

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

15                   VICE CHAIRMAN MULVEY: I guess the question  
16 to all three of you and that would be, do you all feel  
17 that we are premature in looking at the extension of a  
18 nationwide anti-trust immunity and that we should be  
19 looking at the whole question ~~of~~ whether or not we  
20 should continue ~~\*(11:30:16)~~ immunity before we get to  
21 this other SMC request?

1           MR. COBURN: I'd be happy to start. I do  
2 think its - that the order of the proceedings is  
3 perhaps backwards and the board would be better advised  
4 to consider first the question of continuation of  
5 immunity in the proceeding that you've alluded to  
6 Chairman Nober and then address the question of  
7 nationwide rate making. Rather than invest the  
8 resources at this point on the nationwide question.

9           CHAIRMAN NOBER: I'm going to address that  
10 because, I'll tell you why we're having this proceeding  
11 and I'll try to set the record clear once and for all  
12 on that, which is: This proceeding began in 1996 and  
13 the rate bureau proceeding began in 1998, and to say  
14 that we should delay a 1996 proceeding to begin looking  
15 at a new issue at the beginning at the end of 2004 is  
16 something that I will not do as Chairman; and we're  
17 going to resolve this and we'll look at the next thing  
18 in turn. But we cannot let proceedings go on  
19 indefinitely. We'll look at it on the merits, and make  
20 a judgment and then go forward. But to say that we  
21 should take a look at a proceeding that was begun in  
22 1996 and defer it indefinitely, when the proceeding to

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1 look at whether or not rate bureaus should continue  
2 their immunity was begun in 1995 and that didn't get  
3 resolved until 2003. I don't like having proceedings  
4 go on for eight years and that's why we're - we're  
5 taking this up. Because I think folks who made  
6 applications eight years ago deserve to get an answer.  
7 Up or down, whatever it is that we do, we do. But  
8 that's why we did this. Does that clarify things?

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

12 CHAIRMAN NOBER: Not on the underlying.

13 MR. CUTLER: The end of anti-trust immunity  
14 for rate bureaus generally would obviously moot this  
15 proceeding and the adoption of conditions on rate  
16 bureaus generally would obviously affect the decision  
17 in this proceeding - or could affect the condition of  
18 this proceeding. But, I will say that it may be that  
19 other rate bureaus merely seek renewal, not anti - not  
20 nationwide authority. So there are differences between  
21 the two.

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1 VICE CHAIRMAN MULVEY: I wasn't suggesting  
2 that we shouldn't resolve these - -

3 CHAIRMAN NOBER: The parties did and that's  
4 what I wanted to clarify.

5 VICE CHAIRMAN MULVEY: Isn't it true that the  
6 reason why shippers today are receiving low competitive  
7 rates is because of competition between trucking firms  
8 who belong to these rate bureaus as opposed to  
9 competition between the rate bureaus themselves and  
10 competition between the base rates that they  
11 establish.? Do they really have much meaning in terms  
12 of the overall benefit shippers are receiving from  
13 trucking ~~competition.~~competition?

14 MR. COBURN: I think you're exactly right  
15 that competition today is as it should be between the  
16 carriers and the shippers are seeing the benefit of  
17 that. No doubt about it. The rate bureaus don't  
18 really compete with one another other than with respect  
19 to certain services that have nothing to do with  
20 collective rate making, because collective rate making  
21 is territorially constrained. Those constraints on the  
22 scope of the rate bureau immunity have had no impact,

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1 no adverse impact on the level of competition which is  
2 extraordinary. And, again, to reiterate what I said  
3 before, I don't think the government needs to intervene  
4 to enhance the competitive marketplace that's working  
5 just fine.

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

21 MR. CUTLER: I would say, for shippers as a  
22 whole - the Motor Carrier Act of 1980 has been a huge

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1 success. I think most members of the trucking industry  
2 would go along. I've heard trucking industry CEO's say  
3 but for the competition introduced as a result of that  
4 statute, they wouldn't have made the changes that  
5 enable them to compete so fiercely and provide such  
6 excellent service today.

7 The problem we run into is the stealthy  
8 nature of some of these rate increases. The fact that  
9 some shippers follow this stuff closely, they  
10 participate in the NCC when there's a classification  
11 issue. They know when there's a general rate increase.  
12 They immediately call their carriers and negotiate  
13 offsets to limit the discount. At the other extreme,  
14 you have shippers who are in the dark and when an eight  
15 percent increase comes along or 50 percent increase in  
16 a class rating comes along, they figure they're  
17 protected by their discount. They don't understand  
18 that the baseline on which that discount is based has  
19 just risen dramatically. So it's a range of benefit  
20 from competition depending on the savvy-ness of the  
21 shippers.

