



Docket Number: EP 742

Case Title: Public Listening Session Regarding CSX Transportation, Inc.'s Rail Service Issues

Action: Prepared Remarks for the STB Listening Session, October 11th, 2017 at 9:30am

Address of Listening Session: 395 E. Street, S.W., Washington, DC 20423, First Floor Hearing Room

Good morning Acting Chairwoman Begeman, Commissioner Miller and Ladies and Gentlemen of the Surface Transportation Board,

My name is Herman Haksteen and I am here today representing the Rail Customer Coalition, as I am the President of the Private Railcar Food and Beverage Association which is an active member of the RCC.

I would like to thank you for the opportunity to speak today on behalf of the Rail Customer Coalition.

First, let me thank Mr. Harrison and the CSX for the response letter to the RCC, dated August 16. We appreciate you taking the time to address our concerns which were addressed in a letter, dated August 14th, to the Congressional Authorizing Committees and the STB. I would like to take a moment to clarify who the Rail Customer Coalition is because in the letter Mr. Harrison stated that "coalitions do not have service issues" and therefore there was no need to further discuss customer service issues. To clarify, I am a CSX rail receiving customer, a board member of the Private Railcar Food and Beverage Shippers association and a member of the RCC. The RCC is a large collection of trade associations representing a broad cross section of manufacturing, agricultural and energy industries that depend on the railroads to deliver reliable and affordable service in order to remain competitive in a global market. Their members are essential to a healthy US economy with operations and employees throughout the country. Collectively, they provide more than 7 million jobs and produce more than 4.8 trillion in economic output.

Make no mistake, RCC members are major transportation stakeholders and the largest users of rail freight. They account for more than half of the total volume of cargo shipped by rail and generate more than three quarters of the revenue collected by the railroads. The RCC was formed because rail customers across the country are very concerned about growing problems that are severely impacting their operations, including the ongoing CSX service failures.

Allow me to further clarify why the RCC was formed ... *customers* over the years have been ignored and their voices have *not* been heard by the Railroads. The fact is, that the Class 1 Railroads have grown *so large* and *so powerful*, that they act as if they no longer need to listen to the concerns of individual customers. The recent events at the CSX have certainly shown that CSX **DOES NOT** listen to the needs or concerns of individual customers. Those customers, having no other practical choice, have joined trade associations to get a **LOUDER** voice. Seemingly, those trade associations still did not have a large enough **VOICE** to be heard by the Railroads ... and so, those associations joined **COALITIONS**. All in the hopes of getting **HEARD** by the Railroads and policymakers to finally address the systemic problems and marketplace failures within the freight rail network. Make no mistake, Coalitions represent shippers. They represent *real shipper's* concerns, but most importantly for today's topic the RCC represents 75% of CSX's customers.

In that same letter the subject of reciprocal switching was raised, as was an *openness* to speak on that subject with the **COALITION** at any time. At this point, I do not think anymore talking about the subject is required, and for that we thank you.

We thank Mr. Harrison and his investors, who were responsible, for the changes that were made at the CSX. In the past several months, he and his investors have provided the strongest reason and evidence, to date, as to why reciprocal switching must become an option in the United States Railroad system.

Mr. Harrison and his investors have created a text book **nightmare case study** that illustrates how one industry that has too much power can stop the wheels of commerce and bring many other industries to a complete state of inefficiency. It shows how one powerful industry, using monopoly power created by outdated regulatory protections, can lead to the total disruption of commerce in this country.

Those industries that have been affected by the abrupt changes at CSX are industries that have built their business around a rail-based supply chain. These are companies, shippers, *CSX customers*, that have invested in rail sidings, rail specific infrastructure, such as loading and unloading docks and specific railcar equipment. They have built their production around the flow of reliable *rail service*. And let there be no misunderstanding, these companies don't have a choice not to use freight rail. They simply cannot "flip a switch" and go from shipping rail to shipping via truck. Their entire supply chain and infrastructure is built around rail. Their assets to move their products are railcars. They cannot move their railcars across the interstate highways on the back of a truck. These companies can't have a truck back up to their rail unloading terminal or move a tank car of goods into their production plants

through truck unloading docks. Many of the industries in our Coalition are these companies, companies that through their investments are “*all in*” rail users. These are companies that should be CSX’s preferred customers, because they have invested in CSX’s services and support rail transportation. These are companies and industries that CSX should not be taking advantage of simply because they don’t have a choice.

