ton, D.C. simply would not allow the Commission's report to reach distant cities in time. Moreover, the Commission on occasion has not been able to release its report authorizing discontinuance prior to the expiration date provided by the train-off statute. For example, in F.D. No. 2400, *Boston and Maine Corp. Discontinuance of Trains Nos. 75, 21, 20 and 76 Between Springfield, Mass., and White River Junction, Vt.*, 328 I.C.C. 224 (1966), the Commission merely released an order on July 6, 1966. The report was not served until July 25, 1966.[7] A telephone call to Washington, D.C., to inquire as to the order was all the District Court at Montpelier, Vt. had to go on in issuing a temporary restraining order on July 6, 1966, to prevent discontinuance the very next day. *Public Service Board of State of Vermont* v. *United States* (C.A. No. 4611, D. Vt.)

It may very will be that a city as large as Chicago will at sometime need the telephone technique which S. 2687 would bar by statute.

3. *Intervention.*—S. 2687 would restrict the present right of communities to intervene in judicial review proceedings. At present section 2323 of Title 28, which would be repealed, permits any party in interest to the proceeding before the Commission to have an absolute and unqualified right to intervene in court. In repealing section 2323, the proposed section 17(10)(d) of the Interstate Commerce Act would qualify this absolute right of intervention by adding, "whose interests will be affected if an order of the Commission is or is not enjoined. . . ." This may create harassment by the Commission or other parties.[8]

4. *Temporary restraining order.*—The new section 17(10)(f) would drastically revise and sharply curtail the present right of communities to seek a restraining order in obtaining effective judicial review in passenger discontinuance cases.

A. *Security.*—The public parties to judicial review of train discontinuances presently are not required to post security because Rule 65(e) of the Federal Rules of Civil Procedure expressly exempts, by its terms, actions brought in three-judge district courts under section 2284 of Title 28. The posting of security would effectively destroy judicial review in discontinuance cases. The two district judges at Chicago who have thus far issued temporary restraining orders in train-off cases have both declined to require posting of security. See also *City of Williamsport* v. *United States*, 237 F. Supp. 899, 903–4 (M.D. Pa. 1967). In removing I.C.C. orders from section 2284, there is a serious question as to whether the exemption from security will continue to apply.

B. *Hearing.*—S. 2687 would impose a statutory requirement that a hearing be held in order to secure a temporary restraining order, whereas a hearing is now discretionary with the district court judge. The statutory requirement for a hearing, which would seem to imply adequate notice to the adversary to attend the hearing, would be impracticable and impossible in many situations. The Commission's custom of releasing its discontinuance orders at the latest possible time, will simply prohibit a hearing in the conventional sense.

C. *Two judges.*—S. 2687 would require that at least two judges concur in the issuance of a temporary restraining order, whereas at present only one district judge is required. It is not always easy to reach one judge to issue out a restraining order. The requirement that a hearing be held before two judges would be especially burdensome, if possible at all. I wish to impress upon the Committee that we have no advance warning as to when the Commission will issue a discontinuance report. The hour of 3 PM on Fridays is a favorite time for the Commission in passenger discontinuance cases.

D. *Terms of restraining order.*—S. 2687 would transfer section 2324 of Title 28 over into 49 U.S.C. 17(10)(f), but would tighten up the requirement for a restraining order by addition of the word "discretion". Further, the duration of the restraining order would be restricted to a maximum of 60 days, whereas no maximum period is now specified. The proposed restriction would impair judicial review of train-off cases since the Commission is not ordinarily expected to issue a final order within 60 days from the initial decision of its Division 3 authorizing discontinuance. Since an interlocutory injunction would not ordinarily issue until after a final order of the Commission, the right of communities and the public to effective judicial review would be impaired if not destroyed.

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[7] Reported on reconsideration, *Boston & Maine Corp. Discontinuance of Trains,* 328 I.C.C. 594 (1967).

[8] See problems of Pottsville, Pa. in intervening in railroad merger case. *Borough of Moosic* v. *United States,* 272 F. Supp. 513, 518 (M.D. Pa. 1967), vac. and rem. *Penn-Central Merger Cases,* 389 U.S. 486, 506–7, 531 (1968).