

BEFORE THE SURFACE TRANSPORTATION BOARD 312644

WASHINGTON, D.C.

Docket No. FD 36873

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October 2, 2026
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Public Record

**UNION PACIFIC CORPORATION—CONTROL—NORFOLK SOUTHERN
CORPORATION**

EVIDENTIARY STATEMENT OF PARTY OF RECORD, GEORGE AVERY GRIMES

Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0001

Re: Docket No. FD 36873 — Responsive Comment
Union Pacific Corporation and Norfolk Southern Corporation — Control

Dear Members of the Board:

This Evidentiary Statement is respectfully submitted in Docket No. FD 36873 concerning the amended application filed April 30, 2026, by Union Pacific Corporation and Norfolk Southern Corporation.

I write as a Party of Record and an industry professional with 50 years of experience in railroad operations, engineering, strategy, marketing, and research. My background includes 20 years with Class I railroads (MP/UP, KCS) and 15 years in senior leadership roles with short line railroads (OmniTRAX, Patriot Rail). My short line career included participation on both Union Pacific's Shortline Advisory Group (SLAG) and BNSF's Shortline Caucus. I have a BSCE/MSCE in Railroad Civil/Environmental Engineering and a Doctorate in Railroad Engineering, Economics and Finance (UIUC). I have also served the Transportation Research Board in the capacity of Chair of Rail Freight Transportation Committee, then Rail Group Executive Board Chair, and finally as the Chair of the Technical Activities Council overseeing approximately 170 committees of the TRB.

Page 2

I am not an employee of or otherwise compensated by any company or interest group. The views presented here are my own based on my individual experiences and research.

Respectfully submitted,

/s/ George Avery Grimes

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Dated: October 2, 2026

cc: All Parties of Record

EVIDENTIARY STATEMENT

I. Introduction

The proposed Union Pacific Railroad (UP) acquisition of Norfolk Southern Railway (NS) presents an unprecedented consolidation in the freight rail marketplace. If approved, it would create a railroad that has more than 50,000 route miles. The combined carrier would have unparalleled long-haul service and would create 88,000 new county-to-county lanes where shippers will have access to single-line-haul rail service.¹

A combined UP/NS would also shape the future of the short line industry, increasing UP's connected short lines from 180 to approximately 417.² Vann Cunningham has submitted well-stated concerns for the short line eco-system.^{3 4} CN's filings challenge UP/NS's treatment of short lines as competitive alternatives.⁵ Bowers has suggested that UP and NS have a "significant list" of paper barriers that would give UP/NS "enormous market power".^{6 7} This submission asserts that the proposed UP/NS merger will have direct (i.e., artificial market levers) or indirect influence (i.e., network effects) over 90% of its connected short line railroads and at least 60% of the short line industry.

¹ Freightwaves, 7-29-26, 'Future of Freight' NS CEO Mark George; UP/NS website 'Benefits to Customers'

² UP and NS websites, unique short line railroads excluding duplicates

³ Cunningham, J Vann 5-12-26, 'The Ecosystem Below: How the Proposed UP-NS Merger Threatens Class II and III Railroads' LinkedIn

⁴ Cunningham, J Vann 8-4-26, Evidentiary Statement in Docket No. FD 36873 UP Control of NS

⁵ CN in STB Docket FD 36873 FR Doc. 2026-17024 Filed: 8/19/2026

⁶ Bowers, Jim 11-4-25, 'Eliminating Paper Barriers is the Pro-Competitive Move' Railway Age

⁷ Ibid, Bowers explains that both UP and NS were active in selling short lines after Staggers. In 1980 there were 8,000mi of short lines and today there are 50,000mi of short lines suggesting an active expansion of paper barriers.

This submittal is intended to inform the Board as to the asymmetric relationship between Class I railroads and short lines and how the proposed UP/NS acquisition would affect that relationship. Starting with known market levers across the freight rail sector, this assessment looks at the resulting network effects of the proposed UP/NS transaction and describes a broad market influence beyond actual contracts and connections in the competition for revenue share between Class I and short line railroads.

