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AIR FREIGHT REGULATION: THE TWENTY-FIVE MILE RULE

FREDERICK J. STEPHENSON*

INTRODUCTION

IN ITS motor carrier reform bill,¹ the Ford Administration proposed a controversial change in the regulations governing the pickup and delivery of air freight shipments. The thrust of the regulatory modification is to expand the existing zone, in which airlines and air freight forwarders are free of economic regulation by the Interstate Commerce Commission, from a twenty-five mile limit to a one hundred mile perimeter of the airport or city boundary. This proposal has been, and will continue to be, vigorously contested. Furthermore, its enactment will depend upon the ability of its proponents to convince Congress that the benefits of deregulation are far greater than the potentially adverse effects on existing ICC-certificated air freight truckers.

PURPOSE

This article will attempt to thoroughly update the literature on the twenty-five mile rule. Sequentially, it will trace the origin of the rule to an ICC-CAB jurisdictional problem and, through a series of survey questions, examine the rule's impact on shippers, forwarders, and airlines. The article will also examine the impact of the rule on the development of air freight. Attention is thereafter focused on the arguments of advocates and opponents of the regu-

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¹ S. 2929, 94th Cong., 2d Sess. (1976); H.R. 12084, 94th Cong., 2d Sess. (1976).

latory change. The article concludes with an analysis of the findings and a recommended course of action.

The TWENTY-FIVE MILE RULE

The origin of the twenty-five mile rule can be traced to the intermodal nature of air freight, for the origination and conclusion of shipments by aircraft lie with motor carriers. Consequently, in the highly regulated environments of the aviation and trucking industries, a jurisdictional problem arose between the Civil Aeronautics Board and the Interstate Commerce Commission over trucking movements of freight incidental to air service. The result was an exemption defined in Section 303(b)(7)(a) of the Interstate Commerce Act.³ This provides that "transportation of persons or property by motor vehicle when incidental to transportation by aircraft" is exempt from the provisions of Part II (Regulation of Motor Carriers) of the Interstate Commerce Act.³ Years later, and after questions had been raised regarding the extent of the exempt zone,⁴ the CAB adopted, on June 12, 1964, Part 222 of the Code of Federal Regulations, which states:

In accordance with the provision of Part 221 [Construction, Publication, Filing and Posting of Tariffs of Air Carriers and Foreign Air Carriers] and this regulation (Part 222), each carrier or foreign air carrier shall file tariffs covering all pickup and delivery services offered. Such tariffs will be accepted for filing if they meet the requirements of Part 221 of this subchapter and (a) *provide for service to places which are not located beyond a radius of 25 miles of the airport or of the city limits of the certificated point . . .*⁵

Thus, a precise constraint was defined. Air freight forwarders and airlines are under CAB jurisdiction and need not be concerned with the ICC for bona fide collection, delivery, or transfer service within the twenty-five mile limit. If, however, they wish to provide service using their own employees and equipment to points outside

³ 49 U.S.C. § 303(b)(7)(a) (1970).

³ See 49 U.S.C. §§ 303(b), 304 (1970).

⁴ For an explanation of the circumstances that precipitated the CAB's action, see Note, 32 J. AIR L. & COM. 275 (1966).

⁵ 14 C.F.R. § 222.2 (1976) (emphasis added).

that boundary, they must formally seek an extension from the CAB.⁶ This extension is subject to possible review by the ICC, which has final authority concerning such matters.⁷ The possibility exists, therefore, that the CAB could decide to grant an extension to encourage air freight development,⁸ only to be overridden by the ICC.⁹

PRIOR RESEARCH

A decade ago, John William Snow addressed the twenty-five mile rule in an article published in the *Journal of Air Law and Commerce*.¹⁰ In his research, he surveyed domestic air freight forwarders and found them unanimous in the belief that the rule had a detrimental effect upon the industry. Furthermore, responses indicated that 97% of the forwarders knew of shippers who would use their services if the rule did not exist.¹¹ Snow concluded that the twenty-five mile rule interfered directly with the forwarders' efforts to provide door-to-door through service and commented that as a consequence of the rule:

The shipper is prevented from obtaining the transportation service which, in the absence of the limitation, he would utilize, and the producer of the preferable service is not encouraged to expand that service in accordance with the true preference of consumers. In short, the market is prevented from operating to produce the best economic allocation of resources in the transportation industry.¹²

The question arises, therefore, whether or not Snow's findings are still applicable.