The CSX disruptions over the past several months have shown how vulnerable these industries are without a reliable rail option. They are not vulnerable because of the service disruptions. They are vulnerable because of rail regulations and powerful Railroad lobbying groups that continue to prevent customers from having greater access to rail-to-rail competition and choice of last mile Rail providers when their plants are only served by one carrier.

Again, I would like to thank Mr. Harrison for bringing up the topic of reciprocal switching in his letter to the RCC. Not only has he raised the level of awareness for the need for reciprocal switching by his actions at CSX, but through his distinguished career has single-handedly made this decision easy for our lawmakers and the STB to adopt this common-sense reform.

The rail industry and their lobbyists over the years have fought hard against reciprocal switching stating that it creates operating inefficiencies. They *claim* it will drive up additional costs and even create unsafe working environments.

In fact, Mr. Harrison ran and operated two of the most efficient railroads in the Class One Railroad network, the CN and later the CP and did so in an environment that allows reciprocal switching for customers. These class ones while under his control, had safety records and operating efficiencies that were top of class and financials that showed operating ratios and profits that were industry bests.

Today, Mr. Harrison has not only brought it to the attention of the STB and our lawmakers that we need reciprocal switching, his past success has proven, that Class One railroads can operate just as safely, efficiently and profitably in an environment that has reciprocal switching.

Let there be no mistake, the service failures created by CSX railroad these past several months have resulted in huge additional expenses and inefficiencies for its customers and our members. We also know that there will be very little opportunity for these customers to recover those additional costs. The increased costs are the price these customers had to pay for the CSX to drive cost out of its system. Mr. Harrison actions



of transforming a railroad has not created a more efficient railroad it has simply pushed cost to its customers.

If there is any good to be gained from any of this it should be that the Board recognizes that business as usual is no longer working. These problems will not just fade away or fix themselves. Action is needed.

Adopting a sensible competitive switching policy is a good place to start. Doing so should help stave off future service failures as a result of a single railroad by providing access to more shipping options. And as we have seen with the CN and CP, it will support a strong and competitive freight rail system.

At the end of the day, the recent action of Mr. Harrison, his investors and the CSX may very well be the event that drives this needed change, so, for that we thank him for bringing this very painful time of change to the American railroad system.

Respectfully submitted,

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IT'S TIME TO MAKE THE SWITCH TO FREIGHT RAIL COMPETITION

FREIGHT RAIL **REFORM**

Competitive switching will unlock market forces,
improve service, and reduce shipping distances