In summary, the Board should consider two paramount factors in this docket.

First, eliminating artificial short line market barriers must be a pre-condition even to reach a threshold for applying any standard of Enhanced Competition. Before such a standard can be considered, the clearly anti-competitive levers at work must be eliminated.

Second, the Board's definition of Enhanced Competition to be applied in this proceeding should incorporate a *reasonable service* standard. Applicant UP's filings in this docket suggest increased density and capacity constraints, and its asymmetry of power extends to the competition for capacity between high-priority PSR operations and lower-priority local services. A *reasonable service* standard designed by the Board would help anchor the definition of Enhanced Competition, balance shipper needs with the realities of railroad operations, and ensure that if the transaction is approved, banished artificial market levers cannot return in the form of *service penalties* for shippers served by short lines interchanging with a newly integrated UP.⁸

⁸ Railway Age, 8-21-26, Blinn, Bostek, 'UP+NS: Why We Keep Asking the Questions'

II. Short Line Growth and Competition for Revenue Share

According to American Short Line and Regional Railroad Association President, Chuck Baker, all six Class I railroads have said that short line traffic is the fastest growing segment of their carload and merchandise traffic.⁹ As a former 12+ year member of UP's Short Line Advisory Group (SLAG), this author observed many years in which UP recognized short lines as being its fastest growth sector. Well-run short lines are the fastest growing rail sector because they offer what shippers need and often what Class I railroads previously provided. Short lines commonly provide car cleaning, car supply, intra plant switching, track services, storage, logistic support, and much more. And in many cases, short lines provide more choices to shippers in terms of routing and price options.

Class I carriers benefit substantially from short line growth. By leaving local services to short lines, Class I carriers can decrease operating costs while retaining and growing carloads. That said, Class I marketing departments are dis-incentivized to reduce their revenue or revenue share when they have leverage. UP CEO Vena states broadly "It's about pricing."¹⁰ Yet short lines (and their shippers) need an arguably fair division of revenue to deliver safe and reliable services as well as to cover their own capital maintenance and growth investment. Accordingly, the underlying competitive tension between a short line's need for revenue and a Class I's desire to maximize its revenue creates *competition for revenue share (a.k.a. economic surplus)*. Class I railroads are incentivized to maximize their revenue by minimizing the short line's share, and their ability to do so is heavily influenced by an assortment of contractual arrangements that

⁹⁹ Freightwaves, Baker, C, 11-4-25

¹⁰ Freightwaves, Vena, Jim, 7-29-26, 'The Future of Freight' UP CEO

affect relative market power. Vann Cunningham noted the ‘limited leverage’ of short lines in these negotiations.¹¹

III. Class I Market Control Levers Over Short Lines

Power asymmetry between Class I and short line railroads inhibits true competition - whether for carload or revenue share. How often and how effective the levers of power are used is difficult to estimate without making assumptions. The list below classifies some of the primary Class I market levers based on this author’s 15 years of experience as a short line executive:

- Lease Terms and Conditions: market or interchange restrictions built into the language of the lease and the ability of the Class I to cancel or alter lease terms
- Paper Barriers: terms that penalize or prevent interchange with a competing carrier
- Captive Railroads: that have no access to a second carrier or other alternative to remedy Class I service or rate problems
- Trackage Rights: often provide short line access to shippers but are revocable
- At Will Revocable Agreements: e.g., fuel surcharges, run-through power agreements
- Refusal to accommodate new common carrier short lines requested by shippers
- Handling Line Agreements leave pricing power with the Class I railroad

In 2008, Board Vice Chairman Mulvey noted concerns about interchange commitments and that “the trickle of transactions with interchange commitments since the Board’s 2008 interchange

¹¹ Ibid Cunningham

commitment disclosure rules were adopted has turned into a steady drip.”¹² But the number and breadth of these and other market levers goes beyond just the nominal ‘interchange commitments’ about which Mulvey expressed concerns (as the above list suggests.)

