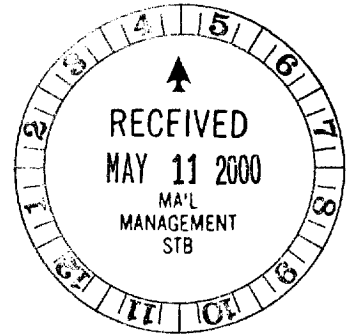


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**BEFORE THE
SURFACE TRANSPORTATION BOARD**



Section 5a Application No. 118 (Sub-No. 2) *et al.*

EC-MAC MOTOR CARRIERS SERVICE ASSOCIATION, INC., *ET AL.*

**REPLY COMMENTS
of the
THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE
regarding the
ADJUSTMENT OF COLLECTIVE RATE BUREAU RATES
TO REFLECT MARKET BASED RATES**

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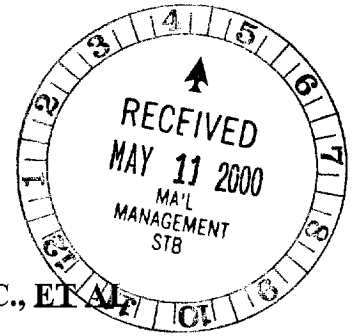
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Dated: May 11, 2000

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**Sec. 5a Application No. 118 (Sub-No.2), et al.
EC-MAC MOTOR CARRIERS SERVICE ASSOCIATION, INC., ET AL**



**REPLY COMMENTS
of the
NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE
regarding the
ADJUSTMENT OF COLLECTIVE RATE BUREAU RATES
TO REFLECT MARKET BASED RATES**

The National Industrial Transportation League ("League") hereby replies in opposition to the opening comments submitted by EC-MAC, *et al.*, ("EC-MAC"),¹ the Western Motor Tariff Bureau, Inc. ("Western"), the Middlewest Motor Freight Bureau, Inc. ("Middlewest"), and the Southern Motor Carriers Rate Conference, Inc. ("SMC") (collectively, the "Rate Bureaus").

The Surface Transportation Board ("Board") initiated this proceeding for the limited purpose of soliciting proposals for methodologies to "adjust [the rate bureau] collective rates . . . to prevailing levels of market based rates."² Despite the Board's straightforward request, the Rate Bureaus devote only a minor portion of their comments to proposing methodologies for reducing collective rates. In that regard, the EC-MAC Bureaus contend that they have already accomplished the Board's objectives by establishing "a general discount of 35% for the benefit of shippers that have not negotiated their own discounts from the class rates published by each Bureau or who otherwise do not benefit from any special rates." *See* EC-MAC Comments at 12. Likewise, SMC contends that it has addressed the Board's concerns by establishing a "20% minimum discount on all SMC class

¹ For purposes of this Reply, discussion of "EC-MAC" refers to the joint comments filed in this proceeding by the EC-MAC Motor Carrier Service Association, Inc., Niagara Frontier Tariff Bureau, Inc., and the Rocky Mountain Tariff Bureau, Inc.

² *See* Request for Proposals and Comments, *Sec. 5a Application No. 118 (Sub-No. 2), et al.*, EC-MAC Motor Carriers Service Association, Inc. et al., (served February 11, 2000).

rates for all shippers not currently having any negotiated discount on traffic moving under SMC tariffs.” *See* SMC Comments at 7.

The proposed discounts do absolutely nothing to reduce collective rates to the market based levels specified by the Board in its decisions issued on December 10, 1998 and February 11, 2000 (the “1998 Decision” and “2000 Decision”).³ In fact, they invite exactly the same types of abuse that prompted the Board to conclude that the current rate bureau system “contravenes the public interest” and provides “no basis for shielding from antitrust scrutiny the existing rate setting process.” *See* 1998 Decision at 5; 2000 Decision at 2. The proposals would preserve antitrust immunity for the rate bureaus, while at the same time allowing their members to continue to (i) charge unwary shippers minimally discounted class rates, (ii) avoid discounts completely with loss-of discount provisions, and (iii) gouge shippers with “stealth” rate increases tied to GRIs that do not reflect legitimate increased costs of handling traffic. Such abuses are exactly what the Board sought to avoid by initiating this proceeding.

