

COMMISSION AUTHORIZED

PREPARED STATEMENT

OF

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BEFORE THE
PUBLIC SERVICE COMMISSION
OF THE
STATE OF MICHIGAN

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Mr. Chairman and Members of the Commission: I am pleased to appear before you today to discuss the potential effects on competition of the Michigan Public Service Commission's ("MPSC") proposed amendments to its rules regulating intrastate trucking.¹ This testimony represents the views of the Cleveland Regional Office and the Bureau of Economics of the Federal Trade Commission. They are not necessarily the views of the Commission or any individual Commissioner.

The proposed rules would revise procedures for obtaining motor carrier certificates and permits, by eliminating detailed restrictions on authorities, frivolous protests, and non-competitive compromises of application proceedings.² This proposal could make entry into the market for motor carrier services significantly easier. The staff of the FTC believes that relaxing restrictions on entry into the trucking industry has benefited consumers and competition by increasing choices, improving service and reducing prices for the transportation of goods. Thus, we support the goals that the MPSC has announced for this proceeding, to promote productivity, efficiency, and competition, and particularly to increase competition by easing entry into the market. Studies of motor carrier regulation, both federal and state, show that consumers benefit most when operating authorities are broad, rather than narrowly restricted, and when incumbent carriers' opportunities to protest applications by prospective entrants are limited.

I. Interest and experience of the staff of the Federal Trade Commission.

The Federal Trade Commission ("FTC") is an independent federal agency charged with enforcing the Federal Trade

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² Proposed Revisions to Motor Carrier Rules, Case No. T-1210; proposed revisions to Mich. Admin. Code R 460.18201, .18202, and .18204, Applications for Motor Carrier Certificate or Permit. This comment will focus on this aspect of the proposed rules. Other parts of the proposal involve safety and accident reporting, evidentiary procedures, household goods carrier estimates, deceptive advertising of licensing, and technical tariff filing requirements.

Commission Act.³ Section 5 of the FTC Act prohibits unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce.⁴ Under this statutory mandate, the Commission staff seeks to identify restrictions that impede competition or increase costs without offering countervailing benefits to consumers. In enforcing the FTC Act, the staff of the FTC has gained substantial experience in analyzing the impact of private and governmental trade restraints and their effects on consumers and competition. The staff of the FTC submits comments sharing its experience, upon request, to federal, state, and local governmental bodies to help them assess the implications of proposed legislation and regulations.

The staff of the FTC has studied the deregulation of trucking and the benefits resulting from an increased reliance on market forces at both the federal⁵ and state⁶ levels. In addition, the Bureau of Economics of the FTC has published a report on trucking deregulation (including the relaxation of

³ See 15 U.S.C. §§ 41-58. The Commission has additional enforcement responsibilities under the Clayton Act, 15 U.S.C. §§12-26, and several other statutes.

⁴ 15 U.S.C. § 45.

⁵ See comments of the staff of the FTC on Pricing Practices of Motor Common Carriers of Property Since the Motor Carrier Act of 1980, Interstate Commerce Commission, Ex Parte No. MC-166 (January 1983); Exemption of Motor Contract Carriers from Tariff Filing Requirements, Interstate Commerce Commission, Ex Parte No. MC-165 (1983); see also D. Breen, Bureau of Economics, FTC, Regulatory Reform and the Trucking Industry: An Evaluation of the Motor Carrier Act of 1980, submitted to the Motor Carrier Ratemaking Study Commission (March 1982).

⁶ See comments and testimony to Illinois Commerce Commission (March 18, 1991); Tennessee Comptroller of the Treasury (June 28, 1990); Director, Transportation/Gas Utilities Division, Railroad Commission of Texas (October 2, 1989); Texas House of Representatives (tow truck regulation) (April 18, 1989); Public Utilities Commission of California (impact of deregulation) (October 27, 1988); Ohio House of Representatives (contract carrier motor freight rates) (February 16, 1988); California Senate (contract motor carrier rates) (December 31, 1987); Legislative Audit Council of South Carolina (September 29, 1987); Washington State Legislature (March 7, 1985).

entry restrictions),⁷ and has published other studies concerning the effects of regulating the entry of competitors into other industries.⁸ The Commission has taken law enforcement action against trucking rate bureaus for fixing the rates of their members.⁹ Through these activities, the staff of the FTC has accumulated considerable experience in analyzing the effects of trucking regulation.