HOW IT WORKS

1 ORIGIN

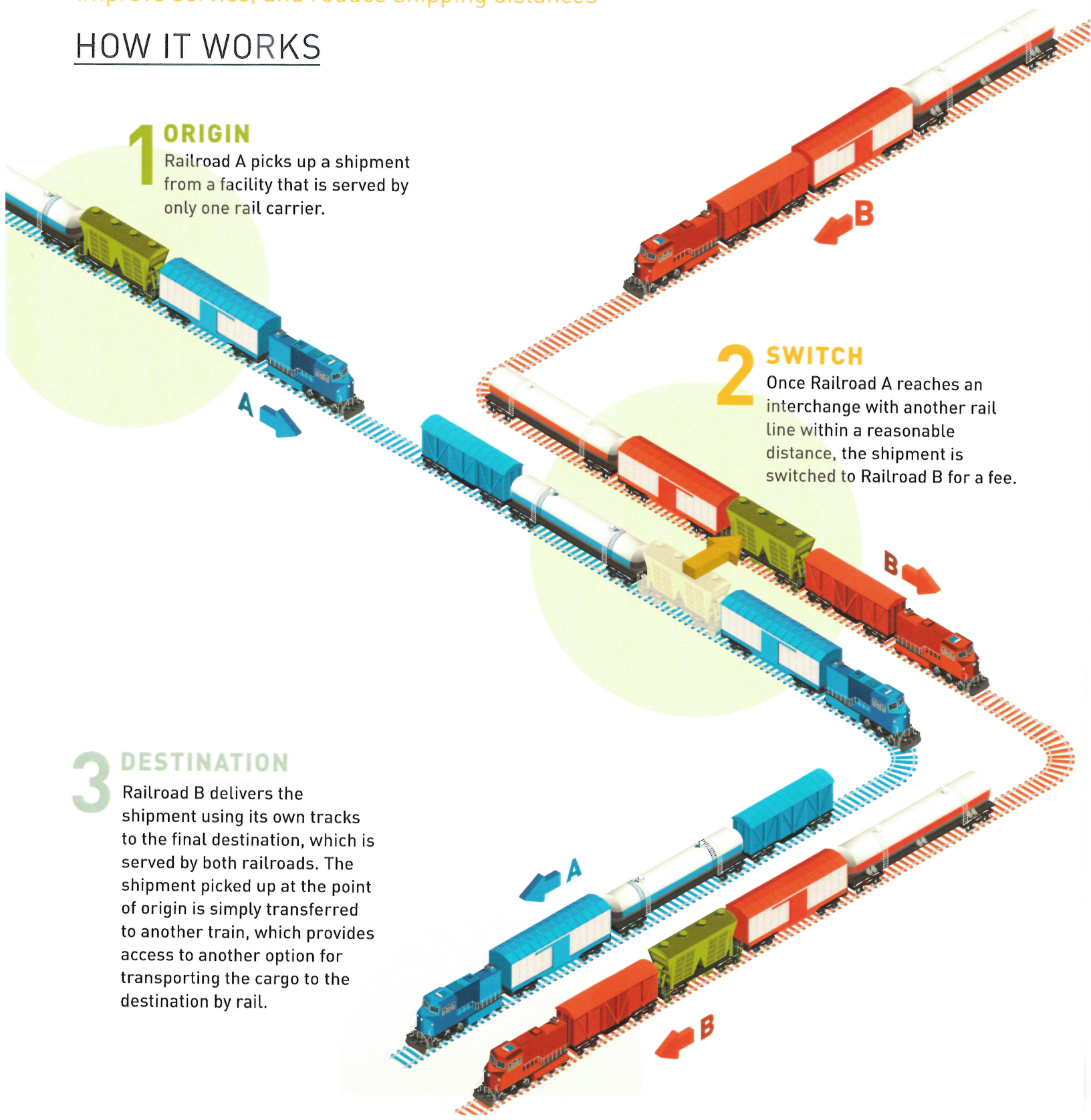
Railroad A picks up a shipment from a facility that is served by only one rail carrier.

2 SWITCH

Once Railroad A reaches an interchange with another rail line within a reasonable distance, the shipment is switched to Railroad B for a fee.

3 DESTINATION

Railroad B delivers the shipment using its own tracks to the final destination, which is served by both railroads. The shipment picked up at the point of origin is simply transferred to another train, which provides access to another option for transporting the cargo to the destination by rail.



COMPETITIVE SWITCHING

FREIGHT RAIL REFORM

THE GOAL

In an environment where rail competition remains elusive for many shippers, rates have soared and service has suffered. It is long past time for the Surface Transportation Board (STB) to move forward with common-sense reforms that provide regulatory relief and increase free-market competition. Promoting competition among freight railroads benefits manufacturers, farmers, and energy producers, as well as consumers across America. Adopting a sensible competitive switching policy will provide access to more shipping options and will support a strong and competitive freight rail system.

FLAWED POLICY

As it stands now, federal regulators shield railroads from competing with each other. As part of the Stagger's Rail Act, Congress envisioned a process that would allow shippers served by a single railroad to have their cargo switched to another nearby carrier as a way to promote rail competition. But due to antiquated rules adopted by the STB, no shipper has been able to successfully request the transfer of their cargo from one railroad to another.

