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Via Courier

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

RE: *Section 5a Application No. 46 (Sub No. 20) Southern Motor Carriers Rate Conference, Inc.*

Dear Secretary Williams:

Please find enclosed for filing in the above-referenced proceeding the original and ten (10) copies of the National Industrial Transportation League's reply comments in opposition to Application.

An extra copy of this filing is enclosed for stamping and returning to our offices.

Should you have any questions regarding the foregoing, please do not hesitate to contact the undersigned.

Sincerely,

Kathryn A. Booth

Enclosures

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BEFORE THE

SURFACE TRANSPORTATION BOARD

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SECTION 5a APPLICATION NO. 46 (SUB NO. 20)

SOUTHERN MOTOR CARRIERS RATE CONFERENCE, INC.



REPLY COMMENTS OF

THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE

IN OPPOSITION TO THE APPLICATION

THE NATIONAL INDUSTRIAL
TRANSPORTATION LEAGUE
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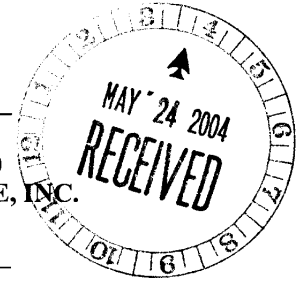
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May 24, 2004

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

SECTION 5a APPLICATION NO. 46 (SUB NO. 20)
SOUTHERN MOTOR CARRIERS RATE CONFERENCE, INC.



**REPLY COMMENTS OF
THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE
IN OPPOSITION TO THE APPLICATION**

I. INTRODUCTION

The National Industrial Transportation League (“the League” or “NITL”) hereby files its Reply Comments in opposition to the application of the Southern Motor Carriers Rate Conference, Inc. (“SMC”) to expand its immunity from the nation’s antitrust laws to permit SMC member carriers to engage in nationwide collective rate setting.

SMC originally filed its application in 1996. In 1998, the Board expressed its intention to permit nationwide ratemaking but only on the condition that collectively set class rates could no longer be established at a level inconsistent with the competitive market; rather, collectively set class rates would have been required to be reduced to market-based levels.¹ However, the agency found that approach to be unworkable for various reasons, and Congress then intervened to prohibit nationwide collective ratemaking altogether. Thus, the matter was put aside by the Board.² In 2003, Congress eliminated the statutory prohibition adopted four years earlier, and SMC raised the issue of expanded collective ratemaking authority again. Accordingly, the Board

¹ *EC-MAC Motor Carriers Service Association, Inc., et al.*, Sec. 5a Application No. 118 (Amendment No. 1), et al. (STB decision served Dec. 18, 1998) (“1998 Decision”) at page 5.

² *EC-MAC Motor Carriers Service Association, Inc., et al.*, Sec. 5a Application No. 118 (Amendment No. 1), et al. (STB decision served Feb. 11, 2000) (“2000 Decision”) at pages 4–5. Later, the Board instituted the “truth-in-rates” rule. *EC-MAC Motor Carriers Service Association, Inc., et al.*, Sec. 5a Application No. 118 (Amendment No. 1), et al. (STB decision served Nov. 20, 2001) (“2001 Decision”) at page 8.

has set a procedural schedule for SMC and interested parties to submit new information and comments regarding SMC's application. *Southern Motor Carriers Rate Conference, Inc., Section 5a Application No. 46* (Sub-No. 20) (STB served March 23, 2004).

The League hereby reaffirms its strong opposition to SMC's desired expansion of antitrust immunity, which would allow its motor carrier members to establish non-competitive class rates that may be applied to motor transportation services performed across the country.

