

Surface Transportation Board
Ex Parte 711 (Sub-No. 1)

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Summary of Ex Parte Meeting held April 4, 2019
between
the American Chemistry Council and National Industrial Transportation League
and Board Member Oberman

American Chemistry Council (“ACC”) and National Industrial Transportation League (“NITL”) Attendees:

- Spencer Pederson, Director, Federal Affairs, ACC
- Jeffrey Sloan, Senior Director, Regulatory & Technical Affairs, ACC
- Jennifer Hedrick, Executive Director, NITL
- Randy Mullett, Senior Policy Advisor, NITL
- Karyn Booth, Counsel to ACC/NITL
- Jeffrey Moreno, Counsel to ACC/NITL
- Jason Tutrone, Counsel to ACC/NITL

STB Attendees:

- Board Member Martin Oberman
- Ellen Erichsen, Attorney-Advisor
- Lucille Marvin, Director, Office of Public Assistance, Governmental Affairs, and Compliance

Meeting Summary:

The meeting began with introductions, and ACC/NITL thanked the STB Attendees for the opportunity to meet and discuss the Board’s proposed rule and the issues in this proceeding.

ACC/NITL discussed the history of the proceeding and the current switching rules, explaining that they are no longer appropriate given changes in the railroad industry.

ACC/NITL offered to answer any questions from Board Member Oberman.

Board Member Oberman asked ACC/NITL to walk through a typical example of competitive switching. ACC/NITL explained that the switch would be at the shipper’s request and that an interchange location could be a yard or other location where traffic is exchanged between two carriers.

Board Member Oberman asked whether there are yards shared by carriers so that no additional movements beyond the yard would be necessary for a switch to occur. ACC/NITL responded that this situation exists but is not typical.

Board Member Oberman asked why 30 miles was the distance NITL proposed as a reasonable distance. ACC/NITL explained that the distance was selected based on the Canadian switching

rules and a desire to create a prima facie standard of reasonableness that would foster access to relief.

Board Member Oberman asked about the number of shippers for which competitive switching was physically viable and whether a distant switch would be beneficial. ACC/NITL explained that a distant switch could be beneficial if the incumbent's handling of the traffic on local trains would not change, but that such situations would be more common for traffic that is interchanged close to its origin or destination. ACC/NITL also explained that it supports the Board's proposed rules even absent NITL's 30-mile reasonableness presumption.

Board Member Oberman asked whether the Board's analysis of proposals regarding competitive switching and rate case issues should be considered in relation to each other. ACC/NITL explained that this would not solve rate case issues because there will continue to be captive shippers who cannot obtain competitive switching, and carriers may choose not to compete. ACC/NITL also explained that competitive switching is about competition, not rate regulation, and it can address service issues and incentivize investments and innovation too.

Board Member Oberman asked whether certain railroads would benefit from competitive switching more than others. ACC/NITL acknowledged the potential for some carriers to have more opportunities to compete through reciprocal switching at some locations.

Board Member Oberman asked whether procedures and substantive requirements should be developed on a case-by-case basis and whether procedural parameters could be established up front to reduce burden and ensure proceedings do not stall. ACC/NITL explained that up front development of procedural and substantive requirements is important to address shippers' concerns about unpredictable litigation burdens. ACC/NITL also explained that establishing procedural parameters to ensure the speedy conduct of cases would not be objectionable if enforced. ACC/NITL cautioned that in SAC cases, extensions to deadlines have become norm.

Board Member Oberman asked for clarification of the burden of proof in ACC/NITL's proposal, explaining that the burden appeared unclear because both parties have to make a showing regarding feasibility. ACC/NITL explained that, a shipper has the burden as to all of the standards in the rule except that rail carriers would have the burden of proving that the proposed switch is unsafe, infeasible, or would unduly hamper the ability of the carrier to serve its shippers.

The meeting concluded with each side thanking the other for participating in the meeting.

