CAN EXISTING REGIONAL DIFFERENCES IN CLASS-RATE LEVELS BE JUSTIFIED?*

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It is the purpose of this paper to examine the arguments used in defense of the present regional differences in the levels of class rates. The discussion may well begin with a summary of certain facts regarding the differences in rate levels, although these facts are by this time well known to those who have been concerned with the problem:

1. The scales of first-class rates applicable in the five rate territories vary considerably in their levels. The levels are substantially higher in southern, western trunk-line, southwestern, and mountain-Pacific territories than in eastern, or official, territory.

2. Although precise comparison of the levels of first-class rates is difficult, partly because the relation between the rates varies at different points in the distance scales, and partly because actual rates are not always made strictly on the scales, a general statement regarding the relationships of the scales may be made. The study made by the Board of Investigation and Research gave the following relationships, taking the official-territory scale as 100:[1]

Official	100
Southern	139
Western trunk-line	
Zone I	128
Zone II	146
Zone III	161
Zone IV	184
Southwestern	161
Mountain-Pacific	166

3. The relatives shown above also express the approximate relationships of rates on individual commodities moving on class rates when the ratings on such commodities are the same, in percentage of first-class rates, in the various terri-

* This paper was prepared before the announcement of the Supreme Court's decision upholding the order of the Interstate Commerce Commission in the *Class Rate* case. See the FOREWORD to this symposium. The rate levels discussed here are those which were in effect at the time of the Commission's investigation, and which remained in effect until the litigation over the Commission's order was terminated by the recent decision of the Supreme Court. [Ed.]

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[1] BOARD OF INVESTIGATION AND RESEARCH, REPORT ON INTERTERRITORIAL FREIGHT RATES, H. R. Doc. No. 303, 78th Cong., 1st Sess. 20 (1943). These relationships have been changed somewhat by reason of the larger increases in rates in eastern territory than in the other territories authorized in *Ex parte* No. 148, 264 I.C.C. 695 (1946), and *Ex parte* No. 162, 266 I.C.C. 537 (1946).

tories. Thus, if an article is rated 50 per cent of first class in any two territories, the relationships of the rates in the two territories are approximated by the relatives shown above. Differences in classification ratings in the different territories, however, make the differences in the rate levels on some commodities greater, and on others less, than the differences in the levels of the class-rate scales.

4. On many articles lower ratings have been given in the South or West, often by means of classification exceptions, in order to bring the rate level on the commodity in question to the level prevailing in official territory, or nearer to that level. The same result is accomplished in other instances by providing commodity rates in the South or West on certain articles which move on class rates in official territory.

5. On many commodities which practically always move on commodity rates in all territories the rate levels also differ considerably in the various territories. Regional variations in the rate levels on such commodities are usually less than are found in the levels of class rates. There are some commodities generally moving on commodity rates on which the rates are as low in the South as in eastern territory, and some on which the southern rate level is lower. In the *Class Rate Investigation* the Interstate Commerce Commission mentioned the following commodities as among those which take lower rates in the South than in official territory: brick; fertilizer and fertilizer materials; coke; lime; logs; pig iron; lumber; pulpwood; sand, gravel, crushed stone, and slag; iron and steel scrap; sulphuric acid; and iron ore.[2] The common belief, however, that commodity rates in the South are always, or nearly always, lower than in official territory is not warranted.

6. Articles on which lower rates have been voluntarily provided in the South and West, or interterritorially from the South and West, either by means of classification exceptions or by commodity rates, tend to be commodities which have come to have considerable traffic importance; that is, they are products of industries which have become important in the economy of the areas concerned and which furnish important amounts of traffic to the railroads.

7. Over a period of years the Interstate Commerce Commission, in numerous cases which have come before it, has required or approved reductions in rates from the South to the North on particular commodities, sometimes reducing them to approximately the northern level,[3] at other times reducing them so that they exceeded the northern level by only 10 per cent or less.[4]

[2] 262 I.C.C. 447, 593-600 (1945).

