

Before the
SURFACE TRANSPORTATION BOARD

Ex Parte No. 767

FIRST-MILE / LAST-MILE SERVICE

**Comments of BNSF Railway Company in Response
to the Board's Invitation to Comment****I. Introduction & Summary**

On September 2, 2021, the Surface Transportation Board ("Board" or "STB") issued a decision requesting comments on issues regarding first-mile/last-mile ("FMLM") service. The Board's interest in FMLM service arose after hearing concerns raised by some rail customers about FMLM service by railroads, and receiving requests that the Board adopt new data reporting regulations relating to FMLM service. *First-Mile/Last-Mile Service (Sept. 2021 Decision)*, EP 767, slip op. 1 (STB served Sept. 2, 2021). BNSF Railway Company ("BNSF") appreciates the Board's interest in FMLM service and the opportunity to assist the Board in understanding the myriad important issues relating thereto. BNSF also supports and joins the comments of the Association of American Railroads ("AAR") regarding FMLM service.

BNSF believes that providing reliable service between our local serving yards and our customers' facilities is a critical component of our overall competitive service offering. Market forces do not permit BNSF to ignore FMLM service issues in favor of an exclusive, or even disproportionate, focus on linehaul or overall network performance. Each railroad's attention to its own FMLM service is important to a well-functioning national rail network, and we take seriously our role and responsibility as a business partner to our customers in relation to FMLM service. That is why, as described in more detail below, BNSF developed a sophisticated internal monitoring system to track its FMLM performance and has been sharing FMLM data, both at a

customer-specific and overall network level, since long before the Board commenced this proceeding.

Any further development and reporting of FMLM data is better left to those same market forces that spurred BNSF's current system. BNSF created its FMLM monitoring system, in part, to better compete for customer business against other railroads and competitors from across different transportation modes. FMLM service is an area in which railroads can compete for business based on metrics that each railroad develops independently to meet the needs of their own customers. BNSF believes in providing accessible and reliable shipment information to our customers. As detailed below, BNSF develops a Base Service Plan for each of its customers, monitoring individual shipments between each customer's facility and BNSF's local serving yard. BNSF then uses this information to track its performance in meeting each customer's service plan. Our individual customer performance (the "Industry Service Metric") and our network performance (the "Local Service" metric) are then reported to customers in a variety of ways. It would be counterproductive to replace BNSF's existing market-driven, individualized FMLM monitoring system with an overly burdensome one-size-fits-all regulatory reporting tool.

BNSF also respectfully cautions the Board against pursuing prescriptive FMLM data reporting obligations as the basis for formal regulatory standards governing FMLM service itself. Any regulatory standards governing FMLM service would have to take into account the particular circumstances for each shipper. From weather events that broadly affect the rail network, to yard-specific issues, to individualized shipper preferences, FMLM service is too nuanced for rigid or formulaic regulations to be effective.

BNSF believes it is particularly important that the Board recognize the limitations in using any aggregated FMLM data to potentially assess a railroad's compliance with its common carrier obligation to a particular shipper. The Board has long appropriately recognized that a

railroad's common carrier obligation is based on a reasonableness standard that must be informed by the specific facts of particular movements, and judged within the context of a carrier's need to provide service to all shippers on its rail network. The reasonableness of FMLM service in any particular case can only be assessed based on multiple factors that consider both the individual shipper's circumstances and any network-wide issues affecting local service. It is highly unlikely that aggregated FMLM data will provide meaningful or actionable information about compliance with common carrier obligations vis-à-vis any particular shipper.

Importantly, shippers already have significant regulatory recourse when they feel they are not obtaining adequate FMLM service and market forces have failed to adequately incentivize their serving carrier's behavior. As discussed below, these remedies include the Board's Rail Customer and Public Assistance ("RCPA") office and the Board's formal complaint processes. Additional regulation in this area is not needed.

II. BNSF Already Has A Monitoring Tool Related to FMLM Service and Provides Its Shippers with Data That Shippers Can Use to Monitor FMLM Performance

As mentioned above, BNSF has already developed a sophisticated internal monitoring system to both track its performance at local serving yards and shipper facilities, and share relevant data with its customers. Imposing any regulatory FMLM reporting obligations on BNSF would be overly burdensome and serve no legitimate purpose.