Instead of submitting suitable rate reduction proposals in response to the Board’s straightforward request, the Rate Bureaus have used a substantial portion of their opening comments to challenge the Board’s determination that rate reductions are needed to justify continued antitrust immunity for the collective rate-making process. The League submits that the Board has already rendered a final determination on the need for rate reductions, and the Rate Bureaus’ efforts to persuade the Board to reconsider the issue should carry no weight in this proceeding.

In sum, the Rate Bureaus’ discount proposals would not reduce collective rates to market based levels. They would simply preserve the status quo, which the Board has already determined

³ Unless otherwise noted, page-number citations to the Board’s decisions refer to the versions published in WordPerfect format on the Board’s web site at www.stb.dot.gov.

contravenes the public interest and does not justify the extraordinary privilege of antitrust immunity. The remainder of the Rate Bureaus' comments re-argue points that have already been considered and resolved in the Board's 1998 and 2000 Decisions. They are non-responsive to the rate-reduction issue presented in this proceeding, and should receive no consideration from the Board.

Under the circumstances, the Rate Bureaus have provided the Board no basis to depart from its position that collective rate-making immunized from the antitrust laws contravenes the public interest. The points and authorities that support the League's position are set forth in detail in the sections that follow.

I. The Rate Bureaus' discount proposals would preserve the current collective rate-making system, which the Board has determined contravenes the public interest and does not warrant antitrust immunity.

The discounts proposed by the Rate Bureaus, which are narrowly-tailored to apply only to shippers who do not receive alternative discounts, would do nothing to prevent the abuses that led the Board to conclude that the current rate bureau system contravenes the public interest. In fact, the proposed discounts are exactly the type the Board has determined *will not* satisfy its concerns about the current system. In its 2000 Decision, the Board specifically rejected the Rate Bureaus' proposal for extending across-the-board discounts to shippers without alternative discounts:⁴

An automatic minimum discount to a level deemed to reflect market rates might be one way to address the concerns raised in the 1998 Decision, although *it does not appear to us that the discount provisions published in connection with the recent GRIs are in fact automatic minimum discounts*. In any event, the bureaus are free to make a formal proposal in this regard, to which other parties may respond, but we are not prepared to find, without further proceedings, that any bureau has satisfied our concerns to date.

⁴ In particular, the Board rejected the contention by a number of rate bureaus that they had mooted the need for further proceedings by "establishing 35% discounts for any shipper using otherwise undiscounted class rates." See 2000 Decision at 5.

See 2000 Decision at 5 (emphasis added).

The League submits that the same type of discount proposals the Board deemed unsuitable in February 2000 remain unsuitable today. The proposals would preserve the status quo, and cannot be squared with the Board's 1998 and 2000 Decisions. In particular, the discount proposals are deficient for the following reasons:

A. The proposed discount levels are not objectively verifiable.

In its opening comments, the League stressed that if the Rate Bureaus propose a system of percentage discounts, they must submit objective data to the Board that demonstrates such discounts are genuine. The League suggested that the Rate Bureaus submit

- (1) comparisons of the revenues that would result by applying their collective rates to their members' traffic with the revenues that result from the discounted rates actually charged for such traffic; and
- (2) evidence of the frequency and range of actual discounts charged by carriers to the universe of shippers.

See League Comments at 7.

The Rate Bureaus' proposals do not include mechanisms to submit data to enable the Board to ascertain the proper level of the discount. The 35% discount proposed by the EC-MAC Bureaus is wholly unsupported by objective data. The 20% discount proposed by SMC is the product of an internal study of discounting practices, which revealed that SMC carriers provide discounts from collective rates ranging from 21.2 to 73.3 percent. *See* SMC Comments at 6. The League appreciates SMC's good-faith effort to conduct an initial survey of its membership. However, the Board should require more than a one-time internal study of discounting practices to demonstrate that discounts are genuine, and are in fact in parity with market rates.