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1           MR. MORENO: I think it's important to note  
2 also that the attractiveness of a nationwide rate  
3 bureau to most carriers is going to be much greater  
4 than regional rate bureaus, and we're likely to see a  
5 gravitation towards a single nationwide rate bureau,  
6 and included within that gravitation are going to be  
7 the very large mega carriers out there today that are  
8 not members of rate bureaus. And that is going to lead  
9 to reduction in baseline rate options, and I think that  
10 is anti-competitive.

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

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

21           VICE CHAIRMAN MULVEY: Just one little  
22 comment on the - in terms of the trucking industry and

1 the Motor Carrier Act of 1980. I think you should  
2 preface that by saying the surviving trucking companies  
3 think very highly of the ~~Motor Carrier Act~~ ~~water carrier~~  
4 ~~\*(11:36:48)~~.

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

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

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

19 MR. COBURN: Right.

20 CHAIRMAN NOBER: Public interest is status  
21 quo?

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1 MR. COBURN: The public interest is the  
2 status quo, absolutely. There's no problem that needs  
3 to be fixed.

4 CHAIRMAN NOBER: Mr. Moreno?

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

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

14 CHAIRMAN NOBER: Ok that's a kind of  
15 conclusion. How would you articulate the public  
16 interest?

17 MR. MORENO: Maximizing competition in the  
18 trucking industry.

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

21 MR. COBURN: Not with respect to collective  
22 rate making, no.

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1           CHAIRMAN NOBER:   No.   Do they compete with  
2 one another?

3           MR. CUTLER:   They compete with each other.  If  
4 SMC goes nationwide they'll - -

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

7           MR. COBURN:       This   should   be   easily  
8 discernable.

9           CHAIRMAN NOBER:   Do they?

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

16          CHAIRMAN NOBER:   Do rate bureaus compete with  
17 one another?

18          MR. MORENO:   No, they don't compete with one  
19 another because they don't overlap.

20          CHAIRMAN NOBER:   We have enforced regional  
21 monopolies for rate bureaus.  So if that's the case,  
22 why is the status quo in the interest of competition as

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1       opposed to letting rate bureaus compete with one  
2       another?

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

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

16              MR. MORENO:       Because right now there's no  
17      problem to be fixed. The SMC, for example, already  
18      offers a Czar-Lite product. We've heard that there's  
19      also the MARS product that's out there. Each of these  
20      rate bureaus have the potential to compete with one  
21      another in that context, such as with Czar-Lite. If  
22      you go to a single nationwide rate bureau that

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1 rationale is going to disappear and we're likely to  
2 gravitate towards a single national rate bureau.

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

7 MR. MORENO: We're speculating that there may  
8 be certain amount of consolidation in the industry and  
9 that the regional rate - there won't be a need for the  
10 regional rate bureaus in the - -

11 CHAIRMAN NOBER: Let me ask another - -

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

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

21 MR. COBURN: Chairman Nober, we're not asking  
22 you to do that and we're not up here saying you ought

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1 to deny SMC's application in order, in order to protect  
2 my clients. What we're saying is that SMC has not  
3 carried its burden because what it's trying to do is  
4 use anti-trust immunity or I should say, abuse anti-  
5 trust immunity by enhancing its own commercial product  
6 and that, we think, is a perversion of the process. So  
7 we don't see the issue really as one of competition  
8 between rate bureaus. You could not find any examples,  
9 I don't believe, in the history of motor carrier rate  
10 making of competition between rate bureaus because  
11 that's never really the issue. The issue is  
12 competition between or among carriers. Rate bureaus  
13 are - -

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

21 MR. COBURN: There is healthy competition.

1           CHAIRMAN NOBER:       Ultimately is any rate  
2 bureau action going to change that, and if it is, how?

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

14          CHAIRMAN NOBER:   You made some interesting  
15 comments about parallels to the classification system  
16 which, as you know, many of us have been concerned  
17 about as well.  Do you think the reforms there have  
18 addressed the shipper concerns about the way the  
19 classification system has worked, and could similar  
20 ones work here?

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1           MR. CUTLER:     We suggested some of them.  
2 They're helpful. We don't think they're complete but  
3 we think they're helpful.

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

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

21           MR. CUTLER:     The concern we have about that  
22 is true. Obviously the board has the power to act

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1 between these five-year review proceedings. But the  
2 concern we have is that - if this concentration of  
3 market power happens, it's very hard to re-create after  
4 the fact, and going in and imposing conditions designed  
5 to generate competing baseline rates to Czar-Lite after  
6 everybody else has gotten out of the business, won't  
7 work.