In *Weskan v. UP*, a short line owned by UP was leased by UP to a large short line holding company.¹³ A shipper on the short line wants to ship grain to a junction with BNSF that is close to the destination elevator, but in 2019 UP imposed a *new or revised* paper barrier to stop the movement.¹⁴ Curiously, the shipper has brought an action against the short line for enforcing a paper barrier imposed by UP. Normally short lines more closely aligned with their customer shipper’s interests than with a Class I, especially with revenue at stake – *unless there is an artificial restriction, like a paper barrier, that limits alignment and competition.*

In this case, the facts seem to suggest that UP specifically used a paper barrier to control this market access, though UP disputes this allegation.¹⁵ It would seem the short line is losing revenue from this artificial barrier. Was the holding company required to agree to a paper barrier to obtain or avoid losing the short line lease? Or were its hands tied because of other railroads controlled by this holding company that have valuable commercial ties with UP? Either way, the anti-competitive effects of the UP’s use of these levers over the short line is clear.

¹² Vice Chairman Mulvey, Sep 16, 2010, Federal Register Vol 75, No. 179

¹³ *Weskan Grain LLC v. Kansas and Oklahoma Railroad, LLC*, No. 2:26-cv-02053 (D. Kan. filed Jan. 27, 2026). Also see STB Docket No. NOR 42185, Decision (served July 9, 2026)

¹⁴ On Nov. 21, 2019, UP and K&O executed the Fourth Supplement to the original 1997 lease. STB Docket FD 36849

¹⁵ In 2019 UP amended the lease and added a \$500 per car use fee for using an interchange with Colorado Pacific.

IV. Class I's Have Direct Influence Over Short Line Railroads and Holding Companies

Entire short line holding companies appear influenced by major carriers. Shown in Table 1 are the results of an in-depth ChatGPT AI-assisted study that this author conducted in September 2026.¹⁶ Of Watco's 47 railroads (US), 22 (or 47%) were all or partly leased from a Class I railroad. Of the remaining 25, 2 have paper barriers. Of the remaining 23, 12 are captive to a single Class I. Of the remaining 11 railroads, 4 depend on trackage rights, for a total of 40 (about 85%) with some kind of market control lever (using these metrics). There are other types of influences (e.g., fuel surcharges, power sharing agreements, handling line agreements, operating and service contracts, car supply) that were not included in this study because the available data was considered uneven. Accordingly, the influence these data imply is considered broadly conservative.

Table 1:
Class I Market Control Levers over Watco and G&W

	Genesee & Wyoming		Watco Railroads	
	# RRs	Cumulative %	# RRs	Cumulative %
Leased some/all from a Class I	25	25%	22	47%
Have paper barriers (but not leased)	1	25%	2	51%
Captive to one Class I (but not leased or have PB)	34	59%	12	77%
Operate over Class I w TR (not leased, PB, or captive)	17	75%	4	85%
Total with some form of Class I influence	77	75%	40	85%
Total railroads	102	100%	47	100%

The cumulative effect of these individual market levers suggests Class I influence at the short line holding company level. It is not clear from these results, however, how much influence each

¹⁶ These studies were conducted by the author in September 2026 and checked for consistency, known controls, and level of confirmatory detail. Methodologies for each table result were documented in detail for potential further research.

of the six (6) Class I carriers have individually. Every Class I is likely to have some level of market control over many or most of its connecting short lines and additional research would offer clarity. NS in particular is known for its extensive use of paper barriers, according to Vann Cunningham.

From a short line perspective, the threat to even a small portion of total revenues can be devastating to an already thin bottom line. It is not the specific percentages in Table 1 that are important – the concerning factor is the market power implied.

