Regulation of Trucking by the States

John C. Taylor

Interstate trucking of goods was deregulated in the United States in 1980. However, most of the states have continued to regulate *intrastate* trucking. That regulation has lead to a parade of economic horror stories, such as:

- A courier service wishing to transport dentures between dental labs and dentists must apply to a state agency for permission. Existing courier services can protest and try to keep the applicant out. The applicant spends over a year and substantial legal funds to acquire the right to transport dentures, and is finally granted the right to deliver only within a 50-mile radius around a city.
- A small household goods mover applies to a governmental body for authority to do business beyond the eight-mile exempt zone around a city and is challenged by 20 existing movers who say the new service shouldn't be permitted. The Michigan state police enter the mover's home office in order to search records that might confirm other movers' complaints that she had moved people more than the eight miles legally allowed. The woman is in danger of being found "unfit" for an authority if she is found to have prior violations of the eight-mile zone rule.
- Carriers in one jurisdiction are allowed to meet as an association to fix prices and terms of service. They do so under state supervision which assures immunity from antitrust laws. The responsible governmental agency issues a minimum rate order prohibiting any carriers from charging less than a certain percentage of the association's rates, and forcing all carriers to price by the same methods.
- Trucking companies routinely move goods with in-state origins and destinations across a state line and back to avoid state rate regulation. The state's attorney general asks the Interstate Commerce Commission (ICC) and eventually a U.S. Court of Appeals to find the practice an illegal subterfuge to avoid state laws and pleads with the Court for an injunction that would bar the party from "charging freight rates 40 percent below the state allowed rates."

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Regulation on Behalf of the Regulated

While the above practices relate to the trucking and courier industries specifically, they tell a much broader story about businesses' innate desire to limit competition. The intrastate truck-

ing industry has elevated Michael Porter's recommendations on how to weaken competitive forces to an art form. There may be no better example of how an industry can create and use government regulation in order to raise barriers to entry to an insurmountable level.

The system of regulation that this industry has crafted to protect itself from competition dates back to the mid-1920s to 1930s. At that time the railroads, and the trucking companies already in business, found a receptive climate for the notion that "destructive competition" would occur if entry into the field were not limited. They argued that trucking companies would price so as to drive others out of business until just one company was left, and that this company would refuse to serve rural areas and small shippers that might be less profitable.

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There was widespread support from economists of the day for the theory of destructive competition. Of course the rationale for economic regulation was different from the "natural monopoly" basis for earlier railroad regulation. However, the populace was concerned about the potential for job loss during the Depression and there was little argument with the theory.

Given this climate, trucking companies and their sometimes railroad accomplices were able to institute state laws regulating entry and pricing in the trucking business. Many states had passed such laws by the mid-1930s. For instance, the Michigan Motor Carrier Act was first enacted in 1923, and the current Act took shape in 1933. However, it wasn't until the middle of the decade, following the successful constitutional challenge to the National Recovery Act's scheme of industry cartels, that the trucking industry sought federal regulation of interstate trucking by the ICC. They secured such regulation in 1935 under the National Motor Carrier Act.

The difficulty that states have had in eliminating these 1930s-era barriers to free enterprise are a testament to their effectiveness in supporting supranatural profits and poor customer service in intrastate trucking. Trucking companies and their highly paid Teamsters Union drivers understand what is at stake far better than shippers and consumers. And what is at stake is the survival of inefficient carriers and workers that could not compete in the open marketplace. Those carriers and their drivers will go to almost any length to maintain protection against new entrants, and to assure they can continue to collectively set unnaturally high prices for their services.

Current State Regulation of Trucking

While interstate regulation of trucking was substantially curtailed under the Motor Carrier Act of 1980, the states have for the most part continued to regulate entry and rates. Most of the state laws have several common features.

