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VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423-0001

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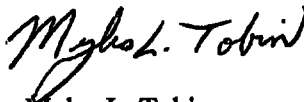
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Re: **Ex Parte No. 705**
Competition in the Railroad Industry

Dear Ms. Brown:

Attached please find the Initial Comments of the American Short Line and Regional Railroad Association ("ASLRRA") in the above-referenced proceeding.

Very truly yours,



Myles L. Tobin
Attorney for the American Short Line and Regional
Railroad Association

Attachment

cc: Richard F. Timmons, President, ASLRRA
Michael Ogborn, Chairman, ASLRRA

BEFORE THE
SURFACE TRANSPORTATION BOARD

EX PARTE NO. 705

COMPETITION IN THE RAILROAD INDUSTRY

**INITIAL COMMENTS OF
THE AMERICAN SHORT LINE AND
REGIONAL RAILROAD ASSOCIATION**

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**ATTORNEYS FOR
THE AMERICAN SHORT LINE AND
REGIONAL RAILROAD ASSOCIATION**

Dated: April 12, 2011

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SURFACE TRANSPORTATION BOARD

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**INITIAL COMMENTS OF
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REGIONAL RAILROAD ASSOCIATION**

I. INTRODUCTION

The American Short Line and Regional Railroad Association ("ASLRRA") is the national trade organization of 1,100 members consisting of 550 Class II and III railroads, most of which are small and locally based, as well as 550 vendors and suppliers to the small railroad industry. ASLRRA appreciates the opportunity provided by the Surface Transportation Board ("STB" or the "Board") to comment on the current state of competition in the railroad industry.

For the past thirty years, competition in the railroad industry, both between railroads themselves and between railroads and other modes of transportation, predominately trucks and barges, has been vigorous and ubiquitous. This competitive landscape has promoted the creation, development and flourishing of a host of small, locally based railroads. The current statutory and regulatory structure has facilitated the ability of these small businesses to acquire and operate hundreds of small, light-density, line segments throughout the United States which would have otherwise been abandoned.

Today these railroads operate approximately 50,000 miles of track and have, in many instances, become the competitive solution to the consolidation of the Class I railroad industry over the course of the last several decades. Of equal importance, these small, local

railroads have kept huge areas of the country connected to the national rail network, particularly in rural areas and small towns. In 30 states these small railroads operate more than 25% of the state's rail network. Absent this locally based service, thousands of shippers would have to move their products by truck or relocate to facilities on a Class I railroad. These same small railroads account for tens of thousands of jobs, both with the railroads themselves and the shippers and receivers which they serve.

The small railroad segment of the railroad industry has been a success story ever since 1980, although the climb to successful levels of operation has been a steep and difficult one. Most small railroads were formed from Class I spin-offs of light-density lines which were headed for abandonment. The small railroads are operating over rail lines which the Class I's did not want. These small, entrepreneurial operations have had to overcome years of deferred maintenance, diversion of traffic to trucks, pre-Staggers Act burdensome regulations, and the subsequent rebuilding of their customer base. The continued success of this segment of the rail industry is, however, not guaranteed.

The nation's small railroads transport their customers' traffic over relatively short distances to interchanges with Class I connections. Their traffic densities are light and their fixed costs are high. The extensive capital necessary to maintain and upgrade rail infrastructure is a significant drain on freight revenue resources. Intramodal and intermodal competition is intense, and railroads struggle on a daily basis to maintain and grow their traffic base. Small railroads' rates are constrained by their competition and they rarely, if ever, have rate flexibility. Market power, let alone market abuse, is not in the lexicon of the small railroads.

A restructuring of the current regulatory landscape in a manner which would reduce the small railroads' ability to serve their customers or to generate revenues sufficient to

meet their high fixed and variable costs would cause substantial and irreparable harm, not only to these railroads but also to the multitude of communities, employees, and significant industries they serve. Changes to the current regulatory regime would have the effect of (1) promoting the departure from the marketplace of numerous existing smaller railroads, which would find their financial viability unsustainable in the face of increased regulation, and (2) stifling the ability of new short line and regional railroads to enter the transportation market as competitive rail alternatives for shippers.

The ASLRRA does not believe that changes to the current regulatory structure concerning the nation's rail industry would serve any valid or justifiable purpose. It is the industry's view that the STB should retain the regulatory structure which has promoted the development of a viable and sustainable national rail network, in general, and the small railroads in particular. If, however, the Board should decide that some changes to the regulatory regime are indeed necessary, the ASLRRA specifically requests that the STB fashion any such changes so that the customers, communities, employees of the small railroads, and the small railroads themselves, are not adversely harmed. The financial viability of these small, locally based railroads and their ability to serve their customers are literally at stake.

The Board has requested that parties focus their comments on seven specific areas of competition in the railroad industry. ASLRRA will, therefore, address its views in accordance with the sequential topics identified in the Board's Notice of January 11, 2011, as follows:

II. THE FINANCIAL STATE OF THE RAILROAD INDUSTRY

Over the past 35 years, Congress has passed three pieces of legislation that comprehensively analyzed and shaped the regulatory landscape of the rail industry: the Railroad Revitalization and Regulatory Reform Act of 1976 (the "4-R Act"); the Staggers Act of 1980;

and the ICC Termination Act of 1995 ("ICCTA"). In each case, Congress determined that the restoration and/or continuation of the rail industry's financial health were critical to the nation's transportation system and the shipping public at large.

When the 4-R Act was passed, the rail industry was in dire financial straits. The purpose of the 4-R Act was "to promote the revitalization of the railroad industry in the United States." See S. Rep. No. 94-499, 94th Cong., 2d Sess. 2 (1976). The legislative history identified an "outmoded regulatory system" as one of the major hurdles facing the railroad industry.

Although the 4-R Act made important strides in eliminating unnecessary regulation, it did not go far enough. See H.R. Rep. 96-1035, 96th Cong., 2d Sess. 38 (1980) (noting that "the 4-R Act does not provide sufficient rate flexibility"). In 1980, the Staggers Act was enacted in recognition of "the need to revamp the regulatory scheme governing the rail industry." See *American Trucking Assns., Inc., v ICC*, 656 F.2d 1115, 1118 (5th Cir. 1982) (citing Staggers Rail Act of 1980, 94 Stat. 1895, Section 2). The legislative history noted that "the overall effect of [federal] regulation has meant that railroads have been severely handicapped in their ability to compete with other modes of transportation." See H.R. Rep. 96-1035 at 38.

Congress was well aware of the benefits of the competitive process initiated by the Staggers Act. In 1995, some shipper groups presented many of the same cries for increased regulation of railroads that are being raised today. In enacting ICCTA, Congress appropriately rejected those proposals and concluded that the competitive process initiated by the Staggers Act should continue to work unfettered by new regulations. Congress clearly understood the financial havoc that could be wreaked upon the railroad industry if it had not stayed the course of increased railroad regulation when ICCTA was enacted:

The transportation sector has changed dramatically since the time of the ICC's creation. With the emergence of the trucking industry, as well as the pipeline and barge industries, railroads have increasingly faced competition from other modes of transportation. Unfortunately, Federal regulations did not always keep pace with the changing market. The combination of continued onerous Federal regulations and stiff competition from the motor carrier industry proved lethal for the railroads.

H.R. Rep. 104-311, 104th Cong. 1st Sess. 90 (1995). The severe and adverse impacts of economic regulation on the rail industry and, correspondingly, the shipping public served by the rail industry, was echoed in the "Study of Rural Transportation Issues," published jointly by the United States Departments of Agriculture and Transportation in April, 2010 ("Joint Study"), which concluded:

The constraints of pervasive economic regulation, although meant to protect shippers from the abuse of railroad market power, resulted in nearly bankrupting the railroad industry as well as increasing shipper costs. Furthermore, Federal legislators recognized that industry regulation was expensive for both industry and government, and created market distortions for nearly all regulated markets.

Joint Study at 197. The Board itself has repeatedly recognized that the competitive process unleashed by the Staggers Act has been one of the most significant public policy successes of the 20th Century.

Since the passage of the Staggers Act, almost 300 newly formed railroads have acquired light-density lines serving communities all across the United States. Many small railroad properties suffered from years of deferred maintenance and service deterioration by their previous owners and were candidates for abandonment. Entrepreneurs acquired these properties, rehabilitated the track infrastructure, hired and trained staff, and revitalized service in

communities that faced loss of rail service, largely in rural areas of the country.¹ Today, these 550 small businesses – with median annual revenues of just \$2.5 million – operate approximately 32 percent of the nation's rail lines, provide competitive service to more than 11,800 rail dependent employers, and play a critical role in the economy of the communities those carriers serve².

Despite operating approximately 32 percent of the nation's rail system and participating in approximately 40 percent of all carload movements, small railroads earn barely five percent of national freight revenues.³ In addition, because they set rates with respect to only a small portion of most interline moves (if at all), small railroads generally have a limited ability to affect the overall price charged to a customer for interline traffic. Indeed, under the marketing arrangements typically in place, the small railroad receives a contractual allowance from its interline connection and has no pricing discretion with respect to origin-to-destination pricing. Accordingly, both in terms of market share and pricing authority, small railroads are not in a position to exercise, let alone abuse, market power.

Similarly, small railroad operations are limited in scope. The average small railroad operates 99 route miles of rail lines and handles approximately 14,000 carloads of traffic per year. To put these numbers in perspective, the *smallest* of the seven Class I railroads operates 3,076 miles of rail line and handles 361,695 carloads of traffic per year.⁴

¹ Small railroads often provide rail service to rural shippers on lines that would have otherwise been abandoned. Joint Study at 326.

² Shortline and Regional Facts & Figures, 2009 Edition.

³ Railroad Facts (Association of American Railroads 2009 and 2010 editions); Verified Statement of Carl Martland attached hereto at 15 (hereinafter "Martland V.S.").

⁴ Railroad Facts (Association of American Railroads 2009 and 2010 editions); "Shortline and Regional Facts and Figures," 2009 Edition; Martland V.S. at 11, 15.

