CHAIRMAN NOBER: Well thank you, and we’ll have questions for the whole panel. Commissioner Buttrey would you like to *(11:29:59).* Vice Chairman Mulvey?

VICE CHAIRMAN MULVEY: I guess the question to all three of you and that would be, do you all feel that we are premature in looking at the extension of a nationwide anti-trust immunity and that we should be looking at the whole question off whether or not we should continue *(11:30:16)* immunity before we get to this other SMC request?
MR. COBURN: I’d be happy to start. I do think its - that the order of the proceedings is perhaps backwards and the board would be better advised to consider first the question of continuation of immunity in the proceeding that you’ve alluded to Chairman Nober and then address the question of nationwide rate making. Rather than invest the resources at this point on the nationwide question.

CHAIRMAN NOBER: I’m going to address that because, I’ll tell you why we’re having this proceeding and I’ll try to set the record clear once and for all on that, which is: This proceeding began in 1996 and the rate bureau proceeding began in 1998, and to say that we should delay a 1996 proceeding to begin looking at a new issue at the beginning at the end of 2004 is something that I will not do as Chairman; and we’re going to resolve this and we’ll look at the next thing in turn. But we cannot let proceedings go on indefinitely. We’ll look at it on the merits, and make a judgment and then go forward. But to say that we should take a look at a proceeding that was begun in 1996 and defer it indefinitely, when the proceeding to
look at whether or not rate bureaus should continue
their immunity was begun in 1995 and that didn’t get
resolved until 2003. I don’t like having proceedings
go on for eight years and that’s why we’re – we’re
taking this up. Because I think folks who made
applications eight years ago deserve to get an answer.
Up or down, whatever it is that we do, we do. But
that’s why we did this. Does that clarify things?

MR. CUTLER: Well, much of the delay was
attributed to Congress not to any of the parties or the
agency. Also, the adoption of --

CHAIRMAN NOBER: Not on the underlying.

MR. CUTLER: The end of anti-trust immunity
for rate bureaus generally would obviously moot this
proceeding and the adoption of conditions on rate
bureaus generally would obviously affect the decision
in this proceeding – or could affect the condition of
this proceeding. But, I will say that it may be that
other rate bureaus merely seek renewal, not anti – not
nationwide authority. So there are differences between
the two.
VICE CHAIRMAN MULVEY: I wasn’t suggesting that we shouldn’t resolve these --

CHAIRMAN NOBER: The parties did and that’s what I wanted to clarify.

VICE CHAIRMAN MULVEY: Isn’t it true that the reason why shippers today are receiving low competitive rates is because of competition between trucking firms who belong to these rate bureaus as opposed to competition between the rate bureaus themselves and competition between the base rates that they establish? Do they really have much meaning in terms of the overall benefit shippers are receiving from trucking competition?

MR. COBURN: I think you’re exactly right that competition today is as it should be between the carriers and the shippers are seeing the benefit of that. No doubt about it. The rate bureaus don’t really compete with one another other than with respect to certain services that have nothing to do with collective rate making, because collective rate making is territorially constrained. Those constraints on the scope of the rate bureau immunity have had no impact,
no adverse impact on the level of competition which is extraordinary. And, again, to reiterate what I said before, I don’t think the government needs to intervene to enhance the competitive marketplace that’s working just fine.

VICE CHAIRMAN MULVEY: Well the carriers within these rate bureaus compete vigorously against each other now. Would it make a difference if you had - a single nationwide rate making rate bureau? You would still have all the carriers belonging to it. And if they’re not colluding today within the regionalized monopolies, why would we expect them to be colluding if it was a single, nationwide rate making authority? They would all be discounting and competing against that single baseline rate as opposed to discounting amongst numerous baseline rates. But I don’t see how that would have much of a meaningful effect given the size of the discounts that are involved for the shipper in terms of the competition that it sees in the trucking industry. Do you care to comment?

MR. CUTLER: I would say, for shippers as a whole - the Motor Carrier Act of 1980 has been a huge
success. I think most members of the trucking industry would go along. I’ve heard trucking industry CEO’s say but for the competition introduced as a result of that statute, they wouldn’t have made the changes that enable them to compete so fiercely and provide such excellent service today.

