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STATE REGULATORY RESPONSES TO FEDERAL MOTOR CARRIER REREGULATION

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INTRODUCTION

Regulatory and legislative initiatives during the past five years have wrought major changes in the motor carrier industry.[1] Present motor carrier law and policy have loosened considerably former restrictions on such strictly regulated matters as carrier operating authority[2] and rate setting procedures.[3] Interstate

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Editor's Note: This article addresses the effects of deregulation which were initially examined three years ago in this Review. *See* Symposium, *Trucking Deregulation,* 32 U. FLA. L. REV. 843-954 (1980).

1. *See, e.g.,* ICC OFFICE OF POLICY & ANALYSIS, *The Effect of Regulatory Reform on the Trucking Industry: Structure Conduct and Performance* (June 1981) [hereinafter cited as *Effect of Regulatory Reform*]; *A Practice Primer for the Eighties,* 14TH ANN. TRANSP. L. INST. (1982) (Butterworths Legal Pub'l, Seattle, Wash.); Freeman & Gerson, *Motor Carrier Operating Rights Proceedings — How Do I Lose Thee?,* 11 TRANSP. L.J. 13 (1979).

2. The ICC traditionally authorized grants of authority if the proposed operations were consistent with the "public convenience and necessity." In Pan-American Bus Lines Operation, 1 M.C.C. 190, 203 (1936), the ICC articulated three components comprising this standard: whether the new operation or service will serve a useful public purpose in response to a public demand or need; whether this purpose can and will be served as well by existing lines or carriers; and whether it can be served by the proposed operation or service without endangering or impairing the operations of existing carriers contrary to the public interest.

By 1976 the ICC was processing about 6,800 motor carrier operating authority cases per year, I.C.C. ANNN. REP. 96 (1978), and granting approximately 80% in whole or in part on the merits, 43 Fed. Reg. 56979 (1978). P. C. White Truck Line, Inc. v. ICC, 551 F.2d 1326 (D.C. Cir. 1977) required the Commission to consider the benefits of increased competition and, in effect, negated the ICC's ability to deny an application because of claims by existing common carriers that they were providing adequate service. In Liberty Trucking Co., Ext. Gen. Commodities, 131 M.C.C. 573, 574 (1979), the Commission held once an applicant had met its prima facie burden of establishing a need for the proposed service, an existing carrier must demonstrate the grant would not be in the public interest. The public interest standard requires proof that the carrier's ability to serve the public would be jeopardized if the application were approved.

Ex Parte No. MC-121, Policy Statement on Motor Carrier Regulation (issued Oct. 16, 1979), shifted the burden of proving that an application would adversely affect the public interest to the protestants. Section 5 of the Motor Carrier Act of 1980, Pub. L. No. 96-296, 94 Stat. 793, *codified at* 49 U.S.C. § 10922 (Supp. IV 1980), reflects this change in the burden of proof, thereby endorsing the shift in ICC policy away from protecting existing common carriers and toward increased competition. Ex Parte No. MC-55 (Sub-No. 43), Rules Governing Applications for Operating Authority (served Dec. 24, 1980), established rules to bring the ICC into compliance with both the procedural and substantive mandates of the Motor Carrier

Act of 1980. Finally, Art Pape Transfer, Inc. - Ext. - Commodities in End Dump Vehicles, 132 I.C.C. 84 (1980), showed the Commission's intent to give applicants the broadest possible authority by making grants as unspecific as possible. The Commission appeared to give Art Pape wider authority, with respect both to commodity description and geographic limitations, than had been requested. In Ex Parte No. 55 (Sub-No. 43A), Acceptable Forms of Requests for Operating Authority (Motor Carriers and Brokers of Property) (served Dec. 24, 1980), the ICC informed carriers to apply for broad, unrestricted authority, with geographic descriptions encompassing at least an entire county and commodity requests defined in broad, generic terms. Ex Parte No. MC-142, Elimination of Gateway Restrictions and Circuitous Route Limitations (served Dec. 24, 1980), also implemented § 6 of the Motor Carrier Act of 1980, which mandated the elimination of these inefficiency-producing requirements. Ex Parte No. MC-142 (Sub-No. 1), Removal of Restrictions From Authorities of Motor Carriers of Property (served Dec. 24, 1980), also implemented § 6 of the Act by allowing carriers to petition the ICC for permission to broaden the scope of existing geographic and commodity authority by eliminating ICC imposed restrictions (other than gateway or circuitry) from their authority. *Cf.* American Trucking Ass'n v. I.C.C., 659 F.2d 452, 456, 461-75 (5th Cir. 1981) (holding that ICC attempts to implement §§ 5 and 6 exceeded its authority in many respects), *docketed* No. 82-86, 51 U.S.L.W. 3014 (July 27, 1982).

As a result of these liberal policies, the ICC handled almost 37,000 applications during fiscal 1980 and the first six months of fiscal year 1981, with 99.1% of all applications considered on their merits resulting in a full or partial grant of authority. In 1980, the Financial Accounting Standards Board ruled that the Motor Carrier Act of 1980 effectively negated the intangible value of interstate operating authority. Approximately $774 million were written off against motor carrier revenues due to this change. The accounting community, at least, believes that present federal policy allows complete freedom of entry to all new or existing carriers. Most other observers would agree. *See Effect of Regulatory Reform, supra* note 1, at 14-17, 27-29, 43-44 & 93-94.

3. The ICC has moved to minimize the role of rate bureaus in the rate setting process. Ex Parte No. MC-297 (Sub-No. 4), Reopening of Section 5a Application Proceedings to Take Additional Evidence (opened Dec. 30, 1977), required all non-rail rate bureaus to reapply for antitrust immunity. Ex Parte No. MC-297 (Sub-No. 5), New Rules Governing Rate Bureaus (served Dec. 30, 1980 and amended by order served May 11, 1981), implements § 14 of the Motor Carrier Act of 1980 by encouraging independent rate actions and prohibiting rate bureaus from initiating rate changes. Independent actions roughly doubled from 1979 to 1980, and similar growth has continued. Carriers without authority to haul a shipment may not vote on rates for that movement and, with a few exceptions, discussion of single line rates is banned. These rules were substantially upheld in American Trucking Ass'n v. United States & ICC, 688 F.2d 1337 (5th Cir. 1982). The Motor Carrier Ratemaking Study Commission will report on collective ratemaking in 1983.

Ex Parte No. MC-128, Revenue Need Standards in Motor Carrier General Increase Proceedings (opened June 19, 1979), is attempting to formulate an equitable method for calculating carrier revenue need and to set appropriate standards. Section 11 of the Motor Carrier Act of 1980 dramatically increased the ability of motor carriers to change rates. It establishes a zone of rate freedom so that within set limits, rates may be changed up or down without the possibility of ICC suspension for unreasonableness. *See Effect of Regulatory Reform, supra* note 1, at 23-26, 74-83.

Lawfulness of Volume Discount Rates by a Motor Common Carrier of Property, 365 I.C.C. 711 (1982), denied a request by certain carriers for a proceeding to set standards governing freight rate discounts for volume and aggregate tenders of freight. Ex Parte No. MC-158, Rates for a Named Shipper, Notice of Proposed Rules (served June 29, 1982), would eliminate the general prohibition against common carrier publishing tariff rates and terms restricted to a particular named shipper, receiver, or location. These two actions reflect the ICC's concern that any interference or regulation from the agency would have a chilling effect on new independent rate filings and might interfere with free market attempts by carriers to set rates at competitive and profit maximizing levels.

Commerce Commission (ICC) regulations that set up artificial distinctions to lessen competition among carriers also have been largely eliminated.[4] Despite some movement to revive these impediments to free competition,[5] many of the recent fundamental changes are irreversible for all practical purposes.[6]

States traditionally have played an important role in intrastate motor carrier regulation, although various state regulatory policies and procedures often do not coincide with federal interstate transportation initiatives.[7] While

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4. The ICC has begun moving to increase competition among the various categories of carrier by allowing each category to compete for a broader range of freight. Terminal areas were expanded, as were the areas of unregulated commercial zones surrounding most major metropolitan areas, in Ex Parte No. MC-37 (Sub-No. 26), Commercial Zone Expansion (decided Dec. 17, 1976). Toto Purchasing & Supply Co., Inc., 128 M.C.C. 873 (1978), allowed private carriers to apply for authority to operate as common carriers if the operations were incidental to their predominantly private operations. Ex Parte No. MC-55 (Sub-No. 42), Dual Operations of Motor Carriers (served July 2, 1980), removed any ICC impediments to a carrier possessing both common and contract authority, and Ex Parte MC-119, Policy Statement Regarding the "Rule of Eight" in Contract Carrier Operations (served Jan. 8, 1979), eliminated the rule that a contract carrier could serve no more than eight shippers without jeopardizing its status. Section 10 of the Motor Carrier Act of 1980, Pub. L. No. 96-296, 94 Stat. 793, *codified at* 49 U.S.C. § 10923(b) (Supp. IV 1980), eases the burden of obtaining contract carrier authority by requiring the protestant to show that the grant would be "contrary to the public interest." It also ratifies the ICC's repeal of both the "Rule of Eight" and restrictions against dual operations. The Act removes impediments to agreements between contract carriers and freight forwarders, and orders the ICC not to limit contract carrier grants of authority to particular industries or geographical areas. Section 9 of the 1980 Act allows private carriers to receive compensation for freight they haul for any wholly-owned corporate entity without being regulated by the ICC. The ICC implemented this section in Ex Parte No. MC-122 (Sub-No. 1), Implementation of Intercorporate Reform Legislation (served Dec. 24, 1980), which was upheld in American Trucking Ass'n v. ICC, 672 F.2d 850 (11th Cir. 1982). Proceedings are pending in Ex Parte No. MC-122 (Sub-No. 2), Lease of Equipment and Drivers to Private Carriers (opened Dec. 19, 1980), which would allow private carriers greater freedom to deal with owner-operators on a direct lease basis. For decisions stayed pending review, see Ryder Truck Lines v. United States & ICC, No. 82-5247 (11th Cir. 1982); Bowman Transp. Co. v. United States & ICC, No. 82-8133 (11th Cir. Apr. 6, 1982). *See Effect of Regulatory Reform, supra* note 1, at 20-23, 78-83. Finally, in Ex Parte No. MC-122 (Sub-No. 3), Interpretation — Intercorporate Hauling (served Dec. 24, 1980), the ICC found that an entity needing transportation services could use an affiliated intercorporate hauler for the transportation of its own freight. This interpretation did not allow for hire transportation of traffic tendered by a non-affiliated corporation. *See* American Trucking Ass'n v. United States & ICC, No. 82-8060 (11th Cir. filed Jan. 26, 1982).