For the small railroads, intermodal and intramodal competition is intense. Traffic moving over shorter distances – 500 miles or less – is particularly susceptible to diversion to truck transportation. In recent years, larger numbers of heavier and longer trucks and combination vehicles have made the competition even more difficult. As noted in the Joint Study, "trucks provide excellent service and are most cost-effective for shorter hauls (up to about 500 miles)." Joint Study at 201. This length of haul is squarely in competition with the small railroad segment of the rail industry, most of which are substantially less than 500 miles in length and whose median length of haul is 42 miles. (See Martland V.S. at 15-16). Thus, it is no great surprise that truck shipments of agricultural products have increased at an average rate four times that of the small railroads over the past fifteen years. "In other words, rail's market share has been steadily decreasing." Joint Study at 192. Nor should it come as a surprise that "[t]rucks now move 70% of agricultural and food products, alcohols, fertilizers, lumber, wood products, paper, pulp and paper board articles." Joint Study at 15. These are commodities which have traditionally been within the competitive "wheelhouse" of the small railroads. As more and more shipments divert to truck, it is certainly conceivable that trucks may become the only competitive option if small railroad service is lost.

Even for traffic moving longer distances, small railroads generally must compete for the "first or last mile" of the shipment with trucks and waterways as well as intermodal operators and rail-truck transload operations located on Class I's. (Martland V.S. at 15) Small railroads, by definition, operate trackage in close proximity to Class I carriers. Because the small railroads generally account for only a small portion of the mileage of any interline move, shippers frequently have an opportunity to bypass a small railroad by trucking their cargo to the nearest transload facility on a Class I rail system. Shippers also can bypass the small railroads

by trucking intermodal shipments that move onto rails to intermodal facilities operated by a Class I carrier. As detailed in Mr. Martland's Verified Statement, intermodal and transload facilities on Class I railroads often draw significant volumes of traffic away from the smaller railroads. (Martland V.S. at 11-15) Additionally, as noted in the Joint Study, "[a]s the Class I railroads build larger intermodal facilities in urban areas, many small intermodal terminals in rural areas [many of which would likely have been located on smaller railroads] have been closed or have had their service discontinued." Joint Study at 343. These options make small railroads susceptible to traffic diversion in ways that generally do not affect Class I carriers. This extensive intermodal and intramodal competition faced by the small railroads on a daily basis has intensified, rather than abated, over the last two decades.

Despite the small railroads' limited (and usually non-existent) discretion with respect to freight rate-making), and in the face of this intense competition, the revenues generated by these railroads must cover a disproportionately high share of fixed costs in comparison to the Class I railroads and other modes of transportation. As the Board is well aware, and as is echoed in the Joint Study, "[t]he railroad industry has large fixed costs; unlike barges and trucks, they provide their own roadbed, tracks, terminals and facilities. The fixed costs are not affected by the volume of traffic on the line, so theirs is a decreasing-cost industry; these fixed costs are spread over all their volume." Joint Study at 6. As detailed in Mr. Martland's Verified Statement, however, small railroads generally have an extremely small "plant," most of the railroads being less than 100 miles in length. (Martland V.S. at 15-16). That plant size, and the substantially lower volumes, limits the small railroads' ability to spread their fixed costs making the "first or last mile" inordinately costly in relation to long distance line

hauls. Class I carriers, on the other hand, can spread their fixed costs over a much larger system and traffic base. (Martland V.S. at 21-22)

These costs will not abate any time soon. As the Joint Study observed, it is anticipated that rail demand over the next several decades will necessitate that small railroads expend in excess of \$13 billion on infrastructure investments. Joint Study at 344-345. Further, the shift to larger rail cars has significantly affected small railroads because they do not have the financial resources to upgrade their lines. Joint Study at 292. The Joint Study pointed out that the estimated cost of upgrading railroad tracks and bridges to contemporary weight standards is approximately \$137,000 per mile. Washington and Iowa State studies, cited in the Joint Study, estimate that upgrading branch lines to handle heavier rail cars would cost \$250,000 to \$300,000 per mile, exclusive of bridge rehabilitation costs. Joint Study at 292.

In the face of those extensive costs, the Joint Study pointed out that the major railroads averaged more than \$560,000 in revenue per route mile, whereas the small railroads averaged only a little more than \$85,000 per route mile. Joint Study at 292.⁵ Mr. Martland believes that figure to be even lower - \$80,000 per route mile. (Martland V.S. at 21). Therefore, it is anticipated that a shift to larger rail cars will actually result in the abandonment of some route miles by small railroads. Joint Study at 303. By the same token, the increased costs of positive train control, potential implementation of dark territory switch position indicators, and the disproportionately (relative to Class I's) high cost of capital expense and equipment financing for the small railroads would place further pressure on the financial viability of the small railroad segment of the industry. Changes to the regulatory scheme at this juncture would severely exacerbate this situation, particularly in light of the fact that, as indicated above, despite

⁵ Based on 2007 figures.

operating approximately one-third of the nation's rail system, small railroads earn barely five percent of national freight revenues.

Thus, despite the Board's view that the "Industry" is in substantially stronger condition financially than it was in 1980, the fact is that many of the small railroads continue to be faced with a day-to-day struggle to compete, cover fixed costs and infrastructure investment, and serve their customers. They do not have market power, and one cannot abuse what one does not have. Consequently, proponents of turning back the "regulatory clock" would have this Board reduce the revenues of the small railroads through increased rate and/or access regulations, which could have the very real effect of eliminating the very service which those proponents would ask the Board to intensely regulate.⁶

III. 49 U.S.C. § 10705 (ALTERNATIVE THROUGH ROUTES)

49 U.S.C. § 10705 primarily focuses on the authority of the Board to prescribe through routes and joint rates and the circumstances under which an origin or destination carrier could be required to "short-haul" itself. Aspects of Section 10705 apply in the context of bottleneck proceedings as well, but in order to address the Board's inquiries sequentially, these Comments will predominately address the bottleneck issues in subsection VI, *infra*.

Section 10705 has not been extensively used in the post-Staggers era. *Entergy Arkansas, Inc. & Entergy Services, Inc. v. Union Pacific Railroad Company, Missouri &*

⁶ The Board requested that parties address the findings of the Christensen Study in addition to those of the Joint Study. The contribution of Class II and Class III railroads to the competitiveness of the railroad industry is clearly not the focus of the Christensen Study. However, ASLRRRA believes that any policy decisions which may arise from the Christensen Study must address both the nation's 550 small railroads in the competitive landscape as well as the effect on those railroads of policy decisions arising out of the study. This is not meant to be a criticism of the Christensen Study, but rather an admonition that, as massive and thorough as that study may be on the subject matter it was assigned to review, there are factors beyond the Christensen Study that the Board should consider before crafting regulations or policy from it.

Northern Arkansas Railroad Company, Inc. & BNSF Railway Company, Docket No. 42104 (STB served March 15, 2001) ("*Entergy*") constitutes the Board's most recent pronouncement with respect to through-route prescription.

Traditionally, Section 10705 relief has only been available pursuant to the competitive access rules in 49 C.F.R. § 1144.2, which require that a showing of anti-competitive conduct, through an abuse of market power, must be a predicate to any such relief. In *Entergy*, the Board suggested an alternative standard pursuant to which Section 10705 relief might be available if a party could establish that the prescribed through-route was "better" or "more efficient," in lieu of showing anti-competitive conduct. *Entergy* at 7, citing *Central Power & Light Co. v Southern Pac. Transp. Co.*, 1 S.T.B. 1059 (1996), *aff'd sub nom. MidAmerican Energy Co. v STB*, 169 F.3d 1099 (8th Cir. 1999).

ASLRRRA believes that the correct standard for Section 10705 relief should continue to be anti-competitive conduct resulting from an abuse of market power. Regardless of which party has the burden of proof, the analysis of preferred routes would be misplaced without a predicate establishing that one or more rail carriers in the route had market power and abused that market power in an anti-competitive fashion. As discussed in Section II, *supra*, traditionally the smaller railroads have not had market power, let alone the ability to abuse that market power. Intensive competition has become a concept which the small railroads live with on a daily basis, whether by truck, barge, Class I railroad or nearby transload and intermodal facilities.

Given the relatively short length of the small railroads, it is unlikely that they could be short-hauled. Nevertheless, regardless of how unlikely that circumstance might be, when small railroads are beset by competitive alternatives to the right and to the left, above and

below, it makes no sense that the absence of market power should fail to play a role in the through-route prescription analysis.

Furthermore, the small railroads' rail lines are highly concentrated from a risk standpoint in the sense that relatively few customers account for the vast majority of traffic on their line segments. As discussed in greater detail in Mr. Martland's Verified Statement, information supplied by ASLRRA members reveals that, typically, three customers account for 66.66% of the rail traffic shipped by each small railroad. (Martland V.S. at 18, 24). Loss of all or a portion of the revenues from any one of those shippers can have a dramatically deleterious effect on the financial viability of the rail carrier in view of the high infrastructure and fixed costs which must be supported by those revenues. Eliminating or reducing those revenues through a prescribed short-haul for the benefit of one shipper would, therefore, have a cascading effect which would directly and adversely impact all shippers on the rail line. Unlike the Class I railroads, the small railroads' costs cannot be spread over a vast rail system or large customer base (Martland V.S. at 23-24). All of the freight revenues generated by customers on a small rail line are vitally necessary to sustain the financial viability of that line. For this Board to depart from the traditional regulatory model, and ignore the existence or absence of market power and abuse of that market power in a through-route prescription analysis, serves no valid purpose, and could have the very real effect of undermining the financial viability of many small railroads.