The problem we run into is the stealthy nature of some of these rate increases. The fact that some shippers follow this stuff closely, they participate in the NCC when there’s a classification issue. They know when there’s a general rate increase. They immediately call their carriers and negotiate offsets to limit the discount. At the other extreme, you have shippers who are in the dark and when an eight percent increase comes along or 50 percent increase in a class rating comes along, they figure they’re protected by their discount. They don’t understand that the baseline on which that discount is based has just risen dramatically. So it’s a range of benefits from competition depending on the savvy-ness of the shippers.
MR. MORENO: I think it’s important to note also that the attractiveness of a nationwide rate bureau to most carriers is going to be much greater than regional rate bureaus, and we’re likely to see a gravitation towards a single nationwide rate bureau, and included within that gravitation are going to be the very large mega carriers out there today that are not members of rate bureaus. And that is going to lead to reduction in baseline rate options, and I think that is anti-competitive.

VICE CHAIRMAN MULVEY: It was suggested that if we do for to a single bureau or if SMC was successful then a lot of the Yellow Freights and other large carriers would re-join SMC and perhaps even dominate it. Would you care to comment on that?

MR. MORENO: I think there’s a benefit for them to join a nationwide rate bureau that they don’t perceive in the regional bureaus today and their participation is going to remove a competitive element from the marketplace.

VICE CHAIRMAN MULVEY: Just one little comment on the - in terms of the trucking industry and
the Motor Carrier Act of 1980. I think you should preface that by saying the surviving trucking companies think very highly of the Motor Carrier Act.

CHAIRMAN NOBER: Let’s start with - I want all three of you to answer this. What - how would you articulate the public interest? That’s what we’re here to do. We’re here to decide what’s in the public interest. What is your - how would all three of you articulate what is the public interest here?

MR. COBURN: I would articulate it as competition for the benefit of shippers without unreasonable government constraints. In other words, I think the situation we have today is one that serves the public interest. We have -

CHAIRMAN NOBER: So that’s your conclusion as to whether or not - how would you describe the public interest you think today?

MR. COBURN: Right.

CHAIRMAN NOBER: Public interest is status quo?
MR. COBURN: The public interest is the status quo, absolutely. There’s no problem that needs to be fixed.

CHAIRMAN NOBER: Mr. Moreno?

MR. MORENO: I tend to agree with that. I think the public interest is defined by enhanced competition and enhanced competition is within the healthy industry of which we have today.

MR. CUTLER: I’d almost agree. I think the status quo is pretty good. There are two pockets of anti-competitive – potentially anti-competitive conduct: one is the NCC, the others are rate bureaus, and that’s all that’s left for regulation. That’s--

CHAIRMAN NOBER: Ok that’s a kind of conclusion. How would you articulate the public interest?

MR. MORENO: Maximizing competition in the trucking industry.

CHAIRMAN NOBER: Okay, so currently today we have - do rate bureaus compete with one another?

MR. COBURN: Not with respect to collective rate making, no.
CHAIRMAN NOBER: No. Do they compete with one another?

MR. CUTLER: They compete with each other. If SMC goes nationwide they’ll —

CHAIRMAN NOBER: I didn’t ask that. Today, do rate bureaus compete with one another?

MR. COBURN: This should be easily discernable.

CHAIRMAN NOBER: Do they?

MR. CUTLER: I think there is this factor as well and that is the Czar-Lite suite of applications is something other rate bureaus don’t have to my knowledge. Maybe Middlewest has something along those lines but it’s — they aren’t in the same league if that’s what you’re asking.

CHAIRMAN NOBER: Do rate bureaus compete with one another?

MR. MORENO: No, they don’t compete with one another because they don’t overlap.

CHAIRMAN NOBER: We have enforced regional monopolies for rate bureaus. So if that’s the case, why is the status quo in the interest of competition as
opposed to letting rate bureaus compete with one another?

MR. MORENO: Maybe I should clarify my earlier answer here in that while the status quo, we have a competitive marketplace. The league is not and has never been in favor of anti-trust immunity for rate bureaus. But that’s not the issue --

CHAIRMAN NOBER: So stipulated. And, with good reason but that’s – let’s just try to address what’s before us. How is maintaining status quo – what the three of you said how was – and DOT before you. How is maintaining three regional monopolies more competitive than we suggested here just giving them all nationwide anti-trust immunity and let the chips fall where they may?