The Board should reject SMC's application for a variety of reasons:

- ◆ Nationwide collective rate setting by a group of motor carriers is inherently anticompetitive and should not be granted absent a compelling public need, which has not been shown to exist. The government should not sanction the collective establishment of class rates that are well above market levels and that are likely to be charged to some shippers. Yet, that would be a result if SMC's application were granted. To the greatest extent possible, pricing of motor carrier services should be established through competition in the marketplace.
- ◆ SMC has not met its heavy burden of demonstrating that the collective establishment of rates on a national scale serves the public interest as required by 49 USC § 13703(a)(2). SMC offers no new justification for the Board to grant its application for an expansion of antitrust immunity. It seeks to substantiate nationwide rate setting based primarily on benefits to be gained by SMC itself, rather than the public at large. Furthermore, SMC relies on evidence of shipper support that is now more than 8 years old.
- ◆ The commercial interest of SMC to improve upon its CzarLite program does not justify expanding motor carrier antitrust immunity. In fact, SMC admits that use of CzarLite has not been impeded and, in fact, continues to grow under the existing territorial limitations, notwithstanding the fact that certain rate bureaus have now ceased operations.
- ◆ The Board's 1998 decision does not justify a granting of the application since the Board's statements regarding nationwide collective rate setting were based on a condition that class rates be reduced to market levels, which has not occurred. Likewise, the mere removal of the statutory prohibition against collective rate setting on national scale cannot be construed as direction by the Congress for the Board to grant such authority.
- ◆ Finally, assuming, *arguendo*, that a benchmark of national class rates for LTL services provides certain benefits to the industry, expanding antitrust

immunity to permit a rate bureau to establish such rates is unnecessary because existing regional class rates can be (and already are being) combined to create nationwide rate levels. Moreover, based on the questionable status of certain other rate bureaus, granting the application could lead to greater harm by potentially creating a rate bureau immune from the antitrust laws that could virtually control the establishment of all LTL class rates.

II. IDENTITY AND INTEREST OF THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE

The League is one of the oldest and largest national associations representing companies engaged in the transportation of goods in both domestic and international commerce. The League was founded in 1907 and currently has more than 600 company members. These company members range from some of the largest users of the nation's and the world's transportation system to smaller companies engaged in the shipment and receipt of goods.

For many years, League membership was open only to shippers and receivers of goods. However, in 2002, the League broadened its membership to permit carriers and all other persons engaged and interested in the transportation of goods to become members. Thus, the League's members now include not only classic shippers and receivers of goods, but also carriers, third-party intermediaries, logistics companies, and others. Members of the League are engaged in all forms of transportation, including rail, motor, ocean, and air carriage. They ship, transport, and plan for the shipment of all kinds of commodities both domestically and in international commerce.

Since its founding, the League has sought a competitive, efficient, and safe transportation system. Toward that end, the League has participated actively in federal regulatory proceedings and legislative matters dealing with national and international commerce.

III. THE BOARD SHOULD DENY SMC'S APPLICATION FOR ANTITRUST IMMUNITY FOR COLLECTIVE NATIONWIDE RATE SETTING

A. Expanding Antitrust Immunity to Permit Nationwide Collective Ratemaking Is Inherently Anticompetitive and Should Not Be Sanctioned by the Federal Government Unless Absolutely Necessary to Address a Compelling Public Need

After deregulation of the nation's motor carriers in 1980, eased entry into the trucking market and productivity increases gave birth to a highly efficient, flexible, and competitive environment for the buying and selling of motor transportation services.³ Today, there are tens of thousands of competing carriers across the United States. This is the picture of a healthy industry functioning consistent with the free market. It is not an industry that requires greater government intervention and extraordinary insulation from the antitrust laws.

As is the case in most other competitive industries, the marketplace is the best vehicle for determining motor carrier rates. Motor carriers who are not bureau members have established national rates pursuant to competition without difficulty. Yet, the SMC (and other bureaus) are seeking to broaden their cloak of immunity without having demonstrated that there is a compelling public need that would justify extending this extraordinary exemption from antitrust laws. Indeed, as addressed below, SMC's application is aimed more at addressing the financial and commercial interests of SMC and its members, rather than addressing the needs of the shipping public or the industry at large.

