Clearing the Track

The Remaining Transportation Regulations

Thomas Gale Moore

Starting with the Railroad Revitalization and Regulatory Reform Act of 1976, Congress has sharply curtailed regulation of transportation. Subsequent legislation decontrolled, at least in part, air freight, air passenger transportation, trucking, railroads, bus service, and freight forwarders, and lifted most of the remaining motor carrier restrictions, including those imposed by the states. Congress also made substantial changes in ocean shipping legislation, permitting somewhat greater flexibility in rates and contracting.

For the U.S. economy in general and its transportation sector in particular, that spate of deregulation has resulted in great savings and increased flexibility. Air fares have dropped dramatically, allowing the broad majority of Americans access to air travel. Gains to airline passengers alone from the elimination of federal controls now total over $10 billion a year.

Freight transportation costs have also been cut sharply. By 1988 railroad rates had fallen to 2.6¢ per ton-mile from 4.2¢ per ton-mile in the 1970s. Yet the railroad industry has become more profitable and weathered the past recession well. Standard & Poor's found that the cost of shipping by truck had fallen by $40 billion from 1980 to 1988. Improved flexibility enabled businesses to schedule deliveries on a more timely basis, thus reducing inventory costs. The Department of Transportation calculated that the outlays necessary to maintain inventories had plummeted by more than $100 billion in today's dollars.

Although deregulatory legislation has dismantled the worst government controls, federal rules still prevent transportation firms from operating as freely as those in most other lines of business. Moreover, even though the Interstate Commerce Commission (ICC) has become pro-competition in recent years, a future commission could, given current laws, toughen regulation of those modes of transportation still not totally free from control. Today the rail industry remains the most closely supervised transport mode, subject to limits on abandonment, mergers, labor usage, ownership of other modes, and even, in certain situations, on pricing. The ICC and the Federal Energy Regulatory Commission regulate pipelines. Virtually all control over trucking is gone, however, except for the carriage of household goods. The continued government role in owning and running the air traffic control system and local governments' ownership of airports still hamper the otherwise totally deregulated airline industry.

Economic regulation of transportation is unwarranted because transportation is an inher-

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ently competitive activity. The ICC and the Maritime Commission should go the way of the Civil Aeronautics Board. Abolishing those agencies is long overdue and is desirable because it would reduce unnecessary burdens on the economy; in addition, it would save taxpayers money. In testimony to Congress, the General Accounting Office forecast that eliminating the ICC and repealing the Interstate Commerce Act of 1887 would save $39 million annually. In addition, it would save the industry a great deal of paperwork and potential liability costs, while increasing competition, innovation, and flexibility. The few remaining government obligations should be transferred to the Department of Transportation, the Department of Justice, or perhaps to the Federal Trade Commission.

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The new Republican majority should rescind all requirements to file rates or conform to any rate criterion; the requirements for "fairness" and "non-discriminatory" pricing should go, as should "common carrier" obligations, entry requirements beyond safety and liability conditions, and limits on ownership of carriers. The transportation industry used to employ brokers, forwarders, and agents who fell under the control of the ICC, the Civil Aeronautics Board, the Department of Transportation, or the Federal Maritime Commission. Today most are subject to very limited regulation. Deregulatory legislation should scrap the remaining controls.

Congress should also withdraw subsidies from the merchant marine industry, Amtrak, and "essential" airline service. The ICC and the Federal Maritime Commission still play a role in regulating and licensing international operations; but international competitive relationships for the airlines, maritime industry, and motor carriers are best left to the State Department and the Department of Transportation. Although international airline policy is far from satisfactory, being based on bilateral agreements, it is probably the best that can be hoped for, at least for the moment, in a world of nationalistic states bent on protecting local interests.

Airlines

The airline industry has been almost completely deregulated. The Airline Deregulation Act of 1978 abolished the Civil Aeronautics Board and removed virtually all restrictions on competition and private initiative. It was disquieting, however, to learn that the Department of Transportation, which is charged with licensing new carriers on the basis of fitness, in 1993 turned down the application of Frank Lorenzo, the former owner of Eastern Airlines, to start a new airline. Airline unions protested his proposal and prevailed. Entry should require only a showing of sufficient insurance to cover potential liability problems.

