

finding that it was not a *bona fide* cooperative as defined by the Agricultural Marketing Act. In *Cache Valley*, however, we discontinued the proceeding upon finding that the Cache Valley Dairy Cooperative was a *bona fide* cooperative and engaged in non-member transportation only to the extent being "incidental and necessary" to its primary function. In this case, it appeared that the blackhaul reveues derived from non-member traffic in such commodities as beer, steel, lumber and rubber products averaged about one-half of the cost of the association's outbound hauling.

Although the *Northwest* decision failed to indicate at what point, short of the 50 percent limitation, a cooperative's transportation operation would cease to be "incidental and necessary" to its primary business function as a farm cooperative, it is expected that the transportation activities of these cooperatives will include an increasing amount of non-farm traffic for non-members and still be exempt from Commission regulation so long as such transportation does not approach 50 percent of the association's total transportation activities. Moreover, since under the Agricultural Marketing Act, all business transacted between a cooperative and a Federal Agency is disregarded in computing the volume of member and non-member business handled by a cooperative association, any percentage of business limitation is, however, essentially meaningless under the present law.

Since the Commission has no regulatory authority over the transportation activities of these associations, we lack the power to require reports from them which would indicate the amount and type of non-farm related traffic now being handled by exempt cooperatives for non-members. Although some limited data compiled by the Department of Agriculture in 1963 and 1964 before the *Northwest* decision indicated that only a small amount of traffic fell into this category, it is reasonable to assume that the Court of Appeals decision has stimulated expansion in this area, since whatever doubt may have existed over the legality of these activities has been removed. A clear indication of this is the decision of the Department of Defense to make use of exempt cooperative trucking for the handling of military shipments whenever it appears to be in the best interest of the government to do so.

Even though the exact amount of traffic handled by these associations cannot be precisely documented, it is clear that trucking operations performed by them for nonmembers possess certain economic characteristics which, when compared with the economic characteristics of the Nation's common carriers, rail and motor, make the traffic of the latter carrier's extremely susceptible to diversion. Since by law and in fact, cooperative associations are not primarily in the transportation business, it is not vital that these activities generate sufficient revenues from non-members to cover the full cost of operations plus a sufficient return on investment to hold and attract new capital. Indeed, it is conceded that the only need for engaging in these activities for non-members is to provide "backhaul" revenue in order to make the cooperatives' principal transportation activities—that of carrying their own members' traffic—economically viable at all. In addition, since these exempt activities do not constitute common carriage, these associations are free to pick and choose what traffic they wish to handle and on what terms they wish to handle it without regard to published tariff rates, adequacy of service, or any of the others economic regulatory duties imposed by law on common carriers. So constituted, it is readily apparent that the exemption afforded these associations by section 203(b)(5), as judicially interpreted, provides a potent economic weapon against the Nation's common carriers which form the backbone of our transportation system.

It is argued that, since the amount of non-farm traffic carried for non-members by these associations is so small, this or similar amendments to section 203(b)(5) designed to confine this exemption to reasonable limits are unnecessary. We do not agree with this argument. In our judgement, the *Northwest* decision has served to stimulate the transportation of non-farm traffic for non-members by these associations. In this regard, it has recently been brought to our attention that in at least one instance, an allegedly exempt cooperative is actively soliciting non-farm related traffic from commercial shippers who would ordinarily be making use of regulated common carriers. For some time, we have been concerned about the adequacy of common carrier service, particularly on small shipments. At the same time, we recognize that the carriers cannot be expected to fully carry out their common carrier responsibilities if much of their profitable revenue freight is being subjected to diversion by exempt motor carrier operations. It should not be necessary for common carriers to suffer traffic di-