

Indeed, in the preamble of the congressional consent to the compact it is stated "Divided regulatory responsibility is not conducive to the development of an adequate system of mass transit for the entire metropolitan area, which is in fact a single integrated, urban community."

Nor would the transportation thus exempted be a minor exemption. It is perfectly obvious that the transportation encompassed within the language of section 5 could become a very substantial factor in the overall transportation picture in this area. In the litigation concerning the Mall shuttle, it was established that the Mall currently is visited by about 12 million people annually—and the Congressman who just preceded me stated Washington will be visited this year by about 15 million visitors, and we know that the number will increase substantially in future years.

I do not know how many visitors annually are projected for the Visitors Center.

I should make it very clear at this point that the Commission is not objecting to the kind of transportation envisaged by section 5. Rather, it is asserting only that such transportation should be subject to the same jurisdiction as all other transportation in the metropolitan area. Nor do we assert exclusive jurisdiction. We recognize, as we recognized in the litigation concerning the Mall shuttle, that the Secretary of the Interior has statutory power to enter into contracts with concessionaires and to impose contractual obligations upon such concessionaires. It is our position only that such concessionaires are, and should continue to be, also subject to the obligations imposed upon them by the compact.

Of course, if the transportation is performed by the Federal Government itself, it would be exempt from the jurisdiction of the Commission by reason of the express provisions of the compact to which I previously referred. If this is what section 5 of the bill is intended to authorize, we respectfully suggest that the language should be clarified to make this explicit.

In summary, we have sought to express our views here because of the possibility that, upon enactment of section 5 of the bills before you, it would be argued that Congress had overthrown the holding of the court of appeals in the *Mall shuttle* case as to the Commission's jurisdiction over concessionaires of the Interior Department. It is our belief that if this is the purpose of the legislation, it would not accomplish that result since unilateral amendment of the compact is impossible. It is further our belief that it would be unwise to seek to accomplish that result.

Accordingly, we would hope that the language of section 5 would be deleted. Alternatively, if you feel that it is appropriate to include in the legislation some language authorizing transportation by concessionaires on the Mall, and between the Mall and the Visitors Center, we would hope that you leave no doubt that such transportation is subject to the provisions of the compact.

Thank you very much, Mr. Chairman.

Mr. GRAY. Well, thank you, Mr. Avery, for a very clear statement.

As you know and as you point out, this is a complex problem and it was not the intent of the Chair certainly to circumvent the powers of the Commission in introducing this legislation containing section 5.