5. *See Re-Regulating at the ICC: The Congress Made Me Do It!*, 5 REG. 5-10 (1981).

6. With thousands of new carriers being given authority each year and existing carriers receiving much broader authority on a regular basis, the Commission appears to be approving annually approximately 30,000 applications for new authority. Even if all new grants of authority were stopped for the foreseeable future, the amount of authority already outstanding is more than ever could be fully utilized. With hundreds of carriers already possessing 48 state authorities, it would be impossible for the ICC even to consider the possibility of attempting to allow a carrier to obtain a measure of market control over a particular route. Furthermore, the growth of contract and private carriage operations also decreases the possibility that a common carrier would maintain market control in the long run.

7. *See infra* note 18. *See* Pub. L. No. 89-170, 79 Stat. 648 (1965), which amended the Interstate Commerce Act in an attempt to encourage greater uniformity among the states with respect to motor carrier deregulation. Section 19 of the 1980 Act, Pub. L. No. 96-296, 94 Stat.

the federal Motor Carrier Act of 1980 (1980 Act),[8] coupled with ICC deregulation efforts, has altered the federal presence in the motor carrier area, there is no reason to expect states will change their procedures and laws to lockstep the federal scheme. Thus, the differences between state and federal motor carrier economic regulation will likely expand. This divergence may hinder realization of a nationally consistent and rational transportation policy.

The 1980 Act was designed to increase both competition and efficiency in the transportation industry.[9] The 1980 Act increases competition by liberalizing entry into the field.[10] Moreover, the Act expands the areas of the trucking industry totally exempt from regulation.[11] With respect to rate regulation, a new zone of rate freedom allows motor carriers to set rates with less government interference. In essence, carriers may adjust their rates ten percent above or below existing rates.[12] Thus, with eased entry and less restrictive rate regulation, proponents of the 1980 Act hoped for increased competition[13] and concomitant benefits for consumers.[14]

The 1980 Act recognized that a multiplicity of state regulatory requirements would not promote a coherent national transportation policy.[15] The legislature simultaneously realized "that it is in the national interest to minimize the burdens of such regulations while at the same time preserving the legitimate interests of the States in such regulation. . . ."[16] Congress consequently directed the Secretary of the Department of Transportation and the ICC to formulate legislative or other recommendations for developing a more efficient and equitable system of state motor carrier regulation.[17]

Not surprisingly, a dispute developed concerning whether this congressional mandate limits the Secretary and the ICC to issues involving state taxation, licensing, registration, safety procedures, and size and weight requirements, or whether recommendations also may be developed concerning state economic regulation of intrastate carrier operating authority and rates.[18] The dispute raises issues over the right, as well as desirability, of federal inter-

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793, also sets up a mechanism for studying and attempting to provide for a possible system of uniform state regulation.

8. Pub. L. No. 96-296, 94 Stat. 793 (codified in scattered sections of 49 U.S.C. §§ 10101-344 (Supp. IV. 1980)).

9. *See* Kretsinger, *The Motor Carrier Act of 1980: Report and Analysis,* 50 U.M.K.C. L. REV. 23, 27 (1981).

10. *See id.* at 34-42.

11. *See, e.g.,* 49 U.S.C. § 10525 (Supp. IV 1980) (territorial exemptions); *id.* § 10526(a)(e) (6) (agricultural exemptions).

12. *Id.* § 10708(1)(A)-(B).

13. S. REP. No. 96-641, 96th Cong., 2d Sess. 2 (1980).

14. For an extensive analysis of the 1980 Act, see Kretsinger, *supra* note 8.

15. *See* Pub. L. No. 96-296, § 19, 94 Stat. 811 (1980).

16. *Id.*

17. *Id.*

18. *See* U.S. DEP'T OF TRANSP. & INTERSTATE COMMERCE COMM'N, *Options for Uniform State Regulation, Sec. 19, Motor Carrier Act of 1980, Working Paper No. 1* 51-58 (1980) [hereinafter cited as *Working Paper No. 1*]; U.S. DEP'T OF TRANSP. & INTERSTATE COMMERCE COMM'N, *Uniform State Regulations, Economic Regulation of Interstate Commerce, Working Paper No. 5* 1-3 (1980) [hereinafter cited as *Working Paper No. 5*].

vention in an area traditionally under state control.[19] From a policy standpoint, the dispute is important because the established trucking industry apparently endorses the view that federal intervention is not only undesirable and unallowable, but that state regulation should continue in its present form.[20] This curious position favoring continued disparity between states raises the specter of an industry using state legislation and regulatory commissions to subvert federal policy and limit competition. This outcome may or may not be desirable, depending upon one's opinion of federal attempts to deregulate the industry.

Because state economic regulatory policies may hamstring federal policy favoring increased competition, it is important to examine state regulatory responses to the radical shift in federal motor carrier policy of the past five years. Any possible impediments to the smooth functioning of an efficient transportation system must be analyzed and examined. This article will discuss the traditional state and federal approach to motor carrier economic regulation. The focus will then shift to the responses from the contiguous states[21] to recent changes in federal trucking policy.[22]

Traditional Economic Regulation

Intrastate economic regulation of the motor carrier industry has been re-

19. *See, e.g.*, Raymond Motor Transp., Inc. v. Rice, 434 U.S. 429, 444 n.18 (1978); South Carolina State Highway Dep't v. Barnwell Bros., Inc., 303 U.S. 177, 184-85, 187 (1938). The deference, however, is not absolute. *See, e.g.*, Kassel v. Consolidated Freightways Corp., 450 U.S. 662 (1981); Bibb v. Navajo Freight Lines, Inc., 359 U.S. 520 (1959). *See also* 49 U.S.C. § 1811 (1976) (nonpreemption of state laws concerning hazardous materials if equal or greater protection); *id.* § 11501 (Supp. IV 1981) (Staggers Rail Act of 1980, concerning intrastate railroad ratemaking); Bus Regulatory Reform Act of 1982, Pub. L. No. 97-261, 96 Stat. 1102 (1982) (Congress also apparently preempted state control over certain aspects of intrastate transportation).

20. *See Working Paper No. 1, supra* note 18, at 57.

21. Alaska and Hawaii, for obvious geographical reasons, have transportation problems wholly unrelated to the integrated transportation system that functions in and among the remaining 48 states. As a convenience, most commentators exclude their problems from consideration when discussing issues such as entry and rate regulation.

22. Issues concerning passenger carriers will not be discussed because their concerns are different from those of most freight carriers. Rather than preferring state regulation, passenger carriers typically object to it. *See Working Paper No. 1, supra* note 18, at 55. The Bus Regulatory Act of 1982, Pub. L. No. 97-261, 96 Stat. 1102 (1982), preempts state control over entry and exit, *id.* § 6, and would require state regulatory commissions to conform to ICC policy and procedures in deciding rate related issues. *Id.* § 11. Issues concerning safety, taxation, registration, and size and weight requirements are omitted because, while they may present impediments to carriers if not uniform, they typically could not be used to thwart federal regulatory policy. These requirements impact on all carriers equally, and, if anything, may have a greater effect on large, established carriers that attempt to comply with the multiplicity of regulations in 48 states. New, small carriers may have to comply with regulations in only one or two states or may be more likely to ignore a burdensome regulation entirely. See *Working Paper No. 1, supra* note 18, at 2-7, for an analysis of the myriad state licensing, registration, and taxing regulations facing a carrier. For a more detailed analysis of the problem, see U.S. Dep't of Transp. & Interstate Commerce Comm'n, *Uniform State Regulations, Working Paper Nos., 2, 3, 4, 6, 7 & 8* (Dec. 1981).

markably consistent[23] despite differing approaches to taxation, licensing, registration, safety, and other requirements.[24] Most jurisdictions follow the pre-1980 federal practices of the Motor Carrier Act of 1935.[25] States regulate motor carriers through their Public Service or Public Utilities Commission (PUC).[26] These commissions usually consist of an odd number of persons appointed by the Governor for a definite term.[27] Commissions maintain enforcement staffs to investigate complaints, such as alleged unauthorized operations and tariff violations.[28] While some states utilize hearing examiners to handle portions of the commission's caseload, most allow original proceedings before the commissioners.[29]

To operate within a state, a common carrier[30] of goods and property is generally[31] required to obtain a certificate of public convenience and necessity.[32] Contract carriers need a permit to operate.[33] Private carriers[34] are normally

23. For a summary of positions on economic regulations taken by major transportation states and a comparison to federal regulation under the 1980 Act, see *Working Paper No. 5, supra* note 18, app. B.