BNSF has always believed that active and consistent communication with our customers is essential for our business. BNSF provides as much visibility as possible to its customers regarding performance and status across the BNSF network, including with respect to individual shipments. As explained below, BNSF develops a Base Service Plan for service between each customer facility and BNSF's local serving yard. BNSF then tracks its performance against that Base Service Plan with an Industry Service Metric that records car-specific data for each customer. An online Customer Portal allows each customer to monitor BNSF's compliance with

the customer's Base Service Plan, and to track the location and progress of their shipments at all times while on the BNSF network. BNSF has also developed critical function Application Programming Interfaces (APIs) that allow BNSF's systems to interact directly and securely with its customers' own transportation management systems, thus maximizing data-exchange efficiency and increasing the value of the data BNSF provides.

Finally, BNSF aggregates its network-wide compliance with all of the individual Industry Service Metrics into a data point referred to as the Local Service Metric, which is included in regular network updates to BNSF's customers. To BNSF's knowledge, it is the only railroad that shares the information reflected in the Local Service Metric with its customers on a regular basis, thus providing BNSF an important competitive advantage.

The elements of these BNSF FMLM monitoring tools are described in more detail below.

A. Individualized Base Service Plan

The starting point for BNSF's FMLM service monitoring system is the development of an individualized Base Service Plan for each BNSF customer served by a particular yard. Each Base Service Plan includes the (i) days of service, (ii) the "spot" times (i.e., the time a car must be ordered to make same day service on a defined service day or within a specific processing time), (iii) the "pull" times (i.e., the time a car must be released from placement to make same day service on a defined service day or within a specific processing time), and (iv) the "processing time" that BNSF has allotted to complete its work with respect to a specific car.

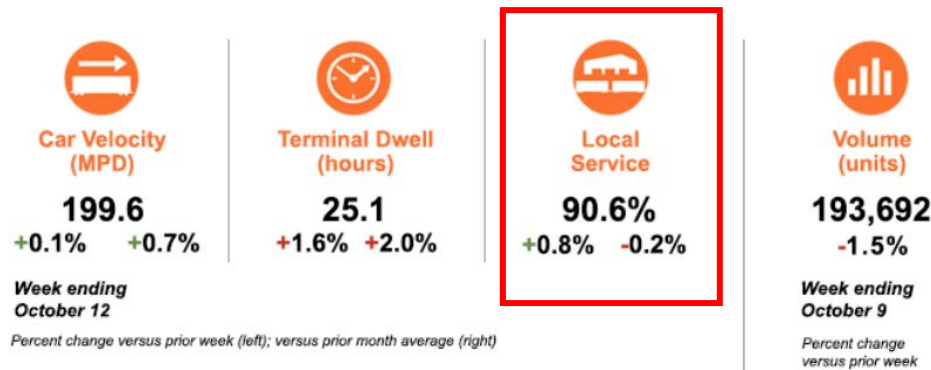
BNSF's internal data system shows the type of data that are recorded as to individual customer Base Service Plans. The data include the days of service, the time by which a customer must order car service to ensure same-day service, the train that will provide service, the identification of the track on which service will be provided, among other details.

B. Industry Service Metric

BNSF has an Industry Service Metric that measures BNSF's adherence to each customer's individualized Base Service Plan, monitoring the movement of each customer car and measuring the actual spot or pull of each car against the customer's Base Service Plan. The Industry Service Metric records car-specific data for each customer. BNSF's internal system shows identifying information about each customer's car: (1) whether a car is loaded or empty, (2) the car's destination station, (3) the destination track number and spot code, (4) the customer name, and (5) a brief description of the car contents. The internal system also shows specific event data for each customer's car such as (1) when a car departs, (2) the type of car the customer wants (i.e., does a customer want a specific car or any available car), (3) the car's scheduled delivery time and date, (4) whether the car was ordered in time for same day delivery, and (5) the car's actual delivery time and date. This event data is used to determine whether BNSF adhered to a customer's Base Service Plan. How often BNSF meets the specifications of a customer's Base Service Plan determines the Industry Service Metric for that customer.