[3] In the *Class Rate Investigation, id.* at 603, the Commission listed the following instances of such action: Brick and Clay Products in the South, 88 I.C.C. 543 (1924); American Distilling Co. v. Akron, C. & Y. Ry., 140 I.C.C. 633 (1928); Krupp Foundry Co. v. Southern Ry., 148 I.C.C. 743 (1928), 156 I.C.C. 415 (1929); Hosiery from Southern Points, 156 I.C.C. 117 (1929); Cullet in Southern Territory, 169 I.C.C. 153 (1930); Eastern Tanners Glue Co. v. Southern Ry., 171 I.C.C. 213 (1930); Stone, Marble and Slate from or to Southern Points, 183 I.C.C. 611 (1932); Muscle Shoals White Lime Co. v. Akron & B. R.R., 205 I.C.C. 273 (1934); Coke from Alabama and Tennessee to Central Territory, 208 I.C.C. 281 (1935), 215 I.C.C. 384 (1936); Sugar from Gulf Port Groups to Northern Points, 234 I.C.C. 247 (1939); State of Alabama v. New York Central R.R., 235 I.C.C. 255 (1939), 237 I.C.C. 515 (1940); Alabama By-Products Corp. v. Ahnapee & Western Ry., 256 I.C.C. 649 (1943).

[4] For example, Paper, Official-Illinois Territories to South, 234 I.C.C. 81 (1939), 238 I.C.C. 104

8. Notwithstanding the many articles on which the southern and western rate levels, or interterritorial rates from the South or West, have been reduced to the official territory level, or nearly thereto, it remains true that on a great many commodities higher rates prevail in the South and West, and interterritorially, than apply for equal distances in official territory. The interterritorial rates on such articles frequently represent a blend of the rate levels in the origin and destination territories, and are therefore higher than the level applying within official territory.

9. It is obvious that these differences in rate levels may often impose a handicap on producers in southern and western territories in attempting to sell goods in official territory in competition with producers located in official territory.

ATTEMPTED JUSTIFICATION OF REGIONAL DIFFERENCES IN RATE LEVELS

Three main arguments have been advanced in an effort to justify existing differences in class-rate levels. The first is that there are substantial differences in transportation costs in the different rate territories. The second is that there are differences in the "distribution of the transportation burden" in the different territories that arise from differences in the composition or "consist" of the traffic. The third is that the existing rate structures in the South and West are advantageous to those areas, and that equalization of the levels would adversely affect the South and West. Each of the three arguments stated will be examined in turn.

Regional Differences in Transportation Costs

There are many cases in which the Commission has, in the past, referred to less favorable transportation conditions in the South and West as a justification of higher levels of rates in those areas. That transportation conditions were less favorable in the South than in eastern territory came to be considered almost axiomatic.[5] In 1935, however, in *Cotton, Woolen, and Knitting Factory Products*,[6] southern shippers contended that transportation costs were lower in the South than in the North. The Commission was not convinced that such was the case, and said: "If necessary corrections of inequalities, especially as to length of haul, were made, and the comparisons were made of properly comparable figures and periods of time, this record would show affirmatively that southern territory should continue to be considered higher rated territory than official territory."[7] As late as 1939 the Commission, in *Divisions of Rates, Official and Southern Territories*,[8] made a specific finding that transportation costs were higher in the South than in the North, although the northern

(1940); Livestock to and from the South, 253 I.C.C. 241 (1942); Schoen Bros., Inc. v. Erie R.R., 258 I.C.C. 471 (1944); Cotton, Woolen, and Knitting Factory Products, 258 I.C.C. 471 (1944); Florida Railroad Comm'n v. Atlantic Coast Line R.R., 264 I.C.C. 365 (1946).