MR. MORENO: Because right now there’s no problem to be fixed. The SMC, for example, already offers a Czar-Lite product. We’ve heard that there’s also the MARS product that’s out there. Each of these rate bureaus have the potential to compete with one another in that context, such as with Czar-Lite. If you go to a single nationwide rate bureau that
rationale is going to disappear and we’re likely to gravitate towards a single national rate bureau.

CHAIRMAN NOBER: So we’re speculating. Essentially the answer would be the three of you speculate that the existing rate bureaus can’t compete with SMC. Is that the answer?

MR. MORENO: We’re speculating that there may be certain amount of consolidation in the industry and that the regional rate – there won’t be a need for the regional rate bureaus in the –

CHAIRMAN NOBER: Let me ask another –

MR. CUTLER: We’ve already seen SMC pull ahead of the others in terms of their success.

CHAIRMAN NOBER: Let me ask an indelicate question then; why should – if taken what you say at face value and please no offense to your clients Mr. Coburn, but why should – through our regulatory actions, we protect competitor – other rate bureaus from a better – from what you’re all admitting is a better competitor?

MR. COBURN: Chairman Nober, we’re not asking you to do that and we’re not up here saying you ought
to deny SMC’s application in order, in order to protect my clients. What we’re saying is that SMC has not carried its burden because what it’s trying to do is use anti-trust immunity or I should say, abuse anti-trust immunity by enhancing its own commercial product and that, we think, is a perversion of the process. So we don’t see the issue really as one of competition between rate bureaus. You could not find any examples, I don’t believe, in the history of motor carrier rate making of competition between rate bureaus because that’s never really the issue. The issue is competition between or among carriers. Rate bureaus are --

CHAIRMAN NOBER: Let’s just stop there and I’ll ask the three of you; is there too little or too much competition between carriers in the LTL industry these days or just right? What would you say? Because that’s ultimately the question, right? I think Mr. Coburn, you phrased it well. Is there competition between the carriers on price --

MR. COBURN: There is healthy competition.
CHAIRMAN NOBER: Ultimately is any rate bureau action going to change that, and if it is, how?

MR. CUTLER: Well, as I said before, it gets to this issue of stealth rate increases and the issue of accountability. If all this – now, I’m not here to carry water for Mr. Coburn’s clients, in fact, I’ve been critical of a couple of things they’ve done in my comments. I think some of these rate bureaus are going to fold no matter what you do today. But, we are concerned about concentration - a continued concentration of power over baseline rates in a single group of motor carriers acting together with anti-trust immunity which may grow.

CHAIRMAN NOBER: You made some interesting comments about parallels to the classification system which, as you know, many of us have been concerned about as well. Do you think the reforms there have addressed the shipper concerns about the way the classification system has worked, and could similar ones work here?
MR. CUTLER: We suggested some of them. They’re helpful. We don’t think they’re complete but we think they’re helpful.

MR. MORENO: Chairman Nober, in response to your question, I think the premise of the question flips the burden of proof in this matter as well. The fact of the matter is that the anti-trust laws are to default provision and it’s incumbent upon SMC to demonstrate a public interest need to expand the anti-trust immunity. Not for us to demonstrate that the expansion of anti-trust immunity wouldn’t be—wouldn’t have competitive implications.

CHAIRMAN NOBER: Okay. The statutes, which you know I like to read, says, “The board may review an agreement of approved under this section on its own initiative or upon request”—so it’s on request here—“and shall change the conditions of approval or terminate it when necessary to protect the public interest.” I’m not sure where the burden—I don’t know, that doesn’t describe what the burden is.

MR. CUTLER: The concern we have about that is true. Obviously the board has the power to act
between these five-year review proceedings. But the concern we have is that – if this concentration of market power happens, it’s very hard to re-create after the fact, and going in and imposing conditions designed to generate competing baseline rates to Czar-Lite after everybody else has gotten out of the business, won’t work.

