TRANSPORT COORDINATION AND REGULATORY PHILOSOPHY*

LEE J. MELTON, JR.†

INTRODUCTION

"Within the short span of one generation this country has witnessed a transportation revolution."¹ This growth of the transportation industry and the rapid and varied innovations in the various transport media have been one of the significant economic developments in the twentieth century. As the structure of the industry has changed, it has been necessary to re-evaluate the governmental controls applied and to examine carefully the economic aspects and competitive relationships of the several forms of transport.

Much literature in recent years has been devoted to the "transportation problem." Everyone agrees that there is a problem, but perhaps all would not agree to its exact nature. Several years ago, in a study of the Motor Carrier Act of 1935,² this writer wrote that certain proposed revisions would not solve the primary transportation problem,³

... which is the uncoordinated and excessively competitive operations of transport agencies subject to diversified regulatory acts, different commissions, and unrelated promotional policies. Until such time as a coordinated transportation system is organized to function under integrated regulation, revisions will serve primarily as palliatives.

His thoughts on the problem and attempts to revitalize regulatory policy have remained basically unchanged.

Transport coordination is a problem of long standing, recognized and treated by numbers of scholars, transport executives, and government officials. The term has, accordingly, come to have different meanings, or shades of meaning, to different people. The use of the term ranges from the description of the loosest cooperation between transport media to the combination of different forms of transport. For purposes of this paper, we shall use the first part of a definition by Peterson:⁴

Co-ordination is the assignment, by whatever means, of each facility to those transport tasks which it can perform better than other facilities, under conditions which will insure its fullest development in the place so found.

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† B.A. 1942, Louisiana Polytechnic Institute; M.A. 1948, Ph.D. 1953, Louisiana State University. Associate Professor of Economics, Louisiana State University.

¹ PRESIDENTIAL ADVISORY COMM. ON TRANSPORT POLICY AND ORGANIZATION, REVISION OF FEDERAL TRANSPORTATION POLICY, A REPORT TO THE PRESIDENT I (1955).

² 49 Stat. 543, 49 U.S.C. §§ 301 *et seq.* (1952).

³ Lee J. Melton, Jr., A Re-examination of the Contract Carrier Regulation and Exempt Provisions of the Motor Carrier Act of 1935 and Their Impact on Common Carriers ix (unpublished thesis in Louisiana State University Library 1953).

⁴ Peterson, *Transport Co-ordination: Meaning and Purpose*, 38 J. Pol. Econ. 660, 680 (1930).

Since the problem of coordination is enmeshed in an environment that is as political as it is economic, the solutions can seem even more complex than they actually are. Aside from the effects of political influence and vested interest, there is the basic philosophy concerning the method to be used. "Coordination of the services of different transport media can be effected by administrative action. But it could also be effected—and perhaps with greater economy and efficiency—through the market processes."⁵

Several solutions for solving the transportation regulatory problems, among them that of coordination, within the private ownership sphere have been put forth in recent years. The economic difficulties are, evidently, expected to work themselves out if the proper regulatory climate and policy are achieved.

Solutions usually revolve around four proposals, or combinations of these proposals. These are (1) consolidation of administration under one regulatory body; (2) the merger of regulatory and promotional activity; (3) uniformity of regulation for all transport agencies; and (4) a selective overhaul of the existing pattern, with a view to placing greater emphasis on competition and less on control. This latter view is probably best exemplified by the Cabinet Committee's report.⁶ In spite of the differences in these approaches, all have one characteristic in common: They assume that the solution will be found within the existing framework of interagency competition, under some degree of regulatory control.

Competition does offer many apparent advantages to our transportation system. Most of us are dedicated to a competitive economy. We look with favor upon developments that strengthen the competitive concept and with disfavor upon those which tend to weaken it. Interagency competition, therefore, fits our basic economic philosophy.

The various means of transport have progressed rapidly in technological innovations. Much of this can be attributed to the competitive struggle between water, rail, motor, and air carriers. It may be further asserted that better service has been instituted and that lower rates have resulted from the competitive relationships of the several forms of transportation. Certainly pickup and delivery practices of rail carriers have been stimulated by competition from motor carriers, to name but one example. Also, there is no denying that commodities and communities which have a number of transportation alternatives usually enjoy lower rates than those where competition is absent.

Nevertheless, the writer considers that no adequate, lasting solution will be found within the competitive framework. It will be suggested that our long-run solution to the transportation problem may be found not so much in changes in regulatory practices as in the economic structure of the subject regulated. This is by no means a new thought, but it has not been much stressed in the past decade until a resurgence of the view in the past two years. It is proposed that companies utilizing all forms

⁵ CLAIR WILCOX, *PUBLIC POLICIES TOWARD BUSINESS* 643 (1955).

⁶ PRESIDENTIAL ADVISORY COMM., *op. cit. supra* note 1.

of transportation would replace the separate operating types of rail, motor, water, and air that we have at present. Hereafter, such multimedia firms will be spoken of as "transportation companies."

The best long-run solution is not necessarily the one that will be adopted; and, even if it is, the length of time required may be inordinately long. For this reason, the separate agency approach cannot be ignored. At the least, it is vital to the interim period. At the most, it may be the best solution we can achieve.

In light of the above discussion, this paper will submit two basic proposals for coordination of the domestic transportation system. The first, and perhaps soundest, will be predicated on the transportation company. As an alternative, suggestions for coordinating under the separate transport agency approach will be explored.

I

SOME AREAS OF VARIATION

Because of the American dislike for regulatory activity, the greater part of the legislation affecting transportation is not the result of careful, long-range planning, but, rather, a hodge-podge creation based upon expediency and custom. Unfortunately, once custom becomes accepted, it takes on an aura of finality, and revision and repeal become exceedingly difficult.