⁶ 14 C.F.R. § 222.3(a)-222.3(e) (1976).

⁷ For an evaluation of the ICC-CAB conflict, see Note, *supra* note 4.

⁸ This is the CAB's responsibility under Federal Aviation Act of 1958, 72 Stat. 731, as amended, 49 U.S.C. § 1302 (1970).

⁹ The statement of policy to the Interstate Commerce Act mandates that the ICC consider the welfare of the carriers. 49 U.S.C. § 1231 (1970), formerly 54 Stat. 898.

¹⁰ Snow, *Air Freight Forwarding: A Legal and Economic Analysis*, 32 J. AIR L. & COM. 485 (1966). Snow's article was one of four writings which discussed the exemption; however, his was the only one that examined the 25-mile constraint. See Elggren, *What Part Shall Freight Forwarders Have in the Development of the Air Freight Industry?*, 14 J. AIR L. & COM. 170 (1947); Note, 32 J. AIR L. & COM. 275 (1966); Note, 34 J. AIR L. & COM. 298 (1968) (which defined the exemption, but not its impact).

¹¹ Snow, *supra* note 10, at 492.

¹² *Id.* at 493.

RESEARCH METHODOLOGY

Data for this article were derived from the literature, telephone and personal interviews, written replies to the author's inquiries, and a series of national surveys. The latter include a national stratified random sample of shippers, an attempted census of corporate officers at each of the domestic air freight forwarding firms, and an attempted census of the domestic certificated route airline industry's top air freight executives. These surveys were undertaken in August, 1974.¹³ A follow-up survey of the same airline executives was conducted during December, 1975, in an effort to determine additional clarifying information.

DEMOGRAPHICS OF THE RESPONDENTS

Of the 504 shipper questionnaires sent out, 153 were completed and returned for a 30% response rate. The firms represented ranged from the small (1973 sales below \$10,000,000) to the very large (eight companies reported sales of one billion dollars or more). The majority of the respondents were senior traffic executives. One hundred thirty-three firms were current users of the domestic air freight system.

Fifty-one of the 150 active forwarders¹⁴ completed and returned the questionnaire for a 34% response rate. In terms of 1973 forwarding revenues, 28% were small firms (sales below \$100,000), 41% were medium-sized forwarders (sales between \$100,000 and \$2,499,999), and 31% were large forwarders (sales of \$2,500,000 or more). The latter included eight of the industry's top ten firms in terms of 1973 sales. Sixty-five percent of the respondents were firm presidents, chief executive officers, or chairmen. An additional 25% were vice presidents.

Nine of the eleven trunk airlines, eight of eight local service carriers, and one of two domestic all-cargo carriers responded to

¹³ F. Stephenson, *An Analysis and Evaluation of the United States Domestic Air Freight Forwarding Industry with Implications for Forwarders, Regulators, Direct Air Carriers and Shippers* (1974) (unpublished Ph.D. dissertation at Univ. of Minn.) (available through the University Microfilms, Univ. of Mich., Ann Arbor).

¹⁴ The term "active forwarder" refers to each firm which generated forwarding revenues during the year. Based upon a review of CAB Forms 244 (Financial and Operating Statements) filed by forwarders with the CAB during 1973, only 150 firms were active.

the initial survey. In total, eighteen of twenty-one carriers (85%) completed and returned the carrier questionnaire.

Eleven replies were received as a consequence of the second carrier survey, a 52% response rate. Of those answering the inquiry, seven were trunk carrier executives while four were local service officials.