Unless the Board receives and has an opportunity to evaluate objective revenue and discounting data, it will lack the means to ascertain whether collective discounts are genuine. It follows that the Board will also lack the means to determine whether the discounted rate bureau rates actually reflect market rates, which is the whole point of this proceeding.

B. The proposed discount levels are not deep enough to reduce collective rates to market levels.

The publically-available data on motor carrier discounting practices demonstrates that discounts of 20-35% are insufficient to reduce collective rates to market levels. As the League pointed out in its opening comments, ten-year-old data generated in connection with the ICC's 1991 investigation into rate bureau operations revealed that shippers routinely received discounts of 40% off the bureau rates. *See Investigation of Motor Carrier Bureau Practices*, 7 I.C.C. 2d 388, 450 (1991). Data submitted to the Board in 1998 revealed that shippers routinely received discounts of 50%, and occasionally received discounts approaching 70%. *See* 1998 Decision at 4; Rate Bureau Petition at 8; Silverman V.S. at 1. Indeed, comments submitted by SMC in this proceeding reveal that its members provide discounts off the bureau rates ranging from 21.2 to 73.3 percent. *See* SMC Comments at 5-6.

The League submits that the available data on motor carrier discounting practices demonstrate conclusively that discounts of 20-35% are insufficient to reduce collective rates to market levels.⁵ This point is underscored by the fact that SMC's proposed 20% discount is slightly smaller than any of the discounts its members actually provide in the real world. *See* SMC

⁵ The Board specifically acknowledged the probable insufficiency of 35% discounts in its 2000 Decision, where it noted that "the provisions of 49 U.S.C. § 13701 explicitly require that collectively determined rates be reasonable, and that rates above market levels could not likely survive a rate reasonableness challenge. Given the extensive discounting typically occurring in the motor carrier industry, *it may be that a 35% discount would not in fact bring rates down to market levels.*" *See* 2000 Decision at footnote 18 (emphasis added).

Comments at 6 (confirming member discounts ranging from 21.2 to 73.3%). Common sense dictates that the Rate Bureaus cannot accomplish the rate reductions required by the Board by establishing discounts that are smaller than the smallest discounts provided by their members. Such discounts can hardly be said to reduce collective rates to market levels.

C. The proposed discounts would not establish a system of true “automatic minimum discounts” available to all shippers.

As discussed in the introduction to Section I, *supra*, the Board indicated in its 2000 Decision that one way to cure the deficiencies of the current rate bureau system might be to replace it with a system that establishes an “automatic minimum discount to a level deemed to reflect market rates” *See* 2000 Decision at 5. The EC-MAC and SMC proposals do not provide for true “automatic minimum discounts” of the type the Board deemed suitable to reduce collective rates to market levels. Indeed, the Board specifically concluded that the EC-MAC Bureaus *did not* implement a system of automatic discounts by “establishing 35% discounts for any shipper using otherwise undiscounted rates” *Id.* Although SMC’s proposed 20% rate reduction is a “minimum” discount in the sense that it is smaller than any discount its members currently provide, it is not an “automatic” discount because leaves its members complete discretion to establish even smaller discounts on a case-by-case basis.

Under a suitable system of true automatic minimum discounts, no shipper would be charged more than the automatically discounted collective rate, which would at all times remain in parity with market-based, competitive rates. The Rate Bureau proposals do not even come close to satisfying the foregoing criteria. They would allow rate bureau carriers, *inter alia*, to (i) continue to gouge unwary shippers by charging minimally discounted rates, and (ii) avoid discounts altogether

by inserting loss of discount provisions into their tariffs and contracts. The Board should therefore conclude that the proposals are not suitable alternatives to the current system.

D. The discount proposals contain insufficient safeguards to prevent rate bureaus from taking general rate increases (“GRI’s”) that exceed the actual cost increases experienced by their members.