In another disturbing step, in 1993 the secretary of transportation, Federico F. Peña, forced Northwest Airlines to abandon plans to compete with Reno Air by offering low-cost service from Minneapolis to Reno, Nevada and on to West Coast cities. That unprecedented step interfered with the legal right of any certified airline to fly between any two points and charge whatever it wants. The action, even if motivated by concern about apparent predatory behavior, imitates the old practices of the Civil Aeronautics Board, stifling price competition in the name of preserving competitors.

Although the issue falls outside of the scope of this article, privatization of the air traffic control system and of airports would improve the workings of the system. The Federal Aviation Administration has done an inadequate job of managing air traffic control. Poor incentives, slipshod management, and federal budget considerations have slowed the growth of the system. Local governments are slow to expand airports, frequently mismanage them, and emphasize objectives other than servicing the airlines or the traveling public.

Railroad Regulation

The federal government has regulated railroads since 1887, longer than any other industry. Although some would argue that in the last decades of the 19th century railroads held a monopoly position in transportation and were often the only practical means of moving goods and people, practically no one would claim that the locomotive, a 19th-century technology, holds such a commanding position today. A few shippers assert that they remain captives of the railroads, but in truth, markets have become so competitive that there is little railroads can do to exploit any leverage they may have.

Regulation continues to stand in the way of railroads' freely competing. It prevents them from profiting where they have a competitive advantage and forces them to carry goods at rates less than the market would justify. Government controls slow intermodal operations, boosting costs to shippers and making such operations less flexible. Federal law precludes railroads from achieving the maximum gain from consolidations, thus keeping costs of transportation higher for the public. Finally, the requirement to file rates stifles price competition and keeps charges higher than they would be in the absence of regulation.

The growth in trucking, air freight, water carriers, and private haulage has eroded the once-commanding position of the railroads. Yet the government still enforces many rules that limit the ability of railroads to compete and serve the public. For example, the "commodities clause" of the Interstate Commerce Act prohibits rail carriers from hauling their own commodities—such as coal and lumber—thus foreclosing potential savings. The ICC can and still does lay down rules relating to rail car supply and interchange of rail cars, even though railroads can clearly make such arrangements on their own. The law prohibits interlocking directorates and subjects financial transactions to ICC oversight, as if the ICC had more expertise about such matters than securities markets or the Securities and Exchange Commission. The ICC can also require one railroad to provide access over its lines to another railroad in order to facilitate competition. In the name of protecting the environment, the ICC, at the instruction of Congress, has subjected the carriage of recyclables to stringent price caps. The new Congress should abolish all those controls, together with the regulation of rates, new trackage, mergers, abandonment, ownership of other modes, and labor protection.

The industry, however, has enjoyed a much freer environment in recent years than it did between 1920 and 1980, and with good results. Under federal law, the ICC can exempt railroad traffic from rate regulation whenever it finds such control is unnecessary to protect shippers from monopoly power or wherever the service is limited. Congress has legalized individual contracts between shippers and rail carriers. The Staggers Act of 1980 authorizes railroads to price their services freely, unless a railroad possesses "market dominance." Congress requires the ICC to persist in enforcing the prohibition on intermodal ownership. It requires the ICC to continue the loss and damage obligations which require that carriers have sufficient insurance. And the ICC must also maintain labor protection. The ICC has taken advantage of the law to exempt much of rail operations from federal oversight, but there is a substantial remainder still subject to control. All rail mergers, for example, require ICC approval; once given the green light, mergers are relieved from challenge under the antitrust laws and from state and local legal barriers.

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Among shipments freed from control by the ICC are TOFC-COFC (trailer on flat car and container on flat car) movements (commonly known as "piggyback traffic") and the carriage of fresh produce. Both exemptions have improved profits for railroads while reducing rates for shippers. The authority to contract has led to mutually beneficial price-service combinations. In some cases, shippers have agreed to load and unload cars more quickly, thus improving utilization of capacity in exchange for better rates. In others, shippers have been induced to aggregate shipments into multicar lots, generating savings for the railroad. Moreover, greater competition and improved flexibility of pricing have led to reduced charges generally. Even though nominal revenue per ton-mile—a measure of price—fell by 15 percent from 1982 to 1987, profits rose.

Mergers among competitors in the rest of the economy are subject to review by the Justice Department under the federal antitrust statutes. Railroads, however, face a more stringent review by the ICC; in addition to general antitrust considerations, the review includes the effect on other carriers, the fixed charges that would arise, and the effect on employees. In particular, the ICC must by law provide protection in any consolidation for employees who might be adversely affected. The latter provision is very popular with rail labor unions, but the industry views it as employment protection that makes achieving significant savings from combinations difficult.

