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Report of J. Strom Thurmond, Governor of South Carolina, Chairman, Freight Committee, Southern Governors Conference, Savannah, Georgia, December 14, 1948

Strom Thurmond

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Governor Lane and Distinguished Fellow Governors:

It is my purpose today to refresh your minds as to the accomplishments of the Southern Governors' Conference toward securing the equalization of freight rates, for the benefit not only of the South but of the entire nation; and, secondly, to remind you that the job is not yet done, and that it is our responsibility to carry the effort through to a successful conclusion.

Today we can look back upon a proud record of achievement secured in spite of vigorous opposition. The equalization of freight rates and the concomitant equalization of opportunity have helped develop the entire United States toward a higher standard of living for all. It has been "equalization" that the Southern Governors' Conference has sought since it was organized in 1937, and we have never sought unnatural or unfair advantage.

At the first meeting of the Conference in Washington, the Governors discussed at length the disadvantage
suffered by the South in meeting competition from other sections which enjoyed more advantageous transportation rates. There were three schools of thought as to procedure. One group of Governors felt that the commodity rates affected the South most, and that the Conference had best concentrate on these before proceeding on the class rate front. Another group felt we must ultimately secure equalization of class rate structure — the "gold standard" of rate making — and that immediate steps should be taken on class rates. A third group held out for a broad frontal attack on all inequities, to secure at one bold stroke the elimination of our freight rate disadvantage. As a result, three committees were named: one to investigate the broad frontal attack method, one to prosecute a commodity rate case, and another to prosecute a class rate complaint.

On May 26, 1937, a complaint -- State of Alabama vs. New York Central Railroad -- was filed with the Interstate Commerce Commission. It attacked, as unreasonable, the level of rates on a large number of commodities from the South to the North, alleging discrimination by reason of the lower rates on the same commodities applying within the North.

After many days of bitter argument on both sides, the Commission issued a favorable decision on November 22, 1939.
The intrinsic value of the decision was far less important than the broad principles enunciated. Actually, relief was granted on only 14 commodities out of the several hundred mentioned. Some of these were important commodities, but of far more significance was the fact that the Commission ruled that unless it was shown that cost justified different rate levels, the South was entitled to mile-for-mile parity on traffic moving to Official territory, in competition with the same commodities shipped wholly within Official territory. The complaint on a number of commodities was dismissed on the anomalous ground that no movement had been shown, and therefore no discrimination existed. The very fact that there was no movement was, in itself, a proof of discrimination in freight rates, which had foreclosed the movement of practically all manufactured commodities from the South.

On the class rate front, a complaint filed by the Conference was dismissed without prejudice by the Interstate Commerce Commission. One reason given was that the complaint included only class rates within the Southern Freight Association territory, and by 1939 the Conference had been enlarged to include Arkansas, Oklahoma, and Texas west of the Mississippi.
in Southwestern territory, which, incidentally, suffered even
greater discrimination than did the South. Virginia and
Kentucky, by the way, had become inactive because their States
were divided between the Southern and Official territories,
therefore their interest was somewhat divided.

Following dismissal of our restricted class
rate complaint, the Governors' Conference renewed its efforts.
On July 29, 1939, the Commission agreed to institute on its
own motion two companion investigations: One having to do
with class rates between all points east of the Rocky Mountains,
and the other dealing with classification for freight rate
purposes/of all articles of commerce between all points in the
United States.

The Governors had not been idle in other fields,
and it was not mere coincidence/that the 76th Congress in 1939/
amended the Interstate Commerce Act/so as to recognize the
existence of discrimination against entire regions of the
nation, and to make such discrimination unlawful. This
amendment corrected the previous ruling/whereby it was necessary
to show movement of a commodity in order to show the existence
of discrimination.
The fight was merely beginning. It was two years before any further progress was shown. But this Conference kept the subject so much before the public that finally an initial hearing was held in St. Louis in July, 1941. Then came a 14-month period of inactivity, during which we plunged into war. From the war's beginning until the Commission's decision in 1945, we had an almost continuous struggle preventing Northern opposition from scuttling the investigation on the grounds of the national emergency, which by all logic should have increased the need for equal freight rates. The Conference successfully opposed these delaying tactics, and during subsequent hearings in Indianapolis, Columbus, and Washington, hundreds of pages of irrefutable evidence was placed before the ICC showing that the system was unfair to the South, and that uniform class rates should be established.