[5] For illustrative cases in which less favorable conditions in the South have been mentioned, see Class and Commodity Rates, 38 I.C.C. 411, 430 (1916); Commercial Club of Carrollton v. Director General, 55 I.C.C. 697, 700 (1919); Barytes from Tennessee, 43 I.C.C. 334, 337 (1917); Cincinnati Ass'n of Purchasing Agents v. Louisville & N. R.R., 89 I.C.C. 285, 294 (1924); Eastern Livestock Cases of 1926, 144 I.C.C. 731, 766 (1928); Blue Ridge Glass Corp. v. Akron & Barberton Belt R.R., 182 I.C.C. 493, 495 (1932).

[6] 211 I.C.C. 692 (1935). [7] *Id.* at 723. [8] 234 I.C.C. 175 (1939).

carriers contended that costs in the two territories were substantially equal.[9] Later in the same year, however, doubts about the truth of the contention that transportation costs were higher in the South than in the North were expressed in the so-called *Southern Governors' Case*.[10] The Commission said: "The freight traffic density in the southern region is considerably lower than that in the eastern district. This, taken by itself, would suggest higher costs therein. But other factors, such as lower investment, lower terminal cost, etc., appear largely to offset the lower density."[11] The Commission concluded that "the cost of transporting the articles named in the complaint from producing points in the South into the North, compared with that of transporting like articles within the North, does not justify the maintenance thereon of higher levels of rates than are applicable on like articles within the North."[12] Commissioner Eastman, however, was not convinced that transportation costs were as low in the South as in official territory, and expressed the opinion that they were actually higher.[13] Commissioner Miller also felt that the cost studies relied upon were inconclusive.[14]

Although it was not until 1939 that the Commission showed signs of questioning the belief that transportation costs were substantially higher in the South than in eastern territory, two cost studies made somewhat earlier by the Bureau of Statistics of the Commission, one published in 1930[15] and the other in 1938,[16] indicated that transportation costs in the South compared very favorably with those in the East.[17] Notwithstanding the limitations of these cost analyses, they served to bring out the fact that regional differences in transportation costs were not great, and that the costs in the South were as low as those in official territory, or slightly lower.

A more elaborate analysis of regional differences in railroad transportation costs was made by Dr. Ford K. Edwards, of the Bureau of Transport Economics and Statistics of the Interstate Commerce Commission, in connection with the *Class Rate Investigation* of 1939, and this study was embodied in various exhibits introduced in that proceeding. One feature of the Edwards study that distinguished it from earlier studies of the Bureau of Statistics was that it determined costs separately for traffic handled in the different classes of equipment—tank cars, box cars, gondola and hopper cars, and others. This procedure remedied in part the weakness inherent in the use of average costs, which do not take into consideration differences in the nature or composition of the traffic, since it recognized such differences to the extent that they resulted in the use of different types of equipment. The results of the

[9] *Id.* at 189.

[10] State of Alabama v. New York Central R.R., 235 I.C.C. 255 (1939).

[11] *Id.* at 307. [12] *Id.* at 326. [13] *Id.* at 343-345.

[14] *Id.* at 348.

[15] STATEMENT NO. 3018, TERRITORIAL VARIATION IN THE COST OF CARLOAD FREIGHT SERVICE ON STEAM RAILWAYS IN THE UNITED STATES FOR THE YEAR 1928.

[16] STATEMENT NO. 3812, TERRITORIAL VARIATION IN THE COST OF CARLOAD FREIGHT SERVICE ON CLASS-I STEAM RAILWAYS IN THE UNITED STATES FOR THE CALENDAR YEAR 1936.

[17] The results of these studies are summarized in BOARD OF INVESTIGATION AND RESEARCH, REPORT ON INTERTERRITORIAL FREIGHT RATES, H. R. Doc. No. 303, 78th Cong., 1st Sess. 252-255 (1943).

