

that section, Congress confirmed the right of management to make initial decision that a particular passenger train should be discontinued. The equivalent of a veto power, however, was placed in the hands of the Commission, so that after investigation and upon proper finding, the Commission can direct management to continue to operate the train for a period of one year. After the expiration of that year the jurisdiction of the state commissions again attaches to any discontinuance of the train, subject only to preemption by again following the provisions of Section 13a(1). The present regulatory scheme enacted by the Congress has worked well and no justification exists for the radical departure from that scheme that would be made by H.R. 18212.

H.R. 18212 contains a special provision that, for two years following its enactment, would apply to the discontinuance of the last passenger train operated in either direction between certain points.

First, the jurisdiction of state regulatory commissions would be preempted for two years and the Interstate Commerce Commission would be vested with exclusive jurisdiction over the discontinuance of such trains.

Second, the Commission would be required to order the continued operation of the train for one year from the date of its order unless it found that public convenience and necessity did not require its continuance or that continuance of the train would impair the ability of the carrier to meet its common carrier responsibilities, considering the over-all financial condition of the carrier or carriers in question.

Third, the Commission could attach to its order requiring continued operation such conditions as it may presume to be just and reasonable to assure the preservation of a reasonable level of service for the train required to be continued.

The end result of these provisions with respect to last train operations would be to make it more difficult to remove such unneeded and losing train, to authorize the Commission to impose upon the carrier what might prove to be burdensome conditions and to require the Commission to order the train continued in operation for one year rather than leaving the duration of operation to the discretion of the Commission based upon the facts and circumstances of the case. We do not think that the fact that the train in question is the last train in any way justifies the imposition of these burdens of law. On the contrary, we agree with the statement of the House Committee in 1958 that where the passenger service cannot be made to pay its own way because of lack of patronage at reasonable rates discontinuance seems called for and we think that such should be the case whether or not the train that cannot be made to pay its own way because of lack of patronage at reasonable rates is or is not the last train. If the train cannot be made to pay its own way because of lack of patronage at reasonable rates there should be no sanctity in the last train situation.

H.R. 18212, by its amendment of Section 13a(2) would extend the present four-months provision to seven months. In other words, the state authority would be granted an additional three months before the carrier could file notice with the Interstate Commerce Commission. No case has been presented to you for this provision and it simply represents further delay in the elimination of unneeded and losing passenger train operations.

Moreover, H.R. 18212 would provide that, upon the filing with the Interstate Commerce Commission of a petition under Section 13a(2) the discontinuance of such passenger train would be subject to all of the provisions of Section 13a(1). We have extreme difficulty in interpreting this provision of H.R. 18212 since a petition filed under Section 13a(2) does not in any way lend itself to handling under the provisions of Section 13a(1). Nor is there any necessity for the provision of Paragraph (1) to apply to such proceeding for the reason that the carrier cannot, under Section 13a(2), discontinue the involved train until the Commission has disposed of the case. However, if the purpose of this provision of H.R. 18212 is to place a time limitation under which the Commission must act on petitions filed under Section 13a(2), we would have no fundamental objection. I should point out that if the Interstate Commerce Commission's jurisdiction over the last train is to be exclusive, as I have stated, there would be no proceedings before that Commission with respect to such train under Section 13a(2).

H.R. 18212 will, as would have H.R. 7004, add a new Section 13a(3), providing that any person adversely affected or aggrieved by an order of the Commission entered after hearing pursuant to subparagraphs (1) or (2) of that Section might bring suit to obtain judicial review. Under such a provision it can be safely assumed that in every instance where a train would be discontinued under this section of the Interstate Commerce Act, and notwithstanding the unneeded and