SOUND SOLUTION

The STB is considering a proposal that provides a practical blueprint for competitive switching. The proposal would simply allow certain rail customers to request that their freight be moved to another major railroad only if another rail line is reasonably accessible.

If the switch is shown to be unsafe or harmful to other customers, the railroad can block it. And there is no "free lunch" for the shipper—they would have to pay an appropriate "access" fee to cover the railroad's costs.

It isn't really a radical idea since it's a process that has worked well for more than a century in Canada. As stated by the Canadian Pacific Railway, railroads subject to Canada's competitive switching requirements are "the two most efficient carriers in the industry today, demonstrating that a low-cost, service-focused carrier can increase revenues, operate efficiently, and reinvest in infrastructure in a competitive environment."

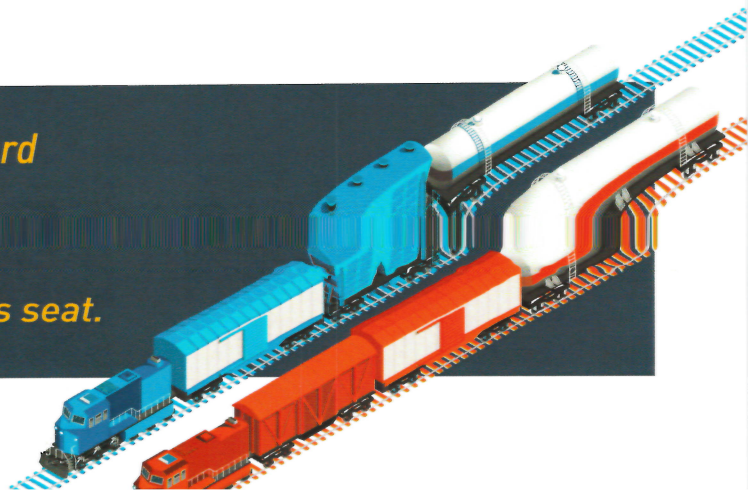
BROAD SUPPORT

Competitive switching has the strong support of the Rail Customer Coalition, representing the largest users of freight rail service and a broad cross section of manufacturing, agricultural, and energy industries.

The U.S. Department of Agriculture has gone on record saying, "Competitive switching offers a market-based solution to balance the needs of the railroads and shippers and is in keeping with the goals of the Staggers Act."

Competitive switching offers a far better way to address freight rail rates and service issues than government intervention. Furthermore, market-based competition can lead to innovation and increased efficiencies—just as it does throughout all sectors of the U.S. economy.

*It's time for the Surface Transportation Board
to remove outdated barriers to competition
and put the marketplace back in the driver's seat.*



Moving Freight Rail Forward

RAIL CUSTOMER **COALITION**

Small and large businesses across America depend on railroads to connect them with their customers, which is why a bulk of freight rail customers have come together to form the Rail Customer Coalition. The Coalition supports regulatory reforms at the Surface Transportation Board (STB) that will promote a healthy, reliable and competitive freight rail network.

Congress took an important step by passing legislation to help improve how the STB operates, and now the STB is pursuing much needed changes to adopt free market principles and do a better job resolving long-standing freight rail problems. Members of the Coalition are calling on the Trump administration and Congress to help keep the STB on track and get our nation's freight rail system back to work for its customers.



Growing Problems

Massive consolidation within the rail industry has left just four railroads in control of 90 percent of the rail traffic in the U.S. Unfortunately, outdated government policies have failed to keep pace with these changes and have left many rail customers without access to competitive transportation options or an effective way to resolve problems with rates and service. As a result, freight rail rates have doubled – more than three times the rate of inflation over the past decade – even though the volume of freight carried by the railroads has barely increased.



Put Competition Back on Track

Competition is the foundation of the free enterprise system and it is what helps drive innovation and cost-savings throughout our economy. At long last the STB has begun to move forward on practical reforms that will remove federal barriers to competition and allow the marketplace to work. Under one of the Board's proposals, rail customers will for the first time have an effective means to seek competitive bids through reciprocal/competitive switching.



