

Before The
Surface Transportation Board

STB Ex Parte No. 656 (Sub-No. 1)
Investigation Into The Practices of the National Classification Committee

Supplemental Reply Comments
Of
National Motor Freight Traffic Association, Inc.
And The
National Classification Committee

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The National Motor Freight Traffic Association, Inc. (NMFTA) and the National Classification Committee (NCC), in response to the Surface Transportation Board's (STB) Decision served on March 16, 2006, file these Supplemental Reply Comments to the letter dated February 21, 2006, submitted in this proceeding and signed by the Hon. Danny K. Davis, the Hon. Charles W. Dent, the Hon. Rahm Emanuel, the Hon. Paul E. Gillmor, and the Hon. Ralph M. Hall, Members of Congress. In response to statements made in that letter comment, the NCC respectfully states as follows:

SECTION I

STATEMENT OF

JOEL L. RINGER

I.
STATEMENT OF JOEL L. RINGER

This statement is submitted by Joel L. Ringer, Manager of Classification Development for the National Motor Freight Traffic Association, Inc. (NMFTA), and National Classification Committee (NCC), 2200 Mill Road, Alexandria, Virginia 22314. I previously submitted statements in this proceeding¹ as well as the lead proceeding, Ex Parte No. 656, Motor Carrier Bureaus—Periodic Review Proceeding.²

In their letter of February 21, 2006 to the Surface Transportation Board (STB), Congressmen Danny K. Davis, Charles W. Dent, Rahm Emanuel, Paul E. Gillmor and Ralph M. Hall criticize the NCC and the collective motor carrier classification process. The Congressmen allege “a carrier bias toward increasing classifications...” and “[a] lack of transparency and accountability [that] only compounds the anti-competitive outcome of the NCC’s classification process,” as exemplified, they state, by “the recent confectionery reclassification case.”³ Since none of the Congressmen, nor any members of their staffs, have ever attended an NCC or Classification Panel meeting and in fact have never participated in any way in the collective classification process, it is reasonable to conclude that their views in this regard have been unduly colored by the candy companies to which they refer in their letter.

I respectfully suggest that the Congressmen have been misinformed.

¹ See Reply Comments of National Motor Freight Traffic Association, Inc., and the National Classification Committee, dated December 22, 2005.

² See Comments, Reply Comments and Rebuttal Comments of National Motor Freight Traffic Association, Inc., and the National Classification Committee, dated March 2, 2005, April 1, 2005 and April 21, 2005, respectively.

³ Congressmen’s letter of February 21, 2006, at page 1.

The Congressmen's Allegations are Unfounded

The openness of the classification process is unparalleled. As I have documented in my earlier statements,⁴ the strict public notification and disclosure requirements placed on the NCC by its Section 5a Agreement—prescribed and approved by the STB—assure “transparency.” Furthermore, all classification actions by the NCC and its Classification Panels are made at public meetings where any interested person, including shippers and shipper groups, can attend and engage in an open exchange of information, views and opinions relating to the classification issue(s) involved.⁵

And the NCC is indeed accountable for its classification actions, as I have likewise discussed in my previous statements. Any change to the provisions of the National Motor Freight Classification (NMFC) approved by the NCC or its Classification Panels—a class increase, class reduction or whatever—must be supported and justified by the facts, data and evidence in the public record as they relate to the classification-making standards recognized by the STB. There is no bias toward class increases,⁶ and safeguards built into the classification system make certain that the NCC and NMFTA/NCC staff do not act improperly. All classification changes are subject to review by a neutral arbitrator, the STB or the courts.

⁴ See for instance Ex Parte No. 656, Motor Carrier Bureaus—Periodic Review Proceeding, Comments of National Motor Freight Traffic Association, Inc., and the National Classification Committee, dated March 2, 2005, Statement of Joel L. Ringer, at pages 5-9.

⁵ Interested persons who cannot, or choose not to, attend the public meeting may still participate in the classification process by submitting information and/or comments in writing for consideration by the NCC or Classification Panel.