Today, transportation is extremely complex. Well-developed common carrier networks in the rail, water, motor, and air transport fields offer service to most points in the nation. In addition, there is extensive use of contract, exempt, and private water and motor carriage, as well as specialized areas of air transport. The days of the rail monopoly are long gone. All of this has given rise to a multimedia competitive structure in transportation with which existing regulatory bodies find it increasingly difficult to cope. Of these many problems, none presents more difficulty of solution than that of the interagency relationship.

The Interstate Commerce Commission's authority over rate-making has steadily evolved, until it is well nigh absolute. The Commission may prescribe the maximum, the minimum, or the exact rate. From the standpoint of current competitive relationships, the power to control minimum rates is the basic ingredient. When authority over minimum rates was acquired under the Transportation Act of 1920,⁷ only rail carriers were concerned. The minimum rate power was exercised primarily to prevent loss of revenues by carriers, to preserve existing rate structures, and to compel increases in intrastate rates which burdened interstate commerce. More important now, because of the increased coverage of the Interstate Commerce Act⁸ and the well-developed state of additional modes of transport, is the prevention of destructive competition and the preservation of all forms of transportation in accordance with congressional policy.

⁷ 41 Stat. 484, 49 U.S.C. § 15(1) (1952).

⁸ 24 Stat. 379, as amended, 49 U.S.C. §§ 1 *et seq.* (1952).

In addition to its rate-making control, ICC authority over other aspects of the rail industry is extensive—more so than over any other media—and regulation of the other forms of transport has increased in scope and intensity. A thorough discussion of the provisions of the Interstate Commerce Act, the Federal Aviation Act of 1958,⁹ and other applicable legislation lies beyond the scope of this paper. It will be more pertinent and suffice for our purposes to enumerate some of the more troublesome areas of variation and inconsistency in regulation and promotional activity as applied to the several carriers. No effort will be made at this point to justify or condemn such variations.

1. There is no uniformity of regulation. Even the Interstate Commerce Act is divided into four parts, with varying treatment of the agencies so regulated.

2. One of the most noticeable distinctions between rail and other forms of transport is the recognition of several classes of the latter—*i.e.*, common, contract, private, exempt, and the like. This is a major source of difficulty.

3. There is no single regulatory agency. Further, the regulatory policy is not coordinated with promotional policy, although each has critical bearing on the other. The Federal Highway Act of 1956¹⁰ was a prime example of this. All of the forms of transport, except rail, currently are the recipients of varying amounts of public aid in the form of direct or indirect subsidy.

4. The intent of Congress seems to be the compulsion of more competition between the transport agencies, without, at the same time, abandoning regulation designed to preserve individual competitors. In this respect, the problem is somewhat similar to that encountered in the antitrust field, where the same two objectives come into conflict.

5. Labor relations have become increasingly troublesome in transportation. Yet, only the railroads and air lines are subject to legislation specifically aimed at preventing work stoppages in these vital services.

The fundamental difficulties in eliminating these trouble spots and achieving satisfactory coordination hinge on two issues, the role to be played by interagency competition and the weight to be given efficient allocation of resources to and among the various means of transportation.

II

COMPETITION AND RATE-MAKING

The writer has indicated that no adequate solution will be discovered within the competitive framework. The agency approach to transport regulation, where the several modes of transport are considered as separate entities, no longer suffices to cope with current situations. Of the questions faced by federal and state regulatory bodies—not to mention the carriers themselves—probably the most pressing is that

⁹ 72 Stat. 731, 49 U.S.C.A. §§ 1301 *et seq.* (Supp. 1958).

¹⁰ 70 Stat. 388, as amended, 26 U.S.C. §§ 4041, 4061, 4070-73, 4081 (Supp. V, 1958).

of competition between the different forms of transportation, each with specific characteristics which give certain cost and service advantages and disadvantages in relation to the others, as well as overlapping features which make advantages and disadvantages less pronounced. Speed and quality of service are of competitive import, but the major impact must come from the pricing or, in this instance, rate-making.

Two aspects of rate-making present themselves here. The first relates to what might be called the natural zone of reasonableness, whose upper limit is set by the highest rate which can be charged without destroying or diverting the traffic, and whose lower limit is the point below which the carrier would incur costs in excess of revenue on each unit of the traffic carried. Will carrier management, if unregulated, select a more economically and socially desirable rate than under the present setup? In other words, is there sufficient competition in the transportation industry to depend upon the workings of the market place to establish rates and fares in such a way that each mode of transport will be relegated to its proper sphere of activity? Competitive rates must, to be effective, be related to the cost of producing the service, and determination of the cost of transporting various items—when the transportation of such an item is only one of several hundred different services that can be produced simultaneously by a given plant—is virtually impossible.

In spite of the many factors considered in rate-making, such as value, density, vulnerability to damage, and the like, the most important one is probably comparison. This means that rates are justified by virtue of their relationship to other rates. But what of the rate selected for this comparison? It, too, was no doubt created on a comparative basis, or else its origin is more or less untraceable, and it, like Topsy, just grew. Because of the extreme difficulty of establishing a specific rate on a cost basis, rate-making might well be considered more of an art than a science. Value here is not found; it is made on the basis of the presumably reasonable judgment of reasonable men.

The second has to do with what we might call the regulatory zone of reasonableness. Here, the upper and lower limits are subject to Commission edict, and the higher zone may be less than the consumer would pay if he had to, and the lower zone may be above that which would be charged by the carrier if unrestrained. Although the Commission can prescribe the exact rate to be charged, the carrier is ordinarily free from Commission restraint within the regulatory zone of reasonableness.

In interagency competition, however, the establishment of the minimum rate is tantamount to establishment of the actual rate. The crux of the present-day rate-making controversy, then, lies in this minimum rate factor. Specifically, it concerns these items: (1) Can out-of-pocket costs be determined accurately enough for this purpose? (2) Is out-of-pocket cost a sound basis for competitive rate making? and (3) Can unrestrained competition be allowed, when related to minimum cost, in an industry where discriminatory pricing is permissible and prevalent? Cost allocation is a complex proposition for transport firms because of the multitude of services

that their machinery is capable of producing. At any given time, such firms will have a sizable physical plant, capable of producing an indeterminate amount of transportation service. To some extent, the costs of operating the plant are independent of the quantity of service provided. In addition, there are expenses related directly to the performance of any specific commodity transportation. The rate charged, therefore, is a component of two factors: a share of the overhead or common expense and the added expense directly incurred by the specific transportation.