OBSTACLES TO AIR FREIGHT DEVELOPMENT

The first question asked forwarders how strongly they agreed with this statement: "The '25-mile' rule has been a major obstacle in developing traffic from facilities located outside its limits."

The response is shown below. Nearly 72% of those expressing an opinion agreed with the statement.¹⁵

<i>Frequency (f)</i>	<i>%</i>	<i>Response</i>
18	39	strongly agree
15	33	moderately agree
11	24	moderately disagree
2	4	strongly disagree
2	—	don't know

Shippers also viewed the rule as an obstacle. In response to the same question, 82% (92 of the 112) agreed with the statement.

<i>f</i>	<i>%</i>	<i>Response</i>
40	36	strongly agree
52	46	moderately agree
16	14	moderately disagree
4	4	strongly disagree
33	—	don't know

In contrast, 69% of the airline respondents (carriers) indicated disagreement with the statement: "The '25-mile rule' has been a major obstacle to my firm in developing traffic from facilities outside its limits."

<i>f</i>	<i>%</i>	<i>Response</i>
1	6	strongly agree
4	25	moderately agree
7	44	moderately disagree
4	25	strongly disagree
2	—	don't know

¹⁵ Henceforth, percentages represent the share of those choosing an alternative other than "don't know."

First, analyzing the forwarder responses, the author found that a great many forwarding firms see themselves in the door-to-door service business.¹⁶ This would appear to be a correct assumption, since shippers perceive the main forwarder advantage as complete door-to-door service.¹⁷ Speed is also an essential part of the forwarder service offering.¹⁸ With the twenty-five mile rule in effect, it is difficult to achieve these goals. Forwarders are unable to maintain total control because of forced dependence on line haul carriers when serving remote clients. As a secondary consequence, interchanging has the tendency to increase delivery times.

Further evidence that the rule creates problems was revealed by other survey responses. For example, 55% of the shippers expressed the view that more potential forwarding traffic lies outside than inside the zone, and yet four out of five forwarders said more sales attention was being given to facilities inside the zone. Additionally, 78% of the forwarders indicated that 75% of their shipments originate within the zone's limits.

Certainly there are other reasons why forwarders are not giving greater attention to customers in the more rural areas,¹⁹ but it would appear that the twenty-five mile rule is at least partially at fault. In respect to the forwarding industry's desire to develop air freight traffic, the rule is an obstacle. Why, then, did their partners in the industry, *i.e.*, the scheduled airlines, not find the rule a burden? It would seem that a problem for one sector would lead to a similar difficulty for the other. Since the reasons failed to

¹⁶ See Snow, *supra* note 10, at 492.

¹⁷ Shippers prefer forwarders over direct air carriers for these reasons:

Rank	Frequency	Forwarder Advantage
1	87	complete door-to-door service
2	62	ability and willingness to serve your specialized needs
3	60	routing flexibility
4	55	single responsibility for loss and damage
4	55	faster door-to-door speed
6	32	more service options
7	21	lower rates
7	21	other
9	15	less loss and damage

¹⁸ Thirty-seven of 51 forwarder respondents offer immediate pick-up service on request with similar immediate delivery at destination. Stephenson dissertation, *supra* note 13, at 193-94.

¹⁹ See Stephenson, *Transport Deregulation—The Air Freight Forwarder Experience*, 643 ICC PRAC. J., 39 (1975).

surface in the responses to the first airline survey, carriers were contacted through a follow-up questionnaire.

Two basic views emerged to explain why the rule was not an obstacle to carrier air freight development. First, trunk airlines indicated that their firms emphasized airport-to-airport operations. While they offer pickup and delivery services, they do not rigorously seek to provide door-to-door through service. Consequently, the majority concluded pickup and delivery operations were adequately being provided by Air Cargo, Inc.²⁰ and air-freight truckers.²¹

A second predominant airline view is that a relaxation of the rule would encourage forwarders to bypass smaller airports and short-haul air movements in favor of direct surface transportation to major airports.²² Local service carriers seemed particularly concerned about this possibility.