It should also be noted that the railroad industry has not stood idly by when use of an alternative route between the small railroads and the Class I's made sense. First, contrary to the perception of some, the ASLRRA determined that currently only approximately 70 small railroads have contractual obligations that limit their access to more than one Class I railroad. Second, the rail industry on its own has addressed methods for facilitating alternative routes

when, in 1998, the ASLRRRA and the AAR negotiated the landmark Railroad Industry Agreement ("RIA"), which provides the potential for waiving contractual obligations with respect to new traffic in a variety of circumstances, thereby facilitating alternate route access for small railroad customers. The RIA was amended in 2004 to make it even more expansive with respect to waiver of these contractual obligations. Over the course of the last six years, data supplied to the ASLRRRA reveals that, of the paper barrier waiver requests submitted to Class I's, an average of 71% were granted.⁷ As a consequence of these waivers, new traffic was able to flow over an alternate Class I route, despite a contractual obligation in place at the time the small rail line was purchased or leased from the Class I granting the waiver. Clearly, private negotiations by and between the rail carriers with respect to joint rates and routes can and do work. The ASLRRRA believes it is incumbent upon this Board not to intervene except in circumstances of blatant abuse of market power.

IV. 49 U.S.C. § 11102(A) (TERMINAL FACILITIES ACCESS)

So-called "terminal trackage rights" under 49 U.S.C. § 11102(a) are perhaps the most drastic form of access relief that the STB can order. Terminal trackage rights compel a rail carrier to allow another railroad to enter the first railroad's line and literally "pirate" its business away. The STB has been extremely hesitant to utilize this authority, and should remain so, particularly in the context of small railroads. A more permissive use of terminal trackage rights could have catastrophic impacts on their continued ability to provide service.

Although terminal trackage rights are not specifically referenced in the Board's competitive access rules at 49 C.F.R. § 1144, it has been clear for twenty-five years that the same anti-competitive standards have governed requests for relief under Section 11102(a). *See*

⁷ ASLRRRA 2006, 2008 and 2011 surveys.

Midtec Paper Corp. v. Chicago & N.W. Transp. Co., 3 I.C.C.2d 171, 178 (1986) ("Although the rules in *Intramodal*⁸ do not specifically cover terminal trackage rights, the underlying public interest test in §§ 11103(a) and (c) is the same and, given the relationship between the issues and the remedies, we believe that the public interest analysis should be similar."); *aff'd sub nom. Midtec Paper Corp. v. U.S.*, 857 F.2d 1487 (D.C. Cir. 1988) (citations omitted). Thus, to prevail in a terminal trackage rights case, a complainant must show that a rail carrier has used its market power to extract unreasonable terms on through movements or, because of its monopoly position, has shown a disregard for the shipper's needs by rendering inadequate service. As discussed above with respect to alternative through routes, it makes no sense to remove that anti-competitive market power standard governing terminal trackage rights. Where market power does not exist, regulatory intervention is not only unnecessary but inappropriate.

This is particularly the case for the traffic that small railroads handle in what might be considered "terminals." By their nature, terminals, as traditionally understood, are served by more than one railroad and are of defined geographic scope. There will thus always be a nearby carrier – usually at least one Class I railroad – to which a small railroad's traffic can be diverted through a transload or intermodal operation. The types of traffic handled by small railroads are susceptible to just that kind of alternative transportation, so the inherent nature of a small railroad's service in "terminals" is inconsistent with the possession or abuse of market power. No legitimate statutory or regulatory purpose is served by the Board *ignoring* that absence of market power in terminal trackage rights cases, and relying instead on a more lenient and amorphous concept of whether competitive access through terminal trackage rights would be "better" or "more efficient" than existing service. Small railroads already have every incentive to

⁸ *Intramodal Rail Competition*, 1 I.C.C.2d 822 (1985).

provide efficient, adequate customer service on rail lines within terminals, knowing that otherwise they will lose the business through the marketplace.

Historically, of course, the classic statutory purpose underlying the Board's authority under Section 11102(a) was to eliminate the need to invest scarce railroad capital dollars in the construction of wholly redundant rail facilities within terminals. *See, e.g., Spokane, P. & S. Ry. Co. and Union P. R. Co. -- Control*, 348 I.C.C. 109, 142 (1975). That rationale is outdated and outmoded in a transportation world that is increasingly reliant on intermodal and transload options for a widening range of traffic. Railroads in 2011 are not going to build new rail lines in metropolitan terminals to access traffic. They do not need to; instead they will work with the serving small railroad to serve the customer, or they will use intermodal options to capture the traffic for their own nearby lines. A reinvented terminal trackage rights remedy is not needed to assure that the small railroads continue to provide competitive and efficient service within terminals.⁹

Such a reinvented remedy would also tend to have disproportionate impacts on smaller carriers. As discussed above, small railroads typically do not have a broad traffic base, and often rely on a limited number of shippers for a large amount of their traffic. Terminal trackage rights essentially take shippers away from the incumbent carrier and give them to another carrier. For Class I railroads, the impact of any particular terminal trackage rights grant is likely to involve a miniscule part of their traffic base. For small railroads, the reality would be much different: they would face the loss of a significant proportion of their traffic on rail lines that were likely low-density and marginal to begin with. Ironically, in most cases the traffic would be lost to the very Class I railroad that wanted to rid itself of the customer in the first

⁹ Shippers, of course, continue to have rate reasonableness remedies against small railroads for such traffic. As noted below, however, shippers have seen no need to invoke those remedies.

place. In almost all cases, the small railroad lacks any opportunity to gain traffic from "reciprocal" rights granted in other terminals, as Class I railroads do.

These problems would only be compounded by any expansion or more liberal construction of what is considered a "terminal." Allowing large railroads direct access to customers along a small railroad's line *outside* of traditional terminal areas would simply create additional unjustified opportunities for "cherry-picking" of the small railroad's most important customers. It would be the ultimate injustice to allow Class I railroads back into serving shippers that those same Class I's previously cast off, when the small railroads have been responsible for preserving and improving the infrastructure serving those customers.

Such unilateral traffic diversions from small railroads would jeopardize the viability of rail service to all remaining customers – both within the terminal and elsewhere on the carrier's line. Small railroads have worked diligently to increase traffic on lines they inherited, in most instances, from Class I's. They have had no choice: abandonment of those lines was frequently the only prior option. Particularly in the absence of any evidence of market power or abuse, the Board should be extremely cautious in allowing the lifeblood traffic of smaller railroads to be siphoned away.

V. **49 U.S.C. § 11102(C) (RECIPROCAL SWITCHING AGREEMENTS)**

Like alternative through routes under Section 10705, reciprocal switching relief under 49 U.S.C. § 11102(c) is specifically subject to the competitive access rules codified at 49 C.F.R. § 1144. For the reasons stated above, there is no basis for the Board to depart from those existing and well-established rules, or to ignore actual market conditions in deciding whether to force one carrier to grant another access to its customers. Section 11102(c)(1) specifically contemplates a Board analysis of whether a reciprocal switching agreement is "necessary to

provide competitive rail service." ASLRRA believes that standard must necessarily incorporate the "public interest" test contained elsewhere in Section 11102(c)(1), and that the Board's competitive access regulations and *Midtec* principles represent a reasonable interpretation and accommodation of those standards.

The Board's approach to reciprocal switching access was clear and longstanding at the time that Congress adopted ICCTA in 1995. Certainly Congress had the legislative opportunity there to recalibrate the nature and availability of reciprocal switching relief if it believed that such changes were necessary or advisable. Yet there is nothing in the statute or legislative history to indicate that Congress had anything approaching such an intention. Instead, its clear desire was to promote the current level of regulation of the industry and thereby assure its financial health. The ASLRRA is not aware of *any* requests to invoke reciprocal switching relief before the Board since the time of ICCTA's passage. The Board should not be imposing what Congress did not want and shippers do not need.

Because reciprocal switching rights, unlike terminal trackage rights, do not involve the physical incursion of one railroad onto another's line, it may be tempting to view reciprocal switching as a less burdensome, and therefore less threatening, remedy on the incumbent carrier. But as discussed in Section VII below addressing access pricing, the effect of forced reciprocal switching access on any particular Class II and III railroad would be equally devastating. Permitting the Class I railroads to "cherry-pick" the small railroads' largest customers, through the artifice of reciprocal switching (ironically, the Class I typically jettisoned that customer when it spun off the line to the small railroad), would wholly undermine the small railroads' ability to serve the balance of their customers. As with terminal trackage rights, small railroads would have virtually no opportunities to mitigate these losses with reciprocal switching

rights obtained elsewhere. Further, isolating the reciprocal switch rates charged to that one customer (solely for the benefit of that customer and the railroad seeking access) with no regard for the overall fixed and variable costs associated with service to all shippers on the small railroad, would effectively shift a larger portion of those costs (with corresponding rate increases) to the balance of the small railroad's customers. The imposition of such remedies would quickly upend the delicately balanced financial position of smaller carriers and turn marginally profitable lines into abandonment candidates.

VI. BOTTLENECK RATES

ASLRRRA does not believe that any change in the so-called "Bottleneck" rule is necessary to address pricing issues or exercises of market power concerning the small railroads. The current rule, as established in *Central Power & Light Co. v Southern Pac. Transp. Co.*, 1 S.T.B. 1059 (1996), *on reconsideration*, 2 S.T.B. 235 (1997), *aff'd sub nom. MidAmerican Energy Co. v. STB*, 169 F.3d 1099 (8th Cir. 1999), provides that rate reasonableness challenges must be brought against the rate for the entire origin-destination rail movement, rather than against rates for individual segments of the movement. For instances where a small railroad originates or terminates an interline shipment, that means that a rate complaint cannot be brought against the small railroad for only its portion of the movement and there is no reason to believe that the ability to bring such complaints is necessary or warranted.

First, because small railroads have no long haul to protect, they are fundamentally different from the classic "bottleneck" situation involving a Class I railroad. In those cases, the Class I exclusively serves the origin and/or the destination, and faces competition from another carrier for a portion of the movement. Shippers seeking "bottleneck" relief are challenging the Class I's ability to price service on the bottleneck segment in a manner that favors longer-haul

single-line service over interline service with the other carrier. This traditional bottleneck paradigm ignores the very existence of the small railroads' movements. Small railroads provide service from their customers to nearby Class I connections, and seldom have meaningful opportunities to move traffic over longer distances to a more distant alternative connection. Their pricing reality simply does not include the ability to preference a long haul.

