

8           CHAIRMAN NOBER:    Since you here are not  
9           regulars to our oral arguments, traditionally,  
10          what we do is give you your 15 minutes to go through  
11          your presentation, and then we'll ask questions on a  
12          rotating basis for five minutes at a time, and we'll  
13          probably do that of the second panel as well.  So,  
14          gentlemen, please start.

15                 MR. BAGILEO:  Thank you very much Chairman  
16          Nober, Vice Chairman Mulvey and Commission Buttrey.  
17          It is indeed a pleasure to be here today in  
18          certainly one of the most historic moments for me in  
19          terms of practicing transportation law, once more  
20          having the opportunity to appear before the board in  
21          a motor carrier matter.

1           As has been indicated, I appreciate the 30  
2 minutes that's been allocated to Southern Motor  
3 Carriers and will retain 15 minutes for rebuttal.

4           Chairman Nober has outlined, basically,  
5 the procedural history of this matter. Southern  
6 Motor Carriers first filed its application for  
7 nationwide authority in 1994. Revised and  
8 resubmitted that application in 1996 with 191  
9 supporting shipper associations, transportation  
10 intermediaries and others as well as 116 motor  
11 carriers. At the conclusion of that evidentiary  
12 phase in 1998, the surface transportation board  
13 issued a decision in which it indicated that with  
14 exceptions and with conditions that it announced its  
15 intent that when the rate bureau agreements were  
16 renewed that those bureaus that had requested  
17 nationwide authority would be granted that  
18 authority, concluding that the present system, the  
19 transportation system today, was globalized and it  
20 was anachronistic to require motor carriers to have  
21 regional rate making restrictions.

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1           As Chairman Nober also pointed out,  
2 legislation was passed in conjunction with the motor  
3 carrier act of 1999 which prohibited the granting of  
4 such authority that was reversed in February of  
5 2003.

6           We are now here once again before the  
7 commission having submitted evidence. The evidence  
8 of record this time consists of 14 carriers within  
9 Southern Motor Carriers, five major shippers, Cass  
10 Information Systems, Inc., Pacific Inland tariff  
11 bureau, another bureau competing with Southern Motor  
12 Carriers in the market, supporting Southern Motor  
13 Carriers efforts, as well as three transportation  
14 intermediaries. We feel that the support that has  
15 been given to Southern Motor Carriers in this  
16 application proceeding is unprecedented because no  
17 proceeding can be pointed to at any point in time in  
18 which that support has been received from the entire  
19 transportation community supporting the effort of a  
20 rate bureau to expand its rate making authority.

21           Much has changed over the years. When I  
22 commenced my career as an attorney - as an attorney

1 advisor in the Office of Proceedings, Section of  
2 Operating Rights of the Interstate Commerce  
3 Commission, there were 125 attorneys handling only  
4 operating rights proceedings. The operating rights  
5 proceedings and to a lesser degree of the rate  
6 proceedings comprised 98 percent of the agency's  
7 workload. Things were much different then.  
8 Trucking companies who sought authority were given  
9 discreet commodity descriptions and limited  
10 operating territories. That was changed by the  
11 Motor Carrier Act of 1980 when, thereafter, we had  
12 nationwide companies. As we evidenced in the 14  
13 statements that we have submitted as well as the 116  
14 statements submitted back in 1997, not only the  
15 largest but even the smallest carriers within  
16 Southern Motor Carriers operate outside the  
17 boundaries of the Southern region and are required  
18 to by customer's needs because of the globalized  
19 needs and the markets that are now being served. It  
20 is important to realize that Czar-Lite, the product  
21 that SMC produces, is not the product of motor  
22 carrier incentive. It is at the request of Masco

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1 Corporation, a member of NITL, a major shipper in  
2 the United States, that that type of pricing  
3 baseline was put together. The reason for it is  
4 that it made - it rationalized the pricing system  
5 that was then ~~\*(10:02:55)~~ etched into the  
6 marketplace. There were so many individual  
7 baselines at that point that it was very difficult,  
8 if not impossible, for many companies to compare the  
9 competitive offers that were being offered to them  
10 because they were using different bases. I would  
11 also point out that it's important to know if the  
12 baselines are common to the government, both the  
13 Department of Defense and the General Services  
14 Administration use baselines in terms of pricing  
15 motor carrier services.

16 Back in the early 1950s when rate making  
17 associations first came on board, the territories  
18 that they were granted roughly corresponded to the  
19 rail territories with which they were competitive  
20 and also basically defined the operations that were  
21 conducted by the regional carriers in those  
22 territories. As I have indicated, that has changed

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1 dramatically, specifically with respect to Southern  
2 Motor Carriers. Over 50 percent of our 128 member  
3 carrier base is located at points beyond the  
4 Southern territory. While SMC can currently serve  
5 their pricing needs within the Southern territory,  
6 it can not go outside that territory and meet their  
7 collective rate making needs. Moreover, even as to  
8 the carriers within Southern territory who operate  
9 beyond Southern territory, we are confined to the  
10 Southern territory rate making powers that are  
11 conveyed to our organization and cannot assist them  
12 beyond those parameters.