C. BNSF's Local Service Performance Metric

BNSF also provides its customers on a bi-monthly basis with a network-wide carload "Local Service" metric – a percentage that measures adherence overall to customers' FMLM service plans – in connection with a broader update on the BNSF network. Below is a screenshot from an example of an October 2021 customer communication including BNSF's Local Service Metric, which can be found on BNSF.com at <https://www.bnsf.com/news-media/customer-notifications/notification.page?notId=industrial-products-network-update-for-friday-october-15-2021>:



Definitions for Metrics

Car Velocity: average number of miles a railcar travelled per day

Terminal Dwell: average time a car resides at a specified terminal location

Local Service: percentage measuring adherence to customers' first/last mile service plans

Volume: total number of carloads and intermodal units moved by the railroad during the week

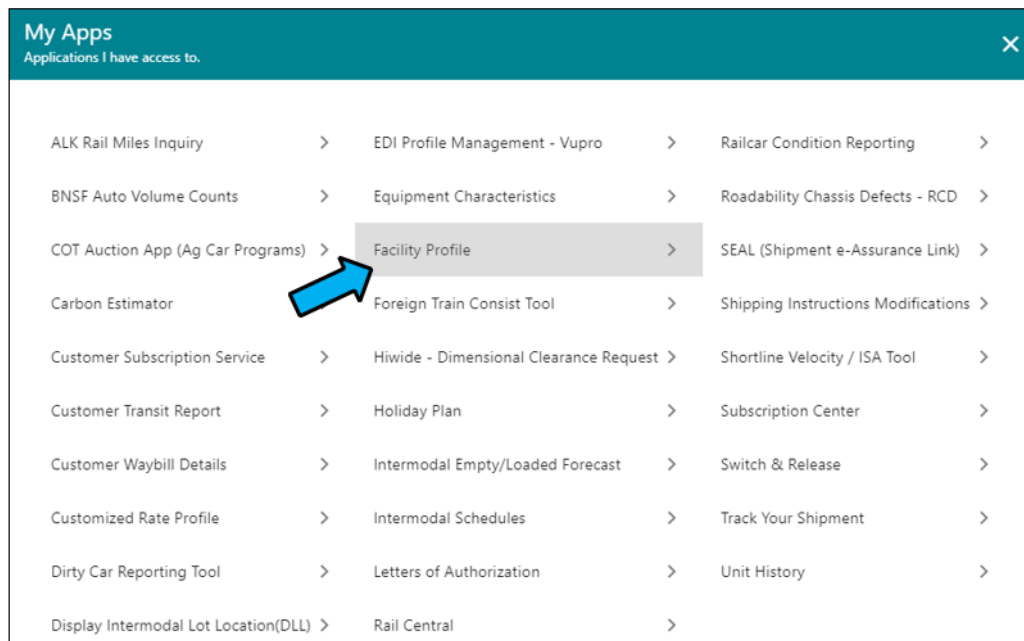
The network update also includes metrics showing the average number of miles a rail car travelled per day (car velocity), the average time a car resides at a specified terminal location (terminal dwell), and the total number of carloads and intermodal units moved by BNSF during that time period (volume). BNSF has met its Local Service performance metric in almost 90% of FMLM movements in 2021.

D. Customer View of Service Plan through Portal

BNSF has invested heavily in providing customers with up-to-date and relevant FMLM information that all BNSF customers can access via a secure Customer Portal on BNSF.com. An average of 11,000 of BNSF customers visit the Customer Portal every day. Through this portal, BNSF offers a suite of tools for customers to conduct a variety of business activities such as tracking shipments and other administrative activities. This accessibility includes viewing FMLM information for shipments and the ability to trace individual shipments in real time as they move across the BNSF network.

For example, when a customer visits the BNSF.com website, the customer can visit its personalized portal by logging into the website and clicking the “My Apps” button. A popup

window will appear and the customer can select “Facility Profile”, as reflected in the following screenshot.



Once the customer selects “Facility Profile,” the customer will access a page called “Customer Facility Information.” Here, the customer can select its name and location from the dropdown menu, which is populated with local service information. This information includes spot cut-off times and planned switch information that is derived from the specific customer’s service group information. A screen shot is set out below showing the information that a customer can see through the Portal.