In addition, as explained above, small railroads often lack any pricing authority over their portions of interline movements handled with Class I railroads. A significant portion of small railroads receive a contractual, per car payment from the Class I, which treats the stations on the small railroad as its own and determines itself a single transportation rate for the entire origin-destination movement. The small railroad has no published proportional rate for its movement, and does not participate in the creation of a "joint rate" in the normal sense. Allowing a separate rate challenge to the small railroad's movement would first require the small railroad to publish a rate for that movement, and thus upend the pricing arrangement created by the underlying line sale contract or lease through which the small railroad purchased its line. Where the Class I is setting a single factor rate for the entire movement it is appropriate that any rate complaint be confined to that movement.

Even where such arrangements are not in place, small railroads simply do not have the ability to impose unreasonable pricing on segments where they may meet a technical definition of a "bottleneck" carrier. The lack of market power held by small railroads is aptly demonstrated by the virtual absence of rate complaints brought against those carriers. Indeed, in the history of the STB, rate reasonableness cases brought directly against a Class III railroad

number exactly one. That case was dismissed six months after filing due to settlement.¹⁰ There also has been only a single rate complaint filed against Class II carriers in the same period.¹¹ That case subsequently settled as well. Finally, in the past year, complainants in two rate cases reluctantly added several small railroads as defendants well after the initial complaint was filed. The small railroads were joined due to a perceived need to comply with the requirements of the bottleneck rule and *Great Northern Ry. Co. v. Sullivan*, 294 U.S. 458 (1935), and all were quickly dismissed.¹² Together, these four instances constitute the sum total of any involvement in rate reasonableness matters by the nation's small railroads over the past fifteen years. Far from being necessary, regulatory intervention in Class II and Class III rate-making has barely ever been requested.

The Board's own experience thus confirms that market power abuse by smaller carriers is a non-issue among rail shippers. That is precisely because small railroads do not possess market power to exercise in the first place. Despite operating approximately one-third of the nation's rail system, small railroads earn barely five percent of national rail freight revenues. They handle competitive traffic over generally short distances, and face the widespread availability of intermodal and transload options. The consequence of above-market pricing is not only the loss of traffic but the loss of viability of the small railroad operation itself. The reality is that much of the traffic handled by small railroads did not move on their rail lines in the past, and does not need to in the future. Only competitive pricing and service has drawn traffic back to these often marginal rail lines, and the economics and financial reality of small

¹⁰ *Ablemarle Corporation v. The Louisiana and North West Railroad Company*, Docket No. 42097 (STB served November 14, 2006).

¹¹ *See Minnesota Power v. Duluth, Missabe & Iron Range Ry. Co.*, 4 S.T.B. 288 (1999).

¹² *See Total Petrochemicals USA, Inc. v. CSX Transportation, Inc., et al.*, Docket No. 42121 (STB served February 4, 2011); *M&G Polymers USA, LLC v. CSX Transportation, Inc. and South Carolina Central Railroad Company*, Docket No. 42123 (STB served February 4, 2011).

railroads will require that such competitive pricing and service continue in the future. Changes to the bottleneck rule, as applied to smaller railroads, are not needed to assure that result.

Moreover, the requirement to examine an entire rate from origin to destination derives from *Great Northern, supra*, and it is not apparent that the Board is free to overturn that precedent as a matter of regulatory policy. In the context of small railroads, the existing precedent and policy are also logical: they reflect the fact that the typical movements in which small railroads participate were originally single-line Class I movements. The spinning off of lines to small railroads should not allow shippers to bring separate rate challenges against individual segments of an historically unitary route.

Finally, creating new rate complaint avenues against small railroads entails significant administrative problems and burdens. Cost structures for small railroads and Class I's are dramatically different, and small railroads have not been part of the Uniform Rail Costing System or annual R-1 reporting for decades. As recent cases have shown, the expense of defending stand-alone cost rate litigation can be crushing for small railroads. Such expenses are particularly unjustified where the small railroad handles only a small handful of cars annually, transports those cars for only a short distance and does not participate in or benefit from any alleged "excessive" rate.

VII. ACCESS PRICING

The Board has inquired what the access price should be if it were to modify its competitive access rules. ASLRRRA respectfully submits that, as discussed in detail above, the competitive access rules should not be modified, at least insofar as those rules pertain to small railroads. Indeed, if the competitive access rules are modified, and the ASLRRRA vigorously

urges that they should not be, then the Board should specifically protect the small railroads and their customers from the impact of those modifications.

Clearly, the revenues derived by small railroads from all of their customers, collectively, are vital to sustaining the financial viability of those rail lines. Any regulatory rule which provides access by another carrier to the lines of a small carrier for the purpose of "cherry picking" customers, will, by any measure, undermine the sustainability of the financial model and continued operation of that rail line. There is no access price, other than perhaps a thoroughly prohibitive price, which could adequately compensate the small railroads for the loss of their customers and the corresponding revenue.

The ASLRRRA members must carefully balance their costs and their operations to serve all of their customers in the most efficient way possible. Crews do not serve one customer, they serve many. New ties, new rail and new bridges do not serve one customer, they serve many. If a crew that previously served four customers now serves three, does that crew get laid off? If so, service to the balance of the customers will suffer significantly. Do the remaining customers' rates get raised to offset the loss of revenue from the one customer? Then rail service to the balance of those customers becomes less viable and less cost-effective. Small railroads operate concentrated rail systems, where the mandated loss of one customer through the regulatory process will have a cascading effect on the overall sustainability of the entire enterprise. There is no access price that could adequately compensate for that loss.

VIII. IMPACT

Those who cannot remember the past are condemned to repeat it.
-George Santayana

The rail industry is not so far removed from the financial catastrophes of the 1960s and 1970s that the financial devastation could not occur again if proponents of increased

regulation are successful. The small railroads in the United States effectively rose like a phoenix out of the ashes of that financial devastation as a direct result of the adjustments to the regulatory environment embodied in the 4-R and Staggers Acts, as recodified by ICCTA. The ASLRRA members' financial viability is not only dependent on their business acumen, but it is also dependent on the flexibility of the regulatory structure which enables them to react to the exigencies of an extremely competitive marketplace.

Small railroads need to have the ability to invest in the infrastructure of rail lines inherited from the prior owners that suffered from little money being invested in them due to those lines' light density. Further, many of the small railroads need to inject capital funds in their lines to bring them up to contemporary weight standards to remain competitive. They will not be able to do this if the regulatory structure governing them is changed.

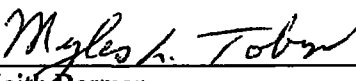
The small railroads have, by their very nature, provided a competitive rail alternative on light-density lines where the Class I's could not sustain the continuing viability of those lines. To enact a regulatory structure which would allow railroads to "cherry-pick" customers on the smaller railroads, or which allows customers to focus their rate challenges to the small railroad rate alone without regard to the fact that the small railroads are part of a larger rail movement, serves no valid purpose. The ASLRRA agrees that this Board should protect the small railroads' customers from abuse of market power. The current regulatory structure is in place to afford that precise opportunity.

Furthermore, the ASLRRA believes that, even if an increase in the regulatory regime is imposed on the Class I railroads alone, that increase in regulation will have a severe and adverse impact upon small railroads. Such increased regulation is likely to reduce the Class I's willingness and ability to allocate resources and investments to assets serving the carload

network, including lighter-density rail lines, yards, and cars dedicated to single-car or small unit train service, all of which are the lifeblood of the small railroad industry. By the same token, such reduction in investment would very likely result in reduced interchange frequency, increased car hire rates, additional accessorial charges, and a variety of other increased costs, all of which will further impact the small railroads' ability to compete in the marketplace and service their light-density lines.

To undermine the opportunity of small railroads to compete in the marketplace through the artificial imposition of regulatory constraints, without regard to any abuse of market power, will undo all that has been accomplished in preserving the infrastructure, the service, and the jobs in large areas of the country associated with light density rail lines. That cannot be the result which Congress intended when it enacted Staggers and ICCTA.

Respectfully submitted,

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Dated: April 12, 2011

VERIFIED STATEMENT

OF

CARL D. MARTLAND

My name is Carl D. Martland. I have been actively involved in research concerning rail and freight operations and economics for more than 40 years. I graduated from MIT with a BS in Mathematics in 1968, an MS in Civil Engineering, and a Civil Engineer degree in 1972. I was a research associate and lecturer in the MIT Department of Civil and Environmental Engineering from 1972 to 2007, the director of the Civil Engineering Rail Group from 1978-2001, and the Program Manager of the Association of American Railroads Affiliated Research Laboratory at MIT from 1983-2001. After retiring from my full time position in June 2007, I have continued to be a research affiliate of the department and I have continued to consult with both railroads and public agencies in the general areas of rail operations and economics and competition within freight transportation systems.

At MIT, I developed and taught graduate-level subjects on Freight Transportation Management, Transportation Systems Analysis, and Transportation Demand & Economics. I also developed and taught a subject on project evaluation and, in 2011, published a textbook "Toward More Sustainable Infrastructure: Project Evaluation for Planners and Engineers". I have offered special courses on railroad operations and economics as part of MIT's summer session and participated in special courses on railroad management for the World Bank, the Chinese Railways, the Indian Railways, the Association of American Railroads ("AAR"), and for individual railroads.

I have published more than 100 papers and research reports related to rail transportation, including papers that earned awards from the Pan American Railway Congress, the Canadian

Transportation Research Forum, and the Transportation Research Forum. In 1991, I was a co-author of the paper that won the Transportation Research Forum's Outstanding Paper Award; in 1989, 1990, 1991, 1993 and 1994, I was a recipient of the Conrail Award for the Best Paper on Railroads presented to the Transportation Research Forum. In 1997, the Transportation Research Forum selected me as the recipient of the Distinguished Transportation Researcher Award, "in recognition of his pioneering the planning and costing techniques that are now commonly used by many US railroads; his research has aided the revitalization of America's railroads, improving their efficiency, productivity, and service quality".

