

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

**Summary of Ex Parte Meeting between the Coalition Associations
and Member Karen Hedlund**

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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
- Brad Hildebrand, NITL
- 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:

- Karen Hedlund, Board Member
- Charles Vance, Attorney Advisor

Meeting Summary:

Coalition Associations explained that the Staggers Act and legislative history demonstrate that reciprocal switching is a tool to enhance reliance on competition to establish rates and service levels. Enhancing competition through reciprocal switching would involve far less regulatory intervention than the other regulatory tools available to the Board.

Coalition Associations explained that reciprocal switching is more effective than other regulatory tools for promoting better rates and service, balanced negotiations, investment, and economic efficiency because it enables the market rather than government regulation to incentivize responsiveness to the business needs of rail customers.

Coalition Associations explained how changes to the rail market since the reciprocal switching rules were adopted justify revising the reciprocal switching rules to promote competition. Today, the industry is much stronger than it was when the rules were adopted, so the Board should establish greater balance between the rail transportation policies of revenue adequacy and enhancing competition by allowing it to set rate and service terms to the maximum extent possible.

Coalition Associations explained that rail consolidation is an important justification for the proposed changes to the reciprocal switching rules. When the STB and its predecessor approved mergers in the 1980s and 1990s, they believed that extended bottlenecks would not harm competition. Today, economists widely understand that end-to-end mergers allow the upstream bottleneck carrier to foreclose competition on downstream non-bottleneck segments to the detriment of shippers. Rail consolidation thus justifies the use of reciprocal switching to mitigate the cumulative effects of foreclosure from prior mergers.

Coalition Associations explained that it is unnecessary to narrow the proposed reciprocal switching rule to existing reciprocal switch locations. Most reciprocal switches would occur at existing interchanges, which perform the same operations as existing reciprocal switch locations. And a reciprocal switch would be attractive for only a small amount of potentially eligible traffic. Converting single-line routes that are captive at both ends to joint line routes would require two switches—one at the origin and another at the destination—and two switch fees, making them less efficient and desirable to rail customers. According to AAR's figures, reciprocal switching would be attractive for far less than 10% of all traffic *potentially eligible* under Prongs 1 and 2 of the proposed rules. The percentage that would *qualify* for reciprocal switching under Prongs 1 or 2 is even lower.

Coalition Associations explained that the Board also could grant switching requests at newly created interchanges in a limited manner by deferring the effective date of rules permitting requests for reciprocal switching that would create a new interchange location, or restoring the standing requirement for these interchanges.

Coalition Associations also explained that, if the Board wants to narrow the scope of traffic potentially eligible for reciprocal switching, it could eliminate switching for any route that would require switching at two locations on the incumbent railroad.

Member Hedlund and Coalition Associations discussed how emergency and temporary service orders are not a substitute for reciprocal switching. Coalition Associations noted that these orders are meant to address temporary issues and, because of their temporary nature, would not encourage the incumbent to respond to competitive forces. Also, a shipper would need to obtain a commitment from an alternative carrier before seeking these orders, and alternative carriers have little incentive to participate on a temporary basis. Further, reciprocal switching addresses more than service issues and, to the extent it addresses service issues, it does so differently by providing a long-term competitive option that encourages competitive behavior. Additionally, Coalition Associations are concerned that emergency and temporary service orders cannot respond to most service problems fast enough to be meaningful.

Member Hedlund asked about the impact of captivity. Coalition Associations explained that many of their members observe 10-20% rate premiums for their captive traffic and, in many cases, do not receive any explanation for rate increases despite facing service challenges. Coalition Associations further explained that captivity has an impact on rates and service, and both are significant concerns for shippers.

Member Hedlund and the Coalition Associations discussed the potential impact of the proposed rule on competition. Coalition Associations explained that members experience competition where reciprocal switching and interswitching is available and this results in lower rates and greater responsiveness to service concerns.

Member Hedlund asked whether short lines should be included under the rule. Coalition Associations responded that short lines should not be the subject of a switching order, but should have the opportunity to benefit from it as a competing railroad.

Member Hedlund and the Coalition Associations discussed Coalition Associations' concerns that the process for obtaining reciprocal switching could become too burdensome.

Member Hedlund asked whether changes would be warranted to 49 C.F.R. §§ 1146 & 1147. Coalition Associations responded that changes could only provide incremental improvement, whereas reciprocal switching could provide options to address service issues that would be more expedient for shippers. They also stated that any changes should be considered under a separate rulemaking.

Coalition Associations explained that the reciprocal switching rule should not include a fault-based or conduct requirement because it would be contrary to the policy of relying on competition to the maximum extent possible and it would deprive shippers of competitive benefits unrelated to fault. If the Board were to impose a conduct requirement, it should clearly state that a shipper can demonstrate the requisite conduct by establishing that the railroad provided inadequate service or refused to offer reasonably balanced tariff or contract terms. Moreover, if the Board imposes a conduct requirement, it must ensure that reciprocal switching is granted for a period of time that provides a sufficient incentive to both the incumbent and competing carriers to actually compete for the traffic, and for the competing carrier to adjust its operations.

Coalition Associations explained that reciprocal switching could address demarketing by allowing a competing carrier to access traffic that is unattractive to the incumbent. They also explained that railroads incorrectly claim that increasing rates to reflect scarce capacity is not demarketing. Because the rail market has high barriers to entry, railroads can use capacity constraints to de-market less profitable traffic rather than increase capacity.