On May 15, 1945, the ICC issued its order requiring both the uniform classification and the uniform class rate scale applicable between all points east of the Rocky Mountains. Since such classification would require many months,
a measure of relief for the South and West was provided by ordering a reduction of 10 per cent in Southern and Western rates, and an increase of 10 per cent in Northern rates. Originally scheduled to become effective in August, 1945, the order was postponed, first for certain minor modifications, and later because of a printers' strike which prevented publication of the tariffs. During the second delay, the Governors of eleven Northern states sought and obtained on November 29, 1945, from the U.S. District Court of the Northern District of New York, a temporary restraining order preventing enforcement of the ICC decision. On December 13, a special three-judge court heard arguments for, and on December 21 issued, an interlocutory injunction. On February 18, 1946, the case was heard on its merits. Meanwhile the western railroads had on February 1 intervened in support of the 11 northern states. With the Southern Governors leading the fight in the district court, the three-judge court on May 9, 1946, unanimously upheld the Commission's order. However, before the rates could be put into effect, the Northern states and western railroads had, on June 25, 1946, appealed to the Supreme Court. Our counsel argued the case before the Supreme Court in March, 1947, and on May 12, 1947, the Supreme Court upheld the ICC order.
On August 22, 1947, we reaped the first harvest of eight years' effort in the class rate case, when a 10 per cent interim reduction was made in Southern class rates, with a corresponding increase in northern class rates. It appeared that success was just around the corner. Yet today, 19 months after the Supreme Court decision, and 43 months since the ICC decision, we still have no uniform classification and no uniform class rates. None are in prospect, either.

Here is the explanation, although it is not necessarily a justification. In the 1945 order, the ICC gave the railroads 90 days in which to decide whether they would develop the classification, or leave the work to the Commission. The carriers elected to do the job, but during the two years of court arguments, they made not one overt effort to do it.

The first concrete sign of progress came with the issuance of Docket No. 1 by the railroads on July 15, 1947, showing proposed changes on four major groups of commodities, or about 20 per cent of the entire classification. During subsequent public hearings on this docket much wrangling
occurred among shippers as to what the Commission intended by its order of May 15, 1945; totally irrelevant comparisons of rates were argued; some shippers refused to participate at all, and certain northern interests openly criticized the Southern Governors. Our Chief Rate Expert, E. L. Hart, ably represented us.

Following the hearings on Docket No 1, there came another lull, and finally the Freight Rate Committee of this Conference met the ICC on February 23, 1948. At this meeting I urged the ICC to order the railroads to file the classification within a reasonable time. Although no formal order followed, shortly after this meeting announcement was made that no further hearings would be held until the railroads had completed all the Preliminary work on classification. To the best of my knowledge, this has been done, and now the carriers have started another round of public hearings.

Of even greater importance than the time element is the danger of having the entire classification rejected because of shipper resistance. Should this happen, it would be a stunning blow to the Conference. At a recent
meeting of the National Industrial Traffic League, it was
decided that the League would file a petition requesting the
ICC to reopen Docket 28310. The League is composed of most
of the large industries of the nation, many of which have been
able to secure special low ratings for their commodities, and
it appears from the reports of the meeting/that these favored
shippers/are objecting to the procedure being followed by the
rail carriers in developing the classification, and especially
to the absorption of low exceptions ratings into the proposed
uniform classification.

Certainly we would have nothing to gain and much
to lose by the reopening of this case, and it should be opposed.

Some dissatisfaction toward the basis on which
the rail carriers are proceeding/has been expressed by many
clear-thinking and far-sighted individuals in the South and West.
I think that the proposals of the railroads should be carefully
scrutinized. If they are individually or collectively found to
be inequitable, then we should make our views known to the
carriers, and try to get them to make whatever changes appear
necessary and justified, so that we can get the best classification
possible filed with the Commission. The better and fairer the
classification is when it is filed by the carriers, the sooner
it will be made effective.
I therefore have two recommendations to make to this Conference:

(1) That the Southern Governors Conference employ counsel and strongly oppose the petition of the National Industrial Traffic League for reopening of the uniform classification case, known as Docket 28310; and

(2) That the Southern Governors Conference appropriate funds to employ statistical personnel to analyze the railroad's proposed ratings carefully and thoroughly, and to confer with the carriers for the purpose of representing the views of this Conference in developing the best possible classification.

The matter of a uniform classification is one which affects every state, regardless of freight rate territorial boundaries, and the development of a uniform classification will ultimately work to the benefit of every state. I urge every member of the Conference to see that funds are appropriated to carry out the two recommendations I have made, which are necessary for the good of our people.