DOES THE RULE CAUSE HIGHER RATES?

Forwarders were asked to agree or disagree with this statement: "The rule forces my firm to charge higher rates than if my firm were allowed to serve these remote clients itself."

Replies were as follows:

<i>f</i>	<i>%</i>	<i>Response</i>
12	27	strongly agree
19	42	moderately agree
8	18	moderately disagree
6	13	strongly disagree
2	—	don't know

Nearly 69% of the respondents (31 of 45) agreed with the statement.

²⁰ Air Cargo, Inc. is a corporation owned by the scheduled airline industry which arranges services with truckers for the pickup and delivery of air freight.

²¹ Trunk carriers also cited views such as (a) the request for an extension of the perimeter may force carriers to serve unprofitable points, (b) airlines can publish joint air-truck rates and forwarders cannot, (c) few applications are on record requesting extensions; therefore, demand is not there, and (d) an effort to extend the perimeter could create a reverse effect since the 25-mile limit is more liberal than the present commercial zone exemption.

²² One respondent was also concerned that removal of the rule would lead to a multiplicity of gypsy operators which would create severe billing problems and other complications.

Eighty-nine percent of the shippers (92 of 103) agreed with this statement: "Rates to facilities outside the limits are higher because of the rule."

<i>f</i>	<i>%</i>	<i>Response</i>
40	39	strongly agree
52	50	moderately agree
8	8	moderately disagree
3	3	strongly disagree
41	—	don't know

To the statement, "door-to-door rates to locations outside the limits are higher because of the rule," there was agreement from 64% (7 of 11) of the carriers.

<i>f</i>	<i>%</i>	<i>Response</i>
0	0	strongly agree
7	64	moderately agree
4	36	moderately disagree
0	0	strongly disagree
7	—	don't know

Precisely why carrier and shipper respondents thought higher rates resulted from the rule are not known, for survey questions did not ask for reasons but merely effects. Forwarder opinions were expressed in followup conversations with George B. Ryan, Executive Vice President of Burlington Northern Air Freight and John C. Emery, Jr., President of Emery Air Freight Corporation. Ryan and Emery agree that a major source of the problem lies with the truckers' use of minimum charges for single shipments. Ryan contends that when multiple shipments are tendered at one time to an air freight trucker, shippers must generally pay the minimum charge per shipment. In providing their own services, forwarders often offer substantially lower shipment charges for multiple shipments. Emery also stated that the addition of pick-up points to his company's present truck operations could produce economies leading to lower surface charges.²³

Unless the majority of forwarders, shippers, and carriers are all wrong, the rule has produced unnecessarily higher rates.

²³ Telephone interviews with George B. Ryan (Oct. 13, 1976) and with John C. Emery, Jr. (Oct. 14, 1976).

DOES THE RULE CAUSE POORER SERVICE?

Forwarders, shippers, and carriers were asked if the rule lowered the quality of service to remote clients. Below are their responses:

<i>Forwarder</i>		<i>Shipper</i>		<i>Carrier</i>		<i>Response</i>
<i>f</i>	<i>%</i>	<i>f</i>	<i>%</i>	<i>f</i>	<i>%</i>	
21	47	36	35	1	6	strongly agree
15	33	45	44	7	44	moderately agree
2	4	18	17	7	44	moderately disagree
7	16	4	4	1	6	strongly disagree
2	—	40	—	2	—	don't know

Eighty percent (36 of 45) of the forwarders and 79% (81 of 103) of the shippers were of the opinion that the rule produces service disutilites. Carriers were not sure, with 50% in agreement and 50% in disagreement.

