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CONVENIENCE AND NECESSITY: MOTOR CARRIER LICENSING BY THE INTERSTATE COMMERCE COMMISSION

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The author discusses the historic development of motor carrier licensing in terms of public policy considerations and how the ICC has interpreted statutory exemptions to promote a reasonable regulatory scheme. The author also considers the current procedure and substantive requirements for application proceedings.

A major factor in the federal regulation of motor transportation is control of entry, which was added to the ICC's jurisdiction in 1935.[1] The licensing of new or enlarged motor-carrier operations has come to represent by far the largest single group of formal proceedings with which the Commission must deal.[2] In the course of more than thirty years of granting certificates and permits to motor common and contract carriers,[3] standards have been formalized which are applied in determining whether a new operation should be authorized.[4]

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1 Motor Carrier Act, 1935, 49 U.S.C. §§ 301-327 (1964). The act is now Part II of the Interstate Commerce Act.

2 In fiscal year 1966 (the year ending June 30, 1966) 8,886 formal proceedings were closed, of which 6,767, or about 74 percent, were motor carrier applications. The Commission's total caseload, including informal proceedings not normally subject to hearing procedures, amounted to 15,851 during this period. 80 ICC Ann. Rep. 110-112 (1966).

3 Common carriers, who serve the public at large, receive "certificates" upon a finding that their services are required by the public convenience and necessity; contract carriers, who serve one or a limited number of persons, receive "permits" upon a finding that their services would be consistent with the public interest and the national transportation policy. 49 U.S.C. §§ 303(a) (14), (15), 307, 309 (1964).

4 The discussion here will be directed primarily to the standards applicable to common carriers. Contract carriers are governed by their own statutory criteria enacted in 1957. 49 U.S.C. § 309(b) (1964), *discussed in* ICC v. J-T Transport Co., 368 U.S. 81 (1961).

At the same time procedures have been worked out, tried, and changed in attempting to meet the dictates of necessity and to cope with the ever-increasing flood of quasi-judicial application proceedings on as current a basis as possible. What follows is an attempt to brighten some of the darker corners of this highly specialized area of administrative law, and also to shed some light on the problems facing the administrative agency which must try to keep up with the fast-growing and ever-changing commercial scene.

I. Origins of Federal Motor Carrier Licensing

On March 2, 1925, the Supreme Court handed down its decision in *Buck v. Kuykendall*[5] holding that the States may not restrict the operations of motor vehicles engaged in interstate commerce unless their regulation is primarily with a view toward insuring safety or the conservation of highways. For nearly ten years afterward there was no economic regulation of interstate motor carriage,[6] but the forces which would shape the federal regulatory scheme were already active. A year after *Buck v. Kuykendall* the ICC instituted an investigation into the possibilities of regulating interstate motor transportation. Its conclusion was that while regulation was probably in the public interest, the primary responsibility should be turned over to the States, so long as they were willing to act.[7] However, the basic rationale behind entry control had already been formulated. After pointing out that a majority of the States license new motor-carrier operations only after finding that they are required by the public convenience and necessity, the Commission said:

> Certificates of public convenience and necessity are required not so much with a view to safety or to the conservation of the highways but primarily for the purpose of protecting the public interest by excluding unnecessary and wasteful competition and by determining what persons or companies are best able to serve the public. The requirement that a certificate of public convenience and necessity shall be a pre-requisite to motor-vehicle operation prevents duplication and unnecessary service where existing facilities are sufficient to meet the transportation needs of the public; it protects the public by preventing irresponsible operations; and gives to certificated carriers some protection against unnecessary competition.[8]

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[5] 267 U.S. 307 (1925).

[6] Terminal area pickup or delivery service performed by or for a railroad was regulated by the ICC as part of the rail movement, but line-haul motor service, even if performed by a railroad, was not subject to the Commission's jurisdiction. Coordination of Motor Transportation, 182 I.C.C. 263, 367 (1932); Constructive and Off-Track R.R. Freight Stations, 156 I.C.C. 205, 235 (1929).

[7] Motor Bus and Motor Truck Operation, 140 I.C.C. 685, 746 (1928).

[8] *Id.* at 737-38.

Prevention of wasteful duplication of services, protection of the public, and protection of investment in carrier facilities were the recurring themes in attempts to persuade Congress to embark upon federal motor carrier regulation. They have continued to be significant factors in determining whether to approve a proposed motor service.

A second major study of the motor carrier situation conducted by the Commission culminated with the issuance of a lengthy report in *Coordination of Motor Transportation*[9] in 1932. The Commission then recommended that interstate motor transportation be made subject to full economic regulation on the federal level. By this time, the trucking business, like all others, was suffering from the effects of depression. One of the measures taken to meet the crisis facing the transportation system was the Emergency Railroad Transportation Act of 1933,[10] which created the office of Federal Coordinator of Transportation. His duty was to make a study of means for "improving conditions surrounding transportation in all its forms and the preparation of plans therefor."[11] ICC Commissioner Joseph B. Eastman was named coordinator, and his report, a large part of which was devoted to the proposal to regulate interstate motor carriers, was submitted to the Senate on March 10, 1934.[12] The draft bill included in the Coordinator's report formed the basis of the Motor Carrier Act, 1935, containing the basic rate and entry control provisions still in effect.

Behind the inclusion of a licensing requirement in the federal regulatory scheme was the fact that virtually all other attempts to regulate motor transportation by the States and foreign countries included such provisions.[13] The consensus was that State control of entry had worked well and was necessary for a successful overall sytem of regulation. Commissioner Eastman, in the Second Coordinator's report, noted that intrastate regulation had generally been successful, and had resulted in stabilization of operations and improvement in facilities and service.[14]

While the first urgings for motor carrier regulation on a national

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9 182 I.C.C. 263 (1932).

10 Emergency Railroad Transportation Act, 1933, ch. 91, 48 Stat. 211 (1933).

11 *Id.* § 4.

12 Regulation of Transportation Agencies, Second Report of the Federal Coordinator of Transportation, S. Doc. No. 152, 73d Cong., 2d Sess. (1934) [hereinafter cited as Second Coordinator's report]. An account of the report's preparation and of the early days of ICC motor carrier regulation will be found in the comments of Charles S. Morgan in Senate Comm. on Commerce, 89th Cong., 1st Sess., An Evaluation of the Motor Carrier Act of 1935 on the Thirtieth Anniversary of its Enactment 4-18 (Comm. Print 1965).