In the course of my rail research, I have supervised more than three dozen studies concerning service design, network rationalization, costing and control, track maintenance planning, equipment utilization, preventive maintenance, terminal operations, intermodal transportation, productivity, and technology assessment. These research projects were supported by U.S. DOT, Federal Railroad Administration, the AAR, individual railroads, and various other federal, state, and local government agencies. I have participated in studies of freight operations in Argentina, Bolivia, Brazil, Canada, Columbia, China, Egypt, India, Panama, Japan, Spain, and Thailand. In the course of this research at MIT, I supervised more than 50 theses and worked with more than 100 research assistants.

I have participated in many studies affecting rail industry profitability and productivity involving both Class I and smaller railroads. I supervised a series of studies of freight service and equipment utilization for the Boston & Maine Railroad that led to annual savings of more than \$3 million that were instrumental in allowing the railroad to emerge from bankruptcy. The Service Planning Model, which was developed under my supervision in that study, was the most widely used model for service planning in North America from the early 1980s to the mid 1990s.

I also supervised the design, programming, and application of TRACS - the Total Right-of-way Analysis and Costing System – that has been used by many railroads for maintenance planning and costing. I supervised the use of TRACS along with other models to help the rail industry assess the economics of heavy axle loads, premium components, and alternative maintenance techniques as part of the larger industry research effort that led to the adoption of the 286,000 pound GVW standard for interchange traffic. From 1990 to 1994, I supervised a major study of rail freight service reliability that quantified rail service levels for various traffic classes and identified strategies for improving performance, notably in the areas of service design and terminal control. In 2004, I supervised a study of service reliability for traffic that originated or terminated on short line railroads. Most recently I have completed studies of the competitive effects of potential increases in truck/size weights, the competitive effects of the CN/EJE merger, the long-term benefits of the AAR research aimed at increasing rail life, and the role of railroads in regional transportation planning.

In summary, because of my extensive background in rail research, I have had many opportunities to study costs, technology, productivity, service quality, profitability, competitiveness, and other major concerns facing Class I railroads, regional railroads, and short line railroads. Because of my teaching role at MIT, I have been able to place this practical research within the broader context of transportation systems analysis, transportation economics, and public policy.

Executive Summary

A fundamental concern for railroads, as for other infrastructure-based systems, is that the high fixed costs associated with the infrastructure must be covered along with the variable costs of operations. As traffic volume increases for any rail yard or rail line, the fixed costs can be

spread over more customers. However, if traffic volumes are low, then the loss of just one large customer could require a large increase in the average fixed costs that would have to be reflected in the pricing for remaining customers. Since competing transportation and logistics options are always available, a small railroad will not have sufficient revenues from the remaining traffic. Thus, the loss of a single major customer could be devastating, resulting in discontinuance of operations by the small railroad and loss of service for its remaining customers. Equally troublesome would be regulatory proceedings that resulted in large reductions in revenue from serving a major customer. The implications for the public are also important to consider; if small railroads are forced to cut back on their operations, then more trucks will end up on the highways.

Given the high fixed costs associated with rail operations, average costs will be far above variable costs for small railroads operating over light density lines. Whether or not revenues for small railroads are reasonable therefore depends upon a much different set of factors (as compared to factors relevant to the Class I railroads) for determining whether total origin-to-destination rates are reasonable. Moreover, regulations or rulings that limit small railroad earnings or that divert traffic by requiring access for competing carriers will have a large anti-competitive impact if the fixed costs of the small railroad have to be allocated to fewer carloads of traffic.

My analysis shows that increased regulation of the small railroads will have a series of devastating impacts on the small railroads, their employees, the communities they serve, and their customers as follows:

- Allowing other railroads to access a small railroad's customers will not reduce the fixed costs of the small railroad's operation, but will divert traffic from the small railroad and reduce its revenues.
- Requiring lower rates – whether by reducing rates charged by small railroads or by reducing rates charged by Class I carriers that share revenues with small railroads – will damage the financial position of any small railroad that is struggling to cover fixed costs and earn an acceptable return to the owners.
- Legislation or regulations that allow open access or that limit small railroad revenues will hinder the ability of small railroads to handle time-sensitive, service-sensitive or price-sensitive traffic. Small railroads typically receive more than half of their revenue from their top two or three customers. Enabling other carriers to capture even one of these customers would severely hurt even the healthiest of the small railroads. Regulatory actions that require small railroads to accept substantially lower revenue from one or more of their largest customers would similarly imperil the carriers' ability to survive.
- Dividing low density operations among two carriers through increased regulation may reduce rates for one or two customers in the short run, but will certainly increase costs in the long run and threaten the ability of the small railroad to continue to serve all of its customers.

Three Basic Economic Issues

This statement addresses some of the key operating and economic characteristics of the short line and regional railroads represented by the ASLRRA. Each of these railroads is smaller than the smallest Class I railroad, and the great majority of them are much smaller. In this

statement, I will therefore refer to them collectively as "small railroads" or "smaller railroads".

Three of the most important characteristics of smaller railroads are as follows:

- A high proportion of their total costs are fixed. Any significant loss of traffic volume or reduction in revenue threatens the sustainability of their operation.
- A high proportion of their traffic mix consists of general merchandise traffic. Small railroads operating over limited networks facing competition from other modes and other railroads have very limited pricing power in serving this traffic.
- Their properties and effective marketing territories are limited in size. As a result, almost all of their traffic originates or terminates on line and must be interchanged with a connecting carrier.

These three characteristics are critical to understanding how proposed changes in regulation might affect smaller railroads.

In order to document these characteristics, the ASLRRA conducted a survey of a representative sample of its members concerning traffic volumes, physical characteristics, resources, and other factors that will be useful for the STB to consider as it contemplates new regulations for the rail industry. The sample railroads were selected by the ASLRRA as representative of small railroads in terms of physical size, traffic volumes, commodity mix, and geographic location. At my request, enough railroads were included in the sample to ensure that summary results would accurately portray the characteristics and performance of smaller railroads.¹ I am therefore confident that the results obtained from the survey do fairly represent the characteristics of all of the smaller railroads.

¹ The ASLRRA distributed the survey to 127 railroads, all of whom responded. The responses represent nearly a quarter of all Class II and Class III railroads, including railroads from all regions of the country, railroads of differing sizes and traffic volumes, and railroads serving different kinds of customers.

My statement also includes results from earlier surveys conducted by the ASLRRA² as well as other publicly available data. I use these multiple data sources together with well-known economic principles to document the operating characteristics of smaller railroads and the competitive transportation environment within which they operate. The next three sections discuss each of the three main issues in more detail.

Average Costs are Very High for Small Railroads

On high density Class I rail lines, the fixed costs of track maintenance, supervision, and communications and control can be spread over vast amounts of traffic. As a result, average costs of operation over these lines are not greatly in excess of variable costs, and it is relatively straightforward to determine costs of operation over any portion of the network. Moreover, changes in traffic volumes will not have a dramatic impact on variable or average costs per ton or per ton-mile.

For light density rail lines, fixed costs must be allocated to a much smaller amount of traffic, and average total costs will be well in excess of variable costs. Given the small size and light densities typical of the small railroads, their fixed costs are high. First, consider labor costs. For low-volume operations, a high proportion of labor costs are actually fixed: someone has to answer the phones and handle the administrative details, someone has to inspect and maintain the track and locomotives, and at least one crew must be available to operate a train a couple of times of week. At least a half dozen or a dozen employees must be available to handle the workload of all but the very smallest, lowest volume railroads.

In the ASLRRA 2011 Survey, the maximum number of employees was 210, the average number was 28, and the median was 18. The data provided in the survey made it possible to calculate various measures of labor productivity, as shown in Table 1. In this table (and in

² ASLRRA, "Short Line and Regional Railroad Facts and Figures", 2004 and 2009 editions

several subsequent tables), I show results for several categories of smaller railroads. Category A includes the respondents with the highest annual carloads, while the last category includes those with the lowest traffic volume. The category with the most carloads also had the highest median number of employees and miles of road operated, and railroads in this category were most productive whether output was measured in terms of cars/day, car-miles per year or revenue ton-miles per year ("RTM").

**Table 1. Employee Productivity for Small Railroads
(Median Values for Each Group of Railroads)**

Category (Based upon Carloads per Year)	% of Smaller Railroads	Freight Employees – Total	Total 2010 Carloads	Miles of Road Operated	Cars/day per Employee	Car- Miles per Employee (1000s)	Ton-Miles per Employee (millions)
A	19%	63	50,948	317	2.37	150	4.8
B	19%	35	26,597	156	2.12	80	2.6
C	19%	27	16,830	123	1.83	64	2.1
D	19%	7	4,960	41	2.20	36	1.2
E:	24%	3	1,627	16	1.56	12	0.4
All Smaller Railroads	100%	18	12,123	70	2.06	47	1.5
Class I Railroads							10.1

Source of data: ASLRRRA 2011 Survey; AAR, Railroad Facts, 2010

Productivity declines with traffic volume, and the railroads with the fewest carloads were by far the least productive for each of the output measures. By way of comparison, the ton-miles per employee for the Class I railroads was 10.1 million in 2009, more than six times higher than the median value for the small railroads.

Table 2 shows a similar result related to equipment productivity. Once again the railroads are divided into multiple categories based upon annual carloads and various measures of output are shown. The table gives the median values for each category and for all of the respondents providing the necessary data. The key performance measure in this table is given in the final column, which shows the average equipment expenses per 1,000 RTM. The equipment

expenses, which include both maintenance and capital expenditures, are the average for three years (2008 to 2010). The final row shows the same measures for the Class I railroads in 2009. The average expenditures per 1,000 RTM are nearly twice as high for the small railroads as for the Class Is, once again illustrating the economies of density and scale associated with those extensive railroad systems.