Any suitable alternative to the current collective rate-making system must reduce collective rates *and* implement safeguards to prevent bureau carriers from taking “stealth” rate increases tied to GRIs that exceed actual cost increases. The Board has acknowledged that shippers who ship via tariffs are vulnerable to gouging as a consequence of GRIs taken by rate bureaus, and that steps need to be taken to prevent carriers from using GRIs to charge above-market rates. In its 1998 Decision, the Board explained that:

We should also point out that, if the class rate structure were appropriately modified, any effort to implement GRIs that exceed the relevant rates of inflation would be viewed as conduct that is presumptively adverse to the public interest.

See 1998 Decision at 5.

Although 49 U.S.C. § 13703(a)(1)(G) prohibits GRIs that exceed rates of inflation, the Rate Bureaus take GRIs without disclosing sufficient cost data to enable shippers and the Board to determine whether they are in compliance with the statute. The Board should closely scrutinize the practices of the Rate Bureaus to ensure that the objective cost data confirms their compliance with the statutory standard.

II. The Board should give no consideration to comments on subjects other than rate-adjustment methodology, which is the only issue presented in this proceeding.

In its 1998 and 2000 Decisions, the Board determined that the current system of collective rate-making contravenes the public interest and does not warrant antitrust immunity. Although the Board did not rule out the possibility that a suitable alternative system could be developed, it

specified that such a system would have to reduce collective rates to levels that are “in parity” with market based rates. The Board initiated this proceeding

- (1) to solicit specific proposals for reducing collectively-set rates to market levels; and
- (2) to evaluate whether such proposals benefit the public and justify the extraordinary privilege of antitrust immunity for the rate bureaus.

Instead of focusing their comments on providing the Board with the rate adjustment methodologies it requested, the Rate Bureaus devote a substantial portion of their comments to challenging the merits of the Board’s 1998 and 2000 Decisions. The League urges the Board to decline the rate bureaus’ invitation to convert this proceeding into a *de facto* petition for reconsideration of the Board’s earlier decisions. The Board has already determined that the rate bureaus must reduce collective rates to market levels to receive antitrust immunity. Comments that seek to re-argue the need for reductions are clearly beyond the scope of this proceeding, and are not entitled to the Board’s consideration.

That said, if the Board elects to reconsider such arguments, the League urges the Board to reject them on the same grounds it rejected them in connection with its 1998 and 2000 Decisions. The deficiencies of the Rate Bureaus’ arguments are summarized in the following sections:

A. The Board has already determined that the Motor Carrier Safety Act of 1999 ratifies the Board’s decision to move forward with this proceeding.

There is no merit to the Rate Bureaus’ contention that the Motor Carrier Safety Act of 1999 (the “Safety Act”) requires the Board to postpone this proceeding five years to determine if any action may be warranted. *See* EC-MAC Comments at 3. Section 227 of the Safety Act merely calls for the Board to review rate bureau agreements every five years, beginning during the five year period measured from December 9, 1999. *See* 49 U.S.C. § 13703(c)(2), as amended. Apparently,

the Rate Bureaus would have the Board believe that Section 227 restricts the Board from moving forward with this proceeding prior to December 9, 2004. The statute places no such restriction on the Board. Completing this proceeding within the five-year time-frame prescribed by Section 227 is entirely consistent with the plain wording of the statute. In so doing, the Board would simply be completing a required task ahead of schedule.

In its 2000 Decision, the Board specifically concluded that the Safety Act ratified the Board's continued inquiry into whether collective rate-making warrants antitrust immunity. *See* 2000 Decision at 3. The Board explained that its 1998 Decision placed Congress on notice that the Board intended to, *inter alia*, (i) condition the Rate Bureau's antitrust immunity on the reduction of collective rates to market levels, and (ii) allow the rate bureaus to operate on a nationwide basis. *See* 2000 Decision at 3-4. In enacting the Safety Act, Congress directed the Board not to allow the nationwide expansion of the rate bureaus, but otherwise did not stand in the way of the Board's inquiry into collective rate-making. The plain wording of the statute leaves no doubt that Congress intended for the Safety Act to have no impact on pending cases, including the instant proceeding:

Nothing in section 227 [other than the directive not to allow nationwide expansion of rate bureau agreements], including the amendments made by [section 227], shall be construed to affect any case brought under this section that is pending before the Board as of the date of the enactment of this paragraph.