13 We seriously believe that to require SMC,  
14 or any other bureau seeking nationwide authority, to  
15 operate with an antiquated, artificial restricted  
16 rate making zones is not conducive to the  
17 marketplace today. Shippers would be better served,  
18 we believe, by a variety of rates that are composed  
19 by Southern Motor Carriers based upon carrier cost  
20 index as well as its national traffic database. Our  
21 carriers, truly, have no knowledge as to how rates  
22 are constructed outside of their rate making

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1 territory. We have no information, no data as to  
2 how the other bureaus construct their rates. It may  
3 be perfectly adequate for the small regional  
4 carriers that they represent, but it has never been  
5 shown to be adequate for our carriers, who have  
6 their own data who can construct a nationwide  
7 baseline of rates. There have been various  
8 allegations that it would be destructive of the  
9 marketplace. That is not true. There are many rate  
10 baselines out there and the important fact to  
11 remember is that it is the shipper who determines  
12 what baseline a carrier uses in terms of bids made  
13 on its traffic. It is not the carrier who tells the  
14 shipper. If Czar-Lite is not constructed in a fair  
15 and reasonable manner, you can be assured Trasite  
16 Transit and other products are out there as well as  
17 the product of Middlewest Motor Tariff Bureau,  
18 namely MARS, which could take over that market very  
19 rapidly.

20 Another very important point is, we're not  
21 here to disrupt the market. We're here to make the  
22 market more efficient and more economical in terms

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1 of the services our member carriers can provide and  
2 their costs and revenue needs. We've shown  
3 ourselves to be a low cost region. A comparison was  
4 made in the testimony of James Ridley introduced  
5 initially where 840 market comparisons were made,  
6 6,720 rates were reviewed. In over 67 percent of  
7 those cases the rates of Southern Motor Carriers,  
8 the class rates, the benchline were lower than those  
9 of seven non-member LTL major carriers operating in  
10 that same territory.

11 What SMC is going to do is to take the  
12 current baseline, and from this point forward make  
13 absolutely sure that any change in that baseline  
14 reflects the economic and efficiencies of its member  
15 carriers and is cost justified. That is extremely  
16 important to the shipping public. That is not  
17 guaranteed anywhere else. As is known by the board  
18 and by the shipper organizations, 30 days before any  
19 effective tariff change is made, a white paper is  
20 distributed. Some 5,000 copies, including the  
21 Surface Transportation Board, which thoroughly  
22 outlines the basis upon which this rate - general

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1 rate action -is being taken. We feel that this is  
2 significant. Our meetings are open. We invite the  
3 public to attend, and a major number of shippers,  
4 transportation intermediaries and other carriers do,  
5 in fact, attend. Each member who attends those  
6 meetings is given the exact same booklet of  
7 information that our carrier members of the general  
8 rate committee receive so that they can follow along  
9 and determine upon what basis these changes are  
10 being predicated.

11 Referring to Section 13703 of the Act,  
12 that provides that carriers can enter into an  
13 agreement by which they collectively establish joint  
14 rates through routes, divisions and general rate  
15 changes based upon industry average cost. Nowhere  
16 in that legislation is the authority of this agency  
17 confined to any particular grant of a territory.  
18 There are bureaus today - specialized bureaus that  
19 have nationwide, collective rate making authority.  
20 It is also important to recognize that over the  
21 years the bureaus themselves have expanded  
22 dramatically. For instance, ~~\*(10:08:42)~~ Eastern

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1 Central has taken over the authority of Middle  
2 Atlantic conference, which is the entire Middle  
3 Atlantic states up and through New England.  
4 Midwest merged with Central States which gave it  
5 expanded territory. Southern Motor Carriers merged  
6 with Central and Southern but, unfortunately, that  
7 only gave us some points in Mississippi and  
8 Louisville, Kentucky because our territories  
9 virtually overlapped. Western Motor Tariff Bureau  
10 has 38 state authority. Motor Carrier Traffic  
11 Association had 32 state authority. So it's not  
12 uncommon for rate bureaus to have expanded rate  
13 making authority. That has been the case over the  
14 years and, always, the agency, whether it was  
15 Interstate Commerce Commission or maybe the board  
16 now, has granted that authority coextensive with the  
17 pricing needs of the member carriers. There can be  
18 no question on this record that SMC's member  
19 carriers are nationwide operators. We have,  
20 overnight, 35,000 direct service points, Watkins  
21 Motor Lines, Estes, ~~\*(10-09-43)~~Avert. I can go  
22 through the litany of 128 carriers and all of them,

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1 down to a \$7,000,000 carrier located in Mississippi  
2 serves many states beyond the Southern territory.  
3 It is, today, the nature of the business and  
4 particularly the needs of the Southern Motor  
5 Carriers.