The Board should reject SMC's application. It is well recognized that the collective establishment of rates under existing territorial limitations has led to a system of vastly inflated class rates that the bureaus and carriers themselves admit are much higher than the rates normally charged to customers. While the SMC claims that these inflated rates are necessary as

³ See generally, ICF Consulting, EVALUATION OF U.S. COMMERCIAL MOTOR CARRIER INDUSTRY CHALLENGES AND OPPORTUNITIES (March 31, 2003), at pages 3-9.

a “benchmark,” the Board has previously expressed serious concerns over this pricing system: “we find that collective ratemaking, as it is currently structured, produces unrealistically high ‘benchmark’ rates and thus is contrary to the public interest.”⁴ Broadening antitrust immunity to permit collective pricing on a national scale would only perpetuate and extend this harmful practice. In addition, an expansion of collective rate setting is flatly inconsistent with the national transportation policy which requires the Board to promote competition to the greatest extent possible. 49 U.S.C. § 13101(a)(2).

If the Board were to grant SMC’s application, the market distortions created by nationwide collective rate setting would have the appearance of being sanctioned by the federal government as reasonable rates. As the Board has previously recognized, some unwary shippers are likely to end up paying the collectively set rates with no discount, which will only be more likely if excessive class rates have the appearance of Board approval. *1998 Decision* at 6 (“it is undisputed that some shippers pay undiscounted or minimally discounted class rates. . .”).

In sum, because antitrust immunity is legally disfavored, *Group Life & Health Insurance Co. v. Royal Drug Co., Inc.*, 440 U.S. 205, 231 (1979), and the motor carrier industry is flourishing under competitive market conditions, the granting of authority that condones the creation of inflated bureau rates is unnecessary to address a compelling public need and is the wrong path to be taken by the Board.

B. SMC Has Not Met Its Burden To Show That the Requested Immunity Is In the Public Interest

As SMC recognizes, it bears the heavy statutory burden of showing that an extension of antitrust immunity to permit nationwide collective rate setting is in the public interest. *SMC Filing*, Apr. 21, 2004, at 5 (“*SMC Filing*” or “*Filing*”). However, the evidence SMC has

⁴ *1998 Decision* at 5.

presented on this point is woefully inadequate to justify a grant of its application. SMC has submitted little new information supporting the authority it seeks. Rather, it has mainly repackaged its now-dated 1996 filing. If the Board had doubts or concerns over whether the public interest test has been satisfied, SMC's latest submission does not resolve them. Accordingly, the application must be rejected.

1. *Dated transportation community support does not satisfy the public interest test*

SMC argues that nationwide collective ratemaking is in the public interest because of the support shown by the "transportation community" when the application was first filed in 1996. *SMC Filing* at 5; *Middleton Statement* at 3. In actuality, fewer than 200 shippers and transportation intermediaries supported the initial application, which represents a very small percentage of these industries combined. *Middleton Statement* at 3. Moreover, it is unknown how these entities currently feel about SMC's application, since their previous sentiments are now eight years old.

In any event, the crucial point here is that reference to eight-year-old material from organizations that may support a given application contributes little to the real analysis that should take place – a reasoned, in-depth determination of whether or not the public interest would be advanced by expanding collective ratemaking. SMC's reliance on the alleged support of the "transportation community" cannot mask its failure to describe meaningful benefits that would be realized by shippers, intermediaries, and the public if its application were granted, and that would outweigh the likely harm of expanded collective ratemaking. Moreover, the whole notion that the "transportation community" supports SMC's application is refuted by this and

other filings by the League,⁵ as well as by strong opposition of the U.S. Department of Justice, the U.S. Department of Transportation, and two other motor carrier rate bureaus (the EC-MAC Motor Carriers Service Association and the Rocky Mountain Tariff Bureau), among others.⁶

Although SMC asserts that its current practice of providing every shipper a minimum 20% discount demonstrates that it operates consistent with the public interest, that practice is little more than a re-setting of the baseline. It is not at all clear that the 20% discount results in any reasonable approximation of market-based rates. Moreover, SMC is not prevented from adopting general rate increases in the future that would nullify the 20% discount. More importantly, it diverts attention from the real issue – that collective rate setting is anticompetitive and leads to substantially inflated rates.

