

the date of service of the order complained of, the court, for good cause shown, may extend the time for filing a petition to review such order for an additional period not exceeding 60 days."

The Commission has no objection to this amendment.

Second, S. 2687 attempts to deal with the problem of appeals being taken in different courts over a single Commission order. As I have previously indicated, the venue provisions of S. 2687, like existing law, permit an appeal to be taken in any court wherein any of the parties resides or has his principal office.

Pursuant to this provision, any aggrieved party may select any court meeting these requirements. Although this poses no problem in the majority of cases, in large and complex proceedings, such as a large railroad merger, this freedom in choosing a forum can, and has, created serious problems because of the bringing of suits in different courts over a single Commission order.

For example, in the recently concluded litigation arising out of the Penn-Central merger, the Commission was faced with challenges to its order in three different courts. (*Penn-Central Merger Cases*, 389 U.S. 486 (1968) affirming *Erie-Lackawanna R. Co. v. U.S. et al*, 279 F. Supp. 964 (S.D. N.Y.) 1967.) In addition to the District Court for the Southern District of New York, appeals were docketed in the Eastern District of Virginia, and the Middle District of Pennsylvania. Similarly, in the so-called Northern Lines merger, challenges were brought in the district courts in Washington, New York, and the District of Columbia.

While the Commission has usually been successful in consolidating multiple proceedings in one court by persuading the other courts to stay their proceedings, the process involved is wasteful and time-consuming for all concerned.

Providing for judicial review in the courts of appeals would largely put an end to this problem. Upon the filing of a petition, any subsequent suits would, by virtue of 28 U.S.C. 2112, which governs the procedure in the court of appeals in appeals from administrative agencies, be consolidated in the court in which the first suit is filed. This change in the present law is clearly desirable.

This bill also changes existing case law with regard to the submission of the complete record of the proceeding before the Commission to a reviewing court. Under existing practice, the person seeking review has the burden of filing a certified copy of the record with the reviewing court. Under S. 2687 the Commission would be required to file the record with the clerk of the court of appeals in which the proceeding is pending.

Upon the commencement of a review proceeding, the Commission would be required to file with the court the original or a certified copy of the record of the proceedings before the Commission, except that the court may permit the filing of a certified list of the contents of the record in lieu of the record itself, a practice now widely followed and expected to be made uniform.

Under our present review procedure, the plaintiff bears the burden of filing with the three-judge court a certified copy of the record before the Commission. Although this change may impose some additional burden on the Commission, it will bring its practice into line with present procedures for the review of all other Federal agency orders.