6 When I first came with the Commission,  
7 many years ago, any rate change, whether it was a  
8 collectively made rate or an individually made rate,  
9 had to be cost justified. That was the function of  
10 the Interstate Commerce Commission. Of course that  
11 changed because of the legislation. But Southern,  
12 on its own initiative, truly believes that the  
13 public and the public interest has a right to know  
14 upon what basis general rate actions are taken. For  
15 that reason, in 1999, it recreated the carrier cost  
16 index, which looks at labor, labor related costs as  
17 well as non-labor costs in terms of determining what  
18 increase in costs carriers have faced, if any. That  
19 is its member carriers. That information is  
20 gathered through a number of sources and also by  
21 survey of the member carriers of the general rate  
22 committee.

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1           In addition, in the year 2001, we  
2           reinstated the National Traffic Database, as may  
3           be recalled back in the early years we had a  
4           continuing traffic study which was a sampling of  
5           freight bills moving so that the characteristics of  
6           traffic moving in the United States could be tested  
7           and in particular the individual bureau areas. And  
8           that was required to be submitted as part of the  
9           justification to the Interstate Commerce Commission.  
10          Southern has gone one step further than that. It  
11          now has 38 carriers participating in that, and when  
12          we had 36, we were reviewing 125,000,000 freight  
13          bills accounting for over \$20,000,000,000 of LTL  
14          freight revenue. That information is extremely  
15          critical in terms of assessing the revenue need and  
16          the rate and the movement of traffic within the  
17          various regions. And SMC is prepared to follow that  
18          through in terms of nationwide rate making.

19                 In sum, basically what SMC is saying is we  
20                 are not here to put any other bureau out of  
21                 business. That is not the intent. We would not  
22                 oppose any other bureau seeking nationwide

1 authority. Middlewest produces MARS, which is a  
2 very good competitive product to Czar-Lite. Pacific  
3 Inland Tariff Bureau supports our efforts in this  
4 proceeding. What we are seeking to do is to create  
5 a baseline that is effective and efficient and  
6 reflects the cost and revenue needs of our base of  
7 carriers. In so doing, we believe that the public  
8 interest will be served. As I indicated today,  
9 Southern has 128 carriers. We have 1,016 associate  
10 members. We've grown from 937, when our filing was  
11 made in April. We have over 700 transportation  
12 intermediaries in our organization. We have 40 of  
13 the top 50 transportation intermediaries who are  
14 subscribers to Czar-Lite. Over 2,700 companies  
15 subscribe to Czar-Lite. I think there is proof of  
16 the public confidence in the product in terms of  
17 their willing to support SMC in its effort to  
18 construct a baseline that is representative of what  
19 the true revenue needs of its carrier members are.

20 Thank you.

21 CHAIRMAN NOBER: We'll start with  
22 Commissioner Buttrey. Do you have any questions?

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1                   COMMISSIONER BUTTREY: I certainly don't  
2 want to steal the thunder of future witnesses who  
3 will be appearing before us today, but one of the  
4 witnesses that will be speaking later points out  
5 that UPS, FedEx, Yellow Freight, Roadway and maybe  
6 other large so-called mega carriers do not  
7 participate in rate bureaus, and it's, I would  
8 think, very clear to most everybody that that's  
9 probably one of the most competitive segments of the  
10 market in the entire country. I was wondering what  
11 you would say to those who think that probably this  
12 whole activity is sort of a convenient fiction or a  
13 relic, if you will, of the past and probably has  
14 sort of outlived its usefulness. I was wondering  
15 what you would say to that.

16                   MR. BAGILEO: Well, Commissioner Buttrey,  
17 I would point to the fact that Czar-Lite is used by  
18 literally thousands and thousands of shippers and  
19 carriers in the United States. The statement by  
20 Danny Slayton, the Vice President of Marketing and  
21 Sales for SMC, goes into great detail about how the  
22 use of Czar-Lite has grown dramatically. If a

1 baseline was archaic, it certainly cannot be proven  
2 by the extent to which it is used in the marketplace  
3 today. It is probably the principle pricing tool in  
4 terms of discounting and I think that when you have  
5 - Congress has looked at this issue time and time  
6 again and has concluded that it would continue anti-  
7 trust immunity for collective rate making agreements  
8 that are approved by the board and shown to be in  
9 the public interest. I think there is a real public  
10 interest purpose that is served in terms of  
11 informing all people of how to assess the  
12 competitiveness of a bid of a rate. I think it's  
13 being used by all segments of the transportation  
14 community for that purpose. Now as far as the large  
15 major carriers - I mean Southern Motor Carriers has  
16 three of the largest carriers in the nation. We  
17 have Overnight. We have Watkins Motor Lines and we  
18 have Estes. They obviously see great value in their  
19 participation in the bureau and are staunch members  
20 of Southern Motor Carriers.

