

19                   MR. COBURN:   Thank you, Chairman Nober and  
20                   good morning Chairman Nober, Vice Chairman Mulvey and  
21                   Commissioner Buttrey.  With me in the room today is the  
22                   Executive Director of the Rocky Mountain Tariff Bureau

1 and the Vice President of the EC-MAC Motor Carrier  
2 Association and also with me is the President of Rocky  
3 Mountain, Mr. Bob Haney from Colorado Denver Delivery.  
4 I think it's abundantly clear from the comments you've  
5 made that we're all on the same page. That any relief  
6 from the anti-trust laws is extraordinary and SMC's  
7 request is no different. Few industries in America  
8 enjoy anti-trust immunity and we know of no situation,  
9 at least in any recent times, where any administrative  
10 agency or Congress, in fact, has expanded the scope of  
11 that anti-trust immunity. That's really what is at  
12 heart here, is the expansion of the anti-trust  
13 immunity. In fact SMC faces a very heavy burden in  
14 this proceeding to justify on public interest grounds.  
15 Not on private or commercial grounds as we believe it's  
16 really doing that such an expansion is warranted. In  
17 fact, what we've submitted hasn't come close to meeting  
18 its public interest burden. It offers a lot of words  
19 in support of its application but little more. No  
20 cogent of public interest reasons are offered because  
21 the facts speak for themselves. The motor carrier  
22 market is a successful, competitive market. There is

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1 no problem out there that needs to be solved with  
2 government intervention, particularly intervention in  
3 the form of an expansion of this extraordinary thing of  
4 anti-trust immunity. What SMC really wants in this  
5 case, we believe, is to enhance the value of Czar-Lite.  
6 You heard a lot about Czar-Lite from Mr. Bagileo. You  
7 read a lot about Czar-Lite in the SMC presentations.  
8 It permeates the statements of support offered by SMC.  
9 It is what this case is really all about. They want to  
10 improve Czar-Lite in the sense of making it somehow  
11 more marketable. They want to control it and through  
12 it control the collectively made class rates that serve  
13 as a benchmark today.

14 Now they claim that they need broadened  
15 immunity so that SMC's carrier members can benefit from  
16 its allegedly superior rate making mechanisms in the  
17 form of data bases and other tools that they use to  
18 annually adjust their carriers rates. But even if SMC  
19 had the best rate making tools in the world, if we  
20 would concede that, that's not a sufficient basis for  
21 broadened anti-trust immunity. There's no evidence  
22 that the SMC carriers are competitively disadvantaged

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1 by the status quo. That they're losing money or that  
2 they're somehow unable to negotiate market based  
3 discounts, which is what carriers do daily. The  
4 evidence is not there because the SMC carriers, like  
5 other LTL carriers that operate in this competitive  
6 market are functioning successfully and, quite likely,  
7 they're making money. There's no evidence that these  
8 carriers are unable to rationally price their services  
9 or negotiate with their customers using whatever  
10 benchmarks they choose as a starting point. They're  
11 probably often using Czar-Lite but they have other  
12 benchmarks available to them as well. In short, the  
13 SMC carriers can and do formulate competitive discounts  
14 without the need for expanded immunity and it is their  
15 discounts that are really at the center of what carrier  
16 rate making is all about. It's not the benchmark. You  
17 can tinker with the benchmark all you want. You can  
18 raise it five percent, you can lower it five percent,  
19 but at the end of the day, it's the individually  
20 carrier/shipper negotiated discount that determines  
21 what rate is going to be charged. So the level of the  
22 benchmark is much less important than the level of the

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1 discount and the carriers negotiate the discounts based  
2 on their perception of the competitive marketplace for  
3 that particular traffic based on their costs and based  
4 on other factors than any business takes into account  
5 when it determines its price. Moreover, SMC offers no  
6 proof that carriers are having any problem formulating  
7 joint rates or through routes, which is a centerpiece  
8 of what rate bureaus do. It's really a primary  
9 justification for anti-trust immunity. When we get to  
10 that phase of the next proceeding where the bureaus are  
11 called upon, perhaps to justify their immunity, this  
12 will be a primary reason. It allows carriers to  
13 formulate joint rates and through routes in an easy  
14 way. In a way that avoids all of the problems that  
15 would occur if there weren't a uniform structure of  
16 class rates. But SMC says nothing about why expanded  
17 immunity will assist that process and it says nothing  
18 about it because the process works well. There's nobody  
19 out saying we can't make a joint rate, we can't make a  
20 through route. The evidence simply isn't there to link  
21 nationwide immunity to that essential bureau purpose.