2. The pricing interests of SMC carriers do not represent the public interest

SMC also tries to support its application by asserting that nationwide collective ratemaking would allow carriers to more easily reflect their costs and revenue needs in the baseline of class rates. *Filing* at 6. It is not entirely clear why SMC carriers are having a problem setting rates that reflect their costs and revenue needs, since they can always set whatever rate they want outside the collective ratemaking process. Indeed, the problem is at least partially of SMC's own making, as SMC admits that its tariff rates and other bureau rates are substantially inflated.

⁵ SMC's suggestion that the use of CzarLite by some League members somehow evidences support for the SMC application hardly deserves mention. *Middleton Statement* at 10 (stating that at least 80 League members use CzarLite). Use of CzarLite bears no relationship to a party's view on whether SMC should be awarded expanded antitrust immunity for collective nationwide rate setting.

⁶ See comments of U.S. DOJ filed Aug. 18, 1997 in *EC-MAC Motor Carriers Service Association, Inc.*, Sec. 5a Application No. 118 (Amendment No. 1). See comments of U.S. DOT, EC-MAC, and Rocky Mountain Tariff Bureau, all filed Dec. 15, 2003 in *Southern Motor Carriers Rate Conference, Inc.*, Sec. 5a Application No. 46 (Sub-No. 20). In addition, the National Small Shipments Traffic Conference, which previously expressed support for nationwide rate setting immunity, has now begun to express more skepticism given industry changes in the past seven years. *Reply of the National Small Shipments Traffic Conference, Inc. to Petition of Southern Motor Carriers Rate Conference, Inc. to Reopen and Reconsider*, filed with the Board Nov. 25, 2003 in the same proceeding.

SMC Vice President of Operations Daniel Acker, whose statement is attached to SMC's filing, tries to explain this conundrum. Mr. Acker seems to say that the territorial restrictions on collective ratemaking are problematic for three main reasons: (1) approximately one-half of SMC carriers are now based outside the South; (2) many SMC carriers have nationwide operating authority; and (3) other rate bureaus are not very open with the reasons for their rate increases, making life difficult for the SMC. *Acker Statement* at 8–9. Thus, SMC believes that nationwide rate setting authority would allow it to be more confident about the accuracy of its rate increases and would reduce the frequency of “regional anomalies.” *Id.* at 9.

As SMC's argument here shows, SMC desires nationwide rate setting immunity primarily in order to make life easier for itself and its member carriers. This is hardly a surprise; whenever competitors can get together and collectively set prices, their primary objectives are likely to be self-serving. In fact, SMC's president and CEO admits that the immunity is really sought only for SMC's interest: he notes that “[t]he sole reason SMC is pursuing this application is to enable it to serve the expanded pricing needs of its member motor carriers.” *Middleton Statement* (attached to filing) at 9. Although SMC has feebly attempted to argue that its increased ease of doing business would also aid the public interest, there is little doubt that it is SMC and its carriers who will primarily benefit from nationwide collective ratemaking.