21 COMMISSIONER BUTTREY: If the submissions  
22 to us are correct, and I'm assuming that they are,

1 there is an indication that the discounting  
2 practices of the carriers can run anywhere between  
3 20 percent discount and 80 percent discount. So, if  
4 that's the case, it would seem to obviate the need  
5 for rate making bureaus or rate making authority at  
6 all, given the fact that you can have these huge  
7 discounts in the marketplace. What's your response  
8 to that?

9 MR. BAGILEO: What I think we have to  
10 understand is that there is a tremendous difference  
11 between a market rate and a class rate. A class  
12 rate is designed to be the highest reasonable rate  
13 available to assure the movement of traffic between  
14 any two points in the United States. That was  
15 hornbook for me when I was back at the Interstate  
16 Congress Commission in 1966. The reason why  
17 discounting is so steep, I believe, is that in  
18 various territories, the class rate structure in  
19 those territories really don't reflect the  
20 competitive need of a particular carrier on a  
21 particular traffic lane. One carrier's headfall is  
22 another carrier's backhaul. In order to have a

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1 contribution to capital to offset its expenses with  
2 a move, you may get a very steep discount, but  
3 that's just the economics of the marketplace.  
4 That's just competition at work and that reflects a  
5 lot. They may be giving a very steep discount in  
6 order to get the traffic of a particular shipper.  
7 This is what is happening out there. But it all  
8 centers on the fact of the existence of a baseline  
9 from which these discounts can be given and carriers  
10 know exactly to what extent that'll be a  
11 contribution to their revenue as well as cover their  
12 cost.

13 COMMISSIONER BUTTREY: Your argument seems  
14 to indicate that there are carriers out there who,  
15 for some strange reason, don't know what their cost  
16 per package is. For instance -

17 MR. BAGILEO: Yes.

18 COMMISSIONER BUTTREY: I can't conceive of  
19 a company in this day and age not knowing what their  
20 cost per package or their cost per pound is. I would  
21 say if they don't know what that is, they probably  
22 ought to go out of business. I mean, the carrier

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1 should go out of business if it doesn't know what  
2 its cost per package is. If they do know what their  
3 cost per package is, it seems that they ought to be  
4 able to construct rates based on what their cost per  
5 package is and what they think they can get in the  
6 marketplace - in the free marketplace. I'm at a  
7 loss, coming from a deregulated environment, of  
8 knowing why bureaus exist.

9 MR. BAGILEO: Well, one of the reasons is  
10 competition in the trucking industry is fierce. We  
11 went, from when I was at the agency, from 18,000  
12 carriers to over several hundred thousand  
13 certificates issued. There are many companies out  
14 in the marketplace, good small-niche carrier; but  
15 they don't have the costing expertise and house  
16 cannot afford it, and that is what a rate bureau  
17 provides many carriers, large and small, that  
18 expertise that they can give them a baseline by  
19 which they can cost their traffic and make a profit  
20 and stay in business. There are several statements,  
21 Shippers Express, Terminal Transport, Benton and the  
22 information that we have supplied to the agency

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1 which goes into this, in fact, that this is a great  
2 benefit to them. They're companies - they have been  
3 around for many, many years and they have survived.  
4 And while as an economic principle what you say  
5 makes absolute sense, the fact is in the trucking  
6 industry the costing expertise often resides some  
7 place other than that company. Another very  
8 important fact is that please remember that it is  
9 the shipper who determines how bids are to be  
10 submitted to it. Today, increasingly, in all  
11 sectors shippers are requiring the use of a baseline  
12 so that they know that 50 percent, 40 percent, 30  
13 percent is a specific number that they can compare  
14 and by having a baseline, it does afford them that  
15 opportunity.

16 VICE CHAIRMAN MULVEY: Thank you. A  
17 couple of questions: The December 18, 1998 board  
18 decision, which indicated board willingness to look  
19 at the possibilities of extending anti-trust  
20 immunity for nationwide rate making, was predicated  
21 on lowering the benchmark rates, which never  
22 occurred. I might add in that decision the board

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1 said "We are not as sanguine as the ICC appeared to  
2 be in its determination but the current system of  
3 collective rate making is essentially benign." So  
4 that the current system, the current regional  
5 system, is not necessary benign, how could a new  
6 national be any less so?