13 Coordination of Motor Transportation, 182 I.C.C. 263, 371-72; Second Coordinator's report 21, 31, 177; 79 Cong. Rec. 5653 (1935) (remarks of Senator Wheeler).

14 Second Corridinator's report 192.

scale came from their major competitors, the railroads, by 1935 many responsible spokesmen of the bus and truck industry supported a statutory system of government controls. Those favoring such a system, which would put limitations on entry, included what is now the American Trucking Associations, Inc. and the National Highway Users Conference, which had representatives from both shippers and carriers.[15] The prevailing thinking regarding the need for certificate and permit requirements in the Motor Carrier Act was ably summed up by Commissioner Eastman in the Second Coordinator's report:

> It is believed that the experience of the past, not only with the railroads but with all industry, and not only in this country but in other parts of the world, shows which course to take. We relied in the early days of railroading upon free competition as the means of public protection, and the result was bankrupt and unsafe railroads, bad labor conditions, flagrant favoritism in rates with the benefit going to the big shipper and the big community, and an uncertainty and instability which were demoralizing to industry in general. Competition was not universal, for the railroads enjoyed a monopoly at many of the smaller places. But public regulation was imposed quite as much to cure the ills of unrestrained competition as to curb the exactions of monopoly. Of late the country has begun to discover that competition can also require restraint in industries which were not supposed to be affected, like transportation, with the public interest.[16]

II. Entry Control Today

The Doyle report[17] summed up the need for entry controls in transportation by saying: "[T]here appears to be no chance of unregulated competition operating in the national interest until the Golden Rule becomes the universally accepted law of business relations." The Motor Carrier Act of 1935 was born out of depression and was designed to regulate an industry that was only beginning to develop and would today be hardly recognizable. But trucking men and their clientele have not undergone such a change in the past thirty years. The profit motive will still lead the carrier to pursue the more lucrative traffic to the disadvantage of consignors and consignees of less profitable freight, and particularly to the detriment of the small-volume shipper.[18]

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[15] *Id.* at 25-26; H.R. 1645 to accompany S. 1629, 74th Cong., 1st Sess. (1935).

[16] Second Coordinator's report 96.

[17] National Transportation Policy: Report prepared for the Senate Comm. on Interstate and Foreign Commerce, 87th Cong., 1st Sess. (1961) [hereinafter cited as Doyle report], by a special study group on transportation policies headed by Maj. Gen. John P. Doyle.

[18] *See* 80 ICC Ann. Rep. 19-22 (1966). The perennial "small-shipment problem" is one of the major issues facing the Commission at the present time.

No alternative to controlled competition and the attendant ability of the government to enforce the service obligations of common carriers has been suggested as a means for assuring that adequate transportation is available to all.

Fundamental to any discussion of government control or regulation is the principle that a common carrier is by nature a public utility. He renders a vital service which cannot be provided individually by each person having a need for it. Private carriage is for many a practical alternative, which means that the motor carrier is not quite in the same class as utilities engaged in less easily duplicated services such as providing electricity, gas, or water. But a proprietary truck operation is not a practical alternative for a small shipper or one whose traffic moves predominantly in one direction; these are precisely the types of shippers whose traffic will be least attractive to the for-hire carrier and who will have the most trouble obtaining transportation service in the absence of industry controls and government compulsion. Examples of the disinclination of motor common carriers to provide service are found in recent complaints before the Commission in which entire communities (St. Joseph, Mo., and Garden City, Kans., in these instances) stood to lose a substantial part of their available motor transportation.[19] After conducting formal investigations into these complaints, the Commission ordered motor common carriers to resume reasonably adequate and continuous service as required by their certificates.

One aspect of business regulation is that it purports to provide protection, or at least to offer benefits, not only to the public patronizing the regulated activity, but to that activity itself. Prevention of unrestrained competition in the motor carrier industry obviously leads to a kind of controlled monopoly and ultimately to more business, and presumably more profits, for the franchised carriers. The large-volume shipper needs little of the protection which economic regulation of transportation provides, and to a very great extent the same is true of the major motor carriers. But the small shipper may need all the help he can get, whether he realizes it or not. It is likely to be only the fear of losing a valuable operating right which will bring the large and profitable motor carrier to accept unprofitable or marginally profitable freight.

The other direction in which the small shipper can turn for service is to the equally-small motor carrier, willing to handle his traffic at a modest profit but able to maintain service only if assured of a steady

19 Pacific Intermountain Exp. Co., 96 M.C.C. 604 (1964); Chamber of Com., 91 M.C.C. 513 (1962).

volume of business without fear of its dilution by competition. Only if entry is controlled and its traffic is protected will this kind of carrier be able to continue to supply a needed transportation service. This casts an interesting sidelight on criticism sometimes heard regarding motor carrier licensing requirements. It has been argued that regulation puts too great a financial burden on the small carriers least able to bear it, but the truth of the matter would seem to be that it is the small operator who gains most from entry controls. The big motor carrier can afford to lose an account or two; for the small carrier such a loss might well mean the end.

When federal motor carrier regulation was still in the planning stages, it seemed to some that it would not be necessary to enforce entry controls very strictly because the relatively small investment in equipment involved—all comparisons then were with railroads—rendered motor operations of little economic significance and meant that a new service could be tried on an experimental basis with little risk. This is no longer the case. Motor carrier equipment has become exceedingly expensive, particularly for the specialized carrier. The general freight carrier has found that it must perform more efficiently and offer faster and better service in order to remain competitive, and the cost to it of a modern automated freight terminal is prodigious. In the words of the Doyle report: "We cannot afford to permit unbridled competition to depress earnings to the point that fresh capital is not attracted to the industry on as favorable terms as to other industry which depends on transportation for its existence."[20] It would appear that economic considerations require the continuation of some comprehensive system of entry control in the interstate motor-carrier field.

III. Exceptions to Certification Requirements

Ten specified varieties of motor transportation are at present specifically excluded from the Commission's economic regulatory jurisdiction.[21] The most significant exceptions from the licensing requirements are probably the transportation of unprocessed agricultural commodities, fish, and ordinary livestock,[22] transportation performed by agricultural cooperatives,[23] and transportation taking place within a single municipality, contiguous municipalities, or a zone "adjacent to and commercially a part" of any municipality.[24] The Commission has frequently been faced with decisions of the courts which have had the

[20] Doyle report 35.

[21] 49 U.S.C.A. § 303(b) (Supp. 1966).

[22] 49 U.S.C.A. § 303(b)(6) (Supp. 1966).

[23] 49 U.S.C.A. § 303(b)(5) (Supp. 1966).

