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

MR. BAGILEO: Thank you very much Chairman Nober, Vice Chairman Mulvey and Commission Buttrey. It is indeed a pleasure to be here today in certainly one of the most historic moments for me in terms of practicing transportation law, once more having the opportunity to appear before the board in a motor carrier matter.
As has been indicated, I appreciate the 30 minutes that’s been allocated to Southern Motor Carriers and will retain 15 minutes for rebuttal.

Chairman Nober has outlined, basically, the procedural history of this matter. Southern Motor Carriers first filed its application for nationwide authority in 1994. Revised and resubmitted that application in 1996 with 191 supporting shipper associations, transportation intermediaries and others as well as 116 motor carriers. At the conclusion of that evidentiary phase in 1998, the surface transportation board issued a decision in which it indicated that with exceptions and with conditions that it announced its intent that when the rate bureau agreements were renewed that those bureaus that had requested nationwide authority would be granted that authority, concluding that the present system, the transportation system today, was globalized and it was anachronistic to require motor carriers to have regional rate making restrictions.
As Chairman Nober also pointed out, legislation was passed in conjunction with the motor carrier act of 1999 which prohibited the granting of such authority that was reversed in February of 2003.

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

Much has changed over the years. When I commenced my career as an attorney – as an attorney
advisor in the Office of Proceedings, Section of Operating Rights of the Interstate Commerce Commission, there were 125 attorneys handling only operating rights proceedings. The operating rights proceedings and to a lesser degree of the rate proceedings comprised 98 percent of the agency’s workload. Things were much different then. Trucking companies who sought authority were given discreet commodity descriptions and limited operating territories. That was changed by the Motor Carrier Act of 1980 when, thereafter, we had nationwide companies. As we evidenced in the 14 statements that we have submitted as well as the 116 statements submitted back in 1997, not only the largest but even the smallest carriers within Southern Motor Carriers operate outside the boundaries of the Southern region and are required to by customer’s needs because of the globalized needs and the markets that are now being served. It is important to realize that Czar-Lite, the product that SMC produces, is not the product of motor carrier incentive. It is at the request of Masco
Corporation, a member of NITL, a major shipper in the United States, that type of pricing baseline was put together. The reason for it is that it made - it rationalized the pricing system that was then *(10:02:55)* etched into the marketplace. There were so many individual baselines at that point that it was very difficult, if not impossible, for many companies to compare the competitive offers that were being offered to them because they were using different bases. I would also point out that it’s important to know if the baselines are common to the government, both the Department of Defense and the General Services Administration use baselines in terms of pricing motor carrier services.

Back in the early 1950s when rate making associations first came on board, the territories that they were granted roughly corresponded to the rail territories with which they were competitive and also basically defined the operations that were conducted by the regional carriers in those territories. As I have indicated, that has changed
dramatically, specifically with respect to Southern Motor Carriers. Over 50 percent of our 128 member carrier base is located at points beyond the Southern territory. While SMC can currently serve their pricing needs within the Southern territory, it can not go outside that territory and meet their collective rate making needs. Moreover, even as to the carriers within Southern territory who operate beyond Southern territory, we are confined to the Southern territory rate making powers that are conveyed to our organization and cannot assist them beyond those parameters.

We seriously believe that to require SMC, or any other bureau seeking nationwide authority, to operate with an antiquated, artificial restricted rate making zones is not conducive to the marketplace today. Shippers would be better served, we believe, by a variety of rates that are composed by Southern Motor Carriers based upon carrier cost index as well as its national traffic database. Our carriers, truly, have no knowledge as to how rates are constructed outside of their rate making
territory. We have no information, no data as to how the other bureaus construct their rates. It may be perfectly adequate for the small regional carriers that they represent, but it has never been shown to be adequate for our carriers, who have their own data who can construct a nationwide baseline of rates. There have been various allegations that it would be destructive of the marketplace. That is not true. There are many rate baselines out there and the important fact to remember is that it is the shipper who determines what baseline a carrier uses in terms of bids made on its traffic. It is not the carrier who tells the shipper. If Czar-Lite is not constructed in a fair and reasonable manner, you can be assured Trasite Transit and other products are out there as well as the product of Middlewest Motor Tariff Bureau, namely MARS, which could take over that market very rapidly.

