MR. MORENO: Good morning. I’m pleased to be here today on behalf of the National Industrial Transportation League in opposition to SMC’s application for nationwide collective rate making
authority. The grant of such authority would provide SMC with anti-trust immunity with respect to its collective rate making activities. Such rate making activity is, per se, unlawful under the anti-trust laws of the United States and only the SMC’s grant of immunity allows this conduct. Now I’m probably stating obvious points to everyone here but I think it’s important not to lose sight of this fundamental fact and the policy behind the, per se, unlawfulness of collective rate making which is a policy that favors market based competition. This places a substantial burden upon SMC to demonstrate that nationwide collective rate making authority is in the public interest and that nationwide anti-trust immunity is needed to promote that interest. The national transportation policy should guide the board’s determination of the public interest. The statutory predicate to each motor carrier transportation policy is to promote competitive and efficient transportation services. And the very first policy is to promote competitive and efficient transportation services in order to encourage fair competition and reasonable
rates for transportation by motor carriers. The league strongly believes that the competitive market is the best means of determining motor carrier pricing and thus insuring reasonable rates.

There is no rational basis for treating motor carriers differently from other competitive industries. SMC has offered nothing to distinguish itself from other industries that must comply with the anti-trust laws. In order to demonstrate public interest in this case, SMC has chosen to create a straw-man problem and offers a nationwide collective rate making as the solution. According to SMC, nationwide authority will allow it to establish a nationwide baseline of class rates to better reflect its member carriers cost and revenue needs with the objective of offering, and I quote directly from SMC’s pleadings here* (11:12:55), “the objective of offering truly competitive rates.”

That statement is rather astounding, I believe, because the underlying premise behind the statement is that the current market base rates are not truly competitive. To accept this premise for which SMC offers no support, one also must accept the counter intuitive proposition
that expanded anti-trust immunity is necessary for competition - for true competition.

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

While SMC purports to agree with the league that motor carrier rates should be established by the competitive marketplace, it does not explain how a nationwide baseline of collectively established rates foster such competition beyond current competitive levels. Any motor carrier today can quote a competitive rate between any two points today without nationwide baseline rate making. Any motor carrier today can assess its own cost in revenue needs and price its services accordingly. Now, SMC has suggested this morning that this is not true because small carriers don’t have in-house costing expertise. But other highly competitive industries function quite well without anti-trust immunity and they may lack such in-house costing expertise as well.
Thus SMC’s claims that nationwide authority will enhance competition are actually baseless. SMC glosses over this fact by offering the convenience of a national baseline of class rates for carriers and shippers as a public interest justification and attempts to equate that convenience with being pro-competitive. Any shipper convenience is substantially outweighed by the anti-competitive risks. Shippers do not need nationwide baselines to obtain competitive rates. They obtain those rates today. Shippers do not need nationwide baselines to compare competitive rate quotes they are able to do so today. A nationwide rate bureau, however, will increase the potential for carrier collusion. It could reduce baseline options by impacting the viability of regional rate bureaus, perhaps leading to consolidation of those bureaus and attracting the large national LTL carriers to a nationwide rate bureau. Those are carriers who currently set their baselines independent of the rate bureaus. That means ultimately that there are fewer baseline options that would exist for shippers to choose from. A nationwide rate bureau also would enable
carriers to shift today’s market based rates closer to
the above market, undiscounted class rate levels
through general rate increases and reduced discounting.
The league strongly opposes any extension above
reasonably high class rate levels to the national
level. The league does not doubt that a national
baseline of class rates would be more convenient to
carriers. Anytime carriers can compare information and
act upon that information collectively, it’s more
convenient.

The principle beneficiary of anti-trust
immunity will be SMC and its Czar-Lite product. Mr.
Bagileo’s presentation this morning emphasizes and
focused on Czar-Lite heavily. Thus anti-trust immunity
would allow SMC to set and adjust Czar-Lite rates
without relying upon other rate bureaus. It would
reduce SMC’s administrative costs and burdens
associated with Czar-Lite. But the commercial success
of Czar-Lite has not been impeded by SMC’s lack of
anti-trust immunity in today’s marketplace and SMC has
not demonstrated that Czar-Lite even is in jeopardy if
immunity is not granted. Anti-trust immunity is an
extreme measure to make Czar-Lite more convenient for
SMC and the shippers and carriers who choose to use it.

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

In this case, SMC seeks to broaden its cloak
of anti-trust immunity without demonstrating a
compelling public need and therefore the league
believes the board should reject SMC’s application.

Thank you.