The laws generally apply to all forms of for-hire transportation using a state's roadways. This applies to "common carriage," carriers holding out to the general shipping public, as well as "contract carriage," services dedicated to a specific shipper. In some states, there is a category known as "restricted" common carriers. These restricted common carriers apply for and can receive authority for a specific set of cities, types of goods which can be carried, or routes. They may be restricted from serving certain manufacturers, from operating in a certain part of the state, or be required to deliver on an expedited basis. In Michigan, a number of carriers have authority for such expedited "just-in-time" services and are required to return goods to the origin if they cannot accomplish the delivery inside the authority requirement.

The regulation doesn't usually apply to what has come to be defined as "private" trucking, or trucking that a business performs using its own trucks to transport its own goods. The definition of private trucking, however, can be vague. For instance, the Michigan statute defines private trucking as transportation that "is incidental to, or in furtherance of, any commercial enterprise of the person, other than transportation." Many states have also exempted a variety of items from the regulation in order to satisfy specific interest groups. For instance, in some states farm goods are exempt, and other exemptions

may exist for government vehicles, waste haulers, loggers, etc.

Perhaps more importantly in this time of increasing specialization and customization of transportation services, the state regulation usually applies not just to trucking, but also to any kind of courier business using autos, vans, pick-up trucks or other similar vehicles. As such, the for-hire transportation of items as far-ranging as cancelled checks moving between banks, coins and currency moving on armored vehicles, flowers going to florists, body organs and blood going to hospitals, and gourmet food being delivered from restaurants is regulated by the state in many cases. While there have been several challenges to the right of states to regulate courier services involving air movements, or packages under a certain size, most states maintain control over such services.

Before a person can engage in for-hire transportation in most states, he must receive some form of state authority or certificate. Applicants generally must demonstrate that there is a "need" for the service. That means either bringing potential customers in to testify before a state administrative law judge, or securing their written statement about the "need." Most state laws also require the applicant to demonstrate that they are "fit." However "fit" does not mean simply safe, but can also refer to whether the person is financially sound, or has ever violated the law. Of the 42 regulated states at the beginning of 1992, some 38 required proof of need and fitness to secure a common carrier authority, while four simply required proof of fitness. The entry requirements usually differ between common and contract authority, and the degree to which contract authority is even allowed can vary significantly from state to state. Twenty-five states require proof of need for contract authority, while 14 simply require proof of a shipper's desire for service. Three states will make an automatic grant of contract authority following application.

Most states also allow existing carriers to protest the entry of new carriers and the expansion of authority by existing carriers. In some states the burden of proof for demonstrating a need is on the applicant, while in other states the burden is on the protester. The protest process can lead to extensive negotiations between applicants and protesters. In Michigan applicants often apply for a narrowly defined authority in order to minimize the number and intensity of protests, and then negotiate down the scope of the application and agree to restrictive amendments in order to entice any protesters into withdrawing. Unfortunately, while this leads to applicants receiving authority in many cases, the restrictions often result in economic inefficiencies and allocations of markets that would be antitrust violations in any other setting.

Finally, the economic regulation often entails a series of pricing controls that are designed to assure that rates cover all relevant costs. As of early 1992, 26 states strictly regulated common carrier rates, according to the Transportation Lawyers Association. Six states are said to exercise little control over rates. Eight states are deregulated and the remainder exercise moderate control over rates. While there is little effort to assure rates are not too high, there is often extensive litigation involving rates that are thought to be too low and possibly "predatory." Many state regulatory commissions have the power to order rates increased, and carriers often file complaints asking that competitors' rates be increased. In one Michigan case several carriers complained that a competing carrier had opted out of collectively set rates and was charging 30-40 percent less than the "bureau" rate. The "bureau" rate refers to a price list published by a group of carriers. Those carriers collectively set rates, and, because they are under state control, have generally been immune from federal antitrust scrutiny under the "state's supervision" doctrine.