Another very important point is, we’re not here to disrupt the market. We’re here to make the market more efficient and more economical in terms
of the services our member carriers can provide and their costs and revenue needs. We’ve shown ourselves to be a low cost region. A comparison was made in the testimony of James Ridley introduced initially where 840 market comparisons were made, 6,720 rates were reviewed. In over 67 percent of those cases the rates of Southern Motor Carriers, the class rates, the benchmark were lower than those of seven non-member LTL major carriers operating in that same territory.

What SMC is going to do is to take the current baseline, and from this point forward make absolutely sure that any change in that baseline reflects the economic and efficiencies of its member carriers and is cost justified. That is extremely important to the shipping public. That is not guaranteed anywhere else. As is known by the board and by the shipper organizations, 30 days before any effective tariff change is made, a white paper is distributed. Some 5,000 copies, including the Surface Transportation Board, which thoroughly outlines the basis upon which this rate - general
rate action -is being taken. We feel that this is significant. Our meetings are open. We invite the public to attend, and a major number of shippers, transportation intermediaries and other carriers do, in fact, attend. Each member who attends those meetings is given the exact same booklet of information that our carrier members of the general rate committee receive so that they can follow along and determine upon what basis these changes are being predicated.

Referring to Section 13703 of the Act, that provides that carriers can enter into an agreement by which they collectively establish joint rates through routes, divisions and general rate changes based upon industry average cost. Nowhere in that legislation is the authority of this agency confined to any particular grant of a territory. There are bureaus today - specialized bureaus that have nationwide, collective rate making authority. It is also important to recognize that over the years the bureaus themselves have expanded dramatically. For instance,
Central has taken over the authority of Middle Atlantic conference, which is the entire Middle Atlantic states up and through New England. Middlewest merged with Central States which gave it expanded territory. Southern Motor Carriers merged with Central and Southern but, unfortunately, that only gave us some points in Mississippi and Louisville, Kentucky because our territories virtually overlapped. Western Motor Tariff Bureau has 38 state authority. Motor Carrier Traffic Association had 32 state authority. So it’s not uncommon for rate bureaus to have expanded rate making authority. That has been the case over the years and, always, the agency, whether it was Interstate Commerce Commission or maybe the board now, has granted that authority coextensive with the pricing needs of the member carriers. There can be no question on this record that SMC’s member carriers are nationwide operators. We have, overnight, 35,000 direct service points, Watkins Motor Lines, Estes, *(10.09.43)Avert. I can go through the litany of 128 carriers and all of them,
down to a $7,000,000 carrier located in Mississippi serves many states beyond the Southern territory. It is, today, the nature of the business and particularly the needs of the Southern Motor Carriers.

When I first came with the Commission, many years ago, any rate change, whether it was a collectively made rate or an individually made rate, had to be cost justified. That was the function of the Interstate Commerce Commission. Of course that changed because of the legislation. But Southern, on its own initiative, truly believes that the public and the public interest has a right to know upon what basis general rate actions are taken. For that reason, in 1999, it recreated the carrier cost index, which looks at labor, labor related costs as well as non-labor costs in terms of determining what increase in costs carriers have faced, if any. That is its member carriers. That information is gathered through a number of sources and also by survey of the member carriers of the general rate committee.
In addition, in the year 2001, we reinstituted the National Traffic Database, as may be recalled back in the early years we had a continuing traffic study which was a sampling of freight bills moving so that the characteristics of traffic moving in the United States could be tested and in particular the individual bureau areas. And that was required to be submitted as part of the justification to the Interstate Commerce Commission.