**Table 2. Equipment Expense per 1,000 RTM
(Includes Maintenance Plus Capital Expenditures)**

Category (Based upon Carloads per Year)	% of Smaller Railroads	Total 2010 Carloads	Miles of Road Operated	Revenue Ton-miles (million)	Locos in Service	Average 2008-2010 Equipment Expenses per 1,000 RTM
A	38%	40,809	255	159	14	\$7.46
B	38%	12,199	77	24	5	\$22.07
C	24%	2,522	24	2	2	\$24.49
All Smaller Railroads	100%	12,048	70	20	5	\$15.39
Class I Railroads		26,005,348	152,000	1,532,214	24,045	\$6.91

Source of data: ASLRRA 2011 Survey; AAR Railroad Facts, 2010

Tables 1 and 2 show that average labor and equipment costs for small railroads are typically much higher than for the Class Is. The reason for this disparity is the high proportion of fixed costs associated with rail freight operations. A train requires a crew, even if there only are a few cars, and locomotives must be maintained even if they are only used for short hauls. Average costs associated with infrastructure are also very high for small railroads, as will be documented below as part of the discussion of light density lines. The basic problems are that wood ties deteriorate with or without traffic, brush must be cleared, snow removed, and washouts filled in even if only a single train is to operate on a line. Because fixed costs are high for both operations and infrastructure, average costs for traffic handled by small railroads will be highly dependent upon the volume of traffic that is handled.

In short, the less traffic, the higher the average costs. For this reason, if traffic on a light density line is split among two or more railroads as a result of competitive access or other regulatory initiatives, each railroad will have to provide switch engines and crews for reasonably frequent operations – further reducing the productivity of what initially was initially a costly service.

Small Railroads Primarily Serve Truck-Competitive Traffic

The traffic base for small railroads is built upon general merchandise traffic that is highly susceptible to diversion to truck. Few small railroads handle appreciable amounts of coal, automotive or intermodal, three commodity groups that are all well-suited to transportation by rail. Coal, automotive, and intermodal traffic originates at relatively few, high volume locations, almost all of which continue to be served by the Class I railroads. Moreover, most of this traffic is handled in highly efficient unit train service. In 2010, fewer than 8% of the approximately 550 smaller railroads handled any coal shipments at all and three of these smaller railroads handled nearly half of the total (Table 3). Automotive traffic was even more concentrated: only eight small railroads handled auto parts or new automobiles in 2010.³ Likewise, few small railroads handle any intermodal traffic, almost all of which originates and terminates at intermodal facilities owned and operated by or for the Class I railroads.

³ ASLRRA analysis of commodities handled by smaller railroads.

Table 3. Fewer than 8% of the Small Railroads Handle Any Coal Traffic

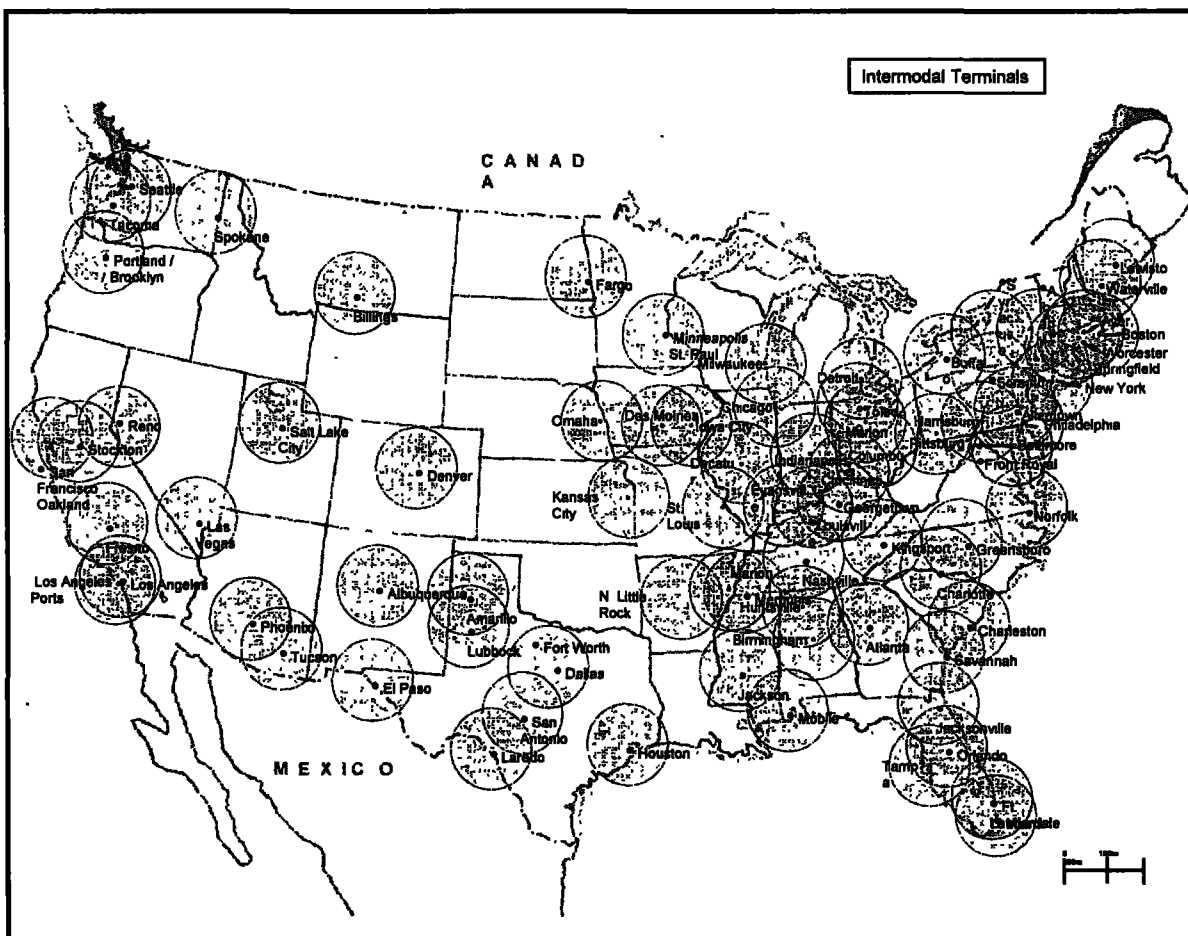
	% of Smaller Roads	Total Carloads per Year	Average Carloads per Year	Equivalent 100-Car Trains per Month	% of Small Railroad Coal Carloads
All Roads Handling Coal	7.1%	917,042	23,514	19.6	100.0%
Roads Handling at Least 100,000 carloads/year (> 4 unit trains per week)	0.5%	398,207	132,736	110.6	43.4%
Roads Handling at Least 5,000 carloads/year (1-4 unit trains/week)	3.5%	487,753	25,671	21.4	53.2%
Roads Handling 1,000 to 4,999 carloads/year (1-4 unit trains/month)	2.2%	27,555	2,296	1.9	3.0%
Roads Handling less than 1,000 carloads/year (< 1 unit train/month)	1.5%	3,527	441	0.4	0.4%

Source of data: ASLRRA analysis of 2010 traffic data.

According to the Intermodal Association of North America ("IANA"), which provides a guide to intermodal facilities on its web site, there are more than 75 intermodal terminals that provide COFC/TOFC service to essentially all of the country's' major metropolitan areas. The vast majority of these terminals are operated by or for the Class I railroads. A major intermodal terminal serves a territory that is roughly limited by the ability of a truck driver to make a round-trip from the terminal to the customer and back in one day. Where roads are subject to congestion, the hinterland for a major intermodal terminal extends perhaps 200 miles; in regions where congestion is less of a problem, the hinterland can extend 250 miles. Figure 1 places circles of 200-mile radius around the cities where there are major hub terminals. Blank areas that are not covered by one of these circles are more than 200 miles away from a major intermodal terminal. It is evident from this figure that the almost the entire region east of the Mississippi, much of the mid-west, and all of the west coast have good access to modern

intermodal terminals. As a result, few small railroads are immune from competition with this alternative form of transportation.

Figure 1 Major Intermodal Terminals Provide Competition for Most General Merchandise Freight
(circles indicate areas within 200 miles of a major intermodal terminal)



While they have small amounts of coal, automotive, and intermodal traffic, small railroads play a disproportionate role in what can be called general merchandise traffic, *i.e.* everything else. As shown in Table 4, smaller railroads handle more than 40% of all rail shipments other than coal or intermodal; for many commodities, there is a small railroad at the origin or the destination of the trip. Small railroads are therefore crucial if the rail industry is to continue to serve this important segment of the freight market. Since this traffic is highly truck

competitive, actions that hinder the ability of small railroads to serve their customers will tend to divert traffic from the railways to highways.

Table 4. Participation in Rail Shipments by Small Railroads
July 1, 2005 to June 30, 2006

Commodity	Handled by Small Railroads	Small Railroad at Origin or Destination	Terminal Road Only
All Commodities	23.3%	21.0%	2.6%
Other than Coal and Intermodal	41.5%	36.9%	5.5%
Leading Commodities:			
Pulp, Paper and Allied Products	57.0%	52.4%	3.8%
Lumber and Wood Products	58.8%	52.0%	5.6%
Waste and Scrap	51.1%	48.9%	3.6%
Metals and Products	52.0%	47.4%	6.2%
Food and Kindred Products	50.4%	44.8%	6.6%

Source: Martland, C.D. and Steven Alpert, "Origin-to-Destination Performance for General Merchandise Traffic Moving to or from Short Line Railroads", Journal of the Transportation Research Forum, Fall 2007

Transfer terminals are another factor related to the competitive situation faced by small railroads. Many commodities that are unsuited for containerized transportation can be handled through transfer terminals. A great variety of rail/truck transfer terminals exist, some of which are served by small railroads and many of which are served by Class I carriers. Since any rail traffic to or from such a terminal is already moved in part by truck, all of this traffic is susceptible to diversion either to truck or to a different transfer terminal operated by another railroad. The presence of accessible transloading options constrains the already limited small railroad pricing flexibility and threatens loss of business.

