

SURFACE TRANSPORTATION BOARD

Ex Parte 711 (Sub. No. 1)

**Summary of Ex Parte Meeting Between Norfolk Southern Railway Company
and Surface Transportation Board Member Robert Primus**

May 4, 2022

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Norfolk Southern Attendees:

- Tom Zoeller, General Counsel Markets and Regulation
- Randy Noe, AVP Regulatory Affairs
- Raymond Atkins, Counsel to Norfolk Southern

STB Attendees:

- Robert Primus, Board Member
- Elizabeth McGrath, Attorney Advisor

Meeting Summary:

Norfolk Southern began by noting the recent public hearing in EP 770 concerning urgent issues in freight rail service and expressed its view that a no-fault reciprocal switching regime will not lead to service improvements. Norfolk Southern pointed to testimony in the public hearing in EP 711 (Sub. No. 1) detailing the added complexity of interchanging traffic and the physical limitations present at some interchange locations that would make it difficult to handle more switching activities.

Norfolk Southern also questioned the premise underlying some stakeholder arguments for a no-fault open switching regime – that the state of competition in the rail industry demands it. Norfolk Southern noted that the Board commissioned a study several years ago – the Christensen report – to evaluate competition in the industry and that study concluded railroads were not earning abnormal profits and that rate increases were not the result of railroads exercising market power. Norfolk Southern suggested that if the Board believes that there is something different about the state of competition in the industry the next logical step would be to update the Christensen report.

Member Primus questioned how impactful a no-fault reciprocal switching regime would be, noting that not all shippers who have the option of using a reciprocal switch actually do so. He indicated that his focus was the health of the overall network.

Norfolk Southern agreed that overall network health is the proper focus of the Board, and suggested that the Board's existing suite of service regulations provide better-tailored remedies than the proposal in EP 711 (Sub. No. 1), which carries with it additional harms, including a negative incentive to invest. Member Primus noted that railroads seemed to place a higher priority on buying back shares than investing in their networks. Norfolk Southern pointed out that a no-fault reciprocal switching regime would make investments even riskier and thus less likely to be made, which would tend to exacerbate Member Primus's concern. Norfolk Southern pointed to the example of Europe's experience with open access in the telecommunications industry, which created downward pressure on investment.

The meeting participants discussed the perspective of some shipper groups, which have suggested that rail operations would be more fluid under a no-fault reciprocal switching regime. Neither Norfolk Southern nor Primus was aware of any data supporting that claim. The participants also discussed the difficulty in providing data on the percentage of customers open to reciprocal switch who actually use it.

Norfolk Southern thanked Member Primus for taking the time to discuss the Board's proposal in EP 711 (Sub. No. 1). Member Primus thanked the Norfolk Southern team for offering its perspective.