[24] 49 U.S.C.A. § 303(b)(8) (Supp. 1966).

effect of broadening the areas embraced within the statutory exclusions, particularly with respect to the definition of agricultural commodities[25] and the legitimate transportation activities of agricultural cooperatives.[26] It has consistently taken the position that these exceptions to the regulatory scheme should be construed narrowly, largely because of the vast volume of traffic which comes within their terms and thus may be transported by motor carriers not subject to any certification requirements or rate regulation.[27]

On the other hand, the ICC has by no means pressed for a general expansion of its regulatory jurisdiction on all fronts. The most recent addition to the list of motor operations exempt from economic regulation, the emergency transportation of wrecked or disabled motor vehicles by towing, was added to the Interstate Commerce Act in 1963 with the Commission's complete support.[28] Moreover, the first time it considered tow-truck operations after the enactment of this legislation, the Commission extended its coverage to include the towing of a replacement vehicle to the scene of the wreck or disablement, in spite of the absence of any language dealing with this situation.[29] In fact in recent years, the Commission has appeared more and more to be seeking reasons for not subjecting to full economic regulation motor operations which are of minor economic significance in the total transportation picture. For example, it has found to be exempt the transportation of trash and garbage, and of the debris resulting from excavation or building demolition, on the ground that the Interstate Commerce Act requires authority only for the transportation of "property," and materials being hauled off to be discarded are not "property" in the usually accepted sense of the term.[30] The same reasoning was applied to the

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25 East Tex. Motor Freight Lines, Inc. v. Frozen Food Exp., 351 U.S. 49 (1956); Frozen Food Exp. v. United States, 148 F. Supp. 399 (S.D. Tex. 1956), *aff'd. mem.* 355 U.S. 6 (1957).

26 Northwest Agricultural Co-op. Ass'n. v. ICC, 350 F.2d 252 (9th Cir. 1965), *cert. denied*, 382 U.S. 1011 (1966).

27 The Commission made it first formal request that the agricultural commodities exemption be limited to transportation from point of production to primary market in 1955. 69 ICC Ann. Rep. 128 (1955). Request for amendment of the agricultural cooperative exemption was first made in 1961. 75 ICC Ann. Rep. 184 (1961).

28 49 U.S.C.A. § 303(b)(10) (Supp. 1966). Statement of ICC Chairman Abe McGregor Goff, "Hearings on H.R. 2906 before Subcomm. on Transport and Aeronautics, Comm. on Interstate and Foreign Commerce," 88th Cong., 1st Sess. 6 (1963).

29 Werner Common Carrier Application, 95 M.C.C. 387 (1964).

30 Joray Trucking Corp. Common Carrier Application, 99 M.C.C. 109 (1965); Miller Common Carrier Application, No. MC-124133 (Sub-No. 2) (ICC, Sept. 21, 1962); Wm. Helzer & Sons Contract Carrier Application, No. MC-123571 (Sub-No. 1) (ICC, Sept. 28, 1961).

transportation of corpses, which have been found to be neither property nor passengers, and hence beyond the Commission's jurisdiction.[31]

Another example of broadening the actual language of an exemption is found in the treatment by the ICC of the schoolbus situation. Motor vehicles "employed solely in transporting schoolchildren and teachers to or from school" are subject to a statutory exemption.[32] In order to allow schoolbuses to be used for extended school-related trips, the Commission in *Keller Common Carrier Application*[33] in effect construed the term "school" as used in the Act as meaning any educational experience. This was an eminently practical construction; any visitor to Washington in the Spring must know that schoolbuses are almost as plentiful as cherry blossoms. The uproar in the local school districts and parent-teacher associations can easily be imagined, should the ICC have tried to put a stop to the use of uncertificated schoolbuses for the traditional class trip. As the Commission noted,

> Not only is such a result not dictated by the statutory language, but it would be contrary to the public interest and would create regulatory problems for the schools, the schoolbus operators, and this Commission without really benefiting the certificated passenger carriers.[34]

While some might quarrel with the first dozen words of the quoted language, the Commission's finding was not only the most practical one, it has also been stamped with approval by the Supreme Court.

A pair of decisions involving motor operations within a single State demonstrate inclination on the Commission's part to find, in the close cases, that it lacks jurisdiction. In *Motor Transportation of Property within a Single State*,[35] it was found that operation by a for-hire motor carrier transporting property within one State, as part of a continuous movement which included a prior movement in private carriage across a State line, is beyond the Commission's jurisdiction. This decision is based on a finding that the Commission is so limited that in determining its jurisdiction over motor-carrier operations it can look only to trans-

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[31] Dennis Common Carrier Application, 63 M.C.C. 66 (1954). In reaching this conclusion, the Commission refused to follow an earlier decision reaching a contrary result. Steffen Common Carrier Application, 34 M.C.C. 779 (1942).

[32] 49 U.S.C.A. § 303(b)(1) (Supp. 1966).

[33] 94 M.C.C. 238 (1963), *aff'd sub nom.*, National Bus Traffic Ass'n. v. United States, No. 64-C-536 (N.D. Ill. June 3, 1965), *aff'd. mem.* 382 U.S. 369 (1966).

[34] *Id.* at 241. The quoted language, although employed in making a statutory interpretation, is much like that found in decisions, some of which are described below, involving a finding of public convenience and necessity.

[35] 94 M.C.C. 541 (1964), *aff'd. sub nom.*, Pensylvania R.R. v. United States, 242 F. Supp. 890 (E.D. Pa. 1965), *aff'd. mem.* 382 U.S. 372 (1966).

portation performed after a shipment is tendered to a for-hire carrier. Perhaps more revealing is a decision reached about the same time in *Motor Transportation of Passengers Incidental to Air*.[36] There the Commission found that a passenger travelling to or from an airport, in bus or limousine service within a single State, either immediately before or after an air movement to or from an out-of-State point, was travelling in intrastate commerce. Moreover, the decision is placed on "public-interest" as much as on technical legal grounds. After citing a number of cases generally holding that passenger transportation within one State is in intrastate commerce except when the passenger is traveling on a through interstate ticket, the Commission went on to say:

> Furthermore, we find no overriding necessity, rooted in the public interest, to claim the involved transportation as interstate commerce. We are already heavily burdened enough with regulatory responsibilities without casting about to extend our jurisdiction beyond that specially required by law.[37]

Beginning in 1963, the ICC has several times requested Congress to enact legislation which would authorize it to exempt from regulation, upon due notice and hearing, any phase of interstate motor transportation found to be of such "nature, character, or quantity" as not to "impair effective regulation, be unjustly discriminatory, or be detrimental to commerce."[38] As examples of operations which might be exempted if it had this power, the Commission has invariably listed the transportation of trash and garbage, of homing pigeons, and of passengers in local mass transit bus service.

