



April 30, 2019

Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423

Re: Docket No. EP 711 (Sub-No. 1)

Dear Chairman Begeman, Vice Chairman Fuchs, and Member Oberman,

We, the undersigned, wish to congratulate and welcome you to your appointments. The Surface Transportation Board (STB) plays a vital role in the growth of American commerce and we commend your efforts to promote a free flow of commodity traffic to ensure U.S. economic competitiveness in the years to come.

To that end, we urge the STB to adhere to its statutory mandate and continue its measured approach to regulation of the railroad industry. The U.S. experience with regulatory intervention into the operations of rail carriers has been nothing short of disastrous. These compounded missteps over several decades nearly destroyed a vital American industry and led Congress to take the extraordinary step of terminating the Interstate Commerce Commission, in addition to substantially deregulating the railroad industry.

We are deeply concerned about the stalled competitive switching rulemaking. The STB argued that its inability—and the inability of the Interstate Commerce Commission before it—to uncover any evidence of anticompetitive conduct on the part of the railroad industry justifies its call for eliminating the post-deregulation requirement that anticompetitive conduct be found before mandatory reciprocal switching could be imposed.

The STB provided no economic analysis to support its conclusion that the anticompetitive conduct requirement “effectively operated as a bar to relief rather than as a standard under which relief could be granted.” Indeed, this absence of analysis could just as easily be used to support the opposite conclusion: that the lack of successful demonstrations by shippers of anticompetitive abuse on the part of carriers effectively shows no such abuse exists and thus no relief is warranted.

Many industry observers have expressed concern that imposing forced reciprocal switching and reducing rate flexibility will come at the expense of network investment. Many have also observed that the proposed competitive switching framework is backdoor rate regulation designed to sidestep established procedures defined in statute. The proposed competitive switching rule threatens railroads, shippers, and consumers with degraded service quality and higher prices on goods, which would naturally follow the resulting reduction in operational efficiencies and private railroad investment.

The railroad industry, like its competing modal industries, is undergoing significant transformation. The competitive transportation landscape of the future—with the rise of new technologies and accompanying business practices—will undoubtedly look drastically different than today’s landscape. Heavy-handed administrative action based on outdated regulatory analysis is dangerous and needlessly threatens the competitive viability of rail carriers.

Over the last 30 years, Congress has repeatedly rejected railroad re-regulation, regardless of political control. On numerous occasions, it has explicitly rejected attempts to eliminate the anticompetitive conduct requirement, recognizing that reducing private railroad investment is not in the public interest. We strongly urge the STB to withdraw the proposed competitive switching rule. The STB should take action to improve its economic analysis in rulemakings in order to avoid similar missteps in the future.

Sincerely,

Marc Scribner, Senior Fellow
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James L. Martin, Founder/Chairman
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