7 MR. BAGILEO: I would point out, Vice  
8 Chairman Mulvey, that in the November 2001 decision  
9 of the agency and the consolidated rate proceeding,  
10 the commission acknowledged that it was not finding  
11 any class rate - any particular class rate to be  
12 unreasonable and did not have that information  
13 before it. As a matter of fact, based upon  
14 representations of the shipper's conferences, namely  
15 NASSTRAC and its sister conference, they realized  
16 that attempting to roll back the baseline rates  
17 would be just totally unreasonable and too  
18 disruptive of the marketplace. The baseline that is  
19 in effect is one that is grown up under strict  
20 regulation from the day it was initiated in terms of  
21 reasonableness. The X party - the MC82 filings were  
22 voluminous and had to be approved by the agency in

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1 terms of that rate base being reasonable. So I  
2 think that there is some misconceptions about class  
3 rates today that exist because of the - I think,  
4 really, the temptation to compare a market based  
5 rate with a class rate, and I don't think there is  
6 any legitimate comparison. But shippers are very  
7 supportive of a base rate system ,and, as you'll see  
8 from the statements of record, major shippers have  
9 said that they have confidence that Southern Motor  
10 Carriers would develop a fair and reasonable system  
11 - nationwide system of baseline rates. I think the  
12 problem is today we don't know what system is being  
13 used in other territories. It may be fine for the  
14 carriers in that territory, but there is nothing  
15 under the law that would preclude SMC's carriers  
16 from constructing their own baseline based upon  
17 their own revenue needs, and when I say construct  
18 their own baseline, I'm talking about the changes  
19 that would be made - the general rate actions that  
20 would be predicated for the future on their cost  
21 carrier index and the national traffic database.

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1           VICE CHAIRMAN MULVEY: In your petition  
2 then you also cite numerous supporting statements  
3 that were filed by small, medium and large size  
4 motor carriers. It's been alleged that this support  
5 really centers on support for Czar-Lite as opposed  
6 to granting the anti-trust immunity for nationwide  
7 collective rate making. Do you want to comment on  
8 that?

9           MR. BAGILEO: I think that one of the  
10 problems was that there very serious concern that  
11 bureaus would go out of business and that the system  
12 of class rates would not be available on a  
13 nationwide basis, and indeed, as we saw, New England  
14 Motor Rate Bureau did go out of business as did  
15 Willimette and the Motor Carrier Traffic  
16 Association. So, I mean, that's a reality in  
17 today's marketplace. Some bureaus are having  
18 financial difficulties. But I think, basically, the  
19 support was, and as I think we clarified on the  
20 record, the support was that SMC be able to  
21 construct a nationwide baseline of rates for its  
22 members who were supporting - submitting those

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1 statements. They wanted their own baseline of  
2 rates.

3 CHAIRMAN NOBER: Okay. Why don't we just  
4 start with the most basic question before us which  
5 is: What are you asking the board to do? Because I  
6 think that if we figure out what you are asking the  
7 board to do, we can also figure out what you're not  
8 asking us to do and that's, I think, been a subject  
9 of a lot of confusion in the papers. What are you  
10 actually asking us to do?

11 MR. BAGILEO: All we are asking the board  
12 to do is to enable us to adjust the class rate  
13 system presently extent in the marketplace based  
14 upon our carrier cost index and our revenue needs.

15 CHAIRMAN NOBER: So we'd be modifying your  
16 existing agreement or approving a new one.

17 MR. BAGILEO: You would be expanding the  
18 existing agreement. We did file an amended  
19 agreement with our application seeking the expansion  
20 to nationwide.

21 CHAIRMAN NOBER: So, under the law, we can  
22 review it and we have, which I'm pretty familiar

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1 with, but essentially we have to take actions  
2 necessary to protect the public interest. What is  
3 your - how would you describe the public interest in  
4 this situation?

5 MR. BAGILEO: I think that the public  
6 interest would be best protected if indeed -

7 CHAIRMAN NOBER: What, what is the public  
8 interest, how would you articulate that?

9 MR. BAGILEO: The public interest is in a  
10 competitive cost effective baseline of rates so that  
11 motor carriers and shippers can negotiate market  
12 based rates off that baseline for discounting.

13 CHAIRMAN NOBER: And why would granting  
14 you nationwide authority be in the public interest?  
15 How would that further your - what you just  
16 articulated of the public interest?

17 MR. BAGILEO: It would assure shippers and  
18 carriers as well as transportation intermediaries  
19 that the baseline extent in the marketplace was one  
20 that was cost based. That it had a rational basis,  
21 a reasonable basis for the level of general rate  
22 actions that were taken.

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1           CHAIRMAN NOBER:   How many baseline rates  
2           are there now in the marketplace?

3           MR.   BAGILEO:       Hundreds.       Individual  
4           carriers have baseline rates.   Individual shippers  
5           have their own baseline rates.   There are software  
6           providers who have baseline rates, Transac,  
7           Transite. MARS is a baseline rate that is by  
8           Middlewest Motor Tariff Bureau.   It's endless. I  
9           couldn't even begin to conjecture a guess.   There  
10          are literally thousands, I am sure.