Southern has gone one step further than that. It now has 38 carriers participating in that, and when we had 36, we were reviewing 125,000,000 freight bills accounting for over $20,000,000,000 of LTL freight revenue. That information is extremely critical in terms of assessing the revenue need and the rate and the movement of traffic within the various regions. And SMC is prepared to follow that through in terms of nationwide rate making.

In sum, basically what SMC is saying is we are not here to put any other bureau out of business. That is not the intent. We would not oppose any other bureau seeking nationwide
authority. Middlewest produces MARS, which is a very good competitive product to Czar-Lite. Pacific Inland Tariff Bureau supports our efforts in this proceeding. What we are seeking to do is to create a baseline that is effective and efficient and reflects the cost and revenue needs of our base of carriers. In so doing, we believe that the public interest will be served. As I indicated today, Southern has 128 carriers. We have 1,016 associate members. We’ve grown from 937, when our filing was made in April. We have over 700 transportation intermediaries in our organization. We have 40 of the top 50 transportation intermediaries who are subscribers to Czar-Lite. Over 2,700 companies subscribe to Czar-Lite. I think there is proof of the public confidence in the product in terms of their willing to support SMC in its effort to construct a baseline that is representative of what the true revenue needs of its carrier members are.

Thank you.

CHAIRMAN NOBER: We’ll start with Commissioner Buttrey. Do you have any questions?
COMMISSIONER BUTTREY: I certainly don’t want to steal the thunder of future witnesses who will be appearing before us today, but one of the witnesses that will be speaking later points out that UPS, FedEx, Yellow Freight, Roadway and maybe other large so-called mega carriers do not participate in rate bureaus, and it’s, I would think, very clear to most everybody that that’s probably one of the most competitive segments of the market in the entire country. I was wondering what you would say to those who think that probably this whole activity is sort of a convenient fiction or a relic, if you will, of the past and probably has sort of outlived its usefulness. I was wondering what you would say to that.

MR. BAGILEO: Well, Commissioner Buttrey, I would point to the fact that Czar-Lite is used by literally thousands and thousands of shippers and carriers in the United States. The statement by Danny Slayton, the Vice President of Marketing and Sales for SMC, goes into great detail about how the use of Czar-Lite has grown dramatically. If a
baseline was archaic, it certainly cannot be proven by the extent to which it is used in the marketplace today. It is probably the principle pricing tool in terms of discounting and I think that when you have - Congress has looked at this issue time and time again and has concluded that it would continue anti-trust immunity for collective rate making agreements that are approved by the board and shown to be in the public interest. I think there is a real public interest purpose that is served in terms of informing all people of how to assess the competitiveness of a bid of a rate. I think it’s being used by all segments of the transportation community for that purpose. Now as far as the large major carriers - I mean Southern Motor Carriers has three of the largest carriers in the nation. We have Overnight. We have Watkins Motor Lines and we have Estes. They obviously see great value in their participation in the bureau and are staunch members of Southern Motor Carriers.

COMMISSIONER BUTTREY: If the submissions to us are correct, and I’m assuming that they are,
there is an indication that the discounting practices of the carriers can run anywhere between 20 percent discount and 80 percent discount. So, if that’s the case, it would seem to obviate the need for rate making bureaus or rate making authority at all, given the fact that you can have these huge discounts in the marketplace. What’s your response to that?

MR. BAGILEO: What I think we have to understand is that there is a tremendous difference between a market rate and a class rate. A class rate is designed to be the highest reasonable rate available to assure the movement of traffic between any two points in the United States. That was hornbook for me when I was back at the Interstate Congress Commission in 1966. The reason why discounting is so steep, I believe, is that in various territories, the class rate structure in those territories really don’t reflect the competitive need of a particular carrier on a particular traffic lane. One carrier’s headfall is another carrier’s backhaul. In order to have a
contribution to capital to offset its expenses with a move, you may get a very steep discount, but that’s just the economics of the marketplace. That’s just competition at work and that reflects a lot. They may be giving a very steep discount in order to get the traffic of a particular shipper. This is what is happening out there. But it all centers on the fact of the existence of a baseline from which these discounts can be given and carriers know exactly to what extent that’ll be a contribution to their revenue as well as cover their cost.