Although some have questioned the efficacy and desirability of antitrust, the merger guidelines administered by the Justice Department are clearly superior to the current federal restrictions on rail mergers. ICC oversight of mergers includes several factors that fail to protect the public or preserve competition, but do shield narrow interests. The current Congress should move to eliminate the long-obsolete ICC control over railroad consolidations. In its 1994 report on regulatory responsibilities, the ICC justified its procedures in words that make clear its perspective: "Not every market is best served by fostering competition, though. A market might be better served by one strong railroad rather than two weak ones, as long as the monopolist is restrained from abusing its market power." In other words, as long as the ICC regulates the monopoly railroad, "the beneficial result is greater economic efficiency."

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That claim is based on an unwarranted faith in the ability of regulation to produce benign outcomes. It reflects a triumph of hope over experience. The history of the ICC proves that it has served only special interests, never the public. Prior to the 1980s ICC controls aided organized labor, owners of trucking certificates, and, in a few cases, influential and powerful shippers. Although the ICC often kept rail rates on coal and grain below profitable levels, railroads were encouraged to make up their losses by charging higher prices for other goods.

The ICC points out that federal law preempts state and local interference with ICC-approved mergers or line transfers. Its 1994 report to Congress expresses concern that local communities might block generally beneficial transactions that could affect local interests adversely. Since state and local interests could effectively "tax" the rest of the system for parochial gain, there is some justice to the ICC's position. For example, a state authority could block a regional merger of competing lines that serve a local community, knowing that the cost of maintaining the duplicative service would be shifted to the parent railroads and their out-of-state customers, while the local shippers would pocket the gains. Although regional authorities do try to prevent acquisitions and closures in other industries, most other services and manufacturing are less vulnerable to discriminatory "taxation," since they are more mobile. A transfer of antitrust review of railroad industry mergers to the Justice Department should probably include a preemption of state and local jurisdiction over any approved consolidations or sales.

Under current law, railroads must seek ICC permission to abandon lines, build new track, or sell any service. Since users and other interested parties employ the law to slow or even block change, adding to costs, those rules should be repealed. If Safeway, for example, wants to close a store, sell it, or build a new one, we are all very fortunate that it need not seek approval from government functionaries. The transportation industries should be allowed the same freedoms.

As mentioned above, the ICC must protect workers' jobs in rail mergers, abandonments, and sales of lines. Such "protection" limits the ability of the railroads to achieve economies and improve productivity, and makes for higher costs that must be paid for by shippers and, ultimately, the consumer. Although the policy is popular with rail unions, it smacks of favoritism and should be abolished.

Federal law also enjoins the ICC to regulate rates for "captive shippers," those that can ship by only one line and enjoy no other satisfactory alternative. Coal and grain companies have exploited the captive shipper provision to gain lower rates. Since the markets for coal and grain are highly competitive, the producers cannot sell their output at more than the market price. Consequently, a railroad that drives shipping costs up to the point where the cost of producing the coal or grain and the cost of moving it exceeds the competitive price will find that it has no traffic. In other words, although the railroad has no direct competition, it too is constrained by the market.

If a coal company enjoys significantly lower costs because of a favorable location or a rich and easily exploited mine, it could reap higher profits than less favorably sited enterprises. However, if the mine also faces only one option for shipping its product, that is, a single railroad, the rail carrier will be able to secure much of that supranormal profit. In that case, the stockholders of the railroads will gain at the expense of the stockholders of the mining corporation. There is no good reason for the government to intervene by favoring one company over another. The captive shipper clause must go.

Congress should also get rid of another glaring anachronism: the ban on railroads' owning trucking companies or certain water carriers. Federal regulations prevent railroads from owning trucking firms, although the ICC has granted many exceptions in recent years. Dating back to the building of the Panama Canal, the Interstate Commerce Act has prohibited railroads from owning water carriers that ply the canal. At that time the public believed that railroads needed the competition of water carriers to keep down transcontinental rates. Like the prohibition on ownership of water carriers, the ban on owning trucking firms stems from an unwarranted fear of railroad power. With the plethora of options available to shippers today, such rules are totally unnecessary. Such restrictions simply limit the ability of railroads, trucking firms, and water carriers to offer the most efficient multimodal services.

Since 1980 intermodal activity has grown very rapidly. Not only do railroads offer traditional "piggyback" service to compete with over-the-road transportation, but the expansion of world trade has prompted ocean carriers to contract with railroads to provide double-stack service to major ports. For the return trip, railroads have been vigorously competing to fill otherwise empty containers, and the competition has increased rate pressure on truckload motor carriers.

