

SURFACE TRANSPORTATION BOARD**Ex Parte 711 (Sub-No. 1)**

Summary of Ex Parte Meeting between Association of American Railroads and

Surface Transportation Board Member Patrick Fuchs

April 21, 2022

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AAR Attendees:

- Tim Strafford, Associate General Counsel and Corporate Secretary
- Fred Miller, Assistant General Counsel and Government Affairs Liaison
- Ben Horwich, Counsel to Association of American Railroads

STB Attendees:

- Patrick Fuchs, Member
- Lisa Novins, Attorney Advisor

Summary:

AAR highlighted several operational complications and infrastructure limitations that could arise in terminals where limited reciprocal switching may exist today, but which would be strained by expansion of those operations. AAR explained that these operational considerations would need to be evaluated on a location-specific basis, which means that a rule that does not take account of railroad conduct and service levels at specific locations would have undesirable operational effects. AAR and Member Fuchs exchanged views on scenarios in which a switching order could be a desirable remedy, including circumstances in which it could alleviate significant service failures and when it could not.

AAR and Member Fuchs also shared their respective views on the structure of regulations that create appropriate incentives for compliance, while promoting a well-functioning rail system that serves all shippers. In that context, AAR and Member Fuchs discussed the current competitive access rules, the *Midtec* standard, the service rules at 49 C.F.R. Parts 1146 and 1147, the underlying statutory provision at 49 U.S.C. 11102(c), and the relationship and overlap among those various authorities.

Member Fuchs conveyed the utility of input from AAR and, especially, from other interested parties with operational experience regarding ways that the Part 1147 rules could be used as a model for a reciprocal switching rule. He invited input on how to define substantial measurable deterioration in service or service inadequacy, and asked in particular what metrics might be useful as presumptions in evaluating claims. AAR and Member Fuchs also discussed other aspects of the Part 1147 framework that may need further examination, such as the duration

and sunset of any Board order, and the preconditions for a shipper seeking relief under that regulation.