11          CHAIRMAN NOBER:   In all those other ones,  
12          for example, with a large national company as  
13          Commissioner Buttrey was talking about, if Yellow or  
14          Roadway (I don't know if they are the same now) or,  
15          ~~\*(10:25:41),~~ Swift wanted to do their own nationwide  
16          baseline, they could do that, right?

17          MR. BAGILEO:   They do it.

18          CHAIRMAN NOBER:   Do they - they wouldn't  
19          have to get any approval from us to do that?

20          MR. BAGILEO:   No, they don't.

1           CHAIRMAN NOBER:    That would serve as a  
2 baseline that other carriers could use or not use,  
3 is that right?

4           MR. BAGILEO:   Well, the problem with that  
5 Chairman Nober, is the fact that other carriers  
6 don't want to use the baseline of another carrier  
7 because that sometimes, and often puts them at a  
8 competitive disadvantage in terms of the marketing  
9 and pricing strategies exhibited in that particular  
10 baseline for a particular carrier.  That is one of  
11 the problems.  A number of shippers at one time  
12 require the various motor carrier rate bases to be  
13 used.  Yellow is one that was widely used and the  
14 carriers did not want to go that way.  They wanted  
15 their own baseline.  A baseline that they felt  
16 represented their cost and revenue need.

17           CHAIRMAN NOBER:   But in the end, when a  
18 rate - when a carrier, small or large, one of your  
19 members, has to compete for a rate, they have to  
20 either - they have to be the most competitive rate?

21           MR. BAGILEO:   Yes.

1           CHAIRMAN NOBER: So, to a certain extent,  
2 what's the relevance of the baseline to what the  
3 actual market rate that's determined is?

4           MR. BAGILEO: It puts everybody in a level  
5 playing field. They're not facing - a small carrier  
6 comes in, it's not facing a large carrier who's  
7 saying I'm giving you an 80 percent discount to the  
8 shipper of its baseline, which is substantially  
9 higher than that smaller carrier's baseline. The  
10 smaller carrier offers a 60 percent discount and  
11 loses the traffic. Not because its rate was lower  
12 but because the comparison of the baselines led to  
13 confusion or an inability to really assess what the  
14 true rate being offered to that shipper was, and  
15 this is attested to by many shippers - that it just  
16 was too confusing. This way is simple. There is a  
17 single baseline or a number of baselines that they  
18 require and they can immediately assess that bid.

19           CHAIRMAN NOBER: So, on the one hand you  
20 have - what is the baseline that small or medium  
21 sized carriers are going to use to submit their bids  
22 and that was, I think, the thrust of some of

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1 Commissioner Buttrey's questions which is: Why do  
2 you need this in the first place? Why can't any  
3 carrier just do their own costing?

4 MR. BAGILEO: Well I -

5 CHAIRMAN NOBER: The answer - but what -  
6 let me finish - and the answer is that's a different  
7 - to me that that's the first question I asked you.  
8 Which is, what are we here to do, and one question  
9 is whether or not we ought to have rate bureaus at  
10 all. That's - is that the subject of this  
11 discussion?

12 MR. BAGILEO: I don't think it is. I  
13 think Congress has spoken and the Commission in 2003  
14 --.

15 CHAIRMAN NOBER: Well, Congress - what  
16 Congress said was that the board should only approve  
17 them if they're in the public interest. That's what  
18 it said. But that's not this proceeding.

19 MR. BAGILEO: Right, but the board did  
20 approve the rate bureau agreements in 2003 and I am  
21 sure going to look at that again - that issue again  
22 under the law - -

1                   CHAIRMAN NOBER: Yes, it's starting by the  
2 end of this year.

3                   MR. BAGILEO: It was found, at that time,  
4 that our agreements were in the public interest  
5 because we did, in fact, implement the agency's  
6 requirements with respect to truth in rates and  
7 certification that collectively made class rates  
8 would not be used as a basis of a loss of discount.  
9 So, at that point in time, certainly, it was  
10 demonstrated that those agreements were in accord  
11 with the agency's thinking as to what was in the  
12 public interest.

13                  CHAIRMAN NOBER: Let me ask, because I got  
14 into follow up on one of Vice Chairman Mulvey's  
15 questions: what is the relevance to Czar-Lite to the  
16 question that you're asking us to decide?

17                  MR. BAGILEO: Czar-Lite, basically, is the  
18 product that was put together back in 1989 and '87,  
19 I believe, and has become the baseline. It is - -

20                  CHAIRMAN NOBER: I don't think you mean  
21 baseline, it's become - because you - baseline is

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1 something that you're using with respect to rates.  
2 Czar-Lite isn't a rate making - -

3 MR. BAGILEO: Well, Czar-Lite provides the  
4 baseline - it's a rating mechanism that enables you  
5 to construct the rates between any two points and to  
6 apply a discount as well as other surcharges,  
7 minimum charges construct the bottom line rate - -

8 CHAIRMAN NOBER: But it's a - -

9 MR. BAGILEO: It's a tool - -

10 CHAIRMAN NOBER: Tool, it doesn't set  
11 rates--

12 MR. BAGILEO: No

13 CHAIRMAN NOBER: It takes the rates that  
14 have been set and baseline - if I understand it  
15 correctly - and helps small carriers analyze them.  
16 Right? So it's like an Excel spreadsheet. Excel  
17 doesn't create numbers, it helps you manipulate,  
18 manage them, right?