The Staggers Act authorized railroads to negotiate contracts with shippers, but only with the approval of the ICC. In addition, the act required all rates to be filed with the ICC, and tariffs that are either "too high" or "too low" can be disallowed. Congress should revoke those regulatory powers. At best they add to paperwork and to the cost of operation; at worst they are used to slow innovation and reduce competition.

The ICC retains jurisdiction over passenger transportation by rail. In particular, it arbitrates between Amtrak and freight railroads, which own most of the track that the government-owned passenger railroad uses. Ideally, Congress should privatize Amtrak and let it negotiate with freight railroads over its use of trackage. Assuming that mutually profitable arrangements exist, private agreements will develop.

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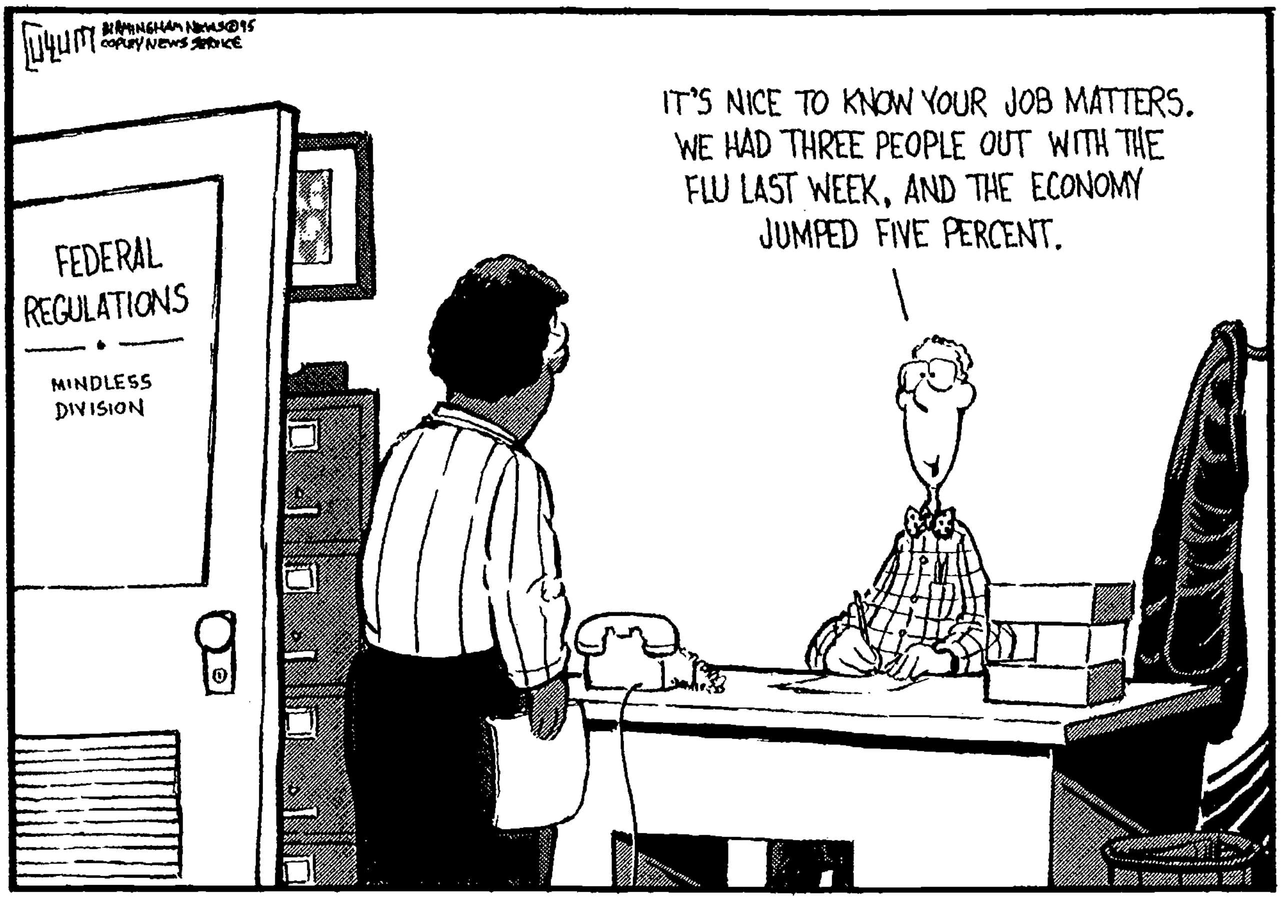
Trucking

Although the deregulatory statutes of the past 15 years have for the most part reduced federal economic controls on the freight trucking industry to paperwork, the federal government still requires licensing and the filing of classification of goods, and insists on dictating loss and damage standards. The licensing requirement could be used to restrict entry in the future; the other regulations either make for more costly paperwork or actually restrict the market.

