Commercial Zones and Terminal Areas: History, Development, Expansion, Deregulation

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Under service date of August 11, 1975, the Interstate Commerce Commission issued an order in *Ex Parte No. MC-37 (Sub-No. 26), Commercial Zones and Terminal Areas*, directing that a proceeding be instituted for the purpose of considering modification of the then existing rules defining commercial zones and terminal areas. That notice is the genesis of what has become one of the more significant and controversial decisions that has been issued by the Interstate Commerce Commission.[1] The notice informed interested persons that:

> The purpose of this document is to institute a proceeding to determine whether commercial zones and terminal areas of motor carriers and freight forwarders should be redefined.
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> Section 203(b)(8) of the Interstate Commerce Act exempts motor carrier operations about municipalities from Federal economic regulation. The geographic area within which exempt motor carrier operations may be performed is referred to as a commercial zone. The existing regulations provide two

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1. Ex Parte No. MC-37 (Sub-No. 26), Commercial Zones and Terminal Areas, 124 M.C.C. 130 (1975) (Interim Report), 128 M.C.C. 422 (1976) (Decision).

> methods of defining the size of a particular commercial zone. The customary method is by reference to a population mileage-formula developed in the mid-1940's . . . . The alternative method provides for an individual determination of the commercial zone of a specific municipality. The present proceeding is instituted for the following three purposes: (1) to determine whether, and the extent to which commercial zones (and corresponding terminal areas of motor carriers and freight forwarders) . . . should be enlarged by expanding or otherwise changing the present population-mileage formula; (2) to attempt to devise a rule of general applicability for all commercial zones and terminal areas of motor carriers and freight forwarders, at least with respect to incorporated communities, thus dispensing with the need for the present individual definition of irregularly shaped zones which are sometimes difficult to describe and in need of subsequent revision; and (3) to make adjustments in the rule of applicability about unincorporated communities compatible therewith.[2]

Changes in the scopes of the commercial zones and terminal areas were proposed in the notice, including adjusting the long-established population-mileage formula,[3] as follows:

Population	*From*	*To*
Less than 2,500	2 miles	3 miles
2,500-24,999	3 miles	4 miles
25,000-99,999	4 miles	6 miles
100,000-199,999	5 miles	8 miles
200,000-499,999	5 miles	10 miles
500,000-999,999	5 miles	15 miles
1,000,000 and up	5 miles	20 miles

The interim report and final decision of December 17, 1976, adopted this proposal and thereby exempted from regulation by the Commission extensive areas of the United States. There are many interesting and perplexing aspects of this decision. Certain of the most vigorous supporters of regulation among the members of the Interstate Commerce Commission were the strongest sponsors of the deregulation that results from this order. Moreover, this deregulation is not confined to limited local areas. It embraces all large and small municipalities, metropolitan areas and unincorporated communities in the United States, ranging from such monsters as Los Angeles, California, with a commercial zone encompassing an estimated land area of over two thousand square miles, to small unincorporated communities having a "post office with the same name."[4] The effect of the order of the Commission is to achieve a more complete deregulation than that advocated by any but the most resolute proponents thereof relating to

2. 40 Fed. Reg. 33, 840 (1975) (citations omitted).
3. *Id.*
4. Ex Parte No. MC-37 (Sub-No. 26), Commercial Zones and Terminal Areas, 128 M.C.C. 422, 432 (1976).

interstate motor carrier transportation. Thus, we are confronted with the paradox of why the "regulation" of motor carriers in all metropolitan, municipal and unincorporated areas of the United States is *not* in the public's best interests, when the "regulation" of motor carriers outside these areas *is* in the public's best interests.

The order also is inconsistent with many existing and long-established policies of the Commission. For example, by determining the scope of terminal areas in the manner set forth in the decision, the Commission has defined service points and areas for most of the carriers under its jurisdiction in terms of radii from points of boundary lines. The Commission's long-established policy is against describing authorities in this manner.[5] In the *Fox-Smythe Transportation Co., Extension* decision, the Commission declared its "policy" with respect to the use of territorial and service restrictions and its intention to establish "guidelines for the drafting of proper and workable motor carrier property applications."[6] It is stated that grants of authorities in terms of mileage radius about a certain point "are discouraged as they might lead to interpretive problems."[7]

There are a number of recent decisions in which the Commission found, based upon specific data, that certain areas were not commercially parts of the base municipalities. For example, *Ex Parte No. MC-37 (Sub-No. 14B)* involved a petition to expand the Atlanta, Georgia, commercial zone, but an order issued on February 26, 1973, found that the area proposed was not commercially or economically a part of that city. The proposed area extended as far as nine miles from Atlanta.[8] A petition to expand the Cincinnati, Ohio, commercial zone was considered in *Ex Parte No. MC-30 (Sub-No. 2)* and was denied on October 7, 1976, because the commerce in the proposed area could not be linked to the commercial zone of Cincinnati.[9] On October 8, 1976, petitions were denied to expand the Minneapolis-St. Paul, Minnesota, and the Spokane, Washington, commercial zones.[10] Thus, predicated upon specific data relative to each of these areas, the Commission issued recent rulings that the proposed extensions were not commercially parts of these base municipalities. However, in spite of these determinations, by its order in *Ex Parte No. MC-37 (Sub-No.*

5. *See* Fox-Smythe Transp. Co., Ext., 106 M.C.C. 1 (1967); Glennon Transp., Inc., Ext., 78 M.C.C. 157, 159 (1958).

6. 106 M.C.C. 1, 1 (1967).

7. *Id.* at 13.

8. Ex Parte No. MC-37 (Sub-No. 14B), Commercial Zones and Terminal Areas, 117 M.C.C. 797 (1973).

9. Ex Parte No. MC-30 (Sub-No. 2), Cincinnati, Ohio, Commercial Zone, 125 M.C.C. 657, 660 (1976).

10. Ex Parte No. MC-37 (Sub-No. 2D), Minneapolis-St. Paul, Minn., Commercial Zone, 125 M.C.C. 649, 651 (1976); Ex Parte No. MC-37 (Sub-No. 27), Spokane, Wash., Commercial Zone, 125 M.C.C. 652, 654 (1976).

26) of December 17, 1976, it has reversed its position and has determined that all of these areas were commercially parts of the base municipalities.

The propriety of the Commission's rulings in this proceeding has been recently tested and affirmed after an appeal to the United States Court of Appeals for the Ninth Circuit in *Shorthaul Survival Committee v. United States.*[11] The decision of that court affirming the December 17, 1976, order of the Commission in *Ex Parte No. MC-37 (Sub-No. 26)* was issued March 17, 1978, and will be discussed hereafter. Neither the Commission nor the court stayed the order and the commercial zone and terminal area expansions became effective March 29, 1978. There was no petition for a writ of certiorari to the Supreme Court of the decision of the Ninth Circuit Court of Appeals.

Nevertheless, the inconsistency between the regulations promulgated by the challenged decision and past policies and rulings of the Commission, the espousing of deregulation by regulators, and the anticipated effect of the expansions of the exempt zones and areas, have raised the status of the Commission's order to one of significance and interest as a reflection of the Commission's present and future regulatory course and policy.

To understand the issues and consequences of the considered decision, a review of the history of commercial zones and terminal areas is essential. The following sections of this article will review the legislative and regulatory proceedings and procedures which created and determined commercial zones and terminal areas and the effect of the commercial zone deregulation and terminal area extensions upon motor carrier and freight forwarder services and upon the general public.

Genesis of Commercial Zones

Section 203(b)(8) of the Interstate Commerce Act permits the establishment of commercial zones and was enacted as a provision of the "Motor Carrier Act of 1935."[12] Since enactment, the Commission and the courts have shared the burden of interpreting the language of the provision and determining the intent of Congress and the purpose of this discretionary exemption. To determine the congressional purpose for authorizing this conditional commercial zone exemption, reference must first be made to the language of the statute and its literal meaning.[13] Are the purpose

11. 572 F.2d 240 (9th Cir. 1978).