II. Regulation of trucking

The proposed rules would affect an important aspect of trucking regulation, the entry of new carriers. At the federal level, motor carriers have been substantially deregulated over the last decade, to permit much greater competition over rates and much easier entry of new carriers.¹⁰ In Michigan, the PSC has moved toward permitting more competition, most recently by ruling that collective rate making by several large tariff bureaus was inconsistent with the state's regulatory policies.¹¹ The reasons for retreating from pervasive economic regulation are clarified by examining the arguments over deregulation and the experiences where economic regulation (i.e., rate and entry regulation) has been relaxed. A number of studies have concluded that the usual rationales for motor carrier regulation are not

⁷ Diane S. Owen, Deregulation in the Trucking Industry, FTC Bureau of Economics Staff Report (May 1988).

⁸ See, e.g., A. Mathios & R. Rogers, The Impact of State Price and Entry Regulation on Intrastate Long Distance Telephone Rates, FTC Bureau of Economics Staff Report (November 1988); R. Rogers, The Effect of State Entry Regulation on Retail Automobile Markets, FTC Bureau of Economics Staff Report (January 1986).

⁹ New England Motor Rate Bureau, Inc., 112 F.T.C. 200 (1989), rev'd, 1990-2 Trade Cas. (CCH) ¶ 69,108 (1st Cir. 1990) (Commission's order finding violation dismissed with regard to Massachusetts, on grounds that price fixing actions were actively supervised by state agency), modified as to New Hampshire, September 4, 1991; see also Motor Transport Association of Connecticut, 112 F.T.C. 309 (1989) (price fixing found, but complaint dismissed because action was actively supervised by state agency).

¹⁰ Motor Carrier Act of 1980, P.L. 96-296, 94 Stat. 793 (1980).

¹¹ Collective Ratemaking et al., MPSC Case No. T-1188 et al., August 14, 1992.

persuasive, and that the economic consequences of rate and entry regulation have been undesirable.¹²

A. Arguments advanced in support of regulation.

Originally, regulation of motor carrier rates and new entry was intended at least in part both to protect the regulated railroads from competition from the unregulated and expanding trucking industry, and to support the trucking industry by restricting competition during the depression of the 1930's.¹³ The arguments usually advanced now for continuing rate and entry regulation assert four goals: preventing predatory pricing, forestalling destructive competition, maintaining safety, and ensuring service to small communities.

1. Predatory pricing.

It is sometimes argued that rate and entry regulation is necessary to prevent predatory pricing. According to this line of argument, larger, better financed companies will attempt to drive out competitors by selling their product or service at a loss.¹⁴ After the competitors are driven out, the surviving "predators" would raise their prices above the competitive level, eventually recouping their losses and increasing their profits.

The practical difficulty of this strategy, of losing money now in the hope of making more later, is that when the "predators" tried to raise prices to noncompetitive levels, other firms may enter, or re-enter, the market. Their entry should take business away from the "predator" and force prices back to competitive levels. Unless that entry can be blocked, predatory pricing is likely to fail. The Supreme Court has concurred in

¹² See generally Winston et al., The Economic Effects of Surface Freight Deregulation, (Washington: The Brookings Institution 1990); Breen, supra note 5; Diane S. Owen, supra note 7.

¹³ Nelson, The Changing Economic Case for Surface Transport Regulation, in Perspectives on Federal Transportation Policy (James C. Miller III, ed. 1975).

¹⁴ Whether a sale is predatory would be determined by comparing the price to cost. Under the test that the FTC has applied, sales at a price below average variable cost for a significant period of time are presumed to be illegal, but the presumption can be rebutted. See International Telephone & Telegraph Corp., 104 F.T.C. 280, 403-04 (1984); General Foods Corp., 103 F.T.C. 204, 344-45 (1984).

this analysis, observing that "predatory pricing schemes are rarely tried, and even more rarely successful."¹⁵ Another deterrent to trying this strategy, in addition to its risk of failure, is that it could be attacked by public and private antitrust enforcement actions.