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1           Now SMC also claims it needs immunity so that  
2 it can help its carriers use a uniform benchmark for  
3 discounting throughout the US. There are, it claims,  
4 too many benchmarks. A plethora, to use their word, of  
5 rates and this is creating confusion. Well in my  
6 definition, that's the marketplace. That's  
7 competition. There's no evidence of confusion.  
8 There's no evidence of anybody having problems figuring  
9 out what the rate ought to be. In fact, getting a rate  
10 quote these days from an LTL carrier is about as easy  
11 as booking travel on Expedia or Travelocity, something  
12 we all have experience doing. You can log on to  
13 Watkins.com or Overnight.com or the websites of several  
14 other SMC carriers. You plug in the origin  
15 destination, I'm sorry, the origin zip code, the  
16 destination zip code, the class of the commodity, the  
17 weight and you hit a button and it gives you a rate.  
18 That rate, in fact, for Watkins and Overnight and for  
19 other major SMC carriers is pegged on their own  
20 tariffs. That is the tariffs of those carriers which  
21 like to be in charge of their own pricing destiny. So

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1 the market is working well. There's no basis for  
2 government intervention of the kind SMC seeks.

3 And further to the extent they want to create  
4 fewer benchmarks, which is what they say repeatedly. I  
5 don't see, we don't see how that could possibly be pro-  
6 competitive. In fact it is anti-competitive to state  
7 the proposition that fewer rates and broadened anti-  
8 trust immunity will enhance competition is, in our  
9 view, a facially, illogical proposition. In fact, we  
10 believe that granting SMC what it seeks here would  
11 eventually lead to SMC becoming the sole LTL bureau.  
12 We think that's a substantial likelihood. Czar-Lite  
13 already has very broad market penetration. It would in  
14 effect become, if they had nationwide immunity, the SMC  
15 nationwide class tariff. Given its market impact and  
16 SMC's sole control of it, if you give them anti-trust  
17 nationwide immunity, it's unlikely that carriers would  
18 participate in other bureaus. I'm not saying that  
19 would happen overnight but it would happen relatively  
20 quickly, we believe. By virtue of the market power of  
21 Czar-Lite we think SMC would become the only game in  
22 town in terms of collective rate making for LTL

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1 carriers and it will be in a position to extract more  
2 revenues from its Czar-Lite product. That's what,  
3 again, this case is really about. We therefore believe  
4 that the board should reject all the rhetoric coming  
5 from SMC about how granting it broader immunity from  
6 the nation's competition laws, from the core  
7 competition laws of the United States will enhance  
8 competition. To even state that proposition is to  
9 expose that it makes no sense.

10 SMC claims that it needs broadened immunity  
11 because its carrier members have broadened operating  
12 authority that allows them to operate throughout the  
13 United States. Well, there's nothing new there. All  
14 carriers have nationwide operating authority and  
15 virtually all have had it for decades, since the 1980s  
16 and yet the system works well. It functions  
17 competitively. There's no problem to be solved. The  
18 disparity between operating authority and rate making  
19 territories is not a problems because number one, most  
20 carriers focus their operations, notwithstanding their  
21 broad operating authority. Most carriers, the vast  
22 majorities focus their operations in a particular

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1 region or set of states. So, most carriers have no  
2 problem with territorial rate making boundaries. They  
3 can belong to a single bureau; they can belong to more  
4 than one bureau. It's simply not a problem. Does that  
5 mean I'm out of time or - -

6 CHAIRMAN NOBER: Pretty much.

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

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