24. *See generally U.S. Dep't of Transp. & Interstate Commerce Comm'n, supra* note 17. State transportation practices typically are less formal than their federal counterparts, although the states tend to place greater reliance on hearings than do the federal agencies, which emphasize modified, no hearing procedures. Since the 1980 Act, the number of entry hearings held by the ICC has approached zero, while the number of grants of authority to truckers has multiplied dramatically, almost all of which are approved under the modified procedure rules. *See* 49 C.F.R. §§ 1100.43-.52 (1982). States tend to place much less emphasis on the formalities of pleadings and evidentiary rules. *See, e.g.*, State *ex rel.* Util. Comm'n v. Carolina Coach Co., 260 N.C. 43, 132 S.E.2d 249 (1963); State *ex rel.* Util. Comm'n v. Carolina Tel. & Tel. Co., 267 N.C. 257, 148 S.E.2d 100 (1966). But they are much more likely to hold hearings on all contested applications.

25. 49 U.S.C. § 1 (1935).

26. The Commissions that have been, are, or will be responsible for motor carrier regulation in their respective states function under many names; for example, Virginia State Corporation Commission, Texas Railroad Commission, New York Department of Transportation, Arizona Corporation Commission, Minnesota Transportation Regulatory Board, and Washington Utilities & Transportation Commission.

27. *See, e.g.*, N.C. GEN. STAT. § 62-10 (1977); WASH. REV. CODE § 80.01.010 (1981).

28. *See, e.g.*, N.C. GEN. STAT. §§ 62-14, -31, -34 & -277 (1977); WASH. REV. CODE § 81.80.330 (1981).

29. *See, e.g.*, N.C. GEN. STAT. § 62-14 (1977); WASH. REV. CODE § 80.01.050 (1981).

30. " 'Motor common carrier' means a person holding itself out to the general public to provide motor vehicle transportation for compensation over regular or irregular routes, or both." 49 U.S.C. § 10.102(12) (Supp. IV 1980).

31. North Carolina exempts the following freight from economic regulation: (1) bulk commodities, such as sand or gravel; (2) newspapers; (3) insecticides or fungicides; (4) farm cooperatives; (5) livestock, fish and shellfish; (6) raw lumber products; (7) private carriers; and (8) commodities of a character not hauled in the ordinary course of business by a common carrier by motor vehicle. N.C. GEN. STAT. § 62-260(a)(9)-(14) & (16) (1977). Exempt commodities tend to reflect regional concerns with Kentucky exempting coal, Oregon exempting potatoes, etc. *See also* WASH. REV. CODE § 81.80.040 (1981) (exempting farm products).

32. *See, e.g.*, N.C. GEN. STAT. § 62-110 (1977); WASH. REV. CODE § 1.80.070 (1981) (Washington calls its certificates "permits").

33. N.C. GEN. STAT. § 62-114 (1977) defines contract carrier as: "any person which, under individual contracts or agreements, engages in the transportation, other than [common carrier] transportation . . ., by motor vehicle of property in intrastate commerce for compensation." *See also* WASH. REV. CODE § 81.80.070 (1981).

exempt from state economic regulations, as are carriers operating solely within a commercial zone or the boundaries of a city or municipality.[35] In an unusual or emergency situation, a carrier may be granted permanent authority or some form of temporary authority,[36] often on an *ex parte* basis, if no existing carrier can meet the immediate need.[37]

Certificates are granted to common carriers and are transferable to other carriers if the proposed operations are required by "present or future public convenience and necessity."[38] The applicant generally bears this burden of proof.[39] Permits are also granted to contract carriers if the grant would be consistent with the public interest,[40] usually a less burdensome standard than public convenience and necessity. Hearings are held on protested applications,[41] with unopposed applications typically being voted upon pursuant to staff recommendations.[42]

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34. N.C. GEN. STAT. § 62-3(22) (1977) defines a private carrier as:

> [A]ny person not included in definitions of common carrier or contract carrier, which transports in intrastate commerce in its own vehicle or vehicles property of which such person is the owner, lessee, or bailee, when such transportation is for the purpose of sale, lease, rent, or bailment, or when such transportation is purely an incidental adjunct to some other established private business owned and operated by such person other than the transportation of property for compensation.

35. *See id.* § 62.260(e); N.C. UTIL. COMM'N R. 2-28 (1977). This exemption may be relatively narrow, however, because most states, including North Carolina, do not exempt private carriers if they haul goods for related corporate entities even if they are wholly owned subsidiaries. This issue is referred to as "intercorporate hauling." *See also* WASH. REV. CODE §§ 81.80.010(6) & .070. *But see, e.g.,* WYO. STAT. § 37-8-306 (1977), which requires private carriers to obtain a permit before beginning operations.

36. Permanent authority refers to motor carrier operating authority vested in a carrier pursuant to a certificate or permit. The authorization allows the carrier to operate subject to delineated limitations until such time as a regulatory agency revokes the authority, typically for willful violations of regulatory rules or laws. Temporary authority refers to operating authority given to a carrier, for a limited period of time, when no existing service is available to meet a particular need of the shipping public.

37. *See, e.g.,* N.C. GEN. STAT. § 62-265 (1977); WASH. REV. CODE § 81.80.170 (1981); WASH. ADMIN. CODE R. 480-12-033(5) (1981).

38. *See, e.g.,* N.C. GEN. STAT. § 62-110 (1977); WASH. REV. CODE § 81.80.070 (1981). *But see* VA. CODE § 56-281 (1950) in which no certificate may be issued unless existing service is found inadequate and the carrier currently providing the service does not improve it within a reasonable time after the finding.

39. *See, e.g.,* N.C. GEN. STAT. §§ 62-75 & -262(e) (1977) (commission must be convinced public necessity requires proposed operation); WASH. REV. CODE § 81-80.070 (1981) (same); N.C. UTIL. COMM'N R. 2-15 (1977) (same).

40. *See, e.g.,* N.C. GEN. STAT. § 62-262(i)(5) (1977); WASH. REV. CODE § 81.80.070 (1981); N.C. UTIL. COMM'N R. 2-10 (1977).

41. *See, e.g.,* N.C. GEN. STAT. § 62-262(d) (1977); N.C. UTIL. COMM'N R. 2-11 (1977); WASH. ADMIN. CODE R. 480-12-045(3)(a) & (b) (1981).

42. *See, e.g.,* N.C. GEN. STAT. § 62-262 (1977); WASH. ADMIN. CODE R. 480-12-045(6) (1981). The commission's decision is often influenced by factors such as the statements of shippers regarding the need for new or additional motor carrier service; the adequacy of existing service provided to those shippers by protesting carriers; the adequacy and training of the applicant's personnel; the applicant's equipment and facilities; the applicant's compliance or good faith attempts to comply with safety, licensing, insurance, and other regulatory requirements; and whether the applicant is "fit, willing and able" to conduct its proposed operations. *See, e.g.,*

Some commissions are concerned that new grants of authority may wastefully duplicate[43] or weaken the ability of existing carriers to provide service and that shippers support requests for new operating authority as a ploy because they have been promised lower freight rates if the new authority is granted. This consideration is especially important in contract carriage applications, with some states requiring that contract carrier tariff rates be higher than existing common carriage rates.[44] Most states also have general prohibitions against "dual operations,"[45] which prevent a single carrier from holding both common and contract carrier authority. Finally, most states strongly enforce the "common carrier obligation"[46] requiring a carrier with appropriate authority to render service at a published rate to all shippers.

State commissions establish just and reasonable motor carrier rates, and common carriers must publicly publish and file with the state tariffs setting forth the terms and conditions of the transportation services they propose to offer.[47] Affected shippers must be given notice of proposed changes.[48] Generally, a tariff must be published for at least thirty days before it becomes effective, although most states permit shorter notice periods under certain conditions.[49] The terms of the applicable tariff must be strictly adhered to even if the result of a change would be a lower rate to the shipper.[50]

Most commissions may suspend proposed tariff changes and investigate their justness and reasonableness.[51] An investigation ensues if a third party, such as a shipper or another carrier, files a protest or complaint, or if the commission files its own order.[52] Although a complaint or investigation may

N.C. GEN. STAT. § 62-262(e) (1977); WASH. REV. CODE § 81.80.070 (1981); N.C. UTIL. COMM'N R. 2-8, 14, 15 (1977).

43. N.C. UTIL. COMM'N R. 2-15(a) (1977). *See, e.g.*, State *ex rel.* Util. Comm'n v. Southern Coach Co., 19 N.C. App. 597, 199 S.E.2d 731 (1973); State *ex rel.* Util. Comm'n v. Queen City Coach Co., 4 N.C. App. 116, 166 S.E.2d 441 (1969). This does not mean, however, that carriers are protected from all competition or from all adverse effects to their business. *See* State *ex rel.* Util. Comm'n v. Ray, 236 N.C. 119, 63 S.E.2d 870 (1957); State *ex rel.* Util. Comm'n v. Queen City Coach Co., 233 N.C. 692, 73 S.E.2d 113 (1951); State *ex rel.* Util. Comm'n v. American Courier Corp., 8 N.C. App. 367, 174 S.E.2d 808 (1970); WASH. REV. CODE § 81.80.020 & .070 (1981).

44. *See, e.g.*, N.C. UTIL. COMM'N R. 2-16(b) (1977); WASH. ADMIN. CODE R. 480-12-255(6) (1981).

45. *See, e.g.*, N.C. GEN. STAT. § 62-264 (1977); WASH. REV. CODE § 81.80.260 (1981).

46. *See, e.g.*, N.C. GEN. STAT. § 62-113 (1977); WASH. REV. CODE § 81.80.220 (1981); N.C. UTIL. COMM'N R. 2-34 (1977). *See also* Hough-Wylie Co. v. Lucas, 236 N.C. 90, 72 S.E.2d 11 (1952).