V. Class I's Exert Market Control Over Entire Short Line Companies Through Leverage-at-a-Distance

The use of these market levers goes beyond any specific railroad or individual agreement and can extend to the entire holding company through 'leverage-at-a-distance' (LAAD). This is the threat of penalizing one short line railroad in the holding company for the actions of a sister railroad by using undue leverage in an otherwise unrelated market. LAAD gives the Class I *indirect* influence over all of the short lines of the holding company regardless of whether a direct contract or physical connection exists. LAAD can also be used against rail customers that have, for example, advocated for a short line as an alternative to poor Class I service performance. The latent market power that this power asymmetry creates is real enough to be meaningful to a short line or shipper whether or not it is actively used.

LAAD shows that the relevant source of railroad market power is not necessarily the control of an individual transaction such as a paper barrier; in many cases it is the *network effect* of these levers that is cumulative and grows with size. LAAD describes how individual levers – including *artificial market barriers* – can be used to exert control *beyond a Class I's existing connections, contracts and geography*. It is distinctly different and more powerful than the general advantages that come with size and scope.

LAAD demonstrates that it can cross markets without reciprocal multimarket competition, when one party controls an economically important relationship on which the other party depends. Whereas the multimarket-contact literature concentrates on how reciprocal competition across markets can facilitate credible punishment (e.g., between Class I's), LAAD shows how economic dependence in one market or relationship leads to the ability to discipline conduct in another, especially in highly asymmetric bargaining positions.¹⁷

Even when a short line *initially* has favorable bargaining power by having access to at least two competing Class I routing choices (i.e., 'dual access'), it can be subject to LAAD control if its holding company has other dependent relationships with the Class I. It is one reason that artificial market levers like paper barriers are so effective and broadly used by Class I railroads. An important distinction from ordinary bargaining-power analysis is that it goes beyond size and network-related advantages and extends to and includes *artificial constraint asymmetry* (created

¹⁷ Edwards, C 1955, Abreu D. 'External Equilibria of Oligopolistic Supergames' Journal of Economic Theory 39 (1986), Bernheim & Whinston 'Multimarket Contact and Collusive Behavior': RAND 1990

by artificial barriers).¹⁸ The Class I is larger and naturally has more leverage, but the use of these artificial constraints amplifies its dominance.

LAAD threats can also come in the form of *non-price type punishments* such as in the *competition for capacity* when local and short line trains cannot get sufficient priority to provide reliable services, and their ability to seek regulatory relief or alternative access is constrained. Because Class I and short line railroads are by nature *complements in production*, reliable interchange services are critical in this one-sided relationship. Based on this author's earlier days as a short line executive, interchange service agreements (ISAs) with Class I railroads were an important tool that set standards and ideally measured interchange performance. But ISAs seem to have been gradually de-emphasized or abandoned in recent years.

The complementary nature of railroad services combined with the competition for revenue share may be described as *multimarket vertical dependence over revenue allocation*. The issue in this case is not competition for the product. *It is competition for the surplus generated by producing the product together*. Complementarity does not imply equal bargaining power. Pre-existing asymmetrical power in one relationship can be used in other relationships within the rail network. And the sanction does not have to be economically efficient for the Class I. It only has to be sufficiently costly to the short line.

¹⁸ Rogerson, W. 2020, 'The Bargaining Leverage Over Rivals Effect' Canadian Journal of Economics
Richards, Bonnet et al. 2018 'Complementarity and Bargaining Power'

VI. Class I's Have the Power to Stop New Short lines

Class I railroads can prevent the development of new common carrier short lines. An example based on this author's personal professional experience was a rural industrial rail park that had suffered unreliable Class I service. The Class I's local switching and pick-up/delivery services were reduced from 5 days/week often to one day/week or less. Lack of service was forcing some of the rail customers to switch to truck or shift production to other locations. This industrial park then contacted and contracted with a short line holding company to establish a new *common carrier* railroad to provide switching and other needed services. The common carrier nature of the short line would have allowed it to set its own rates. When the industrial park contacted the Class I carrier about these arrangements, the Class I carrier's response to the proposed new railroad included the following actions:

- Threats of less or no service at all
- Refusal to accept the short line's switching division in the rate
- Used LAAD to punish the short line's holding company (or a sister railroad)
- Used LAAD with the key shipper to stop the proposed short line

Similar to artificial market levers, there is no way to determine the number of potential short lines prevented, the number of shippers left without rail alternatives, or the amount of economic development lost from this kind of market power. In this particular case, leverage over the shipper was the final straw for the park, and even though the park had formally engaged the new short line, it never began operations.

