

October 27, 2016

The Honorable John Thune
Chairman
Committee on Commerce, Science, and
Transportation
United States Senate
511 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Bill Nelson
Ranking Member
Committee on Commerce, Science, and
Transportation
United States Senate
716 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Deb Fischer
Chair
Subcommittee on Surface Transportation and
Merchant Marine Infrastructure, Safety and
Security
United States Senate
454 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Cory Booker
Ranking Member
Subcommittee on Surface Transportation and
Merchant Marine Infrastructure, Safety and
Security
United States Senate
359 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Thune, Chair Fischer, and Ranking Members Nelson and Booker:

We write today to strongly oppose efforts to re-regulate our nation's freight rail industry currently being considered by the Surface Transportation Board. We believe that freight rail deregulation—culminating in the Staggers Rail Act of 1980—represents one of the most significant economic policy successes in the history of the United States and that these reforms must be protected.

After nearly a century of stultifying economic regulation under the Interstate Commerce Commission, the American railroad industry was facing total collapse in the 1970s. The largest corporate bankruptcy in history left the Northeast U.S. facing the prospect of losing all meaningful rail service. More bankruptcies followed and many more were expected. This led to the nationalization of U.S. passenger rail under Amtrak and the nationalization of Northeast freight rail under Conrail. Many observers at the time believed either outright nationalization of the entire industry or wholesale elimination of rail transportation were the two choices facing America.

Fortunately, a bipartisan coalition within Congress and the Carter administration recognized another path: remove the regulatory barriers that had been strangling the railroad industry for decades.

The reforms following passage of the Staggers Act worked. The industry rebounded in the decades that followed, becoming an American economic success story. Since 1980, the industry has invested more than half a trillion dollars of its own funds into its networks, with annual investments averaging more than \$25 billion over the last few years. According to Towson University's Regional Economic Studies Institute, major U.S. railroads in 2014 alone supported approximately 1.5 million jobs, \$274 billion in annual economic activity, nearly \$90 billion in wages, and \$33 billion in tax revenues.¹ Moreover, average inflation-adjusted freight rates are down more than 40 percent since 1980.

1. Daraius Irani, Raquel Frye, Jessica Grimm, and Catherine Menking, *Economic and Fiscal Impact Analysis of Class I Railroads*, Towson University Regional Economic Studies Institute, May 13, 2016, p. 13, available at <https://www.aar.org/Documents/AAR%20Towson%20Freight%20Rail%20Economic%20Report%20June%202016.pdf>.

Unfortunately, some powerful industrial shipping interests have succeeded in opening a proceeding before the Surface Transportation Board (STB) framed in the language of promoting competition,² but it is really nothing more than backdoor price controls—the same sort of regulation that nearly drove the industry to ruin.³

The regulatory proceeding regarding revised reciprocal switching rules that was recently opened by the STB reverses three decades of precedent. Many industry observers have expressed concern that imposing forced access and reducing railroad rate freedom will come at the expense of network investment. This unprecedented action threatens railroads, shippers, and consumers with degraded service quality and higher goods prices that would naturally follow the resulting reduction in railroad investment.

The STB has proposed eliminating the requirement that reciprocal switching agreements may only be imposed in response to evidence of anticompetitive behavior. Most shockingly, the STB argues that because it and the Interstate Commerce Commission before it have been unable to find any evidence of anticompetitive conduct on the part of the railroads in the past three decades, it must repeal this requirement to find cause for forced access.

Congress has repeatedly rejected railroad re-regulation, correctly recognizing that reducing private railroad investment is not in the public interest.⁴ Nevertheless, the STB is illegally rewriting the law to find guilt where none exists, something we expect to read in Kafka or before courts in banana republics, not within a U.S. federal regulatory agency.

We strongly urge the Committee and Subcommittee to investigate the STB's conduct and prevent its unlawful attempt to push the U.S. railroad industry back into the economic dark ages. If this is the caliber of decision-making now emanating from the STB, perhaps Congress should reconsider the need for this agency altogether.

Sincerely,

Competitive Enterprise Institute

John Locke Foundation

American Commitment

The Maine Heritage Policy Center

American Conservative Union

National Taxpayers Union

Campaign for Liberty

Rio Grande Foundation

Center for Individual Freedom

R Street Institute

Georgia Public Policy Foundation

Taxpayers Protection Alliance

Grassroot Institute of Hawaii

2. Petition for Rulemaking To Adopt Revised Competitive Switching Rules; Reciprocal Switching, *Notice of Proposed Rulemaking*, EP 711 (Sub-No. 1), 81 Fed. Reg. 51149 (Aug. 3, 2016).

3. See, e.g., Comments of the Competitive Enterprise Institute in the matter of Petition for Rulemaking To Adopt Revised Competitive Switching Rules; Reciprocal Switching, *Notice of Proposed Rulemaking*, Docket No. EP 711 (Sub-No. 1), 81 Fed. Reg. 51149 (Aug. 3, 2016), available at [https://cei.org/sites/default/files/Marc%20Scribner%20-%20STB%20EP-711%20\(Sub-No%201\)%20Comments.pdf](https://cei.org/sites/default/files/Marc%20Scribner%20-%20STB%20EP-711%20(Sub-No%201)%20Comments.pdf).

4. For an early explicit example of Congress rejecting attempts to eliminate the anticompetitive conduct requirement for forced reciprocal switching, see Surface Transportation Board Reform Act of 1999, H.R. 3446, Sec. 104, 106th Congress (1999), available at <https://www.congress.gov/bill/106th-congress/house-bill/3446/text>.