⁶ See for instance Ex Parte No. 656 (Sub-No. 1), Investigation into the Practices of the National Classification Committee, Reply Comments of National Motor Freight Traffic Association, Inc., and the National Classification Committee, dated December 22, 2005, Statement of Joel L. Ringer, at pages 42-43.

Moreover, the NCC's classification-making activities are not "anti-competitive,"⁷ and the NCC does not engage in "rate setting."⁸ The NCC evaluates the transportation characteristics—density, stowability, handling and liability—of goods moving by motor carrier and assigns classifications accordingly. Regardless of the particular classification(s) assigned, carriers are free to negotiate freight rates with their shipper customers, and regularly do. Trucking is a *very* competitive business, and motor carrier pricing is determined by market forces. Carriers and shippers may enter into contracts, FAK (freight-all-kinds) rates or any other pricing mechanism as they see fit.

The NMFC is a standard that facilitates motor carrier pricing. The value of the NMFC in this regard to both carriers and shippers has been recognized by the United States Congress, which has characterized freight classification as a:

useful tool for shippers, receivers and transporters of freight [so] all know what they are talking about, thereby contributing to an efficient and economical transportation system.⁹ (Emphasis ours.)

The NMFC enhances carrier-shipper pricing negotiations in a competitive environment by providing important, relevant information on the commodities being shipped.

Former STB Chairman Roger Nober likened the NMFC to a Chilton® Labor Guide manual, which sets the amount of time it takes (or should take) to perform automobile repairs and maintenance work. Such manuals provide a standard that mechanics use to determine their labor charges. At the NCC's public meeting on November 3, 2003, Chairman Nober observed:

⁷ Congressmen's letter of February 21, 2006, at page 1.

⁸ Congressmen's letter of February 21, 2006, at page 2.

⁹ HR No. 96-1069, 96th Cong. 2d. Sess. p. 28.

The Classification functions very much in the same way. It helps carriers get a handle on all of the commodities in the marketplace when they make their pricing. And as long as it helps facilitate the market and encourage competitors rather than set prices, I am all for it, and I think what you [the NCC] do is in the public interest and ought to be continued. (Emphasis ours.)

The NCC's Reclassification of Candy Was Not "Improper"

The reclassification of candy in August 2005, and the events surrounding the NCC's research and review of candy leading to that action, is detailed in my previous statement in this proceeding.¹⁰ As explained there, despite multiple contacts by the NCC, the candy industry's representative organization, the National Confectioners Association (NCA), failed to participate in the classification process.

The NCC's intent was to work cooperatively with the candy industry. Accordingly, Larry Graham, President of NCA, was notified at every stage of the classification process. Mr. Graham was first notified by the NCC when this matter was presented to a Classification Panel as a commodity report; *before* the research survey on candy was initiated. The NCC contacted Mr. Graham twice during the research phase to enlist NCA's and the candy industry's assistance in developing accurate, representative information on the transportation characteristics of candy. Notice was sent to Mr. Graham in advance of the Classification Panel meeting where the results of the research survey were presented, and yet another notice was sent to Mr. Graham in advance of the August 8, 2005 Panel meeting where the proposal to reclassify candy was considered.

In all, Mr. Graham was notified *five times* of the NCC's activities relating to the classification of candy, and *five times* Mr. Graham and NCA ignored those notices.

¹⁰ See Reply Comments of National Motor Freight Traffic Association, Inc., and the National Classification Committee, dated December 22, 2005, Statement of Joel L. Ringer, at pages 22-35.

Absent input from NCA, the Classification Panel that met in August 2005 considered the best information available, which consisted of carrier-supplied data, reflecting the transportation characteristics of actual candy shipments, as well as data furnished by interested shippers who responded to the NCC's survey.

Based on this information the Classification Panel approved the proposal, which amended the classification description and packaging requirements for candy, as named in NMFC item 39970, and increased the applicable class from 65 to 92.5.

