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BEFORE

THE

SURFACE TRANSPORTATION BOARD

STB EX PARTE NO. 656

MOTOR CARRIER BUREAUS – PERIODIC REVIEW PROCEEDING

REBUTTAL COMMENTS OF HOUSEHOLD GOODS CARRIERS' BUREAU COMMITTEE

HOUSEHOLD GOODS CARRIERS' BUREAU COMMITTEE

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CARRIERS' BUREAU
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These Rebuttal Comments are filed on behalf of the Household Goods Carriers' Bureau Committee (HGCBC or Committee) and its approximately 2,000 motor carriers of household goods, parties to the HGCBC Collective Ratemaking Agreement identified as Section 5a Agreement No. 1, in response to Reply Comments filed in this proceeding on April 1, 2005, by the United States Department of Transportation (DOT). The DOT Reply is intended to address all motor carrier bureau Opening Comments filed in this proceeding on March 2, 2005, including those of HGCBC.

Although the DOT Reply does not specifically address the numerous facts contained in the HGCBC Opening Comments related to the HGCBC Ratemaking Agreement, their Reply references certain statements contained in the HGCBC Comments. See DOT Reply, pp. 3 and 4. To the extent those statements are factually based, DOT does not dispute their accuracy. Instead, it presents a series of *ad hominen* arguments designed to persuade the Board that HGCBC collective ratemaking is contrary to the public interest.[1] We submit that considerably more than naked arguments that are not responsive to the points contained in the HGCBC Comments is required to support the DOT conclusions. It is not enough to simply argue that the public interest is the "touchstone" for Board consideration and continued approval of the HGCBC Agreement and then ignore HGCBC's explanation of the importance of collective ratemaking as it relates to the public interest. The errors in the DOT arguments will be addressed with reference to relevant facts contained in the HGCBC Opening Comments.

The DOT argument that free play of competitive forces
<u>and not collective ratemaking serve the public interest</u>

Each segment of the household goods carrier industry business (C.O.D. consumer, national (corporate) account, and civilian and military government) has a stake in the availability of a reliable national moving system that can meet their household relocation requirements at a reasonable cost. Certainly the national account and Federal government agency segments, being large volume shippers, are capable of and in fact protect their interests by negotiating the charges individual carriers will offer to attract their business. To facilitate this process, national account shippers and the Federal agencies rely upon HGCBC collectively formulated tariffs as the basis for their price negotiations with carriers.

In the case of the Department of Defense, the Military Surface Deployment and Distribution Command (SDDC) has directed that all motor carriers it has approved to

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1 Essentially the same arguments were made by DOT in its Report to Congress preceding enactment of the *Interstate Commerce Commission Termination Act of 1995*, P.L. 104-88. DOT Docket No. 49848, *Study on Interstate Commerce Commission Functions*, 60 Fed. Reg. 10771-775 (1995). In that Report DOT unsuccessfully endeavored to also convince Congress to eliminate collective ratemaking. The same Report also argued for elimination of van line/agent antitrust immunity, 49 U.S.C. § 13907(d), authority to enter into pooling agreements, 49 U.S.C. § 14302, and essentially all other indicia of regulation of the interstate household goods carrier industry (tariff and rate reasonableness requirements, collective released rates authority, etc.).

provide service submit their rate proposals by August 1, 2005, for the transportation of military service members' shipments in the SDDC Families First Program using HGCBC Tariff 400-N as the sole basis for those proposals. The collectively formulated rate level and tariff operating rules will therefore be the only pricing mechanism utilized by DOD for the development of individual carrier offers for service to transport military personal effects traffic.[2] As previously explained, the DOD decision to rely on the HGCBC collectively maintained tariff was the result of extensive analysis by DOD and its SDDC. See Opening Comments, p. 6.

A household goods transportation system that meets our Nation's Department of Defense requirements by effectively facilitating the pricing and movement of DOD service members' shipments is consistent with the National Transportation Policy, 49 U.S.C. § 13101, and clearly serves the public interest.

Federal civilian government agencies and the carriers that serve those agencies also rely upon tariffs collectively formulated under the HGCBC Ratemaking Agreement to price the carriers' service on behalf of the government. See Opening Comments, p. 6. Obviously, the efficiencies inherent in a relatively uniform pricing structure meets the requirements of the Federal government when it solicits individual carrier proposals to transport the personal effects of its civilian employees. Meeting the needs of the United States in this manner serves the public interest and is consistent with the National Transportation Policy.