EP 711 Ex Parte Meetings: Key Messages

- 1. Congress intended reciprocal switching to address railroad market power where (1) practical and in the public interest, or (2) necessary to provide competitive rail service. (Op. at 14-16; Reply at 14-17, 37-42)¹**
- 2. There is a strong need for reciprocal switching to address the exercise of railroad market power over captive shippers (Op. at 5-14; Reply at 19-37, 55-67).**
- 3. Reciprocal Switching is Deregulatory (Reply at 55-60).**
 - a. Reciprocal switching is not “artificial” competition created through reregulation, but a statutory tool to prevent carriers from foreclosing competition that otherwise exists on large portions of routes beyond a short distance bottleneck segment.
 - b. Competition would limit the need for rate regulation to the shortest captive distances.
- 4. Operational impacts are greatly exaggerated (Reply at 60-61, 96-116).**
 - a. Railroads have created “worst case” scenarios and misrepresented them as typical.
 - i. There will be zero operating impacts when the incumbent retains the traffic.
 - ii. Reciprocal switching does not impose additional operating steps on the incumbent when it occurs at an existing interchange.
 - iii. Case-by-case approach allows STB to deny switching in the “worst case” circumstances posited by the railroads.
 - b. Operating plans are not static, inflexible, plans as portrayed by the railroads.
- 5. Competition does not discourage investment (Reply at 116-22).**
 - a. Competition will spur investment by creating powerful incentives for each railroad to attract and retain competitive traffic, whereas the incumbent otherwise would have little need to make such investments to retain captive traffic.
 - b. Railroads have made extensive investments in highly-competitive traffic, including in areas with large concentrations of reciprocal switching.
- 6. Including lost contribution (i.e. “Efficient Component Pricing”) in the switch fee would nullify the benefits of reciprocal switching reform (Op. at 53-54; Reply at 131-33).**
- 7. The Board has ample information to act on reciprocal switching.**
- 8. Case-by-case approach enables the Board to consider cumulative impacts (Op. at 20-23; Reply at 86-89).**

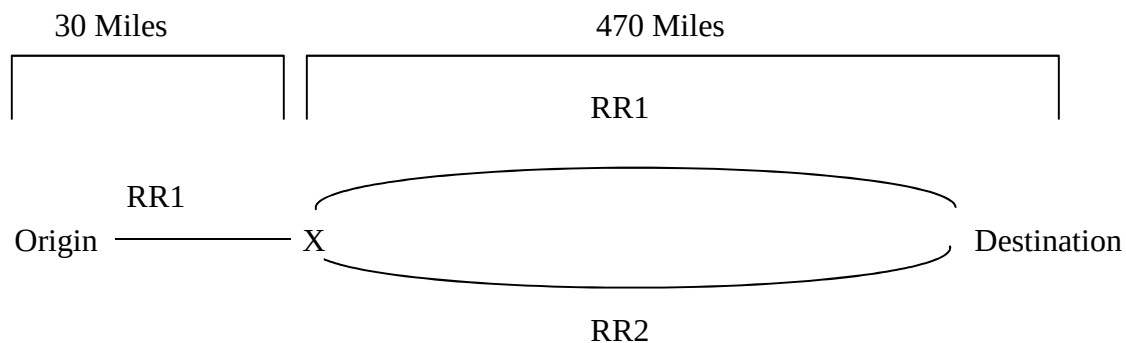
¹ References are to Shipper Coalition Op. Comments (filed Oct. 26, 2016) and Reply Comments (filed Jan. 23, 2017).

The STB's Ex Parte No. 711 Rulemaking Proceeding Is Deregulatory And Pro-Competitive

Objective: Allow competition to replace regulation of the rail industry when a competing railroad is accessible within a reasonable distance of an origin or destination that is captive to a single railroad.

How It Works: Upon a shipper's demonstration of a need for competitive rail service, the STB will grant a request for reciprocal switching, which requires a railroad to interchange the shipper's rail cars to a competing railroad within a reasonable distance of the captive origin or destination, provided that the interchange is safe and feasible.

Illustration:



Deregulatory

Impact: Today, existing regulations require the captive shipper to use RR1, in the above illustration, for the entire 500 mile distance, despite the ability of RR2 to compete for 470 miles. Therefore, to protect the captive shipper from monopoly pricing by RR1, the STB must regulate RR1's rate for the entire 500 mile distance.

Under EP 711, reciprocal switching will allow the STB to regulate just the first 30 miles of physical captivity to RR1, in the above illustration, and allow competition between RR1 and RR2 to determine the rate for the remaining 470 miles.

Additional

Benefits: Competition through reciprocal switching, instead of regulation, provides greater incentives for railroads to improve service and invest in new infrastructure that will make American businesses more competitive.

Competition through reciprocal switching will reduce reliance upon existing STB rate regulation, which requires incredibly complex litigation over several years and costs millions of dollars for an uncertain result. Because most captive shippers do not tender sufficient volumes between the same points over a sufficiently long time period to economically justify this time and expense, competition is a more effective constraint upon rail market power than rate regulation.

