nations, and I devoutly hope that someone can make sense of the ICC's endeavors. But the question is how this affects planning by the states. For our immediate purposes, there is only an indirect effect. Much the same applies to production or productivity. Work rules, car utilization, interlining, and per diem and demurrage charges are all important and worth great efforts. But, again, these are not of immediate concern to state rail planning offices. Plant is.

DOT has concentrated many of its energies on abandonment or downgrading of portions of the system. The response of many regions and shipper interests, not surprisingly, has been substantial opposition. Very few people like to see reduction or cessation of any form of transportation service. What emerges from the dialogue to date, as I perceive it, is a great deal of disagreement about the value of abandonment or reduction of service. The states must therefore take the dominant role in assessing regional impacts.

There are two alternatives. One is that DOT could rate the states' analyses of needs and distribute funds accordingly, but this would have very serious political implications.

The other option is to introduce financial constraints into the states' deliberations. This would increase the states' share of subsidies but raise serious questions about the formula used to apportion the funds.

The answers to the questions of which actions improve railroad economics, of whether the states should worry about this, and of whether it should be left to the railroads, DOT, and ICC seem to be that, if the states do not play the devil's advocate on the issue of abandonment, nobody will. Doubts have been expressed recently that abandonment will improve the economics of the railroads, but DOT firmly believes that significant reductions in trackage will significantly improve the economic well-being of the remaining system. Overall, the railroads themselves appear to believe that abandonment will help.

I think the public interest will be better served if some party that would be inclined to oppose abandonment (e.g., the states) forces the issue. A detailed examination of the dollar advantage of sectional abandonment of lines of the Boston and Maine Corporation clearly shows that (a) the real savings would be much less than claimed and (b) this is a very complicated subject. We need to know what the real value of abandonment is.

Just before the demise of the Penn Central Transportation Company in 1970, the plans for salvation included abandonment of 5000 km (3000 miles) of track, which was estimated to save the necessary amount of dollars. And then there was a series of models of the Penn Central system that estimated first that abandonment of 17 700 km (11 000 miles) would produce the magic and correct result, the second time that 27 000 km (17 000 miles) would be required, and the third time that it would require 22 000 to 24 000 km (14 000 to 15 000 miles). On the day the line declared bankruptcy, the total trackage proposed for abandonment was 150 km (93 miles). Abandonment is often invoked as a panacea for the resolution of railroad problems. I suspect that its economic impact on operations would be much weaker than has been claimed.

This brings me back to the point about state participation. If the states do not stand and challenge on this issue, we will have abandonment whether it is good or bad. Perhaps, if the states make enough noise, the railroads and the Federal Railroad Administration will together develop techniques of analysis that will make it possible for us to approach the subject with a good deal more confidence.

Certainly the states—all of them—must participate. The law suggests this, and the public interest calls for it. Assessment of the local impact is best performed at the local level. State highway planning has been around for a long time. State rail planning is long overdue.

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State and Interstate Commerce Commission Rail Relations

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This paper presents an outline of state and federal roles in inter- and intrastate rail decisions. Regulating intrastate rates came under Interstate Commerce Commission jurisdiction in 1920, and as late as 1958 the federal role was being extended. The Railroad Revitalization and Regulatory Reform Act of 1976 reversed the role, giving jurisdiction over intrastate rate questions to the states, but with certain strict rules. Passenger service and standards of service adequacy fell largely to Washington under the Urban Mass Transportation Act of 1964. Today, the Interstate Commerce Commission and Urban Mass Transportation Administration are calling for more state and local participation in the planning for survival and operation of passenger service. Line abandonments may also be avoided through state planning and state and federal subsidy under the Railroad Revitalization and Regulatory Reform Act.

Many state and local governments are experiencing a movement into their ranks of highly qualified people who are professionally competent, public-spirited, and anxious to find solutions to serious social problems. This movement might be the single most important factor in making our system work. Reflecting the strength of this local development, a number of federal laws are being amended to accommodate and encourage local participation in federal programs.

In the following I shall plot the course of this phenomenon in three matters affecting railroad service: intrastate rates, railroad passenger service, and abandonment of rail lines.