The Motor Carrier Act of 1980 has been a tremendous success in promoting competition and opening up the trucking industry to new carriers. Before the legislation the ICC had granted operating licenses to only 18,000 truckers; by 1992 it was licensing nearly 48,000. Only a handful of carriers in 1980 had authority to operate nationwide; by 1990 approximately 20,000 carriers could move freight freely within the lower 48 states. Competition has been fierce with the less regulated railroads, air freight companies, the Postal Service, and with package delivery companies such as Federal Express and United Parcel Service. Brokers can now consolidate small shipments into truckload lots, offering strong competition to traditional less-than-truckload carriers. One result has been the growth of low-cost,



nonunion carriers and the creation of nonunion subsidiaries of major firms. The increased competition has brought significant savings to shippers and consumers.

The Department of Transportation has estimated that the savings from the Motor Carrier Act reach $10 billion annually. Robert Delaney, writing for the Cato Institute in 1987, came up with returns of $60 billion, including the savings on inventories made possible by speedier transport. Adding in the gains from the Staggers Act in 1994, Delaney projected current savings at more than $100 billion annually. Not only has deregulation benefited American consumers, but allowing manufacturers to reduce inventories, move their products more quickly, and be more responsive to customers has significantly aided American industry in competing internationally.

Until the passage of the Negotiated Rate Act in 1993, however, a regulatory glitch interfered with competitive pricing. Competition led many motor carriers to negotiate lower rates, which they often failed to file with the ICC. Shrewd lawyers and bankruptcy trustees then sued shippers for the difference between the filed rate and the lower negotiated one, and the Supreme Court upheld the suits. Since carriers were responsible for filing rates with the ICC, shippers often could not know whether the agreed-upon rate would hold up in court, or whether they might in the future be liable for additional sums. The 1993 act ruled out collecting for undercharges made prior to October 1990 and limited claims for later undercharges. The Trucking Industry Regulatory Reform Act of 1994, which abolished the need to file rates at all, eliminated the issue for future traffic.

Although the 1994 act stripped away most remaining controls over freight motor carriers, they are still required to seek licenses from the federal government. The Clinton administration is seeking to shift the licensing authority to the Department of Transportation. Congress should ask whether motor carrier licensing is a federal responsibility at all. The Department of Transportation does certify air carriers, but such firms are inherently involved in interstate activities, and the states have little expertise in the area. Having federal safety standards makes some sense; on the other hand, most other industries do not need government approval, and those that do are typically licensed by state authorities. The operation of a trucking firm should require only that the operator have sufficient liability insurance to protect the public from accidents. In any case, accreditation can be handled at the state level; it need not be a federal responsibility.

The ICC still regulates the classification of goods moving by truck, and thereby regulates rates. In a recent case, the ICC refused to go along with a higher classification that would have boosted rates. The law also requires trucking companies to file tariffs set collectively by the rate bureaus and rates charged for shipping household goods. Congress should clear away the remaining obstacles to a free market by abolishing any requirement to file rates or the classification of goods, and annulling any antitrust exemption for collectively set tariffs.

Finally, Congress should repeal the Carmack Amendment to the Interstate Commerce Act. That amendment specifies that all carriers, barring special circumstances, are liable for any loss or damage up to the total value of the goods being shipped. Liability should be part of the price-quality package agreed upon by individual truckers and shippers. Since truckers may be unaware of the real value of the goods being hauled, under current law they must build into their prices an insurance premium to cover any potential loss. Companies shipping less costly goods must, in effect, pay a higher price, that is, purchase a more expensive insurance policy than they need. Others may prefer to self-insure. The matter of insurance is best left to the market. On the other hand, most states specify liability requirements, and both motor carriers and truckers prefer that a nationwide federal standard be maintained.

Household Goods Carriers

The continued controls over household goods movers and forwarders constitute the most egregious remaining regulations involving motor carriers. The continued requirements to file rates and license carriers increase costs and thus boost rates. Such restrictions can only reduce entry and make for a less competitive environment.

