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BY THE U.S. GENERAL ACCOUNTING OFFICE

Report to the Chairman, Interstate Commerce Commission

Interstate Commerce Commission Should Revise Its User Fee Program

The Interstate Commerce Commission (ICC) is authorized by statute to assess fees for special services it provides. However, ICC is not recovering the full cost of these services because it does not charge for all of them and because current user fees, which became effective in 1972, are set at 50 percent of the 1971 cost of providing the services. ICC should charge for all services except those which can be readily identified as providing public benefits; periodically review and update fees to reflect changes in costs; and adopt a full-cost recovery policy, except in those instances where it can justify charging less.

ICC said that it will review its user fee program in accordance with GAO's recommendations.



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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

RESOURCES, COMMUNITY,
AND ECONOMIC DEVELOPMENT
DIVISION

B-209732

The Honorable Reese H. Taylor, Jr.
Chairman, Interstate Commerce Commission

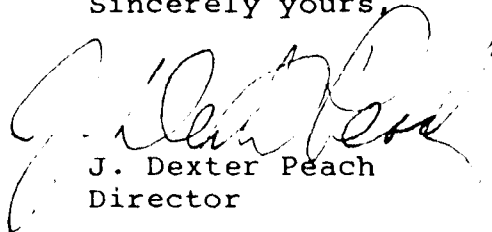
Dear Mr. Taylor:

This report discusses ICC's policies and procedures for assessing user fees for services provided to identifiable beneficiaries. We conducted this review to determine improvements ICC can make in its fee program to ensure that fees are assessed for all appropriate services which provide special benefits to identifiable recipients and to ensure that these services are self-supporting to the full extent possible.

The report contains recommendations to you on page 15. As you know, 31 U.S.C. §720 requires the head of a Federal agency to submit a written statement on actions taken on our recommendations to the Senate Committee on Governmental Affairs and the House Committee on Government Operations not later than 60 days after the date of the report. A written statement must also be sent to the House and Senate Committees on Appropriations with an agency's first request for appropriations, made more than 60 days after the date of the report.

Copies of this report are being sent to the Director, Office of Management and Budget, and to appropriate congressional committees.

Sincerely yours,



J. Dexter Peach
Director

D I G E S T

The Interstate Commerce Commission (ICC) is not recovering the full costs of providing services to identifiable beneficiaries because it does not charge fees for all services, has not updated its user fees since 1972, and sets fees at 50 percent of the cost of providing the services.

GAO conducted this review to determine if opportunities exist for ICC to recover more of the costs of these special services, such as licensing and regulatory functions, and approving operating authority applications, motor vehicle rental contracts, and tariff and rate schedules for regulated carriers.

ALL APPROPRIATE SERVICES
SHOULD BE ASSESSED A FEE

ICC's current fee schedule consists of 40 services. However, GAO found that the ICC performs at least 26 other services for which fees are not assessed. ICC believes that a fee should not be assessed for 13 of these services but that fees could be imposed for 4 of the 26. For the remaining 9 services, ICC was undecided if fees should be assessed primarily because the services were not analyzed to determine if a fee would be cost effective. GAO believes that the potential exists for fees to be imposed for several of the 13 services. (See pp. 6 to 9.)

FEES SHOULD BE UPDATED
AND PERIODICALLY REVISED

Except for minor revisions, the ICC has not updated its user fees in over 10 years. GAO believes that the current fees are generally too low. For example, GAO's analysis of the fees collected for five services showed that for fiscal year 1981, the estimated costs to provide the services exceeded receipts by approximately \$1.7 million.

The Commission has considered updating the fees several times since 1972, but these efforts have been hampered because costs of providing special services cannot be readily identified and because the Commission was uncertain as to the extent of cost data needed to support fees. This uncertainty arose after a series of mid-1970 Federal court decisions on user fees. In 1977, the Commission contemplated revising its user fees, but because the Office of Management and Budget was considering proposing legislation to clarify the law in light of the court decisions, the Commission decided to await the outcome of the proposed legislative changes. However, the proposed legislation was not submitted to the Congress.

Although ICC has a system which can be used to determine hours expended on some services, many of its services are not included in this system. In addition, the Commission needs to update and periodically review its user fees to assure that they reflect changes in costs. To accomplish this, the existing system should be used or modified, as needed. (See pp. 9 to 12.)

USER FEES SHOULD BE
SET TO RECOVER FULL
COST WHERE PRACTICABLE

To account for the public benefit accruing from the services, the ICC sets user fees at 50 percent of the cost of providing the service. Even though it collected about \$10 million in fiscal year 1981, that amount represents only about half of the 1971 cost of providing the services. Although the ICC is not specifically required to charge the full cost of special services, it should be able to support any deviation from a full-cost recovery policy. (See pp. 12 to 14.)

RECOMMENDATIONS TO THE CHAIRMAN OF
THE INTERSTATE COMMERCE COMMISSION

The Chairman should require ICC's Managing Director to review and revise the Commission's user fees. Specifically, the Managing Director should

--identify all services ICC performs which provide a special benefit to an identifiable beneficiary;

- determine for which services a fee should be established by (1) ascertaining ICC's costs of providing the service, using or modifying the existing system as needed, and (2) ensuring that the cost of collecting the fee does not exceed projected revenues and that the collection is administratively feasible;
- establish user fees which are justified by the above analysis and periodically update the fees; and
- justify any fees which are less than the full costs of providing the services and periodically reevaluate the justification. (See p. 15.)