COMMISSIONER BUTTREY: Your argument seems to indicate that there are carriers out there who, for some strange reason, don’t know what their cost per package is. For instance –

MR. BAGILEO: Yes.

COMMISSIONER BUTTREY: I can’t conceive of a company in this day and age not knowing what their cost per package or their cost per pound is. I would say if they don’t know what that is, they probably ought to go out of business. I mean, the carrier
should go out of business if it doesn’t know what its cost per package is. If they do know what their cost per package is, it seems that they ought to be able to construct rates based on what their cost per package is and what they think they can get in the marketplace - in the free marketplace. I’m at a loss, coming from a deregulated environment, of knowing why bureaus exist.

MR. BAGILEO: Well, one of the reasons is competition in the trucking industry is fierce. We went, from when I was at the agency, from 18,000 carriers to over several hundred thousand certificates issued. There are many companies out in the marketplace, good small-niche carrier; but they don’t have the costing expertise and house cannot afford it, and that is what a rate bureau provides many carriers, large and small, that expertise that they can give them a baseline by which they can cost their traffic and make a profit and stay in business. There are several statements, Shippers Express, Terminal Transport, Benton and the information that we have supplied to the agency
which goes into this, in fact, that this is a great benefit to them. They’re companies – they have been around for many, many years and they have survived. And while as an economic principle what you say makes absolute sense, the fact is in the trucking industry the costing expertise often resides some place other than that company. Another very important fact is that please remember that it is the shipper who determines how bids are to be submitted to it. Today, increasingly, in all sectors shippers are requiring the use of a baseline so that they know that 50 percent, 40 percent, 30 percent is a specific number that they can compare and by having a baseline, it does afford them that opportunity.

VICE CHAIRMAN MULVEY: Thank you. A couple of questions: The December 18, 1998 board decision, which indicated board willingness to look at the possibilities of extending anti-trust immunity for nationwide rate making, was predicated on lowering the benchmark rates, which never occurred. I might add in that decision the board
said “We are not as sanguine as the ICC appeared to be in its determination but the current system of collective rate making is essentially benign.” So that the current system, the current regional system, is not necessary benign, how could a new national be any less so?

MR. BAGILEO: I would point out, Vice Chairman Mulvey, that in the November 2001 decision of the agency and the consolidated rate proceeding, the commission acknowledged that it was not finding any class rate - any particular class rate to be unreasonable and did not have that information before it. As a matter of fact, based upon representations of the shipper’s conferences, namely NASSTRAC and its sister conference, they realized that attempting to roll back the baseline rates would be just totally unreasonable and too disruptive of the marketplace. The baseline that is in effect is one that is grown up under strict regulation from the day it was initiated in terms of reasonableness. The X party - the MC82 filings were voluminous and had to be approved by the agency in
terms of that rate base being reasonable. So I think that there is some misconceptions about class rates today that exist because of the – I think, really, the temptation to compare a market based rate with a class rate, and I don’t think there is any legitimate comparison. But shippers are very supportive of a base rate system, and, as you’ll see from the statements of record, major shippers have said that they have confidence that Southern Motor Carriers would develop a fair and reasonable system – nationwide system of baseline rates. I think the problem is today we don’t know what system is being used in other territories. It may be fine for the carriers in that territory, but there is nothing under the law that would preclude SMC’s carriers from constructing their own baseline based upon their own revenue needs, and when I say construct their own baseline, I’m talking about the changes that would be made – the general rate actions that would be predicated for the future on their cost carrier index and the national traffic database.
VICE CHAIRMAN MULVEY: In your petition then you also cite numerous supporting statements that were filed by small, medium and large size motor carriers. It’s been alleged that this support really centers on support for Czar-Lite as opposed to granting the anti-trust immunity for nationwide collective rate making. Do you want to comment on that?