8 VICE CHAIRMAN MULVEY: I think we need to be  
9 careful to clarify what the market is here. I mean  
10 there really isn't a market for rate bureau services  
11 since they don't compete with each other and they're  
12 all regional monopolies. It strikes me that this  
13 market is the Czar-Lite product verses MARS. When they  
14 do market analysis and you look at market dominance,  
15 you sometimes look at market shares, you know a  
16 herfindahl index or the Big Four market share Are  
17 there any data at all to measure the relative market  
18 shares of Czar-Lite with MARS and any of the others? I  
19 could see a number of ways in which it might be  
20 measured but revenues, number of users, subscribers,  
21 etc but, are there any data on the relative market  
22 shares of these products?

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1 MR. COBURN: I'm not aware of any public  
2 data. I think - -

3 VICE CHAIRMAN MULVEY: Well, even if there's  
4 private - -

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

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

15 MR. COBURN: I believe it does although I'm  
16 not intimately familiar with MARS. But having said  
17 that, I can tell you from my own experience that it is  
18 not nearly as widely used as Czar-Lite, not nearly as  
19 marketed or promoted because I don't think the  
20 resources are there to do it.

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1           VICE CHAIRMAN MULVEY: But on the other hand  
2 MARS - Czar-Lite then becomes a superior product and  
3 all good products drive up - -

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

17           MR. CUTLER: The SMC rebuttal filing included  
18 a statement to the effect that of the hundred or so  
19 offerors of baseline rates and services on the website,  
20 30 percent used Czar-Lite. There was no similar  
21 analysis of the market share of alternative websites.  
22 Maybe Mr. Bagileo knows more about that. There was

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1 also a 2001 clipping of a Ray Bowman piece on these  
2 baselines to the effect that Czar-Lite, I think, had 8  
3 billion dollars worth of transportation sort of using  
4 it. There was no similar figure given for MARS and, I  
5 share Mr. Coburn's belief that Czar-Lite is far more  
6 prevalent in the marketplace than MARS.

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

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

21 MR. CUTLER: There used to be one in New  
22 England, I think it folded.

1           VICE CHAIRMAN MULVEY: There's only five. My  
2 understanding is there's only about five left as it is.

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

7           VICE CHAIRMAN MULVEY: They're specialized  
8 products. Thank you. No further questions.

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

13           MR. BAGILEO: Just a few minutes.

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

16           (Laughter)

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

19           MR. BAGILEO: With that advice, I'll be  
20 brief. I think what we've seen today is the discussion  
21 of two variants.

1           Number one, opposition to anti-trust  
2 immunity, which I don't really think is the issue here  
3 today.

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

13           But I'd like to draw on an analogy that you  
14 made, Chairman Nober, about a manufactured suggested  
15 retail price. Our concern on behalf of our member  
16 carriers is that we do not know on what basis the rates  
17 are made in other regions. Mr. Coburn sat here, we  
18 challenged Rocky Mountain and EC-MAC to tell us how  
19 they cost their product. Not a single word said about  
20 it. Nor, who are their members. We are not the same.  
21 Our members do not want their manufactured suggested  
22 retail price as General Motors to be made by Ford and

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1 that's exactly what's happening today. We have other  
2 carriers bearing no relationship to us, establishing  
3 base rates in territories we operate. We want to  
4 establish our own base rates in the territories we  
5 operate in. There's been much discussion about there's  
6 no merit on this record for the action we're  
7 requesting. Look at the record. Back in 1996, we had  
8 191 shippers and 116 carriers supporting our request  
9 for nationwide authority, unprecedented. Look at  
10 today, we have major shippers, major carriers and  
11 transportation intermediaries still supporting us.  
12 Also, look how SMC has grown. Why have we grown?  
13 Because of the value of the services it provides.

14 Mr. Coburn made reference to the fact that  
15 there's no need for a baseline of rates, a nationwide  
16 baseline of rates for joint rates and through routes.  
17 That's absolutely incorrect. If you read the  
18 statements of the motor carriers, they had as many as  
19 235 baselines in their computers upon which to  
20 negotiate joint rates. It was an impossible task, even  
21 for a technological giant like Watkins and now Czar-  
22 Lite is coming more into use and they're being able to

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1 better effectuate their joint rates and through routes.  
2 And joint rates are not the principle function of a  
3 rate bureau today. Today it is the general rate  
4 actions which are the principle function.