It is a fact that national account shippers and their contracting carriers incorporate HGCBC Tariff 400 into their contracts to facilitate the pricing of the services necessary

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2 Carrier price proposals will be expressed as percentages of the HGCBC Tariff 400 rate level.

to transport corporate employees' personal effects.[3] Price negotiations between corporations and individual carriers center on the discounts below the HGCBC Tariff 400 rate level individual carriers will offer to obtain traffic. Experience has shown that corporate shippers prefer to negotiate with individual carriers in this manner since the uniformity of a single pricing mechanism eliminates the necessity of analyzing and comparing individual carrier proposals and the dissimilarities of individually drafted pricing proposals. This results in the proverbial "apples to apples" comparisons and evaluations of carrier contract proposals by shippers. This process meets the needs of a substantial segment of the corporate shipping public, is consistent with the National Transportation Policy, and, therefore, serves the public interest.

One might erroneously assume that the C.O.D. consumer segment of the moving industry's market is the most vulnerable to price discrimination since individual consumers are infrequent users of interstate moving services and may be more likely to incur higher transportation costs. Shipment data developed by HGCBC which are included in its Opening Comments (pp. 11-12) demonstrates that this is not the case.[4]

The fact that national account traffic possesses significantly better operating characteristics than C.O.D. traffic has not resulted in more favorable discounts for

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[3] The same process is followed by third party relocation companies (brokers) that act as intermediaries on behalf of corporate shippers.

[4] DOT suggests that in the "age of the Internet" it is "child's play" for consumers of transportation services to comparison shop by obtaining rate quotes from carriers. DOT Reply, p. 9, footnote 8. Certainly this is not the case with C.O.D. consumer shippers of household goods. In fact, the Internet has become the bane of consumer shippers that obtain rate quotations over the Internet. The significance of this problem was discussed in recent testimony delivered before a subcommittee of the Committee on Commerce, Science and Transportation of the United States Senate on April 5, 2005. In that testimony the Administrator of the Federal Motor Carrier Safety Administration testified, *inter alia*, that the most frequent fraudulent abuse of consumer shippers of household goods occurs over the Internet. Emphasizing her point, she explained that the Internet is "the absolute worst place to get a [rate] quote". See also Docket No. FMCSA 2004-17008, *Brokers of Household Goods by Motor Vehicle*, 69 *Fed. Reg.* 76664, *et seq.* (2004).

corporate shippers even though their heavier weighted shipments are transported longer distances, factors that generally result in lower rates per hundredweight and lower final charges.[5] Notwithstanding this, HGCBC data spanning a significant period of time (1997 and 2003) indicates C.O.D. shippers consistently receive discounts below the Tariff 400 benchmark rate level that are as good as or better than the discounts below that level received by national account shippers.[6]

It should be beyond dispute that the discounts below the HGCBC Tariff 400 rate level negotiated by individual carriers and individual corporate shippers produce what can be termed a competitive rate level. The arms length, one-on-one negotiations engaged in by individual carriers and shippers consider whatever unique price and service circumstances the shippers may require and the carriers are willing to offer. All of this is no doubt greatly influenced by carrier competitors vying for the same business. Thus, the rate level at which national account shipper traffic is transported, as reflected in the HGCBC data, constitutes the HGCBC carriers' and, in fact, the moving industry's competitive rate level.

In its *2000 EC-MAC* decision[7] the Board admonished bureau motor carriers that "... if carriers want to set and charge rates above competitive levels, they must do so individually and not through their rate bureaus". (Dec., p. 5). Obviously, this has not

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5 In 2003 C.O.D. shipments in the less than 30 percent discount category weighed an average 2,709 pounds and were transported an average 899 miles; national account shipments in the same category weighed an average 9,070 pounds and moved an average 943 miles. In the over 30 percent discount category C.O.D. shipments averaged 6,899 pounds and were transported an average 1,281 miles; national account shipments averaged 9,877 pounds and moved an average 1,117 miles. The same pattern existed in 1997. See Opening Comments, pp.11-13.

6 In 2003 the average discount received by C.O.D. shippers in the less than 30 percent category was 21.9 percent; the national account average was 18.9 percent; in the over 30 percent category the C.O.D. average was 62.5 percent and the national account average was 62.4 percent. The same pattern existed in 1997. See Opening Comments, p.11.