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Economic Rationale for Intrastate Trucking Deregulation

Intrastate trucking regulation is both outdated and counterproductive. The very principle of common carriage—that a provider should hold

out a similar service at a uniform price to all in need of service—is at odds with modern business practice. In today's distribution world, shippers are seeking specialized and customized services that are the very antithesis of common carriage. In the interstate deregulated marketplace, shippers have reduced the number of carriers they use and sought to establish closer partnerships with their carriers. Of course, specialized and customized services dictate customized pricing programs that fly in the face of the regulatory ideal of uniform rates for all.

Increased competition and the ability to offer specialized and customized transportation services have resulted in major savings since interstate deregulation in 1980. The Brookings Institute has estimated that interstate deregulation has resulted in transportation savings to users of $20 billion a year since 1980. The same study estimated that interstate less-than-truckload (LTL) rates were 17 percent lower in 1989 than they would have been without deregulation. Annual studies of transportation and logistics costs as a percent of Gross National Product (GNP) by Robert V. Delaney indicate that overall logistics costs as a percentage of GNP have declined from 17.2 to 10.9 since deregulation in 1980. Transportation costs as a percentage of GNP have declined from 7.6 in 1980 to 6.4 in 1992. Delaney's figures also indicate that inventory as a percentage of sales has declined from 28 in 1980 to 18 in 1992. Intrastate deregulation would certainly lead to additional improvements.

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Much of the savings in logistics and transportation costs is because of the increased competition and incentives for innovation that deregulation brought about. Carriers have responded with new management structures, greater use of brokers to marry owner-operator vehicles up with carrier transportation needs, increased use of hub-and-spoke systems, innovations in terminal operations, participation in rail-truck double-stack intermodal operations, and increased use of technologies ranging from Electronic Data Interchange (EDI) to satellite tracking and monitoring of vehicles. The increased competition has also fostered a movement towards increased specialization of carriers and their services, along with more customized and tailored services for customers. The result has been reduced transportation costs as a percentage of GNP, better asset utilization, less miles of travel for the volume of freight moved, and more reliable service.

Service reliability is critical to the logistics costs savings described above. Because of faster and more reliable transportation services, manufacturers have been able to postpone manufacturing commitments until actual customer order information is in hand, while still meeting delivery requirements. Transportation reliability has also allowed manufacturers to eliminate inventory and utilize long-distance "just-in-time" relationships with suppliers at reasonable cost. Those improvements allow for a manufacturing and distribution system that is able to reduce warehousing and inventory carrying costs, while relying on premium transportation services that are less expensive and more reliable than those available before deregulation. That has resulted in lower overall logistics costs and improved customer service.

The potential savings related to complete trucking deregulation are critical to the world competitiveness of U.S. manufactured goods. That is especially true when one considers the number of freight movements that take place on domestically produced goods, compared to the single U.S. trucking move that is typical of an imported product. In one study comparing a domestic product and an imported competitor, the domestic product was found to incur seven times more regulated intrastate freight movements before the finished product was shipped to the ultimate customer. Continued intrastate regulation hurts the competitiveness of U.S. producers by driving up freight costs and slowing service innovation.

While estimates of the savings that would result from intrastate deregulation vary considerably, there is no doubt that they are substantial. A study by Gellman Research Associates, Inc., found that deregulation by all states would save shippers and consumers between $4.5 and $8 billion per year in transportation costs. The Wharton School suggests

transportation savings could reach $11 billion a year. Finally, a major 1990 study for the Department of Transportation found that intrastate deregulation of trucking would save $2.9 billion a year in transportation costs. However, none of those studies have examined the overall logistics cost savings which would result. If interstate deregulation is any example, additional savings should accrue due to faster and more reliable freight services. The improved service and innovation will allow manufacturers to eliminate warehouses, reduce inventory, and end inefficient and costly routing practices that are designed to avoid intrastate regulation.

There is considerable evidence about the freight rate impact in states that have previously deregulated, and other studies comparing intrastate to interstate rates. An article by Professors Richard Beilock and James Freeman found that 55 percent of Florida shippers had seen a rate decline after state deregulation, and that another 32 percent experienced no change. In Arizona 48 percent of shippers reported a price decline following state deregulation, while just 10 percent reported rate increases. Texas, one of the most heavily regulated states, has been estimated to have freight rates 40 percent higher than comparable interstate rates according to testimony by then Department of Transportation Assistant Secretary Jeffrey Shane.

Comparisons of Michigan's intrastate freight rates to equidistant interstate rates led Professors Ed Morash and George Wagenheim to conclude that Michigan class rates were 20 percent higher than interstate rates after all relevant discounts. Recent research by the author, in which 104 small Michigan manufacturers experienced at both intrastate and interstate shipments were surveyed, found that over 75 percent believed intrastate rates were higher than interstate. Forty-five percent of those surveyed felt that intrastate rates were at least 20 percent higher, and 53.7 percent said trucking regulation was hurting their business; just 4.9 percent thought it was helping, and they were referring to unrelated weight limit issues. Intrastate deregulation would help lower intrastate rates to the interstate level.

The Social Benefits of Intrastate Trucking Deregulation

There is significant evidence that intrastate deregulation would result in social benefits as well, such as reduced mileage and a resulting impact on accidents, fuel consumption, and air pollution. Again, interstate deregulation provides some insight into what might happen should intrastate trucking be deregulated.

During the 1970s, before interstate deregulation, "ton-miles" on the nation's highways were growing at twice the rate of GNP. Since deregulation in 1980, the ratio has dropped to 1.3 to 1 according to Robert Delaney. Interstate deregulation resulted in reduced ton-miles because it eliminated restrictions that forced carriers to operate empty. Deregulation also increased competition enough to force carriers to reduce empty miles. The impact can be seen in the number of semitractor combination trucks registered before and since deregulation. In 1980, 1,401,600 such trucks were registered, but by 1990, despite major increases in economic activity, the number had declined to just 1,240,300.

Deregulation of intrastate trucking would have a similar impact. State deregulation would allow private truckers to carry other companies' goods, further reducing empty miles. In Michigan, Spartan Stores, Inc., has testified that past state regulation had resulted in it operating five million miles a year empty in Michigan. Interstate deregulation led to the private fleet empty-mile rate declining from 30 percent to 10 percent. State trucking regulation also results in many carriers taking goods out of state and then back so as to make the move interstate and exempt from state regulation, adding many unnecessary miles. Over half of the respondents in the Michigan survey of shippers referenced earlier said their truckers were engaged in such practices so as to avoid state regulation.

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The reduction of empty and unnecessary miles translates directly into several social benefits. First, number of accidents correlates to number of miles driven. Reducing miles driven will reduce accidents. And as miles are eliminated, fuel consumption is reduced. Finally, reduced mileage translates into reduced pollution. In Michigan, the author has estimated that a 5 percent reduction in unnecessary miles would lead to annual savings of 36 mil-

lion gallons of diesel fuel, and the elimination of 4.55 million pounds of carbon monoxide and 9.11 million pounds of nitric oxides.

Intrastate deregulation would also benefit new business startups and minority business ownership. As specialization in trucking and courier activities has increased, thousands of new business opportunities have arisen. Small businesses have developed at the interstate and intrastate level to perform local moves, delivery of air travel tickets, gourmet food from restaurants, prescription drugs, and even body organs. While new entrepreneurs have not been totally precluded from starting up in regulated states, allowing existing carriers to protest the entry of such businesses has not been helpful. Two Men and a Truck, the moving company referred to in the opening section, provides an interesting example. That new woman-owned company offers franchises to persons wanting to enter the household moving business. However, the franchisees have in some cases been protested by as many as 20 existing movers when applying for authority. Intrastate trucking regulation limits the opportunities for new companies and has a counterproductive impact on most states' goal of increasing new business startups.

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Nor has regulation been helpful to minority business people. By increasing barriers to entry, both minority and nonminority firms have been kept out of the industry. However, there has been a disproportionate impact on minorities. In Michigan, just 1.7 percent of all authorities were held by women and minorities in 1987. Intrastate deregulation would allow more minorities the opportunity to operate in trucking.