5 As to conditions that we would accept, we  
6 would accept any reasonable conditions. We did not  
7 feel it was reasonable to request a rollback of the  
8 class rates. Because that was looked at by the agency  
9 and concluded and supported by shipper interest that  
10 that should not be done. That it would be disruptive.  
11 If you want to review us on a more frequent basis, that  
12 is in the agency's discretion. However, I will point  
13 out, as Chairman Nober pointed out, under Section  
14 13073c, you have the ability to look at us at any time.  
15 Either on your own motion or upon request, and if there  
16 is a shipper out there who feels it is any way being  
17 disadvantaged, I'm sure that request would come  
18 through. One of the associations are on its own  
19 behalf.

20 Also, we ask you to look at the record. The  
21 shippers and the transportation intermediaries, many of  
22 whom are members of NITL League and NASSTRAC and do not

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1 adopt the position taken by either of those  
2 organizations with respect to whether we should be  
3 granted nationwide collective rate making authority.

4 I think the most telling comment made here  
5 today was by Mr. Coburn. There is no competition  
6 between rate bureaus because they are protected  
7 monopolies within their territories. Southern  
8 territory says, anybody come in and we will compete  
9 with you on a baseline rate. They will not say the  
10 same thing and the question is why? The entire  
11 transportation community, as indicated by the shipper  
12 associations, have been benefited by competition. How  
13 would competition between the rate bureaus not benefit  
14 the industry even more? We have shown our ability to  
15 construct the baseline of class rates within Southern  
16 territories. That is absolutely competitive in every  
17 respect, with the baselines individually made by other  
18 motor carriers with whom our carriers compete. Why is  
19 there any reason to assume, with our cost tools, our  
20 expertise and our national traffic database that we  
21 could not do that in the other regions. Our carriers  
22 do operate there. We don't have merely the authority.

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1 We introduced 14 statements. Large, medium and small  
2 carriers 1.4 million to 7 million dollars showing that  
3 they do indeed operate across the continental United  
4 States either directly or through intertwined  
5 arrangements.

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

13 As to nationwide authority, there are already  
14 bureaus that have nationwide authority. There are  
15 already bureaus that have had major expansions of their  
16 territories either through merges and consolidations or  
17 through application. There is substantial overlapping  
18 in the rate making territories between the bureaus  
19 today. Look at Pacific Inland Tariff Bureau, which is  
20 not merely a seller of Czar-Lite. It is an agency that  
21 has collective rate making authority on behalf of 161

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1 carriers. But look at that, they co-exist with R&B.  
2 Why hasn't one driven the other out of the business.

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

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

17 I submit that the record is replete with  
18 evidence demonstrating that the shipper community and  
19 the transportation intermediary community want the  
20 services that Southern Motor Carriers can provide within  
21 its territory as well as without its territory if this

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1 board authorizes it to provide nationwide collective  
2 rate making. I conclude my remarks.

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

6 MR. BAGILEO: Not to my knowledge.

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

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

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

21 MR. BAGILEO: Well, you'd have - -

1           VICE CHAIRMAN MULVEY:    I'm not suggesting  
2 mergers by the way.  You must understand that.

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

14          VICE CHAIRMAN MULVEY:    Well, all analogies  
15 fail but I'll make an analogy here to the airline  
16 industry.  When an airline goes out of business, some  
17 of them have and some of them might, their routes don't  
18 disappear.  It's necessary that the routes be picked up  
19 by the remaining an carriers and while there may be  
20 some changes in the operations, the overall route  
21 structure just gets picked up by somebody else.  If  
22 another one of these rate bureaus went out of business

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1 or failed, wouldn't it be necessary that somebody come  
2 in and add that territory to its bureau?

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

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

9 MR. BAGILEO: I think it could.

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

12 MR. BAGILEO: I have not explored that to be  
13 quite honest with you, Vice Chairman, but I - it  
14 certainly could be discussed with SMC. If that was  
15 what the problem is. But, there are 4,000 rate  
16 baselines out there and I don't see where Czar-Lite,  
17 because it is popular among shippers and TIA is really  
18 a part of the problem, it's part of the fix. If we  
19 could make it a better, more effective baseline of  
20 rates, based upon true costs. We talk about the fact  
21 that, reasonableness. We have the basis of  
22 demonstrating that our rates are reasonable and we have

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1 no objection to Mr. Cutler's suggestion that we  
2 distribute the information that we use at the meetings.  
3 We hand that out at the meetings. We certainly would  
4 provide that to the agency. We have no problems with  
5 that.

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

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

20 VICE CHAIRMAN MULVEY: Okay, thank you.

21 CHAIRMAN NOBER: Okay, well I have no further  
22 questions or comments. I want to thank all the parties

1 for their arguments today and their patience in our  
2 questions and it's a tough issue that we're all  
3 exploring and hopefully we'll be able to bring this  
4 issue to a resolution once and for all and then, in a  
5 few months, start another one.

6 ~~(Laughter)~~

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