47. *See, e.g.*, N.C. GEN. STAT. § 62-130(a) (1977); N.C. UTIL. COMM'N. R. 4-3(a) (1977); WASH. ADMIN. CODE R. 480-12-270 (1981). Contract carriers must also file copies of their agreements with the state Commission. *See, e.g.*, N.C. GEN. STAT. § 62-142 (1977); WASH. REV. CODE § 81.80.140 (1981); N.C. UTIL. COMM'N. R. 2-16(b) & (c) (1977); WASH. ADMIN. CODE R. 480-12-295(7) (1981).

48. *See, e.g.*, N.C. UTIL. COMM'N. R. 4-3(b) (1977).

49. *See, e.g.*, N.C. GEN. STAT. § 62-134(a) (1977); WASH. REV. CODE § 81.80.150 & .28.050 (1981); N.C. UTIL. COMM'N. R. 2-16(b) & (c) (1977).

50. *See, e.g.*, N.C. GEN. STAT. § 62-201, -139 & -318 (1977); WASH. REV. CODE § 81.80.220 (1981); N.C. UTIL. COMM'N. R. 2-16 (1977).

51. *See, e.g.*, N.C. GEN. STAT. § 62-134 (1977); WASH. REV. CODE § 81.80.150 (1981).

52. *See* N.C. GEN. STAT. § 62-134 (1977); WASH. REV. CODE § 81.80.150 (1981).

result from any rule, term, regulation, classification or condition contained in the tariff,[53] most disputes center on the rate levels charged pursuant to an effective or proposed tariff.[54]

Carriers in many states, through rate bureaus, propose collectively set "general" increases or decreases on all or many commodities.[55] A single carrier may propose a rate change for all or some of its freight, referred to as an independent or individual action. Carriers operating collectively may also propose rate changes for a limited number of commodities. Rates proposed collectively or by rate bureaus, especially general increases, are more likely to receive close commission scrutiny than independently proposed individual increases, which usually are examined closely only if a protest is filed.[56]

The commission's staff reviews, often perfunctorily, all proposed rate changes.[57] The staff would be unlikely to recommend a suspension of a rate change that complies with the state's publishing format unless it is a major general increase proposal or serious protests are registered.[58] Because some states review tariffs only if a protest is filed,[59] most unprotested tariff changes escape close scrutiny if properly published. A few states, however, have the regulatory commission prescribe the rates all intrastate carriers charge.[60] Proposed changes may originate from either carriers or from commission studies comparing existing rate levels with the costs of providing service. In states using this procedure, carriers tend to be much more active than the commission's staff in proposing rate changes to the commission. There is little practical difference between states opting for prescribed rates and states that review rates for justness and reasonableness, especially in the general increase area where all proposals are likely to be closely examined by the commission.

State commissions rely heavily on cost evidence developed by the carriers or rate bureaus in ascertaining whether a rate is just, reasonable, fair and nondiscriminatory.[61] Some states allow carriers to use anticipated costs, such as

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53. *See, e.g.*, N.C. GEN. STAT. § 62-146(e) (1977); WASH. REV. CODE § 81.80.150 (1981); WASH. ADMIN. CODE R. 480-12-295 (1981).

54. Shippers often complain about rate increases while competing carriers claim rates proposed by their competitors are unreasonably low. Complaints are occasionally voiced about "long-haul, short-haul" violations, in which a carrier charges one shipper more for a shorter haul than it charges another shipper for a longer haul of the same commodity over the same route in the same direction. *See, e.g.*, N.C. GEN. STAT. § 62-141 (1977); WASH. REV. CODE § 81.28.200 (1981).

55. *See, e.g.*, N.C. GEN. STAT. § 62-152.1 (1977). A rate bureau is a cooperative undertaking among a group of carriers. Although rate bureaus perform many functions, their most important role is collective establishment of rates by the member carriers. *See infra* note 69.

56. Given the manpower shortages indigenous to most state governments, regulatory commissions typically adopted the prudent position of not spending the time to examine any element of the tariff besides its format, unless it is protested.

57. California, with more than 10,000 carriers, has only 27 professional, administrative, and clerical personnel who examine tariffs.

58. *See Working Paper No. 5, supra* note 18, at 9.

59. *Id.*

60. *Id. See also* COLO. REV. STAT. § 40-11-105 (1973); TEX. CODE ANN. art. 911b, § 4(a) (Vernon 1982); WYO. STAT. § 37-8-107 (1977).

61. *See, e.g.*, N.C. GEN. STAT. § 62-146(h) (1977) which states that the Commission should

pending wage increases, for determining appropriate rates.[62] While large carriers and rate bureaus can provide the requested data, it may be overly burdensome for small carriers requesting individual rate increases to do so.[63] Some states encourage small carriers' independent actions by allowing them greater leeway to institute minor changes.[64]

The operating ratio, which sets anticipated or realized costs against expected or actual revenues, is normally the most important measure of a proposed rate change's justness and reasonableness.[65] Most states compute the operating ratio on a variable cost basis, which considers only out-of-pocket expenses necessary to perform the service and ignores fixed costs. Other states consider variable costs and fixed costs associated with plant, equipment, and other non-variable expenses under the "fully allocated cost approach."[66] If costs equal revenues, the operating ratio is 100, a break-even position, while an operating ratio of ninety or lower indicates a highly profitable operation. Most commissions attempt to set rate levels whereby the "average" carrier has an operating ratio of around ninety-five,[67] a figure which may fluctuate with changing economic conditions at the discretion of the commission. Some state commissions, however, have developed precise formulas for determining the justness and reasonableness of a rate.[68] Carriers and rate bureaus in states with formulas therefore know in advance what will be an allowable rate increase.

Most states allow carriers to set rates collectively through rate bureaus.[69]

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give due consideration "to the need in the public interest of adequate and efficient transportation service . . . at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable such carriers under honest, economical, and efficient management to provide such service," while *id.* § 62-146(g) sets forth the operating ratio as an important indicator of the consideration expressed in *id.* § 62-146(h). This financial justification may be documents or testimony of expert witnesses relating to carrier profitability, costs of service, and traffic projections. *See, e.g.,* N.C. UTIL. COMM'N R. 1-17 & 1-24(f) & (g) (1977). North Carolina is somewhat unusual, however, in that it requires carriers to break their revenues and expenses down into North Carolina and non-North Carolina categories, with only North Carolina related expenses being considered by the Commission. Most states allow carriers to use systemwide averages for determining operating ratios and other relevant financial data.

62. The New York, North Carolina and Colorado public utilities commissions, for example, allow evidence as to future costs in setting rates.

63. This problem apparently played a role in legislative decision to "sunset" the Florida Public Service Commission's regulatory control over intrastate trucking. *See* Freeman, *A Survey of Motor Carrier Deregulation in Florida: One Year's Experience,* 50 I.C.C. PRACTITIONER'S J. 51, 54-55 (Nov./Dec. 1982).

64. *See Working Paper No. 5, supra* note 18, at 38-39 & app. A (Kansas) & 49 (New York).

65. *See, e.g.,* N.C. GEN. STAT. § 62-146(g) (1977). For a more detailed analysis of motor carrier costing policy and procedures, see Ex Parte No. MC-128, Revenue Need Standards in Motor Carrier Increase Proceedings; Rules to Govern Assembling and Presenting Cost Evidence, 337 I.C.C. 298 (1970).

66. *See Working Paper No. 5, supra* note 18, at 38-39 (Kansas) & 49 (New York) (these states look at equity and return on invested capital).

67. The average operating ratio in New York is about 97, *see Working Paper No. 5, supra* note 18, at 50, while Kansas allows carriers to be in the 90-93 range, *id.* at 40, and Iowa recognizes 93.2 as a reasonable level, *id.* at 34.

68. *See id.* at 12 (Colorado).

69. For an explanation and analysis of the role of rate bureaus and collective ratemaking

Many states have statutory provisions allowing for collective ratemaking,[70] while other state commissions simply accept rate bureau filings.[71] State involvement in this practice is required to give the collective rates, rate bureaus, and carriers immunity from state and federal antitrust laws.[72] A few states now question the desirability of antitrust immunity for collective ratemaking and have moved to restrict or eliminate the practice.[73]

POST-1980 STATE TRANSPORTATION POLICY

A transportation lawyer reading the prior section would recognize how traditional state economic regulation reflected pre-1980 ICC policy. The ICC, however, is moving away from strict regulatory constraints imposed by a centralized bureaucracy and toward greater reliance on competition as a restraint to unfair, discriminatory, and unreasonable rates and practices of motor carriers.[74] State responses to this dramatic policy change may play a major role in determining its success. At a minimum, these responses will determine whether economic regulation of motor carriage is consistent at the state and federal levels or whether the industry must live under two philosophically opposed systems.

The National Association of Regulatory Utility Commissioners (NARUC) recognized that the policy changes in the 1980 Act necessitated changes in state regulatory policy and adopted the Model State Motor Carrier Act (Model Act) in 1980.[75] This Model Act was promulgated to "Promot[e] uniformity of regulation to the extent compatible with the state objective of protecting the consumer interest with respect to intrastate transportation, and [to promote] greater cooperation among the regulatory agencies. . . ."[76] NARUC's proposal closely follows the new regulatory direction taken by the ICC and the 1980 Act.

Although NARUC unanimously adopted the Model Act, there seems to be little movement toward passage of similar legislation at the state level.[77] Perhaps the highly controversial shift in federal policy and the power of local

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in the transportation process, see, e.g., Cross, *Motor Carrier Rate Territories and Bureaus*, 1970 TRANSP. L. INST. PAPERS & PROCEEDINGS 193-233 (1972); Marx, *Group or Conference Rate-Making and National Transportation Policy in the United States*, 24 LAW & CONTEMP. PROBS. 588 (1959).

