

BEFORE THE
SURFACE TRANSPORTATION BOARD

EX PARTE No. 711 Sub-No. 1

PROPOSED CHANGES TO RULES
REGARDING RECIPROCAL SWITCHING

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**SUMMARY OF POINTS MADE IN
EX PARTE MEETING WITH BOARD MEMBER MILLER**

On March 3, 2017, representatives of the Brotherhood of Maintenance of Way Employees Division/IBT and Brotherhood of Railroad Signalmen (“Unions”), Richard Edelman, Leonard Parker, and Charlie Hogue met with Board Member Deb Miller and Attorney Advisor Brian O’Boyle regarding the above-captioned matter in accordance with the Board’s order. Below is the summary of points made by the Unions in the ex parte meeting:

1. The Unions represent the maintenance of way, signal, and sheet metal workers on all of the Class I railroads, as well as railroad workers on other railroads.
2. While issues like the reciprocal switching issue are often presented as a dispute between big railroads and small shippers, this dispute is primarily one between big corporations that are shippers and big railroads.
3. When railroad revenue is reduced, the railroads typically seek concessions in pay, benefits and work rules from their employees. At the present time the railroads are seeking concessions from their employees because of reduced revenue.
4. Any reduction in railroad revenues as a result of a change in the rules on reciprocal switching is likely to lead to additional demands for concessions or at least to an increase in the railroads’ resolve to obtain concessions.
5. The current structure of the industry and current arrangements for switching are the product of the consolidation transactions in the 1990s that were all reviewed and approved by the ICC and STB. Hundreds of parties participated in each transaction including all of the major shipper interests. In particular, the NIT League was a major participant in each of the consolidation cases.
6. The ICC and the STB engaged in extensive review and consideration of the proposed transactions, as well as requests for conditions sought by participants. The NIT League generally took a lead role in those proceedings and entered settlements with the applicants relatively early in the proceedings; those settlements were often viewed as addressing the shipper concerns and/or as setting a pattern for other settlements. Some other shipper groups entered their own settlements and most settled before final decisions were issued.

7. Rail Labor generally fought the transactions, and these Unions consistently fought them through the final decisions.
8. In the end the transactions conditioned on the settlements were approved as in the public interest
9. Members of the Unions experienced substantial adverse impacts as consequences of those decisions.
10. Many workers lost their jobs or suffered downgrades of their positions. While employee protective conditions were imposed, due to changes in collective bargaining agreements as a result of Congressional imposition of the recommendations of Presidential Emergency Board 219, many employees were unable to benefit from the protections.
11. Even when income protection was provided there were still significant adverse impacts. Many workers were required to relocate, often significant distances. Many workers had to travel across multiple states to work and had to live away from home as the combined railroads consolidated workers into much larger seniority districts. And the railroads used the employee protective conditions to force major modifications of collective bargaining agreements outside Railway Labor Act processes, almost always to the detriment to members of the Unions.
12. A result of those changes was improved financial health of the industry, substantial improvement of rail infrastructure through reinvestment by more financially sound railroads, and significantly improved rail service for shippers.
13. The proposals for changes to reciprocal switching rules are an effort to partially re-litigate and revise the merger and control decisions of the 1990s that were deemed to be in the public interest.
14. In each of those transactions, the applicants asserted that improved networks, elimination of interchanges and single-line service would provide significant public benefits; in particular, they claimed that shippers would benefit by the combinations as a consequence of the new hub and terminal arrangements, enhanced through- service/single line service, improved average speeds, reduced terminal delays and fewer interchanges.
15. The NIT League and other shipper interests now seek to change some of the network, through-service, and interchange arrangements that resulted from the consolidations. Having supported those transactions, or acquiesced in them by settlements that required very little of the railroads, the NIT League and the others should not now be heard to seek changes to those arrangements where the outcome of the proposed changes would be a reduction of revenue for the railroads and a commensurate gain in revenue for shippers.

