

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FIRST-MILE/LAST-MILE SERVICE	)	Ex Parte No. 767
	)	
	)	

**REPLY COMMENTS OF THE WESTERN COAL TRAFFIC LEAGUE,
THE FREIGHT RAIL CUSTOMER ALLIANCE, NATIONAL COAL
TRANSPORTATION ASSOCIATION, PORTLAND CEMENT
ASSOCIATION, AND STEEL MANUFACTURERS ASSOCIATION**

Bette Whalen
President, Western Coal Traffic League
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

Ann Warner
Spokesperson, Freight Rail Customer
Alliance
Ann Warner LLC
300 New Jersey Avenue, Suite #900
Washington, D.C. 20001

John Ward
Executive Director
National Coal Transportation Association
1616 17th St., Suite 266
Denver, CO 80202

Katy Hartnett
Director, Government Affairs
Portland Cement Association
200 Massachusetts Ave., N.W., Suite 200
Washington, D.C. 20001

Philip K. Bell
President
Steel Manufacturers Association
1150 Connecticut Ave NW # 1125,
Washington, DC 20036

William L. Slover
Robert D. Rosenberg
Peter A. Pfohl
Slover & Loftus LLP
224 Seventeenth Street, N.W.
Washington, D.C. 20036
202.347.7170

Attorneys for the Western Coal Traffic
League, Freight Rail Customer Alliance,
National Coal Transportation Association,
Portland Cement Association, and Steel
Manufacturers Association

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The Western Coal Traffic League (“WCTL”), Freight Rail Customer Alliance (“FRCA”), National Coal Transportation Association (“NCTA”), Portland Cement Association (“PCA”), and Steel Manufacturers Association (“SMA”) (collectively, “Shipper Associations A” or “SAA”¹) submit these reply comments in response to the notice that the Surface Transportation Board (“Board” or “STB”) served on September 2, 2021, as modified September 21, 2021 (“Notice”).

SAA explained in its opening comments, as did a range of other commenters in their comments, that:

- (1) There is an urgent need for the public reporting and disclosure of railroad first-mile/last-mile (“FMLM”) data, particularly in light of the harm to adequate service inflicted by the combination of Precision Scheduled Railroading (“PSR”) and the pandemic; and

¹ “Shipper Associations” is such a natural and attractive name for a coalition of shipper associations that another group adopted it in its opening comments. To avoid confusion, the instant group has adopted the Shipper Associations A or SAA name in these reply comments to distinguish itself from the other group.

(2) Since the railroads already appear to compile and utilize FMLM data for their own purposes, there should be little additional burden in making the needed data available to shippers, the Board, and the public on a basis that provides useful information, while still respecting legitimate confidentiality concerns as to individual movements.

Predictably, railroad interests disagree. The Association of American Railroads (“AAR”) submitted a more general or conceptual filing, and most of its Class I railroad members (but, significantly, not Union Pacific Railroad Company or Canadian Pacific Railway Company) submitted individual filings purporting to show data that they do make available. While no doubt intending to do otherwise, the railroad filings only buttress the need for the Board to require the filing of FMLM data.

For example, the AAR first stresses that factors outside a railroad’s immediate control can influence FMLM service. AAR Comments at 2-4. Even so, the data is still useful to measure service performance generally and trends over time, and how a railroad does, or does not, rise to the challenges it faces. The data is particularly useful to the individual shipper that wants to know if its service problems are isolated or the result of a larger problem. It may also help the carriers themselves in evaluating how their FMLM service stacks up against the other carriers generally, and in determining whether corrective actions are necessary to meet and exceed their competitors’ service.

Second, the AAR claims that no “regulatory problem” has been identified and that there has been no showing that the Board needs to collect data on FMLM service. *Id.* at 4-7. The railroads’ apparent belief that shippers have been receiving

adequate service and/or that PSR has not degraded the level of service received by shippers defies credibility and makes the need for Board action even more urgent. Moreover, if customers are receiving the superior FMLM service as AAR apparently believes, then the data reported on FMLM service should help dispel any misperceptions that FMLM service is poor.

Third, the AAR asserts that the customer-specific nature of any service issues is best pursued by investigation on an *ad hoc* basis, particularly as FMLM service is unique to the customer. *Id.* at 7-9. This stratagem is another attempt to frame the problem out of existence. An individual shipper's service problems, FMLM and otherwise, seldom occur in a vacuum. Insisting on a piecemeal approach ensures that the larger picture will be ignored and incorrectly assumes there is no larger picture. The FMLM data is needed precisely in order to be able to determine and monitor whether and the extent to which the problems are or are not isolated. Furthermore, unless the Board has information about the overall level of service, it cannot know the extent to which the common carrier obligation is or is not being fulfilled. Beyond that, accumulating baseline data during the relatively "good" times is necessary in order to identify and quantify deterioration when it occurs, and evaluate whether downward service trends may require additional carrier outreach and actions to help prevent or ameliorate larger service problems.