AGENCY COMMENTS

The ICC said that, despite legislative and administrative uncertainties, its user fee program will be studied with a view toward updating cost data for existing fee items and possibly including other items in the fee schedule, in accordance with GAO's recommendations. The study will be done by an agency task force with the lead responsibility assigned to the Secretary's Office. (See app. III.)

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ABBREVIATIONS

| | |
|-----|-----------------------------------|
| FCC | Federal Communications Commission |
| GAO | General Accounting Office |
| ICC | Interstate Commerce Commission |
| OMB | Office of Management and Budget |

CHAPTER 1

INTRODUCTION

The Interstate Commerce Commission (ICC) is an independent Federal agency responsible for regulating interstate surface transportation within the United States. It is responsible for assuring that the American public has adequate and efficient transportation. ICC has jurisdiction over about 20,000 for-hire companies, such as railroads, trucking companies, bus lines, water carriers, and coal slurry pipelines.

ICC is directed by commissioners who supervise all activities. Specific responsibilities, however, are delegated to various offices and bureaus. 1/ Within this structure, the Office of the Managing Director is responsible for administering the Commission's day-to-day operations. The Office of the Secretary is responsible for collecting user fees.

ICC performs a variety of services for the companies it regulates. It charges fees for some of these services but not for others. In fiscal year 1981, ICC user fee 2/ collections totaled about \$10 million. These fees, as required by legislation, are deposited into the U.S. Treasury as miscellaneous receipts.

SERVICES PROVIDED BY ICC

Services ICC performs consist of those activities related to applications to perform, continue, or expand a specific business activity; applications to cease a particular operation which the applicant is required by law to conduct as a condition of doing business; and applications to enter into some form of financial transaction, agreement, or common arrangement for which the law requires ICC's approval. Specific services include activities such as approving motor or water carrier operating authority, motor vehicle rental contracts, applications of noncarriers to acquire control of two or more carriers, and tariff and rate schedules for regulated carriers.

USER FEE AUTHORITIES

Under the authority of 31 U.S.C. §9701, as codified by Public Law No. 97-258 (formerly Title V of the Independent Offices Appropriation Act of 1952 (31 U.S.C. §483(a) (1976)), commonly known as the User Charge Statute), the ICC and other Federal agencies may prescribe regulations for fees and charges considered fair and

1/Appendix I shows ICC's organization.

2/User fee refers to any charge collected from recipients of Government goods, services, or other benefits not shared by the public.

equitable for services provided to identifiable beneficiaries. In setting fees, consideration is to be given to direct and indirect costs to the Government, value to the recipient, public policy or interest served, and other pertinent facts.

The Office of Management and Budget (OMB) Circular No. A-25 (dated September 23, 1959) sets forth the following general user charge policies to be followed by Federal agencies:

--A charge which recovers the full cost to the Federal Government should be imposed for a service (or privilege) which provides special benefits to an identifiable recipient above and beyond those which accrue to the public at large. A charge should be imposed when the service (1) enables the beneficiary to obtain more immediate or substantial gains or values (not necessarily monetary) than those which accrue to the general public, (2) provides business stability or assures public confidence in the business activity of the beneficiary, or (3) is performed at the recipient's request and is above and beyond the services regularly received by other members of the same industry or group, or by the general public.

--A charge should not be imposed for a service when the identity of the ultimate beneficiary is obscure and the service can be primarily considered as broadly benefiting the general public.

An exception to the general policy is allowed when the cost of collecting the fees would be an unduly large part of the receipts from the service.

HISTORY OF ICC USER FEES

ICC initially began to assess fees for services provided to identifiable beneficiaries in 1966. At that time, ICC charged fees for 34 services. The original fees were set by two methods. Fees for the principal types of applications were set at approximately 50 percent of the weighted average cost of providing the service. These applications are the major part of ICC's workload. This percentage was selected to account for that portion of the benefit which accrued to the general public. Fees for the other services were generally set at 50 percent of the estimated cost of the individual services.

Effective in 1972, ICC revised its fees by increasing the fees for 28 services and imposing fees for 10 additional services. The additional services for which fees were imposed included processing (1) petitions for reinstatement of revoked operating authority, (2) applications for original qualification as an insurer, surety, or self-insurer, and (3) petitions for waivers of any provisions of the lease and interchange regulations. These fees also were generally set at 50 percent of the estimated costs of providing the services.

Although ICC has considered revising the fees several times since 1972, only a few minor revisions have been made. These include adding five fees, eliminating fees for two services, combining fees for eight services into one, and increasing the fees for copying and certifying services. ICC currently charges fees for 40 services. However, it performs at least 26 services for which it does not assess fees (see app. II).

PRIOR REPORTS

Three of the reports we have issued in recent years which relate to matters addressed in this report are discussed below.