The Congressmen appear critical of the fact that much of the information on which the Classification Panel based its decision was obtained from motor carriers, and they describe the approved class increase as "improper."¹¹ I respectfully submit that the information considered by the Panel was valid, and there was nothing improper in the Panel's action.

Repeated solicitations to NCA for information from its members went unanswered. However, even without NCA's assistance, the information of record covered a cross-section of the candy market: hard candy, taffy, lollipops, puffed candy, truffles and chocolate candy, including chocolate-covered cherries. And as stated, the carrier data related to actual shipments and thus reflected the "transportability" of the various candy products. Moreover, in accordance with the NCC's Section 5a procedures, all of the information in the Committee's possession—including the staff report (analysis) and the supporting raw data—was placed in the NCC's public docket file and posted on NMFTA's website 60 days prior to the Classification Panel meeting, so any interested person would have ample time and opportunity to inspect the record and

¹¹ Congressmen's letter of February 21, 2006, at page 1.

challenge the accuracy or representativeness of the data, should there be cause. No one questioned the data.

The NCC has been Working With NCA to Address the Candy Industry's Concerns

After the changes to the candy classification were approved and became effective, NCA contacted the NMFTA/NCC staff and belatedly expressed its interest. NCA asked that the proposal be reopened and the implementation of the class change stayed. But since the amended provisions were already in effect this could not be legally done.

Alternatively, NCA sought a new proposal to reinstate the class 65. As the NCC's Manager of Classification Development, I advised that by having a candy company docket the new proposal NCA would have substantially more time to collect and submit information on behalf of the candy industry.¹²

NCA took my advice. Two candy companies docketed identical proposals for the candy industry. Those proposals, Subjects 17 and 18 of Docket 2006-1 (February 2006), were considered by the Classification Panel that met on February 6, 2006.

NCA provided data on the products of 26 of its member companies, or 6.5 percent of the approximately 400 candy companies it represents. As initially submitted to the NCC, NCA's data contained a number of inaccuracies and inconsistencies, an example of which was a product identified as "chewy candy" that reportedly had a density of 116.41 pounds per cubic foot! Lisa Winter of the NMFTA/NCC staff alerted NCA, which then

¹² Pursuant to the notification and disclosure schedule in the NCC's Section 5a Agreement, the proponent of a docketed proposal must have all of its facts, data and evidence in the public docket file no later than 60 days prior to the meeting where the proposal will be considered, while other interested parties have an additional 30 days to submit their facts, data and evidence. In the scenario I suggested, NCA would be an interested party to the candy company's proposal. It would thus have an additional month to collect its supporting data and still have the proposal considered at the next Classification Panel meeting.

corrected some of the figures. The revised data yielded an overall density range of 5.14 to 51.95 pounds per cubic foot.

The information NCA submitted also indicated some significant stowability, handling and liability concerns. For instance, some candy cannot be subjected to temperatures above 65 degrees Fahrenheit, and two companies actually require refrigerated service. It is also not uncommon for shipping packages to have precautionary markings, such as “Fragile,” “Cannot Be Double Stacked” and “Top Load Only.”

In considering the information of record, the Classification Panel that met on February 6 determined that class 65 was not justified for all candy classified in item 39970, such as products having a density as low as 5.14 pounds per cubic foot.¹³ The Panel also had reservations about the accuracy and representativeness of NCA’s data, which related to only 6.5 percent of the association’s member companies and had already been found to contain erroneous figures.

Nevertheless, after an exhaustive discussion with candy industry representatives in attendance—among them NCA President Graham—and as an accommodation to candy shippers, the Classification Panel ultimately voted to approve the following density-based provisions:

Item No.	Description	Class
	CANDY GROUP: subject to item 39900	
39970	Candy, NOI, or Chocolate Candy, NOI, see Note, item 39976, in boxes or Packages 1403, 2231 or 2495, subject to Item 170 and having a density in pounds per cubic foot of:	
Sub 1	Less than 12	92.5
Sub 2	12 but less than 15.....	85
Sub 3	15 but less than 22.5.....	70
Sub 4	22.5 or greater	65
39976	NOTE—No Change.	

