E. *Cost of litigation.*—S. 2687, by transfering jurisdiction to the courts of appeals, would substantially increase the cost of seeking judicial review. This is because, as the Commission's Chairman testified, the petitioners usually must foot the bill for printing a joint appendix for the court of appeals. The joint appendix consists of relevant portions of the Commission's proceedings, and would be a heavy if not prohibitive expense. At present under the three-judge district court procedure, City of Chicago need only have its copy of the transcript of the Commission proceedings certified by the agency itself. Our only out-of-pocket expense would be the stenographers minutes of the hearings, which may have been ordered previously anyway for use in preparing briefs to the Commission. But even where the hearing transcripts were not purchased for use in the Commission proceedings, our maximum expense for securing the volumes for Commission certification usually would run about $500.00.

Printing of the agency hearings would be a much greater additional expense—running into at least several thousand dollars per court case. This would limit the number of judicial review proceedings in which City of Chicago could participate.

THERE IS NO URGENCY REQUIRING IMMEDIATE ENACTMENT OF S. 2687

This is not the first attempt to change the three-judge district court review of I.C.C. orders. Similar proposals of the Judicial Conference of the United States have been unsuccessful. See: H.R. 5488 (81st Cong., 1949); H.R. 1468 and H. Rep. 1619 (80th Cong., 1948); Hearings before Subcommittee of House Committee on Judiciary on H.R. 1468, 1470 and 2271 (80th Cong.) and H.R. 2915 and 2916 (81st Cong.). An identical recommendation was made by the Administrative Conference of the United States in December 1961.

Why the rush to enact this legislation in the current session of Congress? The Commission's justification is based upon the asserted complexity of multiple suits challenging the same I.C.C. order in current railroad unification approvals, and also mentions pending suits challenging per diem charges between railroads for the use of equipment. Enactment of S. 2687 would provide that the first party to win the race to the courthouse to attack a Commission order would be the winner, to which court all subsequent suits must be transferred.

The lack of urgency for this legislation is best indicated by examining the two principal situations advanced by the Commission in support of S. 2687. These are the *Northern Lines* merger case, involving the Commission-approved merger of the Great Northern, Northern Pacific, Burlington and S. P. & S. railroads, and the *Penn-Central* merger case, involving the merger of the Pennsylvania and New York Central railroads.

1. *Northern Lines.* Judicial review of the Commission's approval was instituted first by Auburn, Wash. in Washington, then by security holders in New York, and finally by the Department of Justice in Washington, D.C. The first two plaintiffs subsequently agreed to join the United States suit filed last in Washington, D.C. However, under S. 2687, all parties would have deferred to Auburn, Wash. (1960 Pop. 11,933) since its suit was filed first. Certainly the Commission, with its counsel located in the nation's capital, should not complain of having its merger order heard here when the various plaintiffs, employing the flexibility provided by the three-judge court procedure, selected the most convenient forum.

2. *Penn-Central merger.*—Suits were initially filed by all parties in the Southern District of New York in September, 1966. The decision of the district court was reversed by the Supreme Court and remanded to the Commission. *Erie-Lackawanna R. Co.* v. *United States*, 259 F. Supp. 964 (1967), rev. sub. nom. *Baltimore & O.R. Co.* v. *United States*, 386 U.S. 372 (1967). Thereafter the Commission issued a supplemental report on reconsideration and further hearing. 330 I.C.C. 328. On the same day the Commission, by an entirely separate report and order, granted the petitions of three railroads to be included in the Norfolk & Western Railway Company, known as the *N&W Inclusion* case. 330 I.C.C. 780.

N&W promptly instituted, the very next day, its suit at Roanoke, Va. to set aside the inclusion order. All of the railroad parties then took the *Penn-Central* order back to the original New York court. Three Pennsylvania communities and a Pennsylvania stockholder thereupon brought a consolidated action against both orders at Scranton, Pa. By means of staying the Virginia *N&W Inclusion* proceeding and joining N&W as an involuntary plaintiff to a New York action