- "Department of Agriculture Should Have More Authority To Assess User Charges" (CED-81-49, Apr. 16, 1981). This report concluded that Federal court interpretations of the User Charge Statute allow agencies to collect from identifiable beneficiaries the full cost of special services.
- "The Congress Should Consider Exploring Opportunities To Expand and Improve the Application of User Charges by Federal Agencies" (PAD-80-25, Mar. 28, 1980). This report concluded that user charges promote Government economy and efficiency and can help reduce Federal tax collections. The report described principles and pricing practices which, from the standpoint of economic efficiency, would be beneficial if adopted by the Congress in formulating user charge guidelines.
- "Establishing a Proper Fee Schedule Under the Independent Offices Appropriation Act, 1952" (CED-77-70, May 6, 1977). This report concluded that the 1976 decisions of the United States Court of Appeals for the District of Columbia Circuit provide sufficient guidance for Federal agencies to use in establishing proper fee schedules. The report also concluded, based on the Court of Appeals decisions, that it is not necessary to measure separately the "value conferred" on the people paying the fee but a proper fee schedule can be based solely upon cost.

OBJECTIVES, SCOPE, AND METHODOLOGY

We reviewed ICC's policies and procedures for setting user fees and examined user fee policies prescribed in 31 U.S.C. §9701, OMB guidance, and court decisions on user fees. Our objectives were to determine if ICC is assessing fees for all services which should be subject to user fees; determine the basis for ICC's user fees; and identify ICC's reasons for not charging fees to recover the full cost of services.

To determine if ICC should be charging fees for any other services, we identified services which ICC was performing but for which a fee was not assessed. We did not attempt to identify all

services or the merit of the services provided. Our purpose was to identify services which provide special benefits to recipients and would thus be candidates for user fees. We identified these services based on information provided by those ICC officials who were directly involved in providing the services and by reviewing ICC documents. We obtained a description of the services, ascertained ICC's reasons for not charging for the services, and discussed the practicability of assessing fees with the agency officials responsible for these services in the Offices of the Secretary, Proceedings, and Compliance and Consumer Assistance and the Bureaus of Accounts and Traffic.

To identify to some extent the resources required to provide some of the services for which ICC was not assessing fees, we requested ICC officials responsible for the activities in the Offices of the Secretary, Proceedings, Compliance and Consumer Assistance, and Budget and Fiscal and the Bureaus of Accounts and Traffic to estimate the annual costs, where possible, of providing the services. Most of the estimates we received were limited to estimated staff days to perform the services and did not include overhead.

We reviewed ICC's basis for the initial fees and subsequent revisions to the fees. We also evaluated ICC's reasons for not updating the fees since 1972. In addition, we discussed with ICC officials in the Secretary's Office and the Bureau of Accounts how the fees could best be updated and how the fees could be periodically revised to ensure that they are current.

We obtained cost data on five services for which fees are assessed from ICC's Budget and Fiscal Office. These five services were processing (1) applications for temporary authority and extensions of emergency temporary authority, (2) applications to deviate from authorized regular route, (3) applications for transfer or lease of a certificate or permit, (4) applications for establishment of released rates, and (5) applications for original qualification and annual renewal as insurer, surety, or self-insurer and maintenance of certificates of insurance. These services were selected because the costs of providing them were more clearly associated with special organizational units and could thus be identified more easily than other services. Because of the resources that would be required, we did not independently verify these costs. However, we analyzed the data to determine estimates of increased collections that would be possible if ICC revised the user fees. We did not obtain cost data for the remaining services because ICC did not have this information readily available.

Our review was made at ICC headquarters in Washington, D.C. We examined pertinent agency records, legal opinions, and interviewed appropriate ICC officials. We also obtained information from OMB on the administration's user fee policies.

We made our review in accordance with generally accepted government audit standards.

CHAPTER 2

ICC NEEDS TO IMPROVE ITS USER FEE

POLICIES AND PROCEDURES

Our review disclosed several areas where ICC can make improvements in its user fee program. To be in accordance with 31 U.S.C. §9701 and to meet the requirements of OMB Circular No. A-25, ICC should impose fees where cost beneficial which recover the full cost to the Federal Government of services that provide special benefits to identifiable recipients. However, ICC has not (1) analyzed all its services to determine those for which a fee can reasonably be assessed and collected, (2) periodically updated its fees, and (3) reviewed its procedure of not charging full cost for the services it provides.

ICC NEEDS TO ENSURE THAT ALL APPROPRIATE SERVICES ARE ASSESSED A FEE

The law, 31 U.S.C. §9701, authorizes charging fees for any service providing a special benefit to an identifiable recipient. Similarly, OMB Circular No. A-25 states that fees should be assessed for such services. Even though ICC has studied some of its services, it has not performed a complete analysis of all services to identify those that should be assessed a fee.

ICC completed its most recent study of its services in 1971 to determine if additional services should be included in the fee schedule. At that time, ICC added fees for 10 services and considered but rejected the idea of having fees for several others. Subsequently, fees for other services have been considered but rejected. For instance, in 1972 ICC considered assessing a fee for one service 1/ but concluded that the cost of administering the collection of receipts would have equalled or exceeded the fee receipts.

After the 1972 fee update, a staff committee was established at the direction of the ICC Chairman to review the entire fee schedule. However, ICC records of the committee's results were incomplete and ICC officials in the Secretary's Office and the

1/This service consists of the filing of freight-forwarder motor carrier contracts. By law, freight forwarders (companies that contract to provide the shipment of goods but do not actually do the shipping) must file a copy of the contract with ICC. Prior to 1977, if a complaint was lodged, ICC reviewed these contracts. In 1977 clerical personnel reviewed contracts only for completeness. Starting in 1982, ICC decided simply to file these contracts without any review. ICC is currently considering a legislative proposal to eliminate the requirement that these contracts be filed.