As far as trash and garbage are concerned, the Commission had found a way to exempt their transportation even before this legislation was first proposed.[39] As for homing pigeons, they at one time constituted something of a regulatory nuisance with several applications for authority to transport them coming before the Commission within the space of a few years. Pigeon transportation almost invariably involves pigeon racing, and hence the specialized handling by a qualified and experienced pigeon trainer. It seems patently ridiculous to subject to federal controls the transportation of a panel truck or station wagon load of pigeons a few miles so that they can be released to fly home

[36] 95 M.C.C. 526 (1964), *aff'd sub nom.*, National Bus Traffic Ass'n. v. United States, 249 F. Supp. 869 (N.D. Ill. 1965).

[37] *Id.* at 537.

[38] 77 ICC Ann. Rep. 13 (1963). The recommendation was most recently renewed on January 23, 1967, and a bill, H.R. 6536, 90th Cong., 1st Sess. (1967), has been introduced to implement it.

[39] Cases cited note 30 *supra*.

in a pigeon race. Nevertheless, the Commission in 1951 could unearth no excuse for avoiding this regulatory burden. It found pigeons not to be "ordinary" livestock, and consequently that their transportation was subject to the certificate requirements of the Interstate Commerce Act.[40] Ten years later, this finding was affirmed[41] in spite of the fact that one member of the Commission pointed to a way out in a concurring expression. He urged that pigeon transportation should be treated as an adjunct to the carrier's primary business, which is actually pigeon training, and hence not subject to economic regulation. Judging from the language quoted above from decisions dealing with schoolbus operations and airline passengers, the majority of the Commission might now be ready to agree.

To say that the Commission could, if it wished, find a way to avoid regulating the transportation of pigeons and trash is not to say that legislation of the type proposed would not be valuable. Many transportation services are of no general economic significance or are by their own nature self-regulating. Transportation of commodities which are exceedingly valuable or which require equipment which is extremely expensive will be likely to attract the attention of so few carriers that entry controls become fruitless. Currency and bullion which must be transported in armored car service, and liquefied gases which must be moved at extreme low temperatures in tube trailers costing upwards of 100,000 dollars[42] might fall into this category.

At the other end of the scale, very inexpensive and plentiful commodities can be moved profitably for only relatively short distances; the fact that a particular movement is in interstate commerce may arise simply because of an accident of geography, not because transportation of any great distance or economic significance is involved. The transportation of sand, gravel, and inedible salt in dump trucks, moving for distances up to 100 miles, might very well be exempted from any certification requirements. So too might the transportation of any "unique chattel." For example, race horses and show animals are too valuable and require too much care in handling for an owner to be willing to entrust them to an unknown common carrier. Hence when their transportation is involved the generally applied axiom that existing carriers should have the opportunity to provide needed service before new services are authorized cannot be applied strictly in fairness to the owners of the animals, and any attempt to control competition is likely to be ineffective as well as unnecessary.

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40 Prang Extension, 53 M.C.C. 223 (1951).

41 Island Pigeon Training Ass'n., 86 M.C.C. 39 (1961).

42 Younger Bros., 95 M.C.C. 1, 9 (1964). Liquid hydrogen trailers are described as costing between $55,000 and $100,000.

Local mass transit operations are often so deeply rooted in the immediate municipal situation that it is difficult for the ICC to make as fully informed a decision concerning the need for new services and their effect upon existing ones as could a local regulatory body. But this is an area in which the public interest clearly demands some form of entry control, and regulation from a distance is no doubt better than none at all. Abdication of jurisdiction by the Commission should therefore be contingent upon the creation of some local body empowered to assume responsibility. This has been accomplished in the Washington, D.C. metropolitan area, which encompasses portions of Maryland and Virginia, by an interstate compact which expressly transfers certain jurisdiction from the ICC to a local agency.[43]

IV. The Flexible Concept of Convenience and Necessity

The Interstate Commerce Act offers nothing in the way of specific guidance to the ICC with respect to what transportation services are required by the public convenience and necessity. The act states simply that motor common carrier service shall be authorized upon the filing of an appropriate application to the extent that it "is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied."[44] As a consequence, it has been left to the Commission and the courts to formulate general standards against which individual proposals can be tested to determine whether new operating authority should be granted.[45] Almost without exception, the development of such standards has been on a case-by-case basis, and the cases that have been the vehicles for this development have been

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43 Washington Metropolitan Area Transit Regulation Compact, 40 U.S.C. § 651 (1960).

44 49 U.S.C. § 307 (1964).

45 In the author's opinion this is a good thing. Where Congress has attempted to provide a list of items to be considered in deciding a particular type of case, the results have not been overly successful. The statutory criteria which must be applied in determining contract carrier applications are a case in point. 49 U.S.C. § 309(b) (1964). How to apply and properly balance them has caused the Commission a great deal of trouble and generated otherwise unnecessary litigation without really affecting the results in individual proceedings. The debate over how to balance the criteria reached its height in H. Messick, Inc., 92 M.C.C. 293 (1963), in which the dissenting Commissioners accused the majority of trying to give equal weight to all the standards and failing to recognize that one may be more important than the others in a given situation. Drawing an analogy from prizefighting, the dissent compared the majority's approach to the "rounds" system of scoring and expressed the view that it would be better practice to use the "total points" system instead. *Id.* at 304. In practice, the application of the contract carrier criteria has done little besides greatly increasing the length of the Commission's reports, for it is thought necessary to make it clear to a reviewing court that each of the standards has been considered and weighed against the other.

application proceedings of the quasi-judicial, adversary type rather than general rulemaking proceedings.

From the beginnings of motor carrier regulation the ICC has professed to follow certain stated standards in granting or denying motor carrier applications. One of the earliest attempts to articulate the concept of public convenience and necessity appears in *Pan American Bus Lines Operation*:

> The question, in substance, is whether the new operation will serve a useful purpose, responsive to a public demand or need; whether this purpose can and will be served as well by existing lines or carriers; and whether it can be served by applicant with the new operation or service proposed without endangering or impairing the operations of existing carriers contrary to the public interest.[46]

This statement has been accepted as fundamental gospel and paid lip service in countless Commission decisions.[47] However, it does not tell us how the ICC is going to decide a given case: whether it will find that the new operation will or will not serve a useful public purpose, that existing services can or cannot meet the public's need for transportation, or that the new proposal would or would not endanger the operations of competing carriers.