Predatory pricing arguments might apply most plausibly to industries into which entry is difficult, perhaps due to high "sunk costs."¹⁶ But entry into trucking is not difficult, except for the problem of obtaining regulatory approval, and sunk costs appear to be relatively low. In the truckload ("TL") segment of the trucking industry, shipments usually go from shipper to consignee without intermediate handling; the truck itself is the only equipment needed. Trucks are highly mobile and can be transferred quickly to alternative uses, either by shifting them to more profitable geographic markets or by selling or leasing them to other operators. Thus, sunk costs are probably minimal in the TL segment.¹⁷ In the less-than-truckload ("LTL") segment, involving shipments of less than 10,000 pounds, shipments often are transported to break-bulk facilities before reaching their destinations, so assets such as warehouses and terminals are also employed. But, like trucks, warehouses and terminals can easily be transferred to alternative uses. Though physically immobile, these assets can be used to store and transfer numerous alternative goods. An entrant can lease warehouse and terminal space, or even when purchase is

¹⁵ Matshushita Electrical Industrial Co. v. Zenith Radio Corp., 475 U.S. 574, at 589-590 (1986), citing R. Bork, The Antitrust Paradox, 149-56 (1978); Areeda & Turner, Predatory Pricing and Related Practices Under Section 2 of the Sherman Act, 88 Harv. L. Rev. 697, 699 (1975); Easterbrook, Predatory Strategies and Counterstrategies, 48 U. Chi. L. Rev. 263, 268 (1981); Koller, The Myth of Predatory Pricing--An Empirical Study, 4 Antitrust L. & Econ. Rev. 105 (1971); McGee, Predatory Price Cutting: The Standard Oil (N.J.) Case, 1 J. L. & Econ. 137 (1958); McGee, Predatory Pricing Revisited, 23 J. L. & Econ. 289, 292-94 (1980).

¹⁶ Sunk costs are those that, once incurred, cannot be recovered should the firm choose to exit the industry. Expenditures on assets that cannot be redeployed easily to alternative uses would be considered sunk costs. An example of this kind of asset might be gas pipelines.

¹⁷ T.E. Keeler, Deregulation and Scale Economies in the U.S. Trucking Industry: An Econometric Extension of the Survivor Principle, 32 J. L. & Econ. 229, 250 (1989).

necessary, can resell the space or lease it to others for alternative uses.

Since predation is unlikely to be profitable or successful, motor carriers are not likely to attempt it. So long as entry by new carriers is not impeded by regulation, predatory pricing in the trucking industry appears to be little more than a theoretical possibility.¹⁸ Others who have concluded that predation in the trucking industry is unlikely in a deregulated environment include the General Accounting Office, the Interstate Commerce Commission, the Motor Carrier Ratemaking Study Commission, and the Department of Justice.¹⁹

2. Destructive competition.

It is also argued that, without regulation, motor carriers will engage in "destructive competition." The setting for the "destructive competition" scenario is typically an industry with fluctuating demand, high sunk costs, and a high ratio of fixed to total costs. These conditions could lead to excess capacity and considerable pressure to cut prices when demand falls. If firms compete on the basis of price, prices may fall below the total cost of providing services, and firms may try to reduce costs by skimping on service, to the detriment of customers.

The critical feature of this scenario is that, because so many costs are fixed or sunk, adjusting capacity in the face of (unpredictably) falling demand is difficult. But these conditions conducive to destructive competition, of relatively high fixed and sunk costs, are unlikely to characterize the trucking industry. Not only are few if any capital costs "sunk," but also fixed costs do not comprise a large percentage of total costs. Rather, the major portion of total costs, such as labor and fuel expenses, would generally be treated as variable. Because the usual preconditions appear to be absent in the

¹⁸ For a review of the modern theoretical literature on predatory pricing, see J. Tirole, *The Theory of Industrial Organization*, chs. 8 & 9 (Cambridge: MIT Press 1988).

¹⁹ U.S. Gen. Acct. Off., *Trucking Regulation: Price Competition and Market Structure in the Trucking Industry*, 8-10 (Feb. 1987). The positions of the ICC, MCRSC, and DOJ are discussed in the GAO report. The GAO report discusses entry barriers in LTL trucking, the most significant of which might be sunk costs involved in providing terminals, financial capital requirements for effective entry, and impediments to entry imposed by state regulation, and concludes that these are "moderate." *Id.* at 18; Diane S. Owen, *supra* note 7, at 13.

trucking industry, removing rate and entry regulation would be unlikely to lead to destructive competition.²⁰

3. Safety.

Next, it is argued that economic regulation must be retained to maintain safety standards. It is feared that carriers facing stiff competition in rates or service would neglect maintenance, postpone replacing vehicles, and overwork drivers. (Because safety is a dimension of service quality, this concern could be an element of the "destructive competition" argument too.)