12. Ch. 498, § 203(b)(8), 49 Stat. 543 (codified at 49 U.S.C. § 303(b)(8) (1976)).

13. Subsections (7a) and (8) of § 203(b) of the Act, as amended, provide:

(7a). . . nor, unless and to the extent that the Commission shall from time to time find that such application is necessary to carry out the national transportation policy declared in this Act, shall the provisions of thie part, except the provisions of Section 204 relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment apply to:

(8) the transportation of passengers or property in interstate or foreign commerce wholly

and intent definitely and unequivocally expressed or did Congress afford the Commission only broad and general guidelines to follow? Are there any limitations or standards which must be observed and applied by the Commission in deciding if, and to what extent, commercial zones should be established and the transportation therein exempted from regulation? Section 203(b)(7a) provides that only "unless and to the extent that the Commission shall from time to time find that such application [of regulation] is necessary to carry out the [N]ational [T]ransportation [P]olicy"[14] shall motor carrier operations within such zones be subjected to economic regulation under Part II of the Interstate Commerce Act. Thus, any exemption authorized must be in conformance with the standards set forth in the National Transportation Policy. Section 203(b)(8) further specifies that the exempt area may be "wholly within a municipality or between contiguous municipalities or within a zone adjacent to and commercially a part of any such municipality or municipalities."[15] The fact that the limits of the exempt area are not more closely delineated leaves the Commission the right to exercise its investigatory authority and expertise, as it has done in the *Ex Parte MC-37* proceeding considered herein. Thus, Congress has established commercial zones of municipalities and their related and adjacent

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within a zone adjacent to and commercially a part of any such municipality or municipalities, except when such transportation is under a common control, management, or arrangement for a continuous carriage or shipment to or from a point without such municipality, municipalities, or zone, and provided that the motor carrier engaged in such transportation of passengers over a regular or irregular route or routes in interstate commerce is also lawfully engaged in the intrastate transportation of passengers over the entire length of such interstate route or routes in accordance with the laws of each state having jurisdiction . . . .

49 U.S.C. § 303(b) (7a)-(8) (1976).

14. 49 U.S.C. § 303(b)(7a) (1976). The declaration of the National Transportation Policy was formerly included in section 202(a) of the Motor Carrier Act of 1935. It was made applicable to all forms of transportation and placed before Part I of the Interstate Commerce Act by the Transportation Act of 1940. The National Transportation Policy enounced by Congress is as follows:

> It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this [A]ct, . . . so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this [A]ct . . . shall be administered and enforced with a view to carrying out the above declaration of policy.

Act of Sept. 18, 1940, ch. 722, § 1, 54 Stat. 899 (codified at 49 U.S.C. preceding § 1 (1976)).

15. 49 U.S.C. § 303(b)(8) (1976). For the text of this section, in pertinent part, see note 13 *supra*.

business or commercial areas, exempt from economic regulation by the Commission to the extent it finds warranted by the National Transportation Policy as enunicated by the Congress.

The Commission and the courts have declared that the language in section 203(b)(8) and the related legislative history furnish little assistance in determining the purpose of this provision or the intent of Congress. They have described the language and history of the statute as being indefinite, lacking in specific guidance, and having no precise definition; and they have applied interpretations from time to time predicated upon speculation as to the purpose of the exemption and to the intent of Congress. In construing the intent of Congress, the legislative history is resorted to, including the committee reports and, particularly, the records of the congressional debates. Because of the complexity of modern federal legislation, these debates have become *increasingly* more significant and useful in *construing* legislative intent.[16] The debate in the Senate was led by Senator Wheeler who introduced Senate Bill 1629,[17] which was adopted as the Motor Carrier Act of 1935. The bill was introduced at the request of the Interstate Commerce Commission. Senator Wheeler advised the Senate that the bill had the endorsement of the Commission, the American Trucking Association, many shippers, practically all of the state commissions, and the truck and bus industries of the United States. With respect to the commercial zone exemption, he stated:

> Furthermore, an exemption is made, unless the Interstate Commerce Commission finds that the law cannot be made to work without its inclusion to some extent, of the transportation of property locally or between New York City and New Jersey, and also, for instance, as between Washington and Alexandria, and other contiguous cities where the transportation is regulated by the local governments themselves.
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> Provision is also made that regulation shall not apply to what may be termed 'intramunicipal' or 'occasional' operations 'unless and to the extent

16. Representative Moorhead has described the use of congressional debates to establish the congressional intent in the adoption of statutes as follows:

> Mindful of this judicial scrutiny, legislators of today have used the opportunity of debate to achieve legislative goals which might otherwise be unattainable. Indeed, by the use of . the 'friendly colloquy' two men may be able to legislate more effectively than all of Congress.
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> This type of colloquy is presented in the form of a friendly exchange of questions and answers about the pending legislation between members, one of whom is usually a member of the committee from which the legislation emanated. This seeming repartee is not accidental. In fact, it is just the opposite. It has been carefully planned by the parties for the express purpose of providing a legislative interpretation of a statutory provision which might otherwise be differently interpreted.

Moorehead, *A Congressman Looks at the Planned Colloquy and Its Effect in the Interpretation of Statutes*, 45 A.B.A.J. 1314, 1314 (1959).

17. S. 1629, 74th Cong., 1st Sess. (1935).

> that the Commission shall from time to time find that such application is necessary to carry out the policy of Congress enunciated in Section 202. The first of these two conditional exemptions concerns the transportation of passengers or property in interstate or foreign commerce within a municipality or between contiguous municipalities or within a zone adjacent to and commercially a part of any such municipality or municipalities, except when such transportation is part of a continuous carriage or shipment to or from a point without such local area.[18]

The concern of the states with respect to the failure of the federal government to regulate motor carrier transportation was significant and pervaded the debates in both the Senate and the House of Representatives. In explaining the effect of the lack of federal regulation of motor carriers, Senator Wheeler reported that "[t]he absence of such regulations has in some instances created chaotic conditions beyond the control of any state or municipal body."[19] In discussing the controls or restraints placed upon the Commission, Senator Wheeler advised the Senate that "[s]ection 202 [(a)] of the pending bill . . . makes clear that the policy of the Congress is to deal fairly and impartially with transportation by motor carriers and to preserve the natural advantages of such transportation."[20] He also described the fear on the part of some bus and truck operators that the Commission would not deal with them fairly and said that to safeguard these operators:

> We specifically wrote into the bill, in the declaration of policy provision, and at other places throughout the bill, that the peculiar features of transportation by truck and by bus should be taken into consideration at all times by the Interstate Commerce Commission, and we put such provision in the declaration of policy.
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> The exercise of authority by the Commission under certain sections of the bill is directly related to the declaration of policy and the added provisions with respect to discrimination, preference, and unfair or destructive competitive practices lay a stronger and more definite basis for administrative action.[21]

The debate concerning Senate Bill 1629 in the House of Representatives was led by Representative Sadowski. He described the hearings and the testimony taken by the Interstate and Foreign Commerce Committee of the House and the reports of the state utility commissions and stated that:

> It is self-evident that there is a positive need for interstate regulation of motor carriers. Legislation over interstate motor carriers, to be practical, must conform with the principles of regulation now in effect in the 48 States which regulate common carriers and the 42 States that regulate contract carriers. The State commissions have asked Congress to pass this bill so that there may be harmony between States as to motor-carrier regulation and since 1926

18. 79 CONG. REC. 5649-51 (1935).
19. *Id.* at 5651.
20. *Id.* at 5650.
21. *Id.*

> Congress has had before it legislation of this character.[22]

Representative Sadowski acknowledged that "the purpose of the bill is to provide for regulation that will foster and develop sound economic conditions in the industry, together with other forms of transportation so that highway transportation will always progress."[23]

Finally, Representative Sadowski noted that states are empowered to grant or deny the use of their public highways but cannot regulate operations of interstate motor carriers. This hiatus of regulation resulted in abuses and problems for the state and federally regulated transportation services. He stated that:

> In the case of *Buck v. Kuykendall* the court held that a State could not regulate motor carriers operating in interstate commerce, and that the matter of control of carriers in interstate commerce was entirely in the hands of Congress to provide for Federal regulation.
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> This decision left the door wide open. It permitted all sorts of abuses by irresponsible operators at the expense of the intrastate motor carriers and other transportation agencies who were under strict State and Federal regulation.[24]