70. *See* United States v. Southern Motor Carriers Rate Conf., 672 F.2d 469 (5th Cir. 1982), which held that certain rate bureau activities were not exempt from the application of antitrust laws either under the "state action" exception or the Noerr-Pennington Doctrine.

71. *See* GA. CODE § 46-7-18 (1982); ILL. REV. STAT. ch. 95½, § 18-512 (1980); N.C. GEN. STAT. § 62-152-1 (1977); TEX. CODE ANN. art. 911b, § 4a (Vernon 1982). *But see Working Paper No. 5, supra* note 18, at app. A (Colorado, Massachusetts & Ohio).

72. *See Working Paper No. 5, supra* note 18, at app. A (Iowa & Washington).

73. *See infra* note 166 (California); notes 134-36 & 132-36 and accompanying text (West Virginia); *infra* text accompanying notes 123-31 (New York). *See also* United States v. Southern Motor Carriers Rate Conf., 672 F.2d 469 (5th Cir. 1982).

74. *See supra* notes 9-14 and accompanying text.

75. *See* Convention Resolution No. 10, *reported in*, NARUC Bulletin No. 2-1981, at 5. *See also* NARUC Bulletin No. 43-1980.

76. *See* Convention Resolution No. 10, *reported in*, NARUC Bulletin No. 2-1981, at 5.

77. New Mexico has effectively adopted the NARUC Model Motor Carrier Act. *See infra* notes 117-28 and accompanying text.

trucking and union interests are factors. More likely reasons, however, are that there is no great outpouring of sentiment at the state level for change and that many state commissions view the federal policy as an unproven experiment.[78] State legislators and regulators are particularly concerned with the effect that deregulation would have on the common carrier obligation and the service received by small or isolated communities or businesses.[79] The shift in federal policy had been under consideration for years, and there certainly is no reason to expect that the states would, or should, abruptly change their policies so soon after enactment of new sweeping federal initiatives. As the effects of loosened regulation or deregulation become clearer, states may well rally behind the federal policy and place greater emphasis on competition and less on regulation.

Even if states have not docilely fallen into line behind federal policy, most have made at least minor changes in motor carrier regulation reflecting the new federal realities. The remainder of this article will delineate present and prospective state regulatory schemes in the aftermath of the 1980 federal policy shift.

States Continuing Traditional Regulatory Policy

Thirty-five states continue motor carrier economic regulation similar to pre-1980 ICC policy.[80] In five of these states, Colorado, Louisiana, Michigan, Nevada, and Washington, some loosening appears possible.[81] In Colorado, while there is no move toward entry reform, the Commission apparently allows greater rate flexibility and is moving away from prescribed, uniform rates.[82] A

78. *See infra* note 81. *See also* N.Y. State Assembly Bill 7920-B, § 1 (1981) (further deregulation may be appropriate after the affects of motor carrier regulatory reform legislation in other jurisdictions is analyzed).

79. *See* N.Y. State Assembly Bill 7920-B, § 1 (1981).

80. The following states have not made meaningful changes in their laws or policies recently: Alabama, Arkansas, Colorado, Connecticut, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Vermont and Washington.

81. Given the looseness of state administrative practice and the dearth of written opinions from many jurisdictions, one of the only ways to gauge the legislative and regulatory trends is to survey those persons most closely attuned to the policies of each jurisdiction. Thus, in each of the forty-eight states, one or more representatives of the state regulatory agency and one or more representatives of the principal motor carrier trade and lobbying group, typically an affiliate of the American Trucking Ass'n, Inc., were questioned by the authors about state transportation policy and trends. Transportation lawyers in many states also were interviewed. The perceptions of these parties are reported in this paper, as noted. Differences of opinion which arose among those interviewed are also noted.

82. *Id.* Pursuant to C.R.S. § 40-11-105 and Consolidated Freightways Corp. v. Public Util. Comm'n, 158 Colo. 239, 406 P.2d 83 (1965), the Colorado Commission is required to prescribe rates on certain types of common and contract carriers. The Commission met this mandate in Decision No. C82-492, Case No. 1585, Order of Commission Prescribing Rates (entered Feb. 5, 1936, amended Mar. 30, 1982), but apparently now is concerned about prescribed, uniform rates only for general commodities carriers.

It must be stressed that Colorado does not have a very loose entry policy, because

bill that would deregulate common carriers is under consideration in Louisiana.[83] With the help of the established trucking industry, Michigan is in the process of drafting legislation allowing a zone of rate freedom and making collective ratemaking mandatory when two or more carriers are involved.[84] The new entry standard would be the same "useful public purpose" test contained in the 1980 Act.[85] Nevada's Public Service Commission has begun holding that competition per se, without any additional evidence of public necessity, is justification for granting new operating authority; and their legislature is holding hearings on proposals to deregulate trucking.[86] Washington initiated a three year deregulation study in 1981, and the legislative and the non-legislative advisory committees examining the issue will likely recommend at least some liberalization of entry requirements.[87]

There appears to be no present support for deregulation in the remaining twenty-nine states continuing traditional ICC economic regulation, although changes consistent with the 1980 Act have been introduced or adopted in some states. Alabama appears to have shifted the burden of proof to the protestant in challenged entry proceedings.[88] Georgia now allows automatic grants of authority in uncontested cases[89] and joins Texas in requiring greater commission restrictions on and participation in the activities of intrastate rate bureaus.[90] Indiana is planning a sunset review of its commission in 1987.[91] In Iowa[92] and Missouri[93] the Attorney General is attacking intrastate rate bureaus. In Massachusetts, which does not grant collective ratemaking immunity to its

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diversion of traffic from existing carriers continues to be grounds for a denial in protested entry cases. The burden of proof remains on the applicants. *See supra* note 81. Despite the softening of the policy concerning uniform, prescribed rates, the Commission continues to require that irregular route common carriers charge rates higher than regular route common carriers, and that contract carriers charge rates equal to or higher than those of competing common carriers performing substantially the same service. *See* Decision No. C82-492, *supra*. If a contract carrier is not competing with a common carrier and the rendered service is not similar or substantially the same as a common carrier, the minimum rate restrictions do not apply. *See* Denver-Climax Truck Line v. Jim Chelf, Inc., 167 Colo. 69, 445 P.2d 399 (1968).

83. *See supra* note 81.

84. *See* Mich. H.R. 5669, art. II, § 7A & art. V, § 6B.

85. *Id.* art. II, § 5.

86. *See supra* note 81. *But see* Whittlesea-Bell Luxury Limosine v. P.V.C., No. A216412 (8th Jud. Dist. Ct. Nev., Clark County, Nov. 2, 1982) (enjoined enforcement of competition per see policy in this proceeding only).

87. *See supra* note 81.

88. *Id.*

89. Current Georgia Public Service Commission practice in uncontested cases is to inform the applicant that his appearance is not necessary. *See supra* note 81.

90. *See* Ga. S. 453 (Reg. Sess. 1980) (amending GA. CODE § 68-510 (1931) and the Ga. Motor Carrier Act of 1931). This change was necessary to bring Georgia law into conformance with United States v. Southern Motor Carriers Rate Conf., 672 F.2d 469 (5th Cir. 1982), so that intrastate rate bureaus could have antitrust immunity. *See also* TEX. CODE ANN. art. 911b, § 4a (Vernon 1982).

91. *See supra* note 81.

92. In Iowa, the Attorney General has not yet brought suit against the Iowa movers bureaus, but is presently considering the possibility. *Id.*

93. *See* Missouri v. Green & Mo. Movers Ass'n, Inc., No. 79-862 (Mo. 19th Cir. Ct. Oct. 19, 1979).

carriers, the United States Department of Justice is bringing suit against the uniform rates imposed by intrastate furniture movers.[94] No formal reform actions have been taken in Minnesota, but on January 1, 1983, a new Transportation Regulatory Board[95] replaced the present Commission, which may presage greater state emphasis on transportation policy. In Mississippi, deregulation efforts have never gotten out of committee, while in Montana current sunset review anticipates no substantive changes.[96]

Although New Hampshire's Commission emerged unscathed from 1981 sunset review, deregulation bills are expected to be introduced in 1983.[97] Similarly, South Carolina's Commission should survive sunset review in 1983.[98] North Carolina, North Dakota, Pennsylvania, and Tennessee eased entry restrictions, and both Carolinas have new procedures allowing unopposed entry applications to be approved without a hearing.[99] Pennsylvania may institute zone of rate flexibility during 1983.[100] Ohio has loosened its entry policy and in practice may have shifted the burden of proof to the protestant in opposed entry proceedings.[101] Oregon deregulated several transportation categories in 1981, but more comprehensive deregulation efforts have subsequently failed.[102] A push by major shipping interests prompted the Texas legislature to authorize a deregulation study by its Committee on Transportation,[103] but the only action taken has been a 1983 sunset review that may result in some relaxation. A state study in Utah adopted a wait-and-see attitude toward deregulation.[104]

In roughly two-thirds of the states, therefore, traditional economic regulation of the motor carrier industry continues virtually unchanged. The remaining fourteen states[105] have undertaken major efforts to revamp trucking regulation policies.

States Moving into Conformity with the 1980 Act

Eight states are presently moving toward the ICC's post-1980 regulatory

94. *See* FTC v. Massachusetts Furniture & Piano Movers Ass'n, Inc., FTC Docket No. 9137 (Dec. 1, 1981).

95. *See* MINN. STAT. ANN. § 174A.01 (1981).

96. *See supra* note 81.