A somewhat more useful declaration, and one equally often repeated in convenience and necessity cases, tells us that it is "fundamental that existing carriers should be afforded an opportunity to transport all traffic which they can handle adequately, efficiently, and economically."[48] As this statement implies, the applicant has the formal burden of establishing the need for the service he proposes, and it is generally true that he must demonstrate that any opposing carriers authorized and willing to handle the traffic involved have been given the opportunity to do so and found wanting in some respect. But any general rule which concludes with three adverbs—"adequately, efficiently, and economically"—is apt to prove too flexible a guideline to be very helpful to parties and counsel trying to map legal strategy, or even to the Commission itself in determining the merits of a given application. What constitutes "adequate" existing service is often the most important and most difficult question requiring an answer, and the answer given is often one upon which not everyone would agree.

In fact, it is not uncommon for attorneys having extensive ICC practices to complain that the standards used in determining public convenience and necessity can be too easily bent to meet the proclivities

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[46] 1 M.C.C. 190, 203 (1936).

[47] *See, e.g.*, American Buslines, Inc., 99 M.C.C. 506, 511 (1965).

[48] Curtis, Inc., 92 M.C.C. 25, 31 (1961).

of an individual decision maker. Commission members will be described as "tough" or "liberal," according to whether they are thought to be inclined to grant or deny applications. It is obvious that any general concept is going to mean different things to different people, and the lawyers' complaint may be justified to a degree. Over the past ten years there have been rather substantial variations in the proportion of motor carrier applications granted or denied. In the year ending June 30, 1957, 77 percent of the motor carrier applications disposed of, other than those voluntarily withdrawn by the applicants, were granted in full or in part.[49] In 1958 the proportion was 78 percent, and in 1959 it was 81 percent. In fiscal years 1960 and 1961, the figure fell to 74 percent, which reflects the general impression among members of the Commission's bar that Division One, the ICC's motor carrier division,[50] as constituted in calendar years 1959 and 1960, was exceptionally "tough." In fiscal year 1962 the proportion of total or partial grants rose to 81 percent; it was 79 percent in 1963; 81 percent again in 1964; 83 percent in 1965; and 85 percent in 1966.

The present trend is clearly toward more grants. This may in part reflect the propensities of individual commissioners, but it seems more likely that it stems from the prevailing economic conditions. When business is generally good, available traffic increases and the authorized carriers, prosperous and utilizing their facilities to near capacity, are disinclined to oppose the applications of prospective competitors. And it is almost axiomatic that unopposed applications will be granted.[51] This is likely to be disturbing to anyone looking for certainty in the standards of proof required for a grant of a certificate. Actually, however, the situation is similar to that presented by an uncontested law suit; just as a plaintiff receives judgment by default, a carrier can expect a grant of his application upon a minimum of proof where there is no opposition. Perhaps the best approach to the question of what is public convenience and necessity is to consider first the elements that are necessary to make a prima-facie case, and then to consider what the result is likely to be if the application is opposed.

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[49] This figure, and those that follow in this paragraph, are based on data contained in the ICC's annual reports. They are for fiscal years ending June 30 of the year named.

[50] The Commission is divided into three divisions of three Commissioners each, in which decision making authority is vested. Division One deals with operating rights, Division Two with rates and related practices, and Division Three with finance proceedings. Relating decided case data to division membership is complicated by the fact that division assignments are made on a calendar year basis while most records are kept on a fiscal year basis.

[51] In January 1967, for example, the employee board which decides most uncontested motor carrier cases granted 194 applications and denied only four.

In *Novak Common Carrier Application*,[52] the Commission recently had occasion to consider a straightforward application for authority to transport lumber and related products from two Michigan points to seven Midwestern States. Although the application was for a contract carrier permit, the evidence needed to sustain the applicant's initial burden of proof is very similar to that required in a common carrier application. Novak's application was denied because of the applicant's failure to make even a prima-facie case. His evidence was so vague and unsatisfactory, it was noted, that it was impossible to ascertain the supporting shipper's actual transportation requirements, if any, so a grant of authority which would meet its needs could not be framed. As an appendix to this report there was reprinted a notice which accompanies orders assigning application cases for processing without oral hearing and fixing filing dates for verified statements, containing information and suggestions as to the minimum legal requirements of an applicant's case. The notice provides:

> Those supporting the application should state with specificity the transportation service which they believe to be required.
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> The shippers and consignees supporting applications for authority to transport property should identify clearly the commodities they ship or receive, the points to or from which their traffic moves, the volume of freight they would tender to applicant, the transportation services now used for moving their traffic, and any deficiencies in existing services.
>
> Those supporting an application for authority to transport passengers should indicate the frequency with which they would use the proposed service and should identify any transportation services now available and the inadequacies believed to exist in such services.[53]

An applicant who tells the Commission (1) *what* is to be shipped, (2) *where* the shipments are to move, and (3) *how much* traffic will be available has made a prima-facie case, and if it does not appear that there are other carriers interested in the traffic, the public convenience and necessity will be found to require his service and authority will be granted.[54] Where there is opposition to his proposal, he would usually be well advised to go one step further and try to develop reasons why his opponent's service is inadequate.

It is where competing claims must be dealt with that it becomes

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[52] 103 M.C.C. 555 (1967).

[53] *Id.* at 558.

[54] *See also* Interstate Commerce Act, 49 U.S.C. § 307 (1964). An applicant must also establish that he is fit which means that he must show that he has facilities and finances sufficient to perform the proposed service and that he will comply with safety and other regulations.

difficult to determine the precise factors which control the decision to grant or deny. A number of elements add to this difficulty. Almost every application case stands or falls on its own facts, and a surprising variety of factual situations are presented. It is possible to identify some recurring situations and to predict that a grant or denial will result,[55] but the vast majority of application proceedings cannot be easily categorized. Moreover, any attempt to develop data in this area is complicated by the relatively few motor carrier decisions that the ICC publishes in its permanent series of reports. In selecting decisions for printing within its budgetary limitations, the Commission must give preference to those of some clear precedential value. Consequently, the usual convenience and necessity case, depending wholly on its own facts and containing no novel points of law, is most unlikely to appear in printed form, and for all practical purposes it remains inaccessible to all but the parties.[56]

In adjudicating a contested application the basic question, obviously, is whether a new service competitive with existing services should be authorized.[57] It has been said on many occasions that the inadequacy of existing services is a basic ingredient in the determination of public convenience and necessity.[58] Not too many years ago it could have been maintained with some success that the Commission considered this

[55] For example, a grant can be predicted where a motor carrier application has only rail opposition and the supporting shipper has customers having no facilities to receive rail shipments; or where the shipper must have farm or job site deliveries and the opposition is limited to motor carriers operating only over designated highways. *See* Hutchinson & Chandler, "Evidence in Motor Carrier Application Cases," 11 Vand. L. Rev. 1053 (1958).