Edwards cost study and of other cost studies introduced in the *Class Rate Investigation* were summarized by the Commission in its report in the investigation. The Commission stated its final conclusions on this question as follows: "The various comparisons of territorial costs reviewed hereinabove show that there is little significant difference in the cost of furnishing transportation in the South as compared to the East, excluding the Pocahontas territory. The figures both for the year 1939 and the period 1930-39 indicate that, taken as a whole, the costs in the South are equal to or a little lower than those in the East. If the period 1937-41 is used, the costs in the South are substantially lower than those in the East."[18]

So far as costs in the West were concerned, the Commission's conclusions were expressed in the following language: "Comparisons based on the year 1939 and the period 1930-1939 show the over-all cost of rendering transportation service in the western territory to be between 5 and 10 per cent higher than in the East, excluding the Pocahontas territory. If the year 1941 were used, this difference would be reduced to 5 per cent or less."[19]

Two commissioners—Porter and Barnard—found the Edwards cost study unconvincing. Both criticized the study on the ground that it did not take into consideration differences in the "consist" of traffic.[20] As previously pointed out, however, the Edwards study did recognize differences in the composition of traffic to some extent in that separate calculations were made of the cost of handling traffic in the various types of equipment. This procedure recognized that the cost of transporting a commodity which moves in box cars may be quite different from the cost of transporting a commodity which moves in gondola cars, but that the cost of transporting one commodity in box cars will not differ very much from the cost of transporting another commodity in box cars except as average loading, loss and damage claims, and special service requirements may differ. In cost study the only differences in composition of traffic that are significant are differences that affect costs.

The other main criticism of the Edwards cost study made by Commissioners Porter and Barnard was that it did not purport to show differences in the costs of transporting *class* traffic in the different territories. If the Edwards cost study had attempted to compare the average cost of transporting class traffic in the East, whatever it might consist of, with the cost of transporting class traffic in the South, whatever *it* might consist of, the study would then really be open to the criticism that it was a comparison of unlike things, and did not recognize differences in the nature of the traffic. This is so for two reasons: first, because some things which move on class rates in one territory move on exception ratings, or on commodity rates, in another; and second, because even if the same articles moved on class rates in all territories, differences in the relative volume of different articles having different transportation costs might distort the figures.

[18] Class Rate Investigation, 1939, 262 I.C.C. 447, 591 (1945).

[19] *Ibid.*

[20] See dissenting opinion of Commissioner Porter, 262 I.C.C. 447, 716-719; and of Commissioner Barnard, *id.* at 728-729.

In the preceding paragraphs it has been assumed that differences in the levels of class rates in the various rate territories would be justified if there were substantial differences in transportation costs. This is a reasonable assumption. It may be noted in passing, however, that differences in the average transportation costs among the different rate territories are less than the cost differences that exist *within* the various rate territories. As a practical matter it has been found expedient to ignore many of these differences in cost in different portions of a rate territory, or on different railroads serving the same territory, and to have a single level of class rates over wide areas. Of course there are numerous exceptions to this policy, as is evidenced by the special treatment afforded New England, and part of Michigan, in eastern territory, and of Florida in southern territory, and the special treatment afforded short and weak railroads generally. Notwithstanding these exceptions, substantial differences in transportation costs have for practical reasons been ignored in setting up intraterritorial class-rate structures. This fact is pointed out to draw attention to the fact that a uniform level of class rates throughout the United States would not be such a radical step as it is sometimes portrayed as being.

Argument over the extent to which regional differences in transportation costs should be reflected in differences in class-rate levels is purely academic if there are no substantial differences in cost. The Edwards cost study, along with the earlier examinations of the question, bears out the contention that the differences in cost are slight.