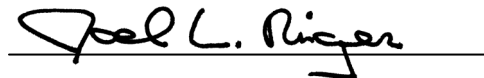
¹³ NCC guidelines for class 65 call for a minimum average density of 22.5 pounds per cubic foot.

Significantly, this action by the NCC's Classification Panel resulted in lower classes for over 83 percent of the candy products of record, with more than half of the products (51.60 percent) being assigned class 65. These provisions are scheduled to become effective on April 29, 2006 in Supplement 3 to NMF 100-AF.

Pursuant to the NCC's Section 5a Agreement, the Classification Panel was constrained to act within the scope of the proposal.¹⁴ Therefore, the Panel also requested that the candy industry, through NCA, work with the NMFTA/NCC staff to develop additional data to see if further class adjustments would be in order. Mr. Graham agreed to do so.

In my previous statement, I lamented NCA's lack of candor in failing to acknowledge the extent of the NCC's cooperation and assistance in this matter. The Congressmen's February 21 letter makes no mention of the NCC's efforts to accommodate and work cooperatively with the candy industry. We must assume that is because the candy industry did not bother to tell the Congressmen, just as it had not bothered to tell the STB. The NCC is once again disappointed in NCA's and the candy industry's lack of candor.

I, Joel L. Ringer, state that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement. Executed on March 24, 2006.

A handwritten signature in black ink, reading "Joel L. Ringer", is written over a horizontal line.

JOEL L. RINGER

¹⁴ Article IV, Rule 6(b) of the Agreement allows the NCC or a Classification Panel to modify a proposal, "but it may not broaden the scope of the proposal..." The present class in item 39970 was 92.5, and class 65 was proposed, so the Panel had to stay within those boundaries.

SECTION II

STATEMENT OF

WILLIAM W. PUGH

II.
Statement
Of
William W. Pugh

This statement is submitted by William W. Pugh, Executive Director of the National Motor Freight Traffic Association, Inc. (NMFTA), and Secretary to the National Classification Committee (NCC), 2200 Mill Road, Alexandria, Virginia 22314. I previously submitted statements in this proceeding including the lead proceeding, Ex Parte No. 656, Motor Carrier Bureaus—Periodic Review Proceeding, as well as previous proceedings conducted over the last decade in which the STB reviewed the NCC’s Section 5a immunity namely, Section 5a Application No. 61 and Section 5a Application No. 61 (Sub-No.6).

On February 27, 2006 the Surface Transportation Board accepted and made part of the public record of STB Ex Parte. No. 656 (Sub-No. 1) a letter signed by five Congressmen which urged the STB to deny the continuance of the NCC’s antitrust immunity but provided no facts to support this action. The letter contends that the National Motor Freight Classification (NMFC) and the process by which it is maintained is “rigid, inefficient, and reflects a carrier bias toward increasing classifications based on insufficient or non-representative data,” and that the process lacks “transparency and accountability.”

For 70 years, the NMFC has promoted both equity and competition in the LTL sector of the trucking industry, and the NCC’s limited antitrust immunity is needed to

enable the maintenance and development of the NMFC as a uniform national standard. The Congressmen's letter fails to recognize the disruption and the difficulties that the LTL trucking industry would suffer if deprived of this invaluable standard. Contrary to the allegations that the NCC's Section 5a immunity constitutes an "antiquated exception to current antitrust laws," the NMFC's value has been recognized by Congress, the ICC and the STB for many years. For example, the legislative history of the Motor Carrier Act of 1980 reflects the Congressional view that the Classification is "a useful tool for shippers, receivers, and transporters of regulated freight to all 'know what they are talking about' thereby contributing to an efficient and economical transportation system." (HR Report No. 96-1069 96th Cong 2nd sess.)

