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**SURFACE TRANSPORTATION BOARD FINDS THAT UNDERCHARGES ARE NOT
WARRANTED IN SUPERIOR FAST FREIGHT CASE**

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**i:½ SURFACE TRANSPORTATION BOARD
i:½ FINDS THAT UNDERCHARGES ARE NOT WARRANTED
i:½ IN SUPERIOR FAST FREIGHT CASE**

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that the Board has found that undercharges sought by Superior Fast Freight (SFF) against Infinity Systems, Inc. (Infinity) are not warranted. i:½ The case was referred to the Board by the United States Bankruptcy Court for the Central District of California to be a "lead" case that would govern undercharge proceedings brought by SFF against a large number of shippers.

In the undercharge cases, SFF, a former motor carrier and freight forwarder, has argued that Infinity and numerous other shippers owe SFF the difference between the amounts originally charged and the amounts allegedly published in motor common carrier tariffs filed by SFF with the former Interstate Commerce Commission (ICC). i:½ Infinity and several of the other defendants argued that they did not owe undercharges because (1) SFF acted

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as a freight forwarder, which was not required to file tariffs with the ICC, or to charge rates based on any such filed tariffs; and (2) even if SFF had been acting as a motor common carrier, the tariff that it used as a basis for its undercharge claims could not apply to the traffic at issue.

The Board found that, although SFF was authorized to operate as both a motor common carrier and a freight forwarder, it was clearly acting as a freight forwarder with respect to Infinity's traffic. i:½ The Board noted that SFF's own former employees testified that SFF's operations were those of a freight forwarder, which assembles and consolidates smaller shipments and then uses other carriers to perform line-haul, and that SFF's president instructed them to market SFF's services as freight forwarder services. i:½ Further, relying on recent Supreme Court precedent, the Board also found that, even if SFF had been operating as a motor carrier, the tariff that it sought to apply in its undercharge case--a tariff of a predecessor corporation that had never been "adopted" by SFF--could not apply to the traffic at issue.

The Board's order was issued in *Infinity Systems, Inc.--Petition for Declaratory Order--Certain Rates and Practices of Superior Fast Freight, Inc.*, No. 41991, on July 2, 1997.

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