INTRASTATE RATES

In 1914, the U.S. Supreme Court sustained an Interstate Commerce Commission (ICC) finding that it is unlawful for a railroad to maintain intrastate rates that discrimi-

nate against interstate commerce. It held that the ICC had jurisdiction to eliminate the discrimination, even when the rates were required by state law. This concept was codified in 1920 in Section 13(4) of the Interstate Commerce Act. However, over the years the ICC, as a matter of comity, was reluctant to exercise its jurisdiction when a railroad was already seeking rate relief from state regulatory agencies.

The Transportation Act of 1958 modified Section 13(4) by requiring the ICC to expedite action in deciding a railroad's petition for removal of the discriminatory rate, regardless of whether or not the matter was pending before a state agency. This change in the law gave a railroad the option of proceeding first before a state agency or of coming directly to the federal agency (ICC).

In 1976 the law was changed again, this time to accord state governments the first—and exclusive—opportunity to address the matter. Under Section 13(4) as amended by the Railroad Revitalization and Regulatory Reform (4R) Act of 1976, a railroad that alleges that intrastate rates discriminate against or unduly burden interstate commerce must first go to the state agency for redress. The state then has sole jurisdiction for 120 d, after which time the railroad may come to the ICC, whether or not the state has rendered a decision within that time.

The problem as visualized by Congress and stated in the 4R Act was that, over a 10-year period, the railroads had been denied $100 million in needed revenues because of delays in adjusting depressed intrastate rates to interstate levels. In a period of steep inflation, the ICC authorized eight general rate increases to enable the railroads to keep pace with mounting costs, and the railroads were contending that they were continuously in a catching up posture.

Now, after tracking a general rate increase proceeding before the ICC, a state will have the additional 120 d to render its own decision on the intrastate rates. If a responsible decision is given in time, litigation at the ICC will be unnecessary.

RAIL PASSENGER SERVICE

At one time regulation of railroad passenger service lay exclusively with the states. Every state had laws or constitutional provisions requiring railroads to provide adequate service. After World War II, when passenger business was good, the railroads invested heavily in new, ultramodern passenger equipment. But their enthusiasm was short lived. By the early 1950s, half the peak number of intercity passengers had deserted, and the trend seemed permanent.

Public programs emphasized the new interstate freeway system and elaborate air travel facilities. The tilt probably occurred in 1952, after which there was no way to switch the mail and the businessman back on the train or to overcome America's love affair with the private automobile.

At that point, the railroads made a conscious decision to minimize their losses on passenger service. One way was to eliminate the deficit trains. They went to the states for authorization, but, as Congress later decided, the pace was too slow. The states testified that they were allowing discontinuances as fast as feasible, but in 1958 Congress enacted Section 13a, creating for the first time federal jurisdiction over the matter.

One part of Section 13a covers interstate trains, the other intrastate trains. Section 13a(1) begins by saying that, when the discontinuance of an interstate train is prohibited by state law, the railroad can circumvent the state by filing a notice with the ICC. More important, it directly authorizes the railroad to discontinue the train, unless the ICC steps in to investigate, under the terms of the notice, taking the matter wholly out of state hands. The railroads cannot do this in matters of intrastate trains but must first seek discontinuance authority from the state. Then, if no decision or an advance decision is made within 120 d, it may petition ICC jurisdiction.

In the early 1960s, five southwestern states complained to the ICC that a railroad crossing them was not providing adequate passenger service. They said that as individual states they could not contend with the problem. We can only speculate as to whether joint or coordinated action might have provided a solution. The ICC concluded that jurisdiction over the adequacy of rail passenger service had not been assigned to a federal agency but that it would take the problem to Congress.

In 1972, then, Congress created Amtrak to take over intercity rail passenger service and directed the ICC to establish standards of service adequacy. Such standards have been established, but many questions remain. One is whether Amtrak is capable of satisfying all the standards all the time. Another is how much public funding of rail passenger service is fiscally provident.

In 1964 Congress enacted the Urban Mass Transportation Act, which provides federal funds for local and regional rapid transit projects. However, the understanding is that local governments must actively participate with the Urban Mass Transportation Administration (UMTA).