As in the *Weskan v UP* case, it is the rail customer that is often left alone to deal with the Class I when a short line's hands are tied and the customer is directly threatened. In a normal free marketplace, the short line would find the most efficient and competitive route and work directly in the shipper's interest as previously described. But not in this case.

LAAD appears equally effective with rail customers as with short lines (including rail industrial parks and similar shipper proxies), perhaps even more so. As shown in the example described above, LAAD used against a shipper is the *ultimate backstop* if a short line is unresponsive to a Class I's actions. It has the *shipper lever* to pull even without any contractual or physical connection to the short line, especially if its shippers have other economic relationships (e.g., other locations) with that Class I.

VII. UP/NS Market Leverage Over Short Lines Will Increase

If the Board Approves the Transaction, which Is Not in the Public Interest

The proposed acquisition will increase UP's direct (*or structural, from directly applied artificial market levers*) influence from 112 to 207 short line railroads based on the AI-assisted research conducted by the author in September 2026.¹⁹ Vann Cunningham notes that UP/NS may have enough consolidated market leverage to drive carloads away from other Class I railroads by controlling bridge carriers.

¹⁹ See footnote 16 on the September 2026 study conducted by the author.

The analysis shown in Table 2 includes only short lines that connect directly with either UP or NS, and only market levers that could be *identified* from the AI-assisted literature search. As such, this is considered a conservative analysis of direct structural influence.

Table 2:
Estimated Structural Influences
over connected shortlines

	UP		NS		UP+NS	
	RRs	Cumulative	RRs	Cumulative	RRs	Cumulative
Leased some/all from UP, NS	38	21%	32	15%	70	18%
Have paper barriers (but not leased)	2	22%	1	15%	3	19%
Captive to UP or NS (but not leased or have PB)	63	57%	50	39%	113	49%
Operate over UP or NS w TR (not leased, PB, or captive)	9	62%	12	44%	21	54%
Total with some form of UP or NS influence	112	62%	95	44%	207	54%
Total railroads (verified as connected)	181	100%	214	100%	380	100%

While UP's *structural market* influence will almost double, it also has indirect LAAD influence over a short line holding company's other lines even if they aren't connected to UP/NS or do not have direct market control levers. Adding in the *indirect influence* from LAAD (i.e., 188), this suggests that about 395 (i.e., 207+188) short line railroads could be directly or indirectly influenced, or over 60% of the short line industry as a result (see Tables 2 and 3).

Table 3: Short Line Holding Company (SHC) Effects	SHC Total Count verified only	UP		NS		UP+NS		LAAD Indirect Influence
		<i>Structural Influence</i>	<i>Structural Influence</i>	<i>Structural Influence</i>	<i>Structural Influence</i>	<i>Structural Influence</i>	<i>Structural Influence</i>	
G&W	102	18	12	30	29%	72		
Watco	47	10	8	18	38%	29		
OmniTRAX	35	6	1	7	20%	28		
Patriot Rail	31	6	3	9	29%	22		
R.J. Corman	19	1	6	7	37%	12		
Jaguar Transport	14	6	2	8	57%	6		
Regional Rail	17	0	4	4	24%	13		
Anacostia Rail Holdings	6	0	0	0	0%	6		
North Shore Railroad Co.	6	0	6	6	100%	0		
Total Count	277	47	42	89	32%	188		

As mentioned previously, the four structural levers (i.e., leases, paper barriers, captivity, trackage rights) examined in this September 2026 study only capture some of the Class I's influence over short line holding companies. Switching contracts, terminal operating agreements, handling carrier agreements, port operations, and similar service arrangements create additional enterprise-level dependencies: Anacostia, R.J. Corman, Patriot, G&W, Watco, OmniTRAX and potentially other short line holding companies have such relationships with UP and/or NS. These were *not included* in the *structural* lever counts but represent additional pressure points through which leverage-at-a-distance may operate.

