

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Ex Parte No. 656

MOTOR CARRIER BUREAUS—PERIODIC REVIEW PROCEEDING

STB Ex Parte No. 656 (Sub-No. 1)

**INVESTIGATION INTO THE PRACTICES
OF THE
NATIONAL CLASSIFICATION COMMITTEE**

PETITION OF THE NATIONAL BUS TRAFFIC ASSOCIATION, INC.

FOR AN EXTENSION OF THE EFFECTIVE DATE

The National Bus Traffic Association, Inc. ("NBTA") hereby requests a modification of the effective date of the Surface Transportation Board's May 4, 2007 decision in this proceeding from September 4, 2007 to September 4, 2008. In support of this request, NBTA states as follows:

The NBTA is comprised of some 56 motor carriers of passengers that provide scheduled intercity bus service throughout the United States. NBTA member carriers sell tickets and provide single line service. In addition, as required by 49 U.S.C. § 13705, motor carriers of passengers must establish through routes "with other carriers of the same type" and must establish individual and joint rates applicable to transportation on such through routes. These carriers must also comply with the interline service requirements established for passengers with disabilities under the American with Disabilities Act ("ADA"). See 49 C.F.R. § 37.187.

The STB decision of May 4, 2007 concluded that "motor carriers can efficiently establish through routes, joint rates and divisions without antitrust immunity." The



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decision likened the interchange of traffic to “nothing more than a partnership or contractor/subcontractor arrangement, whereby the carrier contracting with the shipper arranges for another carrier to conduct part of the movement ” *Slip op . at 17*

NBTA’s members are preparing to go forward with interline arrangements that will comply with the antitrust laws, but they must individually negotiate interline agreements with each of the carriers with whom they share passengers and package express service These agreements must incorporate negotiated items such as revenue divisions, baggage handling procedures, package express charges,¹ payment and credit terms, liability terms, and transportation of passengers with disabilities under the ADA

In addition, this year the NBTA began its “sponsored carrier initiative,” which will allow NBTA members to sponsor state and local transit agencies, not-for-profit entities, Amtrak, and Mexican and Canadian motor carriers of passengers as interline partners with NBTA member carriers This initiative is expected to add hundreds of new interline arrangements to the existing network of intercity bus transportation throughout North America

As required by the Board’s decision, these new interline arrangements will take more time to negotiate, execute and implement than the 120 days allowed NBTA member carriers are mostly very small entities—the vast majority of members operate fewer than 10 buses in intercity passenger service Yet one carrier, Burlington Trailways

¹ The STB decision stated that NBTA members “establish their passenger fares individually, and we see no reason why they should not also establish their baggage and express charges likewise ” The Board further stated that “there is no more reason to believe that bus package rates ought to be collectively set with antitrust immunity than freight rates for other types of motor carriers,” and the decision specifically referenced that carriers in the airline industry set baggage charges, size limitations, and package rates individually “without any apparent adverse effects on the public.” *Slip op , at 13*

of Iowa, has determined that it alone must develop some 37 separate interline arrangements with other carriers to continue providing the same service that it now offers

Under the STB's decision, this transition from decades of collective activity in the bus industry to compliance with the antitrust laws must be accomplished during the summer months, the busiest season for intercity bus travel. Requiring these carriers to restructure their entire mechanism for interlining passengers and package express while attempting to provide service during their busiest (and most profitable) months is a particular and unnecessary hardship.

Moreover, NBTA members must go through their various rules tariffs to determine which rules might be found to "preclude competition on certain service terms" that "could be struck down summarily if they were challenged on antitrust grounds," and which rules "clearly facilitate interchange without affecting rates and services" that "would not raise antitrust issues." *Id.* This is a cumbersome but critical process of reviewing each item in each NBTA tariff and making a legal judgment as to whether the item could be reasonably construed to present antitrust concerns. NBTA has already begun this process, but asks for additional time for so that the NBTA's review may be thorough, accurate and comprehensive.

NBTA also objects to the Board's notions that "carriers can efficiently establish through routes, joint rates and divisions without antitrust immunity," and that "the interchange of traffic is nothing more than a partnership or a contractor/subcontractor arrangement." First, the only permissible partnership for division of revenues, service

or traffic is through a pooling arrangement that requires a substantial and prolonged application process and regulatory approval under 49 U.S.C. § 14302(a) ²

Second, subcontracting is itself problematic as there are a limited number of potential subcontracting interline carriers. A carrier must have authority from the Federal Motor Carrier Safety Administration to operate over a particular route before it may subcontract to interline passenger or package express with another carrier over that route. Carriers must apply for authority over each route on which they want to operate and comply with the application requirements in 49 C.F.R. Part 365.

Granting the one year of additional time to comply as requested herein would not harm the public interest. The STB admitted in its decision that “it ha[d] not received the same degree of interest with regard to bus immunity as [it] had regarding immunity for general freight carriers.” *Id.* at 13. Further, the STB noted that “no party has requested termination of our approval of NBTA’s agreement,” *id.*, and it appears clear that termination of the NBTA’s immunity was merely an afterthought in a decision primarily intended to address alleged anticompetitive activities in the trucking industry. To the best of NBTA’s knowledge, no party has complained to the STB or its predecessor Interstate Commerce Commission about rates or service terms in the intercity bus industry for over a dozen years. There is simply no compelling public interest in forcing the intercity bus industry to restructure all of its interline arrangements over a four-month period, with the risk of civil or criminal antitrust liability as the penalty for not correctly assessing the

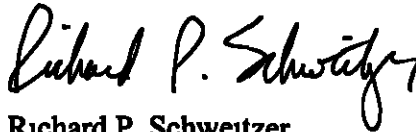
² The effect of STB approval of a pooling agreement is to immunize the participants from the antitrust laws and from all other laws as necessary to carry out the terms of the agreement, which removes the activities that are the subject of the agreement from the application of this decision. 49 U.S.C. § 14302(f).

effect on competition for each term in its tariffs, merely because the STB wanted to terminate antitrust immunity for motor carriers of property.

CONCLUSION

NBTA respectfully requests that the STB amend the effective date of its May 4, 2007 decision in this proceeding to September 4, 2008 as applied to approval of NBTA's Conformed Agreement, STB Section 5a Application No 9 (Amendment No 8)

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard P. Schweitzer".

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June 7, 2007

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of this petition by U S Mail, first class, postage prepaid, on each named party to this proceeding this 7th day of June, 2007

Richard P. Schwitzer