97. *Id.*

98. *Id.*

99. *See* N.C. GEN. STAT. § 62-262(d) (1981). South Carolina has not passed any specific statute, but administratively allows unopposed applications to be approved without a hearing.

100. *See supra* note 81.

101. *Id.* Some transportation lawyers feel, however, that entry policy in opposed proceedings has not appreciably loosened.

102. *Id.*

103. *Id.*

104. *See* Letter from Max W. Young, head of Transportation Task Force to Review Regulation of the Intrastate Motor Carrier Industry, to Gov. Scott M. Matheson (Jan. 2, 1982) ("no action required"); Minutes of Transportation & Public Safety Study Commission (Oct. 20, 1982) (recommendations regarding regulatory changes or deregulation postponed for one year pending observation of Arizona and Florida experiences).

105. These states are: Arizona, California, Delaware, Florida, Idaho, Kansas, Maine, New Jersey, New Mexico, New York, South Dakota, West Virginia, Wisconsin, and Wyoming.

approach. Idaho deregulated its household goods carriers in 1981 and may yet attempt to deregulate the entire intrastate motor carrier industry in 1983.[106] Entry has always been easy and is getting easier for carriers. The Idaho Commission also no longer strives for rate uniformity among carriers.[107] The Commission has started approving maximum rather than exact rates for some carriers, especially those hauling truckload quantities.[108]

Kansas appears to be following the 1980 Act respecting entry and rate bureaus. The primary criterion for entry is merely whether the applicant is "fit, willing, and able,"[109] which dramatically limits the possibility of protests. Rate regulation will continue, especially for contract carriers who may not charge less than existing common carrier rates. After 1982, rate bureaus may not be used to agree on single line rates, while ratemaking procedures have been established for joint line ratemaking.[110]

Recent changes in New Mexico, which were based on the Model Act, authorize the issuance of certificates of public convenience and necessity to common carriers if they are "fit, willing, and able" and would "serve a useful public purpose, responsive to a public demand or need."[111] Only certain carriers may protest applications,[112] and in order to block an application the protestants must prove the proposed service inconsistent with public convenience and necessity.[113] The Commission must consider the effect of granting the certificate on existing carriers, although traffic or revenue diversion alone is not inconsistent with public convenience and necessity.[114] Gateway restrictions and circuitous route limitations are to be eliminated and regulations are to be implemented to streamline the removal of other operating rights restrictions.[115] Liberalized contract carriage standards do not fix the maximum number of shippers a carrier may serve and mandate the issuance of a permit if the carrier is "fit, willing, and able" and the proposed operation is consistent with the public interest.[116] Dual operations also are allowed.[117] The New Mexico statute permits rate bureaus and collective ratemaking, but bestows antitrust immunity only on carriers with ratemaking agreements approved by the Commission.[118] The right of independent action must be preserved, and

106. *See* IDAHO CODE § 61-801(K)(12) (1981).

107. *See supra* note 81.

108. *Id.*

109. *See* Kan. S. 511 § 3 (1982) (amending KAN. STAT. ANN. § 66-1, 114 (1981). Although the primary standard is "fit, willing and able," a protested application could be denied if evidence showed the application was inconsistent with public convenience and necessity. *Id.*

110. *See id.* § 1.

111. Motor Carrier Act, 1981 N.M. Laws, ch. 358, § 5D(1) (to be codified at N.M. STAT. ANN. § 65-2-84(D)(1)).

112. *Id.* § 6E & F (to be codified at N.M. STAT. ANN. § 65-2-85(E) & (F)). *See also supra* text accompanying notes 75-76.

113. *Id.* § 5E (to be codified at N.M. STAT. ANN. § 65-2-84(E)).

114. *Id.* § 5F (to be codified at N.M. STAT. ANN. § 65-2-84(F)).

115. Motor Carrier Act, 1981 N.M. Laws, ch. 358, § 7 (to be codified at N.M. STAT. ANN. § 65-2-86).

116. *Id.* §§ 7 & 8 (to be codified at N.M. STAT. ANN. §§ 65-2-87 to -88).

117. *Id.* § 10C (to be codified at N.M. STAT. ANN. § 65-2-89(C)).

118. *Id.* § 19 (to be codified at N.M. STAT. ANN. § 65-2-98).

after 1983 joint discussion on actions concerning single-line rates will not be allowed in most cases.[119] Unreasonable preferences for or against any person, port, gateway, locality or region, district, territory, or description of traffic are unacceptable.[120] Finally, the Commission must establish a zone of rate freedom initially no greater than ten percent above or below a specified level.[121] The range of the zone may not be expanded by more than five percent in each direction per year.[122] In practically all respects, New Mexico follows NARUC's Model Act by putting emphasis on independent action and greater reliance on unregulated competition as a deterrent to unfair and unreasonable motor carrier practices.

New York continues to regulate in the traditional pre-1980 ICC manner, but is considering legislation to simplify its transportation law.[123] An original bill advanced by state transportation officials met with motor carrier objections;[124] however, a substitute bill has been endorsed by state officials and the industry. The proposed legislation would bring service and rate bureau requirements in line with the 1980 Act[125] and would shorten the period of time within which the Department of Transportation may withhold decision on a proposed rate increase.[126] The bill allows a ten percent zone of rate freedom for non-collectively set rates,[127] eased entry,[128] tougher protest standards,[129] and discretionary hearings in certificate or permit application proceedings.[130] This proposed legislation to allow greater rate freedom and to stimulate competition is likely to pass during the next legislative session.[131]

While regulating tariff rates in the traditional manner, South Dakota has shifted the burden of proof in entry cases to the protestants.[132] Traffic or revenue diversion from existing carriers may not be the sole reason for denying a permit, and the Commission will issue a certificate unless the protestants prove that the grant would contravene public convenience and necessity.[133] Since South Dakota's new law took effect in 1981, no protestants have prevailed in certificate issuance proceedings.

119. *Id.* § 19B(2)(b) & (4) (to be codified at N.M. STAT. ANN. § 65-2-98(B)(2)(b) & (4)).

120. *Id.* § 17D (to be codified at N.M. STAT. ANN. § 65-2-96(D)).

121. *Id.* § 17I (to be codified at N.M. STAT. ANN. § 65-2-96(I)).

122. *Id.*

123. *See* Governor's Program Bill No. 164 (1981) (prepared primarily by the New York State Dep't of Transp.). *See also* N.Y. Assembly Bill 7920-B (1981) (another bill designed to meet concerns voiced by the transportation industry).

124. The Governor's Program Bill No. 164 (1981) was criticized because it abolished many elements of existing law that protected carriers without removing enough of the restrictions imposed on truckers.

125. *See* N.Y. Assembly Bill 7920-B, § 142 (1981).

126. *Id.* § 179(5).

127. *Id.* § 178(8).

128. *Id.* §§ 174-75 & 193.

129. *Id.* §§ 174(3), 175 & 193(7).

130. *Id.* §§ 174-75 & 193.

131. *See* Memorandum on Governor's Program Bill No. 164, at 2-3 (1981). *See supra* note 81.

132. *See* S.D. H.R. 1129, § 5 (Reg. Sess. 1981) (amending S.D. CODIFIED LAWS § 49-28-14 (1974)).

133. *Id.*

Because West Virginia now assumes competition to be in the public interest, its PUC has eased applicant entry requirements.[134] The PUC agrees with deregulation proposals whenever possible and has announced a two-year experimental prohibition of collective ratemaking.[135] At the experiment's mid-point, it is unclear whether the moratorium will be lifted at the end of the second year. Nevertheless, the trucking industry is concerned enough about the changes to propose its own deregulation bill,[136] which has not yet been acted upon.

Wisconsin and Wyoming have practically unlimited entry derived from two entirely different mechanisms. Wisconsin traditionally had lax entry requirements.[137] This negligible entry regulation prompted carriers to support a bill making fitness the only criterion for a grant of authority.[138] Because the filing fee increased from $50.00 to $500.00,[139] the bill may be more accurately characterized as a revenue bill than an attempt at economic reregulation of the motor carrier industry. Thus, for all practical purposes, traditional entry regulation has ended in Wisconsin. Wyoming, which sets rates for some common carriers and allows contract carriers to charge no less than these established rates,[140] grants permits to contract carriers as a matter of right.[141] Because nothing requires contract carriers to identify the companies for which they wish to transport goods, most carriers, even household goods carriers, run in Wyoming pursuant to the automatically granted contract carrier authority,[142] thus avoiding totally Wyoming's public convenience and necessity test for common carriers.

California's Major Reregulation Effort

Motor carrier and public concern has led to a major reregulation effort in California. The established trucking community backs much of this effort on the theory that if traditional regulatory concepts are discontinued, the best alternative is the least amount of state intrusion in the motor carrier industry.[143] In 1975, the California PUC began a substantial relaxation of governmental trucking controls, while retaining an oversight role in the affairs of carriers.[144] Entry controls have largely disappeared, as have the public convenience and necessity standard and the "no harmful effect on existing carriers" standard.[145]

134. *See* Public Serv. Comm'n of W. Va. Motor Carrier, Case Nos. 20376 & 20377, at 6 (Oct. 26, 1981).

135. *Id.*

136. *See supra* note 81.

137. *Id.* Approximately 97% of all entrants have been accepted since 1980. *Id.*

138. *See* Motor Carriers — Deregulation, 1981 Wis. Legis. Serv., ch. 347, § 51 (West) (to be codified at WIS. STAT. § 194.23).

139. *Id.*

140. *See* WYO. STAT. § 37-8-108 (1977).

141. *See id.* § 37-8-304.

142. *See supra* note 81.

