Vice Chairman Buttrey's Opening Statement in STB Docket No. WCC-101.

Good morning and thank you for coming. I will be presiding over today's oral argument due to the Chairman's absence because of illness.

This case is the first of its kind to come before the Board. When the Interstate Commerce Commission was abolished and the Surface Transportation Board was created, the Board was given exclusive jurisdiction over the rates charged by water carriers in the noncontiguous domestic trade, thereby eliminating the divided jurisdiction that existed between the ICC and the Federal Maritime Commission. The noncontiguous domestic trade includes Puerto Rico, the U.S. Virgin Islands, Hawaii, Alaska, the Northern Mariana Islands, and Guam.

Before I address the specific issues that are the subject of toady's oral argument, I would like to briefly reiterate the history of this case. In 1998, the Government of Guam filed a complaint challenging the reasonableness of the rates, rules, classifications, and practices for all transportation by water provided by the carriers. The Board adopted a three-step process to resolve the case. Phase I concluded in 2001. The Board's decision in that phase: (1) denied the carriers' motion to dismiss, with the exception of Guam's discrimination claim; (2) limited recovery of damages to the period beginning September 10, 1996; and (3) ruled that the Zone of Reasonableness provided a safe harbor for rate increases, but not base rates. The Board also concluded that Congressional intent was unclear as to what analytical methodology should be used to resolve this case. The Board currently uses "constrained market pricing" for its railroad cases. The FMC, when it had jurisdiction over these cases, applied a "distributive cost" methodology known as General Order 11.

This oral argument is part of Phase II. In Phase II, we must resolve three major issues. The first issue is whether we will make a preliminary market dominance inquiry as we have in our railroad rate cases. The second is what type of methodology we should use for water carrier cases. And the third is how we apply the statute's Zone of Reasonableness provisions. Specifically, whether our task is to determine a base rate for 1996, and then use the ZOR to set the maximum rate for each year after 1996, or whether we should determine a maximum reasonable rate for the entire period covering 1996 to the present, leaving the ZOR to cap future rate increases after this case is over.

Our typical procedure for oral arguments is to give each party in turn its time to make a presentation. We generally try to hold questions to the end, although not always. The complainant has been given 30 minutes, and may reserve some of that time for rebuttal if it so desires. The two carriers have been given 30 minutes collectively, and they may divide that time however they wish. Board members' questions typically are asked in rounds of 5 minutes each.

Our first speaker today is Mr. Edward D. Greenberg for the complainant, the Government of the Territory of Guam.

Our next speakers are: Mr. C. Jonathan Benner for Horizon Lines LLC and Mr. Richard A. Allen for Matson Navigation Company, Inc. Welcome and please proceed.