Arguments Against Intrastate Trucking Deregulation

The arguments against intrastate deregulation are the same ones that were made about interstate deregulation before 1980. The arguments focus on the notion of destructive competition, the idea that deregulation will harm small, rural communities, and the belief that safety would deteriorate if trucking were deregulated. The merits of those arguments can be examined both theoretically and through empirical observation of the impact of interstate deregulation and intrastate deregulation in those states where it has occurred.

The theory of destructive competition says that carriers will compete with each other by pricing below cost, and that a number of carriers will eventually leave the market; the remaining carriers will then raise their prices above the competitive level. This theory requires the existence of high entry and exit barriers and high fixed costs, which simply do not exist in the trucking industry. A 1987 General Accounting Office (GAO) study concludes that barriers to entry in truckload trucking are low, and that they are just moderate in LTL trucking. The biggest entry barrier, in fact, is state regulation itself. Carriers have found a number of management techniques to keep entry costs down. For instance, terminals can be leased, information processing can be used to lower personnel costs, and brokers and owner-operators can be used to operate a virtually asset-free trucking service, even in LTL operations. Exit barriers are also low. Investment in equipment is for short time periods, and the equipment itself is highly mobile. The use of equipment and personnel leasing also minimizes the exit costs for decommissioning terminals and the costs of terminating workers. Price reductions for information and communications processing equipment and personnel have also lowered exit barriers. Finally, the industry has a high ratio of variable costs to fixed costs, making it unlikely that anyone will price far below total cost.

A number of government studies have examined destructive competition and predation in the trucking industry. Each study has concluded that this is simply not a valid argument for maintaining regulation. The 1987 GAO study mentioned above confirms earlier reports by the ICC, Motor Carrier Ratemaking Study Commission, and the Department of Justice in finding no predatory behavior in the trucking industry. More recently, the ICC's docket in *Investigation of Motor Carrier Collective Ratemaking and Related Practices and Procedures*, (1991) and a report by the ICC's

Office of Economics, the *U.S. Motor Carrier Industry Long After Deregulation* (1992), found that neither destructive competition nor predation was common in the trucking industry.

Nor is there any significant evidence of concentration in the industry 13 years after interstate deregulation. In fact, the number of ICC authorities jumped from 18,045 in 1980 to 45,791 in 1990. While most of that increase reflects existing exempt or private carriers obtaining authority, it is evident that this could hardly be described as a reduction in service. The ICC's 1992 report actually concludes that competition has increased. In fact, courier services such as United Parcel Service and Roadway Package Services are increasingly taking business away from traditional LTL carriers at the low end of the market; and alliances of railroads, drayage companies, and third party intermodal marketers are taking business away from traditional LTL carriers with double-stack intermodal services at the heavier end of the market. The minimal economic impact from this year's Teamsters strike of the four biggest LTL carriers further demonstrates the lack of concentration since interstate deregulation. Based on the interstate experience, it is clear that intrastate deregulation would not cause any increased concentration in trucking.

Proponents of continued state regulation also argue that it somehow assures service for rural communities and small shippers. This argument requires one to buy into the somewhat counterintuitive notion that restricting entry by small rural business people somehow improves service. The same arguments were made and continue to be made about interstate deregulation. However, the entire argument is clearly a red herring. While proponents of state regulation make claims about helping rural areas, they have seldom if ever produced any small business or trade associations in support of their position. For instance, the Farm Bureau supports intrastate deregulation. In Michigan, other traditional small business trade associations such as the Michigan Grocers Association and the National Federation of Independent Businesses have supported state deregulation as well.

Nor is there any evidence that regulation ever benefitted rural areas. To assume so would require one to believe that carriers were forced to provide service they otherwise would not have provided. Carriers have a number of ways of avoiding service to areas they do not want to serve, even in those rare cases where a regulatory body may have ordered them to do so.

