MR. COBURN: Thank you, Chairman Nober and good morning Chairman Nober, Vice Chairman Mulvey and Commissioner Buttrey. With me in the room today is the Executive Director of the Rocky Mountain Tariff Bureau...
and the Vice President of the EC-MAC Motor Carrier Association and also with me is the President of Rocky Mountain, Mr. Bob Haney from Colorado Denver Delivery. I think it’s abundantly clear from the comments you’ve made that we’re all on the same page. That any relief from the anti-trust laws is extraordinary and SMC’s request is no different. Few industries in America enjoy anti-trust immunity and we know of no situation, at least in any recent times, where any administrative agency or Congress, in fact, has expanded the scope of that anti-trust immunity. That’s really what is at heart here, is the expansion of the anti-trust immunity. In fact SMC faces a very heavy burden in this proceeding to justify on public interest grounds, Not on private or commercial grounds as we believe it’s really doing that such an expansion is warranted. In fact, what we’ve submitted hasn’t come close to meeting its public interest burden. It offers a lot of words in support of its application but little more. No cogent of public interest reasons are offered because the facts speak for themselves. The motor carrier market is a successful, competitive market. There is
no problem out there that needs to be solved with
government intervention, particularly intervention in
the form of an expansion of this extraordinary thing of
anti-trust immunity. What SMC really wants in this
case, we believe, is to enhance the value of Czar-Lite.
You heard a lot about Czar-Lite from Mr. Bagileo. You
read a lot about Czar-Lite in the SMC presentations.
It permeates the statements of support offered by SMC.
It is what this case is really all about. They want to
improve Czar-Lite in the sense of making it somehow
more marketable. They want to control it and through
it control the collectively made class rates that serve
as a benchmark today.

Now they claim that they need broadened
immunity so that SMC’s carrier members can benefit from
its allegedly superior rate making mechanisms in the
form of data bases and other tools that they use to
annually adjust their carriers rates. But even if SMC
had the best rate making tools in the world, if we
would concede that, that’s not a sufficient basis for
broadened anti-trust immunity. There’s no evidence
that the SMC carriers are competitively disadvantaged
by the status quo. That they’re losing money or that they’re somehow unable to negotiate market based discounts, which is what carriers do daily. The evidence is not there because the SMC carriers, like other LTL carriers that operate in this competitive market are functioning successfully and, quite likely, they’re making money. There’s no evidence that these carriers are unable to rationally price their services or negotiate with their customers using whatever benchmarks they choose as a starting point. They’re probably often using Czar-Lite but they have other benchmarks available to them as well. In short, the SMC carriers can and do formulate competitive discounts without the need for expanded immunity and it is their discounts that are really at the center of what carrier rate making is all about. It’s not the benchmark. You can tinker with the benchmark all you want. You can raise it five percent, you can lower it five percent, but at the end of the day, it’s the individually carrier/shipper negotiated discount that determines what rate is going to be charged. So the level of the benchmark is much less important than the level of the
discount and the carriers negotiate the discounts based on their perception of the competitive marketplace for that particular traffic based on their costs and based on other factors than any business takes into account when it determines its price. Moreover, SMC offers no proof that carriers are having any problem formulating joint rates or through routes, which is a centerpiece of what rate bureaus do. It’s really a primary justification for anti-trust immunity. When we get to that phase of the next proceeding where the bureaus are called upon, perhaps to justify their immunity, this will be a primary reason. It allows carriers to formulate joint rates and through routes in an easy way. In a way that avoids all of the problems that would occur if there weren’t a uniform structure of class rates. But SMC says nothing about why expanded immunity will assist that process and it says nothing about it because the process works well. There’s nobody out saying we can’t make a joint rate, we can’t make a through route. The evidence simply isn’t there to link nationwide immunity to that essential bureau purpose.
Now SMC also claims it needs immunity so that it can help its carriers use a uniform benchmark for discounting throughout the US. There are, it claims, too many benchmarks. A plethora, to use their word, of rates and this is creating confusion. Well in my definition, that’s the marketplace. That’s competition. There’s no evidence of confusion. There’s no evidence of anybody having problems figuring out what the rate ought to be. In fact, getting a rate quote these days from an LTL carrier is about as easy as booking travel on Expedia or Travelocity, something we all have experience doing. You can log on to Watkins.com or Overnight.com or the websites of several other SMC carriers. You plug in the origin/destination, I’m sorry, the origin zip code, the destination zip code, the class of the commodity, the weight and you hit a button and it gives you a rate. That rate, in fact, for Watkins and Overnight and for other major SMC carriers is pegged on their own tariffs. That is the tariffs of those carriers which like to be in charge of their own pricing destiny. So
the market is working well. There’s no basis for government intervention of the kind SMC seeks.

And further to the extent they want to create fewer benchmarks, which is what they say repeatedly. I don’t see, we don’t see how that could possibly be pro-competitive. In fact it is anti-competitive to state the proposition that fewer rates and broadened anti-trust immunity will enhance competition is, in our view, a facially, illogical proposition. In fact, we believe that granting SMC what it seeks here would eventually lead to SMC becoming the sole LTL bureau. We think that’s a substantial likelihood. Czar-Lite already has very broad market penetration. It would in effect become, if they had nationwide immunity, the SMC nationwide class tariff. Given its market impact and SMC’s sole control of it, if you give them anti-trust nationwide immunity, it’s unlikely that carriers would participate in other bureaus. I’m not saying that would happen overnight but it would happen relatively quickly, we believe. By virtue of the market power of Czar-Lite we think SMC would become the only game in town in terms of collective rate making for LTL
carriers and it will be in a position to extract more revenues from its Czar-Lite product. That’s what, again, this case is really about. We therefore believe that the board should reject all the rhetoric coming from SMC about how granting it broader immunity from the nation’s competition laws, from the core competition laws of the United States will enhance competition. To even state that proposition is to expose that it makes no sense.

SMC claims that it needs broadened immunity because its carrier members have broadened operating authority that allows them to operate throughout the United States. Well, there’s nothing new there. All carriers have nationwide operating authority and virtually all have had it for decades, since the 1980s, and yet the system works well. It functions competitively. There’s no problem to be solved. The disparity between operating authority and rate making territories is not a problems because number one, most carriers focus their operations, not withstanding their broad operating authority. Most carriers, the vast majorities focus their operations in a particular
region or set of states. So, most carriers have no
problem with territorial rate making boundaries. They
can belong to a single bureau; they can belong to more
than one bureau. It’s simply not a problem. Does that
mean I’m out of time or --

CHAIRMAN NOBER: Pretty much.

MR. COBURN: If I can just sum up. I think
I’ve made my core points. With respect to the question
of monitoring, we don’t think the board has the
resources to monitor. We don’t know how you would
monitor. So we don’t think that allowing them
nationwide immunity and then monitoring is the answer.
We think, you’re dealing with anti-trust immunity you
have to be very cautious. You’ll hear from the
shippers; their point of view, their opposition to
this. We think caution is in order. We think the
immunity expansion should not be allowed. Thank you.