[56] The author is chairman of an employee board that predominantly decides contested motor carrier applications. During a two year period ending in March 1967, this board disposed a 765 proceedings but printed only 14 of its reports. In addition, between 25 and 30 percent of the application cases referred to a hearing officer for an initial decision become final because no exceptions are filed to his recommended order. The Commission has not printed such decisions since 1940.

[57] Only situations in which there is a real conflict of interest are being considered here. Many nominally contested cases can be compromised because the applicant has asked for more authority than its public support will justify, and the opposing carrier's operations, although they overlap the actual application, do not conflict with a grant of authority which will meet the applicant's real purpose in filing the application. The procedural modifications adopted by the Commission in recent years, and discussed in the next section, were motivated to a substantial extent by the desire to lead the parties to settle cases of this kind without the expense of an oral hearing.

[58] *See, e.g.*, Hudson Transit Lines, Inc. v. United States, 82 F Supp. 153 (S.D.N.Y. 1948); Inland Motor Freight v. United States, 60 F. Supp. 520 (E.D. Wash. 1945). A particularly full discussion of the requirement that the ICC give full consideration to the effect of a grant on other carriers, and the extent to which it must make specific findings to this effect, will be found in Southern Kansas Greyhound Lines, Inc. v. United States, 134 F. Supp. 502, 506-509 (W.D. Mo. 1955).

the pre-eminent ingredient. This protectivist regulatory philosophy reached its high watermark in a 1959 decision[59] which unsuccessfully attempted to apply new legislation concerning motor contract carriers[60] in such a way as to protect from new competition existing carriers who had never enjoyed the particular traffic involved. In language which was broad enough to describe its thinking with respect to both common and contract carriers, the Commission stated: "There is, in effect, a presumption that the services of existing carriers will be adversely affected by a loss of 'potential' traffic, even if they may not have handled it before."[61] Two years later the Supreme Court reversed that decision. Since then there has been a tendency to afford more weight to the desires of the public witnesses, and to any unique elements which may be present in the applicant's proposed service that are not provided by protestants; consequently, the proportion of applications granted has been on the rise.

In the past two or three years the ICC granted a number of applications in the face of opposing carriers who had offered services which had not been shown to be unsatisfactory in the sense that they had provided demonstrably poor service or lacked essential facilities to meet the needs of the shipping public. An application was granted on the ground that the protestant had showed no past interest in the traffic,[62] and another on the basis that the shipper should not be deprived of the "fruits of technological advance" manifested by the applicant's modern equipment.[63] An applicant was granted a certificate because the commodities which he had transported for many years for a particular industry had gradually evolved into products not included in his existing authority.[64] Authority has been granted for the reason that the protestant, who was participating with the applicant in an admittedly satisfactory connecting line service, had contributed nothing to the establishment of that service, or to the development and solicitation of the traffic.[65] It has also been granted on the ground that the supporting shipper was unwilling to tender traffic to the opposing carrier because the latter had an affiliate which was the shipper's business competitor to which, it feared, the protestant might disclose the identity of its customers.[66]

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59 J-T Transport Co., 79 M.C.C. 695 (1959), *rev'd.*, 185 F. Supp. 838 (W.D. Mo. 1960), *aff'd.*, 368 U.S. 81 (1961).

60 Statute cited note 4 *supra.*

61 79 M.C.C. at 705.

62 Dick Jones Trucking, 100 M.C.C. 46 (1965).

63 Dierckbrader Exp., Inc., 103 M.C.C. 540, 543 (1967).

64 Pennsylvania-Ohio Exp., Inc., 96 M.C.C. 449 (1964).

65 Kroblin Refrigerated Xpress, Inc., 96 M.C.C. 233 (1964).

66 American Courier Corp., 103 M.C.C. 298 (1966).

Actually, even before the decision in *J-T Transport* the courts had been leading the way toward a more equal balancing of the advantages of a proposed service against its effects upon existing carriers. The point is well stated in *Hudson Transit Lines, Incorporated v. United States.* After noting that the inadequacy of existing facilities is basic to a determination of convenience and necessity, the court went on to state:

> This does not mean that the holder of a certificate is entitled to immunity from competition under any and all circumstances . . . . The introduction of a competitive service may be in the public interest where it will secure the benefits of an improved service without being unduly prejudicial to the existing service.[67]

Again, in *Shaffer Transportation Company v. United States*,[68] the Supreme Court overturned an ICC decision denying motor carrier authority on the basis of existing rail service alone, finding that the Commission had failed to give sufficient weight to certain inherent advantages which the more flexible, faster, and less expensive motor service possessed when compared to that which the railroads could provide.[69]

Thus the ICC, led by the courts, has come more and more to think of convenience and necessity as involving something more than subtracting existing service from proposed service and inserting the remainder into a certificate. It has come to recognize that proposed operations, existing operations, technological improvements, shippers' needs, and changing commercial conditions all must be looked at as interrelated parts of a whole picture, and that all the ramifications of granting or denying a request for new authority must be considered.

V. Processing Application Proceedings

For the first twenty years of federal motor carrier regulation the annual level of applications filed held relatively steady, averaging between 2,500 and 3,000.[70] In the fiscal year ending June 30, 1958, the number began to rise with 3,474 filings, and except for a recession in 1961 it has risen steadily ever since. The number exceeded 4,000 in 1960 and 1962; 5,268 new applications were filed in 1964; and in 1965, which seems to have been a typical year with no discernible reason for an inflated figure, the number was 6,353. In 1966 there were 8,681 new applications, but this may be explainable in part by many applicants

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67 82 F. Supp. 153, 157 (S.D.N.Y. 1948).

68 355 U.S. 83 (1957).

69 *Accord*, Vincent Montone Trans., Inc. v. United States, 231 F. Supp. 484 (M.D. Pa. 1964).