Budget and Fiscal Office did not know if the committee had completed its work and issued a report.

We identified 26 services ICC performs for which no fee is charged (see app. II). ICC officials believed that a fee should not be assessed for 13 of these services but that a fee could be assessed for 4 services; they were undecided if a fee should be charged for the remaining 9.

ICC officials gave us several reasons why a fee should not be assessed for the 13 services. These reasons included that (1) the service benefits the public, (2) fee collection would be an administrative burden or would not be cost beneficial, (3) the right to protest should be free, or (4) the service consists of an activity mandated by law. However, we believe the potential exists for a fee to be assessed for some of these services. For example:

--One of these services, reviewing filings of tariffs, rate schedules, and related supplemental publications, cost ICC an estimated \$1.8 million to perform in fiscal year 1981. In 1969, an ad hoc committee which conducted a complete review of the user fees recommended assessing a fee for this service. However, in 1971 the Commission rejected this proposal because it concluded that the tangible benefits to the carrier were obscure. An ICC official in the Bureau of Traffic responsible for this service advised us that fees should not be assessed because these filings are required by law. However, our 1977 report (CED-77-70, May 6, 1977, "Establishing a Proper Fee Schedule Under the Independent Offices Appropriation Act, 1952") concluded that a decision of the United States Court of Appeals for the District of Columbia Circuit allowed the Federal Communications Commission (FCC) to fully recoup the necessary costs it incurred to assist regulatees in complying with statutory requirements, including tariff filings. The court required only that the fee reasonably reflect the cost of providing the service. Although the Court of Appeals decisions immediately and directly affected only FCC's collection of fees, in our opinion the decisions are relevant to other regulatory agencies which collect user fees under the law.

--In 1971, ICC determined that a fee should not be assessed for processing emergency temporary authority applications because these benefit the public and because of the administrative effort involved in collecting such fees. An ICC official in the Office of Compliance and Consumer Assistance responsible for this service advised us that it would be administratively difficult to collect the fees because much of the work is accomplished by telephone and the paperwork is not submitted until after the authority is granted. Under normal conditions, it takes ICC about 35 days to process a temporary authority application.

However, in instances where an urgent need exists to transport goods in a geographical location where no other carrier is capable of providing the service, ICC will grant emergency temporary authority. The time required to grant this authority ranges from a few hours to several days. Providing this service for approximately 5,300 applicants cost ICC an estimated \$945,000 in fiscal year 1982. Although ICC charges \$10 for extensions, it does not charge for the initial application. In 1969, ICC Commissioners proposed charging a \$60 fee for processing these applications but rejected the idea primarily because the service benefited the public. ICC believes the need no longer exists for emergency temporary authority because, in most cases, sufficient carrier service is available and because temporary authority applications are processed more quickly than in the past. During 1983, ICC plans to submit a legislative proposal to change the motor carrier entry procedure. Meanwhile, ICC is still providing the service but not charging a fee. Based on the estimated 5,300 emergency temporary authority applications filed in fiscal year 1982, ICC could have collected about \$318,000 if it had assessed the proposed 1969 fee of \$60.

The four services which ICC officials believe could be assessed a fee cost the Commission an estimated \$30,000, excluding overhead, in fiscal year 1982. None of these costs were recouped. ICC has not analyzed these services to determine if recovering their costs is feasible. Examples of these services are:

- Petitions for provisional exemption from the Commission's regulations. These petitions can range from minor matters, such as allowing a railroad to transport goods before its contract is approved, to major activities such as relief from the filing of rates in the transportation of coal for export. ICC expended an estimated \$13,587 on approximately 200 minor cases and an estimated \$221,465 on 18 major cases in fiscal year 1982. ICC officials in the Office of Proceedings believed that minor exemptions could be assessed a fee since they usually benefit one carrier but that major exemptions should not be assessed a fee because larger groups receive a benefit.
- Statistical publications. ICC does not charge for statistical publications unless it is necessary to provide the requestor with a photocopy, in which case it charges for the reproduction costs. A 1976 ICC study recommended that ICC charge for selected publications, but because a full-cost study was never undertaken, these recommendations were not implemented. The Government Printing Office, however, had charged for ICC publications that it printed and distributed. But when ICC started to print these publications in-house, they were provided free to recipients.

ICC concerns about imposing and collecting user fees

Revenues collected from user fees are paid into the U.S. Treasury as miscellaneous receipts. Several ICC officials told us that this requirement offers ICC no incentive to impose user charges. In fact, they pointed out that it is a disadvantage because ICC must bear the administrative cost of collecting the fees without any reimbursement.

ICC officials in the Office of Proceedings also expressed a concern that imposing fees on some services might discourage or prevent some parties from exercising their legal right to protest. OMB Circular No. A-25 requires agencies to consider public policy or interest served when assessing fees.

While these concerns need to be recognized, we believe the costs ICC incurs to provide services which provide special benefits to identifiable recipients need to be recovered to the full extent practical, taking into consideration the benefit to the public. Depending on the extent of public benefit, ICC may decide not to charge for a certain service or to charge less than the full cost of providing the service. However, in our opinion ICC should fully justify these decisions.