Not suprisingly, it was evident throughout the debate that strong pressure for the enactment of the legislation was coming from the states that were affected by the absence of regulation over the interstate transportation. It was observed that: "The regulatory bodies of the various states which are grouped together in a national organization, composed of the 48 state commissions, have investigated this subject. All of the state commissions, out of vast experience they have had, are now calling upon this Congress to pass this bill."[25]

Clearly, the discretion given the Commission by Congress in interpreting section 203(b)(8) of the Act includes power to define the areas of ex-

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22. 79 CONG. REC. 12,204 (1935).
23. *Id.* at 12,205.
24. *Id.* at 12,206.
25. *Id.* at 12,210. Representative Sadowski, in responding to questions concerning commercial zone and other exemptions in section 203(b) stated:

> We felt that the Commission itself ought to have some power there to interpret this Act according to section 202, wherein we set down the policies to be carried out in the bill. It should have the power to interpret those three remaining exemptions [including commercial zones] in connection with section 202 so that we would not have somebody coming in by subterfuge, chiseling in, using these last three exemptions to break down the very things that we are trying to correct.
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> MR. FORD of Mississippi: Does the gentleman think it would be better for the Congress to decide what should be exempted rather than to leave it in the hands of the Commission that might nullify the entire intentions of Congress?
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> MR. SADOWSKI: We do that very thing. The Commission can only consider this in reference to the policy set down by the Congress in section 202. They have to take into consideration the policy of Congress.

Id. at 12,225.

empt commercial zones of municipalities or between contiguous municipalities or within zones adjacent to and commercially parts of such municipalities. Congress declared its intent that the exempt transportation is to be limited to movements locally or between contiguous municipalities or commercial zones and that these zones shall exist unless and to the extent the Commission is able to find they are consistent with the standards of the National Transportation Policy.[26]

The Commission, therefore, is required to consider the effect of the exempt zones upon these policy standards established by Congress. But has the Commission considered and issued findings from time to time that these zones "encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices,"[27] in accordance with the National Transportation Policy standard? Has the Commission cooperated with the several states to find if the presently constituted zones create or encourage the chaotic conditions and the abuses which caused states to propose and support the regulation of interstate motor carriers? Has the Commission made findings from time to time that retention of the zones has promoted safe, adequate, economical and efficient service, fostered sound economic conditions and encouraged fair wages and equitable working conditions?

Initial Commercial Zone Proceedings

The first proceeding in which the Commission was required to interpret the intent and declared policy of Congress relative to commercial zones was *St. Louis, Mo.-East St. Louis, Ill., Commercial Zone.*[28] It was initiated by the filing of a petition by Columbia Terminals Company of St. Louis, Missouri. That case was assigned MC-C-1, and involved the scope of the commercial zone of St. Louis, Missouri, and East St. Louis, Illinois, two cities which are separated by the Mississippi River. While that matter was pending, the Commission, on its own motion, commenced investigations to determine the areas embraced by the New York and Chicago commercial zones.[29] Orders in the three proceedings were issued by the Commission concurrently on April 5, 1937. In the initial case, the Commission found that nothing intervened between the populated areas of St. Louis, Missouri, and East St. Louis, Illinois, except the Mississippi River, that they were connected by bridges over which there was a constant flow of vehicular traffic and that the two cities were contiguous. It limited the territory coming

26. *See* notes 14 and 15 *supra* and accompanying text.
27. *See* note 14 *supra*, for the text of the National Transportation Policy.
28. 1 M.C.C. 656 (1937).
29. New York, N.Y., Commercial Zone, 1 M.C.C. 665 (1937); Chicago, Ill., Commercial Zone, 1 M.C.C. 673 (1937).

within the commercial influence of the municipalities to that in which transportation by motor vehicle was in the nature of an intraterminal or city-type movement, and excluded any areas between which the transportation was intercity in nature. Based upon these determinations, the Commission established a single commercial zone for St. Louis and East St. Louis, and specifically defined the bounds of the area commercially a part of that zone. However, it eliminated from that zone service to or from the *contiguous* city of Belleville, Illinois, upon finding that movements between it and East St. Louis were linehaul or over-the-road, rather than local or intraterminal transportation. The Commission stated:

> We find that the application of all provisions of the Motor Carrier Act, 1935, to transportation by motor vehicle between Belleville, on the one hand, and points in the St. Louis-East St. Louis commercial zone, on the other, is and will be necessary to carry out the policy of Congress enunciated in section 202(a) and that the exemption with respect to such transportation provided in section 203(b)(8) should be removed.[30]

Predicated upon the guidelines set forth in the St. Louis-East St. Louis order, the Commission determined areas included in the New York, Chicago and Washington, D.C. commercial zones.[31]

In another 1937 decision, *Los Angeles, Calif., Commercial Zone*,[32] the Commission concluded that two commercial zones should be created in the Los Angeles area. The main business area of Los Angeles was connected with its port by a narrow strip of annexed land, which was between one-half and three-quarters of a mile wide, and was described as the "shoestring" strip. No highway between Los Angeles and its port was entirely within the city limits and the primary routes between the two areas traversed both thickly and sparsely settled areas. The Commission found that movements between the main business and industrial areas of Los Angeles and its port were not local, but intercity, in character and should be regulated. It did so by dividing the considered area into a Los Angeles Commercial Zone and a Los Angeles Harbor Commercial Zone. Then, following its practice of defining the limits of the individual commercial zones as problems arose requiring investigation, the Commission established, during the period between 1939 and 1943, the limits of commercial zones of the cities of Philadelphia,[33]Cincinnati,[34] Boston,[35] Kansas City,[36]

30. St. Louis, Mo.-East St. Louis, Ill., Commercial Zone, 1 M.C.C. 656, 663 (1937).
31. New York, N.Y., Commercial Zone, 1 M.C.C. 665 (1937); Chicago, Ill., Commercial Zone, 1 M.C.C. 673 (1937); Washington, D.C., Commercial Zone, 3 M.C.C. 248 (1937).
32. 3 M.C.C. 248 (1937).
33. Philadelphia, Pa., Commercial Zone, 17 M.C.C. 533 (1939).
34. Cincinnati, Ohio, Commercial Zone, 26 M.C.C. 49 (1940).
35. Boston, Mass., Commercial Zone, 31 M.C.C. 405 (1941).
36. Kansas City, Mo.—Kansas City, Kan., Commercial Zone, 31 M.C.C. 45 (1941).

and a tri-city zone for Davenport, Iowa, and Rock Island and Moline, Illinois.[37]

It was not until 1946 that the Commission ceased attempting to administer this exemption by specifically defining the commercial zones of individual and contiguous municipalities, based upon the particular facts affecting each zone. Nevertheless, it was still required to determine, formally and informally, whether the operations of a large number of carriers were within or without the zones of municipalities located throughout the United States.

Ex Parte MC-37 (First Report)—Commercial Zones

In 1943, the Commission instituted, on its own motion, a general investigation to determine the zones adjacent to and commercially a part of every municipality in the United States, other than those which had been previously determined. That same proceeding was also to include the investigation of the scopes of terminal areas of motor carriers and freight forwarders under the recently enacted section 202(c) of the Interstate Commerce Act. But, due to the complexity of the problems presented pertaining to commercial zones, consideration of terminal areas was postponed to a later proceeding.

At the conclusion of the investigation, a report and order was issued in *Ex Parte No. MC-37, Commercial Zones and Terminal Areas*, in which the Commission declared that its "piecemeal" approach to the commercial zone problem was impractical and that effective and uniform administration of the Act required a determination of the scope of the exemption as it applied to all municipalities as soon as possible.[38] Until the limits of the commercial zones were defined, the Commission stated, there could be no wholly effective administration of section 203(b)(8).