LAAD may also arise when a shipper has a facility that is captive to either UP or NS while also operating a facility on the other. In such cases it is the *captivity* at one of its locations that creates leverage rather than a paper barrier or lease terms. This author found a number of LAAD-type configurations for chemical, grain, steel, automobile and containerboard producers that could result from the proposed UP/NS transaction but the results are too preliminary to publish.

From a shipper perspective, the implications of the *Weskan* case are troubling. UP appears to be exercising its perceived right to establish new or enhanced paper barriers to, *for example*, restrict NS short line shippers to its long-haul routes when they may have had other choices previously. It will certainly be incentivized to do so and the *Weskan* case demonstrates UP's *ongoing willingness* to apply this type of market power, *even retroactively*.

**VIII. If this Transaction is Approved, the Competition for Capacity
will Adversely Affect the Public Interest**

With a UP/NS merger new long-haul precision scheduled railroad (PSR) operations will likely strain existing capacity on lines that currently support local services, as UP's own Application suggests. In these situations, local and industry 'jobs' (e.g., trains, switch engines) often receive lower priority and can become too unreliable to meet customer needs. Loss of reliable local services comes at a cost to existing small railroads, shippers, local industrial parks, and regional economic development areas - especially those located near these high-priority and dense corridors. Demarketing of local industrial parks, intentional or not, can happen in these instances.

Capacity is an expensive and limited resource especially in the short term. *Capacity control* is one of the greatest levers that Class I railroads use to maximize their return on investment. This *competition for capacity* is decidedly one-sided between coast-to-coast high-priority PSR trains and low-priority short lines and local switchers.

Class I railroads currently share capacity all over their networks at important gateways and corridors such as Chicago, St Louis, Houston, the Speedway, and others. They will occasionally challenge each other for dispatch priority but that normally results in a fair, data-supported settlement, sometimes with obligations for capital or operating plan changes. Similarly, an agreement to preserve capacity for local, industry, and short line services as a condition of this merger seems a logical and workable necessity.

It is also possible that future advances in rail automation may further strain rail capacity and access with efficient direct origin-destination rail services using multiple small-train ‘batches’.²⁰ Class I railroads will eventually have to respond to the existential threat that automated trucking presents by advancing and applying automation to new levels. The 88,000 new single line-haul county-to-county pairs that UP’s proposed acquisition would create should give UP/NS an advantage if this version of automation comes to fruition. How will such changes affect capacity and reliability of shipper and short line services? Where does this leave their Common Carrier obligation to provide *reasonable service* if this obligation is not defined long before automation technology becomes mainstream railroading?

Reasonable service is fundamental to basic market access, much less a thriving competitive marketplace. Competition without it is meaningless. Similarly, an Enhanced Competition standard is arguably superficial without a context to provide and enforce a *reasonable service* standard. Sharfman (2024) agreed that the Common Carrier obligation continues to exist after Staggers, but says the Board has to set identifiable statutory standards for enforcement.²¹

IX. Enhanced Competitiveness Is Not Enhanced Competition

The Board has espoused an Enhanced Competition standard for approving new Class I mergers, but has not defined a specific metric for deciding when that requirement has been met. UP/NS

²⁰ Grimes, G. Midwest Rail Conference, 2025: ‘Remote Control Trains and the Future Economics of Railroading’ also 2019 TRB, NURail, and SMART Union presentations. Reducing fixed-cost of a train start makes small trains economical but potential heterogeneous train size capacity effects need further study.