In addition, SMC's claim that it needs expanded antitrust immunity for collective nationwide rate setting to adequately serve its members that are located outside the southern region is not a legitimate public interest concern that justifies a grant of nationwide collective rate setting. Those carriers that are located outside of the Southern territory can already engage in collective rate setting by joining a rate conference that represents their area of the country. If those carriers are dissatisfied with their own region's rate bureau, then they may still set national

rates, based on their own individual costs and the competitive market. Furthermore, as SMC apparently offers a wide variety of services to carrier members unrelated to collective rate-making, regardless of their location, these services can continue without expanding antitrust immunity.⁷

Moreover, SMC's contention that antitrust immunity for collective national rate setting is not atypical in light of previous approvals for other rate bureaus is unavailing. *SMC filing* at 3 (note 5). The four ICC decisions mentioned by SMC all dealt with rate bureaus of a single commodity class such as mobile housing haulers or oil field haulers, and the Board explicitly stated that it was approving the joint agreements because they did not involve carriers of different classes.⁸ Thus, the narrow circumstances in those cases do not equate to the broad relief requested here, since SMC's members are not restricted in the commodities they haul and would be collectively setting rates for shipments across the board.

3. *The commercial interests of SMC to promote and profit from CzarLite do not justify nationwide collective ratemaking*

SMC further claims that antitrust immunity is in the public interest because SMC's CzarLite proprietary pricing software is already very popular, and a uniform rate implementation date is necessary to make CzarLite even more popular. *SMC Filing* at 6; *Middleton Statement* at 4-7. SMC's unilateral desire to improve upon CzarLite and make it more widespread in the motor carrier industry does not equate to a public interest. Greater use of CzarLite would seem to clearly benefit only the software licensor (not coincidentally, SMC), but SMC amazingly

⁷ SMC provides education and training, data services (including the CzarLite national rate quoting service), carrier quarterly operating reports, and a motor carrier news reporting service, among other benefits of membership. Furthermore, SMC's own website admits that "[o]ur superior services have allowed us to expand our client base and service customers on a nation-wide basis so that remote locations are no longer remote." (emphasis added) <http://www.smc3.com/Services/services.htm> (visited May 20, 2004).

⁸ *Oil Field Haulers Association, Inc. - Agreement*, 291 ICC 780, 783-784 (1954); *Machinery Haulers Association - Agreement*, 302 ICC 741,747 (1958); *Mobile Housing Carriers Conference - Agreement*, 318 ICC 564, 566 (1962); *National Automobile Transporters Association*, 325 ICC 707, 712 (1965).

states that “[b]y entrusting SMC with nationwide ratemaking authority, the shipping community will be assured that a competitive baseline of class rates will occur on a date certain.” *Filing* at

6. The irony of this assertion is apparently lost on SMC. It believes that more antitrust immunity will lead to a more competitive baseline of rates, but this assertion comes despite SMC’s recognition that the collectively set “baselines” are now grossly in excess of market-based rates. SMC also claims that nationwide authority would allow it to fix the problem of staggered implementation dates of class rates created by other rate bureaus. However, reducing administrative costs and burdens associated with the publication of CzarLite hardly justifies nationwide collective ratemaking. SMC has other options available to address this problem, since it could simply mimic other rate bureaus’ implementation dates or create a more fluid system for publishing rate changes.

The Board should not facilitate the further growth of CzarLite simply to give carriers a single, uniform national pricing source. SMC admits that CzarLite already has significant power in the LTL market. *Slaton Statement* at 2 (“CzarLite has become the standard” for LTL). Furthermore, SMC’s goals for CzarLite apparently include national dominance. *Id.* at 4 (SMC hopes that CzarLite will “represent the LTL carrier industry as a whole”). Instead of broadening antitrust immunity available to the creators and marketers of CzarLite, just the opposite should be true. When a commercial product already enjoys widespread penetration into its target market, federal agencies should be even more wary of taking action that will lead to greater market dominance. Indeed, many users of CzarLite are already concerned with the high cost of the product. Should CzarLite become the only nationwide price list for LTL services in the future, then licensees could only expect to pay even more to access the product. It cannot be ignored that what is very much at the heart of SMC’s application is its own financial interests.

4. *Easing rate reasonableness assessments is not a public benefit*

SMC also claims that nationwide collective rate setting is in the public interest because SMC procedures are transparent and generate voluminous publicly available information. Thus, the Board would be easily able to assess the reasonableness of any motor carrier rates set by the SMC. *SMC Filing* at 7. While this may represent a slight benefit to the Board, it is inconceivable that any shipper would gladly pay an excessive rate today in exchange for making rate reasonableness assessments modestly easier.