VICE CHAIRMAN MULVEY: I think we need to be careful to clarify what the market is here. I mean there really isn’t a market for rate bureau services since they don’t compete with each other and they’re all regional monopolies. It strikes me that this market is the Czar-Lite product verses MARS. When they do market analysis and you look at market dominance, you sometimes look at market shares, you know an herfindahl index or the Big Four—market share Are there any data at all to measure the relative market shares of Czar-Lite with MARS and any of the others? I could see a number of ways in which it might be measured but revenues, number of users, subscribers, etc but, are there any data on the relative market shares of these products?
MR. COBURN: I’m not aware of any public data. I think --

VICE CHAIRMAN MULVEY: Well, even if there’s private --

MR. COBURN: I think SMC will tell you and I think it’s probably right that Czar-Lite has achieved substantial market penetration. It has become a nationwide rate compilation, because it compiles the rates of Rocky Mountain and EC-MAC and one other bureau and the Southern bureau under one cover and it has substantial market power, so to speak.

VICE CHAIRMAN MULVEY: Doesn’t MARS also do that? Doesn’t MARS include the southern area? Don’t they all include all the others --

MR. COBURN: I believe it does although I’m not intimately familiar with MARS. But having said that, I can tell you from my own experience that it is not nearly as widely used as Czar-Lite, not nearly as marketed or promoted because I don’t think the resources are there to do it.
VICE CHAIRMAN MULVEY: But on the other hand, MARS - Czar-Lite then becomes a superior product and all good products drive up --

MR. COBURN: And we’re not, we don’t believe that there’s anything that’s threatening the continued success of Czar-Lite. We think Czar-Lite is a fine product. We think the south can continue to market it. It has marketed it successfully. So the issue in this proceeding ought not to be whether or not the south can continue to market Czar-Lite because there’s nothing to stop it from doing that. What the south wants to do is to control all of the rates in Czar-Lite so it can control that benchmark of national rates. It currently can’t do that because it doesn’t have the expanded immunity. What it really wants to do is control the most important benchmark that’s out there.

MR. CUTLER: The SMC rebuttal filing included a statement to the effect that of the hundred or so offerors of baseline rates and services on the website, 30 percent used Czar-Lite. There was no similar analysis of the market share of alternative websites. Maybe Mr. Bagileo knows more about that. There was
also a 2001 clipping of a Ray Bowman piece on these baselines to the effect that Czar-Lite, I think, had 8 billion dollars worth of transportation sort of using it. There was no similar figure given for MARS and, I share Mr. Coburn’s belief that Czar-Lite is far more prevalent in the marketplace than MARS.

VICE CHAIRMAN MULVEY: Okay, one last question. You mentioned that some of the rate bureaus, that exist today, regional rate bureaus could be going out of business, would go out of business, especially if we granted SMC nationwide anti-trust immunity. How many rate bureaus are left? You said some could go out of business. How many are left right now? It wouldn’t take very many going out of business to create a monopoly would it?

MR. COBURN: I believe, well there’s Rocky Mountain and EC-MAC, there’s Pacific Inland, which is a marketer of Czar-Lite. Then there’s the Middlewest Bureau and the Southern Bureau. I don’t think I’ve left any out.

MR. CUTLER: There used to be one in New England, I think it folded.
VICE CHAIRMAN MULVEY: There’s only five. My understanding is there’s only about five left as it is.

MR. CUTLER: Part of the difficulty in answering your question, Chairman Mulvey, is there are also these little specialized bureaus that do Hawaii Offshore and --

VICE CHAIRMAN MULVEY: They’re specialized products. Thank you. No further questions.

CHAIRMAN NOBER: Okay, well I have no further questions so can I thank you all for answering them and Mr. Bagileo, do you want to use your time for rebuttal?

MR. BAGILEO: Just a few minutes.

CHAIRMAN NOBER: No one should feel compelled to use all their time.

(Laughter)

CHAIRMAN NOBER: Which I think goes without saying for all the speakers.

MR. BAGILEO: With that advice, I’ll be brief. I think what we’ve seen today is the discussion of two variants.
Number one, opposition to anti-trust immunity, which I don’t really think is the issue here today.