ICC NEEDS TO REVISE FEES AND ESTABLISH A SYSTEM FOR PERIODICALLY UPDATING THEM

Except for minor revisions, ICC has not updated its fee schedule in over 10 years. One of the primary reasons is that ICC does not have a system through which it can readily identify or update the costs of providing services. As a result, ICC does not know if its fees are appropriate. However, based on the rate of inflation over the past 10 years and our analysis of the fees assessed for five services, we believe that the fees are too low.

User fees are required by 31 U.S.C. §9701 and OMB Circular No. A-25 to be based on costs. In addition, OMB Circular No. A-25 states that fees should be reevaluated annually. The determination of costs for supporting user fees must meet the standards established by the courts in a series of decisions in the late 1970's. However, the OMB Circular states that a new cost system should not be established solely for the purpose of setting user fees.

Revision of fees would help ensure that costs are proper

ICC does not know the cost of services it provides. For example, one of the basic costs is salaries of the staff providing the services. Although the average ICC salary more than doubled

between 1971, which was the year used in calculating the last fee revision, and 1982, ICC has not revised the fee schedule to reflect these changes.

In addition, our analysis of the fees for five services based on ICC's estimated fiscal year 1981 costs and on its fiscal year 1981 collections ^{1/} showed that for fiscal year 1981, the costs of providing these services exceeded collections by an estimated \$1.7 million. Although ICC's policy is to collect 50 percent of the cost of the services, the collections for these services ranged from 5.1 percent to 43 percent of estimated costs. ICC's total estimated cost of these five services for fiscal year 1981 was \$2.84 million. Fee collections for these services totaled \$1.14 million. Even by setting fees at 50 percent of the 1981 estimated cost of \$1.42 million, ICC could have collected about \$280,000 more.

We realize that there are costs associated with providing services other than salaries and that all costs should be considered in establishing fees. Also, the above costs of providing the five services are estimates, and the potential increased collections cannot be projected to all ICC services.

ICC recognizes the need to revise fees and has pursued several different approaches for doing this since 1972. However, these attempts were unsuccessful because ICC did not have the necessary cost data readily available and because of reluctance to commit the necessary resources needed to assemble this data.

ICC considered revising the fees in 1976 based on the average increase in Government salaries between 1972 and 1976. On that basis, most fees would have increased about 22.6 percent. However, at that time OMB was considering proposing legislation to clarify how agencies should establish fees under 31 U.S.C. §9701 in light of court decisions in the mid-1970's. Because of this pending OMB action, ICC delayed revising its fee schedule until the results of the proposed legislation were determined. However, OMB never submitted the legislation.

ICC also considered revising the fees in 1977 by performing a cost study. The proposed study would have determined all the items which need to be considered for inclusion in the fee schedule, developed work records to enable ICC to identify time charges for specific services, and established a system that would have allowed for annual evaluation and revision. The study was not performed because of other priorities. Estimated resources to perform the study were approximately 3 staff years.

^{1/}Fee collections for extensions of emergency temporary authority and temporary authority were estimated for us by ICC based on calendar years 1980 and 1981 data.

While ICC officials in the Secretary's Office agreed that the fee schedule needs to be revised, they expressed concern that any increase in fees might discourage entry into the motor carrier industry. However, oral hearings held by ICC in 1981 do not support this contention. During these hearings, which were conducted to assess entry barriers for small and minority businesses, only 4 out of 96 witnesses mentioned filing fees as a problem.

In commenting on our draft report, ICC stated that it has streamlined its application procedures and filing requirements for all categories of administrative proceedings. ICC believes that this has considerably reduced the time and expense involved in the application process for both the Government and the applicants. According to ICC, the effect of this improved productivity has, on the whole, significantly offset any inflationary impact on the schedule implemented in 1972.

Costs clearly have changed since 1972 and, in our opinion, in most cases the costs have increased as shown by the five examples discussed on page 10. However, ICC has not revised its fee schedule. In our opinion, it should do so in order to fairly determine the appropriate fees.

A cost study is needed
to revise fees

ICC performed a study to determine costs when it originally established fees and again when it revised them. The original fees were based on a limited cost study which covered a 4-week period in 1964. The one major revision to the fee schedule in 1972 was based on another study which obtained information through three different methods. During this study, costs for 11 services were based on a formula derived by using staff hours obtained from a computerized system. ^{1/} For 14 services, those clearly associated with special organizational units, costs were computed manually by using total salaries and number of work items completed. The majority of the remaining fees were updated based on Federal salary increases.

According to ICC officials in the Secretary's Office and the Bureau of Accounts, another cost study must be conducted if the current fee schedule is to be updated. However, these officials believe that any additional study should not only update the fees to reflect current costs but also provide a mechanism for periodic updating. In our opinion such a study would probably be similar to the one proposed in 1977 and should utilize information already

^{1/}The computer system, originally called the Central Status System, recorded staff hours. In 1976, the system was expanded and revised and is currently known as the Case Status System.

available from the computerized system. However, it would also need to include a mechanism for determining costs of those services not currently available in the system. Although hours or time spent on a project for certain services can currently be input, these hours cannot be computed or, therefore, converted to charges for costs of providing services.

ICC officials in the Office of the Managing Director and the Office of Proceedings told us that the system could be revised to perform this function and that ICC plans to revise the system in the future for other purposes. In our opinion, this would be an ideal time to develop procedures whereby hours for those services not in the computerized system can be entered into the system and used to revise the fees. By doing this, ICC will not need to develop a new cost system but can rely on those mechanisms already in place.