Based upon the information developed in the investigation, the Commission concluded that the commercial zone of each municipality in the United States consists of:

> (1) the municipality itself hereinafter called the base municipality, (2) all municipalities within the United States which are contiguous to the base municipality, (3) all other municipalities within the United States and all unincorporated areas within the United States which are adjacent to the base municipality as follows: (a) When the base municipality has a population of less than 2,500, all unincorporated areas within 2 miles of its corporate limits and all of any other municipality any part of which is within 2 miles of the corporate limits of the base municipality; (b) when the base municipality has a population of 2,500, but less than 25,000, all unincorporated areas within 3 miles of its corporate limits and all of any other municipality any part of which is

37. Davenport, Iowa—Rock Island and Moline, Ill., Commercial Zone, 41 M.C.C. 557 (1943).

38. 46 M.C.C. 665 (1946).

> within 3 miles of the corporate limits of the base municipality; (c) When the base municipality has a population of 25,000, but less than 100,000, all unincorporated areas within 4 miles of its corporate limits of the base municipality; and (d) when the base municipality has a population of 100,000 or more, all unincorporated areas within 5 miles of its corporate limits and all of any other municipality any part of which is within 5 miles of the corporate limits of the base municipality; and (4) all municipalities wholly surrounded, or so wholly surrounded except for a water boundary, by the base municipality, by any United States municipality contiguous thereto, or by any United States municipality adjacent thereto, which is included in the commercial zone of such base municipality under the provisions of (3) of this finding.[39]

The premise upon which the Commission based its ultimate finding was:

> The limits of the commercial zone of each municipality should be determined in a manner to include, in addition to the area within its corporate limits, all other places or areas which, whether separately incorporated or not, are integral parts of the same business community, and to exclude all places and areas transportation between which and the base municipality is intercity in character.[40]

The Commission also stated that a commercial zone already exists about each municipality by reason of trade practices, the uses to which the area is put, and geographical and political considerations. The Commission's function, it stated, is to determine the limits of zones which already exist, and not to create or establish commercial zones.[41]

By this decision, the Commission attempted to resolve all of the uncertainties concerning the applicability of the exemption, modified certain of its earlier guidelines, and invited any interested person to petition for determination of the limits of the commercial zone of any particular municipality in which the broad rule might prove inappropriate. To this end the important term "municipalities" was defined there to mean:

> Only those cities, towns, villages, and boroughs which have been created by special legislative acts, or otherwise individually incorporated or chartered pursuant to general laws, or which are recognized as such under the constitution or the laws of the state in which located, and which have local governments.[42]

It further found that unincorporated townships or the New England type towns were excluded from this term;[43] that the population of any municipality shall be the population determined by the last decennial census;[44] and

39. *Id.* at 699. The words, "within the United States", were eliminated from this definition by the Commission in 1957 in Verbeem v. U.S., 154 F. Supp. 431, 435 (1957), *Aff'd per curiam sub nom.* Amlin v. Verbeem, 356 U.S. 676 (1958).
40. 46 M.C.C. at 685.
41. *Id.* at 672.
42. *Id.* at 679.
43. *Id.*
44. *Id.* at 699.

that distance from the corporate boundary of the base municipality shall be the airline distance.[45]

Between the initial decision in *Ex Parte MC-37* and the decision of December 17, 1976, there were twenty-eight supplemental reports in which thirty-nine commercial zones were specifically determined by the Commission. In addition, there were innumerable Commission formal and informal proceedings involving problems related to commercial zones and terminal areas.

Ex Parte MC-37 (Third Report)—Terminal Areas

The 1943 notice of the Commission's investigation of commercial zones, which resulted in the *Ex Parte MC-37 (First Report)*,[46] had for one of its purposes the determination of the maximum terminal areas for Part II motor carriers. However, because of the complex problems related to commercial zones, consideration of terminal areas was reserved for this later and separate proceeding. The order issued in this separate proceeding, Third Supplemental Report of the Commission in *Ex Parte MC-37, Commercial Zones and Terminal Areas*,[47] determined the scope of terminal areas.

There were no terminal areas provided for in the Motor Carrier Act, 1935, and freight forwarders were not under the Commission's jurisdiction until the enactment of the Freight Forwarder Act, 1942.[48] The Interstate Commerce Act was amended to recognize terminal areas for motor carriers and freight forwarders in 1940 and 1942, respectively.[49] Prior to the adoption of those amendments, however, motor carriers performing collection, delivery or transfer services that were deemed to be part of rail or railway express services were partially excluded from regulation under Part I of the Act.

Section 202(c) of the Act, exempting terminal area motor carrier operations, reads as follows:

> (c) Notwithstanding any provision of this section or of section 203, the provisions of this part, except the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety of operation and equipment, shall not apply—
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> (1) to transportation by motor vehicle by a carrier by railroad, subject to part I, or by a water carrier subject to part III, or by a freight forwarder subject to part IV, incidental to transportation or service subject to such parts, in the per-

45. *Id.*
46. *Id.* at 665.
47. 48 M.C.C. 418 (1948).
48. *See* Ch. 318, 56 Stat. 284 (1942) (codified at 49 U.S.C. §§ 1001-1022 (1976)).
49. Ch. 722, § 17, 54 Stat. 920 (1940) (codified at 49 U.S.C. § 302(c) (1976)) (motor carriers); Ch. 318, § 2, 56 Stat. 284 (1942) (codified at 49 U.S.C. § 320(c) (1976)) (freight forwarders).

formance within terminal areas of transfer, collection or delivery services; but such transportation shall be considered to be and shall be regulated as transportation subject to part I when performed by such carrier by railroad, as transportation subject to part III when performed by such water carrier, and as transportation or service subject to part IV when performed by such freight forwarder;

(2) to transportation by motor vehicle by any person (whether as agent or under a contractual arrangement) for a common carrier by railroad subject to part I, an express company subject to Part I, a motor carrier subject to this part, a water carrier subject to part III, or a freight forwarder subject to part IV, in the performance within terminal areas of transfer, collection, or delivery service; but such transportation shall be considered to be performed by such carrier, express company, or freight forwarder as part of, and shall be regulated in the same manner as, the transportation by railroad,express, motor vehicle, or water, or the freight forwarder transportation or service, to which such services are incidental.[50]

In the Third Supplemental Report in *Ex Parte MC-37*, the Commission concluded that neither section 202(c) nor any other section of the Act contains any definition of the terms "transfer," "collection" or "delivery service" or "terminal areas." It was assumed by the Commission that definitions were not included in the Act because these terms were regularly used and had accepted meanings in transportation parlance. "Collection" had been long-established as "transportation performed in the picking up, gathering together and assembling of shipments prior to a linehaul movement."[51] Conversely, "delivery service" was that performed in the distribution of shipments to final destinations after the linehaul had been completed.[52] The "transfer service," within the meaning of section 202(c), was deemed to be the movement of freight between the terminals of the same carrier in the same municipality or terminal area, or movements within such area from the dock or terminal of one carrier to the dock or terminal of a connecting carrier.[53]

Although the Commission found that the words "terminal area" were not defined in the Act, it concluded that the meaning could be determined with reasonable certainty when examined in the light of earlier decisions of the courts and the Commission. Based thereon, it held that there were areas within which were performed collection, delivery, or transfer services incidental to some intercity or intercommunity linehaul transportation, and where terminal facilities were available and terminal handling occurred. "In other words," the Commission stated, "the 'terminal area' of a particular carrier at any municipality which it serves, within the meaning of Section

50. 49 U.S.C. § 302(c) (1976).
51. 48 M.C.C. 418 (1948).
52. *Id.*
53. *Id.* at 421.

