

UCR Board Minutes 11-4-2010

Exhibit A

AIPBA

November 3, 2010

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The Honorable Anne S. Ferro, Administrator
Federal Motor Carrier Safety Administration
United States Department of Transportation
1200 New Jersey Avenue SE
Washington, DC 20590

Dear Ms. Ferro:

This is a Petition for Determination.

I am the president of the *Association of Independent Property Brokers & Agents* ("AIPBA"), a newly created non-profit industry trade group duly filed with the Texas Department of State. We represent over 100 FMCSA-licensed property brokers. I am writing to you on behalf of our membership at the request of our Board of Directors.

By way of background, I am an STB & FMC Registered Transportation Practitioner. In private practice, I regularly assist motor carriers, property brokers, freight forwarders and leasing companies in complying with the annual Unified Carrier Registration ("UCR") filing required under 49 CFR 367.30. As such, I have intricate knowledge and understanding of the UCR agreement and the administration of the UCR program, a program which just raised its fees in 2010.

As you know, online UCR "registration fee" payments are processed through www.ucr.in.gov. This system collects the fees duly promulgated at 49 CFR 367.30. However, this system also requires motor carriers, property brokers, freight forwarders and leasing companies to pay an "Instant Access Fee" and a flat "Usage Fee" of \$3 in addition to their registration fee. As the amount of the Instant Access Fee fluctuates with the amount of the sale, it appears the Instant Access Fee is essentially a 'credit card surcharge.' It is unclear how these accessorial fee amounts were set and came into existence. On a fleet with 1,001 or more trucks, this amounts to \$1,471 in extra fees charged.

I researched this matter and offer the following information. According to Credit Info Center, Federal law prevented surcharges on credit card transactions until 1984. After 1984, the federal government let the states make decisions about surcharges. I also learned that the following states prohibit merchants such as the UCR System from adding surcharges to credit card transactions: **California, Colorado, Connecticut, Florida, Kansas, Maine, Massachusetts, New York, Oklahoma & Texas.**

Association of Independent Property Brokers & Agents
P.O. Box 96224, Houston, TX 77213 Phone: (631) 379-5243 Fax: (631) 543-2351
Email: info@IndependentPropertyBrokers.org

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I note, here, that of these states, the following eight states participate in the UCR system: **California, Colorado, Connecticut, Kansas, Maine, Massachusetts, New York & Texas.**

It would therefore appear that, by virtue of their participation in UCR as currently administered, these states may currently be violating their own state laws.

According to an advisory opinion I received from the New York State Department of Transportation's Legal Department some time ago, credit card surcharges usually violate merchant agreements with VISA & MASTERCARD.

I have reviewed the UCR Agreement, the applicable promulgated rules at 49 CFR 367.20 and 367.30, the rationale offered during rulemaking ([Docket No. FMCSA-2009-0231] RIN 2126-AB19) and the enabling legislation codified at 49 USC Section 14504a.

Whereas the UCR Agreement states:

16. UCR FEES AND REVENUE DISTRIBUTION

(a) Determination of UCR Fees.

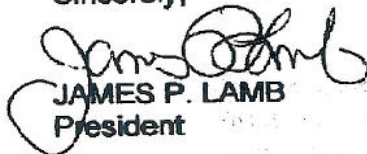
- (1) The UCR fees shall be determined by the Secretary based upon the recommendation of the Board.*

...I can find no reference that the Secretary has, through the rulemaking process, determined there be any Instant Access Fees or Usage Fees charged to motor carriers, property brokers, freight forwarders and leasing companies whatsoever.

The AIPBA is therefore writing to ask under what, if any, legal authority the UCR system collects an Instant Access Fee and a Usage Fee. If none, we respectfully ask for an FMCSA determination that collection of such fees is unauthorized. It would appear to the AIPBA that absent proper authority (i.e. rulemaking), the imposition and collection of these accessorial fees are unlawful and violate the Administrative Procedure Act. It would appear that the online UCR system should be immediately reprogrammed so as to stop collecting these fees. We would contend that any and all of these fees previously collected from 2007 (when UCR first went into effect) up to the present should be refunded accordingly.

We thank you for your consideration.

Sincerely,


JAMES P. LAMB
President

cc: Unified Carrier Registration Board of Directors