From the standpoint of an economic ideal, perhaps, the rates should reflect total cost, consisting of direct expenses and a fully allocated share of the overhead or common expense. Actually, this is not always possible. For one thing, it is difficult to allocate the common costs, for reasons explained previously. For another, it is not always desirable, from either the standpoint of the carrier or the shipping public, to levy fully allocated charges. As long as capacity permits, additional traffic that returns direct cost plus some contributions to overhead, no matter how slight, provides additional revenue to the carrier and, since the over-all revenue is restricted to a recovery of costs plus a reasonable return on investment, makes possible lower rates to shippers that do pay fully allocated costs. Such pricing is, of course, discriminatory, but it is permitted on the theory that, so long as the discrimination is controlled, it is beneficial. On the other hand, the freely competitive use of discriminatory pricing can have adverse effects on rate levels and on traffic that is noncompetitive.

It must be clearly kept in mind, then, that minimum rates are often discriminatory and that lowest out-of-pocket cost does not necessarily go hand-in-hand with the lowest average total cost. Suppose an item can be transported by either of two modes of transportation. Carrier *A* would need to charge one dollar to recover total cost, consisting of fifty cents overhead and fifty cents direct expense. Carrier *B*, on the other hand, would need to charge ninety cents to recover full cost, consisting of thirty cents overhead and sixty cents direct cost. In a competitive situation, if rates were permitted to gravitate toward out-of-pocket costs, Carrier *A* would have the advantage, although it is actually the high-cost carrier when all factors are considered.

From the standpoint of sound, economical use of natural resources, another view of the above example deserves consideration in order to reflect certain other factors of vital consequence. The economical carriage of one commodity or a few commodities must be balanced against the efficient carriage of many commodities. Troxel writes:¹¹

A pipeline, taken alone, can often haul oil or gasoline more cheaply than can a railway line. But railways are still required for other commodity movements, and even some oil movements along the same paths. Or motor trucks can carry some commodities at lower costs and, on occasion, offer higher qualities of transport service than railways; but the railway technique remains for other traffic. These and other situations of partial substitution cannot be controlled to efficient transport ends, measured in the aggregate, if each

¹¹ CHARLES EMERY TROXEL, *ECONOMICS OF TRANSPORT* 327 (1955).

technique is treated as a separate or a special case. No matter what their popularity, cost comparisons between techniques are not enough.

This situation must be accorded attention in any formulation of national transportation policy.

Discriminatory pricing is an accepted American institution. Impossible under conditions of perfect competition and lamented by many economists, discriminatory pricing policies are an integral part of the marketing philosophy of many business firms. Product differentiation, based on different trade labels representing various degrees of quality which exist to a considerable extent only in the minds of advertising agencies and a gullible public, is the outstanding example. The buyer usually has several sources from which to choose, however, and these sources enjoy no privileged status in the eyes of public authority.

This is very definitely not the case in the purchase of transportation from a common carrier. There may be no satisfactory substitute, nor, under controlled entry, may there be the possibility of any development of a substitute. The buyer is paying a discriminatory price not through choice or lack of knowledge, but through necessity. One may take the view, of course, that there is nothing particularly onerous or reprehensible about value-of-service pricing so long as competitive conditions exist and that, since the establishment of several well-developed media of transport, competitive conditions actually do exist.

To evaluate the validity of the last-mentioned position, it is necessary briefly to examine a concept of workable competition. Except for use as a model, the idea of perfect competition, with its requisites of homogeneous product, many buyers and sellers, mobility of resources, and knowledge of the market place, plays little part in modern economic analysis. The majority of economists feel satisfied if there are enough buyers and sellers, together with some opportunity for entry and withdrawal, to assure reasonably dynamic allocations. To function satisfactorily, competitive conditions of this sort should effect, in so far as the transportation system is concerned, the following achievements: (1) allocate resources between transportation and other industries; (2) allocate transportation resources among the various media; and (3) allocate the services of each transport medium in the most effective way.

Concerning the first point, such allocations in our economy are not fully effected by competitive forces. In the absence of government financial assistance, which, by and large, has been no greater to transportation than to several other segments of the economy, the transportation firms would have had to attract capital on the same basis as anyone else. But it must be remembered that the subsidy element in air, water, and highway transportation causes some distortion. This complex subject lies beyond the scope of this paper, but it suffices to say that competition is not the sole basis for the fundamental allocation of resources between transportation and other economic activity.

The allocation of resources among the media of transport and among firms within a given media is not completely dependent upon competitive conditions, either. Let us assume that a nontransportation firm finds that its scale of operations is too small for effective production. It may, subject to its financial limitations, expand its operation and sell over a wider area. A common carrier does not find this so easy to do, because its territorial operating rights are definitive and permission to expand may not be forthcoming from appropriate regulatory bodies. Or suppose useful techniques are developed by a nontransportation firm's competitors—techniques, perhaps, that partially or completely outdate existing methods. Again, the firm would adopt the improvements as rapidly as possible. But transportation firms are rather rigidly delineated, and common carriers of a given mode of transport are prevented from branching into other forms of transportation.

The efficacy of the individual carrier is not allowed to resolve itself under competitive conditions with others of its own kind. Common carrier rates between points served by competing lines are ordinarily published by conferences or bureaus. Although the individual carriers may abstain from such tariffs, as a practical matter, this is not feasible, so weak roads may get such business as readily as strong ones, and circuitous routes may be used as frequently as direct ones; for in either case, the rate is the same. Nor is the rate necessarily geared to the cost of the most efficient carrier. It may, and frequently does, reflect averaging or umbrella rate-making not because it is forced by the regulatory commission, but because it is the wish of the carrier group. Further, controlled entry protects, to a considerable extent, the vested interests of a given form of transportation. Certainly, transport firms need not fear the unrestricted onslaught sometimes encountered outside the field.