202(c), does not exceed the area within which bona fide collection, delivery, or transfer service, as distinguished from linehaul service is performed."[54] The services were "essentially local in character and are confined to the particular municipalitiy served and to such contiguous, or closely adjacent municipalities, or unincorporated areas as are an integral part of a business community."[55]

Because these operations were found to be local and intraterminal and the same character of transportation as was performed in commercial zones, the Commission concluded that the limits applied to commercial zones should also be used to define the maximum limits of terminal areas. Upon these considerations, the Commission determined:

> Subject to the limitations in its operating authority, the bona fide collection, delivery, or transfer services of any motor carrier or freight forwarder at any municipality authorized to be served by it, may be deemed to extend throughout the commercial zone of such municipality as defined by this Commission.[56]

Thus, in this proceeding, the Commission initially established the *coexistence* of terminal areas and commercial zones. It declared that this policy "achieves a desirable uniformity and contributes in no small way to the simplification of regulation benefiting directly both carriers and public."[57]

With respect to terminal areas, however, the Commission was required to consider the application of this exemption to unincorporated communities. Commercial zones under section 203(b)(8) are limited to municipalities. But section 202(c) is not so restricted. The Commission believed it was required to establish a relationship between unincorporated communities and municipalities, as well as a uniformity of the size of terminal areas for comparable unincorporated communities. It determined that it was required to establish some central point to describe the limits of terminal areas, rather than the outlying boundaries of the unincorporated communities. No suitable landmark could be found and the post office was selected as the central point to be used to determine the scope of a motor carrier's or freight forwarder's terminal area. The Commission held that a terminal area in any unincorporated community included all points within a fixed radius of the community's post office. These areas included all points within 2 1/2 miles of the post office of an unincorporated community having a population of less than 2,500, within 4 miles, if it had a population of 2,500 but less than 25,000, and within 5 1/2 miles, if it had a

54. *Id.* at 422.
55. *Id.*
56. *Id.* at 423.
57. *Id.* at 433.

population of 25,000 or more.[58]

Ex Parte MC-37 (Sub-No. 27)

The previous sections of the article describe the development of and policies related to commercial zones and terminal areas, based upon the Commission's interpretation of Congress' intent and direction. This section will consider the report of the Commission, decided December 17, 1976, in *Ex Parte MC-37 (Sub No-26), Commercial Zones and Terminal Areas.*[59]

The significance of this proceeding is reflected in the considerable interest in the matter and the number of appearances made before the Commission.[60] There were a number of appearances made by motor carriers supporting the proposed commercial zone expansion. They were primarily long-line carriers desiring expansions of their terminal areas, and having no direct interest in "local" commerical zone transportation. These carriers argued that the expansion was warranted by reason of a migration of business and industry to suburban areas located outside existing commercial zone and terminal areas. Expansion of these areas, it was contended, would result in extensions of their single-line through services thereby conserving fuel and resulting in lower transportation charges to shippers.

Conversely, many motor carriers (primarily short haul carriers) vigorously opposed the proposed expansion of the commercial zones and terminal areas. They alleged that there had been no significant migration of business and industry to suburbs and where such occurred it was to points beyond the limits of the proposed areas. The short haul carriers argued that the proposed expansion would be tantamount to deregulation which would open the expanded exempt areas to rigorous competition to the financial detriment of existing, authorized carriers. It was also contended that the proposed terminal area expansion for freight forwarders, would be similarly harmful to short line carriers.

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58. *Id.* at 435.

59. 128 M.C.C. 422 (1976).

60. Indeed, the Commission makes note of this fact in its decision stating:

> A numerical breakdown of the representations indicates that 313 motor carriers have filed individual and joint representations and 13 motor carrier associations also presented their views. Two freight forwarders filed comments, and the Freight Forwarder Institute submitted evidence on its own behalf and that of its 28-member forwarders. Individual shipper and warehouse interests filed 63 representations, and 23 shipper associations and conferences presented their views. Various local interests (i.e., local governments, realtors, land developers, and Chambers of Commerce) filed 58 representations. Four state agencies have submitted written comments. Two labor unions, 144 individuals, one maritime interest, and one law firm also filed representations. Four members of the United States House of Representatives expressed views concerning our proposed commercial zone expansion on their own behalf and on behalf of their constituents.

Id. at 434.

A number of specialized motor carriers appeared in opposition to the proposed expansion. The National Automobile Transporters Association argued that by reason of the unique description of the operating authorities held by its carriers, motor carriers which do not hold certificates with such descriptions would be able to serve manufacturing plants which are outside the present commercial zones but within the proposed expanded areas, thereby diverting traffic from existing carriers. The National Tank Truck Carriers, Inc. (NTTC), represented bulk carriers of liquid commodities. Normally, this type of service does not involve transportation over great distances. NTTC believed that the Commission's decision would result in almost total deregulation and at the same time deprive the shipping public of the safety in movement provisions that have heretofore been applied to the transportation of this traffic. The Movers and Warehousemen's Association of America, Inc., representing transporters of household goods, argued that such expansion would only, without justification, increase the number of carriers, offer duplicating services, and result in ensuing traffic congestion, waste of fuel, air pollution and rate cutting.

In addition to the foregoing, many specific objections were addressed to the proposed expansion insofar as it applies to certain specifically named large cities such as New York, Chicago, Los Angeles, Portland, Seattle and Vancouver (Washington). To apply the rather broad-based population-mileage formula to these large metropolitan areas, it was contended, would cause great confusion, develop unbridled competition and, in effect, deregulate expansive population areas.

There were a large number of shippers which appeared in support of the proposed expansion. Their support was based upon their collective belief that the proposed expansion would decrease delays and loss and damage to shipments, and result in lower rates. Conversely, there were a number of shippers opposing commercial zone expansion. These particular shippers argued that the expansion would adversely affect the financial stability of existing small short haul carriers, and would create safety and claim problems.

A brief was submitted by the Short Haul Survival Committee, composed primarily of members of the Local and Short Haul Carriers Conference of the American Trucking Association, Inc. This committee submitted a detailed analysis of the problems, citing legislative history and the basic philosophy which has permeated prior Commission decisions relating to commercial zones and terminal areas, arguing that these exemptions apply only to "local" and "intra-community" movements of traffic. Ultimate approval of the proposed expansion, the committee stated, would create additional and unnecessary competition, would deprive shippers of protections they now have relative to loss or damage claims, safety, and prejudicial or

discriminatory rates, would adversely affect the human environment, and would cause severe financial damage to existing carriers.

As set forth above, in virtually each of the decisions which were issued prior to the promulgation of the *Ex Parte MC-37* decision referred to herein, the Commission uniformly took the approach that only traffic which was of an *intraterminal or city-type nature would be considered within the geographical ambit of a commercial zone*. Specifically excluded was transportation of an inter-city nature. This basic ideology was reaffirmed by the Commission in its initial decision in *Ex Parte MC-37 Initial Report*,[61] but apparently was abandoned by the Commission in the decision of December 17, 1976, in the Sub-No. 26 proceeding. The word "abandoned" is applied purposefully, simply by reason of the fact that in the ninety pages of discussion in the latter decision, only three paragraphs are utilized to consider the long-followed "intra-terminal v. inter-community or inter-city test." It is also important to note that this brief discussion referred only to the subject of *overlapping* zones which of course has no real relevance to the previously espoused test. Such discussion also failed to consider the reality of the situation where different zones overlap, leaving to the motor carrier the choice of selecting any available zone that will permit the involved transportation outside the scope of Commission regulation. Such "choice" in effect further expands the geographical area immune from economic regulation by the Commission.

Yet another line of policy rulings espoused a basic principal which the Commission would appear to be dismissing herein. It was established that if a particular city experienced a rather significant or substantial increase in population during the period of time occurring between decennial censuses, an interested party could file a petition asking that, on the basis of such population growth, the scope of the commercial zone be extended commensurately.[62] However, it is most important and indeed significant to note that the Commission, in considering requests for extensions based upon this particular set of facts, did not automatically grant these extensions on an arithmetical basis, that is, by simply adding up the population and applying the population-mileage formula to extend the area. The Commission quite unequivocally stated that in addition to the population growth, there must be shown some unusual or abnormal economic increase or development brought about by an extraordinary event, such as establishment of a large industrial complex.[63] This is more akin to the reasoning utilized by the Commission prior to its recently adopted "slide

61. Commercial Zones and Terminal Areas, 46 M.C.C. 665 (1946).
62. Commercial Zones and Terminal Areas, 78 M.C.C. 423, 425 (1958).
63. *Id.*

rule'' regulations and, of course, appears to be directly contrary to its opinions expressed in *Ex Parte MC-37 (Final Report)*.