The will of Congress, as expressed in 49 USC §13703(c)(1), is that the NCC's Section 5a antitrust exemption shall continue unless and until the STB finds that termination is necessary to protect the public interest. A finding that termination of the NCC's immunity is necessary to protect the public interest can not be made on the basis of the bare allegations contained in the letter which apparently arises out of a shipper group's dissatisfaction with a particular classification action by the NCC. What we find particularly disturbing is that a shipper group that is dissatisfied with the NCC's action in reclassifying candy can forgo the STB's prescribed procedures for testing the merits of its case and instead attempt to invoke a "nuclear option" of soliciting a letter by members of Congress to terminate the NCC's antitrust exemption.

The NMFC remains viable after 70 years because it works well for shippers as well as carriers. Its utility has been amply demonstrated by the statements of many shippers as well as carriers that have accompanied the pleadings submitted by the

NMFTA/NCC in the last eight years in connection with the STB's routine investigations of the NCC's Section 5a classification-making Agreement.

Contrary to the allegations set forth in the letter, the National Motor Freight Classification is not closely related to illegal price fixing nor do class increases adopted by the NCC automatically result in increased revenue for the carriers. In fact, such allegations implying or stating that the Classification is used as a revenue-generating device have been repeatedly made and rejected by both the ICC and STB.

Allegations such as those found in the Congressmen's letter are much more easily made than disproved. In order to thoroughly refute these allegations, the NMFTA/NCC has been obliged to submit detailed statements describing the classification-making process (see, for example, the detailed factual rebuttal provided in the attached statement of Joel Ringer). Some of the arguments that are now raised in opposition to the continuation of our antitrust exemption have been rejected by the STB throughout the course of its proceedings that have been instituted since November of 1997 to review the NCC's Section 5a Agreement, including the instant proceeding, and Ex Parte 656, as well as Section 5a Application No. 61 and Section 5a Application No. 61 (Sub-No. 6). These same allegations have not somehow gained credibility through the passage of a few years.

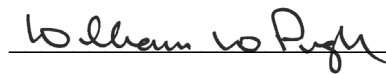
Finally, the Congressmen's letter includes the alternative suggestion that if the NCC's antitrust exemption is not withdrawn, representatives of shippers as well as carriers should sit on the NCC. We strongly disagree. When that same suggestion was made in a recent proceeding, the STB determined that, inasmuch as we have provided the option of arbitration of an NCC decision, "shipper voting on the NCC was neither

necessary nor appropriate.” Section 5a Application No. 61, National Classification Committee Agreement, served November 20, 2001.

We understand the need for the STB’s proceedings that are intended to review the NCC’s Section 5a Agreement. However, we object to the misuse of those proceedings as a means of circumventing the procedures that have been established to determine the reasonableness of the NCC’s classification decisions. When the candy manufacturers or any other person or group objects to a specific classification action of the NCC, those objections are properly raised through reconsideration by the NCC or before a neutral arbitrator and if necessary by means of a protest before the STB. These authorized procedures are designed specifically to facilitate a detailed evaluation of the reasonableness of a particular classification action such as the reclassification of candy. The Candy Manufacturers are apparently unable to develop a sound argument to defeat the NCC’s reasonable and necessary reclassification of their products on the merits. It is not appropriate for them to misuse the instant investigation of the NCC’s Section 5a Agreement as a means to this end.

I, William W. Pugh, state that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on March 24, 2006.

A handwritten signature in black ink, reading "William W. Pugh", written over a horizontal line.

William W. Pugh

SECTION III

ARGUMENT OF COUNSEL

III. Argument

A. The Actions of the Candy Manufacturers Soliciting Political Support After the Record Has Closed Are Improper.

The candy manufacturers, through their trade association, the National Confectioners Association (NCA), are parties of record in this investigation proceeding. It is submitted that their solicitation, and obvious input into the representations made by the five Congressmen in their February 21, 2006 letter comments, sent some two months after the evidentiary record was closed, are improper and should be so found by the Surface Transportation Board (STB). The candy manufacturers' actions violate a number of the agency's procedural rules and present a serious issue regarding the Canons of Ethics.