Customer Facility Information

Facility Summary

This application provides facility information for BNSF-served customers.

Customer :

Location :

Facility Diagrams

In order for BNSF to visualize your facility, you can upload up to three attachments to this page. Then, BNSF will have access to view the information, which will be helpful in conversations with you about your service, facility setup, etc. We recommend uploading facility schematics, diagrams and/or overhead pictures.

To upload an attachment simply click the Browse button and choose a document on your computer, then click Submit. For assistance with this application, please contact ebizhelp@bnsf.com

NOTE: Individual attachments cannot be larger than 2MB each.

Attachment 1: No file chosen

Attachment 2: No file chosen

Attachment 3: No file chosen

Comments :

Local RR Contact

John Doe

Track

1871, 1872, 1873, 1874

Your company's designated contact for BNSF Railway to discuss facility parameters.
Contact details are available in the Track Summary below.)

Track Summary

Spot cut-off time for next planned switch

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY
06:00		06:00		06:00		

If any of the following information related to your facility's tracks or shipment handling is incorrect, please contact Customer Support at 888-428-2673, options 4, 3.

Facility Facts:

Tracks for TEST CUSTOMER at ANYSTN, US [1871 1872 1873 1874](#)
(Please Right Click on the Track number for more options)

Shipment Handling Instructions

- All empty cars are routed to track 1871
- All other cars are routed to track 1873

Select a track from the dropdown menu to view detailed information about how BNSF Railway handles your facility:

Attachment 1

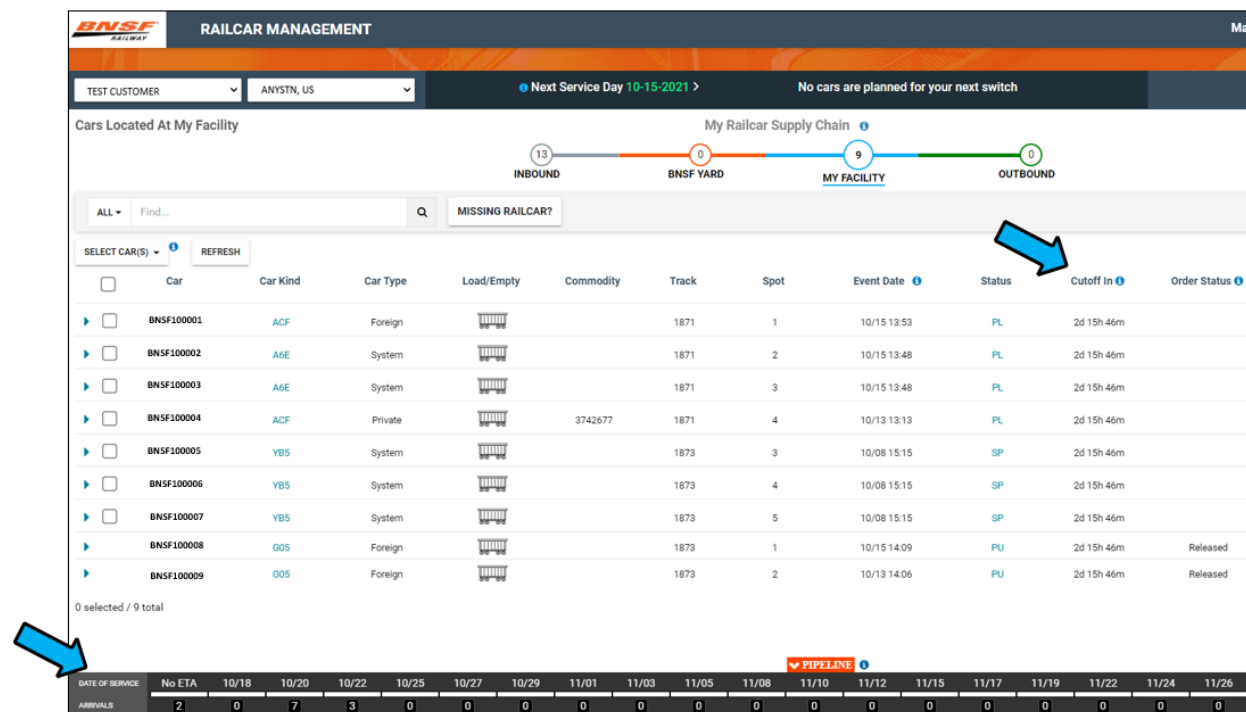
No Facility Diagram available for the selected Customer and Destination and Version.