MR. BAGILEO: I think that one of the problems was that there very serious concern that bureaus would go out of business and that the system of class rates would not be available on a nationwide basis, and indeed, as we saw, New England Motor Rate Bureau did go out of business as did Willimette and the Motor Carrier Traffic Association. So, I mean, that’s a reality in today’s marketplace. Some bureaus are having financial difficulties. But I think, basically, the support was, and as I think we clarified on the record, the support was that SMC be able to construct a nationwide baseline of rates for its members who were supporting - submitting those
statements. They wanted their own baseline of rates.

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

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

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

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

CHAIRMAN NOBER: So, under the law, we can review it and we have, which I’m pretty familiar
with, but essentially we have to take actions necessary to protect the public interest. What is your – how would you describe the public interest in this situation?

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

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

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

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

MR. BAGILEO: It would assure shippers and carriers as well as transportation intermediaries that the baseline extent in the marketplace was one that was cost based. That it had a rational basis, a reasonable basis for the level of general rate actions that were taken.
CHAIRMAN NOBER: How many baseline rates are there now in the marketplace?

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

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

MR. BAGILEO: They do it.

CHAIRMAN NOBER: Do they – they wouldn’t have to get any approval from us to do that?

MR. BAGILEO: No, they don’t.
CHAIRMAN NOBER: That would serve as a baseline that other carriers could use or not use, is that right?

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

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

MR. BAGILEO: Yes.
CHAIRMAN NOBER: So, to a certain extent, what’s the relevance of the baseline to what the actual market rate that’s determined is?

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

CHAIRMAN NOBER: So, on the one hand you have - what is the baseline that small or medium sized carriers are going to use to submit their bids and that was, I think, the thrust of some of
Commissioner Buttrey’s questions which is: Why do you need this in the first place? Why can’t any carrier just do their own costing?

MR. BAGILEO: Well I -

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

MR. BAGILEO: I don’t think it is. I think Congress has spoken and the Commission in 2003 --.

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

MR. BAGILEO: Right, but the board did approve the rate bureau agreements in 2003 and I am sure going to look at that again - that issue again under the law - -
CHAIRMAN NOBER: Yes, it’s starting by the end of this year.

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

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

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

CHAIRMAN NOBER: I don’t think you mean baseline, it’s become – because you – baseline is
something that you’re using with respect to rates. Czar-Lite isn’t a rate making --

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

CHAIRMAN NOBER: But it’s a --

MR. BAGILEO: It’s a tool --

CHAIRMAN NOBER: Tool, it doesn’t set rates--

MR. BAGILEO: No

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

MR. BAGILEO: That’s right. That is done by the rate bureau through its general rate committee. The creation of the numbers have formed the baseline. The baseline is extent in Czar-Lite
and it is the pricing tool - the pricing mechanism which is used. The pricing mechanism, as we indicate, the relevance to what we’re seeking here today is that - that pricing tool is dependent upon rates created in the various territories and if the other territories are no longer extent, or our carriers feel that those rates are not sufficient or adequate, that brings into question the reasonableness of the Czar-Lite baseline.

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

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

CHAIRMAN NOBER: But you could load into it any other carriers.
MR. BAGILEO: Well, whether you call it Czar-Lite, I’m not sure, but it would be a rate module that could be constructed for anybody.

CHAIRMAN NOBER: So Czar-Lite is just SMC’s rates?

MR. BAGILEO: Well it’s the bureau – it’s a compilation of the bureau rates. It’s not merely SMC’s rates, it’s the rates of all the bureaus nationwide.

CHAIRMAN NOBER: So that’s how you do it now? You –

MR. BAGILEO: Yes.

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

MR. BAGILEO: Yes.

