

version to these associations in large amounts before remedial action is required. It is also stated that the effect of any legislation such as S. 752 is to place a higher value on the preservation of the business of regulated common carriers than on the prosperity of the Nation's agricultural producers, since any limitation on the exemption will allegedly render the transportation activities of these associations unprofitable and thus force their discontinuance with resulting higher transportation costs on the producers of agricultural products.

In our opinion, favorable consideration of this legislation does not require choosing between the unquestioned national policy of preserving and enhancing the agricultural sector of our economy on the one hand, and preserving and enhancing our system of common carriage, as contemplated by the National Transportation Policy, on the other.

It should be pointed out that the language used in this bill corresponds to that defining the primary functions of an exempt agricultural cooperative in the Agricultural Marketing Act and would re-establish what we believe to be the intent of Congress in enacting section 203(b) (5) as indicated by the portions of the Congressional debate on the exemption in 1935 which are attached as an appendix to my prepared statement. In administering this exemption prior to the *Northwest* decision, the Commission is not aware of any instance in which its decisions created serious economic harm to the transportation activities of these associations.

In addition, the effect of the *Northwest* decision must be viewed in light of the basic statutory scheme of regulation in part II of the Act as it pertains to the motor carrier activities of those engaged in agricultural activities. For example, section 203(b) (4a) exempts from regulation the transportation by a farmer of his own products or supplies. The problem raised by the *Northwest* decision, however, is that it permits farmers to band together to perform transportation that each farmer could not lawfully perform, i.e., a group of farmers (cooperative) may legally backhaul any traffic that will reduce their over-all cost of transportation, but under the statute a single farmer may not avail himself of such non-farm related back hauls solely to make his outbound transportation more economical and efficient.

Similarly, section 203(b) (6) exempts all agricultural commodities by any motor carrier from regulation but does not permit the backhauling of non-agricultural commodities in the interest of efficient or economical transportation except by regulated carriers holding duly issued certificates and permits.

Lastly, in order to make the activities of an agricultural cooperative more economical and efficient, the vehicles used in such operations have been given specific exemption in section 204(f) of the Act from this Commission's rules against trip leasing. The total statutory scheme of regulation, then, plainly reveals that there is no need for the broad and generous construction made by the Court of Appeals in the *Northwest* case. Considered in this light, we believe that the rather moderate amendment to section 203(b) (5) proposed by S. 752 will not result in the serious economic consequences alleged by past opponents of this measure. Nothing in this bill restricts the freedom of these associations to transport any commodities for their members while the limitation we are proposing for non-member traffic will, in our opinion, confine the exemption to reasonable bounds without at the same time inhibiting the economical use of a cooperative's transportation facility.

For these reasons, we urge favorable consideration of this bill. This concludes my testimony, Mr. Chairman.

APPENDIX

EXCERPTS FROM LEGISLATIVE HISTORY OF SECTION 203(b) (5)

When Congressman Jones offered the amendment to exempt agricultural co-ops from economic regulation, he stated:

"I want to assure the members of the committee as well as the Members of the House that there is no desire on the part of those who are interested in this amendment to open the floodgates. . . ." (79 Cong. Rec. 12220 (1935))

Congressman Terry, member of the House Interstate and Foreign Commerce Committee, made these statements during the consideration of the amendment:

"The Committee feels that to the extent the cooperatives are carrying and trucking their own property that they should be exempt, and they are exempt under the terms of the exception on page 9; that is, the casual, occasional, or