To see a preview of your attachments click the left or right arrow.

Customers can also view car dwell times by selecting the “Carload” button in the Customer Portal and then selecting the “Customer Dwell Management Tool.” Here, the customer can also view FMLM information such as the spot and pull times for specific cars on specific days.

Additionally, customers can view a personalized Railcar Management Tool (“RMT”) within the Customer Portal. The RMT allows customers to view inbound cars, at BNSF serving

yards or at the customer’s facility, in order to order cars to spot or release to pull. The RMT provides (i) a “Date of Service” that correlates to the service days and (ii) a “Cutoff In” column that acts as a countdown clock to when cars need to be ordered/released to make same day service on a defined service day.



III. The Board Should Not Use This Proceeding to Impose New and Burdensome Reporting Requirements

As mentioned above, BNSF appreciates the Board’s interest in learning more about FMLM service. The Board has previously used information-gathering proceedings to seek public comment and learn about a variety of topics of interest to the railroad community. *See, e.g., Common Carrier Obligation of Railroads*, EP 677 et al. (STB served Jan. 19, 2010). While it is appropriate and beneficial for the Board to engage in information gathering efforts such as this proceeding, the premise of the shippers seeking Board action here—that additional regulation of FMLM service is needed—is misplaced.

A. Neither rail customers nor the Board has identified a problem that requires regulatory intervention.

As described in the *Sept. 2021 Decision*, the Board's interest in FMLM service is the result of correspondence from rail customers. *See Sept. 2021 Decision*, slip op. at 2-4. For example, rail customer trade groups stated that their members were concerned by "the gap between the service data that the railroads report to the Board and the level of service that shippers receive in the real world." *See id.* at 3. These trade groups seek "improved transparency regarding FMLM service issues" and suggest that "transparency could be achieved by having the rail carriers report appropriate data." *Id.*

BNSF takes concerns about FMLM service seriously, as should the Board. But the rail shippers' comments regarding FMLM service do not identify a problem that additional mandatory data reporting would solve. Any new regulatory data mandates must be based on the identification of a real and concrete problem that those mandates have a high likelihood of solving. Not only do the rail customer comments fail to identify such a problem, they ignore the multitude of factors affecting FMLM service that would undermine the utility to the Board of any generalized data reports. Nor do the shipper interests explain how new data reports would benefit actual customers. A generalized desire for more transparency into FMLM service data does not justify burdensome regulatory action, especially considering the significant amount of FMLM data that is already available to BNSF's customers. To the extent that the trade groups seek mandated data reporting to support new litigation over common carrier obligations, their objective is based on a fundamental mischaracterization of the law of common carriage, as discussed below.

Additionally, BNSF's believes that the Board's RCPA office already serves as an invaluable and effective resource for resolving service issues between railroads and their customers without the need for formal adjudication by the Board. And where intractable service

issues do arise, rail shippers have demonstrated a willingness to use the Board’s formal complaint processes.¹ Requiring carriers to comply with prescriptive, top-down rules regarding FMLM service metric reporting would not improve this well-functioning regulatory system.

B. The value of aggregated FMLM metrics is limited because they would not reflect many factors affecting FMLM service.

Shippers seeking new FMLM data reporting requirements fail to acknowledge that any aggregated FMLM service metrics for any particular railroad would necessarily reflect the knock-on effects of attenuated events that may not be in that railroad’s control. The U.S. rail network is part of a complicated and interconnected multi-modal supply chain with many and diverse local elements that can affect movements across the network. Indeed, the complexity and interconnections of the U.S. rail network are its defining characteristic. Congestion issues at urban hubs – such as Chicago, IL, Houston, TX, St. Louis, MO, and Kansas City, MO – can create a contagion of congestion affecting the entire rail network, including local service far from the original source of the congestion.² The importance of these external factors is evident today. Katie Farmer, BNSF’s President and Chief Executive Officer, explained in two letters earlier this year to Board Chairman Oberman how the challenges facing the U.S. supply chain this year were a clear reflection of the variability and complexity of the interconnected multi-modal transportation system.³