See 49 U.C.S. § 13703(e)(2).

In sum, the plain wording of the Safety Act and the context in which it was enacted demonstrate that Congress intended to refrain from interfering with the Board's inquiry into the public benefits, if any, of immunized collective rate-making. As the Board confirmed in its 2000

Decision, the Safety Act presents no impediment to this proceeding and the Board should move forward expeditiously.

B. The Board has already considered and rejected the rate bureaus' argument that the Board lacks authority to condition antitrust immunity on the reduction of class rates.

As they have done in earlier stages of this proceeding, the Rate Bureaus continue to advance the specious contentions that

- (1) the Board lacks statutory authority to require the Rate Bureaus to reduce their collective rates as a condition for receiving operating authority and attendant antitrust immunity pursuant to 49 U.S.C. § 13703; and
- (2) the Board may adjust collective rate levels only by adjudicating individual rate cases.

See, e.g., EC-MAC Comments at 18-20. The Rate Bureaus cite no authority in support of the foregoing contentions because none exists.

On the contrary, ample statutory authority exists for the Board to order the rate reductions at issue in this proceeding. The Board has broad authority to disapprove, impose conditions upon, and/or terminate rate bureau agreements when necessary to protect the public interest. *See* 49 U.S.C. § 13703(a)(2) (authorizing the Board to disapprove agreements it finds are not in the public interest); 49 U.S.C. § 13703(c) (authorizing the Board to impose conditions upon and/or terminate agreements in connection with periodic reviews). The Board has equally broad authority to “require compliance with reasonable conditions consistent with this part to assure that [each rate bureau agreement] furthers the transportation policy set forth in section 13101.” *See* 49 U.S.C. § 13703(a)(3). In addition, the Board has substantial latitude to conduct investigations like the instant proceeding and issue orders necessary to protect the public interest:

The Board may investigate any action taken pursuant to an agreement approved under this section. If the Board finds that the action is not in the public interest, the Board may take such measures as may be necessary to protect the public interest with regard to the action, including issuing an order directing the parties to cease and desist or modify the action.

See 49 U.S.C. § 13703(a)(5)(B).

In rendering its 1998 and 2000 Decisions, the Board relied on the foregoing statutory authority to find that the current collective rate-making process contravenes the public interest and does not warrant continued antitrust immunity. In its 1998 Decision, the Board stated specifically as follows:

[W]e find that collective ratemaking, under present circumstances, *contravenes the public interest*, and that existing collective ratemaking agreements ought to be approved . . . *only if all existing class rates are amended to reflect market-based rates*.

See 1998 Decision at 5 (emphasis added). In its 2000 Decision, the Board confirmed that it could

find no basis for shielding from antitrust scrutiny the existing rate setting process, in which rate bureaus collectively publish class rates at levels that, the rate bureaus say, are almost never charged, and from which, the bureaus say, actual rates are nearly always discounted.

See 2000 Decision at 2. The Board also reiterated that it intended “to approve rate bureau agreements, and thereby protect the parties establishing rate collectively from the operation of the antitrust laws, *only if class rates are reduced to reflect market-based levels*.” *Id.* (emphasis added).

In denying the Rate Bureaus’ petition to reconsider its 1998 Decision, the Board considered and rejected the argument that it lacked authority to order the foregoing reductions. The Board explained its position as follows:

[S]ection 13703(c) provides that we ‘shall change the conditions of approval or terminate it when necessary to protect the public interest.’ Our determination that it is not in the public interest for a regulatory

agency to immunize above-market rates, which some shippers may be required to pay, from the antitrust laws does not contravene any Congressional directive contained in the ICCTA.

See 2000 Decision at 3.