Fourth, the AAR returns to a standard tactic, invoking the need for formal, time- and resource-consuming cost-benefit analysis as a barrier to any Board action that would start to provide some semblance of balance between shipper and railroad

knowledge of service performance. *Id.* at 9-11. However, the AAR does so in its typical whipsaw fashion, first ignoring the need to address major service issues and the Board's lack of data on a key and problematic aspect of service, and then asserting collecting the information would be burdensome without ever acknowledging that this is the very data that the railroads already collect on a routine basis (and that would be utilized were any individual service issues to be addressed on the piecemeal basis that the railroads prefer). In short, the AAR has again assumed its preferred conclusion that no performance data information need be shared because there is no "regulatory problem" in a blatant effort to avoid engaging constructively on what it should recognize is a significant issue. Furthermore, the railroad's preferred lack of transparency serves only to highlight the industry's insularity and problems, especially since worthy competitors in a true competitive market should want to highlight, and not hide information regarding their quality of service.

Fifth, the AAR claims that the Board should properly account for competitive concerns. *Id.* at 11-14. SAA agrees with the need to protect railroad and shipper trade secrets and for that reason SAA recommended that data be aggregated, but not so excessively that the data loses utility. Those objectives can be balanced with a reasonable level of aggregation, as SAA explained in its opening comments. However, what the AAR appears to have in mind is that no additional data should be made available at all because it could allegedly give another carrier an advantage or prompt a shipper to prefer one carrier over another. Efforts to suppress data on that basis are extremely disconcerting and problematic. Railroads should be expected to compete on

the basis of price as well as service, and markets work more efficiently and productively when information about service quality is available. In other words, furthering competition is an additional reason to make reasonably aggregated data available.

The AAR's final contention is that Railinc's Train II dataset is limited in its utility for measuring FMLM service. *Id.* at 14-16. However, the AAR evades a key question, namely, whether the railroads are already using Train II data to compile their trip plan compliance figures. If they are already utilizing the data to monitor FMLM and other service components, then the data should be very suitable for developing the FMLM information discussed in the Board notice and that shippers and other non-railroads discussed in their comments. On its face, the data should be entirely suitable. The second sentence of the Train II User Manual (from which the AAR quotes only the first sentence) states: "[The Train II system] is used to monitor the full movement cycle of equipment from the time it is loaded to the time it is unloaded and returned to its owner." Railinc, TRAIN II User Manual, at 1-1 (Jan 2022) (available at <https://public.railinc.com/sites/default/files/documents/TrainII.pdf>). That is precisely the relevant universe and use of data that is needed for FMLM and related purpose. The AAR members should state directly if they utilize this data for their trip plan compliance information, particularly if they are going to invoke the need for a formal cost-benefit analysis.

The filings of the individual railroads (BNSF, CN, CSX, KCS, and NS) are similar and appear to have been coordinated. The comments explain that some of the carriers post or disclose an overall trip plan compliance figure (a practice that SAA

discussed at length in its opening comments) and that carriers make data available on individual movements available to individual shippers. The main problem is that there is nothing in-between. On some (not all) systems, there is an overall percentage figure that lacks transparency, but otherwise the shipper can learn nothing about FMLM service beyond its own individual experience. The shipper has no means to learn whether its experience is typical of others located in the same region, whether service is generally improving or deteriorating, whether the fluctuations correlate with other factors such as weather, crew or equipment shortages, or congestion. In other words, the railroad maintains exclusive possession of whether service problems are due to factors within its control.

BNSF represents in its comments that the customer has access to its individual base service plan that is used for determining the network-wide carload local service metric (trip plan compliance). SAA members that ship via BNSF cannot confirm the availability of the base service plan information described by BNSF. SAA members that ship via BNSF and other carriers have confirmed that the equivalent of an estimated time of arrival (a trip plan of sorts) is available. In theory, that information is to be utilized for planning purposes, particularly to avoid demurrage for being unable to receive cars or for holding onto cars for too long. However, the estimated time of arrival information is subject to frequent updating, so much so that estimating and planning for the actual arrival becomes an exercise in trying to hit a moving target. The unpredictability and instability of deliveries are major reasons why the FMLM data is needed.

In short, the railroads have failed to provide any reason why the Board should refrain from issuing a notice of proposed rulemaking. Their comments only confirm the need for the data to be reported and made publicly available.

Respectfully submitted,

Bette Whalen
President, Western Coal Traffic League
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

Ann Warner
Spokesperson, Freight Rail Customer
Alliance
Ann Warner LLC
300 New Jersey Avenue, Suite #900
Washington, D.C. 20001

John Ward
Executive Director
National Coal Transportation Association
1616 17th St., Suite 266
Denver, CO 80202

Katy Hartnett
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200 Massachusetts Ave., N.W., Suite 200
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