¹ See *e.g.*, Sanimax USA LLC Compl., Nov. 6, 2021, *Sanimax USA LLC v. Union Pac. R.R.*, NOR 42171 (shipper seeks determination that reduction in service from five days per week to three days per week constitutes a failure of common carrier service and is an unreasonable practice); Bell Oil Compl., July 10, 2020, *Bell Oil Terminal, Inc. v. BNSF Ry.*, NOR 42169 (shipper filed a complaint alleging that a reduction in service constituted a failure of common carrier service); Sherwin Alumina Co. Pet., Mar. 10, 2015, *Sherwin Alumina Co. v. Union Pac. R.R.*, NOR 42143 (shipper filed a petition alleging railroad’s denial of service due to labor dispute at the facility violated the common carrier obligation).

² Examples of this dynamic include the service problems in the western United States after the UP/SP merger and congestion issues after Conrail merger. See *e.g.*, Joint Petition for Service Order, STB Service Order No. 1518 (STB served Oct. 31, 1997); See *CSX Corp.— Control & Operating Leases/Agreements—Conrail Inc.*, FD 33388 (Sub-No. 91), Decision No. 5 (STB served Feb. 1, 2001).

³ See Response Letter from Katie Farmer, President and Chief Executive Officer, BNSF, to Martin J. Oberman, Chairman, STB (Aug, 4, 2021) available at <https://www.stb.gov/> (open tab at “News and

Moreover, local conditions and the circumstances of individual rail yards and customer facilities vary widely. BNSF has a wide variety of serving yards that perform FMLM service to customer facilities. Certain of BNSF's large hump yards, like those at Kansas City, KS or Tulsa, OK, have large footprints with multiple groupings of tracks that accommodate substantial 24/7/365 operations handling diverse commodities and train types. Flat switch yards, like those at Houston, TX or Temple, TX, are generally smaller than the large hump yards and handle a mix of traffic types that depend on geographic location and local needs. Local serving yards, like those at Bay City, TX, Crystal City, MO, or Sealy, TX, are generally even smaller and feature more narrowly focused operations. While hump yards and flat switch yards can be designated as serving stations for local service, the local serving yards are typically positioned closer to a group of customers where cars can be sent in blocks (i.e., pre-classified car groupings) to build trains for local service. Broad data reporting would not reflect these nuanced circumstances of individual rail yards.

Additionally, the circumstances of individual customer facilities and needs vary widely. A customer with low volume and irregular demand often has a small facility footprint with limited capacity to spot inbound cars or store cars onsite, likely making the customer more heavily dependent on the railroad's local serving yard or switching facility. A customer with high volume and regular demand typically has a larger facility footprint, can load and unload multiple cars throughout the day, and may have the ability for onsite storage and self-switching to move cars between facility tracks. Some shippers have less than ideal facilities for loading and unloading cars, including facilities located directly off a main line without the infrastructure to

Communications," select "Non-Docketed Public Correspondence" locate "August" select "BNSF Response Letter to Chairman Oberman Regarding Intermodal Supply Chain Issues, August 4, 2021"; Response Letter from Farmer, BNSF, to Chairman Oberman, STB (June 9, 2021) available at <https://www.stb.gov/> (open tab at "News and Communications," select "Non-Docketed Public Correspondence" locate "June" select "BNSF Response Letter to Chairman Oberman Regarding Rail Service, June 9, 2021")

allow a local serving train to clear the main track to provide service, thereby impeding through trains, and some facilities have operational requirements that require additional switching, spotting, and pulling of cars. It would be impossible—or, at best, excessively burdensome—to require aggregated FMLM data reporting that would reflect these important distinctions between customer facilities.