19 MR. BAGILEO: That's right. That is done  
20 by the rate bureau through its general rate  
21 committee. The creation of the numbers have formed  
22 the baseline. The baseline is extent in Czar-Lite

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1 and it is the pricing tool - the pricing mechanism  
2 which is used. The pricing mechanism, as we  
3 indicate, the relevance to what we're seeking here  
4 today is that - that pricing tool is dependent upon  
5 rates created in the various territories and if the  
6 other territories are no longer extent, or our  
7 carriers feel that those rates are not sufficient or  
8 adequate, that brings into question the  
9 reasonableness of the Czar-Lite baseline.

10 CHAIRMAN NOBER: Does Czar-Lite also  
11 include other baselines as well beyond just the rate  
12 bureau base lines?

13 MR. BAGILEO: The Southern Motor Carriers  
14 rate library has some 4,000 modules. A carrier  
15 could come in and get a baseline constructed  
16 essentially on any module that it wants. Czar-Lite  
17 itself is the rate modules that are the rate bureau  
18 modules at this time.

19 CHAIRMAN NOBER: But you could load into  
20 it any other carriers.

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1 MR. BAGILEO: Well, whether you call it  
2 Czar-Lite, I'm not sure, but it would be a rate  
3 module that could be constructed for anybody.

4 CHAIRMAN NOBER: So Czar-Lite is just  
5 SMC's rates?

6 MR. BAGILEO: Well it's the bureau - it's  
7 a compilation of the bureau rates. It's not merely  
8 SMC's rates, it's the rates of all the bureaus  
9 nationwide.

10 CHAIRMAN NOBER: So that's how you do it  
11 now? You - -

12 MR. BAGILEO: Yes.

13 CHAIRMAN NOBER: You basically incorporate  
14 the other rates into it.

15 MR. BAGILEO: Yes.

16 CHAIRMAN NOBER: Does Middlewest do the  
17 same thing? We'll hear from them - -

18 MR. BAGILEO: I - my knowledge of MARS is  
19 yes, they do essentially the same thing. They have  
20 a slightly different mechanism by which it's done,  
21 but in theory it's the same product.

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1                   CHAIRMAN NOBER:       Some of the other  
2 carriers are going to assert that if we granted  
3 nationwide authority that we would have fewer rate  
4 bureaus in the end. Of what relevance is that to  
5 us? I don't want to be asking the same thing but -  
6 how would you say we should take that into account,  
7 if at all?

8                   MR. BAGILEO: Well, my feelings strongly -  
9 is when I - I do have some knowledge of the rate  
10 bureaus having worked with various bureaus over the  
11 years. I think that really bureaus as they've  
12 evolved today are really niche bureaus. They  
13 satisfy the needs of a certain category of shippers  
14 carriers, rather, and have done that. I don't  
15 really see how SMC having nationwide authority is  
16 going to put them out of business because it's  
17 really meeting and addressing the pricing needs of  
18 its member carriers. Not those member carriers,  
19 hopefully that would continue to be done by the  
20 other bureaus. So I don't see it as being either  
21 SMC or other bureaus. Pacific Inland Tariff Bureau  
22 is a larger bureau than SMC. It has 161 carrier

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1 members. Middlewest is essentially the same size  
2 and I believe 4 of the bureaus filed nationwide rate  
3 making applications that, just as we did, they can  
4 petition the agency to re-open.

5 CHAIRMAN NOBER: I think when the other  
6 bureaus speak we'll have to clarify that point  
7 because there is some confusion at least as to  
8 whether or not they have. But, my question is sort  
9 of a more basic one. What difference does it make  
10 under the statute for the task that we have to do -  
11 whether or not the other rate bureaus thrive, die or  
12 do anything in between? What is the relevance to  
13 us?

14 MR. BAGILEO: I don't think there is  
15 relevance in that issue alone. The issue is if the  
16 other bureaus die and there's no one to construct  
17 rates in the territory that they uniquely hold, that  
18 creates an issue with SMC with respect to the  
19 ability to continue the nationwide baseline of  
20 rates.

21 CHAIRMAN NOBER: But - in - if the goal -  
22 if the public interest is for competition in the

1 market, as you said, the pricing market, and  
2 allowing the most carriers possible to be in the  
3 market because that's what produces competition to  
4 the shippers - what - and there are thousands of  
5 baseline rates which carriers can use - why would  
6 one rate make a difference in that?