7 *EC-MAC Motor Carriers Service Association, Inc., et al.*, (served February 11, 2000).

occurred in the HGCBC carriers' pricing of services for C.O.D. consumer shippers. Keen competition among carriers has resulted in a C.O.D. consumer rate level that is as competitive as the rate level set by individual carriers and shippers that negotiated the national account rate level. In 2003 this occurred in spite of a significantly higher demand for service from C.O.D. shippers which should have dictated lower carrier discounts.[8] In 1997 shipment volume for both groups was nearly identical and discounts below the Tariff 400 rate were also nearly identical for both groups.[9]

Undisputed HGCBC data confirms that sound economic conditions govern the pricing of household goods transportation services for consumers which serves the public interest and is consistent with the National Transportation Policy

The DOT argument that HGCBC collective
<u>ratemaking does not enjoy shipper support</u>

The DOT Reply fails to acknowledge that users of the HGCBC carriers' transportation services are not opposed to HGCBC collective ratemaking. As explained in the Opening Comments, the manner in which this system serves the interests of shippers no doubt accounts for this lack of opposition. Opening Comments, pp. 6-8. The theoretical opposition mounted by DOT stands in stark contrast to the obvious utility shippers find in a uniform rate scale and operating rules that facilitate their rate and service negotiations with individual carriers.

Section 13702 of the Interstate Commerce Act requires that motor carriers of household goods publish tariffs containing their rates and related rules and practices

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[8] In 2003, 631,168 personal effects shipments were transported by HGCBC carriers compared to 421,915 national account shipments. See Opening Comments, p. 5.

[9] C.O.D. shipments numbered 583,748, and national account shipments numbered 590,000. See Opening Comments, p. 5.

which must be available for inspection by the Board and shippers. There is no question that shippers recognize the value in their ability to rely upon a single uniform tariff as opposed to, in the case of HGCBC carriers, 2,000 individual tariffs containing individual carrier versions of rates, charges and operating rules. In addition, Tariff 400 contains various rules that are mandated by the Federal Motor Carrier Safety Administration Consumer Protection Regulations, 49 C.F.R. Part 375. Of course, carriers are bound by their tariff provisions which may not be enforced unless the various requirements of Section 13702 are met.

We submit that the uniform pricing mechanism utilized by HGCBC carriers and the shipping public is far superior to an individual carrier tariff publication system. This serves the public interest and promotes the economical and efficient transportation objectives contemplated by the National Transportation Policy.

The DOT argument that competitive forces have
not determined the services offered, the prices
charged and the revenue needs of HGCBC carriers

Competition among household goods carriers for available traffic is intense. The previously referred to HGCBC shipment and pricing data and the prevailing competitive rate level applicable to national account and consumer traffic, which were generated by that competition, confirm that this is the case.

The statement prepared by Dr. Hertzmark also addresses the beneficial effects of the HGCBC uniform rate level on users of household goods transportation services. See Opening Statement, pp. 13-14 and April 2000 Hertzmark Statement. Obviously, this would not be the case if carriers did not vigorously compete for available traffic. Dr. Hertzmark's conclusions are fully supported by relevant HGCBC shipment and pricing data. Unlike the DOT argument, they are not theoretical propositions that are better suited to discussions of theoretical markets.

Demonstrative facts support the conclusion that the public interest is served by individual carrier pricing that is predicated upon the HGCBC Tariff 400 rate level. The result is reasonable rates without unreasonable discrimination or unfair or destructive competitive practices as contemplated by the National Transportation Policy.

CONCLUSION

The Department of Transportation Reply Comments submitted in this proceeding are not responsive to the HGCBC Opening Comments or April 2000 Comments. The Department's long standing opposition to collective ratemaking continues to rely on economic theories and antitrust legal precedent that it fails to connect to the immunized collective ratemaking conducted by HGCBC carriers. The Opening and Rebuttal Comments of HGCBC, on the other hand, explain the activities of HGCBC carriers and the users of their transportation services from the public interest perspective discussed in the Board's December 13, 2004, decision instituting this proceeding. We submit that those Comments clearly justify continued approval of HGCBC Collective Ratemaking

Agreement, Section 5a Application No. 1. For all of these reasons, HGCBC and its member carriers respectfully request Board approval of Section 5a Application No. 1.

Respectfully submitted,

HOUSEHOLD GOODS CARRIERS'
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