Although the Household Goods Transportation Act of 1980 specifies that the ICC allow carriers the maximum freedom to set rates and determine quality, it continues the requirement that movers file their rates. For the first time, however, the law authorizes movers to offer binding contracts on rates and guaranteed pickup and delivery times. They can also contract with companies to handle their employee moves. In addition, the 1980 statute contains a number of consumer protection elements such as requiring the careful weighing of the truck before loading and after the goods are placed on board. Movers can provide, usually at an extra charge, insurance covering replacement costs for goods damaged or destroyed. Binding rates have become popular among consumers, as have guarantees on delivery. Carriers offer damage payments for failure to meet promised schedules.

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Although further deregulation would bring additional gains, partial deregulation has been reasonably successful. The large number of movers generates strong competition, entry is reasonably easy, and rate flexibility has blossomed. Prior to the 1980 act a family shipping its goods could receive only an estimate of the cost; the actual expense, payable only in cash or certified check at the time of delivery, depended on the approved rate per hundredweight and the actual poundage of the goods. After 1980 consumers could receive a binding estimate and pay by credit card or personal check. They could also get a guarantee of delivery time that eliminated the former wait for the delivery van. As might be expected, the number of public complaints about movers fell by about two-thirds over the first four years.

Even though van lines or their agents must file rates, including negotiated binding rates, with the ICC, the recorded tariffs no longer have any meaning. Since movers base quoted prices on competitive conditions, rate regulation cannot maintain a floor anymore. In effect, the ability of household carriers to quote guaranteed charges has bred total price flexibility. Not surprisingly, both industry and labor representatives have been critical of the practice and yearn to return to the previous requirement that all invoices be based on weight and a regulated charge per pound. Congress should scrap the remaining regulation of household goods movers. If consumers experience difficulties, they can be handled as they are for the rest of the economy, that is, through the Federal Trade Commission.

Intercity Bus Regulation

Because of the spread in ownership of private autos and the expansion of inexpensive air passenger service, the bus industry has been contracting for decades. Airline deregulation, by intensifying competition for passengers, has added to pressure on the intercity bus market. Amtrak, with its federal subsidies, offers an alternative mode of transportation for the old and poor, who constitute the natural patrons of bus travel. Even though a market for bus service exists, the immediate prospects for that shrinking industry are poor.

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The Bus Regulatory Reform Act of 1982 removed many of the restrictions on competition for passenger traffic. Under the authority of that legislation, the ICC has opened entry by eliminating fitness tests and requiring simply that the firm meet safety and insurance standards to receive a license. Bus companies now enjoy a zone of discretion in which to price their services. The law specifies that if reasonable pricing fails to cover variable costs, requiring a company to continue a service would be an "unreasonable burden" on interstate operations, and the ICC must grant a petition to abandon the route.

Bus companies, however, must seek operating licenses, file rates, and apply to abandon routes. Although the ICC has been pro-competitive and allowed firms carrying passengers a great deal of freedom, a new commission could restrict competition. Moreover, the requirements to seek government permission for normal activities such as entering a market or leaving it, and the requirement to file make for additional paperwork and boost costs to the companies and ultimately to travelers. Total deregulation, although not a panacea, would help the bus industry survive.

The 1982 act eliminated antitrust immunity for single-line and joint-line rates. But it also specified that antitrust immunity would continue for broad changes in tariffs and the publishing of tariffs, but that only carriers whose operations were affected by rate bureau tariffs could vote on them. In addition, the statute partially preempted state authority over interstate trucking firms. Under the provisions of the act, bus companies must first submit to state authorities requests to change fares or to enter or abandon markets. If the state fails to act or turns down the petition, the ICC can intervene. Nevertheless, since states can still block the discontinuing of some routes, federal legislation should preempt state authority over interstate carriers wishing to abandon intrastate service.

Private bus charter firms have complained with some justice that the ICC has authorized municipal transit systems receiving federal subsidies to compete with them. The best solution, although it lies beyond the scope of this article, would be to abolish federal mass transit subsidies. If a city or state desires to subsidize its transit system and to employ taxpayer funds to aid charter operations, that should be between the government officials and the taxpayers of that city or state.

As a consequence of those reforms, many new carriers have entered the market, especially in the charter bus business, and a major reallocation of routes has occurred. Deregulation has also improved the competitive position of bus companies in moving small parcels. With the new freedom, Greyhound offers door to door package delivery service in competition with United Parcel Service and Federal Express.