These varied circumstances in local serving yards and customer facilities necessarily result in FMLM service environments that differ based on the serving yard for any particular customer and based on the needs and facilities of individual shippers. Because FMLM service is particularly focused on local and individualized circumstances, the value of any new aggregated data reporting regulation to shippers or the Board would be minimal.

C. FMLM data reporting would not be a legitimate basis for assessing a railroad’s compliance with its common carrier obligation.

The comments of rail customer trade groups indicate that they believe FMLM data reporting might be relevant to assessing railroads’ compliance with their common carrier obligations. The October 8, 2020 filing made by FRCA, NCTA, NITL, and PRFBA asserted that new data reporting was necessary because the existing data does not allow the Board to “ascertain whether carriers are meeting their common carrier obligations in the aggregate.”

The assumption that new FMLM data reports could be relevant to assessing common carrier compliance is based on a misunderstanding of the common carrier obligation, and a misplaced assumption that objective and rigid standards can be used to assess compliance with common carrier obligations. To the contrary, the common carrier obligation, as developed through many years of experience by the Board and its predecessor agency with the realities of railroad operations, recognizes the complexity and variability of railroad service and the unpredictable and far-ranging effects of problems arising in the interconnected network. The trade groups’ assertion that aggregated FMLM data would provide meaningful information on

compliance with common carrier obligations disregards the realities of railroad operations and is in direct conflict with the fact-based standard that has developed for assessing common carrier obligations.

The common carrier obligation requires railroads to provide “transportation or service on reasonable request.” 49 U.S.C. § 11101(a). The statute does not set out a standard for determining when a railroad has complied with this broad obligation. Instead, the scope of the common carrier obligation has evolved through case law and regulatory developments that have, over many years, reflected and respected the realities and complexities of railroad transportation and the need to balance the needs of individual customers with the collective customers interests.

The touchstone of the common carrier obligation is that it is a highly fact-specific requirement that a railroad act reasonably under existing circumstances to provide adequate service. The scope of the common carrier obligation, as developed over time, recognizes that the reasonableness test depends on individual circumstances. Broad abstractions and aggregated metrics cannot be used to assess compliance with such a fact-specific obligation. In general, “the Board tries to avoid micromanaging a carrier’s operational decisions.” *Montana v. BNSF Ry.*, NOR 42124, slip op. at 7 n.28 (STB served Apr. 26, 2013).

Given the focus of the common carrier obligation test on the specific facts of particular cases, generalized FMLM data will not provide any meaningful information on a railroad’s compliance with the common carrier obligation standard for any particular shipper. Generalized data cannot reflect the multitude of factors that must be assessed to determine whether a railroad acted reasonably under the circumstances.

IV. Regulatory Mandates Should Not Determine Appropriate FMLM Metrics

BNSF developed the metrics described in Section II above to assist it in providing quality service that its customers demand and to provide feedback to shippers that will allow them to

make better logistical decisions. BNSF does not believe that regulatory mandates relating to FMLM service can or should replace the market as the source of incentives to develop similar performance-related metrics. A requirement for uniform standards would likely require changes to the tools and metrics that BNSF has already developed in response to the particular circumstances faced by BNSF and its customers. Instead of allowing railroads to continue developing railroad-specific reporting tools, and then allowing competition to determine which tools are most attractive and responsive to shipper demand, a new regulatory requirement would force industry-wide compliance with what would likely be less efficient and effective reporting regime. If BNSF were to be required to conform to a new industry-wide standard, BNSF would be forced to consider abandoning its existing processes and deprive its shippers the benefits of those tools BNSF has already developed with customer feedback. Allowing competition and market forces to determine shipper reporting programs will better serve shippers and produce superior reporting programs.

V. Conclusion

Uniform regulation is not appropriate for the highly variable area of FMLM service. Generalized data on FMLM service that is mandated by the Board will not provide the Board or shippers with meaningful information. Instead, railroads should be permitted to continue competing for customers' business by developing appropriate reporting systems and providing their shippers with customized service products for FMLM service. A regulatory mandate would likely inhibit the development of systems that better serve shipper needs. As demonstrated by BNSF's development of a sophisticated monitoring system, regulatory standards and requirements are not needed to ensure that customers have access to the local service data they desire regarding their shipments.

Respectfully submitted,

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