Reducing the Cost of Bureaucracy

The Board is also trying to cut the red tape out of its procedures for resolving rate issues where rail customers lack competitive transportation options. The STB's current system is a bureaucratic nightmare with recent rate cases taking an average of 5 years and \$5 million to complete. This is unacceptable regulatory hurdle is one that many rail customers cannot afford. The STB should replace its outdated and overly burdensome policies with a market based alternative, such as competitive rate benchmarking. Doing so would dramatically reduce the amount of time and money it takes to address unreasonable rates that are a result of monopoly pricing, and no longer require shippers, railroads and the federal government to sink millions of dollars into rate cases.



STB is on the Right Course

The STB is pursuing much needed changes to adopt free market principles and do a better job resolving long-standing freight rail problems. Congress and the Administration must encourage the Board to keep moving forward on these changes and ensure that individuals that serve on the STB are committed to adopting these long overdue reforms.

Learn more at www.freightrailreform.com

Rail Customer Coalition

The Rail Customer Coalition (RCC) is a large collection of trade associations representing a broad cross section of manufacturing, agricultural, and energy industries. Their members are essential to a healthy U.S. economy with operations and employees throughout the country – collectively they provide more than 7 million jobs and produce more than \$4.8 trillion in economic output.

RCC members are major transportation stakeholders – accounting for more than half of the total volume of cargo shipped by rail and generate more than three quarters of the revenues collected by the railroads. Because a dependable, affordable rail network is so important to their operations, members of the Coalition support practical regulatory reforms that would allow greater access to competitive freight rail service and that would make the Surface Transportation Board more effective in addressing freight rail issues.

Groups Participating in the Coalition Include:

Agricultural Retailers Association
Alliance of Automobile Manufacturers
Alliance for Rail Competition
American Farm Bureau Federation
American Chemistry Council
American Fuel & Petrochemical Manufacturers
American Forest & Paper Association
American Malting Barley Association, Inc.
American Petroleum Institute
American Public Power Association
Associated Industries of Massachusetts
Chemistry Council of Missouri
Chemistry Council of New Jersey
Chemical Industry Council of California
Chemical Industry Council of Delaware
Chemical Industry Council of Illinois
The Chlorine Institute
Edison Electric Institute
The Fertilizer Institute
Freight Rail Customer Alliance
Foundry Association of Michigan
Georgia Chemistry Council
Glass Packaging Institute
Global Automakers
Growth Energy
Idaho Grain Producers Association
Independent Lubricant Manufacturers Association
Institute of Scrap Recycling Industries, Inc.
International Warehouse Logistics Association
Louisiana Chemical Association
Manufacture Alabama Chemistry Advisory Council
Manufacturers Association of Florida
Massachusetts Chemistry Technology Alliance

Michigan Chemistry Council
Motorcycle Industry Council
National Association of Chemical Distributors
National Barley Growers Association
National Cotton Council
National Farmers Union
National Industrial Transportation League
National Pork Producers Council
National Rural Electric Cooperative Association
National Sorghum Producers
Nebraska Wheat Board
New York State Chemistry Council
Ohio Chemistry Technology Council
Pennsylvania Chemical Industry Council
Plastic Pipe and Fittings Association
Portland Cement Association
Private Railcar Food and Beverage Association
PVC Pipe Association
Resilient Floor Covering Institute
Society of Chemical Manufacturers and Affiliates
South Carolina Manufacturers Association
SPI: The Plastics Industry Trade Association
Steel Manufacturers Association
The Sulphur Institute
Tennessee Chamber of Commerce & Industry
Texas Chemical Council
United States Fashion Industry Association
Vinyl Building Council
The Vinyl Institute
Vinyl Siding Institute
West Virginia Manufacturers Association
Wyoming Wheat Marketing Commission

Learn more at www.freightrailreform.com

FREIGHT RAIL REFORM

STAY ON TRACK WITH THE FACTS

The Association of American Railroads continues to make many misleading claims about the effort to modernize our nation's outdated freight rail policies and reform the Surface Transportation Board. The following are the most often repeated claims with some helpful facts to help set the record straight:



CLAIM: This is an effort to "re-regulate" the railroads



FACT CHECK: Current regulations such as the Board's archaic policies that prevent customers from requesting to switch their cargo from railroad to another actually shield the railroads from competing with one another. The problem isn't re-regulation; it's existing regulations that are nearly 40 years old.