The Amtrak act has been modified a number of times. The ICC feels that states should participate fully in the development of new routes called for in the 1975 amendment. New intercity routes could be tied in with local bus and rail routes and schedules and with UMTA-financed projects. The pendulum could profitably swing toward the states and they could have a separate office—perhaps patterned after our Rail Services Planning Office—apart from Amtrak and the U.S. Department of Transportation (DOT), to assist them in passenger route selection and development. States should also be represented on the Amtrak board of directors.

RAILROAD ABANDONMENT

When the federal government took over the railroads during World War I, it became aware of the fact that, as a system, the railroads of this country were not very efficient. There had been a proliferation of lines into areas that did not produce enough traffic to sustain them; yet, in other localities, railroad facilities were unable to meet public needs.

Congress concluded that the country needed a fully integrated rail system comprised of privately owned, independent railroad properties. It envisioned, however, the consolidation of railroad properties into a limited number of systems, with productive competition in all sections of the country.

Congress conceived of an agency of the federal government that would monitor the changes in the structure of the system and its evolution into the kind of a system it set as a national goal. The monitoring would be regulated by the ICC, which would be aware of changes in the corporate structure, the physical structure, the competitive balance, and the revenues, costs, and profits. The jurisdiction was spelled out in the Transportation Act of 1920.

Paragraphs 18-22 of Section 1 of the Interstate Commerce Act governed the extension of rail lines and the abandonment of service and lines. The concern at that time was with a national system. Consequently, the role of arbiter in extending and contracting lines within the national system was placed within the sole jurisdiction of the ICC. Later, after World War II, the economy of

the Northeast began to founder, and many of the heavy industries the railroads served in the last century were gone. Anthracite coal, silk, textiles, leather, steel—all big supporters of the railroad system in "official territory" (east of the Mississippi and north of the Ohio River)—had dwindled, dried up, or fled to other areas.

Even poultry, once a substantial industry in New England, was driven elsewhere by economics. The emergence of the Interstate highway system, the almost explosive growth of air transport, and the dispersion of populations and industries to truck-oriented locations further added to the demise of railroads.

Some rail systems in that area succeeded in timely realignments and consolidations and were able to maintain viability, but nine major railroads in the territory either failed to take effective action or saw their economic foundation evaporate. By 1972, about half the railroad trackage in official territory was in reorganization under Section 77 of the Bankruptcy Act.

Section 77 was designed to help distressed railroads achieve reorganization by providing a respite from creditor pressure and thus produce a positive cash flow. Operations were to have continued while a reorganization plan was being formulated and implemented. Unfortunately, the circumstances in the Northeast were not susceptible to successful handling under Section 77.

Recognizing the inadequacy of Section 77, Congress enacted the Regional Rail Reorganization (3R) Act of 1973. In effect, it created a super bankruptcy proceeding and court. Substantial federal funding was made available to assist the court in reorganizing the bankrupt railroad properties in the territory. The Consolidated Rail Corporation (Conrail) is the offspring of that legislation. Another product was the exclusion of substantial rail trackage from the final system plan. For the unincluded trackage, the 3R Act provided for subsidies under which agencies of state or local government could designate rail operators who would continue rail service. To assist local governments and people of the impacted states in preserving service on the deficit branch lines unincluded, the 3R Act created the Rail Services Planning Office, a semiautonomous adjunct of the ICC. Today, service is being provided on substantial branch-line trackage by designated operators guaranteed a profit through the subsidy provisions of the 3R Act.

In 1976, Congress extended to the rest of the nation, the 31 states outside the Northeast and Midwest, provisions for subsidization of financially deficit rail branch lines. The 4R Act established a $360 million subsidy program for a 5-year period ending July 1981. Patterned roughly after the 3R Act, the 4R Act enables states to step in and avoid abandonment of rail branch-line service.

To maintain such service a state must establish a planning agency responsible for devising a railroad plan that is an integral part of its transportation plan. The agency must also be responsible for the expenditure of funds and the implementation of the subsidy program. The state must match federal funds to the extent of 10 percent of the subsidy in the second year, 20 percent in the third year, and 30 percent in the fourth and fifth years. During the first year, funding is to be undertaken 100 percent by the federal government.