Except for coal unit train shipments and a few very specialized commodities, a smaller railroad's customers nearly always have the opportunity to use truck, and they may have an opportunity to use water transport. In most parts of the country, they will enjoy good access to a major COFC/TOFC terminal served by a Class I railroad. For many commodities, they will have

various options for moving shipments via transloading centers. Agricultural customers in particular have multiple options for moving their crops. Instead of using a local grain elevator that is served by a small railroad, they may truck their crop to a barge terminal or to a larger elevator that receives unit train service from a Class I railroad. Thus, even when a small railroad's customer continues to use rail, the smaller railroad can lose its share of the movement to a motor carrier. A customer's transport choices are based upon the available transport options and the total logistics costs associated with each option, taking into account not only transportation rates, but also loading and unloading costs, inventory costs, and the probability of loss and damage. If rail costs rise, any of these other transport options may become more attractive.

Competition does not just involve modal competition for given freight flows. Each rail customer competes with other companies who may use entirely different supply chains to produce similar products. If their logistics costs are too high, they may lose their business to other companies – and both they and their transport service providers will lose out.

Because of the intense competition for freight traffic and the limited size of their networks, smaller railroads have very little pricing power. The vast majority of their traffic is subject to diversion to another route or another mode, and their networks are too small to allow them much chance to participate if traffic patterns shift traffic away from their existing customers.

Respondents to the ASLRRA 2011 Survey stated that their traffic is highly susceptible to diversion to other modes. On the average, they described 84% of their traffic as subject to diversion; smaller railroads without any coal traffic indicated that close to 90% of their traffic is truck or barge competitive. These results are certainly consistent with my research experience in

studying freight market shares and modal competition. The general merchandise traffic that dominates the traffic mix of small railroads is precisely the kind of traffic that can also be handled efficiently by trucks.

In summary, the smaller railroads face intense competition from other railroads providing carload service, from intermodal operations, from trucks, and in some cases from water carriers. Because of their competitive situation with respect to trucks, the smaller railroads have a disproportionate importance to the public in terms of the environmental benefits that can be gained by shifting freight from truck to rail. Since most of the smaller railroads cannot rely on coal and intermodal, they must work harder than the Class Is to attract and retain general merchandise traffic. Making this task more difficult would not be good public policy.

Small Railroads Serve Customers Located on Light Density Lines

The territories served by small railroads are, by definition, much more limited than those of the Class Is. These railroads provide the "first mile" and the "last mile" of service, and few of them are large enough to have long hauls that compete with the Class Is for any significant amount of traffic. Whereas two Class I railroads might find many opportunities for such things as reciprocal switching, joint use of terminals, and trackage rights, the limited scale of the smaller railroads limits such opportunities. It is the low volume of traffic and the high costs of serving customers – not the lack of competition – that limits the productivity of light density rail operations.

Table 5 documents the relative size of these small railroads and the lack of concentration within the industry. For the small railroads that operate in the U.S., the average route-mileage is 99 and the median route-mileage is only 42. Only ten smaller railroads operate over networks

with more than 650 route-miles, and those ten roads only account for 18% of the total mileage of the smaller railroads. The other small railroads operate an average of just 83 route-miles.

Table 5. Network Size for Small Railroads

	Total	Top 5	Next 5	All Other
Total Miles	52,647	5,777	3,538	43,331
% of Miles	100%	11%	7%	82%
Average	99 miles	1,155 miles	708 miles	83 miles
Median	42 miles	1,214 miles	674 miles	40 miles

Source of data: ASLRRRA

Table 6 shows similar information for each of ten categories: the 50 railroads with the largest networks, the 50 with the next largest, and so on. The top 50 railroads have at least 271 route miles; the next 50 have 143 to 270 route-miles. At the other end of the spectrum, there are 183 that operate over fewer than 23 route-miles.

Table 6. Characteristics of Small Railroads

	Top 50	2	3	4	5	6	7	8	9	All Other
Total Miles	25,512	9,651	5,706	3,720	2,740	1,919	1,352	947	646	455
% of Miles	48%	18%	11%	7%	5%	4%	3%	2%	1%	1%
Average	510	193	114	74	55	38	27	19	13	5
Median	408	185	117	73	56	38	27	18	14	6
Minimum	271	143	89	63	46	32	23	15	10	1

Source of data: ASLRRRA

Table 7 shows the median and average route-miles for the railroads responding to the 2011 ASLRRRA Survey. The largest 20% of the respondents operate an average of 425 route-miles, which is similar to the top two categories in the previous table. The smallest 20% of the respondents operate an average of 11 route-miles, which is similar to that of category 9 in the previous table.

Table 7. Route-Miles Operated in 2011

Quintile	Number	Median Route-Miles	Total	Average
Largest	20%	395	10,619	425
2 nd	20%	160	4,312	172
3 rd	20%	72	1,906	76
4 th	20%	32	812	32
Smallest	20%	11	286	11
Total	100%	70	17,935	141

Source of data: ASLRRA 2011 Survey

Not all route-mileage is the same. Since the widespread introduction of heavier freight cars over the past 20 years, it has become critical for small railroads to upgrade their track structure and bridges in order to be able to handle heavier cars that can reduce a customer's shipping costs. The smaller railroads still require substantial investments to upgrade their infrastructure. The big problem is bridges, which are expensive to maintain and even more expensive to upgrade. The ASLRRA data show that only 40% of smaller railroads' bridges are capable of handling 286,000 pound GVW cars. Moreover, fully 40% of their route-miles are not capable of handling 286,000 pound GVW equipment, so a lot of work remains to be done.⁴

This discussion of route-mileage documents further that the ASLRRA 2011 Survey is representative of the industry. The survey included responses from a mixture of railroads in terms of both of route-mileage and in terms of their ability to handle 286,000 pound equipment.

Although the smaller railroads collectively serve a great many customers, each individual smaller road has a traffic base dominated by a few customers and a few commodities. In 2008, smaller railroads served a total of 11,836 customers, an average of only 21 per railroad.⁵ In the ASLRRA 2011 Survey, which covered a quarter of the industry, respondents served a total of 3,063 customers, an average of 24 per railroad. The number of customers per railroad ranged

⁴ ASLRRA, "Short Line and Regional Facts and Figures", 2009, p. 10; ASLRRA 2011 Survey.

⁵ Short Line and Regional Railroad Facts and Figures, 2009, pp. 7 and 9

from 1 to 150; the median number was 14. However, survey results reveal that, typically, 3 customers account for two-thirds of the traffic shipped by each small railroad. According to the respondents to the ASLRRA 2011 Survey, their customers employed more than 110,000 people in 2010, which is indicative of the importance of the small railroads to the regional economy. The small railroads continue to add new customers: the average road served 1.3 new customers in 2009-2010 and expected to serve 3.2 new customers in 2011-2012.

In other recent surveys conducted by ASLRRA, the railroads were asked to identify the carloads handled in their top five commodity groups. Of the railroads that responded to the 2006 survey, the single top commodity accounted for 53% of the traffic, the top three accounted for 72%, and the top five accounted for more than 80% (Table 8). Similar results were obtained in the ASLRRA 2011 Survey (Table 9). By way of comparison, the numbers for the seven Class I railroads in 2008 were as follows: 27% for the single largest commodity, 40% for the top three, and 48% for the top five.⁶ The small railroads clearly have a more concentrated commodity mix than the Class I railroads.

Table 8. Concentration of Small Railroad Traffic Base (2006)

Rank of Commodity (Carloads per year)	Carloads	% of Carloads	Cumulative %
1	229,684	52.7%	52.7%
2	48,687	11.2%	63.9%
3	36,940	8.5%	72.4%
4	16,801	3.9%	76.3%
5	22,127	5.1%	81.3%
All Other	435,978	18.8%	100%

Source of data: ASLRRA, "Short Line and Regional Facts and Figures", 2009

⁶ Source of data: AAR, "Analysis of Class I Railroads 2008"; note that intermodal traffic consists of FAK, so it cannot be considered to be a single commodity group.

Table 9. Concentration of Small Railroad Traffic Base (2010)

Rank of Commodity (Carloads per year)	Carloads	% of Carloads	Cumulative %
1	1,039,672	42.6%	42.6%
2	378,120	15.5%	57.1%
3	227,494	9.3%	66.4%
All Other	792,445	33.6%	100%
Total	2,437,730		

Source of data: ASLRRA 2011 Survey

Despite their small size, most small railroads have multiple connections to the Class I rail network. The typical small railroad has several interchange locations and connections to two or more Class I railroads. These roads are therefore pro-competitive, since they provide multiple routing options to their customers.

Almost all small railroad traffic either originates or terminates on line (Table 10). Most small railroads handle little or no local or overhead traffic, which further supports the fact that these railroads are almost entirely involved with the first and last mile, which are the most costly and time-consuming elements of rail freight operations.

Table 10. Freight Traffic by Traffic Class

	Local	Forwarded	Received	Bridged
2011 Survey respondents	9.6%	39.4%	41.9%	8.4%
2009 Survey Respondents	7%	36%	50%	6%

Source of data: Short Line and Regional Railroad Facts and Figures, 2009; ASLRRA 2011 Survey

Small railroads generally do not have, nor do they require large classification yards. The only exceptions would be some of the terminal railroads, which do serve high volumes of traffic in Chicago, St. Louis, and elsewhere and which are jointly owned by Class I railroads. Table 11 shows that small railroads typically only have a couple of low-volume yards that together handle only about 500 cars per week. The second row of this table shows that 72% of smaller railroads

have at least one yard, 35% have at least two yards, and only 18% have three or more yards. Many small railroads operate without any yards, simply moving cars between interchange and customer sidings. Table 12 shows that the largest yard reported by any of the respondents handled only 2,100 cars per week or 300 cars per day. To put this number into perspective, modern hump yards are designed to handle more than 2,000 cars per day, and many large flat yards were built to handle 500 to 1,000 cars per day. The costs of handling cars at a small yard are much higher than at a large yard, which is why the Class I railroads have consolidated their intermediate switching at hump yards. The small railroads, which lack the volume to justify efficient, high volume yards, must use small yards with high fixed costs per car for maintenance and operation.