It is apparent that conditions prerequisite for effective competition are now lacking in transportation. This does not, however, necessarily indicate that conditions required for competition cannot be achieved if regulation were abandoned.

What results can be expected from competitive pricing among these agencies? The managerial prerogatives, whose infringement is so often lamented, would be restored; but as a group device, because of the aforementioned bureaus. As far as cost determination is concerned, the situation would remain unchanged, except the allocation might conceivably be closely related to the demand for an alternate service provided by competing carriers. The most hoped-for accomplishment is that a more rational allocation of transportation resources would result.

The writer has serious doubts about the certainty of this occurrence. First of all, there cannot be effective competition in conjunction with regulation. The terms are in themselves contradictory. So long as firms are not free to enter and leave an industry at will, to expand whenever the management deems it necessary, or to imitate the methods and devices of more successful rivals, a "competitive" rate cannot be relied upon as an economic rationing device. Further, the fixing of prices and control of earnings by public authority, if followed consistently, will, for obvious reasons, undermine a competitive structure.

It is interesting to note that few of the advocates of competition as the prime allocator in transportation have ever suggested that regulation be abandoned. A minimum of regulation is always tolerated to prevent the rise of "destructive" competition. It is suggested by this writer that competition seldom, if ever, destroys anything but individual competitors, and, if the underlying conditions for effective competition are present, this should accrue to the benefit of the system. On the other hand, if the conditions requisite for effective competition are not present, as in the utility field, the results will likely not be beneficial. Perhaps there is still something of the utility complex in transportation, in spite of what the Cabinet Committee calls the growth of "pervasive competition."¹² The reluctance of transport executives to give up regulation would seem to underline some lack of faith on their part as to the effectiveness of competition.

If regulated competition should be abandoned and competition relied upon completely, the result would be the end of the common carrier, for the common carrier is not basically competitive by nature. These carriers would not be able to withstand the diversion of the more desirable traffic to the noncommon carriers. It is doubtful if the economy is ready to abandon its system of public carriage, for the link between the common carrier and the common welfare is still a strong factor with which to reckon.

Of the alternatives to the existing method of handling interagency competition, greater reliance upon competitive rate-making is a delusion. There can be no effective competition under regulation; and, in the absence of regulation, the transport system would be demoralized. All of this suggests, then, that the integrated transport firm—the transportation company—may be a more satisfactory and lasting solution.

III

TRANSPORTATION COMPANIES

These transportation companies have definite strengths that might eliminate or mitigate certain of the existing problems in transportation. The use of these companies would remove the interagency conflicts that currently plague the carriers. At least this would be true of the existing conflicts between common carriers. Unless contract, private, and exempt carriage are defined and regulated in such a way as to prevent many of the abuses associated with such transportation, a key trouble spot would remain. Nevertheless, the elimination of interagency rivalry between the common carriers would remove one of the major obstacles to a solution of transport coordination.

The transportation company is an agency in which coordinated transport service can be effectively accomplished. The management of such companies should be in a position to select the means of transport best suited, from the standpoint of service and economy, for the various operating and demand situations encountered.

¹² PRESIDENTIAL ADVISORY COMM., *op. cit. supra* note 1, at 2.

The transportation company provides a means of achieving more efficient use of transportation resources. There are two possible ways in which the increased efficiency might materialize. One is the elimination of the waste and duplication that comes from the existence of a number of competing media. The coordinated effort of the integrated company should permit the abandonment of facilities whose function could be more effectively performed by some other medium or combination of media. A second saving might come through the operations of economy of scale—the substitution of large-scale firms for a multitude of small ones. It has long been contended that expanded size of a transportation firm would bring about substantial decreases in unit costs. Today, there is some question as to the extent such economies are actually realized. Koontz found that the route structure and density of traffic were of far greater importance than the size of the firm.¹³ Roberts reached much the same conclusion in a recent study of motor carrier costs.¹⁴ A comparison of financial and operating statistics of various size rail carriers indicates some possibility that this is also true of railroads.

The fact that such economies may not be as great within each medium as once thought does not preclude such economies from the integrated firm, but mere size alone is not necessarily the most important characteristic of the transportation company. Rather it is the ability to eliminate duplication and to exploit a coordinated transportation system.

The transportation company is not, however, without its weaknesses. There is the possibility of suppression of other media of transport by the dominating agency in the organization. The most often-voiced fear, when coordination or combination of the several modes of transport is mentioned, is that such an organization would be rail-dominated. The possibility of domination of one type by another is admitted. If permitted to occur, it would be a deterrent to the hoped-for result. It does seem unlikely, however, that such a bias could be successively passed to subsequent managerial groups over a period of time.¹⁵

Similarly, many voice the fear of complacency of the management of such transportation companies. With the element of competition removed, what incentive will those who operate the enterprise have to increase their efficiency of operations, either through better utilization of a given technology or through the introduction of technical innovations? The question of incentive is a pressing one. A limited amount of competition between transportation companies might be permitted, and some stimulus might come from private carriage. A more direct monetary stimulant might be provided through the adoption of some sort of sliding-scale basis for rate control, under which earnings in excess of what is considered an adequate rate would be shared by both shippers and management.

¹³ Koontz, *Domestic Air Line Self-Sufficiency*, 42 AM. ECON. REV. 103 (1952).

¹⁴ Roberts, *Some Aspects of Motor Carrier Costs: Firm Size, Efficiency, and Financial Health*, 32 LAND ECON. 228 (1956).

¹⁵ See HAROLD G. MOULTON & ASSOCIATES, *THE AMERICAN TRANSPORTATION PROBLEM* 890 (1933).