70 The data in this and the following paragraphs are taken from the ICC's annual reports and from releases of the Commission's Public Information Office. The latter are so ephemeral it seems futile to attempt to provide detailed references.

rushing to meet two deadlines: a new application form, placing a greater burden of disclosure upon the applicant, was adopted effective May 20, 1966; and a schedule of filing fees was adopted for the first time, effective July 22, 1966.

While the caseload was increasing during this period the ICC's staff remained about the same size, increasing only 1.4 percent between 1960 and 1966. Nevertheless, the Commission was able to reduce the average time required to dispose of a formal proceeding from 8.6 to 7.2 months. How the increasing motor carrier docket is being handled provides a study in what an administrative agency must do if it is to keep abreast of its responsibilities.

The first step which the Commission took to meet its growing caseload was to increase the delegation of decision-making authority to employee boards. The Interstate Commerce Act already allowed the assignment of informal proceedings and uncontested formal cases to three member boards, and in 1961 the act was amended at the Commission's request to permit such boards to decide contested cases as well.[71] Three Review Boards, one each to deal with rate, finance, and operating rights cases, were established pursuant to this legislation. In 1964 two additional Operating Rights Review Boards were created, and three years later each of them was deciding up to forty contested cases a month. They were established primarily to determine cases which have been the subject of a hearing officer's report and recommended order to which exceptions have been filed—hence the name review boards. A petition for reconsideration of a board's decision lies to a division of three Commissioners. The measure of the boards' success may be seen in the fact that only about 5 percent of their decisions are successfully appealed.

Before 1964 the great majority of motor carrier applications were routinely assigned for oral hearing unless the parties agreed to the submission of evidence in the form of written statements. The procedure followed at that time, upon the receipt of the application itself, was to fit the case into a hearing itinerary and then to publish a notice of the scope of the application and of the time and place of hearing in the Federal Register as public notice to all interested parties. Anyone notifying the applicant ten days prior to the hearing of his intention to appear and protest the application could do so. The result was that a great many applications presenting simple and straightforward situations, applications with no opposition, and applications in which the opposition could be eliminated by amendment, were being orally heard.

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[71] 49 U.S.C. §§ 17(2), (5) (1964), *as amended*, (Supp. 1965); subsection (5) was amended in 75 Stat. 517 (1961).

While this wasteful procedure could be followed with some success in the leisurely days when 3,000 applications were being filed annually, some alternative had to be found when it became apparent that the figure was about to reach 4,500 and was still going up. The ICC therefore modified its rules of practice to provide for immediate publication of all its applications in the Federal Register and to require the filing within thirty days of a formal protest, stating the ground therefore, by anyone wishing to oppose. All unopposed cases were assigned for handling under the modified procedure, so the evidence had to be submitted in the form of affidavits, and were assigned to an employee board. During the whole of calendar year 1963, 414 unopposed applications were processed under the modified procedure. In March of 1964 alone, 104 such cases were handled, and in December 1966 the number reached a high of 307.

As the docket continued to rise the need for further steps was clear. One of the biggest problems facing the Commission was the waste of hearing time. Too many applications were being set for hearing and then withdrawn at the applicant's request; perhaps this was because of a schedule conflict by the applicant's counsel or, it was often suspected, because anticipated support failed to materialize or because the application had been filed as a "trial balloon" and not with any serious intention of prosecuting it. Also, in a great many cases the party filing a protest failed to appear at the hearing or, upon arrival, promptly withdrew upon amendment by the applicant, leaving the application unopposed.

An obvious way to discourage the filing of frivolous applications is to charge a fee for each filing. The Commission had never imposed filing fees, but a proceeding looking toward this result was instituted in October 1965 and culminated in the establishment of a fee schedule as of July 22, 1966.[72] The charge for filing a motor carrier application was set at two hundred dollars, the highest level charged by the schedule.

The Commission also adopted a new application form which was put into use on May 20, 1966.[73] For the first time applicants for motor carrier authority were required to submit with their applications affidavits of supporting witnesses stating their intention to appear at an oral hearing, if one were held, to give testimony on the applicant's behalf. The Commission's Rules of Practice were modified to place upon opposing parties a greater burden of making known the precise extent of their interest in the applicant's proposal.[74] At the same time the ICC

72 Regulations Governing Fees for Services, 326 I.C.C. 573 (1966).

73 ICC Form OP-CR-9, 49 C.F.R. § 7.78 (1963).

74 49 C.F.R. § 1.247(d)(3) (Supp. 1966).

published in the Federal Register a "General Policy Statement Concerning Motor Carrier Licensing Procedures"[75] which outlined the problem it faced in the growing size of the docket and described the procedures intended to meet that problem. The ICC announced that it intended to greatly increase the use of no-oral hearing procedures in handling contested motor carrier applications, that the initial decisions in such cases would be made by one of the Operating Rights Review Boards, bypassing the hearing officer's report and recommended order, and that the boards would make all rulings on procedural motions after the proceedings were submitted for decision, including the determination whether oral hearing should be scheduled for purposes of cross-examining opposing witnesses. The first modified procedure cases handled under this plan reached the review boards in August 1966, and by January 1967 thirty to forty a month were being decided.

Not only does the increased use of the modified procedure point to a way for the ICC to control its docket, but it can produce substantial economic and other benefits for the parties as well. Many motor carrier application cases do not involve traffic which will be particularly valuable to a successful applicant.[76] A simple procedure, without the time consuming and expensive trappings of a full scale adversary-type hearing, is obviously necessary to meet the needs of the small businessman who finds it necessary to obtain a government franchise. It may fairly be said, therefore, that the exigencies of time and budget have forced the ICC to move away from the over-judicialized procedures upon which it formerly relied and to develop new case-handling methods better suited to meet the needs of the public and better geared to effectuate the proper ends of the administrative process.

The Commission's tendency in recent years to modernize its traditional procedures can be seen in its increasing use of quasi-legislative techniques to meet problems in specific areas. The Commission has not been inclined to turn to general rulemaking proceedings in the licensing area even where it has been necessary to interpret certificates or statutory provisions. The more usual course has been to select some representative application proceeding, formal complaint, or investigation into the activities of an individual carrier as a vehicle to make interpretations which would in all probability have a significant future effect upon the transportation industry as a whole. The dangers inherent in this procedure are illustrated in the Commission's interpretation of the schoolbus exemption discussed earlier.[77] Because of the far reaching

[75] 31 Fed. Reg. 6600 (1966).

[76] See the homing pigeon applications in text accompanying notes 40-41 *supra*.