Table 11. Size of Freight Yards on Small Railroads

	Largest Yard	Second Largest Yard	Third Largest Yard	Total, Three Largest Yards
Average Cars Handled per Week	376	300	156	561
% of Smaller Railroads	72%	35%	18%	

Source of data: ASLRRA 2011 Survey

Table 12. Size of Freight Yards on Small Railroads

Cars per Week	Cars per Day	Number of Yards
<70	<10	26
71-140	10 to 20	28
141-210	20 to 30	30
211-350	30 to 50	32
351-700	50 to 100	26
701-1050	100 to 150	9
1051-1400	150 to 200	4
1401-1750	200 to 250	3
1751-2100	250 to 300	2
Total		160

Source of data: ASLRRA 2011 Survey

With fewer route-miles, shorter hauls, and fewer customers, the smaller railroads have much less revenue than the Class Is. According to the ASLRRRA, the total revenue for these railroads was below \$4 billion in 2006 and 2008, compared to Class I revenue of \$50 billion in 2006 and \$59 billion in 2008.⁷ Thus the small railroads as a group only receive a small portion of total rail industry revenue. Table 13 shows that a high percentage of small railroads have limited revenues. The average revenue per route-mile is \$64,000; the median revenue per route-mile is \$80,000. To put these numbers into perspective, the average for the Class I railroads in 2009 was \$510,000 per route-mile. The smaller railroads have revenue density that is only 15% of the revenue density over the Class I network, which is why it is more difficult for them to cover the fixed infrastructure costs.

Table 13. Freight Operating Revenues

Total Revenue	% of Respondents	Average Revenue (\$million)	Median Revenue/Mile Operated
Under \$5 Million	49%	\$2.5	\$90,000
\$5-10 Million	23%	\$7.5	\$72,000
\$10-20 Million	18%	\$15	\$57,000
\$20-40 Million	10%	\$30	\$91,000
All Respondents	100%		\$80,000

Source of data: ASLRRRA 2011 Survey

Average Costs of Rail Operations on Light Density Lines

The Class I railroads have been able to consolidate large volumes of traffic on their main lines as a result of major advances in track materials, locomotive reliability, signaling, and infrastructure investment. For operations over these high density mainlines, variable costs are low because trains can be long, heavy and operate at relatively high speeds due to the high quality of the track structure. Since these lines handle so much traffic, fixed costs can be

⁷ ASLRRRA, "Short Line and Regional Facts and Figures", 2009; AAR, "Railroad Facts", 2009.

allocated to a great many carloads and the average fixed cost per carload is very small. However, most general merchandise traffic originates within terminal areas or along light density lines where traffic volumes are much lower, train speeds are slower, and fixed costs are a much larger component of total costs. Similar observations can be made for switching costs. Switching costs are much higher for the small flat yards that typically serve local industries than for the large hump yards where the Class I railroads assemble most of their long-distance trains.

A typical rail trip therefore involves three distinct operations:

- Terminal operations at the origin, including movements to and from the customer and handling of cars at an industry support yard or minor interchange location.
- Line haul, including intermediate classifications and major interchanges.
- Terminal operations at the destination, including movements to and from the customer and handling of cars at an industry support yard or minor interchange location.

The terminal operations are characterized by high fixed costs per carload and low traffic volumes, whereas the line haul operations are characterized by high traffic volumes and high variable costs per carload.

The costs associated with track maintenance are one of the largest problems faced by small railroads, as these costs remain high even when traffic density is very low. Table 14 shows the median expense per road-mile and the average expense per car-mile for six categories of small railroads based upon traffic density (carloads/road mile per year). The annual expenses per road mile vary greatly, depending upon the condition of the facility, the projected growth or decline in traffic, the ability to operate safely at slower speeds, and the availability of capital for investment. To smooth out these highly variable numbers, I used the average expenditures for

2008 to 2010, without trying to differentiate between maintenance and capital expenditures. I then determined the measures shown in Table 14 for each group of railroads, for all of the small railroads responding to the ASLRRA 2011 Survey and for the Class I railroads. The results clearly indicate the importance of track expense to the small railroads. Although the Class I railroads spend much more per road-mile, the small railroads spend much more per loaded car-mile. Moreover, the expense per loaded car-mile rises sharply as the traffic density declines. For the roads with the lightest density traffic, track expenses are 30-40 times higher than the expenses for the Class I railroads.

**Table 14. Track Expenses
(Maintenance and Capital Combined)**

Category (Carloads/Year)	% of Small Railroads	Median Expense per Road-Mile	Average Expense per Loaded Car- Mile
A	18%	\$48,000	\$1.60
B	18%	\$35,000	\$3.43
C	18%	\$21,000	\$4.00
D	18%	\$28,000	\$9.33
E	18%	\$40,000	\$28.29
F	10%	\$ 9,000	\$32.91
Small Railroads	100%	\$37,000	\$3.99
Class I Railroads		\$157,000	\$0.83

Source of data: ASLRRA Survey 2010; AAR "Railroad Facts" 2010

The great variations in track costs result from the high fixed costs of track maintenance. As a result primarily of these variations in track costs, the railroads involved in an origin-to-destination movement are likely to have markedly different fixed costs to allocate to their portions of the trip. This is especially true for a small railroad that handles only the origin or destination portion of the trip. Class I railroads each operate light density lines, but they do not have as much difficulty covering the fixed costs associated with such lines. From their perspective, they can cover the fixed costs of the light density line with the total contribution that

they receive from the loads that originate or terminate on that line. A smaller railroad only has revenue for its small portion of the typical rail trip; unlike the Class I railroad, it cannot use any contribution from efficient high-density main line operations to cover the fixed costs of their light density network.

High Fixed Costs and the Threat of Diverting Traffic

As is evident from the analyses in the previous sections of this statement, any small railroad will have substantial fixed costs that must be covered, in the aggregate, by the revenue received from its customers. So long as the total fixed and variable costs can be covered, the railroad will be able to continue its operations. So long as a prospective customer can cover those variable costs and make some contribution toward covering the fixed costs, that customer's traffic will add to the sustainability of the small railroad.

The opposite is also true. If a small railroad loses a customer, then it loses that customer's contribution and increases the share of fixed costs that must be covered by other customers. Since small railroads typically only have a few major customers, the loss of one of them would pose a very serious threat to the viability of that railroad.

The top three customers make up two-thirds of the traffic of the typical small railroad, and these are the large customers most likely to be targeted by a railroad or customer seeking competitive access. Given the high fixed costs that must be covered even after the revenue from a large customer is gone, the small railroad would face serious financial difficulties.

In this statement, I have shown the operating conditions on light density lines lead to higher costs for labor, for track, and for equipment. Carriers operating under these conditions are already in a highly competitive situation, as nearly all of their traffic is subject to diversion to trucks, to an intermodal COFC/TOFC terminal operated by a Class I railroad, to a barge terminal

or to a competing transload facility. While operating costs and fixed costs are high, competition is severe, which means that margins are low. Where margins are low, loss of a major customer is very likely to push a small railroad toward cessation of operations or bankruptcy.

Summary and Conclusions

1. There are several key characteristics of small railroads:
 - a. Their service territories are small and their traffic densities are low.
 - b. Fixed costs are by far the largest proportion of their total costs.
 - c. They have lower shares of dominant rail commodities such as coal, motor vehicles, and intermodal, but a much higher concentration of general merchandise traffic.
 - d. They are dependent upon a limited, non-diversified traffic base.
 - e. They are mostly involved in the switching-intensive portions of rail trips, namely the "first and last miles" in serving customers.
2. Allowing other railroads to access a small railroad's customers will not reduce the fixed costs of the small railroad's operation, but will divert traffic and reduce revenues. As a result, the average rate required to cover fixed costs will rise, which could potentially affect all customers on the line.
3. Requiring lower rates – whether by reducing rates charged by small railroads or by reducing rates charged by Class I carriers that share revenues with small railroads – will damage the financial position of any small railroad that is struggling to cover fixed costs and earn an acceptable return to the owners.
4. Legislation or regulations that allow open access or that limit small railroad revenues will hinder the ability of small railroads to handle time-sensitive, service-sensitive or price-

sensitive traffic. Small railroads typically receive more than half of their revenue from their top two or three customers. Enabling other carriers to capture even one of these customers would severely hurt even the healthiest of the small railroads. Regulatory actions that require small railroads to accept substantially lower revenue from one or more of their largest customers would similarly imperil the carriers' ability to survive.

5. The traffic handled by small railroads is highly competitive traffic that is susceptible to diversion to other modes. Restricting the ability of small railroads to handle this traffic or increasing their costs of serving their customers is likely to have anti-competitive impacts, especially since small railroads have limited pricing power.
6. Likewise, small railroads have the flexibility and the need to focus on the service requirements of their customers. Most of these railroads have only a few dozen customers, so they can and must concentrate on providing good service to them, and they can and must seek new customers in order to cover the high fixed costs of their operations. Dividing low density operations among two carriers may reduce rates for one or two customers in the short run, but will certainly increase costs in the long run and threaten the ability of the small railroad to continue to serve all of its customers.

The results of my analysis of small railroad operations and economics are not subtle. Average costs are clearly much higher for low density rail operations, competition is strong for the commodities handled by small railroads, and revenue from major customers is essential to the financial health of these railroads. The economic reasoning is straightforward, the types of costs considered are well understood, and the magnitude of the adverse impacts resulting from increased regulation is clear. Eliminating a major customer from a small railroad can and will have very significant, negative results, both for the railroad and for the remaining customers.

VERIFICATION

I declare under penalty of perjury that the foregoing statement is true and correct to the best of my knowledge, belief, and information. Further, I certify that I am qualified and authorized to file this statement.

Executed this 8th day of April, 2011



Carl D. Martland