Studies of the safety effects of removing economic regulation are, at best, inconclusive; figures are cited apparently showing that deregulation led to more older trucks on the road and more reported accidents involving truckers, but other data can be cited showing that deregulation has not compromised safety.²¹ For example, a California legislative study was "unable to prove the hypothesis that CPUC [California Public Utilities Commission] economic regulation of trucking is significantly and positively linked to improved highway safety."²² At the federal level, a recent report by the staff of the ICC concluded that economic deregulation did not compromise safety, citing, among other things, 1990 DOT figures showing that the fatal accident rate per million miles driven by large combination trucks had fallen by one third since the 1978-79 period.²³

There is no necessary relationship between economic regulation and safety. Regulating rates and entry would not ensure that profits are spent on safe operations, nor would removing economic regulation necessarily reduce expenditures on

²⁰ See A. Kahn, 2 Economics of Regulation 178 (1971), in which the author states, "[D]oes trucking have the economic attributes of an industry subject to destructive competition? It would be difficult to find one less qualified."

²¹ Diane S. Owen, supra note 7, at 18-21; Weinstein & Gross, Transportation and Economic Development: The Case for Reform of Trucking Regulation in Texas, Center for Enterprising, Southern Methodist University, Feb. 1987, at 50-51.

²² California Public Utilities Commission & California Highway Patrol, AB 2678 Final Report on Truck Safety, Joint Legislative Report, at 3 (Nov. 1987).

²³ Office of Economics of the ICC, "The U.S. Motor Carrier Industry Long After Deregulation", March 1992, at 60-67.

safety. Addressing safety concerns directly, through enforcement of safety regulations, may promote safety more effectively than addressing those concerns indirectly through economic regulation.

4. Preserving service to small communities.

Finally, maintaining economic regulation is sometimes said to be required to preserve service to small communities. According to this argument, motor carriers will find it unprofitable to serve small markets, unless they are guaranteed, by rate and entry regulation, a fair return on investment. The argument presumes that serving small markets is inherently so unprofitable that carriers must subsidize that service through high profits earned in other, larger markets, which can only be guaranteed by protecting them from competition there.

But studies of the actual effects of deregulation have not revealed any significant deterioration in service to small communities. Surveys by the Department of Transportation found that a large majority of shippers in rural areas reported either no change, or an improvement, in the quality of service after interstate trucking was partially deregulated.²⁴ A 1982 Interstate Commerce Commission study found that federal deregulation had resulted in lower prices, less damage, and often more service options for shippers in small communities.²⁵ In a survey following deregulation of intrastate trucking in Florida, 65 percent of respondents in small communities expressed a preference for deregulation, while 30 percent expressed no preference.²⁶ And a study of the Texas trucking market concluded that small Texas communities would not lose service in a deregulated environment because common carriers have found such service to be profitable.²⁷ Thus experience does not confirm

²⁴ See U.S. Dept. of Transportation, Third Follow-Up Study of Shipper-Receiver Mode Choice in Selected Rural Communities, 1982-3 (1986); Fourth Follow-Up Study of Shipper-Receiver Mode Choice in Selected Rural Communities, 1984-5 (1986).

²⁵ Interstate Commerce Commission, Small Community Service Study (1982).

²⁶ Beilock & Freeman, Motor Carrier Deregulation in Florida, 14 Growth and Change 31-41 (1983).

²⁷ Pustay, Interstate Motor Carrier Regulation in Texas, Logistics and Transportation Review, vol. 19, no. 2 (1984), quoted in Weinstein & Gross, supra note 20, at 49. The study found willingness to serve small communities evidenced by

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the prediction that deregulation will impair service to small communities.

B. Effects of regulation.

A comprehensive study of the impact of state trucking regulation by the Department of Transportation found that state trucking regulations impose annual costs on the economy, in the form of higher trucking rates, of approximately \$2.8 billion (1988 dollars).²⁸ This study allows some comparison between states that have retained economic regulation and states that have relaxed or eliminated regulation of rate levels and made it easier for new companies to enter and compete. The study estimates the costs of state-level trucking regulations by comparing deregulated interstate rates with regulated intrastate rates. The study's methods estimated costs for many states individually, but not for Michigan, which was included in a group with Wisconsin, Indiana, and Ohio; for those four together, the annual economic costs of trucking regulation were estimated to be \$171 million.