143. *Id.*

144. *See* CALIFORNIA PUB. UTIL. COMM'N, TRANSP. DIVISION, *Report to the Legislature on Trucking Re-Regulation*, at 7-8 (Mar. 1982) [hereinafter cited as *Report to the Legislature*].

145. *See generally* Cal. S. 860 (Reg. Sess. 1977) (effective Apr. 30, 1980). *See also Report to the Legislature, supra* note 144, at 8.

Greater policy emphasis, however, has been placed on proving financial fitness or responsibility as a precondition to operating in California.[146] Concluding that setting minimum rates is not an appropriate state function, the Commission has begun canceling statewide minimum rate orders[147] and allowing carriers to exercise considerable freedom over tariff rates.[148] The PUC still exercises oversight review in the pricing area, although no comprehensive tariff examination program is in place.[149] Thus, the state continues to play a role, albeit a much more limited one, in the motor carrier area.

The road to reregulation has not been smooth. For example, in 1975 the PUC considered canceling all state-approved minimum rates and requiring all carriers to file new tariffs within 150 days.[150] When it became apparent that the time frame had been overly ambitious, the PUC announced it would consider regulatory changes in eighteen different minimum rate tariffs.[151] By 1981, the Commission managed to cancel minimum rate tariffs on general commodities, trailer coaches, and tank or vacuum truck carriers,[152] but the cancellation of other tariffs was still under consideration.

Even the relatively straightforward goal of requiring carriers to set rates on an individual basis has been difficult to implement.[153] When the general commodities minimum tariff was canceled in 1980, carriers were required to set their own rates and file tariff schedules with the PUC.[154] To ease the burden on carriers, the Commission allowed carriers to adopt former minimum rate tariffs called "transition tariffs,"[155] which could be relied on for some period of time to be determined by the PUC.[156] This "transition" program still continues.[157]

A 1981 California Supreme Court decision, *United States Steel Corp. v. P.U.C.*,[158] slowed reregulation by mandating that the Commission exercise increased caution when considering the economic consequences of reregulation.[159] The carriers' lack of experience in developing and filing individual tariffs led to numerous mistakes. Education of the carriers[160] and the multitude

146. *See supra* note 81. Many feel, however, that the practical effects of this policy have been nil.

147. *See Report to the Legislature, supra* note 144, at 7.

148. Statewide tariffs covering general commodities carriers, cement, and trailer coaches have been cancelled. *Id.* at 11, table 1.

149. *See id.* at 7-8.

150. *See* California Pub. Util. Comm'n, Case no. 9963 (Sept. 3, 1975). *See also Report to the Legislature, supra* note 144, at 9.

151. California Pub. Util. Comm'n, Case No. 87047 (Mar. 9, 1977). *See also Report to the Legislature, supra* note 144, at 9 & app. A.

152. *See Report to the Legislature, supra* note 144, at 9-12.

153. *Id.* at 10-12.

154. *Id.* at 9.

155. *See Working Paper No. 5, supra* note 18, at 3-4, app. A.

156. *Id.*

157. *See* California Pub. Util. Comm'n, Case No. 90663 (Aug. 1979, effective Apr. 1, 1980). *See also* Order Instituting Rulemaking No. 4 (Nov. 13, 1982), which established policy and rules for the transition program.

158. 29 Cal. 3d 603, 629 P.2d 1381, 175 Cal. Rptr. 169 (1981).

159. *Id.* at 609-10, 629 P.2d at 1384-85, 175 Cal. Rptr. at 172-73.

160. *See Report to the Legislature, supra* note 144, at 13.

of individual tariffs filed has greatly inflated PUC administrative costs, compared to the regulatory costs associated with uniform statewide tariffs.[161] Another bottleneck has been the unavailability of adequate cost data and the consequent delays in completing studies needed to determine the lawfulness of rate changes and practices.[162] This lack of cost data is a particularly severe impediment to rate reductions because carriers using transition tariffs may republish rates below that level only if they demonstrate the new rates are needed to meet competition or to contribute to carrier profitability.[163] Until better data are available, the PUC is requiring carriers to use prevailing union wage scales in their calculations to demonstrate that a lower rate is lawful. Nonunion carriers find this a most difficult burden to meet.[164]

To simplify the filing procedure for rate increases or decreases, the Commission probably will phase in a "rate window," similar to the federal scheme's zone of rate freedom, which would allow gradual increases to the zone in which carriers can freely change rates from the prior year's levels.[165] This zone would expand until a phased-in deregulation of motor carrier rates occurred.[166] Carriers then would be in complete control of their economic position. In the meantime, California carriers find rate changes burdensome without a simplified procedure as evidenced by the modest number of proposed rate reductions or deviations from transition levels filed with the PUC.[167]

Because reregulation in non-entry areas has been almost entirely administrative, rather than legislative, it has led to a plethora of problems and delays. The PUC continues to grapple with problems such as the role of rate bureaus,[168] an expedited method for rate increases and reductions,[169] state policy on compensated intercorporate hauling,[170] and a system for handling overcharge claims.[171] The absence of a clear PUC policy on these important issues often completely stymies new carrier initiatives. For example, the PUC

161. The number of pages of tariffs filed with the Commission has gone from 36,866 in fiscal year 1978-79 to 95,000 in fiscal year 1981-82. The number of contracts filed with the Commission has gone from zero in fiscal year 1978-79 to 12,000 in fiscal year 1981-82. *Id.* at app. G.

162. *See Report to the Legislature, supra* note 144, at 16-17.

163. *See Working Paper No. 5, supra* note 18, at 4, app. A.

164. *Id.*

165. *See* Order Instituting Rulemaking No. 6 (May 5, 1981). *See also Report to the Legislature, supra* note 144, at 19-20.

166. *See Report to the Legislature, supra* note 144, at 19-21.

167. The number of rate reductions processed by the Commission in fiscal year 1981-82 was 650. *Id.* at app. F.

168. *See* Order Instituting Investigation, Case 10368 (July 6, 1977) (pending) (to determine the fate of California rate bureaus with respect to antitrust immunity).

169. Order Instituting Rulemaking No. 6 (May 5, 1981) (in which the Commission is considering adoption of a "rate window" or "zone of rate freedom," to enhance carrier rate flexibility).

170. *See* Order Instituting Rulemaking No. 3 (Sept. 22, 1982) (Commission established rules and policy allowing compensated intercorporate hauling for 100% owned subsidiaries without regulatory constraints).

171. *See* Order Instituting Rulemaking 5 and Decision 82-02-127 (Apr. 18, 1982), Rules Governing the Processing, Investigation, and Disposition of Overcharge on Duplicative Payment Claims by Common Carriers.

continues to offer antitrust immunity for approved rate bureau agreements, while simultaneously investigating the legality of the practices, rules, and activities of all rate bureaus.[172] This incongruity between formal policy and actual practice, coupled with Commission warnings of uncertainty about federal antitrust immunity for collective ratemaking agreements, leaves the bureaus operating under a cloud.[173]

California therefore remains in the throes of an administratively wrought no-man's land. The PUCs direction is clear, but its path remains uncertain. Carriers are pushing for rate deregulation to complement eased entry requirements, and the Commission is trying to move toward reliance on free and open motor carrier competition. The agency, however, apparently does not have enough trust in competition to recommend total removal of its oversight role in the surface transportation area. California is traversing new ground by undertaking this difficult task of realigning traditional regulatory trade-offs such as limited entry and rate control. In this uncharted land, it is not surprising that obstacles have impeded the PUC's attempts to formulate a fair transportation policy based upon regulatory trade-offs more closely aligned to the free competition model.

The Deregulationists: States with Total Deregulation

Five states — New Jersey, Delaware, Arizona, Maine and Florida — are totally deregulated. The first two states, New Jersey and Delaware, never have had any meaningful economic regulation.[174] Because of this lack of traditional regulation, shippers and carriers in these two states may not be able to draw comparisons between the advantages of regulation and deregulation. Studies to date, however, do demonstrate that service failures and rate problems have not been serious and that the transportation industry functions more efficiently absent state control.[175]

The remaining three states — Arizona, Maine and Florida — abandoned their traditional regulatory schemes for total deregulation. In 1982, Arizona acted by referendum[176] and Maine deregulated legislatively.[177] Their deregulation experiences are too recent to evaluate, although indications are that shippers consider deregulation beneficial and that service to small communities and businesses will not suffer.[178]

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172. *See* Order Reinstituting Investigation, Case 10368 (July 6, 1977).

173. *Id.*

174. New Jersey, however, does exercise some economic jurisdiction over household goods and solid waste disposal and some entry controls over bulk carriers, for purposes of safety.

175. *See generally*, Testimony of Professors Alice Kidder and Bruce Allen, before the Motor Carrier Ratemaking Study Comm'n, Orlando, Florida (Apr. 1, 1982) (to be published in *Report of Motor Carrier Ratemaking Study Commission* (U.S. Gov't Printing Office, 1983)).

176. Proposition 101, which deregulated Arizona's motor carrier industry, was passed on November 4, 1980.

177. *See* Me. H.R. 1576 (Reg. Sess. 1981) (effective Jan. 1, 1982).

178. Freeman & Beilock, *An Analysis of Arizona and Florida Motor Carrier Deregulation*

Florida is an ideal laboratory for examining the impact of total motor carrier deregulation, because it is the one state experiencing both regulation and deregulation for a considerable period of time. Florida's regulatory controls were suddenly sunsetted out of existence on July 1, 1980.[179] Many legislators felt the Florida Public Service Commission was too restrictive,[180] while carriers labeled it slow, cumbersome, and ineffective.[181] Florida's two legislative houses passed bills to reregulate trucking,[182] but no agreement could be reached prior to the expiration of Commission authority over intrastate trucking.[183] Because large volumes of commercial, industrial, and agricultural freight move throughout the elongated state, Florida's deregulation experience will offer valuable insights into the desirability of similar deregulation in other jurisdictions.

