

September 25, 2024

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Via E-filingKristen Monaco, PhD
Director, Office of Economics
U.S. Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423**ENTERED**
Office of Proceedings
September 25, 2024
Part of
Public RecordRe: Waybill Data Request 24-45

Dear Dr. Monaco:

In a letter entered September 11, 2024, the Consolidated Government of Columbus, GA (City) requested access to “2022 unmasked confidential Carload Waybill Sample of railroad traffic originating, terminating, or passing through [the City].” Letter from the City, to Dr. Kristen Monaco, Director, Office of Economics, at 1 (Sept. 4, 2024) (City Letter). Notice of this request was served on September 11, 2024. The request seeks access to waybill data “to understand how local rail traffic has changed in the last decade, and to evaluate the City’s reversionary interest in certain railyard parcels within its jurisdiction.” *Id.* The stated objective of the City is to “determine whether the City should pursue its reversionary interest through formal proceedings before the Surface Transportation Board.” *Id.* The request is broad and includes unmasked revenues, cost, and other confidential information.

By this letter, the Association of American Railroads (AAR), on behalf of its freight railroad members, strongly objects to the release of waybill data pursuant to the current request. Entities seeking access to confidential carload waybill sample (CCWS) under the “other users” provision have a demanding standard to meet. *Procedures on Release of Data from the ICC Waybill Sample (Waybill Procedures)*, 4 I.C.C.2d 194, 1987 ICC LEXIS 377 at 5 (1987) (noting “confidential waybill data generally will not be released to other users”). As explained in *Waybill Procedures*, other users must show that “a particular and legitimate need” for the data and, generally, then one must show that there are no reasonable alternatives to obtaining the data. *Waybill Procedures* at 6.

There is no particular and legitimate need for this information, especially revenue-related information, to be released. The City states it wants to understand rail traffic in its jurisdiction, as it is updating a “a rail yard relocation feasibility study conducted in 2010.” *Id.* The City will then study the updated data to evaluate its possible reversionary interest in certain railyard parcels and, ultimately, decide whether to pursue a formal proceeding at the Board.

But the City does not justify why it needs confidential data, like unmasked revenue data, for such efforts. This request should be denied as it does not provide a particular or legitimate need for the unmasked revenues, costs, and other confidential information.¹

Additionally, the possible pursuit of litigation does not justify such a release. The City ignores the fact that its consultants could request access to the data in a particular proceeding under 49 C.F.R. § 1244.9(b)(4). Instead, the City's request amounts to pre-litigation discovery. In short, the City is placing the cart before the horse and does not justify its need for such confidential unmasked revenue data, much less why it must be provided prior to the filing of a proceeding.

For these reasons, the City's request should be denied. If the overall request is nonetheless granted, the Board should not release any revenue information, including unmasked contract revenues, and should limit the release to traffic that originated, terminated, interchanged in, or passed through the City.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Frederick Miller Jr.', with a stylized, cursive script.

J. Frederick Miller Jr.

Counsel for the Association of American Railroads

¹ See Letter from Dr. William Brennan, Director, Office of Economics, to Scott Strelecki, Regional Planner, Southern California Association of Governments, Docket No. WB 20-48 (Nov. 5, 2020) (limiting the release of data to a state entity to masked carload waybill sample for traffic that originated, terminated, passed through, or interchanged in that state).