Also in the nature of a weakness, or perhaps better described as a stumbling block to creation, is the difficulty of formation. The antagonism of the management of the various transport media would make voluntary establishment on a cooperative basis most difficult to accomplish. Motor, water, and air carriers would fear domination by rail management, and logically so. A large rail system would bring the greater amount of assets and tonnage into a transportation company and would expect this contribution to be reflected in the apportionment of equity. Nor would compulsion by governmental authority be palatable to either the transport firms or the majority of the general public, even in the unlikely event such legislation should escape the condemnation of the courts.

Under what conditions, then, could transportation companies conceivably be established? One possible arrangement would be the purchase of control of the needed media by an outside corporation formed for the purpose, with subsequent merger under new management. Such an event would require a change in both transport regulation and antitrust law, but this way does alleviate fears of control by any one form of transport.

A second way lies in removing the restrictions on the utilization of one form of transport by another medium—for instance, the operation of a motor carrier by a railroad. Such restrictions affect rail carriers primarily, for few motor, air, or water lines are in a position to institute rail service. The removal of these limitations would mean that rail carriers would be free to form transportation companies. Still another possibility is the acceleration of consolidation of like means of transport. These firms might then be more easily merged into transportation companies.

If transportation companies were formed, what should be the ultimate climate for their operations—conditions of controlled competition, or exclusive territorial operating rights? If the first condition prevailed, there would undoubtedly be some conflict between regulation and the competitive urge; but effective regulation should be more easily achieved than at the present time, because of the structural homogeneity of the firms involved. The latter course would mean a sharp break with existing regulatory policy.

It is not easy for an economist of orthodox training to advocate controlled monopoly or near monopoly. Still, this appears to be the inevitable solution to the formation of an economic and coordinated transportation system, and the writer proposes that the transportation companies operate under these conditions. They would, in effect, be treated as a public utility. The change is not so marked as it might appear at first glance. Common costs would continue to be allocated on a demand basis, and rates would still be related to value of service as long as such value was above out-of-pocket cost. Earnings control would keep the general rate level within reasonable bounds, and the Commission power over individual rates would care for specific instances of unreasonable or discriminatory charges. The only thing missing under the regional monopoly would be the fiction of allocation by interagency competition.

If some reliance on competition is insisted upon, then the transportation companies could be granted overlapping territories, as were the rail carriers. The ensuing activities in the competitive areas would have to be regulated in much the same fashion as the rail carriers before the advent of effective motor transportation, with many of the difficulties attendant to that era and the present.

If the transportation company could be successfully operated, most of the so-called coordination problems that exist at present would be eliminated, and control of those that remained would be simplified. Specifically, any justification that might now exist for separate commissions and regulatory provisions would be removed. The interagency competition between common carriers would disappear with the separate corporate entities. It might be too much to expect that the transportation company would be any less disposed to accept public aids than the individually subsidized modes, but since such aids would no longer be critical as a competitive factor, it would perhaps be easier to approach promotional policy with better perspective.

IV

PIECEMEAL APPROACHES

Even if we assume that the transportation company will prove to be the most satisfactory long-run solution to the problem of transport coordination, there is no evidence that the public, government, or the transport firms are anxious to accept it. Such support as is evidenced at the present time comes principally from railroad groups and interests, but it may be that the rail carriers have become interested in the acquisition of competing forms some twenty-five years too late. It is well to remember, also, that the public is not always interested in the maximum in efficiency. They may value competition among transport firms as a principle, even if there is added cost involved. They may insist on promoting certain types of transportation, regardless of the economic justification for such action.

If the transportation company is to be a long time in coming, with more than a remote possibility that it may not come at all, what measure of coordination may be achieved in the face of the separate agency approach? What may be expected depends on (1) whether a piecemeal or positive approach to policy revisions is followed; (2) the public attitude toward the equitable treatment of transportation costs—*i.e.*, the question of public aids; and (3) the amount of competition relative to regulation.

In 1954, the President established the Presidential Advisory Committee on Transport Policy and Organization, requesting that it undertake a comprehensive review of over-all federal transportation policies and problems and submit recommendations for the consideration of the President and Congress. The findings of this Cabinet Committee, while touching on several of the trouble spots of transport legislation and while purporting to be positive in nature, are representative of the piecemeal approach to policy revision. The Cabinet Committee, in its appraisal of national transporta-

tion policy, proceeded from the fundamental premises that the transportation system operates in a general atmosphere of pervasive competition, that adjustment of the regulatory programs and policies to these competitive forces were long overdue, and that restoration and maintenance of a progressive and financially strong system of common carrier transportation is of paramount importance to the public interest. To accomplish these ends, the Cabinet Committee suggested a number of revisions in public policy.¹⁶

First, and most emphasized, was increased reliance upon competitive forces in rate-making. Competition was to be stimulated by (1) limiting the regulatory authority of the ICC in rate control to the determination of reasonable minimum and maximum rates; (2) restricting the duration of the time period for which the Commission has the power to suspend rates; (3) removing the requirement that rail or water common carriers obtain prior approval for fourth-section relief where necessary to meet competition and when the charge is not less than a reasonable rate; and (4) legalizing volume freight rates when based upon cost differences and when established to meet competition.

The other recommendations of the Cabinet Committee called for a stricter definition of private and contract carriage; the requirement that contract carriers publish actual rather than minimum charges; the repeal of the bulk-commodity exemption applicable to water carriers, so that such transportation might be subjected to regulation similar to that applicable to other transportation; the tightening of standards for qualification as a nonprofit association for exemption from regulation as a freight forwarder; empowering the Commission to override certain state service requirements if continuance of such service would unduly burden interstate and foreign commerce, provided adequate substitute service were available; and the clarification of agricultural commodity exemptions.