7 MR. BAGILEO: Because the one rate, I  
8 think, that they would want to use is one that they  
9 have confidence in that it reflects their cost and  
10 their revenue needs. I think that is what SMC has  
11 demonstrated to the shipping and carrier public.  
12 That it can, in fact, do and does that.

13 CHAIRMAN NOBER: Doug or Frank, do you  
14 have anything?

15 VICE CHAIRMAN MULVEY: Yes, I have a few  
16 more follow-up questions. I guess I'm a little  
17 confused as to why you need anti-trust immunity  
18 expanded nationwide if indeed Czar-Lite already  
19 incorporates the base rates from the other  
20 conferences. You could always construct a base rate  
21 using the baseline that's constructed for the  
22 Pacific or Mid-West or any of the rate bureaus since

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1 that's also in Czar-Lite and you don't need anti-  
2 trust immunity for Czar-Lite. That's my  
3 understanding, correct?

4 MR. BAGILEO: We don't need anti-trust  
5 immunity to compile Czar-Lite, in other words to  
6 take the rates from the other bureaus. What we need  
7 anti-trust immunity for is for our general rate  
8 committee to collectively establish the level of  
9 class rate in a particular territory based upon the  
10 general rate action that we would take in terms of  
11 our revenue need and our cost. That is what is  
12 contemplated under the statute. That is what  
13 provides anti-trust immunity for that type of  
14 collective rate making. So true, with respect to  
15 Czar-Lite we don't have to continue if we are just  
16 going to publish those rates, but we're looking to  
17 change those rates in other territories. Just like  
18 we require anti-trust immunity in Southern  
19 territory, we would require anti-trust immunity in  
20 any other region in which we were going to engage in  
21 a general rate action collectively.

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1                   VICE CHAIRMAN MULVEY: Well there's the  
2 question as to whether or not the other rate bureaus  
3 would go out of business if you were given this  
4 expanded authority. If you were given this expanded  
5 authority, wouldn't some of their members say, "Well  
6 look, the Southern Motor Carrier Conference allows  
7 for nationwide collective rate making and this is a  
8 broader and more useful set of rates" and they would  
9 want to join you and they would leave the other  
10 bureaus if they did not respond with their own  
11 nationwide collective rate making authority?

12                   MR. BAGILEO: That is a possibility. But  
13 what I look at is the fact that other bureaus - some  
14 of the other bureaus have stated we serve very small  
15 regional carriers who operate within our  
16 territories. That being the case I do not really see  
17 as a need for them joining a national baseline of  
18 rates when they are receiving services from their  
19 own bureau in the territory in which they provide  
20 transportation services.

21                   VICE CHAIRMAN MULVEY: Well you said that  
22 your members provide transportation services both

1 within the territory and without the - outside the  
2 territory. And you said that half of your 128  
3 members are in fact located outside the Southern  
4 territory. Do you have any data on the shipments -  
5 the number of shipments you members make within the  
6 territory compared to outside the territory?

7 MR. BAGILEO: That could be gotten. I do  
8 not have it here with me.

9 VICE CHAIRMAN MULVEY: You also mentioned  
10 that when you're doing your calculations of the base  
11 rates, looking at costs, when you want to adjust you  
12 look at the changes in the carriers' costs, both  
13 labor cost and non-labor cost. Do you also take  
14 into account productivity changes?

15 MR. BAGILEO: I don't know to what extent  
16 that would come into the formula. My knowledge of  
17 it is based upon the surveys that are conducted and  
18 the fact that various components of the CPI, PPI as  
19 pertains to transportation is used. Actual  
20 productivity changes - I think that would be  
21 accessible clearly through the National Traffic  
22 Database. I think that they would - because that

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1 measures every aspect of traffic moving into and out  
2 of a territory. I think productivity changes would  
3 be very apparent on that basis.

4 VICE CHAIRMAN MULVEY: Okay, we have, an  
5 the rail side, a rail cost adjustment factor, both  
6 adjusted and unadjusted - adjusted based upon  
7 whether or not productivity changes are included. I  
8 would point out something that Commissioner Buttrey  
9 said earlier about any carrier that doesn't know its  
10 costs would go out of business. I think that's an  
11 issue in this industry, unfortunately. A lot of  
12 firms don't know their costs, especially the  
13 hundreds of thousands of truckload carriers who are  
14 mom and pop operations, but they're not your members  
15 for the most part, right?

16 MR. BAGILEO: No, but we have very many  
17 small carriers. We have carriers down in the  
18 thousands of dollars, not the millions of dollars,  
19 in that range and they are very local operations.  
20 Very small companies started out as owner operated,  
21 got additional trucks, became a small carrier and in  
22 desperately need of rate help.

1

VICE CHAIRMAN MULVEY: Thank you.

2

MR. BAGILEO: Thank you.

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