

jurisdiction since the year 1913) to the U.S. court of appeals; ultimate review by the U.S. Supreme Court would be changed from the present direct appeal from the three-judge district courts, in favor of a petition for certiorari to the high court. However, as part of the transfer of judicial review jurisdiction, S. 2687 contains many new provisions which would sharply curtail the right to effective judicial review.

The proposed legislation is in the form of an amendment to section 17 of the Interstate Commerce Act, plus the repeal of sections 2321-25, inclusive, of Title 28 of the United States Code. The legislation is sponsored by the Commission's Office of General Counsel.

Our opposition to the proposed legislation, in its present form arises from the participation of the City of Chicago in numerous passenger train discontinuance proceedings under section 13a(1) of the Interstate Commerce Act, 49 U.S.C. 13a(1).¹ Our objections run to the fact that S. 2687 would cut off important substantive and procedural rights presently available to City of Chicago, and to other communities and to the public generally, in seeking effective judicial review of unlawful agency action in approving a given passenger train discontinuance. Enactment of S. 2687 would virtually preclude judicial review, both from the standpoint of effectiveness as well as substantially increasing the cost of filing law suits. We take no position as to whether jurisdiction to review Commission decisions ultimately should be vested in the court of appeals. We do believe, however, that substantial amendments are necessary and that no urgency exists to rush S. 2687 through the Congress at this time.

Chicago is the leading railroad center of the country. The railroad industry plays an important role in the economy of the area. Chicago is the leading interchange point for passengers traveling over more than one railroad for their journey. As the nation's leading convention city, Chicago is anxious to have adequate passenger transportation facilities available by all modes of transportation so as to provide ready access to and from all parts of the country. In accordance with assuring this necessary passenger service, City of Chicago, through its corporation counsel, reviews all railroad passenger discontinuance proceedings instituted at the Commission which might affect Chicago and, where the facts warrant, participates in the proceeding.

THE PRESENT PROCEDURE FOR JUDICIAL REVIEW OF PASSENGER TRAIN DISCONTINUANCES

The present procedure for judicial review of railroad passenger train discontinuances can best be described by a recent illustration. City of Chicago was a participant to the Commission proceeding involving the proposed discontinuance of the "Hummingbird" trains operated by Louisville & Nashville Railroad Company ("L&N").² The "Hummingbird" formerly operated with the "Georgian" trains, the latter already being the subject of judicial review.³ Discontinuance of the "Hummingbird" was placed under investigation by the Commission on April 24, 1968 and operation required pending hearing and decision in the investigation, but not for a longer period than the four month period provided by statute. The four-month expiration date was September 7, 1968.

On Friday, September 6, at 9:30 AM, Division 3 of the Commission released its decision and report finding that continued operation of the "Hummingbird" is not required by public convenience and necessity and would unduly burden interstate commerce. It is the practice of the agency to so release its decision on the final day before expiration of the four month statutory period without prior notice to the protesting parties.

Upon review of the report, it was concluded to seek immediate court action. This "review" consisted of telephone conversations because, of course, copies of the 16-page report with 4 pages of attached appendices were available only in Washington, D.C.

Emergency court action was required, because the discontinuance could not otherwise be restrained since it would become effective the next day (Saturday). An attorney was dispatched from Washington, D.C. to Chicago by air with copies of the Commission's decision—the complaint had to be drawn aloft. Simultane-

¹ Enacted as part of Transportation Act of 1958, 72 Stat. 571.

² Finance Docket No. 25047, Louisville & Nashville Railroad Company Discontinuance of Trains Nos. 6 and 7 Between New Orleans, La., and Cincinnati, Ohio.

³ No. 68 C 956, City of Chicago v. United States, N.D. Ill. E.D.