If one assumes that the Cabinet Committee's emphasis on increased reliance on competitive forces in rate-making was proper, a serious omission in its report was the failure to provide the basis for such competition. Competition is effective only when competitors are placed on an equal footing, and no efforts were directed toward this fundamental end. Specifically, there should have been exploration of the question of public aids and the possibility of user charges to reflect these benefits; and the area of uniform regulation should have been examined with some care.

In the ensuing years, a good part of the principal recommendations of the Cabinet Committee have been enacted into law. The result, however, has not been any great feeling that transportation problems are solved or are even in the process of being solved.

The Cabinet Committee made no direct mention of air transport, even though it is a dynamic and rapidly growing form. The last session of Congress revised the regulation applied to air carriers with the passage of the Federal Aviation Act of 1958, although the economic regulation was left virtually unchanged.

¹⁶ PRESIDENTIAL ADVISORY COMM., *op. cit. supra* note 1, at 6 *et seq.*

It is imperative that the improvement of future transportation policy should include promotional activity—that is, the planning, financing, and construction of transport facilities—as well as regulation. The two are inseparable; but so far, legislation respecting the economic regulation of the carriers has ignored the factor of promotion, and vice versa.

No comprehensive plan for the promotion of the several forms of transportation currently exists. The agencies are considered separately, without regard to the impact on the total transport network. If regulatory and promotional activity are to remain in separate hands, some means must be found for coordinating the two. Without this, the effectiveness of efforts to coordinate the transport system under the separate-agency approach will be limited. It may well be that the public will choose to continue to promote certain spheres of transportation through the direct or indirect grant of public aids, but the consequences of this for the nonsupported or inequitably supported agency will be of the negative type, and competition will have to be carefully watched and controlled in the interest of maintenance of effective transportation.

As mentioned previously, no serious consideration has been given by either the management of transport firms or by the Government to the abandonment of restraints on competition, in spite of the talk about the pervasiveness of such restraints. The question is, then, how much can regulation be relaxed and how much competition can be substituted for control? Unless the public and transport management are willing to pay the short-run costs to obtain the expected long-run benefits of competitive transportation, the answer is, not very much. There is no evidence that transport firms wish to engage in such competition, except on their own terms. Some years ago, Dr. John Ise, then of the University of Kansas, spoke at a dinner sponsored by the College of Commerce of Louisiana State University. One of his comments was to the effect that those who speak loudest about promoting competition will bear the closest watching. The thought is still appropriate! It is doubtful that we shall get enough competition to rely on it to allocate transportation resources. It is possible that we shall get enough to make the allocation on other bases more difficult.

Even if competition under unified and comparable regulation is the course adopted, there remains the question of the form the competition should take. There are two clearly distinct types that operate concurrently. One is the intra-agency competition between like forms, such as railroads, and the other is the interagency competition between different kinds of transport, such as rail and motor. Is it necessary to have railroads compete with railroads and motor carriers with motor carriers, or will competition between different forms suffice? If interagency competition is deemed sufficient, regulatory policy and practice might be revised to permit, and even encourage, the consolidation of like agencies into fewer and more economical units. The writer feels that the increased integration of similar forms of

transport will be necessary, no matter what the ultimate climate of transport operation.

V

PUBLIC AIDS AND PROMOTION

While the probability of getting an optimum of coordination without an optimum of integration is somewhat remote, this does not mean that the transport network cannot be more effectively coordinated than it is at present. The fact that we have failed to achieve it so far is the result of our dislike for disturbing established economic patterns. "America needs all forms of transportation" is sometimes used as a slogan by transportation groups. This is no doubt true; but it does not necessarily follow that we do not need more of some and less of others than formerly. If such groups had been well enough organized in the days of the Conestoga wagon, it might be with us yet. It is time to allocate our transportation resources on a more economical basis. If we insist on doing otherwise, at least we must not be disappointed with our efforts to obtain optimum coordination of transportation facilities.

Coordination within the general pattern of the existing framework calls for a number of fundamental changes in law and attitude, in conjunction with numerous minor revisions. Basic to any program of coordination is uniformity of regulation, or as much uniformity as the nature of the media will permit. It goes without saying that much more is permissible than is indicated by regulation now in effect. Basic to uniformity of regulation, however, is equitable promotional policy, and we shall begin our discussion around this focal point.

The transportation firms, whatever the media, have as an underlying basis for rate-making the concept of discriminatory pricing. They make no pretense of consistently treating economic comparables alike. It is good business from their standpoint, and the strengthened transportation system which results is said to benefit all. The public, too, in its policy toward transport firms follows a policy of discrimination. This discrimination also is probably capable of strengthening the transportation system, although it may not benefit all firms engaged in the business. But this type of discrimination, like discriminatory rates, may become undue or excessive, with the effect that it is more harmful than helpful.

It is unlikely that the public will soon give up its inclination to promote certain categories of transportation, especially the newer forms or those that serve well-organized groups. It is imperative, however, that these public aids be clearly isolated by amount and recipient, so that the hidden cost of transportation may become a matter of public knowledge. It is further necessary that the projects calling for public aid be coordinated, with a view to economy of effort and maximization of transportation facilities.

From a purely economic standpoint, all transportation should pay its own way. Where it is not feasible or economic for the transport firm to provide certain of its own facilities and the public authority must do so, the cost of the investment so

provided should be recovered through the imposition of user charges. The public, in a democratic society, may demand certain transportation services that are not, for one reason or another, capable of pricing at rates that would attract usage. In other words, the public may desire transportation for which it is not willing to pay the full cost as a direct corollary to the use of the service. The deficit is expected to be made up from the general revenues of the government. This subsidization of transport is especially prevalent with respect to new developments in transportation. Every form of transport has, at one time or another, been the recipient of varying amounts of public aid in its period of early development, and some have received payments into maturity. No transport concern, and no user group, ever voluntarily relinquishes such public assistance; but the economic use of resources requires that the need of transport forms for publicly-provided facilities and their ability to contribute a part or all of such costs in user payments be continually appraised, for unwise subsidization is a major factor in diversion of traffic from common carriers.

