

**Surface Transportation Board
Ex Parte 711 (Sub No. 1)**

**Summary of Ex Parte Meeting between the Coalition Associations
and Vice Chairman Michelle Schultz**

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Coalition Associations' Attendees:

The Coalition Associations are the American Chemistry Council (ACC), The Chlorine Institute (CI), Corn Refiners Association (CRA), The Fertilizer Institute (TFI), and The National Industrial Transportation League (NITL).

Their attendees were:

- Karyn Booth, Counsel to ACC, CRA, NITL, and TFI
- Justin Louchheim, The Fertilizer Institute
- Michael McBride, Counsel to CI
- Eamon Monahan, CRA
- Jeffrey Moreno, Counsel to ACC, CRA, NITL, and TFI
- Bruce Ridley; Packaging Corporation of America and Chair of NITL's Board of Directors
- Jeffrey Sloan; ACC
- Jason Tutrone; Counsel to ACC, CRA, NITL, and TFI
- Ann Warner, NITL

STB Attendees:

- Michelle Schultz, Board Vice Chairman
- Michael Small, Attorney Advisor

Meeting Summary:

Coalition Associations explained that the Staggers Act and legislative history demonstrate that reciprocal switching is a tool to enhance competition. Railroad opposition to reciprocal-switching reforms and railroad suggestions that the Board rely on other regulatory tools is inconsistent with the Staggers Act policy to rely on competition rather than regulatory intervention. Providing competition through reciprocal switching would involve far less regulatory intervention than the other regulatory tools available to the Board.

Coalition Associations distinguished reciprocal switching from rate reasonableness cases, explaining that reciprocal switching does not prescribe a rate or guarantee any rate reductions. They further explained that enhanced competition from competitive switching provides broader benefits than other forms of regulation, which are aimed at discrete issues.

Coalition Associations explained railroad consolidation and the rail industry's significantly improved financial condition since the existing reciprocal switching rules were adopted in 1985 justify changing the rules. Significant industry consolidation occurred after 1985, causing competitive harm by extending bottlenecks. Even Union Pacific Railroad's economic witness in the CP/KCS merger proceeding recognizes this competitive harm, which the Board did not address when approving the consolidations. This development and the rail industry's improved financial condition warrant reciprocal-switching rules that strike a greater balance between the competing goals of revenue adequacy and competition.

Coalition Associations explained that the emergency service order and temporary service order rules are not a substitute for reciprocal switching. Because they are temporary measures to address specific disruptions, they would not encourage a response to competitive forces. In contrast, reciprocal switching provides a long-term competitive option that has a broader impact on the relationship between the incumbent carrier and the shipper.

Vice Chairman Schultz asked whether a service order providing reciprocal switching under 49 CFR 1147.1 would be temporary or have any impact on FMLM service issues. Coalition Associations explained that it would not address FMLM issues because the incumbent would still provide FMLM service under the reciprocal switch. Also, the order would be temporary because, as soon as the incumbent can demonstrate that it has resolved the underlying issue giving rise to the order, the Board is required to terminate the order and restore the status quo. Consequently, temporary service orders would not discipline the incumbent railroad's behavior and incentivize the incumbent to respond to competitive forces in pricing, service, customer relations, contract negotiations, etc. Additionally, an alternative carrier participating in the reciprocal switch has little incentive to provide competitive service because it knows the traffic will return to the incumbent.

Vice Chairman Schultz asked whether the Board should consider a fault-based standard for awarding reciprocal switching. Coalition Associations responded that Congress did not require such standard and it would be contrary to the objective of the first Rail Transportation Policy, which is to rely on competition to the maximum extent possible.

Vice Chairman Schultz and Coalition Associations discussed the circumstances under which the Board might deny a switch. Coalition Associations explained that under both prongs of the proposed rule, the Board could deny reciprocal switching if infeasible, harmful to other shippers, or unsafe. A cost-benefit analysis also would be required under Prong 1 (i.e., public interest) and a market dominance requirement would apply under Prong 2 of the proposed rule (i.e., where "necessary to provide competitive rail service").

Coalition Associations also explained that the actual scope of reciprocal switching will be limited. Using reciprocal switching to convert single line service to joint line service will be unattractive to shippers because such conversions would require two switches – one at the origin to access the competing carrier and another at the destination to return to the incumbent carrier – which would require two switch fees and two additional handlings. In contrast, the most attractive switches will be those that occur at existing interchanges and

merely change the location of the interchange for existing joint line moves. According to AAR witness Baranowski's estimates, far less than 10% of potentially eligible traffic has these characteristics. This figure is conservatively high because some of this traffic will not meet the requirements under Prong 1 or Prong 2. Coalition Associations further observed that, because the proposed rule's scope will impact a small amount of traffic, the probability of service issues occurring are low and that, at existing interchanges, the rail operating witnesses at the hearing acknowledged that additional car handlings are unlikely.

Coalition Associations concluded by noting that, if the Board were to graft some form of fault-based standard onto Prong 2, the resulting switching needs to be long-term, rather than temporary, to realize the full competitive benefits that Congress intended reciprocal switching to provide.