²¹ Sharfman, B. 2024, Washington Legal Foundation, ‘Common Carrier Regulation of Railroads Must Abide By Statute’s Ascertainable Standards’

seeks to pre-emptively define it as simply the old-school merger analysis, at least according to recent interviews with the CEOs of UP and NS.^{22 23} Some of the proposals by CN and UP that are presented as ‘enhanced competition’ appear to be *less than the 8,000 miles of rights that UP offered BNSF for the UP/SP merger to preserve competition*. UP’s CEO Vena makes a case that UP’s single line services will increase UP’s competitiveness with the efficiency and service levels of coast-to-coast routes.²⁴ But enhanced competitiveness is not the standard that the Board adopted with the 2001 merger rules. Enhanced competitiveness is not Enhanced Competition (e.g., *a more efficient dominant service provider such as Amazon, for example, does not mean more competition, it often means less.*)

So far there is little evidence that any of UP’s proposals address the ‘watershed’ type of Enhanced Competition standard that is a threshold for approving the proposed combination under the 2001 merger rules. The underlying challenge to the Board is to define what standard to use to verify if UP’s proposals satisfy an Enhanced Competition threshold. It is logical to expect that Enhanced Competition would meaningfully affect broad swaths of the shipping public and should evaluate customer and short line viewpoints in particular. A balanced approach would consider the rights and responsibilities of railroads and shippers, both large and small.

A primary pre-condition of any Enhanced Competition standard is the elimination of artificial market control levers and banishment of LAAD-type actions. This alone would be a dramatic

²² Surface Transportation Board, 6-11-2001, Major Rail Consolidation Procedures, STB Ex Parte No. 582 also 49 CFR @ 1180.1(c).

²³ Freightwaves ‘Future of Freight’ George 7-29-26 “There’s no denying that competition has already been enhanced just by the announcement of it.”

²⁴ Freightwaves ‘Future of Freight’ Vena, George 7-29-26 ‘How a Transcontinental Merger Will Lead to Growth’

and powerful proposal that would support the continued competitive provision of services by short lines to shippers and the communities that depend on them. Eliminating anti-competitive constraints would include allowing short lines to initiate services where customer demand justifies it and incumbent carriers fail to provide it. *Short line market freedom* would encourage new competition across all UP/NS markets, and this precedent could become a new regulatory floor for any later Class I merger proposals.

X. This Transaction Is Not in the Public Interest without *Reasonable Service*
Definition, Application and Enforcement

Railroads are complementary in production but competitive in revenue surplus and capacity allocation. The linkage between production and competition in a constrained rail infrastructure network would seem to require - at least theoretically - a definition of *reasonable service* as a floor in a highly asymmetric but otherwise competitive marketplace. Once defined, service quality information systems can identify if and when *reasonable service* is or is not being provided and if remedies are justified. These types of systems have been around for many years.²⁵

How should this service obligation be applied realistically and objectively? What are the broader *reasonable service* obligations that need to be considered in this case?²⁶ Some starting principles could form the basis for fuller consideration:

²⁵ Grimes, G., Journal of the Transportation Research Forum, 1992 pp28-37 'Service Quality Information Systems for Railroads'

²⁶ Buck, M., Yale Law Journal, 2025, "Railroad Regulation Reinterpreted" Use of CCO to address concentrated power

- Shippers and short lines should have a defined right to reasonable service
- Railroads that provide reasonable service should not be forced to provide new competitive access
- If an incumbent railroad fails to provide reasonable service, competitive access is a logical remedy
- Exceptions for captive, inefficient shipper, and ‘cherry-picking’ situations
- Reasonable service standards apply to all traffic whether under ‘contract’ or otherwise excluded by commodity type or subject to highway competition
- If competitive access is justified:
 - New entrants must abide by common carrier rules
 - Must be implementable, similar operating conditions
 - Access does not mean a guaranteed service provider

An important feature of a *reasonable service* framework is that it reduces *economic domination* of railroad interests *by large shippers over smaller shippers* by setting a *service floor* for this small but vital customer sector. When a Class I railroad expands rapidly by acquisition or merger, it is natural for its key focus to be on its largest customers, and when capacity and crews get tight, big customers logically get more attention. From a small or smaller customer viewpoint, losing the *competition for capacity* to large shippers when a railroad’s operational fluidity is strained is a justifiable concern. As Class I railroads merge or acquire each other, the economic distance between their largest shippers and their smallest ones increases, with predictable results.

