

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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EX PARTE NO. 656

MOTOR CARRIER BUREAUS – PERIODIC REVIEW PROCEEDING

EX PARTE NO 656 (Sub-No. 1)

INVESTIGATION INTO THE PRACTICES OF THE NATIONAL CLASSIFICATION  
COMMITTEE

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REPLY OF THE NATIONAL INDUSTRIAL  
TRANSPORTATION LEAGUE

IN OPPOSITION TO THE  
REQUEST FOR EXTENSION OF TIME EXPEDITED ACTION REQUESTED

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June 5, 2007

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Comes now The National Industrial Transportation League (League) in opposition to the Request for Extension of Time Expedited Action Requested (hereinafter denominated "Extension Request") filed on May 18 by the National Classification Committee ("NCC") and the National Motor Freight Traffic Association ("NMFTA"), collectively referred to herein as "NCC/NMFTA." In their Extension Request, NCC/NMFTA request an extraordinary 18 months to comply with the Board's decision issued in this case on May 7, 2007, from the current effective date of September 4, 2007 to November 4, 2008. The chief reasons given by NCC/NMFTA are the alleged difficulty of complying with the Board's decision in the allotted

45-day period permitted by the Board, and the alleged lack of prejudice or disadvantage to other parties by granting the relief sought.

The League opposes the requested extension, which amounts to a request for a stay of the decision without meeting either the judicial or administrative requirements for a stay.

Fundamentally, the League believes that the time has come to remove the last vestiges of the highly regulated structure that was in place for the motor carrier industry from 1935 to the passage of the Motor Carrier Act of 1980, and that there is no point in delaying that process any longer. As the Board found in its May 7 Decision, antitrust immunity "is not necessary to create or maintain a classification system or systems." Decision, p. 22. Nothing would prevent participants in the motor carrier industry individually from using the current classifications while NCC/NMFTA are developing procedures that would comply with the antitrust laws.

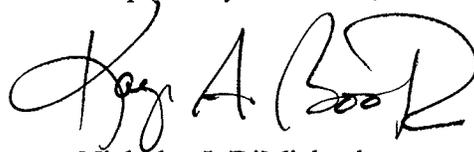
NCC/NMFTA may not be able to *change* the current classifications until these new procedures are in place, but there is no reason that such changes should be made collectively, with antitrust immunity, when the Board has found that such immunity is contrary to the public interest.

Moreover, it is untrue that no party would be prejudiced by such a long extension of the effective date. It is noteworthy that, though NCC/NMFTA argue that they need the extension to develop new procedures, NCC/NMFTA have *not* promised to refrain from changing the current classification system while they are proceeding with developing new procedures that comply with the antitrust laws. Such a long extension would certainly provide an opportunity – indeed, a temptation – to "game" the classification system while new procedures are being developed. Moreover, the unreasonable length of the requested extension would eliminate any incentive for NCC/NMFTA to act expeditiously in making the needed changes. Given the Department of Justice's position in this proceeding and as noted by the Board in its Decision, the League is

confident that DOJ would be responsive to good-faith NCC actions to fundamentally change its procedures. Decision, p. 23. Moreover, as the Board pointed out, "there are many industries" that have developed cost models and procedures that comply with the antitrust laws. Decision, p. 22. While these matters may be unfamiliar to NCC/NMFTA, they are not unfamiliar to DOJ nor to competent antitrust counsel. These facts all militate against the extraordinary extension of time requested.

Accordingly, the League opposes the requested extension.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Karyn A. Booth". The signature is stylized with large, flowing letters and a prominent flourish at the end.

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June 5, 2007

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of June, 2007, a copy of the foregoing "Reply of The National Industrial Transportation League In Opposition to the Request for Extension of Time Expedited Action Requested" was served by first class mail upon all parties of record.

A handwritten signature in black ink, appearing to read "Aimee DePew", written over a horizontal line.

Aimee DePew