It may be worth while to discuss one of the reasons why the findings of the Edwards study that transportation costs were as low in the South as in the North were difficult to accept at first, and were received with some skepticism. The findings did not seem to square with the financial results of railway operations as expressed by the relation of net railway operating income to investment in property, or to property valuations, since for many years the southern railroads had made a poorer showing than the eastern railroads. It was this situation which caused Commissioner Eastman to question the Commission's conclusion in the *Southern Governors' Case* that transportation costs were not greater in the South than in the North.[21] The same point was raised in the *Class Rate Investigation*. The southern carriers argued that if the costs were less in the South than in the East, as the Edwards cost study seemed to indicate, and if the rate level in the South was higher, as was conceded, then the southern railroads should have earned a larger rate of return on their investment than the northern railroads, whereas the reverse was the case. It is true that in the years 1930 to 1936, inclusive, the railroads in the southern region did earn a lower rate of return on their investment than did the railroads in the eastern district.[22] This might be attributed, in part, however, to the lower passenger fares in the South, and to the low revenues from this source. Average freight revenues per ton-mile in the South were from 3 to 5 per cent higher than

[21] State of Alabama v. New York Central R.R., 235 I.C.C. 255, 343-345 (1939).
[22] See BOARD OF INVESTIGATION AND RESEARCH, *op. cit. supra*, note 17, at 265.

in the East, but the revenues per passenger-mile in the South were lower than in the East. Although the earnings of the southern railroads were less favorable than those of the eastern railroads in the period 1930 to 1936, later years have shown the southern railroads to be earning more generous rates of return than the roads in the eastern district.[23] This fact was noted by the Interstate Commerce Commission in the *Class Rate Investigation*. The Commission showed that the rates of return earned in recent years by the southern and the eastern railroads on their reported investment in railway property, plus cash, materials, and supplies, had been as follows:[24]

	Southern Region	Eastern District
1936	2.52 per cent	2.67 per cent
1937	2.35 per cent	2.27 per cent
1938	1.90 per cent	1.26 per cent
1939	2.50 per cent	2.34 per cent
1940	2.57 per cent	2.66 per cent
1941	4.24 per cent	3.62 per cent
1942	6.51 per cent	4.90 per cent
1943	5.73 per cent	4.32 per cent

The table shows that only in 1936 and in 1940 did the southern railroads fail to show better earnings than those in the eastern district. It is significant that subsequent developments have also shown the southern roads to be better earners than the eastern roads. In June, 1946, when the Interstate Commerce Commission permitted the railroads to restore temporarily the war-time increases in rates[25] which had originally been authorized in 1942[26] but which had been subsequently suspended, it permitted an additional increase of 5 per cent in official territory because of the low earnings of the railroads in the eastern district. The Commission noted that in 1945 the railroads in the eastern district earned 4.30 per cent on their estimated value for rate-making purposes, while those in the southern region earned 5.38 per cent, and those in the western district earned 5.71 per cent.[27] We must conclude that the financial results of railway operation in recent years do not disprove the conclusions of the Edwards cost study that transportation costs are no higher in the South than in the East.

The conclusion seems amply warranted that differences in transportation costs do not require the existing differences in the levels of class rates in the different rate territories. The Commission, in the *Class Rate Investigation,* was very positive in its findings on this matter. After pointing out that it had long been considered impractical and unwise to attempt to reflect all differences in cost in the rate structure, the Commission said: ". . . there is no doubt that, based on cost of service considerations,

[23] *Ibid.*
[24] 262 I.C.C. 447, 613 (1945).
[25] *Ex parte* No. 162, Increased Railway Rates, Fares, and Charges, 1946, 264 I.C.C. 695 (1946).
[26] *Ex parte* No. 148, Increased Railway Rates, Fares, and Charges, 1942, 248 I.C.C. 545 (1942).
[27] *Ex parte* No. 162, 264 I.C.C. 695, 728 (1946).

the differences in levels, schemes, and progressions of scales that at present occur in the several territorial class-rate structures here under review are not justified."[28]