The author believes reactions to this statement were influenced by the perception of one's role. As previously explained, forwarders strive for door-to-door service while airlines do not. Air freight shippers apparently agree with the forwarders' idea of service, and they are not as satisfied with the treatment received outside the limit as within.²⁴ Again, the rule would appear to be a barrier to those desiring service and to those concerned with providing such offerings. Snow's finding that service is hindered by the rule would still appear valid.²⁵

EVALUATING THE PRESENT EXEMPTION PROCEDURE

As mentioned previously, there is a process by which forwarders and airlines can request an extension of service beyond the twenty-five mile limit. As one airline industry official noted, however, few requests have been submitted. This led him to conclude the rule is not as big an obstacle as forwarders would like the public to believe it is.

Between October 21, 1964, and January 1, 1975, there were thirty-one applications for zone extensions.²⁶ On only two occa-

²⁴ While 85% of the shippers rated service good to excellent within the zone, only 54% gave the same rating to service beyond the perimeter.

²⁵ Snow, *supra* note 10, at 493.

²⁶ Information provided by Dean Johnson, Supplementary Services, CAB, from a non-published working document.

sions were the requests submitted by airlines (which supports the carrier contention that to them the rule poses no serious obstacle). Twenty-nine applications were filed by forwarders. Of these, sixteen were granted, four were partially granted, two were denied, and seven were voluntarily withdrawn. In total, twelve different forwarders applied for extensions.

Based on this record, the CAB has generally taken a favorable attitude toward zone extensions. The ICC has also rarely chosen to get involved in the process (although in 1970 it became concerned that the CAB was getting too liberal in granting extensions).²⁷ Consequently, it would seem the regulatory agencies have opened an appropriate avenue to facilitate the process. When asked, however, to agree or disagree that the present procedure for seeking permission to go beyond the twenty-five mile limit is satisfactory, 71% of the forwarder respondents (31 of 44) disagreed with the statement. Of these, eighteen indicated strong disagreement:

<i>f</i>	<i>%</i>	<i>Response</i>
1	2	strongly agree
12	27	moderately agree
13	30	moderately disagree
18	41	strongly disagree
3	—	don't know

Perhaps of more relevance is the finding that 79% of the large forwarders (*see* "Demographics of the Respondents") found the procedures unsatisfactory. Their views should be given special consideration, for it is this group which has filed practically all of the extension applications to date, and this is also the group which is most likely to have the resources and greatest incentive to expand their pickup and delivery operations.

According to George Ryan of Burlington Northern and John Emery of Emery Air Freight, representing two of the largest forwarding firms, the one-by-one application approach in seeking extensions involves much red tape, time lags, and high costs. Emery further explained his objections to "over-regulation." In his opinion, the geographic location of business with its expansion and shift from the central cities to the suburban and fringe areas has

²⁷ In *Motor Transportation of Property Incidental to Air*, 112 M.C.C. 1 (1970), the Commission declined to expand the 25-mile limit except for compelling reasons in individual cases.

greatly changed the conditions under which the rule and the exception process were created. Present procedures, according to Emery, are outdated.²⁸

SHOULD THE RULE BE DROPPED?

Forwarders, shippers, and carriers were asked to review this statement: "The rule should be dropped completely to allow carriers and forwarders to serve all points directly regardless of the distance from the airport."

These responses were recorded:

<i>Forwarder</i>		<i>Shipper</i>		<i>Carrier</i>		<i>Response</i>
<i>f</i>	<i>%</i>	<i>f</i>	<i>%</i>	<i>f</i>	<i>%</i>	
23	51	63	55	0	0	strongly agree
12	27	34	30	6	38	moderately agree
3	7	13	11	6	38	moderately disagree
7	16	5	4	4	25	strongly disagree
2	—	30	—	0	—	don't know

Nearly 78% of the forwarders (35 of 45) want the rule abolished and total pickup and delivery freedoms instituted. Worth noting is the number who agree strongly with this statement (23) and the fact that 93% of the large firms support total abolition of a mileage constraint.

