

**Surface Transportation Board
Ex Parte 711 (Sub No. 1)****Summary of Ex Parte Meeting between the Coalition Associations
and Member Patrick Fuchs****March 25, 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
- 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:

- Patrick Fuchs, Board Member
- Stephanie Borges, Administrative Assistant

Meeting Summary:

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, Coalition Associations stated that the agency believed that extended bottlenecks would not harm competition. Coalition Associations stated that, 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. Coalition Associations stated that rail consolidation thus justifies the use of reciprocal switching to mitigate the cumulative effects of foreclosure from prior mergers.

Coalition Associations explained that emergency service orders (ESOs) and temporary service orders (TSOs) have different objectives than reciprocal switching. ESOs and TSOs are meant to address temporary issues and, because of their temporary nature, would not encourage the incumbent to respond to competitive forces. Also, Coalition Associations noted a shipper would need to obtain a commitment from an alternative carrier before seeking an ESO or TSO, and alternative carriers have little incentive to participate on a temporary basis. Coalition Associations further stated that 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 offered its concern that emergency and temporary service orders cannot respond to most service problems fast enough to be meaningful.

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, Coalition Associations stated that the agency must ensure that reciprocal switching is granted for a minimum of 5 years. Additionally, Coalition Associations stated that the Board 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. Coalition Associations, nevertheless, advised that the Board should not adopt a conduct requirement and that narrowing the scope of reciprocal switching would be a preferable alternative to a conduct requirement.

Coalition Associations explained that, if the STB chooses to narrow the scope of potentially eligible traffic for reciprocal switching, it should focus on switches that occur at existing interchange locations. Coalition Associations stated that focusing on existing reciprocal switching locations is too narrow because the interchange that is required to accomplish a reciprocal switch is the same operation required to switch other traffic at existing interchange locations. Moreover, focusing on existing interchanges would require few operating changes.

Coalition Associations explained that the Board also could grant switching requests at newly created interchanges in a limited manner by limiting switch requests that would create new interchange locations to just Prong 1 where the cost-benefit analysis will be able to weigh the operational impacts on the RR against the benefits to the shipper, or restoring the standing requirement for these interchanges.

Coalition Associations also explained that, if the STB chooses to narrow the scope of potentially eligible traffic, it could deny reciprocal switching for any route that would require switching at two locations on the incumbent railroad. Coalition Associations stated that 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 highly inefficient. Coalition Associations stated it expects few, if any, shippers to request such switching.

Coalition Associations and Member Fuchs discussed mechanisms for establishing the requisite conduct under a potential conduct standard, including metrics and presumptions. They discussed the minimum time a switching order, based on a conduct standard, should be in effect, and the Coalition Associations stated that a temporary order could not provide the same pro-competitive benefits as a long-term order. They also discussed the lookback period for a service issue and whether to require a shipper that is seeking reciprocal switching to make an initial showing about an alternative carrier.