Subsidy funds may be used to pay for the cost of continued operations, the cost of acquiring the rail line for continued operation, the cost of rehabilitation, the cost of reducing the cost of lost rail service, and the cost of planning. For the planning function, the law specifies that $5 million be made available.

As I interpret the 4R Act, Congress concluded that a sound transportation system leaves the operations and properties in private hands, but the privately owned railroads should not be required to subsidize chronically deficit lines indefinitely. Congress also recognized that, for the economic and social well-being of certain areas, railroad service, even though inherently deficit or deficit because of seemingly insurmountable financial obstacles, may be required. This service would be subsidized while steps are taken either to improve the economics of the rail operation or to make provision for the use of alternative transport.

The plan of the 4R Act stipulates that states have planning agencies and integrated transportation plans and that, before a rail line can be abandoned or become eligible for federal subsidy, an abandonment application must be presented to the ICC. The ICC then decides if the line in question, in terms of national transportation policy and the national system, is required by public convenience and necessity. If the finding is negative, the state can then proceed to the Federal Rail Administrator in DOT and obtain the subsidy funding provided for in the act.

A number of unique provisions in the act assist states in establishing planning agencies, prioritizing rail branch lines for public funding purposes, and determining whether and when to proceed under the subsidy program. The ICC issues regulations implementing its part of the program. These regulations require a railroad to give considerable notice before undertaking abandonment. First, each railroad must publish a system diagram showing its rail lines in five categories:

Category 1. Depicts all the segments the railroad intends to abandon within the coming 3 years;

Category 2. Shows the lines potentially subject to or under study for abandonment;

Category 3. Shows the segments already subject to abandonment applications.

(The other two categories are not pertinent to this discussion.)

The ICC cannot issue an abandonment certificate for any segment not on the diagram for at least 4 months. That prohibition would not apply where an application has no opposition.

In chronological order, the steps to be taken under the abandonment regulations are as follows.

Step 1. The railroad must give notice of its intent to abandon by directly apprising each state in which the abandonment line lies and certain users of the line. It must publish this intent for 3 consecutive weeks in a newspaper of general circulation in each county through which the abandonment line passes. This notice must be completed at least 30 d prior to the filing of the application.

Step 2. The public will then have at least 65 d to express any opposition. It may file a protest petition requesting the ICC to investigate or it may simply file comments providing information but not indicating whether an investigation is desired. The public response must be in the hands of the ICC 35 d after the application is filed.

Step 3. Once the abandonment application is filed, the ICC must, within 55 d, decide whether to investigate. If the situation does not warrant an investigation, the ICC must forthwith under the law issue the certificate of abandonment.

Step 4. If the ICC decides to investigate, it must notify the applicant within 55 d after the date the application is filed. Once an investigation is undertaken, the ICC has 180 d to complete the process and an additional 120 d to render the initial decision.

Step 5. When the ICC decides after investigation that continued operation is not required by public convenience

and necessity, it must publish that finding in the Federal Register and withhold the issuance of an abandonment certificate for 30 d.

Step 6. Within those 30 d a prospective offeror has 15 d to notify the ICC of its financial responsibility and its wish to provide the subsidy.

Step 7. The Commission then has 15 d to determine first whether the offeror is financially responsible, and second whether the subsidy offered is adequate.

Step 8. If the answer to both those questions is yes, the ICC will postpone issuing the abandonment certificate for up to 6 months to provide time for the offeror and the railroad applicant to negotiate the terms of the subsidy for continued operation or for the offeror's acquisition of the line for continued operation.

Step 9. If, at the end of the 6 months, the negotiations are unsuccessful, the ICC has a number of options: (a) it can reopen the proceedings on the grounds, among others, of a change in the material facts—namely, the fact that continued operation would be at a deficit; (b) it can submit the subsidy question to arbitration with ultimate review by the Commission; (c) it can grant the certificate subject to the condition that the line be kept in operation for a period of time, perhaps up to 1 year, provided the opponents to the application or the users of the line will pay an amount of compensation prescribed by the ICC; (d) or it can grant the certificate subject to other conditions, including one required by statute—namely, that the line be made available for 120 d for acquisition by a public body for some public use.