Several states have reduced or eliminated economic regulation. Their experiences attest to the benefits to consumers that can follow. California, for example, experimented with partial economic deregulation of trucking from 1980 to 1986. During that time entry was virtually free, and rates, though regulated, were flexible.²⁹ The result was lower rates with no loss in service.³⁰ In New Jersey, a study concluded that

²⁷(...continued)
individual entry petitions for common carrier operating authority and a resale market for existing authority, suggesting that carriers would provide the service voluntarily, "even in the absence of regulation."

²⁸ W. Bruce Allen et al., *The Impact of State Economic Regulation of Motor Carriage on Intrastate and Interstate Commerce*, U.S. Dept. of Transportation, May 1990, at 294.

²⁹ Carriers were permitted to change rates, after a short waiting period, without having to show the change was cost-justified. There was no waiting period to match a competitor's rate.

³⁰ Simmerson, *Analysis of The Impact of Deregulation of the General Freight Trucking Industry*, at 20-21, Cal. Pub. Util. Comm'n, Investigation No. 84-05-048 (Aug. 10, 1984) (based upon survey by CPUC of 239 general freight carriers and survey by
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deregulation worked well.³¹ Shippers were satisfied with the available service, rates were about ten percent lower than they would have been under regulation, and intrastate carriers prospered.³²

In Florida, deregulation came so quickly that truckers and shippers had no opportunity to prepare. Nonetheless, one study found that, a year after deregulation, 88 percent of shippers supported it, with most finding that service levels remained constant and that rate fluctuations had posed no difficulties; indeed, even 49 percent of truckers supported deregulation.³³ A DOT study³⁴ found that 90 percent of Florida shippers believed that post-deregulation service was at least as good as service before deregulation and 30 percent reported improvements. A majority of these shippers (58 percent) perceived that deregulation had held rates down. And an economic study found that deregulation led to a 15 percent average reduction in motor carrier rates.³⁵

³⁰ (...continued)

California State University, Hayward, Institute of Research & Business Development of 596 shippers.)

³¹ Allen, Lonergan & Plane, Examination of the Unregulated Trucking Experience in New Jersey, U.S. Dept. of Transportation (July 1979).

³² Allen, Statement Before the National Commission for the Review of Anti-Trust Laws and Procedures (January 22, 1979).

³³ Freeman, A Survey of Motor Carrier Deregulation in Florida: One Year's Experience, ICC Practitioners Journal, at 51 (Nov.-Dec. 1982).

³⁴ Statement of Matthew V. Scocozza, Assistant Secretary for Policy and International Affairs, U.S. Dept. of Transportation, Before the Subcommittee on Surface Transportation, U.S. House of Representatives (June 20, 1984).

³⁵ Blair, Kaserman & McClave, Motor Carrier Deregulation: The Florida Experiment, 68 Rev. Econ. & Stat. 159 (1986). A related finding comes from Maryland, for a period (1973-74) when interstate household goods movers were regulated but intrastate movers were not. The regulated household goods carriers charged 27 percent to 67 percent more than unregulated carriers for comparable moves. Breen, Regulation and Household Moving Costs, Regulation, 53 (Sept.-Oct. 1978). At the federal level, see also J.S. Ying and T.E. Keeler, "Pricing in a Deregulated Environment:
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In sum, deregulation of intrastate trucking appears not to have had the adverse impact on competition or consumers that many critics of deregulation have predicted. In fact, deregulation has fostered lower shipping rates and improved service. Lower shipping rates and the reduced costs from more efficient service would, in many instances, be passed through to consumers in lower final goods prices.³⁶

III. Rules proposed by the Michigan Public Service Commission.

The rules proposed would affect new entry by changing several aspects of the applications for operating authority and the resulting certificates and permits. The MPSC is required by statute to issue a certificate or permit authorizing motor carrier service if the application meets several requirements.³⁷

³⁵(...continued)

The Motor Carrier Experience," RAND Journal of Economics, Summer 1991, at 264-273. These authors conclude that "deregulation has reduced rates from the very beginning and that the effect has grown over time. By 1983 reductions are conservatively in the 15-20 percent range and in the 25-35 percent range by 1985."