USER FEES SHOULD BE SET TO RECOVER
FULL COST WHERE PRACTICABLE

To account for that portion of the benefit which accrues to the public from services it provides, ICC sets user fees at approximately 50 percent of the cost of providing the services. Although ICC seems to be authorized, as discussed below, to establish user fees below full cost in some instances, it should have a sound rationale for such charges. ICC should require recipients to pay full cost except in those situations in which justification exists for charging fees that are below the full cost of providing the service.

ICC is authorized by 31 U.S.C. §9701 and OMB Circular No. A-25 to establish user fees to recover the full cost of providing services. The law requires that a Federal agency shall be self-sustaining to the full extent possible when providing a special service or benefit to any person. OMB Circular No. A-25 requires that where a service (or privilege) provides special benefits to an identifiable recipient above and beyond those which accrue to the public at large, a fee should be imposed to recover the full cost of rendering the service. Further, several court decisions and a Comptroller General's decision provide a basis for assessing fees at full cost.

In fiscal year 1981, ICC collected about \$10 million in user fees. The lack of cost data prevented us from determining the possible collections if ICC had set fees at full cost. However, since these fees were approximately 50 percent of the 1971 cost of providing the services and the charges have not been revised since they became effective in 1972, they appear to be less than one-half the amount ICC could have collected. Thus, if fees were set at an amount to recover the full 1971 cost of providing the services, ICC, during fiscal year 1981 alone, could have collected an estimated \$10 million more.

ICC officials advised us that it was a policy decision to set fees at approximately 50 percent of cost. The underlying reason was to account for that portion of the benefit received by the general public from the service. However, ICC officials could provide no support as to why 50 percent was selected instead of some other percentage.

We believe that Federal court interpretations of the law indicate that it is not necessary to adjust user fees to account for services which result in an incidental benefit to the public. These court decisions seem to make it clear that an agency can charge identifiable recipients 100 percent of cost. For example, in 1974 the Supreme Court approved OMB Circular No. A-25 as a proper interpretation of the user charge law. The circular instructs agencies "to recover the full cost to the Federal Government" of providing special services. 1/

Also, in 1974 the Supreme Court ruled that the measure of the fee is the value to the recipient. 2/ In 1976 the United States Court of Appeals for the District of Columbia ruled that the value to the recipient is equal to the value of the service the agency confers. 3/ The value conferred is a reflection of the direct and indirect cost incurred by the agency to provide the service. 4/

The United States Court of Appeals for the District of Columbia Circuit also ruled that fees may include the full cost of providing a service to a recipient, although the service may result in some incidental public benefits. 5/ Further, the United States Court of Appeals for the Fifth Circuit ruled under the user charge law that when a service is provided to a private beneficiary, the agency may recover the full cost regardless of whether the service may also incidentally benefit the public. In these circumstances, there is no need to allocate the cost

1/Federal Power Commission v. New England Power Company, 415 U.S. at 349-51.

2/National Cable Television Association, Inc. v. United States, 415 U.S. 336 (1974).

3/National Cable Television Association, Inc. v. Federal Communications Commission, 554 F. 2d at 1107 (D.C. Cir., 1976).

4/Ibid.

5/Electronic Industries Association v. FCC, 544 F. 2d at 1115.

of providing the service between the recipient and the public. 1/
The Comptroller General has reached a similar conclusion. 2/

OMB officials advised us that principles of full cost recovery should be applied wherever feasible. However, the officials stated that any policy should provide sufficient flexibility to allow recovery at less than full cost when the service is determined to be in the public interest. The officials added that any recovery below full cost should be fully justified.

ICC officials in the Secretary's Office expressed concern that establishing fees to recover full costs might discourage entry into the motor carrier industry and thereby lessen competition. However, ICC has never performed a study to determine the effect of filing fees on the industry. As discussed previously, when ICC held public hearings in 1981, only 4 of 96 witnesses mentioned filing fees as a barrier to entering and remaining in the transportation field.

Since the last revision of the fee schedule in 1972, ICC officials have either suggested that fees be set at full cost or questioned the validity of the 50 percent policy. In a September 20, 1972, memorandum the Director, Bureau of Accounts, suggested that full costs be recovered for several services. In addition, in 1977 the ICC General Counsel questioned the validity of charging an arbitrary fee of 50 percent.

We recognize that ICC may be justified in charging recipients fees that are less than the full cost of providing some services when the services are determined to be in the public interest. However, the reason for charging less than full cost should be fully supported instead of arbitrarily setting fees at 50 percent of costs for all services.

CONCLUSIONS

ICC is authorized to charge identifiable beneficiaries the full cost of special services. This is not being done because (1) ICC is not charging fees for all services provided, (2) the current fees for those services for which charges are made are outdated, and (3) ICC has established a policy whereby fees are set at 50 percent of the cost of providing the service. As a result, services performed by ICC are not self-supporting to the full extent possible.

1/Mississippi Power and Light v. N.R.C., 601 F. 2d 223 (1979),
cert. denied, 444 U.S. 1102 (1980).

2/59 Comp. Gen. 389 (1980).

There are other services for which ICC could possibly be charging fees. However, ICC has not identified all the services it performs or sufficiently analyzed these services to determine if a fee should be assessed.