And secondly, the attempt to project the fact that our entire purpose of filing this application is Czar-Lite and that is not the case. Yes, Czar-Lite is a component because we are concerned in terms of our own member collective rate making capabilities that if other bureaus go out of business and there’s nowhere to fill that gap, that Czar-Lite will not have the rate modules of all the bureaus to have a nationwide baseline of rate.

But I’d like to draw on an analogy that you made, Chairman Nober, about a manufactured suggested retail price. Our concern on behalf of our member carriers is that we do not know on what basis the rates are made in other regions. Mr. Coburn sat here, we challenged Rocky Mountain and EC-MAC to tell us how they cost their product. Not a single word said about it. Nor, who are their members. We are not the same. Our members do not want their manufactured suggested retail price as General Motors to be made by Ford and
that’s exactly what’s happening today. We have other carriers bearing no relationship to us, establishing base rates in territories we operate. We want to establish our own base rates in the territories we operate in. There’s been much discussion about there’s no merit on this record for the action we’re requesting. Look at the record. Back in 1996, we had 191 shippers and 116 carriers supporting our request for nationwide authority, unprecedented. Look at today, we have major shippers, major carriers and transportation intermediaries still supporting us. Also, look how SMC has grown. Why have we grown? Because of the value of the services it provides.

Mr. Coburn made reference to the fact that there’s no need for a baseline of rates, a nationwide baseline of rates for joint rates and through routes. That’s absolutely incorrect. If you read the statements of the motor carriers, they had as many as 235 baselines in their computers upon which to negotiate joint rates. It was an impossible task, even for a technological giant like Watkins and now Czar-Lite is coming more into use and they’re being able to
better effectuate their joint rates and through routes. And joint rates are not the principle function of a rate bureau today. Today it is the general rate actions which are the principle function.

As to conditions that we would accept, we would accept any reasonable conditions. We did not feel it was reasonable to request a rollback of the class rates. Because that was looked at by the agency and concluded and supported by shipper interest that that should not be done. That it would be disruptive. If you want to review us on a more frequent basis, that is in the agency’s discretion. However, I will point out, as Chairman Nober pointed out, under Section 13073c, you have the ability to look at us at any time. Either on your own motion or upon request, and if there is a shipper out there who feels it is any way being disadvantaged, I’m sure that request would come through. One of the associations are on its own behalf.

Also, we ask you to look at the record. The shippers and the transportation intermediaries, many of whom are members of NITL League and NASSTRAC and do not...
adopt the position taken by either of those organizations with respect to whether we should be granted nationwide collective rate making authority.

I think the most telling comment made here today was by Mr. Coburn. There is no competition between rate bureaus because they are protected monopolies within their territories. Southern territory says, anybody come in and we will compete with you on a baseline rate. They will not say the same thing and the question is why? The entire transportation community, as indicated by the shipper associations, have been benefited by competition. How would competition between the rate bureaus not benefit the industry even more? We have shown our ability to construct the baseline of class rates within Southern territories. That is absolutely competitive in every respect, with the baselines individually made by other motor carriers with whom our carriers compete. Why is there any reason to assume, with our cost tools, our expertise and our national traffic database that we could not do that in the other regions. Our carriers do operate there. We don’t have merely the authority,
We introduced 14 statements. Large, medium and small carriers 1.4 million to 7 million dollars showing that they do indeed operate across the continental United States either directly or through intertwined arrangements.

I feel that what we are looking at is not to put any other bureau out of business. That’s not SMC’s function. We haven’t done it in the past, why would we do it now? What we’re trying to do is to achieve a baseline system based upon our collective rate making expertise that reflects the cost and revenue needs of our carriers. That is all that is being asked here.

As to nationwide authority, there are already bureaus that have nationwide authority. There are already bureaus that have had major expansions of their territories either through merges and consolidations or through application. There is substantial overlapping in the rate making territories between the bureaus today. Look at Pacific Inland Tariff Bureau, which is not merely a seller of Czar-Lite. It is an agency that has collective rate making authority on behalf of 161
carriers. But look at that, they co-exist with R&B. Why hasn’t one driven the other out of the business.

I just don’t see where the difficulties that are being presented to the board have any true validity. They all claim that SMC is here only for its own benefit. What they forget is SMC is its member carriers. It’s the Board of Directors and the general rate committee, who are responsible for my sitting here today and who is responsible for the filing of the applications and the evidence that is before this board.