December 2, 2005 was set by the STB as the date on or before which comments were to be filed by parties in response to the STB's Decision instituting this investigation proceeding, and the NCC was given until December 22, 2005 to submit its response. The NCA did file comments on behalf of its candy manufacturer members, which comprise some 90% of that market. Now, through the February 21, 2006 letter signed by five members of Congress, they seek to submit additional comments in violation of Sections 1104.6 and 1104.7(b) of 49 C.F.R.

Section 1104.6 provides that "documents must be received for filing at the Board's offices in Washington, DC within the time limits set for filing." The candy manufacturers seek to circumvent that requirement by having comments submitted through five members of Congress almost three months after that submission was due. Section 1104.7(b) specifies that "requests for extensions must be served on all parties at

the same time and by the same means as service is made on the Board....” Moreover, requests for extensions must be made not less than ten days before the due date. Neither requirement was complied with by the candy manufacturers in this investigation proceeding which involves the statutory right of the NCC to collectively establish classifications with antitrust immunity.

The candy manufacturers’ actions also raise an issue regarding a prohibited ex parte communication as defined in Section 1102(a)(3) of 49 C.F.R. The NCC, as well as the other parties to this proceeding, was aware that comments would be posted on the STB’s website within the timeframes established by the agency’s procedural decisions. However, the NCC had no reason to suspect that almost three months after the due date for such filings the candy manufacturers, through the solicited input from five members of Congress, would have additional comments submitted.

In Section 1102 (a)(3) of 49 C.F.R., an ex parte communication concerning the merits “means an oral or written communication by or on behalf of a party which is made without the knowledge or consent of any other party that could or is intended to influence anyone who participates or could reasonably be expected to participate in the decision.” Clearly, the February 21 letter comments were submitted at the request and on behalf of the candy manufacturers party to this investigation proceeding. That document was submitted without the knowledge or consent of the NCC, and patently is intended to influence the STB’s decision in this adjudication. The STB’s posting of the letter on its website does not cure those violations and cannot be deemed to be adequate notice inasmuch as the NCC had no reason to suspect that those letter comments were to be submitted to the STB or that they would be admitted into the record

after it had been closed for some two months. It was entirely fortuitous that the letter came to the NCC's attention. Such filing on behalf of the candy manufacturers violates the spirit, if not the intent, of the STB's ex parte communication prohibition—especially in this investigation which involves an adjudication of the NCC's statutory right to antitrust immunity and possibly the continuance of its Section 5a Agreement.

The agency should also be concerned about the strategy recently engaged in by certain shippers and their trade associations, including the candy manufacturers, of avoiding the STB-approved procedures for challenging classification actions by the NCC and seeking the input of certain members of Congress to defeat the classification process. That course of conduct raises issues concerning compliance by such persons with Section 1103.13 of 49 C.F.R. which prohibits attempts to exert political influence on the Board.

While Section 1103.13(a) speaks in terms of political threats or personal reprisal, a letter from members of Congress contending that there is an inherent bias in the classification process; that antitrust immunity should be eliminated for the NCC; and that shippers should sit on the NCC; although not a threat, nonetheless seeks to influence the STB's judgment on these critical matters which are under investigation. Given that none of the five members of Congress signatory to the February 21 letter, or their staffs, has ever attended an NCC or Classification Panel meeting, or otherwise taken part in a classification matter, it is apparent that the very negative comments in the letter are the product of candy manufacturer allegations. There can be no question that the candy manufacturers' intent in having those unfounded contentions made by members of Congress was to influence the STB in its decision made in this adjudication. Such

conduct should not be condoned by the STB—particularly in view of the manner in which the involved letter was introduced into this record.

B. No Weight Can or Should Be Given to the February 21 Letter.

Considering the circumstances under which the February 21 letter was submitted, the absence of any firsthand knowledge by its signatories of the classification process or the allegations and comments made therein, procedural fairness and due process dictate that the involved letter be accorded no weight in adjudicating the statutory right of the NCC to conduct collective classification-making activities with antitrust immunity.