The 1982 act has been reasonably successful: in the first five years the number of companies offering intercity bus service nearly tripled. Competition within the industry has also intensified, bringing benefits in the form of discount fares to consumers. At the same time Greyhound and Trailways, which merged in 1987, discontinued or cut service to a large number of small towns. Despite widely publicized concern about the forsaken localities, a 1984 Indiana University study sponsored by the Department of Transportation found that most routes that were subsequently given up were serving communities with above average incomes and with few elderly residents. As might be expected, those were the locations with the lowest demand for bus service. The department concluded that abandonment had been going on for a long time and that the limited deregulation had, after an adjustment period, left unaffected the slow shrinkage of the industry. Notwithstanding the declining status of bus transportation and its poor profit record, fare competition has actually emerged in many markets. Between 1980 and 1984, 17 percent of the interstate fares fell, while intrastate rates increased to approach the much higher interstate levels that had existed for years.

Total deregulation of the bus market would provide even greater benefits, but the single most important step for policymakers would be to abolish subsidies to other modes of transportation. Amtrak, a major competitor with the bus companies, receives large subsidies. Air service to a number of small towns also benefits from taxpayer money. In addition to abolishing the remaining federal controls over the bus industry, it will be important to preempt attempts by states to maintain regulation. If states can control rates, many will hold down intrastate charges, forcing bus companies to cover their expenses through higher levies on interstate passengers. After deregulation, the only federal role remaining would be for the Department of Transportation to ensure that bus companies carried sufficient insurance.

Maritime

Despite the Shipping Act of 1984, the maritime industry remains heavily regulated. Water carriers must still file their rates with the Maritime Commission, and inland carriers with the ICC. The ICC licenses all inland water carriers operating within the contiguous 48 states and oversees their rates to ensure that they are nondiscriminatory and reasonable. The Jones Act, which prohibits foreign carriers from moving freight between U.S. ports, including those in Hawaii, Guam, Alaska, and Puerto Rico, has substantially inflated the cost of moving cargo between noncontiguous regions of the United States. The North Atlantic Free Trade Agreement left in place restrictions barring Canadians and Mexicans from moving goods between U.S. ports. The Shipping Act of 1984 authorized oceanliners to enter into contracts with shippers specifying rates, volumes, and schedules. It also gave antitrust immunity to intermodal rates and conference agreements, including agreements on tariffs. Although Congress gave oceanliners the right to independent action, after a 10-day notice any such rates had to be filed, and the conference was free to match the changes. In effect, the law blessed cartel arrangements and has failed to promote competition.

If Congress were to abolish the Jones Act and eliminate prohibitions on existing subsidized carriers participating in domestic traffic, freight rates between the U.S. mainland and Hawaii, Guam, Alaska, and Puerto Rico would all drop sharply. The benefits of such a policy change would be substantial, especially for the residents of those outlying territories. Not only would they find that the prices of goods from the contiguous 48 states would be substantially lower, but exports from the islands and Alaska to the rest of the nation would be more competitive. That would increase employment in those outlying areas.

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The Treasury subsidizes U.S.-flag carriers—ships made in the United States and manned by U.S. sailors; taxpayers fork out about $100,000 annually for every seaman's job. Current regulations bar subsidized carriers from the four domestic routes: Hawaii, Alaska, Puerto Rico, and Guam, leaving the market to a handful of highly protected oceanliners. The subsidized carriers compete in international markets where maritime legislation and foreign governments sanction price-fixing cartels. Prevalent in major overseas markets, such as East Coast-Europe and West Coast-Japan, they keep prices above competitive levels and inflate shipping costs.

As part of the compromise negotiated to secure authorization of the Alaskan oil pipeline, Congress prohibited the export of any petroleum transported by the pipeline. Since more crude oil flows from the North Slope than can be profitably refined on the West Coast, some petroleum is sent through the Panama Canal to refineries in the Gulf area. The excess supply of Alaskan oil has depressed prices in California and led to the closing of local oil rigs. The natural market for much of the Alaskan crude is Japan, but the law forbids selling it overseas. The Clinton administration has recommended that the export prohibition be repealed. The main support for maintaining it comes from maritime interests—mainly labor—that rely on the legislation to preserve jobs. Since oil companies have made investments in tankers and facilities in Panama that would lose value if the prohibition were repealed, they too oppose any change. Nevertheless, rescinding the prohibition would benefit consumers and enhance economic efficiency.