In order to understand the significance of the proposal insofar as it relates to increases in geographical areas free from economic regulation one need only draw maps of existing zones surrounding points of commercial interest, and then at the same time circumscribe the areas with descriptions of the areas which would be encompassed by the zones created under the new formula. Insofar as California carriers are concerned, the situation in Los Angeles probably most graphically and poignantly illustrates the geographical scope of the Commission's proposal. The Los Angeles area was divided into two separate and distinct commercial zones. Under the new formula, that distinction is abolished and a commercial zone of vast area is established. It encompasses approximately two thousand square miles and virtually triples the geographical area now encompassed in the existing Los Angeles commercial zone. The new zone runs roughly from Ventura on the north, down the Pacific Coast highway to Balboa, a considerable distance south of Los Angeles. Pursuant to the Commission's order, this entire geographical area is immune from economic regulation by this Commission.

A similar situation exists in the northern California area surrounding the San Francisco Bay. In light of the Commission's ruling, a geographical area is created free from economic regulation that encompasses virtually the entire greater San Francisco Bay Area and extends to points in the east and south far outlying even the geographical confines of the San Francisco Bay itself.

And there is yet another point which compounds the geographical significance of the Commission's proposal. While it is true that commercial zones may not be tacked or combined to effect a transportation service, it is also true that a carrier may select any available commercial zone that will permit the involved transportation. This was a subtle feature of the Commission's decision that appears to have been overlooked by most parties.

The foregoing outlines the substantial and significant geographical expansion of areas which are now immune from economic regulation of this Commission by reason of the subject decision. In this context, it is also important to note that activity in these areas is totally free from any economic regulation whatsoever, for it has been unequivocally held that local and state agencies may not generate any regulation in existing commercial zones notwithstanding the fact that the Interstate Commerce Commission exercises no economic regulation therein.[64]

64. Baltimore Shipper and Receivers Ass'ns v. P.U.C., 268 F. Supp. 836 (N.D. Cal. 1967), *aff'd* 389 U.S. 583 (1968).

As argued by the short-haul carriers, implementation of the expanded commercial zones will bring about a diversion of traffic now being handled by existing, regulated motor carriers. Such diversion will come about in any number of ways. As an example, the Commission's decision obviously creates and/or otherwise establishes new more extensive authorities for the long-line carriers that will necessarily result in a diminution of their need for the services of existing short-line carriers.

Other traffic will be lost to presently unregulated local carriers which will extend their existing unregulated operations to the increased, expanded commercial zones formed by this decision. These carriers are not subject to any economic regulation and will make every effort to obtain whatever traffic they can divert from existing carriers, primarily through reduced rates. Some of the traffic that will be diverted to both the long-line and local, unregulated carriers will be the more profitable shipments, leaving the regulated short-haul carriers to handle the less attractive and less profitable movements.

The effect of the decision is an absence of any control either by this Commission or the local regulatory agencies, leaving a motor carrier to assess any charge it might wish for commercial zone shipments, discriminate between shippers or shipments, give extended credit periods, limit a shipper's rights relative to filing and processing claims and, generally, disassociate itself with any and all regulations promulgated for the protection of the shipping public.

JUDICIAL REVIEW

As noted, *Ex Parte MC-37* was affirmed by an opinion of the United States Court of Appeals for the Ninth Circuit in *Short Haul Survival Committee v. U.S.A.*[65] The circuit court considered and rejected each of the arguments advanced by the petitioners and affirmed the Commission's decision in all respects.

After initially outlining the pertinent statutory framework within which the appeal was considered, the court found that the Commission's decision was in effect a good faith exercise of its administrative rule-making authority. It went on to find that the Commission was not obligated to proceed by adjudication merely because its action affected carriers individually and in some cases adversely.[66]

The court then considered the scope of its review of Commissions decisions. It emphasized that the scope of review is exceedingly narrow when considering a challenge to the "product" of a rule-making proceeding, and declared: "Our inquiry is limited to determining whether the Com-

65. 572 F.2d 240 (9th Cir. 1978).
66. *Id.* at 244.

mission's order is 'arbitrary, capricious, and abuse of discretion or otherwise not in accordance with the law.' "[67]

The court discussed the rationality of the Commission's action. It cited as the best evidence of the rationality of the challenged decision the Commission's lengthy interim and final reports which were prepared before the issuance of the final decision, and the massive record upon which they were predicated. The court specifically found that these reports demonstrated that the Commission relied upon economic data which supported the ultimate conclusions. In replying to petitioners' argument that the revised population-mileage formula is arbitrary since it applies indiscriminately to all municipalities, the court adopted the Commission's line of reasoning that if any particular municipality objected to the expanded zone it could seek relief on an individual basis by filing an appropriate petition.[68]

As to the subject of Congressional intent, the court rejected petitioners' claim that the Commission decision violated the intent of Congress in adopting the commercial zone exemption. It concluded that the Commission's decision is in full accord with the legislative purpose behind the commercial zone exemption of section 203(b)(8). The court opined that the Short Haul Survival Committee's argument to the effect that only "intramunicipal" carriage falls within the exemption is itself contrary to the plain language of the statute. On this particular issue, the court found:

> In Section 203(b)(8) Congress did exempt transportation carried out 'wholly within the municipality' from Federal regulation. It did not rest there, however, but went on to exclude from the Act's coverage transportation carried out 'within a zone adjacent to and commercially a part of' a base municipality. If these words mean no more than intramunicipal transportation they would be mere surplusage, a result which we do not think that Congress intended.[69]

The court concluded that by reason of a substantial urban expansion without a corresponding increase in zone limits, the Commission found itself regulating local transportation which Congress had sought to exclude from its jurisdiction. It then found that the Commission issued the subject decision and adopted the challenged rules so as to avoid this jurisdictional interjection in to local commerce.[70]

The court next considered the "adjacency" requirement of the exemption. Petitioners had argued that the newly enlarged zones include areas which are actually not adjacent to one another and which violate the criteria of the statute establishing the exemption. In rejecting this argument, the court held that the key relationship under the statute is the *economic* nexus between outlying points and the base municipality. It stated: "Two commu-

67. *Id.* (quoting 5 U.S.C. § 706(2)(a) (1970)).
68. *Id.* at 246.
69. *Id.*
70. *Id.*

nities which are neither geographically contiguous nor economically interdependent may nonetheless qualify for inclusion in a single commercial zone if both are 'adjacent to' the same city."[71] It concluded that the Commission's decision cannot be found to be violative of the statute notwithstanding the fact that the expanded zones might include communities which are not in fact geographically contiguous to one another.[72]

The argument that the Commission abused its discretion in concluding that the expansion would promote, rather than frustrate, the goals set forth in the National Transportation Policy was reviewed by the court. In considering this argument, the court gave much weight to the "overwhelmingly positive" shipper support for the expanded zones. Cited as reasons therefor were: (1) the fact that suburban shippers may now contract with exempt local carriers equalizing their position with shippers located in the previously zoned areas, and (2) the ability of long haul carriers to serve the same suburban shippers without the necessity of interlining.[73] The court also affirmed the rationality of the Commission's conclusion to the effect that expansion will result in lower rates, shorter transit times and reduced cargo damage for suburban shippers, thereby fostering the National Transportation Policy's stated goal of "economical and efficient service." It thus concluded that the Commission did not in fact act in an arbitrary or capricious manner in balancing the equities among competing interests in rendering its decision.[74]

The court quickly dismissed petitioners' argument that the expansion promulgated by the Commission would adversely affect highway safety. It stated that since responsibility for highway safety has now been shifted to the Department of Transportation (DOT) and since that Departments' jurisdiction extends to both regulated and unregulated carriers alike within and without the commercial zones, safety in operation will not in any way be affected by the Commission's decision expanding commercial zones.[75]

Finally, the court concluded that the Commission's environmental impact statement was in compliance with the applicable terms and provisions of the National Environmental Policy Act (NEPA). In holding that the NEPA is essentially a procedural statute, the court stated that it was simply designed to make sure that the involved agency would be fully aware of the impact of its decision prior to the issuance thereof. The court concluded that it was satisfied that the Commission took a "hard" look at the environmental impact of commercial zone expansion and that it was fully apprised

71. *Id.*
72. *Id.* at 247.
73. *Id.*
74. *Id.* at 248.
75. *Id.*

in the premises prior to the issuance of the decision.[76]

Thus, the court affirmed every finding of the Commission on appeal.