16. In the Unions' view, and in their experience, transfer of earnings from the railroads to the shippers will hurt railroad workers. Members of the Unions should not now face the prospect of further losses because certain shipping interests see an opportunity now to chip away at the product of the Board's balancing of competition, service, efficiency and other stakeholder interests.

17. The Unions were asked whether the requested change involved a revenue shift from the railroads to the shippers or whether it would just result in a shift of revenue between railroads. The Unions responded that it would involve a shift of revenue from railroads to shippers, that this has been the general goal of shippers in these sorts of petitions. The Unions again noted that with respect to service and connections, those issues were addressed in detail in contested proceedings in the merger and control cases. The ICC and STB considered and balanced service, efficiency, network advantages, transit times, access, and competition in those decisions. There has been no structural change or subsequent transaction since the major merger and control decisions affecting access, competition and terminal switching. The Unions asserted that the petition is an effort to shift revenue from the railroads to the shippers.

18. A response was elicited to the assertions of some that the agency favored the railroads in the balancing of interests in the major merger and control decisions because of the adverse financial circumstances of the railroads and it was now time to re-balance. The Unions responded that such assertions were ahistorical. The ICC tilted in favor of the railroads in the 1980s post Staggers because of their financial circumstances- much more to the detriment of railroad workers than shippers. By the mid-1990s the ICC had allowed numerous Section 10901 line sales with significant adverse effects on rail workers; those sales were premised on assertions, supported by shippers, that the line sales would result in better service for shippers. The financial viability of the transactions depended in large part on the reductions in labor costs accomplished by the sales that could not have been accomplished otherwise-in essence, shippers benefitted from the losses incurred by rail labor. Shippers routinely supported those transactions even where the new entities could connect only with the selling carrier. The ICC had also allowed acquisitions of rail lines by commonly controlled railroads without employee protections applicable to transactions between carriers under the fiction that newly formed subsidiaries and affiliates of rail carriers were new, independent non-carrier entities; these transactions also adversely affected rail workers and were based on legal grounds that were dubious at best. Again, the foundation for those decisions was the interest of shippers who routinely supported the transactions.

Also in the early 1990s, in addition to the legislatively mandated changes to collective bargaining agreements based on the recommendations of Presidential Emergency Board 219 that dramatically changed the agreements to the advantage of the railroads, the employee protective conditions imposed in various transactions were also used to force changes in collective bargaining agreements to the disadvantage of railroad workers and advantage of the railroads; these changes were approved by the ICC based on the "public interest" – primarily shippers and consumers of shipped goods. All of those decisions and actions dramatically improved the health of the railroads prior to the major merger and control transactions; the decisions authorizing

those transactions focused primarily on service, networks, single line service competition and effective and efficient transportation. In particular, advantages of single line service, reduced interchange, better networks, reduced terminal delays, faster transit times were put forward as advantages of the transactions and balanced with competition and access issues. Network structure, terminals, gateways, particular interchange points were examined in detail. While financial health of the railroads was considered, it was not a driving factor in those decisions as has been suggested by some.

19. In response to a question about assertions by some that a relatively small number of shippers would be affected by the proposed change, the Unions rejected that assertion. The Unions answered that there was no reason for the NIT League, other shipper associations and other large shippers to initiate the petition in this proceeding and to advocate for change in the reciprocal switching rules if only a few shippers would be affected by the proposed change. The Unions also observed that the post-1980 history of the agency, ranging from the handling of Section 10901 line sales, to acquisitions of rail lines by subsidiaries and affiliates of rail carriers, to the *State of Maine* line of cases, demonstrates that even when initial efforts for changes in regulatory policy appeared limited at first, the policy expanded to cover circumstances and situations not contemplated by the initial decisions.

20. Another subject discussed was the impact of technological change on railroad workers. The Unions responded that their crafts have dealt with technological change over recent decades and would continue to do so; and that the important point is that the work of the crafts continue to be done by qualified, skilled and responsible railroad workers employed by rail carriers who have an ongoing interest in safe and high quality rail infrastructure.

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