

19 MR. MORENO: Good morning. I'm pleased to be
20 here today on behalf of the National Industrial
21 Transportation League in opposition to SMC's
22 application for nationwide collective rate making

1 authority. The grant of such authority would provide
2 SMC with anti-trust immunity with respect to its
3 collective rate making activities. Such rate making
4 activity is, per se, unlawful under the anti-trust laws
5 of the United States and only the SMC's grant of
6 immunity allows this conduct. Now I'm probably stating
7 obvious points to everyone here but I think it's
8 important not to lose sight of this fundamental fact
9 and the policy behind the, per se, unlawfulness of
10 collective rate making which is a policy that favors
11 market based competition. This places a substantial
12 burden upon SMC to demonstrate that nationwide
13 collective rate making authority is in the public
14 interest and that nationwide anti-trust immunity is
15 needed to promote that interest. The national
16 transportation policy should guide the board's
17 determination of the public interest. The statutory
18 predicate to each motor carrier transportation policy
19 is to promote competitive and efficient transportation
20 services. And the very first policy is to promote
21 competitive and efficient transportation services in
22 order to encourage fair competition and reasonable

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1 rates for transportation by motor carriers. The league
2 strongly believes that the competitive market is the
3 best means of determining motor carrier pricing and
4 thus insuring reasonable rates.

5 There is no rational basis for treating motor
6 carriers differently from other competitive industries.
7 SMC has offered nothing to distinguish itself from
8 other industries that must comply with the anti-trust
9 laws. In order to demonstrate public interest in this
10 case, SMC has chosen to create a straw-man problem and
11 offers a nationwide collective rate making as the
12 solution. According to SMC, nationwide authority will
13 allow it to establish a nationwide baseline of class
14 rates to better reflect its member carriers cost and
15 revenue needs with the objective of offering, and I
16 quote directly from SMC's [pleadings here](#)*(11:12:55),
17 "the objective of offering truly competitive rates."
18 That statement is rather astounding, I believe, because
19 the underlying premise behind the statement is that the
20 current market base rates are not truly competitive.
21 To accept this premise for which SMC offers no support,
22 one also must accept the counter intuitive proposition

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1 that expanded anti-trust immunity is necessary for
2 competition - for true competition.

3 SMC has offered no evidence that motor
4 carriers require expanded anti-trust immunity to
5 produce rates that are more competitive than those set
6 in today's competitive marketplace.

7 While SMC purports to agree with the league
8 that motor carrier rates should be established by the
9 competitive marketplace, it does not explain how a
10 nationwide baseline of collectively established rates
11 foster such competition beyond current competitive
12 levels. Any motor carrier today can quote a
13 competitive rate between any two points today without
14 nationwide baseline rate making. Any motor carrier
15 today can assess its own cost in revenue needs and
16 price its services accordingly. Now, SMC has suggested
17 this morning that this is not true because small
18 carriers don't have in-house costing expertise. But
19 other highly competitive industries function quite well
20 without anti-trust immunity and they may lack such in-
21 house costing expertise as well.

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1 Thus SMC's claims that nationwide authority
2 will enhance competition are actually baseless. SMC
3 glosses over this fact by offering the convenience of a
4 national baseline of class rates for carriers and
5 shippers as a public interest justification and
6 attempts to equate that convenience with being pro-
7 competitive. Any shipper convenience is substantially
8 outweighed by the anti-competitive risks. Shippers do
9 not need nationwide baselines to obtain competitive
10 rates. They obtain those rates today. Shippers do not
11 need nationwide baselines to compare competitive rate
12 quotes they are able to do so today. A nationwide rate
13 bureau, however, will increase the potential for
14 carrier collusion. It could reduce baseline options by
15 impacting the viability of regional rate bureaus,
16 perhaps leading to consolidation of those bureaus and
17 attracting the large national LTL carriers to a
18 nationwide rate bureau. Those are carriers who
19 currently set their baselines independent of the rate
20 bureaus. That means ultimately that there are fewer
21 baseline options that would exist for shippers to
22 choose from. A nationwide rate bureau also would enable

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1 carriers to shift today's market based rates closer to
2 the above market, undiscounted class rate levels
3 through general rate increases and reduced discounting.
4 The league strongly opposes any extension above
5 reasonably high class rate levels to the national
6 level. The league does not doubt that a national
7 baseline of class rates would be more convenient to
8 carriers. Anytime carriers can compare information and
9 act upon that information collectively, it's more
10 convenient.

11 The principle beneficiary of anti-trust
12 immunity will be SMC and its Czar-Lite product. Mr.
13 Bagileo's presentation this morning emphasizes and
14 focused on Czar-Lite heavily. Thus anti-trust immunity
15 would allow SMC to set and adjust Czar-Lite rates
16 without relying upon other rate bureaus. It would
17 reduce SMC's administrative costs and burdens
18 associated with Czar-Lite. But the commercial success
19 of Czar-Lite has not been impeded by SMC's lack of
20 anti-trust immunity in today's marketplace and SMC has
21 not demonstrated that Czar-Lite even is in jeopardy if
22 immunity is not granted. Anti-trust immunity is an

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1 extreme measure to make Czar-Lite more convenient for
2 SMC and the shippers and carriers who choose to use it.

3 The league represents many shippers who use
4 Czar-Lite. This issue is not - the issue here is not
5 the benefit of Czar-Lite but the issue is whether anti-
6 trust is necessary for Czar-Lite to accomplish its
7 objective and that fact that Czar-Lite exists and
8 permeates the market today is evidence that it is not
9 necessary. Anti-trust immunity should be granted only
10 sparingly and to the narrowest extent possible. The
11 anti-trust immunity must further the public interest,
12 meaning that the potential benefits should
13 substantially exceed the potential competitive harm. In
14 order to meet this burden, SMC must show that anti-
15 trust immunity will yield substantial benefits that
16 cannot be obtained by lesser means. The mere
17 convenience does not meet this high standard and SMC's
18 enhanced competition claims are baseless.

19 In this case, SMC seeks to broaden its cloak
20 of anti-trust immunity without demonstrating a
21 compelling public need and therefore the league

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1 believes the board should reject SMC's application.

2 Thank you.