

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

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**Summary of Ex Parte Meeting between the Coalition Associations
and Member Robert Primus**

March 30, 2022

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
- Ross Corthell, Packaging Corporation of America and Chair of NITL Railroad Transportation Committee
- 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
- Jeffrey Sloan, ACC
- Jason Tutrone, Counsel to ACC, CRA, NITL, and TFI
- Ann Warner, NITL

STB Attendees:

- Robert Primus, Board Member
- Elizabeth McGrath, 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. Reciprocal switching is more effective than other regulatory tools for promoting better rates and service, balanced negotiations, investment, and economic efficiency because it is not fixated on single issue and enables the market 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 fraction of the potentially eligible traffic estimated by AAR. 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 that would be most attractive to shippers (i.e., switching that would occur at existing interchanges and that would not require switching at two locations) accounts for just 6.7% of all traffic *potentially eligible* under the proposed rules. The percentage that would *qualify* for reciprocal switching under Prong 1 or Prong 2 is even lower. 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, which would eliminate most conversions of single line moves to joint line moves.

Member Primus asked whether short line railroads should be treated differently than Class I railroads under the proposed rules. 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 Primus and Coalition Associations discussed how reciprocal switching functions today. Coalition Associations observed that filings by a Canadian railroad indicate that, concerning Canadian interswitching, railroads establish protocols for handling switches and work together to make switching successful.

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.

Member Primus and Coalition Associations discussed how emergency and temporary service orders are not a substitute for reciprocal switching. Coalition Associations are concerned that

emergency and temporary service orders cannot respond to most service problems fast enough to be meaningful. Coalition Associations encourage the Board to consider revisions to 49 C.F.R. Parts 1146 and 1147, including proposals that its associations offered to the Board in 2018. However, emergency and temporary service orders do not address the need for long-term competitive options that encourage competitive behavior.

Coalition Associations concluded by explaining that railroads are unlikely to resolve ongoing service issues involving captive traffic unless they face the competitive forces that reciprocal switching facilitates.