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SERVICE DATE - JUNE 28, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42026

MCI EXPRESS, INC.  
— PETITION FOR DECLARATORY ORDER —  
DSL TRANSPORTATION SERVICES, INC.

Decided: June 22, 1999

By petition filed February 27, 1998, MCI Express, Inc. (petitioner), seeks a declaratory order to resolve a dispute over whether certain shipments of property by motor carrier (transported before enactment of the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803) moved in common carriage or in contract carriage. DSL Transportation Services, Inc. (respondent), filed an answer on June 22, 1998. The matter is before the Board on referral from the United States District Court for the Central District of California, in Case No. CV 96-4697 ABC (BQRx), DSL Transportation Services, Inc. v. ETA Transportation, Inc., and MCI Express, Inc. (referral order dated February 9, 1998).

Under 5 U.S.C. 554(e), the Board has discretionary authority to issue a declaratory order to terminate a controversy or remove uncertainty. The Board and its predecessor, the Interstate Commerce Commission (ICC), have exercised broad authority in handling such requests, considering a number of factors, including the significance to the industry and the ripeness of the controversy. See Delegation of Authority—Declaratory Order Proceedings, 5 I.C.C.2d 675, 676 (1989). There, the ICC noted that petitions for issuance of a declaratory order premised on referral from a federal court are routinely accepted.<sup>1</sup>

Under the Board's authority in 5 U.S.C. 554(e) and 49 U.S.C. 721, a proceeding is instituted to resolve the controversy here. The matter has been referred by a federal court and otherwise appears to be within the Board's primary jurisdiction. The Board will resolve this matter pursuant to the modified procedure rules at 49 CFR 1112.1, et seq.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

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<sup>1</sup> It then delegated the responsibility for taking initial action in disposing of such matters to the Director of the Office of Proceedings. See 49 CFR 1011.8(c)(6).

1. A declaratory order proceeding is instituted. This proceeding will be handled under the modified procedure, on the basis of written statements submitted by the parties. All parties must comply with the Rules of Practice, including 49 CFR 1112 and 1114.

2. Petitioner's opening statement is due on July 28, 1999.

3. Respondent's reply is due on August 17, 1999.

4. Petitioner's rebuttal is due on September 1, 1999.

5. This decision is effective on its service date.

6. A copy of this decision will be served on:

United States District Court for the Central District of California  
(Attn: District Judge Audrey B. Collins)  
(RE: No. CV 96-4697 ABC (BQRx))  
Suite 680  
Edward Roybal Federal Building and Courthouse  
255 East Temple Street  
Los Angeles, CA 90012

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary