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Surface Transportation Board
Docket No. EP 711 (Sub-No. 1)
RECIPROCAL SWITCHING

Dear Chair Oberman, Vice Chair Schultz, and Members Fuchs, Hedlund and Primus:

The United States has the most productive freight railroad system in the world, which serves businesses, including small businesses, and consumers extraordinarily well. It is important to keep in mind that this has not always been the case, as railroads had declined and decayed under excessive and intrusive regulation prior to passage of the Staggers Act in 1980. The Small Business & Entrepreneurship Council (SBE Council), therefore, stands in opposition to turning back toward a regime of over-regulation. That certainly includes opposing the Board's proposal to mandate reciprocal switching, or "forced access," on American railroads.

As the Federal Railroad Administration has explained ("Impact of the Staggers Rail Act of 1980," March 2011):

"Prior to 1980, economic regulation prevented railroads from any flexibility in pricing needed to meet both intra as well as intermodal competition. Regulation also prohibited carriers from restructuring their systems, including abandoning redundant and light density lines, a necessity for controlling cost. Added to these problems was the industry's inability to cover inflation due to the regulatory time lag in rate adjustments. As a consequence, nine carriers were bankrupt, the industry had a low return on investment and was unable to raise capital, and faced a steady decline in market share."

The Association of American Railroads summed up the grave ills of over-regulation ("The Need for Balanced Railroad Regulation," July 2017):

“By the 1970s, eight decades of over-regulation had brought America’s freight railroads to the brink of ruin. More than 20 percent of rail mileage was owned by bankrupt railroads; safety was deteriorating; and tracks, locomotives, and freight cars were falling apart and railroads couldn’t afford to repair them. Railroads were unable to provide the safe, efficient, cost-effective rail service that American businesses need to grow.”

The railroad industry only returned to health and profitability after Congress passed and President Jimmy Carter signed into law the Staggers Rail Act, which partially deregulated railroads in terms of setting prices for services and setting rail rates, making decisions regarding what routes to use, and establishing shipper contracts, that is, allowing freight railroads to make decisions based on market conditions. The benefits from this major deregulatory measure have been widely recognized, including vast improvements in industry efficiency and productivity, capital investment, maintenance and safety, market share, profitability, and reduced costs and enhanced service for customers.

As for various specifics, the AAR has found (“Freight Railroads Under Balanced Economic Regulation,” July 2021) that since passage of the Staggers Act, customers have experienced average real rail rates that are 44 percent lower than they were in 1981; freight railroads have invested \$740 billion in their operations; train accident and hazmat accident rates have declined by 33 percent and 64 percent, respectively; the rail employee injury rate in 2020 registered an all-time low; and while return on net investment “had been falling for decades” prior to the Staggers Act, after it passed, returns registered 4.4 percent in the 1980s, 7 percent in the 1990s, 8 percent from 2000 to 2009, and 12% from 2010 to 2019.

It also must be recognized that the transportation business is highly competitive and dynamic. Consider that railroads compete against each other, as well as with trucking, barges, pipelines, geographic or locational competition, product substitution, and so on. And of course, future innovations and new competitors remain a constant factor across industries in our dynamic economy. Who would have predicted that long ago, for example, that a company like Amazon would create its own distribution network? Competition in all its forms spur railroads, and others in the transportation business, to be mindful of costs, prices and quality of service.

Small Businesses are Dominant

As for small businesses and freight railroads, the sectors directly and indirectly related to and served by railroads are no different from the rest of the U.S. economy, that is, smaller firms are the majority of firms in each industry. Consider the latest data on the role of small business in each of these sectors:

Percent of Employer Firms by Size in Key Sectors Directly or Indirectly Impacted by Freight Railroads

Industry	% of firms with fewer than 20 workers	% of firms with fewer than 100 workers	% of firms with fewer than 500 workers
Support Activities for Rail Transportation	66.8%	82.5%	90.4%
Freight Transportation Arrangement	87.1%	96.1%	98.4%
Packing and Crating	86.7%	95.7%	98.6%
Warehousing and Storage	52.4%	71.0%	84.2%
Retail Trade	87.5%	94.9%	96.6%
Agriculture, Forestry, Fishing and Hunting	93.6%	98.7%	99.6%
Mining, Quarrying and Oil and Gas Extraction	82.1%	94.5%	98.1%
Construction	91.6%	98.9%	99.8%
Manufacturing	74.5%	93.3%	98.4%
Railroad Rolling Stock Manufacturing	42.4%	68.9%	84.8%
Port and Harbor Operations	60.4%	76.8%	84.6%
Administrative and Support and Waste Mgmt and Remediation Services	87.8%	96.4%	98.8%
Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance	91.5%	97.6%	98.8%

Data Source: U.S. Census Bureau, 2018 latest data. Calculations by SBE Council.

For good measure, short line railroads themselves are predominately small businesses. These Class II and III railroads generally serve concentrated geographic regions and operate in every state but Hawaii. According to the American Short Line & Regional Railroad Association (as noted in their 2016 comments (STB Docket No. Ex Parte 711 (Sub-No. 1)) to the Board, its membership includes “about 480 short line and regional small, locally-based railroads” and “approximately 550 suppliers and contractors.” What do these small businesses do? The association explained:

“These railroads operate about 50,000 miles of track constituting 32 percent of the nation's rail system connecting largely less populated, rural areas to the national rail network. These Small Railroads participate in 40 percent of all carload movements but earn only five percent of the revenue generated on the national rail system. Small Railroads frequently provide the first and last mile of service on rail movements... These Small Railroads have short lengths of haul, high fixed costs, and large capital needs for infrastructure investment, including the task of upgrading bridges and track to handle heavier freight cars. They also face pervasive competition trucks, barges, and transloading operations for freight traffic.”

The association, as noted in those comments, “vigorously opposes the imposition of a rule mandating reciprocal switching as it would be extremely injurious to the national rail system.” Indeed, a return to misguided regulation would come with real and significant costs.

Writing in *The Washington Post* (“No need to fix a freight rail system that is thriving”) in June 2017, transportation industry consultant Anthony Hatch pointed out:

“Simply put, forced access is a bad idea.

“First, there’s the economic cost. Forced access would slow rail shipments across the network, injecting increased complexities and inefficiencies into the network. This change would impact businesses coast to coast and beyond in the global economy. Then, there’s the huge costs that would be required to maintain and operate a rail network that provides ‘competitive switching’ service for all customers.

“Such regulatory tinkering and forced faux competition would usher in an era of financial uncertainty. At the most basic level, the

rail network would require more resources to move the same amount of freight in a time of very tight capacity, swiftly returning the industry to the dark days of gross inefficiencies.

“Rail industry leaders say that forced competition could mean an annual revenue loss of \$7.9 billion. Rail companies would have less money to maintain and expand the nation’s 140,000-mile rail network.”

Finally, with American businesses and consumers already suffering from supply chain problems related to the pandemic, this kind of regulatory intrusion would only make such matters worse. Indeed, imposing severe regulatory burdens never makes economic sense, but doing so during tough economic times ranks as being particularly egregious.

Forced switching would undermine the efficiency of the rail system, and raise costs for customers, again, including small businesses, and consumers overall. This regulatory measure would allow large companies, who simply do not wish to pay market rates for shipping, and competitors to lobby so that government would mandate that railroads hand over traffic to competitors. The results should be obvious, including reduced network efficiencies, slower rail traffic, and increased costs for customers. These and other regulatory measures would reduce incentives to invest in railroads, again, thereby reducing innovation and competition.

Thank you for the opportunity to submit these comments, and please do not hesitate to contact SBE Council with questions or additional information.

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