It is obvious that the statutory schedule requires important decision making with relatively short lead time. The first tight period is the 4 months after the railroad places a segment of line in category 1. Once the railroad decides it will seek abandonment of a particular segment, it will apparently place it on the diagram immediately and then, within the shortest possible time, file the application.

If this is correct, the state will have about 60 d after the line appears on the diagram before notice is sent. There will be an additional 30 d while the railroad is posting its notices in the stations along the line and publishing them in the county newspapers. Then, there will be the final 30-d period before the application is filed. Thus, the state will have about 120 d prior to the time the application is filed. It will then have an additional 35 d to notify the ICC of its intent.

In all, the state will have a little more than 4 months to make its decision and then take the steps necessary before the 155th day. It must decide whether to oppose the application or to join with the railroad in seeking a quick affirmative decision from the ICC as the preliminary to seeking a subsidy from the Federal Railroad Administration (FRA).

The second critical period will be the 20 d the ICC has given itself to determine whether to investigate, that is, the period between the 35th day after the application is filed and the 55th day before which it must notify a railroad if an investigation is to be undertaken.

The third critical period is the 15 d after the ICC publishes in the Federal Register its finding that "public convenience and necessity" permit or require the proposed abandonment. In those 15 d, the offeror must establish its eligibility and make its offer.

The next critical period is the 15 d during which the ICC must decide whether the offeror is financially responsible and the offer adequate. And the next critical period is the 6-month period of negotiation, during which the railroad will be required to continue operations at its own expense.

Each of these periods is critical, because the state, ICC, or railroad must make important decisions in a short time and sometimes on limited information. In 1976, FRA conducted a series of seminars throughout the country to acquaint state representatives with the 4R Act features dealing with the railroad abandonment and subsidy program. At those seminars the railroads expressed a willingness to provide state planning agencies with a package of information upon which the state plans might be, at least to some degree, predicated.

It occurred to a number of ICC members that if the information the railroads provide state agencies were meaningful (accurate enough to provide a basis for states to determine whether they should or could afford to continue rail operations under subsidy) it might well be accurate enough for use by the ICC and the parties in abandonment proceedings.

Much of the information needed by states for planning purposes, and by the ICC for the abandonment application, is in the possession of the applicant railroad in the form of the physical characteristics of the abandonment line; the originating, terminating, and overhead traffic on the line; the revenues attributable to that traffic; the costs incurred as a result of operating the subject trackage; the value of the railroad properties involved in the operation; and the cost of capital to the applicant railroad. Time and anxiety in the regulatory process could be avoided if the railroads were willing to share that information with the other interested parties as soon as it is obtained. State planners, the ICC, and FRA could begin their own preliminary evaluations on the basis of the available information, with the understanding on the part of all that the railroad would be free to refine and modify the data input as it prepares its abandonment application.

If a state planning agency is concerned about retention of service on designated branches and develops data of its own, it could exchange its data with the railroad and other parties. Conceivably, state and railroad, by agreement, could reduce the areas of controversy so that by the time the application is filed many issues of fact will already have been resolved.

This system of early data exchange would be worthwhile even if it were used only when a state decides to participate as offeror under the subsidy program and even if it served merely to limit the issues in the ICC abandonment proceeding. The railroad and the state planners could conceivably approach the issue of rehabilitation costs and other revenue and cost issues simultaneously and perhaps in collaboration with each other.

A computerized data bank shared by the railroads, states, FRA, and ICC could facilitate the quick decisions required of the state and the ICC within the first 35 and 55 d respectively after the application is filed, by the state within the first 15 d after the ICC publishes its finding in the Federal Register, by the ICC within the 15-d period following the time set for the receipt of offers, and by the railroads and the states in the 6-month negotiation period following the ICC decision as to the adequacy of the offer.

If, on the basis of pre-exchanged information, the ICC can be moved to a "no investigate" decision, and the FRA and the offeror state can come to terms on rehabilitation to an agreed safety standard, and the railroad, the states, and FRA can agree on the amount of subsidy and the availability of subsidy funds, the disposition of the abandonment application by the ICC could be accomplished in the minimum time, possibly in less than 3 months after the application is filed.

Benefits could accrue to all concerned in terms of the immediate abandonment application and in the use of the compiled data for future programs relative to light density lines.

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