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Although the international aspects of the maritime trade make deregulation touchy, Congress should forge ahead: first, by eliminating all subsidies; second, by opening up the domestic market to foreign competition through repeal of the Jones Act; third, by abolishing the Federal Maritime Commission and with it any need to file rates. American carriers should be prohibited from joining any conferences that fix charges. Together with the abolition of the ICC, Congress should eliminate all federal oversight of inland water carriers. Finally, Congress should back the administration's proposal to repeal the prohibition on the export of Alaskan oil.

Pipelines

The ICC still regulates all pipelines except those carrying petroleum products and natural gas, which are supervised by the Federal Energy Commission. Fortunately, only a handful of operations come under ICC oversight. Nevertheless, that relic of the past originated when the ICC supervised all interstate movement of goods and is obsolete today.

A recent case makes the futility of pipeline regulation evident. In 1986 the Chevron Corporation built a phosphate slurry pipeline from its mine in Vernal, Utah to a mill in Wyoming. Since it was cheaper to build a large capacity pipeline, the finished pipe had excess capacity but was used solely to move Chevron's own phosphate. A company with mineral leases in Wyoming that did not actively mine phosphate complained to the ICC that Chevron had failed to file rates for transporting phosphate in its pipeline. Chevron responded that the pipeline was not a common carrier and was intended only to carry Chevron's own products. The ICC ruled against Chevron, requiring that rates be filed. Such interference in private decisionmaking is unjustified. At best, the ICC's ruling adds to paperwork; it may also force a company to use its assets inefficiently, thus discouraging investment in other pipelines. Along with abolishing the ICC, Congress should eliminate all federal oversight over private pipelines.

Foreign Competition and Ownership

Even before the North American Free Trade Agreement, Canadian and, to a very limited extent, Mexican truckers were competing in the U.S. market. By 1991 the ICC had issued over 2,000 licenses to Canadian truckers; 650 of those carriers had authority to carry goods to and from Canada throughout the lower 48 states. Only four Mexican carriers have full operating rights, and it is unlikely that the U.S. government will authorize others. Although federal law restricts foreign ownership of airlines, no constraints exist on foreign ownership of U.S. railroads or trucking firms, except for Mexicans. Canadian motor carriers, as already mentioned, can also carry freight from and to Canada throughout the 48 contiguous states. The Mexican government, however, restricts U.S. truckers' operations within that country, on the grounds that American carriers have superior equipment. Since Mexico prohibits American truckers from carrying goods throughout Mexico, Mexican carriers are also restricted in competing in U.S. markets. Until December of this year, carriers in both countries are confined to "commercial areas" along the border. After December, truckers from both nations will be able to move freely within states that are adjacent to the other country. Beginning in 2004, nationals of both Mexico and the United States will be able to own motor carriers that carry international goods throughout each country, but cabotage will still be prohibited for both

Mexican and U.S. carriers.

There is no good reason to prohibit foreign ownership of U.S. airlines. If a carrier were owned by an airline based abroad, it would still be required under federal immigration laws to utilize American personnel in its domestic operations. Such an enterprise is unlikely to have any competitive advantage over a U.S. carrier. A foreign-owned carrier could of course quote a single through-rate from a U.S. city to its home base, but American-owned carriers with the rights to fly to that same airport could (and can) also quote through-rates. On the benefit side, since several U.S. carriers are weak financially, their purchase by a strong foreign carrier would enhance their ability to survive in the highly competitive airline industry. Thus, elimination of the ban on foreign ownership of airlines would strengthen competition in the U.S. market while providing gains to American travelers.

Conclusion

The 104th Congress should finish the deregulatory process that started under President Ford, was accelerated by President Carter, continued under President Reagan, and has been nearly completed under President Clinton. The ICC, the oldest and the most outmoded federal regulatory body—which will be 108 years old this year—should not survive another birthday. Nor does the Federal Maritime Commission perform any useful function; Congress should also excise it. Although the Department of Transportation has supported moving some of the ICC's regulatory functions into its own jurisdiction, all economic regulation except for antitrust, mergers, or consumer protection cases—which should be handled by either the Justice Department or the Federal Trade Commission—should be scrapped. Congress should lift the withered hand of government oversight from the transportation industries. Entry should require only a showing of sufficient insurance. The ability of any government agency, including the Department of Transportation, to restrict entry on any other basis should be expunged.

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