A *reasonable service* standard would obligate a combined UP/NS to continue to provide regular local, industry, and short line connecting services on a reasonable pre-defined operating schedule even when the network operating plan changes. UP/NS should not be allowed to unilaterally reallocate capacity from local services to PSR or other through-freights. It would not obligate UP to operate at a loss or otherwise subsidize the shipper, but it should require an integrated UP - *a priori* - to preserve and maintain capacity needed for local services and short lines. Such a standard would also allow a shipper to pursue a potential service alternative if the incumbent railroad cannot (or will not) provide *reasonable service*, as long as there is an alternative that actually exists and is willing to provide that service (at a price the shipper is willing to pay).

From a Class I perspective, one advantage of this concept is that it lessens the push for more drastic actions like open access or *pending legislative proposals*.²⁷ Instead, this submittal suggests that a *reasonable service* standard should be designed around the realities and limitations of railroad operations over a relatively fixed infrastructure. The Board is in the best position to do this from its detailed and focused insight into the rail industry. It would be in a position to properly balance policy objectives with operating and economic reality. Last but not least, the Board also has both the responsibility and the power to set such standards under its Common Carrier policy directives²⁸, and this submittal urges it to do so.

²⁷ The ‘Reliable Rail Service Act of 2025’ is sponsored by Sens. Tammy Baldwin (D-Wis.) and Roger Marshall (R-Kan.). It would amend the requirement to serve shippers “on reasonable request” by adding “in a manner that meets the shipper’s need for timely, efficient, and reliable rail service and fulfills the shipper’s reasonable service requirements.” It would also add a lengthy list of conditions for the Surface Transportation Board to take into consideration if a carrier is meeting that common carrier obligation. These include frequency of service, the impact of reductions in employees, reductions in equipment or infrastructure, and the transportation needs of a customer based on previous service.

²⁸ ICLE Issue Brief 2025-11-04

XI. Conclusion

UP's Amended Application poses serious harm for short lines and their rail customers. It should not progress without first mitigating or eliminating artificial market barriers over short lines and other shipper proxies. Artificial market controls over short lines are inherently anti-competitive. This submittal demonstrates that such Class I controls - *such as direct control through paper barriers and handling line agreements, and through indirect control such as leverage-at-a-distance* - create market power beyond physical connections, contracts and geography. Eliminating these levers is a necessary first step in defining and adopting the Enhanced Competition standard necessary for considering the proposed acquisition.

Second, the Board's definition of Enhanced Competition to be applied in this proceeding should incorporate a *reasonable service* standard. Applicant UP's filings in this docket suggest increased density and capacity constraints, and its asymmetry of power extends to the competition for capacity between high-priority PSR operations and lower-priority local services. A *reasonable service* standard designed by the Board would help anchor the definition of Enhanced Competition, balance shipper needs with the realities of railroad operations, and ensure that banished artificial market levers cannot return in the form of *service penalties* for shippers served by short lines interchanging with an integrated post-merger UP.

CERTIFICATE OF SERVICE

I hereby certify that on October 2, 2026, I served copies of the foregoing Evidentiary Statement upon the following parties, by email where email service is acceptable and by first-class mail otherwise:

- Secretary of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590
- Attorney General of the United States, c/o Assistant Attorney General, Antitrust Division, Room 3109, Department of Justice, Washington, DC 20530
- Michael L. Rosenthal, Covington & Burling LLP, One CityCenter, 850 Tenth Street NW, Washington, DC 20001 (Counsel for Union Pacific)
- Raymond A. Atkins, Sidley Austin LLP, 1501 K Street NW, Washington, DC 20005 (Counsel for Norfolk Southern)
- Hon. Jenifer Soulikias, Administrative Law Judge, alj.soulikias.inbox@stb.gov
- All parties designated as Parties of Record on the service list for Docket No. FD 36873

/s/ George Avery Grimes

George Avery Grimes

Party of Record