Either subsidies must be kept to a minimum, or consideration must be given to the subsidization of the entire system, including the railroads. Accordingly, it is suggested that the several governmental agencies now actively promoting the different forms of transportation should be combined into a single entity. Whether this agency should be combined in a single department which would also function in the regulatory field or be maintained as a separate division will be treated below; but, whatever its location, this department should be invested with the authority and responsibility for planning the development of the entire transport system. It is further suggested that careful analysis by this agency of the benefits to a balanced program of transportation should be made prior to the construction of facilities, and that consideration should be given to the development of a system of user charges where they do not now apply.

VI

UNIFICATION OF REGULATION

Comparable footing is mandatory for competition between carriers, and comparable treatment is, for that matter, desirable in its own right. The various segments of American transportation had their inception at different times, and this, coupled with the American custom of regulating as the need presents itself, has resulted in separate acts to regulate separate industries. As the segments become more fully developed, the varying treatment accorded the different media becomes less satisfactory. The time has come—indeed, it has long passed—to replace the diverse provisions with a more homogeneous application.

While much unification of treatment might be accomplished under the separate regulatory bodies now authorized, unified regulation requires unified control. An appropriate start to coordinated regulation would be the creation of a single agency of control. It might be objected that the single body would not have the high degree

of interest in any one medium of transport that the present boards have, but this is precisely the point. The degree of objectivity would be increased, and this is desirable. The ability of a single body to acquire the vast amount of knowledge required to administer all forms of transportation might also be questioned. The details of the operation of any one of the agencies are beyond the ken of any one individual, true, but the mastery of the principles of transportation and the general information required to comprehend the problems of the several forms of transportation is a less formidable task. The single regulatory agency will provide the base for an unprejudiced view of the over-all concept of transport which can be obtained in no other way.

Reference has already been made to the need for centralizing promotional policy and coordinating it, to some extent, with regulatory objectives. The Hoover Commission advanced a solution which would concentrate all general research and promotional activities under the direction and control of a governmental agency concerned with all of the major questions of transportation policy, and would retain separate commissions to perform the essentially regulatory functions.¹⁷ Under such a system, the promotional agency would, in general, determine which promotional programs were necessary and justifiable. Consideration might be given to lodging with such an agency the determination of the over-all extent of the direct subsidy programs. If this were done, the regulatory commissions, as far as subsidies are concerned, would be restricted to determination of which parties should receive particular subsidies.

The multiregulatory-body approach would be rejected by this writer, but the other feature of the Hoover Commission's recommendation is worthy of consideration. The Commission was also on sound footing when it rejected the idea of a separate Department of Transportation. Its thought was that this might lead to the demand for departments for other major industries.

What are the ramifications of housing responsibility for major questions of transportation policy, including promotion, in a division of transportation and establishing a separate regulatory commission to function independently? Such a step means, first, that a comprehensive, but not inflexible, plan for transportation use and development may be formulated. This, in turn, means that competition is not to be relied upon as the prime allocator of resources to transportation; but competition has never been relied upon to the exclusion of other forces where transportation and public utilities have been concerned. The over-all plan will not preclude an aggressive effort by the management of the several media, in groups or alone, for increased efficiency and expanded markets, both for the firm and the industry. Second, the centralization of promotional policy means that a concise, coordinated program of public aids can be formulated and controlled, and the costs more accurately evaluated, ascertained, and apportioned—if this is felt desirable—to the proper beneficiaries. This means

¹⁷ COMM'N ON ORGANIZATION OF THE EXECUTIVE BRANCH OF THE GOVERNMENT, DEP'T OF COMMERCE, A REPORT TO CONGRESS 11-25 (1949).

that the regulatory body, to a greater extent than at present, will be informed and aware of the extent and place of public aids in interagency conflicts and competition.

Mention is made above of the preference for an independent regulatory body. The fundamental basis on which this choice is predicated is the desire to preserve the impartiality of the commission, and to do this, the commission must be as free as possible from political interference from either administration or congressional sources. Even the so-called independent body can be subjected to political influences by the passage of unwise legislation or amendments to force action that the commission could not otherwise undertake in good conscience—the amendment of the Motor Carrier Act with respect to trip-leasing was a prime example of this¹⁸—but at least the activity is overt.

Unification of regulatory activity will not, in itself, insure comparable treatment and supervision of the several media of transportation, although it should lead in that direction. The acts themselves, and the parts thereof, must be aligned, in so far as the economic characteristics of the transport types will permit. This permits a considerable amount of flexibility in the revision, but it is anticipated that it will result in a minimum amount of inconsistency. Whether the emphasis is placed upon a maximum of competition with a minimum of regulation or a maximum of regulation with a minimum of competition, incomparable treatment of the separate modes of transport is indefensible.

VII

SOME IMMEDIATE STEPS

If the public and the government are not ready to accept a positive approach to the transport problem, either in the form of transportation companies or through comparable treatment of the separate agencies, a great deal of coordination is still possible under existing conditions. Slight changes in legislation could make possible still more. These potential areas of coordination are important not only because they may be effected, to some degree, in a short time period, but because such coordination would be required under more permanent solutions and is, therefore, a step in that direction. The coordination is of two types, intra-agency and interagency.

The railroads have developed intra-agency coordination to a higher degree than any of the other forms of transport. It is to them that we might first look as a model (not necessarily an ideal one) of what might be attained in the way of coordinated service involving a single medium of transportation. Over a long period of time, as a result of managerial decision and commission prodding, the railroads have developed an extensive network of through routes, established joint rates, evolved comprehensive car service rules for the interchange of equipment, and provided for joint use of terminals. The rails have also provided for the interchange of freight with water carriers and, in some instances, with other types of carriage. In the areas of through routes, joint rates, and interchange of equipment, the other carriers

¹⁸ 70 Stat. 983 (1956), 49 U.S.C. § 304 (Supp. V, 1958).

have lagged noticeably behind the rail carriers. Much of the delay has been caused by the size of operations of the carriers and the characteristics of the equipment used.