The Effect of Commercial Zones and Terminal Area Expansions

The commercial zone and terminal area expansions have been effective since March 29, 1978. What has been the effect of the expansion? Has the expansion promoted safe, adequate and efficient service; fostered sound economic conditions; encouraged the establishment of reasonable transportation charges, without unjust discriminations or preferences, or unfair or destructive competition; resulted in cooperation with the several states; and encouraged fair wages and equitable working conditions as contemplated by the National Transportation Policy?

The United States General Accounting Office recently completed a study of the impact of the expansions of the commercial zones and terminal areas. It is not expected that its final report will be released for several months. The study involved a mailing of 3,000 questionnaires to carriers and shippers and about 250 on-site interviews. It has been anticipated that the study will determine that neither the dire consequences nor significant benefits predicted by the participating parties or the Commission are being experienced. The Commission's Bureau of Accounts had criticized this study as being premature, believing the full impact of the expansion will not be determinable until a reasonable period after the court appeal has been concluded. Commissioner Christian, at the convention of the Short-Haul Carriers' Conference of the American Trucking Association, on May 3, 1978, stated that the Commission is launching its own study to determine the effects of the commercial zone decision.

To determine the effect of the Commission's decision for the purpose of this article, a limited investigation was made by contacting representatives of motor carriers, forwarders, and attorneys specializing in transportation throughout the United States.[77] The correspondence and telephone conferences involved in this study resulted in receipt of reports and data which, generally, indicate the impact of the Commission's decision. It is concluded therefrom in those instances where zone changes were measurable, that the predictions of both the proponents and opponents were correct. Certificated authorities of the short-haul carriers became less valuable, traffic was diverted from their operations, and some went out of business. Unregulated carriers expanded their services, cut rates for particular traffic and employed drivers at wages which the Teamsters Union and

76. *Id.* at 249.

77. The results of this investigation are on file with the authors and the Transportation Law Journal [hereinafter cited as Investigation]. Because of the confidential nature of the correspondence, the parties providing information in this investigation are not identified.

regulated carriers deem low and unfair. Long-line carriers, where economically feasible, expanded their direct services to the new terminal area points and the freight forwarders immediately extended their operations throughout those larger assembly and distribution areas. Such actions were predictable as they reflect normal business condtions and practices experienced in the transportation industry over many years.

A. *Quantifiable Effects*

As predicted, there were reductions in the values of the short-haul carriers' certificates which are reflected by the current selling prices of these authorities. The Los Angeles Basin Territory certificates, which included the Los Angeles and the Los Angeles Harbor Commercial Zones, formerly were worth $60,000 to $80,000. Such an authority was recently advertised and offered for sale over a long period of time and eventually sold for $15,000. The Los Angeles Commercial Zone now covers an area of about 2,000 square miles. Local rights in the New York area were previously sold for $75,000 to $250,000. They now have little value. The present New York Commercial Zone embraces parts of the states of Connecticut, New Jersey and New York and has a population of approximately 19,000,000 people. Before the expansion, the Portland, Oregon/Vancouver, Washington Commercial Zone right was worth $15,000 to $20,000. Now these rights have little value. The certificates of registration to serve between the Chicago area and points in Illinois were priced between $175,000 and $75,000. They are currently worth about $45,000. The rights to serve the peddle areas proximate to Boston have dropped from a value of between $75,000 and $45,000 to between $22,500 and $18,000. Such losses are not suffered by large well-financed carriers. These rights are owned by small, local short-haul carriers which, generally, either held and operated under these authorities for many years or bought them over extended periods to meet the requirements of their customers.[78]

The long-line carriers have extended their peddle or pickup and delivery services to the new points and have developed new markets in the expanded areas. These extensions, however, have been dictated by economic considerations. Where it is advantageous to continue to utilize the regulated short-haul carriers for the terminal area pickups and deliveries, this has been done. Also, long-line carriers are providing portions of their terminal areas with direct service while other areas continue to receive interline service. In some instances, the short-haul carriers are tendered the small shipments and the long-line carrier effects the pickups and deliveries of the larger shipments with its own units. Certain of the long-line carriers

78. *Id.*

with broad authorities lost more than they gained through the Commission's action. Though their terminal areas were expanded, they received new competition in their previously authorized territories by the expansion of the terminal areas of other carriers.[79] No information was received that any linehaul rates were reduced because of the Commission's decision, and it would be impossible to determine the effect of expansion upon damages to the involved traffic.

Freight forwarders have expanded their terminal operations to the new areas, continuing to employ the regulated short-haul carriers for their less-than-carload shipments unless an unregulated carrier is able to offer a comparable assembly or break-bulk service at a lower rate. Truckload movements of freight forwarders, shipper associations and consolidators are being transported by unregulated carriers.[80]

The most immediate and expected reaction is the growth and expansion of the unregulated local carrier services in the extended deregulated zones. Boston will be used as an example of the effect of this expansion but it is similarly applicable to other metropolitan areas of the United States. The rate or charge of the regulated short-haul carriers was $112 for hauling a water-carrier container from a pier in Boston to a point within fifteen miles of that city. To provide this service, a union driver was employed at an average cost (including fringe benefits and taxes) of $12.85 per hour subject to an eight-hour minimum day. In the congested Boston area, it takes substantially all of an eight-hour day to provide this service. Thus, the labor cost alone for this transportation was about $102.80. Unregulated local carriers for the same transportation now charge $80 per container or trailer or more than $20 less than the direct labor cost of the regulated carrier.[81] Similarly, in the San Francisco area, unregulated local carriers are charging about twenty percent less than the regulated short-haul carriers for hauling water-carrier containers.[82] The cost of labor is the principal difference between the operating costs of unregulated and regulated carriers. The total labor costs of an unregulated local carrier are about sixty percent of those experienced by the regulated short-haul carriers employing union drivers.[83] Regulated short-haul carriers, generally, have been in business for many years, have substantial investments in facilities and rights and employ drivers under a Teamsters' contract. On the other hand, unregulated local motor carriers usually have small, flexible operations and limited investments. They are able to avoid union contracts, union wages and fringe benefits. Often, unregulated carriers do not even have employees to per-

79. *Id.*
80. *Id.*
81. *Id.*
82. Author's telephone conversations with San Francisco area carriers.
83. Investigation, *supra* note 77.

form the actual transportation as they utilize leased owner-operators who are paid a percentage of the revenues or a fixed fee for each shipment handled. When owner-operators are employed, the operating costs of an unregulated carrier are less than when an employee-driver is utilized for the same work.

Diversion of traffic from regulated short-haul carriers to unregulated local carriers, including owner-operators, is being experienced throughout the United States. However, this new competition is more apparent in the port commercial zones than in their counterparts in the inland areas. It is reported that conditions are chaotic at the New York Harbor area which embraces the ports of Newark and Elizabeth, New Jersey. The regulated short-haul carriers have been virtually eliminated from the hauling of shipments between these piers and the extended areas in the commercial zone. At the present time, a rate war is taking place in that harbor area. Reports were received indicating that certain mob or criminal elements may be taking control of the water front operations and that certain of this traffic is being obtained by payoffs and coercion.[84] In the Chicago area, the transportation of water-carrier containers, steel, and piggyback trailers has been diverted to independent owner-operators. Similarly unregulated local carriers and owner-operators, through reduced rates, have taken over a large portion of the local commercial zone truckload traffic in the Philadelphia, Baltimore, Seattle, Los Angeles, San Francisco and Boston areas. It is reported that the small shipment service from Detroit to its airport, which formerly was shipped via regulated short-haul carriers, is now being transported by unregulated carriers.[85]