CLAIM: Modernizing the STB's policies will threaten future railroad investments



FACT CHECK: Competition is the foundation of the free enterprise system and helps American producers grow their businesses and create new jobs. Removing regulatory barriers at the STB will help unlock competition in the rail network, which will provide railroads with greater incentive to make investments to improve service and reduce costs – as it does with every other industry.



CLAIM: The STB does not have the authority to change its policies



FACT CHECK: The STB is following its [statutory mandate](#) that says that the Board is supposed to promote a healthy rail system by allowing the railroads to earn adequate revenues; ensure effective competition among rail carriers; and maintain reasonable rates where competition is absent. As a [recent report](#) by the National Academy of Sciences' Transportation Research Board concluded, "While the U.S. freight railroad industry has become modernized and financially stable since the Staggers Rail Act of 1980, some of the industry's remaining economic regulations have not kept pace and should be replaced with practices better suited for today's modern freight rail system."



CLAIM: The Rail industry must be protected by the government



FACT CHECK: The railroads are an important part of the economy but they should not be allowed exercise undue pricing power over their customers. Furthermore, the interests of the rail industry must be balanced with the economic contributions of its customers and the need for fair, reliable and competitive rail service. For example, the [Rail Customer Coalition](#) represents farmers, manufacturers, energy producers and other industries that fuel the economy by providing 7 million jobs and contributing \$4.8 trillion in economic output.



CLAIM: The STB is trying to undermine railroad profits



CLAIM: There is no evidence that railroads' regulatory protections should be removed



CLAIM: Rail carriers are being asked to turn over their tracks to other railroads



CLAIM: The STB is trying to cap rail rates



FACT CHECK: Every decision the STB makes, including the Board's current proposals, considers the potential impacts on railroad revenues. And, this steadfast approach is working quite well. The financial health of the railroads continues to be very strong. The rail industry routinely promotes to Wall Street analysts that their pricing power over their customers will compensate for cyclical traffic changes, while complaining to policymakers in Washington that any minor policy changes will produce 1970's style bankruptcies.



FACT CHECK: Massive consolidation of the rail industry [has driven freight rail rates steadily higher](#). An economic analysis of public data found that freight rail rates have nearly doubled over the past 10 years. With data showing skyrocketing rail rates are no longer being subjected to market forces, the STB is proposing to end the railroads out-of-date exemptions for certain commodities and restore customers' access to important Board oversight functions.



FACT CHECK: The Board's proposal for [competitive switching](#) appropriately implements current law and introduces free market forces into a system where railroads are protected from competition. It would not "open up" rail lines to competitors, but would simply allow certain rail customers served by a single railroad to request that their freight be moved to another major railroad at a nearby interchange. It isn't a radical idea since the process has worked well for more than a century in Canada. Furthermore, the U.S. Department of Agriculture has gone on record saying, "Competitive switching offers a market-based solution to balance the needs of the railroads and shippers and is in keeping with the goals of the Staggers Act."



FACT CHECK: No one – not the STB or rail customers – is proposing to "cap rates." Where competition exists, STB has no authority to interfere with market rates. However, the STB is trying to cut the red tape out of its procedures for handling situations where a rail customer has no competitive transportation options and are subjected to unreasonable rates. It currently takes on average more than 3.5 years and \$5 million to resolve under the Board's cumbersome process, and sometimes longer and costlier. Many rail customers have concluded that this system is broken and the STB Commissioners agree: Chairman Elliott has said, "We should never be satisfied with a process that is so expensive and time consuming for all parties."