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Reply Comment STB Docket No. EP 711 (Sub-No 1)

To whom it may concern:

Thank you for the opportunity to submit a reply comment in this proceeding and for making the hearings public with live streaming. The STB made an effort to hear various stakeholders as demonstrated with an accumulated 20 hours of testimony. As a policy researcher, I applaud this documentation which offers a valuable bank of reference to assess the merits of the proceeding in addition to the written record.

This reply comment offers three reflections on the hearing and record to date. The proceeding has not uncovered evidence of deliberate or systemic harm necessitating more regulation. The proceeding has not demonstrated that the STB has the required economic expertise to address questions of rail regulation. Moreover, the STB should be updated on the economics of consolidation, not just the superficial knowledge of customer requests.

For these reasons, the STB should end the proceeding and shelve plans to impose so-called reciprocal or forced switching regulation.

Sincerely,

A handwritten signature in blue ink, appearing to read "Roslyn Layton".

Roslyn Layton, PhD
Visiting Researcher*

*Please note that these comments reflect my own research and should not be construed of the position of Aalborg University.

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The STB's hearing failed to uncover evidence of deliberate harm to shippers necessitating more regulation.

There were understandable rail slowdowns and hiccups during the pandemic, but overall, according to researchers at Northwestern University, the industry has performed admirably under unprecedented conditions.¹ I have observed this in my own research as well.² It's a testament to freight rail networks performing under crisis. Moreover, that things returned to normal quickly on their own demonstrates the power of market forces.

Episodic service issues are to be expected in any industry. These do not suggest market failure, let alone justification for a sweeping regulation.

In any event, neither the hearing nor the record demonstrated evidence, patterns, or situations which justify imposing sweeping regulation. Therefore the movement to make and impose a new regulatory regime through forced switching is unwarranted. It could be considered arbitrary and capricious.

My hope is that all agencies "encouraged" to implement policies of Executive Order (EO) 14036 can rise above mid-term election temptation to use regulation as a political tool. If not, it becomes obvious to observers that the STB is making a desperate attempt to look busy.

The STB's documentation on the switching proposal and related communications raise questions of the agency's economic expertise.

At various points, STB members argued this presumed economic regulatory matter was not necessarily a matter of economics. It was unclear whether they said this because the economics does not support their preferred outcome, or because the members recognized that the economics exceeded their abilities. Without the needed information and requisite understanding, a forthright STB would forbear from further regulatory activism. Indeed such humility should be applauded. Yet this does not appear to be slowing the push for new regulation. Moreover the STB seems to disregard the complexity of the rail network and the disruption that widespread forced switching could cause, choosing to fixate on how many moves are in a switch – it seems to vary – and ignoring that multiple railroads cited 24-48 hours of delay due to forced switching incongruent with their network operations.

I suggest some resources to inform the STB's thinking:

¹ <https://www.transportation.northwestern.edu/research/featured-reports/us-railroad-covid19-report.html>

² <https://www.thereview.org/2020/08/18/layton-networks-owners-rise-occasion-pandemic/>

Jeffrey T. Macher, John W. Mayo (eds). *U.S. Freight Rail Economics and Policy: Are We on the Right Track?* Routledge Studies in Transport Analysis, 2019. The book offers chapters on key regulatory concepts like the history of freight rail, international trade, costing, and price effects of trucking. The chapter “Open Access and Revenue Adequacy” recounts the efforts by the National Industrial Transportation League (NIT) to disintermediate fairly negotiated pricing by inventing new regulatory concepts. Ultimately the STB gave up the gambit because it didn’t fly empirically.

Monios, Jason, and Rickard Bergqvist, eds. *Intermodal freight transport and logistics*. CRC Press, 2017.

Jonathan Cowie, Stephen Ison eds. *The Routledge Handbook of Transport Economics*. Routledge, 2017. See the chapter on “Rail Freight” by Allan Woodburn.

Economists suggest that freight rail needs to charge the price that the market will bear because of the need to recover costs.

The STB should assess rail economics beyond customer requests, including consolidation.

The key reason to join two firms is to obtain economies of scale, being able to deliver greater output with more efficient use of cost. Importantly, consolidation allows investment in new technologies, as the consolidated entity can leverage the capital investment across two or more enterprises. Moreover, consolidation allows weaker firms to benefit from better management. Notably the inability of Europe’s rail industry to consolidate is one reason it lags behind the US. State-owned enterprises must be privatized first before they can be joined across countries for greater scale and efficiency. My earlier filing makes a detailed case of why the US market is superior to Europe for output, innovation, investment, and greenhouse gas reduction.

The research from FTI (via the Association of American Railroads) shows there has been no uptick in single served rail customers due to consolidation. In fact, many shippers – particularly the large chemical companies – are locating *new* facilities on single served lines and then complaining about this as proof of captivity. Especially as it relates to new facilities, companies have choices in making investment decisions. Choosing to locate in these areas and then using the regulatory process to intervene is duplicitous, and the STB should be smarter to recognize this. It is obvious to observers.