STATEMENT OF JOHN A CARVER, JR.
ASSISTANT SECRETARY - PUBLIC LAND MANAGEMENT
DEPARTMENT OF THE INTERIOR
BEFORE THE SENATE COMMITTEE ON INTERSTATE
AND FOREIGN COMMERCE ON S. 2413, A BILL
TO PROVIDE FOR ECONOMIC REGULATION OF THE ALASKA
RAILROAD UNDER THE INTERSTATE COMMERCE ACT, AND FOR OTHER
PURPOSES, June 25, 1963

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

S. 2413 would place The Alaska Railroad under the economic regulation of the Interstate Commerce Commission. The Act of March 12, 1914 (38 Stat. 305) which authorized the construction and operation of the Railroad provided that it would become subject to the Interstate Commerce laws only in the event that it was leased or sold to private parties.

By Executive Order No. 3861 of June 3, 1923, the President delegated to the Secretary of the Interior the responsibility for the operation of The Alaska Railroad. In the matter of tariffs this responsibility includes both the determination of tariff rates and the resolution of protests against such rates that might be lodged by shippers or by competitors.

It is this joining of administrative and quasi-judicial functions which has produced criticism in Alaska of tariff-making on The Alaska Railroad. This, however, is but the beginning of the problem. The Secretary is both executive and judge for many of the functions of the Department. But when a citizen objects to a Department decision, the Secretary does not normally have an adverse interest against the complainant.

In sharp contrast, The Alaska Railroad is a commercial-type public enterprise which is competitive with private enterprise. The Secretary, acting through the General Manager, cannot avoid making tariff-rate decisions which mean more or less business for the Railroad, and more or less business for the Railroad's private competitors. Were the Secretary Solomon himself, it would not be possible to convince the Railroad's business competitors that the Department is not sometimes promoting the interests of the Railroad at their expense. This is why motor carriers in Alaska, and water carriers who do not interchange with The Alaska Railroad, feel that the Secretary should not be the last word when these carriers protest that certain Railroad tariff rates are unreasonable or discriminatory.

There are various ways in which this problem could be met. One is the way of S. 2413 which would place The Alaska Railroad under the Interstate Commerce Commission.

Another would formalize the method used in 1960 in adjudicating complaints against an Alaska Railroad increase in the terminal increment of its through tariffs. A retired Interstate Commerce Commission examiner was hired by the Department with instructions from the Secretary to hear and decide the protests so far as practicable as though the Alaska Railroad were under the Interstate Commerce Act. The decision of the examiner was subject to the approval of the Secretary and it was approved.
If such a procedure were formalized it would still fail to satisfy many Alaskans with interests in transportation. It would, however, protect the Department from some of the criticisms that have been leveled at the more casual treatment of protests of previous years.

Another possibility would be legislation similar to S. 2413, but with all decisions of the Interstate Commerce Commission advisory to the Secretary of the Interior.

I am aware that S. 1508, passed by the 86th Congress, which placed The Alaska Railroad under the Interstate Commerce Commission, was vetoed by President Eisenhower because, among other reasons, it limited the authority of the President. I am informed that a similar objection has been made with respect to S. 2413.

It occurs to me that this problem of political philosophy could be met by a change in the delegations of authority under the Act of March 12, 1914, The Alaska Railroad Act. Since all authority under that law has been delegated by the President to the Secretary of the Interior, it follows that the authority to make tariff rates and to review tariff-rate protests have both been delegated to the Secretary. The President is certainly not required to delegate both powers to the same agency. He might continue the administrative delegation to the Secretary of the Interior, but delegate the review function to some other Department or instrumentality of the United States. If the delegation of the review function were made to the Interstate Commerce Commission, it could not be said that the authority of the Executive had been impaired. Yet the fact of third-party review of Alaska Railroad tariff rates would be established.

Because of my acquaintance with the transportation facts of life in Alaska I am in sympathy with the purposes of S. 2413. If it should be concluded that this bill, if enacted, would constitute an inappropriate limitation upon the power of the President, some other means should be adopted to solve the problem toward which S. 2413 is directed. I have suggested other means because I think Alaskans are entitled to a responsive answer to their protests against the current situation. The Department has already taken action, as I have indicated, although the procedure described has not yet been formalized. I am not convinced, however, that the Department can go far enough, acting solely on its own authority, to provide an equitable solution.