³⁶ A recent study of federal deregulation of surface freight transportation (trucking and railroads) estimated that deregulation benefits shippers, and ultimately consumers, approximately \$20 billion annually through reduced rates and improved service. The net welfare gain to the economy as a whole is somewhat less--\$16 billion annually--because deregulation reduces the profits of some carriers and reduces the wages of some workers. Still, the overwhelming conclusion is that deregulation provides substantial, ongoing benefits. See Winston et al. *supra* note 12.

³⁷ Obtaining a certificate authorizing motor common carrier service requires a finding of fitness and a finding that the proposed service "will serve a useful public purpose." But the certificate will not be issued if a protestant, who must be another carrier performing the same service (or offering or applying to perform it), demonstrates that the authority "would create excess service by endangering the ability of the present carriers to provide adequate, economical, safe, and efficient service." Diversion of revenue or traffic from an existing carrier is not, in itself, to be considered inconsistent with the public interest. Mich. Comp. L. §476.5. In making its determination, the MPSC is guided by the twelve elements of the statutory transportation policy. These include, among other
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The process and standards are similar to those required by federal law for interstate authority.³⁸ The statute requires that the application contain certain information about the applicant, but does not specify how much detail must be included about the proposed service. The proposed rules concern that degree of detail, both in the application and in the resulting authority.

The MPSC's goals are to lessen regulatory burdens, improve safety, and increase productivity, efficiency, and competition. One means that the MPSC evidently anticipates will accomplish these goals is curtailing devices that may have been used to prevent competition from new entrants. Originally, the MPSC suggested that applicants be required to request relatively general operating authorities, specifying a few generic commodity classifications and broad territories. But the MPSC now fears that, under this procedure, entry might actually be hampered, because an application for broad authority could stimulate many protests, which could delay or deter entry.

Instead, the MPSC now proposes that applications and authorities be relatively specific. Applications, and thus authorities, would include a description of the commodities to be

³⁷(...continued)

things, promoting competitive and efficient service, including a variety of options to meet changing and various demands, and also providing an opportunity for efficiently run motor carriers to earn adequate profits and maintaining service to small communities and small shippers. Mich. Comp. L. §475.2. The criteria and procedures for obtaining a permit authorizing contract carrier service are similar. Mich. Comp. L. §§477.2, 477.5a.

³⁸ Federal trucking regulation has been partially relaxed. The Interstate Commerce Commission ("ICC") is required to issue an interstate motor common carrier certificate if the applicant is able to provide the service, to comply with ICC law, and, on the basis of evidence offered in support of issuing the certificate, if the proposed service would serve a useful public purpose, unless evidence offered against issuance demonstrates that issuing the certificate is inconsistent with the public convenience and necessity. 49 U.S.C. § 10922 (b) (1). Thus, the burden of proof is placed upon opponents of a proposed service. In fact, federal law prohibits the ICC from finding "the diversion of revenue or traffic from an existing carrier to be in and of itself inconsistent with the public convenience and necessity." 49 U.S.C. § 10922 (b) (2). We understand that in practice federal certificates are rarely denied.

carried and of the complete geographic area to be served (or, for contract carriers, the identity of each shipper). But it also proposes to retain measures to prevent using the protest procedures for anticompetitive purposes. Although certificate and permit authority would be specific, in terms of commodities and geographic areas (or, for contract carriers, shippers), no further restrictions would be permitted. Thus, certificates or permits could not limit the size of vehicle or shipment or time of service, nor could they contain limitations aimed at particular plants or cities. Protests anticipating anticompetitive compromises would be curbed, both by prohibiting restrictions such as these and by penalizing frivolous protests.