Differences in the Distribution of the Transportation Burden

Justification of differences in the levels of intraterritorial class rates has been sought not only in alleged differences in transportation costs, but in differences in "the distribution of the transportation burden" in the different rate territories. It is argued that it has been the policy of the carriers in the South and West to maintain relatively high rates on manufactured articles and low rates on raw materials and certain other products of those areas, while the policy of the carriers in eastern territory has been to accord manufactured articles somewhat more favorable rates than apply in the South and West. To some extent this argument seems to be an attempt to justify a discrimination by itself. When differences in class rates are challenged, it is a weak reply to argue that they are justified because they have long been that way. The real question is whether the differences in rate policy followed in the different territories are justified. The defenders of the present class-rate differences recognize this when they go on to say that the differences in the "distribution of the transportation burden" in the different rate territories are required by differences in the composition or "consist" of the traffic. It is contended that the smaller volume of high-grade manufactured articles in the traffic of the South and West requires higher rates on these articles than are provided in official territory if the railroads are to obtain adequate revenues.

If substantial differences in class rates are not to be justified by differences in transportation costs, but by differences in rate policy, or in the "distribution of the transportation burden," the real issue is the scope to be allowed to value-of-service or what-the-traffic-will-bear factors in rate making. Most economists believe that because of the substantial volume of fixed or constant expenses in the railroad industry it is sound policy to adjust rates with some consideration to the conditions of demand, or, in railroad parlance, to give some attention to the value of the service or what the traffic will bear. By this process full utilization of plant is facilitated, and unit costs are made lower than under any other policy of pricing. Certain limitations on this policy are recognized, however. Rates less than fully allocated cost are justified only if they do not fall below variable or out-of-pocket costs, and if the traffic will not stand normal rates. There must also be a check on the practice of charging what the traffic will bear in order to prevent monopoly profits arising from carrier exploitation of the fact that some traffic can stand rates greatly in excess of transportation costs. Furthermore, differences in rates based on real or assumed differences in what the traffic will bear should not be permitted when they create unjust discrimination, or undue preference and prejudice.

We may return now to an examination of the class-rate structure to determine the extent to which a difference in the distribution of the transportation burden in the different territories has been recognized, and how it is to be explained.

[28] 262 I.C.C. 447, 694 (1945).

In a great many cases the Commission has recognized the fact that there were differences in the distribution of the transportation burden in the different rate territories.[29] The difference, so far as the North and South are concerned, has been the maintenance of relatively higher class rates in the South; and on some commodities, relatively low commodity rates. In *Rates on Bristol & Norton Lines of Norfolk & Western Railway,* the Commission pointed out that "commodity rates in the South are often on a relatively lower level in comparison with class rates, and sometimes on an absolutely lower level than they are in the North."[30] In *Knoxville Freight Bureau v. Southern Railway,* the Commission also observed that "class rates are relatively low and commodity rates generally are relatively high in official territory as compared with those in the South."[31] The reason for this difference in the distribution of the transportation burden is suggested in *Eastern Bituminous Coal Investigation,* where the Commission said: "Official territory is so predominantly concerned in manufacturing that a rate structure has developed there which appears on the whole to be more favorable to high-grade manufactured products and less favorable to low-grade basic commodities, relatively, than the rate structures of certain other territories."[32]

To point out that differences in the distribution of the transportation burden have existed in the past in the various rate territories, and that a historical explanaion of the differences is to be found in differences in the dominant economic interests of the several regions, is not to justify the differences in rates. The question remains whether such differences in the distribution of the transportation burden are necessary or proper.

One matter that needs to be made clear at this point is that it is difficult to justify higher class rates as a whole in one territory than in another on the basis of differences in the ability of traffic to stand high rates. Class traffic is not a homogeneous thing. It is made up of thousands of articles of varying abilities to pay transportation charges. With respect to some of these articles there might be regional differences in what the traffic would bear. For other commodities there are probably no such differences. This situation is amply demonstrated by the many articles which have been given lower ratings in the southern classification, or in exceptions thereto, in order to offset in whole or in part the higher class rates in the South, and thus to make the rates on these articles equal to, or more nearly equal to, the rates in official territory. The same result is attained on other commodities by the use of commodity rates. These examples indicate that the maintenance of a different "distribution of the transportation burden" on these particular articles in the South and in official

[29] See Coke from Alabama & Tennessee to Central Territory, 208 I.C.C. 281, 289 (1935); Cushwa & Sons v. Arcade & Attica R.R., 185 I.C.C. 280, 288 (1932); Brick & Clay Products in the South, 155 I.C.C. 730, 736 (1929).