CHAIRMAN NOBER: Does Middlewest do the same thing? We’ll hear from them –

MR. BAGILEO: I – my knowledge of MARS is yes, they do essentially the same thing. They have a slightly different mechanism by which it’s done, but in theory it’s the same product.
CHAIRMAN NOBER: Some of the other carriers are going to assert that if we granted nationwide authority that we would have fewer rate bureaus in the end. Of what relevance is that to us? I don’t want to be asking the same thing but – how would you say we should take that into account, if at all?

MR. BAGILEO: Well, my feelings strongly – is when I – I do have some knowledge of the rate bureaus having worked with various bureaus over the years. I think that really bureaus as they’ve evolved today are really niche bureaus. They satisfy the needs of a certain category of shippers carriers, rather, and have done that. I don’t really see how SMC having nationwide authority is going to put them out of business because it’s really meeting and addressing the pricing needs of its member carriers. Not those member carriers, hopefully that would continue to be done by the other bureaus. So I don’t see it as being either SMC or other bureaus. Pacific Inland Tariff Bureau is a larger bureau than SMC. It has 161 carrier
members. Middlewest is essentially the same size and I believe 4 of the bureaus filed nationwide rate making applications that, just as we did, they can petition the agency to re-open.

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

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

CHAIRMAN NOBER: But - in - if the goal - if the public interest is for competition in the
market, as you said, the pricing market, and allowing the most carriers possible to be in the market because that’s what produces competition to the shippers - what - and there are thousands of baseline rates which carriers can use - why would one rate make a difference in that?

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

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

VICE CHAIRMAN MULVEY: Yes, I have a few more follow-up questions. I guess I’m a little confused as to why you need anti-trust immunity expanded nationwide if indeed Czar-Lite already incorporates the base rates from the other conferences. You could always construct a base rate using the baseline that’s constructed for the Pacific or Mid-West or any of the rate bureaus since
that’s also in Czar-Lite and you don’t need anti-trust immunity for Czar-Lite. That’s my understanding, correct?

MR. BAGILEO: We don’t need anti-trust immunity to compile Czar-Lite, in other words to take the rates from the other bureaus. What we need anti-trust immunity for is for our general rate committee to collectively establish the level of class rate in a particular territory based upon the general rate action that we would take in terms of our revenue need and our cost. That is what is contemplated under the statute. That is what provides anti-trust immunity for that type of collective rate making. So true, with respect to Czar-Lite we don’t have to continue if we are just going to publish those rates, but we’re looking to change those rates in other territories. Just like we require anti-trust immunity in Southern territory, we would require anti-trust immunity in any other region in which we were going to engage in a general rate action collectively.
VICE CHAIRMAN MULVEY: Well there’s the question as to whether or not the other rate bureaus would go out of business if you were given this expanded authority. If you were given this expanded authority, wouldn’t some of their members say, “Well look, the Southern Motor Carrier Conference allows for nationwide collective rate making and this is a broader and more useful set of rates” and they would want to join you and they would leave the other bureaus if they did not respond with their own nationwide collective rate making authority?

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

VICE CHAIRMAN MULVEY: Well you said that your members provide transportation services both
within the territory and without the - outside the territory. And you said that half of your 128 members are in fact located outside the Southern territory. Do you have any data on the shipments - the number of shipments you members make within the territory compared to outside the territory?

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

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

MR. BAGILEO: I don’t know to what extent that would come into the formula. My knowledge of it is based upon the surveys that are conducted and the fact that various components of the CPI, PPI as pertains to transportation is used. Actual productivity changes - I think that would be accessible clearly through the National Traffic Database. I think that they would - because that
measures every aspect of traffic moving into and out of a territory. I think productivity changes would be very apparent on that basis.

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

MR. BAGILEO: No, but we have very many small carriers. We have carriers down in the thousands of dollars, not the millions of dollars, in that range and they are very local operations. Very small companies started out as owner operated, got additional trucks, became a small carrier and in desperately need of rate help.
VICE CHAIRMAN MULVEY: Thank you.

MR. BAGILEO: Thank you.