SURFACE TRANSPORTATION BOARD
OPEN VOTING CONFERENCE
MARCH 21, 2003

***EC-MAC Motor Carriers Service Association, Inc., et al.*, Section 5a Application No. 118 (Sub-No. 2X)**

STATEMENT OF
CECELIA H. CANNIZZARO, ATTORNEY,
OFFICE OF THE GENERAL COUNSEL

Under the statute, when trucking companies get together to collectively set rates and other terms of service, they are not subject to the antitrust laws if they are members of a rate bureau whose arrangement has been approved by the ICC or the Board. In 1995, Congress directed the Board to review whether, or under what conditions, such rate bureau arrangements should continue to be approved.

In looking at whether these arrangements are in the public interest, the Board was concerned about the artificially high level at which bureau rates are collectively set, with bureau members then expressing their own rates in the form of a percentage discount off of the bureau-set rates. This method of pricing, with no restrictions, troubled the agency.

First, the occasional, unsophisticated shipper could be misled into thinking that the collectively-set rates are the prevailing prices, which they are not. Even shippers who know that trucking companies routinely offer discounts may not really know the extent of the discounting. The only thing that customers know for sure is the "list price," which is set by carriers collectively.

Second, many carriers have pricing documents that say that if a shipper is late in paying its freight bill – even a day past the credit period – it will lose all discounts. When that happens,

the shipping charges are based on these artificially high, bureau-set rates, which are sometimes more than twice as high as the discounted rate. That is quite a penalty, and one that bears no relation to the trucking company's collection costs for the overdue bill.

The Board's examination of rate bureaus resulted in a series of decisions, culminating in a 2001 decision in which the Board concluded that the existing bureau arrangements should continue to be approved only if the companies that are members of rate bureaus make two significant changes to the way they do business.

First: when quoting a rate as a discount from, or percentage off, a bureau-set rate, trucking companies must give a "truth-in-rates" notice that informs the potential shipper that a wide range of discounts generally is available and discloses the range of discounts that have been offered by the rate bureau's members. Requiring carriers to reveal the extent of their discounting seems fair to both the carriers and their customers and a small concession for continued immunity from antitrust liability.

Second: as a condition of membership in a rate bureau, trucking companies must not use the bureau-set rate as a measure of a late-payment penalty. Again, the idea is that carriers should not be allowed to set artificially high late-payment penalties through collective action that, if not protected by the Board, would be subject to the antitrust laws. Rather, the penalties should be reasonably related to the trucking company's collection costs.

Several rate bureaus have asked the Board to reconsider its 2001 decision and either drop or modify the truth-in-rates notice requirement and the prohibition against loss-of-discount conditions. And on the other side, a large shipper organization argued that the Board did not go far enough and has asked for additional conditions on the Board's approval of bureau agreements.

The draft decision finds none of their arguments persuasive and reaffirms the two conditions, but provides some clarification to make sure that the two conditions work as intended.

We would be happy to answer any questions.