If regulation were somehow providing benefits to, and if deregulation were to harm, the rural shipper, one would have expected to have seen some adverse impact in the interstate arena by now. However, annual studies by the DOT between 1980 and 1985 indicated that the vast majority of shippers in rural areas found no loss of service, or an improvement. In 1993, the Michigan Department of Commerce surveyed shippers in communities that the DOT had surveyed and found a slight improvement in rural service.

In Florida, following intrastate deregulation, a study found that 59 percent of small shippers had a preference for deregulation and that 29 percent had no opinion. The same study found that 65 percent of rural shippers preferred deregulation. In Wisconsin, which deregulated in 1982, a 1983 study by the Wisconsin Office of the Commissioner of Transportation found that most rural respondents expressed satisfaction with deregulation. According to Walter Blatz, the current Wisconsin commissioner of transportation, the situation has not changed. He indicated as recently as 1993 that services to rural communities appear to have improved since state deregulation. In Michigan, over half of the rural shippers surveyed in 1993 were in favor of ending state economic regulation of trucking, with most of the remainder having no view.

Annual studies by the DOT between 1980 and 1985 indicated that the vast majority of shippers in rural areas found no loss of service, or an improvement, after interstate deregulation.

Proponents of state economic regulation of trucking also argue that entry controls and price supervision are necessary to assure safety. They indicate that without such regulation carriers will not have the resources to safely maintain their equipment. However, there is little support for this emotionally charged argument.

Regulation in and of itself cannot assure that

a truck owner will invest higher profits resulting from entry and price controls in safety. As such, it does not follow that deregulation will cause a decline in safety expenditures. It should also be noted that there are several reasons for deregulated carriers to continue investing in safety. First, resources currently being spent on economic regulation could be diverted to more direct safety enforcement, forcing additional compliance. But even absent those measures, carriers and their drivers have some strong incentives for maintaining their equipment. Aside from their own interest in avoiding accidents, insurance companies provide strong incentives for safety. Unsafe carriers cannot get insurance or must pay a substantial premium, and insurance should be and is required by most regulatory agencies.

Once again, the interstate model provides a good example of what can be expected from intrastate deregulation. The accident rate has gone down nationally, and it is estimated that 80 percent of all truck miles are driven interstate or on an exempt basis. According to the DOT, the fatal truck accident rate declined from 6.56 per hundred million miles in 1976, when administrative truck deregulation began, to 4.34 per hundred million miles in 1987. The American Trucking Associations, Inc., long an opponent of further state trucking deregulation, testified before the Senate Committee on Commerce, Science, and Transportation in 1991 and indicated that interstate deregulation had not resulted in the feared impact on safety.

Opponents of intrastate trucking deregulation consist almost entirely of regulated carriers, their union employees, and state regulatory bodies. There are few, if any, manufacturer, shipper, or rural trade associations that support regulation.

A number of federal, state and academic studies have concluded that there is no link between economic regulation and safety, and that safety should be enforced directly through stricter laws, more enforcement, and tougher penalties. For instance, a major conference on the subject was held at Northwestern University in 1987. The concluding comments by the editors of the conference proceedings indicate that "overall, there is no evidence that regulatory reform has had a negative impact on safety." A 1987 study by the California Highway Patrol and the California Public Utilities Commission also found no link between economic regulation and safety, but did find a strong correlation between the number of roadside inspections and safety. Given those findings, it is hard to envision a scenario in which intrastate economic deregulation, while maintaining safety regulation, would adversely affect safety.

Protection from Competition

Opponents of intrastate trucking deregulation consist almost entirely of regulated carriers, their union employees, and state regulatory bodies. There are few, if any, manufacturer, shipper, or rural trade associations that support regulation. That is because the proregulation arguments presented above are primarily red herrings to cloud the issue. The real reason that carriers and their labor unions oppose deregulation is that they see it as a last vestige of protection for their inefficient practices and supranatural profits and wage levels.

