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Cc: [Erichsen, Ellen](#)
Subject: FW: ExParte 711, Reciprocal Switching & Biden Administration Executive Order
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Docket No. EP 711 (Sub-No 1)

Good Evening Chairman Oberman:

In reading the WSJ piece today (Order Will Target Rail, Sea Shipping, page A2) I immediately thought, wow, someone in the top of the Biden Administration must have read my testimony submitted to Chairman Begeman nearly two years ago, copy below.

As one who has had experience as a shipper, a mid level marketing officer at a class1 and as CEO & President of a Shortline, I can tell you the time is long overdue to correct these abuses by the class 1s and allow true competition to be the regulator of choice. What I proposed to Chairman Begeman is a good starting point.

The class 1s will unleash a barrage of opposition, well financed and articulated, and bring enormous pressure on you, but they should not prevail. They are making billions, much of it to buy back shares/reward activist investors, while the small railroads, regionals and shippers captive to them suffer mightily. And this hurts our Country's ability to compete in the marketplace. Now it would seem we have an Administration that recognizes the problem. The opportunity to fix the problem is at hand.

I hope you will give my proposed remedy serious consideration. It is not re-inventing the wheel and would benefit all constituents considerably.

Thank you for the consideration.

Paul D. Denton
President & CEO (ret.)
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From: Paul Denton [mailto:pddenton@goeaston.net]
Sent: Thursday, August 1, 2019 1:48 PM
To: 'Michael.Higgins@stb.gov' <Michael.Higgins@stb.gov>
Subject: ExParte 711, Reciprocal Switching

The Honorable Ann D. Begeman
Chairman
Surface Transportation Board

Chairman Begeman:

I am submitting this testimony to be included in the consideration and record on ExParte 711, Reciprocal Switching. Having served 44 years in the railroad industry, both as a class I marketing/rate department office and as President & CEO of shortline Maryland Midland Rwy. (MMID) I have a unique, and comprehensive view, of this entire subject.

GENERAL CONSIDERATION & APPLICATION

ExParte 711 should be broadened to consider and render a decision on three intertwined, related

issues; **PAPER BARRIERS, RECIPROCAL SWITCHING AND BOTTLENECK RATE/ROUTING.** You and the other STB members have an awesome responsibility in deciding these issues, you will be lobbied by many interests. But this proceeding also provides the STB a timely vehicle to resolve these issues for the lasting benefit of all parties as well as the rail transportation system of our Country. Here is what I recommend should be done and why.

PAPER BARRIERS

All existing Paper Barriers should be eliminated and none granted/allowed in future line spinoffs, as they are, indeed, absent STB approval, a per se anti-trust law violation of a competition-reducing tying agreement in restraint of trade.

The class I railroad defense of Paper Barriers as a voluntary bargained agreement in exchange for discounted sales or leases is nothing more than political/regulatory eyewash to justify restraint of trade. Whether sale/lease was done on a net salvage value, net present value, on going market value or other basis, from experience on both sides of the issue I can tell you the class I seller never 'gave away anything.'

The real world purpose of Paper Barriers by the class Is was to lock up any traffic the shortline might develop to the selling/leasing class I. If such new traffic originated at or was destined to a station not served by the selling class I they didn't care. Three line hauls were generally not competitive and it was not uncommon for the selling/leasing class I to prefer such new traffic to move truck. Result; the worst kind of a competition-reducing tying agreement in restraint of trade.

Further, many lines sold/leased had not been used, or lightly used, by the class Is in years, deferred maintenance was huge and outright abandonment was the only other option. Shortline entrepreneurs scraped and sacrificed to raise the capital to complete the deal only to learn, often the hard way under the class I boot, the power of the big guy to restrict your ability to compete by locking you out of markets.

One example MMID suffered will illustrate. A large customer we served received one unit train of coal per week. A small train (usually about 45 cars) but around 2000 cls per year is big to a shortline. Our only class I connection informed us and the customer they were going to substantially increase the freight rate. The customer told them if they did so, they would divert all of this tonnage to truck. Our class I connection raised the rate, the traffic was diverted to truck. We located another coal supplier on another class I and with the second class I developed a new coal unit train package that would allow the business to move rail. But our only existing class I said, in effect, 'no way, we won't allow you to interchange with the second class I. We don't want the traffic, but you can't have it with anyone else, that's the way it is.'

Not an isolated case. It's restraint of trade, monopoly power, locking small firms out of markets. The 4R Act and Staggers Rail Act did much to help our industry compete and grow, help long overdue. But one serious flaw was approval of transactions exempt from the anti-trust laws by sanctioning use of Paper Barriers. In the real world, Paper Barriers cannot be justified and must be abolished across the board.

However, elimination of Paper Barriers is a hollow victory to customers and shortlines if a concurrent provision is not provided stating terms and conditions that must be observed for the captive customer/shortline to reach a second connecting class I. The answer is to include in the STB decision and order a requirement that the class I petitioned by the captive shortline must grant the shortline trackage rights or haulage rights at terms and conditions acceptable to both parties, to the nearest

connecting interchange with the second class I. Such trackage/haulage terms and conditions must be agreed upon within 90 days of the shortline petition date. If trackage/haulage terms and conditions are not agreed upon within 90 days, each party will submit to the STB its best offer and within 30 days STB will issue its binding decision establishing trackage or haulage rights terms and conditions.