A small or medium-sized trucker cannot afford to release a loaded trailer to another firm with the knowledge that he will be without its service for days or weeks, for it would handicap his ability to provide service over his own route. This inability to exchange trailers has been one of the major factors in retarding the development of coordinated motor carriage. The increasing use of leasing companies and the increased supply of equipment which this makes available will help to remedy this situation. In the latter part of 1958, 365 common carriers by motor vehicle formed the National Motor Equipment Interchange Committee to facilitate the increased interchange of motor trailer containers.

One factor that should have considerable impact on the ability of carriers to offer coordinated service is the increasing amount of consolidation proposed for motor carriers and for rail carriers. The barriers that impede the development of transportation companies do not exist in the same magnitude with respect to integration of like forms of transport.

Any economic coordination of transportation is desirable, and coordination of the services of like forms of transport is to be fostered; but it is still necessary that the transport system as a whole be more coordinated than at present, whether the coordination be a joint effort of the separate media or the decision of a company controlling more than one medium. Several examples of the coordination of separate media as a joint effort currently exist. One of these is the movement of air express, which is a joint venture of the airlines and railway express. Another is plan I piggyback—rail transportation of trailers owned by common motor carriers—which is one form of coordinating rail and motor service that is growing in popularity.

Piggyback, of which plan I is only one of several methods for coordinating rail-motor service by use of trailers on flat cars, is one of the most promising devices to coordinate the economic advantages of the flexibility of motor carriers with the over-the-road economy of rail. Improvements in the physical equipment used in the service, such as the flexi-van, plus the increased use of incentive rates to put more common motor carrier trailers on the rails, should bring accelerated usage. More experimentation is in order with respect to joint rates between rail and motor carriers, which would serve, in effect, to extend the territory of each carrier into that served by the other. A number of such agreements are already in effect.

Broader in scope is the present request of the Western States Movers' Conference for permission to admit rail and water carriers, which will join rates and through routes.¹⁹ Much potential coordination of this sort has been hindered in the past by the fear by one carrier of strengthening another. There is some evidence that the desire for mutual profit is overcoming this misgiving.

An important development that may speed coordinated handling of freight between the several forms of transport is the advance made in the use of large-size

¹⁹ Section 5a Application No. 39, ICC, Nov. 7, 1958, amending Western States Movers' Conference—Agreement, 288 I.C.C. 678 (1953).

containers, of which the truck trailer itself is one type—the most mobile type. With piggyback and fishyback, these containers may be exchanged readily between motor, rail, and water—and possibly air freight. In fact, this must be considered the most promising of all devices to promote physical coordination of the separate agencies.

Under existing regulation and philosophy, then, the very minimum in coordination of transportation calls for (1) continuing consolidation of like forms of transport; (2) increasing the number of through routes and joint rates requiring participation of unlike forms of transport, such as rail and motor, or motor and water, as well as increasing the number of through and joint routes of like forms of transportation; and (3) the interchange of equipment wherever possible to facilitate the service and economy of joint routes.

CONCLUSION

Coordination of transportation can range from a high degree of integration to a loose type of cooperation. The ultimate in coordination comes under the former circumstance. How much coordination can be expected depends upon the desire of the American public for coordinated transport relative to their desire to preserve separate, competing transport entities subject to varying degrees of regulation and public assistance. It is suggested, therefore, that there are several answers to the problem of transport coordination, depending upon the fundamentals of public policy toward the transportation system.

It is evident that the existing regulation is unsatisfactory in many respects. It is also apparent that the transportation system is not achieving its maximum economic potential. Expressions from industry and from congressional leaders indicate that the need for remedial action is recognized. This action has manifested itself in revision of the Interstate Commerce Act and the passage of the Federal Aviation Act, and further revision is indicated. As a minimum, we may expect a continuing patching of some of the most obviously inadequate or outdated provisions. As a maximum, greater reliance may be placed on competition, with a change in regulatory and promotional policy to effect it. Neither policy will provide a completely workable answer because of the nature of the transportation industry. The industry's characteristics will not permit more than a minimum amount of competition without undesirable aftereffects. On the other hand, regulatory control is made difficult by the heterogeneity of the carriers subject to jurisdiction.

The ultimate solution may lie in a change in the economic structure of the firms offering transportation service, which will eliminate interagency competition and provide a base for uniformity of regulation. A change of this sort would be most difficult to effect. Still, the transportation company has much to offer from a regulatory and economic standpoint. Further thought might well be given to the transportation company as a long-run solution to the transportation problem.

An intermediate solution may take either of two approaches, competitive or regulatory. Each would be predicated upon two premises. First, there would be com-

parable treatment of public aids for all forms of transport. Either user charges would be assessed on those receiving public aids or public aids would be extended to those currently not receiving any. Promotional policy would be comparable in any event and closely coordinated with the regulatory function. Second, the inconsistencies in the regulation of the several modes of transport would be removed, and uniform control would be exercised by a single, independent regulatory authority. These intermediate approaches would differ in that one would place major emphasis on competition as an allocator of resources among the several media of transportation; this would mean that the preservation of the individual competitors would be placed secondary to the maintenance of a vigorous competition between firms. The alternate intermediate solution would be based on the assumption that reliance on greater competition for transport allocation is unworkable because of the nature of the industry; competition would be permitted, but there would be no hesitancy about moderating it by regulatory action in both general and specific cases.

The least desirable, but most easily attained, solution is a continuation of existing laws, commissions, and policy, with only such amendment of particular areas as will be forced when the areas become troublesome or when there are shifts in attitude toward specific problems. Even within this framework, a great deal of coordination can and should be effected, on both an interagency and an intra-agency basis. Extension of through routes, joint rates, the interchange of equipment, and expedition of service should be promoted and encouraged, for they are beneficial to the transport firms directly concerned, to the shipping public, and to the maintenance of a vigorous transportation system.