A very dangerous and unfair precedent is threatened here. As indicated, rather than seek relief under the STB-approved procedures available through the NCC, or through recourse to the agency, when classification decisions may be disagreed with, Congressional intervention is being sought to influence agency action and to terminate the classification process through the NCC's approved Section 5a Agreement. That conduct should not be condoned by the STB, and such course of action should be categorically prohibited by the agency.

Through comprehensive proceedings conducted over the course of the past seven years, the STB has approved a classification process which is fair and responsive to the needs shippers have asserted are necessary to their participation. The arbitration process, which major shipper associations claimed was absolutely necessary to remove their "perception of bias," was instituted by the NCC and approved by the STB. Nowhere has any of the shipper groups which argued so vehemently for the incorporation of

arbitration into the classification process given a plausible explanation for their failure to utilize arbitration to challenge initial classification actions with which they may disagree. Now, as apparently suggested in the February 21 letter, permitting shippers to have an equal voice with carriers in making classification decisions is offered as the panacea for shipper objections to the classification of their products. The ability of shippers to act without bias in the classification of their products, or those of their competitors, cannot be given serious consideration and properly has been disapproved in the past. Certainly, such shipper participation would not be a reasonable condition to the continuation of the NCC's Section 5a Agreement.

C. The Views Expressed In the February 21 Letter Are Not Shared By Congress or the Agency.

The comments that the Classification is “rigid, inefficient, and reflects a carrier bias toward increasing classifications based on insufficient or non-representative data” betrays the signatories lack of understanding of the Classification.

After an extensive review of the Classification by Congress in connection with the Motor Carrier Act of 1980, it was stated that:

. . . [T]he Committee is of the view that the commodity classification system currently in place is a useful tool for shippers, receivers and transporters of regulated freight [s]o all “know what they are talking about” thereby contributing to an efficient and economical transportation system. (H.R. Rept. No. 96-1069, 96th Cong., 2d Sess., p. 28 (1980).)

In Section 5a Application No. 61, National Classification Committee-Agreement, served May 18, 1987 (not published), the former Interstate Commerce

Commission (ICC), in approving the modifications made by the NCC in response to the Motor Carrier Act of 1980, concluded that:

Classification can promote efficiency, encourage sound economic conditions in transportation, and allow a variety of quality and price options to meet changing market demands and the diverse requirements of the shipping public. (Decision, p. 4.)

The independent Motor Carrier Ratemaking Study Commission (Study Commission) which was established by the Motor Carrier Act of 1980 to study collective ratemaking, and the continued need for antitrust immunity for such activities, had reached very similar conclusions regarding the Classification as had the ICC. After conducting extensive hearings and investigations the Study Commission, which consisted of ten members, including three Congressmen, three Senators, and four members of the public appointed by the President, concluded that:

Classification can facilitate competition by helping carriers establish cost-related rates and by easing the task of rate comparison by shippers. Classification can also reduce transaction costs involved in the pricing of motor carrier services. (Report, Collective Ratemaking in the Trucking Industry, p. 455, June 1, 1983.)

In considering what would be the appropriate classification system, the Study Commission concluded that it would be a system “with basically the same organizational structure and procedures as the current one.” (See Report, pp. 455-457.)

Another extensive review of the classification system was conducted by the ICC in Ex Parte No. MC-98 (Sub-No. 1), Investigation Into Motor Carrier Classification, 364 I.C.C. 906 (1981); 367 I.C.C. 243 (1983); and 367 I.C.C. 715 (1983).

In preliminarily assessing the merits of the classification system and its role for the future, the ICC stated that:

Carriers will always need a way of listing their prices. Classifying articles according to their relative transportation characteristics is one way of starting to assemble a rational pricing system. (364 I.C.C. at p. 911.)