In sum, the Board has clear statutory authority to require the rate reductions called for by its 1998 and 2000 Decisions. The Rate Bureaus' assertions to the contrary lack merit, and have already been considered and rejected by the Board. They are entitled to no weight in this proceeding.

C. The Board has already considered and rejected the Rate Bureau's argument that collective rates already reflect market-based levels, and require no reduction.

In its 1998 and 2000 Decisions, the Board elected to give the rate bureaus an opportunity to justify their continued antitrust immunity by reducing their collective rates to market-based levels. Although the Board did not define the term "market-based level," it obviously meant for the Rate Bureaus to reduce their inflated collective rates to levels that reasonably prudent, well-informed shippers actually pay for transportation service in the marketplace.⁶

The Rate Bureaus attempt to sidestep the Board's common-sense directive by arguing that their inflated collective rates compare favorably with the inflated benchmark rates maintained by major non-bureau carriers. *See* EC-MAC Comments at 3, 7-8. In other words, they contend that their immunized inflated list prices already reflect market based rates because they are about same as non-immunized inflated list prices used by non-bureau carriers. It follows, according to the Rate

⁶ This interpretation of the Board's directive flows naturally from (i) its observation that informed, sophisticated shippers do not pay undiscounted class rates, and (ii) its stated desire to prevent "uninformed," and "vulnerable" shippers from paying inflated class rates set pursuant to a government-sanctioned process immunized from the antitrust laws. *See* 1998 Decision at 4-5. With respect to such immunized rates, the Board clearly intended to place such uninformed, vulnerable shippers on more or less equal footing with sophisticated shippers, who receive deep discounts off the class rates.

Bureaus, that there is no need to adjust the collective rate-making process, which is “not insulated from the market, but of necessity [is] very much responsive to it.” See EC-MAC Comments at 8.

The foregoing comparison ignores the critical fact that collective rates are set with the benefit of antitrust immunity while benchmark rates are not. This distinction is central to the Board’s decisions, which *do not call for* immunized inflated list prices to remain in parity with their non-immunized counterparts. For purposes of this proceeding, comparisons of immunized and non-immunized list prices simply *do not matter*. What matters is whether immunized collective rates can be reduced to reflect the rates that reasonably well-informed, prudent shippers actually pay for transportation in the marketplace. The list prices set by non-immunized carriers have absolutely no bearing on that issue.

As an alternative argument against reducing their immunized rates, the Rate Bureaus assert that adjustments to the collective rate-making process are unnecessary because any traffic that moves at undiscounted or minimally discounted collective rates is, *ipso facto*, moving at the appropriate “market rate” for that traffic. See EC-MAC Comments at 10. Under the circumstances, the Rate Bureaus contend that the Board’s directive to reduce collective rates amounts to intrusive regulatory interference with the operation of the free market. The Board has already rejected that argument on the ground that the Board is not forcing the Rate Bureaus to set any particular rates for their traffic. It is only setting conditions on their eligibility for immunity from the antitrust laws that normally govern pricing activity in the free market. As the Board explained in its 2000 Decision,

First, we must emphasize that we are not meddling or intruding in private business at all. Rather, the rate bureaus themselves have filed applications asking us to immunize them from the laws that would otherwise govern private businesses operating in the free market. If the rate bureaus do not want us to ‘intrude’ into their affairs, they can withdraw their applications for immunity, and we will leave them to set whatever rates they want, however they want to set them, subject

to whatever laws will apply to their unimmunized conduct. If they want immunity from the laws that govern private businesses in the free market, however, then they must demonstrate to us that immunity is in the public interest. And our view has been, and still is, that *carriers should not be given immunity to collectively set, and to charge, rates that are above competitive levels; rather, if carriers want to set and charge rates above competitive levels, they must do so individually and not through their rate bureaus.*

See 2000 Decision at 4 (emphasis added).

In sum, the Board has already considered and rejected the arguments that the Rate Bureaus' immunized collective rates are market rates that require no reductions. The Board has made it clear that if the Rate Bureaus want the extraordinary benefit of immunity from the antitrust laws, they must reduce their collective rates to competitive levels. Otherwise, they must comply with the antitrust laws that apply to other participants in the free market.