In other comments on motor carrier regulation, the staff of the FTC has supported using relatively broad and general grants of operating authority, such as the MPSC had proposed originally.³⁹ Restricting the commodities and territories for which authorized carriers can operate can inhibit them from responding flexibly to unexpected shifts in shippers' needs. Before 1980, the Interstate Commerce Commission required interstate truckers to obtain route-specific and commodity-specific certificates, thus imposing a regulatory structure similar to the MPSC's present proposal. At the interstate level, these restrictive entry requirements were loosened by the Motor Carrier Act of 1980, and studies suggest that shippers and consumers have benefited from lower shipping rates and more flexible service offerings.⁴⁰ Studies of state-level deregulatory changes have yielded similar results.⁴¹ In an unregulated market, public demand for a particular service is shown through consumers' willingness to pay for the service, and producers are rewarded with higher sales and greater profits when they meet these demands efficiently. Motor carriers could meet them better if they were relatively free to respond in particular circumstances. We believe that consumers and shippers benefit most when entry restrictions are minimal, that is, when operating authorities are broad and general, and thus we believe that the approach in the MPSC's original proposal would benefit consumers and shippers substantially.

The MPSC's concern that broad and general authorities could spawn a large number of protests confirms the importance of

³⁹ See comment to Illinois Commerce Commission (March 18, 1991).

⁴⁰ See, e.g., Diane S. Owen supra note 7, and Winston et al. supra note 12.

⁴¹ See the discussion in section II.B. supra.

curtailing anticompetitive protests against applications from prospective entrants. When protests are not so curtailed, incumbent carriers may use their right to protest to benefit themselves, at the expense of shippers and consumers, by preventing or delaying procompetitive entry. It is instructive to compare the MPSC's concerns to experience at the federal level, which suggests that curtailing incumbent protests is central to stimulating procompetitive entry. In the late 1970s, the ICC granted increasing numbers of applications for new authority, but did not curtail incumbent carriers' ability to protest new applicants. Rather, to diminish the number of protests, the ICC actually encouraged incumbent carriers to work out acceptable terms with prospective entrants before they applied for new authority. The result was often to delay or forestall entry and to reduce its competitive consequences.⁴² The 1980 MCA and subsequent ICC decisions have now placed a heavy burden on incumbents who protest against a new entrant's operating authority. The significant gains to shippers and consumers following the MCA show the benefits of the post-1980 approach. This experience suggests that the MPSC should give serious consideration to the broad-authorities approach it proposed originally, coupled with curtailing inappropriate protests.

In comparing the existing regulatory structure, the MPSC's original proposal, and the MPSC's current proposal, we believe the MPSC's original proposal to be superior. Still, we do not recommend against the current proposal because, relative to the

⁴² According to a report prepared for the Department of Transportation,

The overall conclusion is that although a large number of new authorities are being granted under the new ICC entry procedures, their competitive impact is negligible. The authorized services are narrowly restricted in several respects, such as territorial scope, commodities, vehicles, interlining with other modes of shipment, and other operating restrictions. Designed to avert or eliminate possible protest, these operating restrictions result in new entry which creates a minimal increase in competition with existing carriers, and a minimal increase in the choice among carriers and types of service available to shippers.

Department of Transportation Contract No. DOT-OS-80047, "New Entry into the Regulated Motor Carrier Industry," prepared for DOT by Sobotka & Co., Inc. and Mandex, Inc. (December 19, 1979), pp. 5-6.

status quo, it would increase the prospects for procompetitive entry. Further, it is possible that, in Michigan's particular statutory and regulatory setting, a combination of specific authorities and limited protests may result in greater carrier flexibility and more competitive entry than the alternative of general authorities facing constant protests. Whether that proves to be true will depend in part on whether the measures to curb anticompetitive protest activity accomplish that goal. Under the MPSC's current proposal, authorities would be geographically limited and commodity specific, but they could not include some of the kinds of operating restrictions that the ICC once encouraged in order to minimize protests. If protests against applications for limited authorities lead to the same kinds of delays and procedural complications as they would against broader ones, the MPSC might wish to consider returning to its original proposal.⁴³

IV. Conclusion.

The trucking industry has been partially deregulated at the federal level and in a number of states. Arguments typically advanced against deregulation appear largely unfounded. Instead, deregulation has brought lower prices and in many instances better quality service to shippers. In particular, relaxing regulations that impede market entry and that limit rate flexibility has benefited consumers and competition.

The rules that have been proposed for adoption by the MPSC may make entry into the intrastate trucking industry in Michigan easier. We agree that consumers and competition in Michigan would be best served if obstacles to entry could be reduced.

We appreciate this opportunity to comment.

⁴³ Even if protests against applications for limited authorities prove to be relatively rare, the MPSC might still wish to consider granting broader authorities, to the extent that the rarity of protests indicates that the regulations designed to curb anticompetitive protests were effective.