Modern practices and productivity improvements have reduced the number of trucks that are needed to produce a given amount of service, and deregulation further reduces the need by eliminating artificial barriers to efficiency. By promoting barriers to entry, assuring a pricing system that requires rates to cover all costs, and providing antitrust immunity for joint price-fixing, carriers are able to stay in business despite inefficient practices. Before interstate deregulation, regulated carriers were estimated to earn on average a 50 percent higher rate of return on investment than firms in other industries. According to Diane S. Owen, author of an ICC staff report in 1988, 30 percent of those excess returns went to carriers and 70 percent to union drivers. Interstate deregulation eliminated a good part of those excess rents, and intrastate deregulation would have a similar impact.

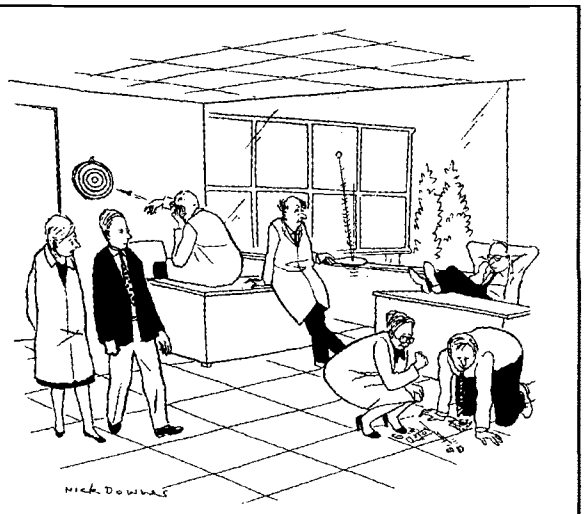
Obviously, the Teamsters would like to maintain state regulation to avoid further loss of wages. Prior to interstate deregulation, regulated carriers paid wages 30 percent higher than

exempt carriers. Deregulation also eases entry for new nonunion carriers, further eroding the ability of union drivers to demand supranatural wages and challenging Teamsters' dominance of the industry.

Efforts to Deregulate Intrastate Trucking

Ending state regulation of trucking has proven difficult since interstate deregulation in 1980. Now, nine states are considered totally deregulated. New Jersey and Delaware never were regulated. Florida deregulated in 1980, followed by Arizona in 1981 and Maine in 1982. Wisconsin, Alaska, and Vermont followed in 1983, 1984, and 1985 respectively. Most recently, Maryland deregulated with little fanfare in 1992. In the rest of North America, Canada deregulated interprovincial and international trucking to a substantial degree in 1988, much as the United States did in 1980. Ontario deregulated intraprovincial operations to a substantial degree in 1989, and the Ontario Trucking Association is now urging complete deregulation. Mexico deregulated trucking in 1989.

There have been several efforts to legislatively preempt state regulation of trucking during the 1980s and early 1990s; however none of the efforts have succeeded in getting out of committee. In the late 1980s Representative Dennis Hastert (R-Ill.) introduced a bill that would broadly preempt intrastate trucking regulation. In the early 1990s Representative Ron Packard (R-Calif.) introduced similar legislation, but again, the bill went nowhere. In 1992 Representative Bob Clement (D-Tenn.) introduced a bill to federally preempt intrastate regulation of all packages under 150 pounds and delivered in under 48 hours, but this "Fed Ex" bill also went nowhere. An additional effort to tie package express preemption to rate undercharge legislation in this session of Congress was also ended in order to assure a better chance of passing the undercharge legislation. The package express industry is currently mounting a major effort to force federal preemption of intrastate movements of packages under 150 pounds. Chances for passage of such a bill have been enhanced by federal court decisions that exempted the intrastate ground operations of federally certified air carriers from intrastate regulation, regardless of whether an air movement was involved.



"I didn't even know there was a union of unconcerned scientists."