C. The Board's 1998 decision does not justify nationwide collective rate setting

In its April 21 submission, SMC claims, in essence, that immunity for nationwide collective rate setting is largely perfunctory at this point since the “only remaining condition (meaning SMC’s Section 5a Agreement) was given final approval in the STB’s decision served on October 16, 2003.” *SMC Filing* at 6 (parenthetical added). This assertion represents selective memory on the part of SMC.

In actuality, the Board considered granting immunity for nationwide rate setting only on the condition that collectively set rates were reduced to market-based levels. *1998 Decision* at 5, 8, and 10. However, thereafter, Congress effectively removed nationwide immunity from the table. Sec. 227 of the *Motor Carrier Safety Improvement Act of 1999* (106 P.L. 159). Nonetheless, the Board still planned to require rate bureaus to reduce their collectively set rates to market levels if they wanted to maintain immunity. *2000 Decision* at 1–2. It was only later, after the issue was tabled because of Congress’ action, that the Board dropped its plan to require collectively set rates to be at market levels due to the difficulty in the logistics of implementation. *2001 Decision* at 5–6. The Board instead instituted a new “truth-in-rates” rule

whereby collectively set rate quotes had to be accompanied by a notice of the range of discounts that had been given to other customers. *Id.* at 8.

This chronology makes clear that the Board did not consider granting nationwide collective rate setting authority alongside the current truth-in-rates requirements. In fact, the Board only considered allowing nationwide rate setting if the rates to be established were at market-based levels. *1998 Decision* at 10 (“provided the bureaus reduce their class rate scales appropriately, they should be permitted to lift such territorial restrictions”).⁹ Thus, there can be no presumption that the Board is in favor of nationwide immunity since rates have not been reduced to a market-based level. The implication in SMC’s application that Board approval of nationwide rate setting has effectively already occurred is highly misleading. Since SMC has not reduced its class rates to market levels, the condition in the Board’s 1998 decision has not been met, and the application should be denied.

Similarly, any suggestion that Congress is somehow in favor of immunity for nationwide collective rate setting is likewise incorrect. The mere removal by Congress of the statutory prohibition on nationwide collective ratemaking, without more, cannot be construed as its approval of such activity. Also, the *Omnibus Appropriations Act of 2003*, wherein Congress returned to the Board authority over whether immunity is given to nationwide rate setting, did not feature floor debate or committee reports in favor of immunity for nationwide rate setting. It merely returned to the Board the authority and discretion to evaluate this activity in connection with the public interest.

⁹ See also *Southern Motor Carriers Rate Conference, Inc., Section 5a Application No. 46 (Sub-No. 20)*, at page 2 (STB served Mar. 23, 2004) (“In a decision served on December 18, 1998 ... the Board commented favorably on territorial expansion, provided that the bureaus reduce their class rate levels”).

D. There Is No Need For Expanded Immunity to Create a National “Baseline” of Class Rates

SMC has argued that it needs a nationwide baseline of rates immune from antitrust law to serve the pricing needs of its member carriers. *SMC Filing* at 5. Apparently, SMC’s position is that, when rates are individually set, it is too difficult for carriers to keep track of thousands of potentially applicable rates and, hence, a collectively set “baseline” is needed. *Middleton Statement* at 4–5.

SMC ignores basic free market economics with its argument. SMC carriers can already set nationwide rates whenever they want, at any level, and can change them as often as they like. They can simply do so individually, which is how almost all other businesses in the U.S. operate, and there is no reason that SMC motor carriers cannot also operate this way. Even the smallest carrier has the ability to keep track of its costs and price its services accordingly, as the competitive market permits. If a carrier’s service does not sell, then the carrier may want to lower its price, add value to its offering, or try to exploit some niche market. SMC has not shown that its members’ services should be treated differently from this basic free-market model or that special treatment to allow collective rate setting is needed to serve the public interest.