The author believes that forwarders see the rule as an obstacle which retards the development of air freight services through rate disincentives and slower services than forwarders believe the air freight customer expects. Dependence on outsiders, a lower level of control over pickup and delivery aspects, and a time-consuming, costly process for extensions beyond the twenty-five mile limit add to the forwarders' dissatisfaction.

As a group, shippers were more convinced than the forwarders that the rule should be eliminated. Over 85% (97 of 115) agreed with the statement, and of these, 63 strongly advocated termination of the rule. It would appear this attitude can be traced to the high level of shipper discontent with present rates and services to remote points.

Carriers once again took an opposite perspective. Nearly 63% opposed dropping the rule. When questioned on this matter, air-

²⁸ Telephone interviews, *supra* note 23.

line officials voiced the same opinions previously mentioned when reviewing why they thought the rule was not an obstacle. In their opinion a problem does not exist; therefore, there is no need to change the rule. Some were also worried that forwarders would shift certain short-haul traffic to surface transportation, thus eroding the traffic base.

THE AIR FREIGHT TRUCKER OBJECTION

The most vocal opponents of extension of the twenty-five mile limit are ICC-certificated air freight motor carriers who feel threatened by the potential consequences of increased competition. From their perspective, the twenty-five mile rule is not a constraint but a privilege, for it is an exemption under which forwarders and carriers are free of the burdens they face under ICC economic regulation.²⁹ Therefore, it is their opinion that an extension of the zone is unfair and unjustified, and not only does it threaten irreparable harm to the regulated carriers' traffic and financial posture,³⁰ but also it devalues their ICC-granted certificates and will add to the erosion of common carriage. Air freight truckers argue that they are fit, willing, and able to meet the shippers' air freight needs and oppose carrier and forwarder-instituted competition.³¹

SUMMARY

Given the arguments for and against extending the exempt zone, it is appropriate at this time to summarize and analyze the findings

²⁹ An ICC common carrier must apply for and be granted a certificate of public convenience and necessity. In addition to the cost and legal burden involved in obtaining the right to enter the business, carriers then must contend with route, rate, and other regulatory requirements which limit the ability of management to make operating decisions.

³⁰ To be successful, many of the routes served by these truckers depend on the collection of numerous shipments from multiple shippers destined for several indirect and direct air carriers. Withdrawal of traffic by forwarder and carrier customers could result in excess capacity and a financial loss on the remaining freight or the need to increase rates on the retained portion leading to further potential problems.

³¹ The views expressed represent a summary of arguments gathered from various sources: (1) Gilliland, *CAB Spokesman Sees Bright Future For Intermodal Air Freight Carriage*, CONTAINER NEWS, June, 1974, at 48; (2) *Editorial: What's the Outlook for Common Carriage?*, TRAFFIC WORLD, Apr. 26, 1976, at 3; (3) CAB Order No. 75-1-101 (Jan. 24, 1975); (4) CAB Order No. 74-10-19 (Oct. 4, 1974); and (5) *Scari's Asks ICC to Stay Expansion of Commercial Zone at "Philly" Airport*, TRAFFIC WORLD, Dec. 8, 1975, at 60.

and place the issues in perspective.

1. Forwarders and shippers have argued that the present rule is a constraint that results in substandard air freight services. It hinders the forwarder from offering the door-to-door through services he is interested in providing and prevents the shipper from getting the services he desires.

2. The majority of forwarders, shippers, and airline officials agree that the rule causes higher freight rates. Unless they are all wrong, this is a serious negative consequence of regulation.

3. Forwarders and shippers expressed strong opinions that the rule hinders air freight development. Airline officials, in contrast, do not find the rule an obstacle to air freight growth.