[77] See text accompanying notes 32-34 *supra*.

effects which the decision would have, at one stage the case had to be remanded to the Commission from a three-judge court which was concerned at the Commission's refusal to allow trade associations and other spokesmen of the motor-bus industry an opportunity to express their views.[78] Again, in dealing with the incidental-to-air exemption in 1962[79] the Commission found itself faced with a situation in which Division 1 had issued a decision in an application case which reversed a long line of precedent.[80] In order to attain a higher degree of stability, the entire Commission, rather than deal with the broader issues presented in disposing of the application itself, instituted a rulemaking proceeding which resulted in the adoption of regulations of general applicability.[81]

The tendency today seems to be to favor this method of making decisions which will have future effect for all or a class of carriers. The Commission recently declined to answer certain questions regarding the meaning of authority held by many passenger carriers and brokers of passenger transportation under which they may provide "all-expense," "sightseeing" or "pleasure" tours in spite of the fact that it had before it two proceedings in which these questions were squarely presented and in which the buslines and tour brokers were well represented.[82] Instead it announced that it would institute rulemaking proceedings in which the issues of general importance to the industry would be considered.[83]

Another indication of the Commission's move to a greater exercise of its quasi-legislative powers in dealing with its licensing functions is found in a number of special procedures that have been devised to deal with specific problem areas which have arisen. The first manifestation of this attitude is found in what appears to have been a highly successful attempt to deal with the extensive changes in distribution methods and patterns brought about by the introduction of multi-level rail cars for the transportation of automobiles. Vast quantities of traffic were diverted from motor carriers specializing in automobile transportation during the early 1960's, resulting in severe economic hardship to them. The changing traffic patterns made it clear that what had formerly been

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78 National Bus Traffic Ass'n. v. United States, 212 F. Supp. 659 (N.D. Ill. 1962).

79 49 U.S.C.A. § 303(b)(7a) (Supp. 1966).

80 Hatom Corp. Common Carrier Application, 88 M.C.C. 653 (1962).

81 91 M.C.C. 725 (1962); Motor Transportation of Passengers Incidental to Air, 95 M.C.C. 526 (1964); 49 C.F.R. § 210.45 (Supp. 1967).

82 Greyhound Corp., 100 M.C.C. 453 (1966); Michaud Bus Lines, Inc., 100 M.C.C. 432 (1966).

83 Passenger Transportation in Special Operations, No. MC-29 (Sub-No. 1) (ICC, filed Jan. 17, 1966); Operations of Brokers of Passenger Transportation' No. MC-29 (Sub-No. 2) (ICC, filed Jan. 17, 1966).

all-motor movements would in the future involve rail transportation for a substantial portion of the distance, with the motor carriers' role shifting to providing short-haul transporation from factory to railhead or from rail terminal to dealer. This meant that the motor carriers would need new operating authority if they were to keep any share of their past business. In *National Automobile Transporters Association*[84] the ICC adopted a procedure under which carriers in this position could obtain the authority they required to coordinate their operations with those of the railroads, and to continue to provide service at the origins and destinations they had previously served. Instead of requiring the carriers to produce supporting shipper testimony, the Commission in effect provided a "grandfather" procedure, and made the statutory finding of public convenience and necessity upon a showing of past operations, loss of traffic to the railroads, and the pattern in which coordinated rail-motor service had developed. The applications filed pursuant to the special procedures were determined without oral hearing. The Commission's authority to handle this situation in the way it did has been upheld by the courts.[85]

Similar special procedures were adopted to facilitate the conversion of irregular-route motor authority to regular-route authority when a gradual shift in the character of a carrier's operations made it appear that such a change was warranted.[86] The Commission had long recognized a distinction between regular and irregular route services,[87] and its experience had been that a number of applications were filed each year for authority to convert from the latter type of operation to the former. A procedure to provide for the issuance of regular route authority in lieu of irregular route authority upon proof of past operations alone became effective on May 1, 1964, and over 150 applications for conversion were filled prior to the cut-off date, March 1, 1965.

Recently the Commission had to determine whether authority was required for the operations of motor carriers performing transportation service for freight forwarders of household goods, when forwarding itself was not subject to federal regulation. In *Kingpak, Incorporated*[88] it was found that the underlying motor transportation was subject

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84 91 M.C.C. 395 (1962).

85 Motor Convoy, Inc. v. United States, 235 F. Supp. 250 (N.D. Ga. 1964), *aff'd. mem.* 381 U.S. 436 (1964); United Transports, Inc. v. United States, 245 F. Supp. 561 (W.D. Okla. 1965).

86 49 C.F.R. § 2a (1963); Midwest Motor Exp., Inc., 96 M.C.C. 402 (1964).

87 Motor Common Carrier, of Property—Routes and Service, 88 M.C.C. 415 (1961); Brady Transfer & Storage Co., 47 M.C.C. 23 (1947), *aff'd.*, 80 F. Supp. 110 (S.D. Iowa 1948).

88 103 M.C.C. 318 (1966).

to the licensing requirements of the Interstate Commerce Act. This meant that a large number of applications would be filed by carriers seeking authority to continue operations they had believed to be exempt. In the *Kingpak* decision the Commission announced that it would entertain such applications under a special procedure, that proof of past operations would be deemed sufficient to support a finding that the public convenience and necessity required their continuance and that no oral hearings would be held.

Kingpak represents the farthest step taken to date by the ICC in adapting its procedures to the practical necessities of regulating motor transportation. And for the first time there is found a clear expression of the Commission's position that hearings are not required in application proceedings.[89] Four of the eleven Commission members would have gone beyond simply making such a statement and would have disposed of the anticipated applications without even giving competing carriers the opportunity to protest and present evidence under no-oral hearing procedures.

VI. Conclusion

It seems likely, at least for the forseeable future, that there will continue to be economic regulation of interstate motor transportation, and that control of entry will remain an important factor in the federal regulatory scheme. As the national economy has grown, the amount of freight and passenger traffic increased, and distribution patterns changed, the ICC has taken steps to keep abreast of the situation. In recent years it has apparently drawn away from an earlier mechanical approach which often appeared to equate public convenience and necessity with the absence of any existing transportation service, and to become more willing to recognize the need of the public for modern and efficient service. It has begun to replace its over-judicialized, formal hearing procedures with others which are less expensive, more effective and designed to meet the immediate needs of the carriers it regulates and the public which must rely on common carrier transporation. Hopefully, these trends will continue, and the ICC, the oldest of the regulatory agencies, will continue to meet the challenges provided by an industry on the move.

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[89] *Id.* at 343-44.