RECIPROCAL SWITCH SCENARIOS

Fig. 1

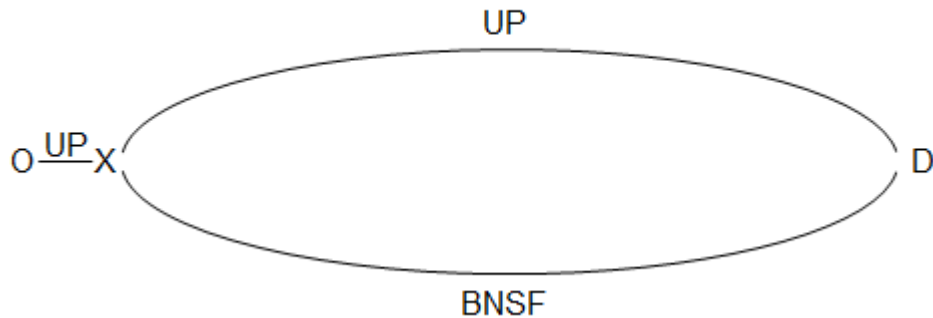


Figure 1, which is the only scenario the railroads address, converts single-line service to two-carrier service as a result of a reciprocal switch. Shippers are likely to request switching in this circumstance only when the competitive carrier offers other efficiencies to offset the additional handling.

Fig. 2

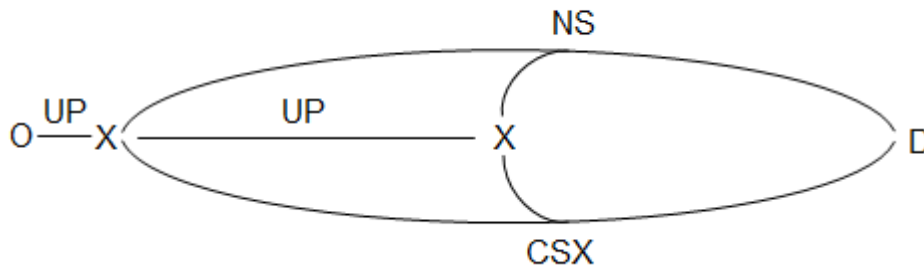
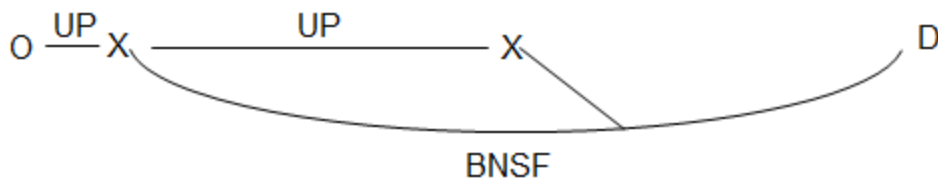


Fig. 3



Figures 2 and 3 reflect more common scenarios where reciprocal switching does not increase the number of interchanges or carriers in the route, but merely changes the interchange location.

- ❖ Figure 2 is a movement that occurs on east-west (and vice-versa) gateway movements where the origin carrier achieves its long-haul by handling the traffic in the north-south direction (and vice versa) for the longest distance that is practical before interchanging to the east-west carrier.
- ❖ Figure 3 is common in the west between BNSF and UP, in the east between NS and CSX; and along the Mississippi River between BNSF, UP, CN and KCS.
- ❖ In both Figures, reciprocal switching allows the destination railroads that participate in the route to claim a longer haul when they can be more efficient, without any additional handling.