The ICC has also made an effort to reduce the impact of intrastate regulation by more narrowly defining what constitutes an intrastate movement. States have argued that any freight originating and ending in their state constitutes an intrastate move. However, shippers and the ICC have argued that if freight originates out of state, and simply passes through a warehouse in a state, than the final move from the warehouse to an in-state destination constitutes the "continuation of an interstate move, not subject to state regulation." The courts have upheld two ICC decisions in this regard. In *Matlack*, the Eighth Circuit Court of Appeals upheld the ICC on February 3, 1989, and the Supreme Court refused to hear the case. The courts have upheld the ICC in a similar case, *Armstrong Carpet*. The ICC has since issued a series of rules to help shippers determine whether a given situation is exempt from intrastate regulation.

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There have been several moves to deregulate trucking in larger states in recent years. From a

legislative standpoint, Maryland, California, and Texas have all made substantial changes. As pointed out earlier, Maryland completely deregulated trucking in 1992 following years of minimal enforcement of its regulatory provisions. California recently passed legislation ending economic regulation of carriers with integrated air-ground operations that handle packages under 150 pounds. California substantially deregulated all truck rates in 1990 when the California Public Utilities Commission ordered that almost all downward movements in rates would be allowed. A 1993 review found that rates did not increase as fast as other prices in the state in the two years following the decision, and that rates in southern California declined by an average 13 percent.

In Texas, regulatory reform enacted by the legislature took effect in September 1993. The changes allow truckload freight discounts of up to 40 percent from the base rate set by the Texas Railroad Commission. The legislation also eases the entry standards for minority and disadvantaged firms, and will allow backhaul privileges for all specialized carriers within 75 miles of the original route.

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However, the road to intrastate deregulation has run into a dead end in Michigan. After five years of deregulation efforts, large Michigan manufacturers, which had been fighting for deregulation, and the carrier/union coalition fighting for regulation, reached an agreement for several changes. Unfortunately, the changes which were signed into law January 13, 1994, are far more likely to worsen regulation than ease it.

The agreement will produce some benefits for large truckload shippers by easing entry requirements for full truckload contract carriage, ending the requirement for proving that rates cover all costs, and allowing for confidential contract rates. However, in return for those concessions, large manufacturers agreed to changes that will significantly worsen the regulatory impact on LTL shipments.

Under the new Michigan law, common carrier applicants must prove a "required public purpose," rather than the old "useful" purpose. The then chairman of the Michigan Public Service Commission testified that this change would "virtually foreclose any new entry into common carriage." The law also dramatically limits the kinds of freight movements that will qualify for "contract carriage" by prohibiting trucks with contract freight onboard from carrying any other freight at the same time. Those provisions will mean trucks will be less full than might be the case, and will lead to unnecessary extra truck miles. A small number (15-20) of intrastate carriers will, however, be exempt from these "dedicated truck" provisions and will be allowed to commingle shippers' freight on a truck, while the 1,000 or so other carriers in the state will be denied this competitive benefit.

In a final bone for trucking company special interests, the legislature included language making it state policy to promote the use of "jointly considered and initiated rates," and restored state approval of collective ratemaking agreements and resulting antitrust immunity that the Michigan Public Service Commission had previously terminated. The Michigan experience should make it clear that deregulation efforts can quickly be turned into feeding frenzies for special interests at the expense of small shippers and consumers.

Conclusion

While nine state have now more or less fully deregulated intrastate transportation, 41 states continue to regulate most aspects of intrastate trucking. Studies of interstate deregulation suggest that it is saving shippers and consumers as much as $20 billion per year in transportation and logistics costs. Further deregulation of state trucking entry and rates could save shippers and consumers an additional $11 billion dollars a year.

Opponents of intrastate deregulation have argued that it would lead to destructive competition and predatory pricing, a loss of rural service, and deterioration in safety. However, neither theory nor experience with interstate deregulation and intrastate deregulation in several states supports those claims.

Further deregulation of intrastate trucking has been resisted at both the federal and state level. At the state level, carriers and their union drivers have seen the issue as a matter of survival and have been effective at lobbying for the protection from competition that regulation bestows. The nature of the regulation is also largely concealed from the public. As a result, efforts at state deregulation are likely to be ideologically based, and lacking in sufficient public support to assure widespread change.

Selected Readings

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