ICC's current user fees are inappropriate because the fees have not been adjusted since 1972. We believe that, because of inflation over the past decade, most costs have increased. This is reinforced by the estimated costs provided us for five services ICC performs. Collection for these services in fiscal year 1981 ranged from 5.1 percent to 43 percent of the cost of providing the services. Even if ICC followed its policy of setting fees at 50 percent of costs, it could have collected an additional \$280,000 for these five services in fiscal year 1981.

To ensure that the fees are reasonable, ICC should update its user fees and then periodically review them. To do this, it will be necessary for ICC to periodically identify costs. This will not necessarily require a new cost system because much of the information ICC needs to develop cost information is already available. ICC needs to modify its current system so that existing information can be periodically assembled and analyzed. Some new information, such as time charged for services not currently in the system, will need to be developed.

ICC has not justified its policy of setting fees at 50 percent of the cost to provide the services. Services provided by ICC to identifiable beneficiaries should be self-supporting to the full extent possible. Although ICC is not specifically required to charge the full cost of special services, it should be able to fully support any deviation from a full-cost recovery policy.

RECOMMENDATIONS TO THE CHAIRMAN OF ICC

We recommend that the Chairman of ICC require the Managing Director to review and revise ICC's user fees consistent with 31 U.S.C. §9701, court decisions, OMB Circular No. A-25, and the Comptroller General's decision. Specifically, the Managing Director should

- identify all services ICC performs which provide a special benefit to an identifiable beneficiary;
- determine for which services a fee should be established by (1) ascertaining the costs to ICC of providing the service, using or modifying the existing system as needed, and (2) assuring that cost of collecting the fee does not exceed projected revenues and that the collection is administratively feasible;

- establish user fees which are justified by the above analyses, and periodically update the fees; and
- justify any charges for services at less than full cost, and periodically reevaluate the justification.

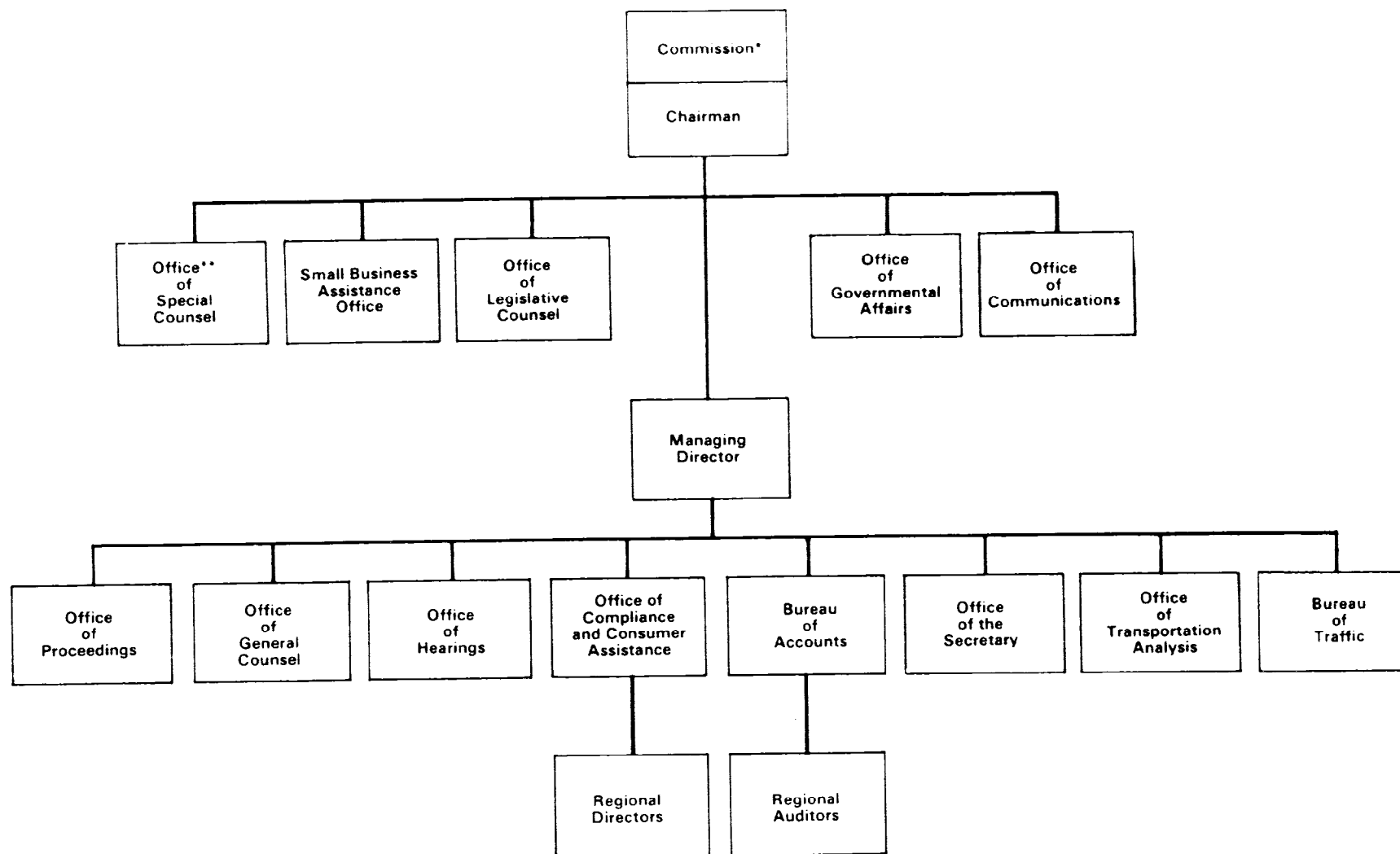
AGENCY COMMENTS AND OUR EVALUATION

In commenting on our draft report, ICC said that we presented a fair, accurate, and complete analysis of the situation and that our report clearly recognized the various reasons why the Commission has not acted in this area.