Again, in its subsequent review of its interim decision in that proceeding, the ICC reiterated that “the usefulness of the current commodity classification is not disputed.” (367 I.C.C. at p. 245.)

Moreover, in a separate opinion, then Commissioner Heather Gradison concluded that:

I agree with the outcome of this decision, which abandons the Commission’s ill-advised proposal to replace the National Motor Freight Classification with an inefficient and unworkable “information based system” in which individual rate bureaus, and perhaps even individual carriers, would have published separate classifications. The decision properly reflects the chaos and needless confusion that this proposal would have visited on the shipping public. The decision retains the essential elements of the National Motor Freight Classification, while removing from it the vestiges of the collective ratemaking system.

* * *

...[T]he Classification is the useful product of many decades of careful work. It helps both carriers and shippers to do their work more efficiently. The Congress has recognized this and has found that the Classification will be as useful under the system in which carriers make individual rates as it was under the system in which carriers make collective rate decisions. It assists new entrants into the motor carrier industry to make rational rate decisions, and it promotes the cost based rate system mandated by the Motor Carrier Act of 1980. (367 I.C.C. at pp. 259-260.)

Notwithstanding the sweeping regulatory reforms in the motor carrier industry brought about by the Trucking Industry Regulatory Reform Act of 1994 and the

Interstate Commerce Commission Termination Act of 1995, Congress continued to recognize the value of the motor carrier classification system to the entire transportation community. In his January 7, 1998 comments in the then pending proceeding in Section 5a Application No. 61, National Classification Committee-Agreement, the Hon. Nick J. Rahall, II, the ranking Democratic Member and former Chairman of the Subcommittee on Surface Transportation of the House Committee on Transportation and Infrastructure, in supporting antitrust immunity for the NCC, stated that:

...[T]hose of us charged with actually crafting both the 1994 and 1995 Acts [TIRRA and ICCTA] sought to maintain the public interest by preserving certain regulatory functions and practices such as antitrust immunity for commodity classifications. To wit, the language that was used (now U.S.C. 13703(d)) emphasizes that if the parties to the agreement seek renewal, it will be provided unless the Board finds that renewal is not in the public interest. It follows then that unless the Board finds that renewal is not in the public interest, immunity is continued by Sec. 13703(a)(6).

In fact, in the House of Representatives, there never was a question that we would not maintain immunity for commodity classifications with provision for this practice included in every draft of H.R. 2539 considered, from its introduction through the Committee process, and as passed by the House. (Cong. Rahall Comments, p.2.)

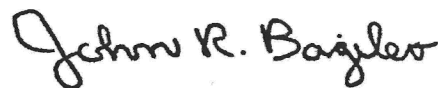
Referring to his support for the continuation of antitrust immunity for the Classification under ICCTA, Congressman Rahall stated that:

I believed then, as I do today, that the efficient operation of the motor carrier industry, and its ability to serve both shippers and consumers alike, depended on the continuation of commodity classifications. In this regard, the hearing record developed during consideration of the 1995 Act (as well as records developed in preceding legislative actions going back to 1980) clearly showed that

motor carriers could not, and would not, meet collectively without immunity. It is a fact that tremendous volumes of traffic move in LTL service, rather than under contract or FAK, but subject to their proper classification. No system other than the National Classification Committee Agreement provides for the grouping of products with comparable characteristics, or the separation of products that are dissimilar for transportation purposes. (Cong. Rahall Comments, p. 3.)

In view of the long, comprehensive review of the National Motor Freight Classification by Congress and the ICC, as well as by the STB during the past decade and which remains ongoing, and the uninterrupted conclusion that the Classification continues to serve the public interest, none of the unsubstantiated allegations set forth in the February 21 letter justifies the withdrawal of antitrust immunity from the National Classification Committee or could rationalize placing the authority of establishing motor carrier classifications in the hands of shipper interests.

Respectfully submitted,

A handwritten signature in black ink that reads "John R. Bagileo". The signature is written in a cursive, slightly slanted style.

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