Also, SMC is a 501(C)(6) corporation, not for profit. It cannot put its assets back to its members under Georgia law. Those assets must go to another not-for-profit corporation. So we’re not a proprietary profit making enterprise.

I submit that the record is replete with evidence demonstrating that the shipper community and the transportation intermediary community want the services that Southern Motor Carries can provide within its territory as well as without its territory if this
board authorizes it to provide nationwide collective rate making. I conclude my remarks.

VICE CHAIRMAN MULVEY: Is there any state in the United States that is not served by one of the rate bureaus?

MR. BAGILEO: Not to my knowledge.

VICE CHAIRMAN MULVEY: So all the mergers that have occurred have continued to make sure that every state continues to be part of the included rate bureau territory of one of the rate bureaus?

MR. BAGILEO: Yes, but some states have two bureaus, some states have one.

VICE CHAIRMAN MULVEY: Okay, could you see a merger with another of the surviving five rate bureaus accomplishing what you want to accomplish now. Given that your competitors, from what I’m told, are not as well off as the Southern Motor Carrier Conference and some of them may, in fact, be on the verge of going under. Would a merger with them accomplish what you want to accomplish?

MR. BAGILEO: Well, you’d have --
VICE CHAIRMAN MULVEY: I’m not suggesting mergers by the way. You must understand that.

MR. BAGILEO: I understand but, mergers are possible. Southern merged with Central and Southern. But other mergers have failed such as the Middle Atlantic/New England and what happened was that the regional motor carries simply did not want to be part of a larger rate making organization. They were content with, at that time, New England, who subsequently went out of business. But, would mergers be impossible? No. But would it be - that presents other problems with respect to administrative staff etc. But anything would be looked at.

VICE CHAIRMAN MULVEY: Well, all analogies fail but I’ll make an analogy here to the airline industry. When an airline goes out of business, some of them have and some of them might, their routes don’t disappear. It’s necessary that the routes be picked up by the remaining an carriers and while there may be some changes in the operations, the overall route structure just gets picked up by somebody else. If another one of these rate bureaus went out of business...
or failed, wouldn’t it be necessary that somebody come in and add that territory to its bureau?

MR. BAGILEO: Well that would certainly be the basis of an application for that authority, to take over that rate making function.

VICE CHAIRMAN MULVEY: Could Czar-Lite be spun off SMC as a separate organization and a separate corporation?

MR. BAGILEO: I think it could.

VICE CHAIRMAN MULVEY: Would that solve a lot of the concerns of the protestants here?

MR. BAGILEO: I have not explored that to be quite honest with you, Vice Chairman, but I - it certainly could be discussed with SMC. If that was what the problem is. But, there are 4,000 rate baselines out there and I don’t see where Czar-Lite, because it is popular among shippers and TIA is really a part of the problem, it’s part of the fix. If we could make it a better, more effective baseline of rates, based upon true costs. We talk about the fact that, reasonableness. We have the basis of demonstrating that our rates are reasonable and we have
no objection to Mr. Cutler’s suggestion that we
distribute the information that we use at the meetings.
We hand that out at the meetings. We certainly would
provide that to the agency. We have no problems with
that.

VICE CHAIRMAN MULVEY: One final question?
You say there’s 4,000 rate bases out there but most of
those are either the single commodity nationwide with
anti-trust immunity for only a single commodity or
they’re the rate bases of individual large firms,
correct? How many are there that are rate bases for a
collection of firms in a rate bureau that are similar
to yours.

MR. BAGILEO: Well, when I said 4,000 rate
modules, that’s in SMC’s library. I just want to make
that clear. SMC has all of the rate modules of the
other bureaus the collectively made modules, as well
as, a matter of fact, I believe we also have household
goods modules.

VICE CHAIRMAN MULVEY: Okay, thank you.

CHAIRMAN NOBER: Okay, well I have no further
questions or comments. I want to thank all the parties,
for their arguments today and their patience in our questions and it’s a tough issue that we’re all exploring and hopefully we’ll be able to bring this issue to a resolution once and for all and then, in a few months, start another one.

(Laughter)

But again, thank you all and if there’s no further comments, the board will stand adjourned.