The author contends that airline officials need to reassess the latter opinion. It seems that during the last twenty years, air freight has always been on the verge of a "take-off,"³³ and spectacular growth and success have been constantly predicted. The fact is, it never happened. Instead of seeing the day when freight sales exceeded passenger revenues, as one forecaster predicted,³³ the best air freight could achieve in 1974 was a meek 5.8% of the total domestic trunk carrier sales and 3.8% of the total local service carriers revenues.³⁴ Granted, the industry has had its share of over-optimistic freight projections, but the divergence of the estimate from reality forces the author to conclude that the twenty-five mile rule is at least partially responsible. Even if the scheduled airlines are not interested in performing pickup and delivery operations, the mere fact that forwarders want to develop the potential and are held back retards air freight growth, and that in turn hurts the scheduled airlines who derive revenues from forwarder traffic.

ICC-regulated air freight motor carriers and the majority of the airline air freight officials do not want the twenty-five mile rule altered. The former's concern, and understandably so, is the protection of their operating rights and their own welfare. Local service carriers are also concerned with an erosion of short-haul traffic, fearing forwarders would use truck rather than air trans-

³³ See comments of Secor D. Browne in *Air Freight Truckers Wait for Big Take-Off*, FLEET OWNER, May, 1973, at 60.

³³ *Air Cargo Sees a Higher Ceiling*, BUSINESS WEEK, May 13, 1967, at 107.

³⁴ Air Transport Association of America, AIR TRANSPORT 1975, at 18.

portation.

The author contends that these arguments are basically true but somewhat exaggerated. Extending the zone will not bring a high number of forwarders and carriers into extended pickup and delivery operations. Carriers have shown very little interest in personally serving the more rural areas. Few small forwarders are also likely to be in the financial position to expand operations to remote points. In reality, the main competition for the ICC-regulated air freight truckers will come from large air freight forwarders. There is no question they will enter where they think the traffic base will support a profitable operation. Thus, certain ICC truckers will suffer from increased competition unless their rates and services fall more in line with what their customers expect.

In regard to the local service concern, it is quite true that forwarders would start diverting some short-haul traffic to surface transportation, but how much depends in part on the airline offerings. The key ingredient in retaining short-haul traffic is the availability of aircraft capacity particularly during the prime-time hours.³⁵ If night airline operations are curtailed at the local airport, and forwarders continue to stress next day delivery, forwarding firms will seek surface transportation alternatives to airports where desired flights are available.

CONCLUSION

Based on data presented in this study, the author believes that the twenty-five mile rule should be discontinued. Its present concern is not for a more efficient transportation system, but for the preservation of inefficiency and protection of existing ICC motor carriers. The rule does not produce better results than if it were not in force, and therefore it is in the nation's best interests to change the present regulation. Furthermore, present procedures for extensions are also unsatisfactory.³⁶

The Ford Administration's proposal to create a one-hundred-mile rule to replace the twenty-five mile rule would certainly seem

³⁵ See Stephenson, *The Night-Freighter Controversy*, 15 *TRANSP. J.* 15 (1976).

³⁶ Whether a procedure is satisfactory depends in part upon one's difficulty in working through the process. The author found that the expense, the delays, and the multitude of points to which one could seek extensions discourage forwarders from filing for exceptions to the rule. The net loser would appear to be those shippers who would benefit from improved rates and services.

a moderate yet positive step in the right direction. A one hundred mile rule should accommodate most extensions expected in the near future, for there is a practical limit to air freight pickup and delivery services when the profit incentive or speed element is missing. Nevertheless, if one argues that there would be relatively few requests for extensions beyond the one hundred mile limit, it would seem more appropriate at this point in history to end the mileage constraint altogether. This will not deregulate carrier and forwarder-performed surface operations, for CAB entry and tariff rules are in effect and could be continued. The effect would merely be to remove an arbitrary constraint aimed at curtailing intermodal efforts on the part of the air transportation industry. Based on history, the trucking industry has little to fear from air freight diversion. Air freight is very specialized traffic that relies on a superb service offering. Unless shippers need such services, why would they shift traffic from motor carriage to generally much higher priced air transportation? The Ford Administration proposal was perhaps a more politically feasible solution, but in light of the findings, it is a suboptimal decision compared to total abolition of the mileage constraint. The latter proposal is more desirable in the public interest.