Bottleneck Extensions Through Mergers

Pre-Merger



Post-Merger Scenario 1



Post-Merger Scenario 2

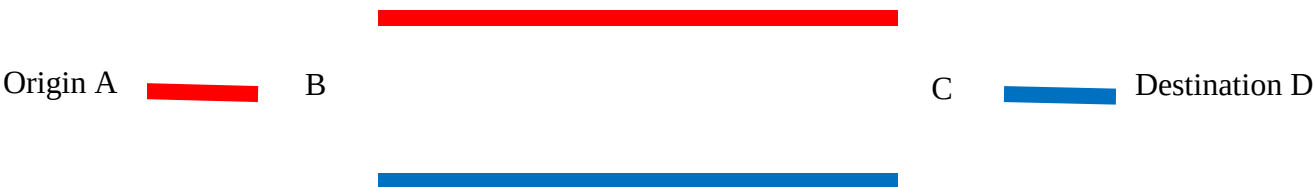
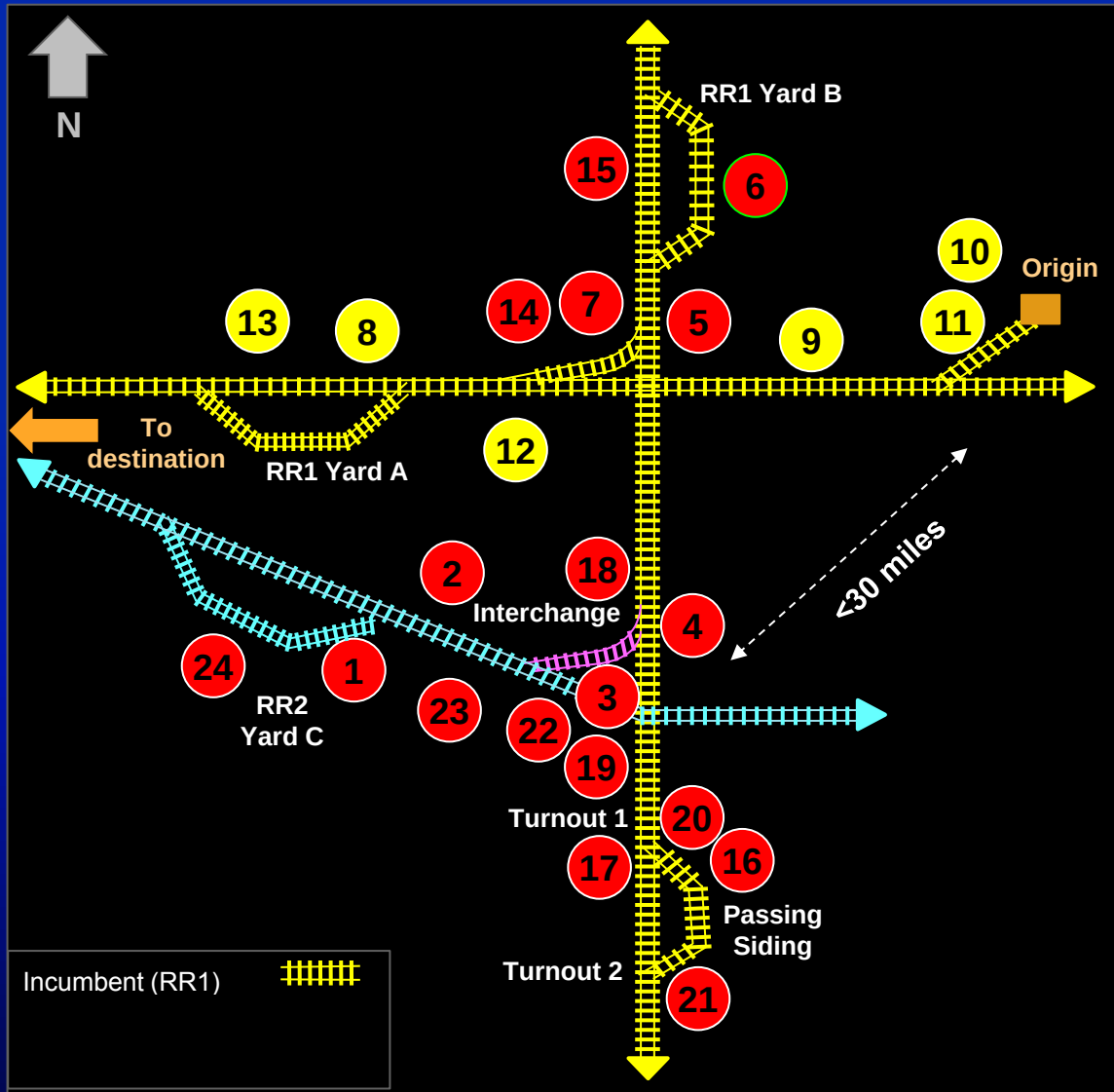


Exhibit 4: Many Forced Switches Will be Much More Complex



Step	Description
1	Yard switch to move empty car to way train at Yard C
2	Way train moves empty car to interchange track
3	Interchange switch to spot empty car on interch. track
4	Interchange switch to retrieve empty car from interchange track
5	Way train moves empty car to Yard B
6	Yard switch to move empty car to way train serving Yard A
7	Way train moves empty car via Connection to Yard A
8	Yard switch to move empty car to way train serving Consignor
9	Way train moves empty car to Consignor
10	Industry switch to place empty car into Consignor's siding
11	Industry switch to retrieve loaded car from Consignor's siding
12	Way train moves loaded car to Yard A
13	Yard switch to move loaded car to way train serving Yard B
14	Way train moves loaded car to Yard B
15	Yard switch to move loaded car to way train serving interchange
16	Way train moves loaded car to passing siding
17	Way train locomotive runs around train and couples to the end of the train
18	Way train moves to clearance point beyond Interchange
19	Interchange switch to spot loaded car on interch. track
20	Way train backs to passing siding
21	Way train locomotive runs around way train, couples to front and proceeds
22	Interchange switch to retrieve loaded car from interchange track
23	Way train moves loaded car to Yard C
24	Yard switch to move loaded car into outbound road train