SMC’s argument here also fails to recognize that most carriers already have the expertise necessary to price their services without reference to a “baseline.” As the Board has found, many shippers get discounts off of collectively set class rates. *1998 Decision* at 6. These discounts are individually tailored to each shipper’s situation; they represent the results of negotiation and/or discretionary decisions by carriers to offer certain prices. Thus, SMC carriers are already engaging in the same skills they need to individually set rates and do not need a collectively set baseline of rates.

SMC claims that the necessity for this baseline cannot be questioned since the use of a baseline is so widely accepted in the industry. *Middleton Statement* at 5. SMC should know that industry acceptance is entirely irrelevant to an investigation into whether or not the public interest is served. SMC's sentiment here merely emphasizes the fact that SMC only seeks nationwide rate setting immunity for the benefit of itself and its carriers.

Lastly, any supposed need for a baseline of rates, if it truly exists, is already provided by SMC's CzarLite price quoting system. This system has existed for over fifteen years and provides licensees access to baseline rates that are national in scope for practically any commodity. SMC's Danny Slaton explained the introduction of CzarLite as a revolutionary leap forward from the previous patchwork of pricing systems. *Slaton Statement* at 2. He noted that "[b]y developing a unique way of resolving territorial boundary overlaps and conflicts in the rate basing system, CzarLite was able to present a unified, nationwide base rate for various pricing purposes." *Id.* Thus, any need for a national baseline is already being served and there is no justification to expand antitrust immunity because a software licensor could improve upon an existing commercial product.

Furthermore, the demise or weakness of other rate bureaus has not harmed CzarLite. In fact, as Slaton notes, CzarLite's popularity has been booming in recent years. *Slaton Statement* at 2-3. Moreover, since CzarLite is partially based on rates collectively set by other bureaus, SMC can continue to use preexisting rates to create the national baseline if any bureau were to cease publishing new rates, and simply adjust the level of the discount to make the rate competitive.

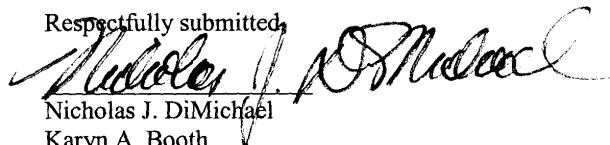
E. The Regional Limitation Is Needed to Prevent Rate Bureau Monopolization

Finally, the Board should reject SMC's application for nationwide collective ratemaking authority because the regional limitation acts as a protection that one or two rate bureaus would not come to dominate the entire country. With nationwide rate setting, there would be no reason to have numerous regional rate bureaus, and consolidation of the existing rate bureaus would be likely. The Board should be very cautious before it expands antitrust immunity for collective ratemaking purposes, especially given the risk that such expansion would lead to monopolization by one or two nationwide rate bureaus. Such institutions could possibly become even more powerful by attracting the largest U.S. motor carriers, who thus far have tended to not participate in rate bureaus. It is for reasons like these that antitrust immunity is legally disfavored and should be narrowly construed. *Union Labor Life Insurance Co. v. Pireno*, 458 U.S. 119, 126 (1982).

IV. CONCLUSION

For all of the above reasons, the League respectfully requests that the Board reject SMC's application.

Respectfully submitted,



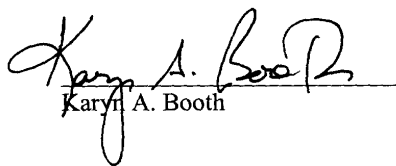
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May 24, 2004

CERTIFICATE OF SERVICE

I hereby certify that I have on this 24th day of May, 2004, served a copy of the foregoing
Reply Comments of the National Industrial Transportation League in Opposition to the
Application on all parties of record, by first-class mail, postage prepaid.


Karyn A. Booth