D. There is no merit to the Rate Bureaus' contention that the Board's call for rate reductions lacks factual support.

The Rate Bureaus challenge the factual support for the Board's inquiry into collective rate-making by offering the following misleading characterization of the bases for the 1998 and 2000 Decisions:

The Board based its decision[s] on a generalized concern that there may be some relatively unsophisticated shippers, none of whom participated in the proceeding or who were identified, who are paying benchmark bureau-published class rate levels, which the Board concluded (without any specific evidence or rate analysis) may be above-market rate levels.

See EC-MAC Comments at 2.

Contrary to the Rate Bureaus' assertions, the Board did not base its decisions on a generalized, unsupported concern that some unwary shippers might be paying inflated collective rates. In fact, the Board issued its decisions based on a combination of findings that supported the

conclusion that the current collective rate-making system contravenes the public interest. In particular, the Board found, *inter alia*, that:

- (1) The practice of setting inflated collective rates has virtually no impact on prudent, informed shippers, who routinely receive discounts of up to 50%. *See* 1998 Decision at 4.
- (2) “[I]t is undisputed that some shippers pay undiscounted or minimally discounted class rates” *Id.*
- (3) The Board’s role in approving rate bureau agreements (and thereby immunizing them from antitrust scrutiny) can lead unsophisticated shippers to believe that inflated collective rates are really government-sanctioned reasonable rates. *Id.* At 4-5.

Such findings prompted the Board to conclude that, at best, collective rate-making has no impact on sophisticated shippers, and at worst, is prone to abuse at the expense of less sophisticated shippers who lack the means to negotiate arms-length arrangements for transportation at market rates.

The evidence submitted in connection with this proceeding unequivocally *confirms* that the current collective rate-making system presents very real traps for unwary shippers. For example the studies referenced in the comments of the Transportation Consumer Protection Council (“TCPC”) reveal that even large companies with traffic departments pay undiscounted collective rates due to “inadvertence and clerical error.” *See* TCPC Comments at 5. One such study conducted by Industrial Traffic Consultants Inc. found that “an average of 9.54% of all [such] bills were ‘undiscounted.’” *Id.* Similarly, in explaining the rationale for its proposed 20% reduction in class rates, SMC acknowledged that some shippers have “no negotiated discounts.” *See* SMC Comments at 6.

Such evidence establishes conclusively that some traffic moves at undiscounted collective rates, and that the current collective rate-making process amounts to a trap for the unwary that requires correction. Moreover, common sense dictates that the Board’s role in approving rate bureau agreements can only exacerbate the potential for abuse by lending the imprimatur of government

legitimacy to the Rate Bureaus' inflated "list prices." In sum, the evidence and common sense support the Board's determination that the current collective rate-making system contravenes the public interest and that rate reductions are needed to justify continued antitrust immunity.

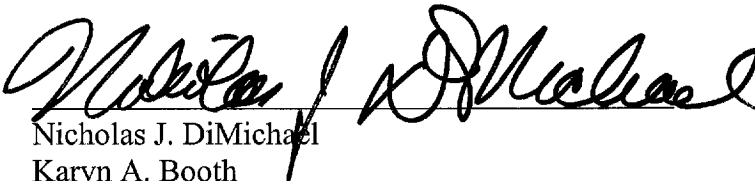
III. Conclusion

The Rate Bureaus have largely ignored the Board's request for proposals to reduce their collective rates to market levels. To the extent they have responded at all to the Board's request, they have proposed discounts that would do nothing to eliminate the "traps for the unwary" that led the Board to conclude that the current collective rate-making system contravenes the public interest. The Board should reject the approach suggested by the Rate Bureaus.

Respectfully submitted,

THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE

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May 11, 2000

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CERTIFICATE OF SERVICE

I hereby certify that I have on this 11th day of May, 2000, served a copy of the foregoing Reply Comments of The National Industrial Transportation League by first-class mail, postage prepaid upon all parties of record.



Aimee L. DePew