ICC added that at the present time it is faced with many uncertainties that could significantly affect the structure of the user fee program. Among these are possible sunset legislation for the agency, probable establishment of fitness-only licensing requirements in the near future, and responsibilities under current legislation to guard against any level of licensing fees that could discourage filings and thereby lessen competition.

Despite these legislative and administrative uncertainties, ICC will review its user fee program with a view toward updating cost data for existing fee items and possibly including other items in the fee schedule, in accordance with our recommendations. The study will be done by an agency task force with the lead responsibility assigned to the Secretary's Office. In our opinion, such a study adequately addresses our recommendations.

INTERSTATE COMMERCE COMMISSION



November 1981

*In deciding most proceedings, the Commission is divided into two divisions of general jurisdiction, each comprised of three Commissioners. Rulemaking and significant adjudications are decided by the entire Commission.

** Subject to administrative supervision of the Chairman, but in all other respects is accountable to the Commission

SERVICES FOR WHICH ICC IS NOT CHARGING A FEE

1. Adding names of interested parties to service lists for cases in various categories of proceedings.
2. Providing information on and copies of prior ICC Practitioner examination to the public upon request.
3. Petitions for exemption from the Commission's regulations.
4. Statistical publications provided to the public upon request.
5. Petitions for declaratory orders.
6. Petitions for rulemaking.
7. Requests for name changes of carrier, broker, or freight forwarder.
8. Requests for nationwide or regional general rate increases.
9. Filing protests for all types of applications proceedings.
10. Tariffs and rate schedules, including all supplemental tariffs and schedules.
11. Informal interpretation of operating rights.
12. Followup required from delinquent filings of reports.
13. Carrier filing letter of intent proclaiming overcharges and requesting permission for refund.
14. Providing copies of Commission votes on cases and other matters under the Sunshine Act.
15. Freight-forwarder motor carrier service.
16. Petition to add shipper.
17. Emergency temporary applications for motor carrier authority.
18. Personal delivery of decisions to railroad carriers by messenger.
19. Reference assistance to the public.
20. Complaint cases based on unlawful rates or practices of carriers.

SERVICES FOR WHICH ICC IS NOT CHARGING A FEE

21. Accepting, processing, and publishing agricultural co-op filings.
22. Reinstatement of dismissed applications.
23. Providing Diazo copies of microfilm dockets on request.
24. Accepting filing designating agents for service of process.
25. Informal complaints.
26. Providing service lists for cases to the public upon request.

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE CHAIRMAN

DEC 8 1982

Mr. J. Dexter Peach
Director
Resources, Community and
Economic Development Division
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Peach:

Thank you for the opportunity to comment on the G.A.O. draft report on our user fee program.

Your report has presented a fair, accurate and complete analysis of our situation. It has clearly recognized the various reasons why the Commission has not acted in this area.

We fully understand your views on the need to adopt a full-cost recovery policy in connection with such fees. However, as pointed out in your report, the Commission has not adopted such a policy for a variety of reasons. At the present time we are faced with many uncertainties that could impact significantly on the structure of our user fee program. Among these are possible sunset legislation for this agency, probable establishment of fitness only licensing requirements in the near future, and our responsibilities under current legislation to guard against any level of licensing fees that could discourage filings and thereby lessen competition.

From a cost perspective, the Commission has and continues to streamline its application procedures and filing requirements for all categories of administrative proceedings. This has lowered considerably the time and expense involved in the application process for both the government and the applicants. The effect of this improved productivity is, on the whole, a significant offset of any inflationary impact on the fee schedule implemented in 1973. 1/

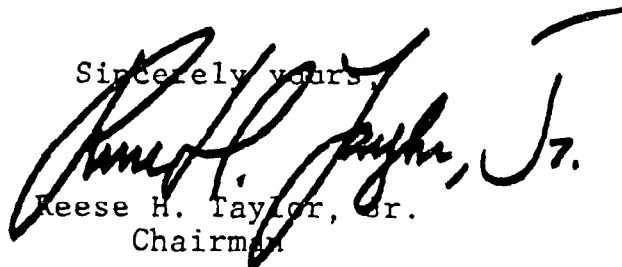
1/This should be 1972.

Mr. J. Dexter Peach
Page 2

Despite these legislative and administrative uncertainties, our user fee program will be studied with a view toward updating cost data for existing fee items and possibly including other items in the fee schedule, in accordance with your proposals. The study will be done by an agency task force with the lead responsibility assigned to the Secretary's Office.

We will keep your office informed of our progress in this area.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Reese H. Taylor, Jr.", written over the typed name and title.

Reese H. Taylor, Jr.
Chairman

(347504)

239187

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