[30] 192 I.C.C. 315, 324 (1933).

[31] 156 I.C.C. 315, 318 (1929). See also Stoves, Ranges, Boilers & House-Heating Furnaces, 169 I.C.C. 169, 179 (1930); Central Leather Co. v. Akron, C. & Y. Ry., 159 I.C.C. 56, 61 (1929); and Southeastern Sugar Investigation, 132 I.C.C. 477, 499 (1927).

[32] 140 I.C.C. 3, 16 (1928).

territory was either impossible or inexpedient because of the competitive disadvantages created thereby.

In the *Class Rate Investigation* differences in the distribution of the transportation burden, resting upon differences in the nature and composition of the traffic, were urged both as justifying a higher level of class rates as a whole in the South and West and also as justifying a lack of uniformity in freight classification. In considering the argument as a justification of higher levels of class rates in the South and West than in official territory the Commission pointed out that these higher rates, together with the interterritorial rates which reflect these levels, operated to the disadvantage of producers in the higher rated territories. The Commission pointed out that official territory is the greatest consuming territory in the country, and is the market which all manufacturers desire to reach if possible. "In shipping to official territory, manufacturers in the other territories not only have the disadvantage of location, but are subjected to an additional burden in those instances where they must pay class rates on a much higher level than their competitors in official territory."[33] The Commission said that this situation "reacts to the disadvantage of manufacturers in the other territories, and to the advantage of those in official territory, tends to restrict the growth and expansion of the manufacturers in the other territories, and, to some extent, to prevent the establishment of new manufacturing plants in those territories."[34] That such would naturally tend to be the result of substantial differences in class-rate levels in the different territories seems obvious. The Commission went on to point out that the method of distributing the transportation burden in the South and West, by imposing higher rates on class traffic, had been largely unsuccessful. "It is clear that the method of distribution of the rate burden between types of traffic now observed in southern, southwestern, and western trunk-line territories has resulted in rates so high that they have prevented the free movement of traffic at the rates in issue. This result is fully proved by the fact that numerous lower exception and commodity rates which move the great preponderance of the traffic and produce the great preponderance of the revenues in those territories, have been established."[35] The conclusion seems warranted that the attempt to maintain a different distribution of the transportation burden on some commodities in the South and West than in official territory has been unsuccessful, and that in other instances it has created undue preference and prejudice.

Differences in the composition of the traffic were also urged in the *Class Rate Investigation* as justifying or requiring differences in classification ratings in the different territories. The Commission's statement of this argument, and its reply thereto, deserve quotation:

> Differences in classification ratings are defended upon the ground that they are justified by differences in the composition of traffic in the several territories. Thus in one territory,

[33] 262 I.C.C. 447, 696 (1945).
[34] *Ibid.*
[35] *Ibid.*

there may be a large movement of low-grade commodities on which the ratings are relatively low and a small movement of manufactured articles on which the ratings are relatively high, and in another territory the reverse may be true. The contention is that in order to obtain the necessary revenue, it is proper to make the ratings higher in one territory than in another. This presupposes that in the determination of a reasonable rating consideration and weight must be given to the volume of the traffic in the respective territories.