B. Uncertain Limits of Commercial Zones and Terminal Areas

Another problem which is being experienced in all areas is the confusion and uncertainty as to the limits of the respective commercial zones and terminal areas. It is virtually impossible to specifically determine the limits of the commercial zones in the heavily populated metropolitan areas. The extensive New York Commercial Zone embraces parts of three states. Enlargement of the Los Angeles zone embraces a land area of over 2,000 square miles. The Providence, Rhode Island Commercial Zone includes seventy to eighty percent of the population of that entire state. The city of Jacksonville, Florida, which embraces 827 square miles, has a zone of over 2,000 square miles reaching into the State of Georgia. In our newest state, Alaska, the capitol city of Juneau has 3,108 square miles within its boundary. This problem is compounded by the right to select any available commercial zone that will expand the deregulated area and extend an

84. *Id.*
85. *Id.*

exempt operation. For example, the San Francisco Commercial Zone reaches fifteen miles south toward San Jose. But by selecting the Fremont zone, which touches the city limits of both San Francisco and San Jose, the north-south limits of the exempt area extends a distance of sixty miles and embraces both of these heavily populated municipalities. Problems are also being experienced in determining the scopes of the newly authorized terminal areas. Long-line carriers are publishing descriptions of their new terminal areas only to find that other carriers have adopted larger areas in their tariffs. To resolve this problem, carriers are adopting the most extensive terminal areas published by any of their competitors. Obviously, the Commission has created a regulatory monster that will be difficult to control or regulate.

The study has disclosed that unregulated or exempt operations were not confined within the limits of commercial zones prior to the expansion. With the extension of these areas, the Commission's problem of confining the unregulated services to the exempt zones will be greatly aggravated.

C. Safety Regulation

The Commission and the Ninth Circuit Court of Appeals gave short shrift to the issue of safety. They declared that it is the responsibility of the Department of Transportation's Federal Highway Administration but neither the Commission nor the court advised the Federal Highway Administration of how it may find these exempt carriers.[86] As early as the congressional debates which resulted in the enactment of the Motor Carrier Act of 1935, Congress recognized the obvious fact that there cannot be an enforcement of regulations unless carriers are regulated. Included in the House debate is the following statement of Commissioner Eastman on this point:

> [T]he regulation of motor vehicles will involve many practical difficulties, chiefly resulting from the fact that there are many individual operators. It is not like the case of the railroads where the companies are large. *There are thousands of operators of motor vehicles, and many of them operate only one or two trucks. Practical difficulties will arise in locating the carriers and also in enforcing regulations with respect to them.*[87]

The requirement for registration with state commissions by interstate motor carriers exempt from regulations by the Interstate Commerce Commission does not produce the needed data to locate unregulated commercial zone carriers. Unregulated commercial zone interstate carriers do *not* register with the state commissions or comply with their insurance and other requirements. The State of California has over 20,000 individually licensed motor carriers and it is estimated that at least twenty-five to forty percent

86. Short-Haul Survival Comm. v. U.S., 572 F.2d 240, 248 (9th Cir. 1978).
87. 79 Cong. Rec. 12,210 (1935) (remarks of Rep. Terry) (emphasis added).

regularly or occasionally provide exempt commercial zone services. Only eighty of these carriers are registered with that Commission as exempt interstate commercial zone carriers.[88] Commercial zones are known in the industry as the "graveyard for equipment." When vehicles are no longer able or capable of regular highway service, they are used for these local operations. It is the obligation of the Federal Highway Administration to require exempt interstate carriers to comply with safety regulations pursuant to Part II of the Interstate Commerce Act. However, under the existing situation, it is difficult to exercise any effective safety controls over these carriers.

D. Other Impacts

Many other related matters will be affected by changes in the commercial zones and terminal areas which are either not measurable or which will require more time before an impact can be gauged. As indicated in the legislative history of the commercial zone exemption and in the congressional debates described above, it was of primary concern and importance in enacting the Motor Carrier Act of 1935 to establish a harmony between the states and federal government with respect to motor carrier regulation. The lack of state or federal control over interstate operation resulted in the following situations: "It permitted all sorts of abuses by irresponsible operators at the expense of the intrastate motor carriers and other transportation agencies who are under strict state and federal regulation."[89] Representative Merritt advised the House of Representatives that:

> So far as I know, these [state regulatory] bodies have been sufficiently successful in state regulation unanimously to recommend Federal regulation of interstate business, and they point out that one of the principal difficulties that they have encountered is in the interference of unregulated interstate vehicles with the state regulated intrastate buses and trucks.[90]

Under the decision of the Commission considered herein, this situation has been reestablished. Broad territories in and adjacent to all metropolitan areas in all states have been deregulated by the federal government. Within those areas, interstate commercial zone carriers are subject to no regulation while the intrastate motor carriers are regulated by state commissions.

The question of whether deregulation of motor carriers in the exempt zones and regulation of carriers outside the zones will result in rates that are preferential, discriminatory and/or destructive cannot be determined at this time. Further, any violations in this character are and will be difficult to determine and prove unless actual audits are made of the records of the

88. Based upon impromtu survey by California Public Utilities Comm'n, License Branch.
89. 79 Cong. Rec. 12,206 (1935) (remarks of Rep. Sadowski).
90. *Id.* at 12,207.

involved carriers and shippers. The Commission presently does not have the means or personnel to conduct such audits.

With the deregulation of the commercial zones, antitrust matters become an element of concern. No report that was received suggested that an antitrust problem has arisen related to the expansions. An antitrust problem may exist, however, for motor carrier rate bureaus that hold section 5a[91] exemptions from the Interstate Commerce Commission and publish rates covering commercial zone movements. A bureau's fixing of rates would be unlawful except for the section 5a exemptions. With the deregulation by the Commission of the commercial zone transportation there may be an issue of whether the prices or rates are lawful for these movements as established and published by rate bureaus. The rates and operations of motor carriers exempt from the Commission's regulation are not subject to Part II of the Interstate Commerce Act.[92] If the fixing and publication of these commercial zone changes are not subject to Part II of the Act, then the section 5a antitrust exemption does not apply.

Conclusion

This article has traced the genesis, development and past and present Commission policies relative to commercial zones and terminal areas. Based thereon, it is expected that further consideration will be given this subject because of the many problems that have been and will be raised by the considered decision. The Commission, as found by the appellate court, weighed the arguments for and against the expansions and deregulation and concluded that the overall benefits to the public of "more single-line service and greater flexibility of local operations within terminal areas" justify this action.[93] Therefore the considered decision now has the imprimatur of the United States Circuit Court of Appeals and will govern until modified by the Commission.

The significance of the effect of the decision and the wide interest of the transportation industry in commercial zones and terminal areas and related problems will not permit the matter to rest for long. As noted above, the United States General Accounting Office made a study and the Interstate Commerce Commission soon will commence its investigation of the act of the expansion and resultant deregulation. These studies are expected to demonstrate that the linehaul motor carriers and freight forwarders have extended their terminal area operations. They will further show

91. 49 U.S.C. § 5b (1976).

92. *See, e.g.*, IML SeaTransit Ltd. v. U.S., 343 F. Supp. 32 (N.D. Cal. 1972), *aff'd* 409 U.S. 1002 (1972); Baltimore Shippers & Receivers Ass'n. v. P.U.C. of Calif., 268 F. Supp. 836 (N.D. Cal. 1967), *aff'd* 389 U.S. 583 (1968); Motor Carrier Operation in Hawaii, 84 M.C.C. 5 (1960).

93. 572 F.2d at 248.

that there has been a substantial loss of commercial zone and terminal area traffic by the regulated short-haul carriers to unregulated motor carriers, that this diversion is the result of the lower rates which are attributable to lower employee and equipment costs of the latter carriers. The large numbers of unregulated carriers operating in the very extensive commercial zones in all metropolitan areas of the United States will be of great concern to the various regulatory agencies, including the state commissions and the Department of Transportaion, and to carriers and shippers. These agencies and entities and the Commission will undoubtedly be impelled to again weigh the benefits of this expansion and deregulation against the problems resulting therefrom.

For these reasons, the recent decision of the Commission on this matter is but a chapter in the unfinished history and development of commercial zones and terminal areas.