While final results will not be known for several more years, preliminary research suggests the transition to deregulation has been smooth and orderly.[184] Freight shippers overwhelmingly favor deregulation because it has dampened rate increases and improved service,[185] while the motor carrier community is just as happy with deregulation as it was with Commission regulation.[186] Only about ten percent of shippers and private carriers prefer regulation over deregulation, and approximately half of the carriers approve of deregulation.[187] Household goods movers are more likely to support deregulation than are other carriers.[188]

Most carriers believe competition has increased since deregulation,[189] but

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and the Implications for State Regulatory Change, 15TH ANNUAL TRANSP. L. INST. (1983) (Butterworth Legal Pub'l. Seattle, Washington).

179. *See generally* Freeman, *supra* note 63, at 51, 55; Report to the Committee on Governmental Operations of the Florida House of Representatives, 1980 LEGISLATIVE ACTION ON MOTOR CARRIER REGULATION (Mar. 1, 1981); Symposium, *Trucking Deregulation*, 32 U. FLA. L. REV. 843-954 (1980).

180. *See* Freeman, *supra* note 63, at 54.

181. *Id.* at 55.

182. *Id.*

183. *Id.*

184. *See* ICC OFFICE OF POLICY & ANALYSIS, *Commission Studies of Florida Motor Carrier Deregulation: An Interim Report* (Apr. 1981); ICC OFFICE OF POLICY & ANALYSIS, *Initial Carrier and Shipper Responses to Intrastate Trucking Deregulation in Florida* (June 1981); Freeman, *supra* note 63, at 67-68; Freeman & Beilock, *Motor Carrier Deregulation in Florida: Shipper/Receiver and Carrier Perspectives*, ___ GROWTH & CHANGE ___ (1983).

185. Seventy-one percent of shippers responding to a survey believed that rates were held down by deregulation in Florida. *See* Freeman, *supra* note 63, at 61.

186. *Id.* at 60-61.

187. *Id.* at 58.

188. *Id.* One explanation for this finding is that household goods carriers have been able to increase rates in the fact of deregulation, something that has been denied other truckers due to competitive constraints. Because many household goods moves are paid for by third-parties (employers) and because certainty and assurance of a successful move are paramount to the moving party, it is unlikely that many people will trust their household possessions to someone with whom they are not familiar. Thus, well-known national companies tend to get the business regardless of cost. Under deregulation, and absent state scrutiny, these companies have been able to impose rate increases and make them stick. Apparently the movement of one's personal possessions is not a price-elastic commodity.

189. Only 11% of the carriers believe that competition has not increased. *Id.* at 62-63.

fewer than half of the carriers perceive deregulation as responsible for reduced profits.[190] Service has improved, with over one hundred new carriers offering service in Florida since 1980.[191] About thirty-five percent of the private carriers are now hauling at least some freight for other companies, a practice normally not possible in a regulated environment.[192] Established Florida carriers also have expanded existing operations and interstate truckers have begun offering intrastate service.[193] Because interstate carriers now compete for local business and intrastate carriers cannot retaliate by bidding for the competitor's interstate traffic,[194] Florida intrastate carriers are at a competitive disadvantage so long as regulation continues in surrounding states and at the federal level. Thus, support among intrastate carriers for deregulation in Florida might even be greater if the entire country were deregulated.

Rate levels have generally dropped in real terms, except on very small or low-rated shipments.[195] Carriers are restructuring their rates to reflect actual costs more closely.[196] Shippers with large or multiple shipments often can make attractive deals with discounts of up to sixty percent from the 1980 regulated tariff rates.[197] Household goods movers, however, have been conspicuous in raising their rates under deregulation.[198] Despite these generally

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190. Forty-nine percent of the carriers perceive at least some negative effect on profitability, roughly correlating with those carriers opposed to deregulation. *Id.* at 63.

191. Chi, *Intrastate Motor Carrier Deregulation: The Florida Experience,* INNOVATIONS 4 (Jan. 1982). Sixty-one percent of the surveyed carriers report increased competition from new carriers. *See* Freeman, *supra* note 63.

192. *See* Freeman, *supra* note 63, at 66.

193. Fifty percent of all responding carriers noted increased competition from established Florida carriers, and 50% also believed that established non-Florida carriers were beginning to compete for freight. *Id.* at 63.

194. In effect, anyone with a truck — a new carrier, an authorized interstate carrier, or an authorized intrastate carrier from Georgia or Alabama, for instance — can now solicit and haul Florida intrastate freight, thus taking business away from existing intrastate carriers in Florida. These same Florida carriers, however, cannot retaliate against out-of-state carriers by soliciting their business without first obtaining authority from the appropriate state or federal agency, a long and expensive process in most states and still a time consuming process at the federal level.

195. *See supra* note 185. Low-rated shipments refers to shipped commodities which tend to be heavy for their volume and of low market value for their weight.

196. Fifty-one percent of the surveyed carriers now are basing their tariff rates on the cost of providing that particular transportation rather than relying on across-the-board rate increases utilized by most carriers and rate bureaus prior to deregulation. In effect, carriers are attempting to end cross-subsidization of freight transportation services in which some freight pays higher rates than are cost justified so that other freight — typically small shipment, rural freight, or inexpensive merchandise — can be charged lower rates and still allow the carrier to earn a reasonable profit. Sometimes this problem is justified by the "common carrier obligation," pursuant to which most regulated carriers agree to transport all freight for which they have governmental authority regardless of whether that freight represents a profitable shipment for the carrier. *See* Freeman, *supra* note 63, at 64, 68, 72.

197. *Id.* at 72.

198. Freeman & Beilock, *supra* note 184, at 8-9. Sixty-four percent of household goods carriers thought that their rates were higher under deregulation than they would have been pursuant to continued regulation. Only 24% of the other carriers held this view.

declining real rate levels,[199] service has remained constant, with shippers experiencing no appreciable service difficulties.[200] On-time performance, service availability, number of service options, and freight loss and damage claims have improved since deregulation.[201] Shippers are six times as likely to have received offers of new service than to have reported service cutbacks or withdrawals.[202]

The fate of small and rural shippers, if the common carrier obligation and rate regulation were terminated, caused concern prior to deregulation. While there is some evidence in Florida that small or rural shippers are not benefiting from deregulation as much as their large or urban counterparts,[203] they probably are better off under deregulation than would have been the case had traditional regulation continued.[204] Nearly equal percentages of small and large shippers report being offered new service, having lower rates, receiving increased speed of service and experiencing greater competition for their freight.[205] Rural shippers were actually more likely to favor deregulation and to report improved service, new service, lower rates, and special deals or discounts.[206]

Florida's experience with deregulation has not appreciably exacerbated carrier bankruptcies and service problems. In many respects, the overall picture is quite positive. The apparent success of deregulation, however, should not blind other jurisdictions to the possibility of long-run effects on certain transportation subsectors that will suffer greater deregulation side-effects than normal. Household goods carriage, for example, contradicts the general rule that deregulation results in lower rates.[207] This may be due in part to the inability of families to bargain for more favorable rates, the lack of repeat business, the fact that many household movers are paid by third parties, and, finally, the ability of established household goods carriers to charge premium rates for reliable service. This possibility suggests regulation may be appropriate in limited cases involving little repeat business and non-commercially-oriented shippers. Nevertheless, the overall success of Florida motor carrier deregulation should serve as a positive example to other jurisdictions.

CONCLUSION

While there has been movement by many states toward a system of economic regulation compatible with the Motor Carrier Act of 1980, most states continue to regulate freight motor carriers in a traditional manner. Although it is likely

199. *See supra* note 185. Less than 10% of responding shippers noted declines in trucking service either in the northbound or southbound directions.

200. Freeman, *supra* note 63, at 60-61. Only 11% of the shippers report service difficulties resulting from motor carrier deregulation in Florida.

201. *Id.*

202. *Id.*

203. Freeman & Beilock, *supra* note 184, at 18-24 (manuscript). *See also supra* note 185.

204. Freeman & Beilock, *supra* note 184, at 22-24 (manuscript). *See also supra* note 185.

205. Freeman & Beilock, *supra* note 184, at 18-21 (manuscript). *See also supra* note 193.

206. *See* Freeman & Beilock, *supra* note 184, at 22-24 (manuscript).

207. *See* Freeman, *supra* note 63, at 71-72.

many states will eventually fall into line behind the federal model, changes may be a long time in coming. How important are these differences in federal and state economic regulation? From a carrier perspective these economic differences are probably less important than variations in licensing, taxation, registration, and safety, which are more aggravating and yield greater paperwork and inefficiencies; however, any such inefficiencies leading to resource misallocation should be candidates for change.

If state economic regulation change is to occur, total deregulation should prevail over partial deregulation or reregulation. The confusion resulting from reregulation causes problems for both the shipping public and carriers, as does the transition period during which state regulatory officials search for the correct regulatory balance between carrier freedom and shipper protection. In many jurisdictions, political realities may temper deregulation movements, but Florida's experience should encourage deregulation proponents. Moreover, indications that many organized motor carrier associations prefer deregulation as the best alternative to reregulation should give hope to deregulation advocates.

Whether the federal model is the most effective and beneficial system of motor carrier economic regulation remains to be seen. State regulatory experiments such as those outlined above will therefore be valuable in the national debate over motor carrier regulation. Regulation is a fairly new game, and states must have a reasonable amount of time to examine the facts and determine what innovations, if any, are necessary to promote just and fair competition among freight carriers.