We believe that the assignment to the same article of commerce of a rating which is different (in terms of percentage relation between class rates governed thereby) throughout one territory from the rating in another, because the article moves in large volume in the one as a whole and in small volume in the other, causes undue preference and prejudice between the shippers in the two territories, as well as between the traffic and between the territories.[36]

The Commission has thus recognized that differences in rate levels on particular commodities which result from differences in classification ratings in different territories tend to create undue preference and prejudice. The Commission allowed ample leeway for local differences in classification ratings on particular articles when justified, since it held that local exceptions to the classification or commodity rates might be published where circumstances warranted such action. "Where adequate justification exists for lower charges in a portion of a territory, or from and to particular points, the proper remedy is the establishment of lawful exceptions to the classification, or commodity rates."[37] The Commission, however, in order to prevent the use of classification exceptions to break down the substantial uniformity considered essential, indicated that exception ratings should be confined to such situations as could be justified individually upon their own merits.[38]

Freight Rates and Regional Protectionism

A few spokesmen for the South and West defend the present rate structures on the ground that they are best adapted to the economy of those areas. Equalization of rate levels, these spokesmen contend, would work to the disadvantage of the South and West by depriving them of the present advantages in rates which they enjoy.

It is beyond the scope of this paper to engage in a debate over the kind of rate structure that would be most advantageous to the South, or to the West, or to any particular section of the country. The contention of the southern group which defends the present rate structure as in the best interest of the South is based on the fact that the southern rate structure, both intraterritorially and interterritorially, has certain protectionist features.

These protectionist features include (1) high interterritorial rates on manufactured products which to some extent protect southern manufacturers from northern competition in southern markets; (2) low rates within the South on some raw materials used in southern industries; and (3) relatively low interterritorial rates on certain important manufactured and other products of the South for which a

[36] *Id.* at 505. [37] *Ibid.* [38] *Id.* at 511.

market is sought in the North.[39] The relatively high interterritorial class rates which protect some southern manufacturers from northern competition also restrict the ability of certain other southern manufacturers, actual or potential, to sell in northern markets. It is the conflict between these two effects of high interterritorial class rates that has divided the South on the freight-rate question.

One of the most outspoken advocates of a distinctly protectionist and mercantilist rate policy is Mr. C. E. Widell, associated with the Tennessee Manufacturers' Association. Mr. Widell says:

> Obviously, the ideal rate structure for any manufacturing region like the South should consist of (1) low rates within the South on in-bound raw materials—that is within the region—(2) rates on manufactured goods within the South that will protect the South's industrial economy; (3) a rate scale so graded as to give the manufacturer in the South the greatest possible advantage of large differences in rates against competitors in southern markets; and (4) out-bound rates on manufactured goods to outside markets on rate scales with the smallest differences against the southern manufacturer.[40]

Similar views have been expressed by other traffic men representing industries or groups of industries in the South which fear a possible disturbance of rate adjustments which are apparently favorable to them.[41]

The argument that the present rate structure in the South is best for the South, like all protectionist arguments, identifies the interest of the South with the interest of certain special groups. Assuming, for the sake of the argument, that the real interest of the South is identical with the interest of certain important producing groups in the South, it may be said that a rate structure which favors certain important southern products exported to official territory, and which protects southern manufacturers and producers in local markets from the competition of northern and western producers, is as much to be condemned from a national standpoint as one which discriminates against other products of the South, actual or potential, in northern markets. It is just as objectionable to have a rate structure which keeps northern goods out of the South as one which keeps southern goods out of the North. Rates which are discriminatory against the South cannot be defended by pointing to other rates that are not discriminatory, or that may even be preferential of the South, and to others that discriminate against northern products in the South. The ideal rate structure is one which enables each section of the country to develop according to its natural advantages without artificial rate handicaps or preferences.

[39] For a more detailed listing of protectionist features of the southern rate structure, see Heath, *The Uniform Class Rate Decision and Its Implications for Southern Economic Development*, 12 Sou. Econ. J. 213, 233 (1946).

[40] See *Hearings before Committee on Interstate Commerce on S. 942*, 78th Cong., 1st Sess. 929 (1943).

[41] Particularly Mr. A. W. Vogtle and Mr. A. J. Ribe, both of Birmingham, Alabama.