RECIPROCAL SWITCHING

Nationwide Reciprocal Switching should be established in all existing terminals where two or more railroads—be they class I, class II or class III—serve customers. Reciprocal Switching should not be established on line of road or terminal areas not now served by two or more railroads.

Reciprocal Switching Nationwide is required to implement the intention of the Staggers Act to allow competition in the transportation marketplace to be the economic regulator of choice. This is not a new approach as pre-Staggers, much of CTR territory within Official Territory had Reciprocal Switching and it worked well. Going forward, in the dividing up and sale of ConRail to CSX and NS the necessity of true competition was recognized in the creation of the ConRail Shared Assets area and it too appears to be working well. Rail customers throughout the Nation should enjoy the same benefits at applicable terminals. However, today, with the class Is extremely profitable, their stock prices at near record levels, what captive rail customers get is slow, erratic service, frequent rate increases, class I focus on cost cutting, fewer trains, cars, locomotives and employees wrapped in press releases touting the benefits of PSR and, in effect, told ‘take it or leave it.’ Where they can, many customers have left as annual carload volume continues its fall over time. Captive rail customers need the STB to act for them.

The first critical criteria here is to define the terminal areas. While a number of terminal definitions are possible there is no need to complicate the issue nor re-invent the wheel. I suggest using ICC Docket 28300-40 mile blocks for terminal definition for the terminal areas served by two or more railroads. To illustrate, Raleigh, NC, is served by two railroads. Any customer located in the Raleigh Docket 28300-40 mile block should be open to Reciprocal Switching for line haul service via either serving railroad. On the other hand, Asheville, NC, is served by only one railroad. Hence, customers in the Asheville Docket 28300-40 mile block, would not be open to Reciprocal Switching and none should be artificially established to reach them. That said, nothing would or should prevent customers in the Asheville Docket 28300-40 mile block from bringing rate reasonableness cases to the STB should they feel justified in doing so. But artificially establishing Reciprocal Switching to single line, line of road points or existing terminal areas not now served by two or more Railroads is not a just and reasonable application of Reciprocal Switching.

I must add for emphasis here that I no longer have the National Rate Basis or Docket 28300 class grouping tariffs but such should be readily available in ICC/STB files. Use and application of this system for terminal definition is simple, quick and easy. In today’s world it should be able to be programed in a day or two, if not in a few hours.

Reciprocal Switching charges, terms and conditions should be terminal area specific, reflecting the operating conditions in each. I would recommend against a car hire reclaim provision as it is cumbersome and creates complexity. While arbitrary, I’d recommend a three day (or 72 hour) car hire abatement for the switching line with car hire exceeding this amount for account of the switching line.

At each existing terminal where Reciprocal Switching would be established, all carriers serving that terminal would be given 90 days to agree to uniform charges, terms and conditions. If no agreement

is reached in 90 days, each carrier shall submit its best offer to the STB and the STB shall within 30 days establish the Reciprocal Switching charge, terms and conditions for that terminal.

So establishing Reciprocal Switching at applicable existing terminals would eliminate customers being held captive at such terminals but, appropriately and rightfully, not open nor establish such provisions on line of road or terminal areas not now served by two or more railroads.

BOTTLENECK RATE/ROUTING

At its basic level, this is nothing more than customers attempting to subvert the deregulation benefits of the Staggers Act by having the STB force railroads to establish joint line routing where none now exists or is justified. Such efforts by customers should be rejected across the board by the STB.

The partial deregulation of the railroads under the provisions of the Staggers Act has allowed them to compete, grow and prosper. The days of derelict, bankrupt and near bankrupt railroads is over. The railroads have invested enormous sums of their own capital into improving their properties, locomotives, cars and IT systems, none of which would have happened without Staggers Act passage. Being able to maximize carload revenue via single line haul routing, where appropriate and justified, is part of the reason for the railroads rebound. Such single line routing application should not be compromised, but should be subject to and reflective of elimination of Paper Barriers and the establishment of Reciprocal Switching, where appropriate, as described herein above.

It should also be noted that such routing preference establishment was observed by the railroads pre Staggers in the era of the Section 5(b) Rate Bureaus. Hence, any argument that Staggers created restrictive routing is unfounded. While it is true many more railroads existed prior to 1980 with routing applicable via some, as a member of several GFTC committees, we routinely made rate/route adjustments for customers only our railroad served, via our preferred routes only, flagging out of routes in which we did not want to participate.

CONCLUSION

Approval and implementation of the recommendations I have made on **Paper Barriers, Reciprocal Switching and Bottleneck Rate/Routing** will level the playing field for all carload railroad customers, increase the effectiveness of the Staggers Act and protect the legitimate competitive position of the railroads.

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