

BEFORE THE
SURFACE TRANSPORTATION BOARDENTERED
Office of Proceedings
August 15, 2016
Part of
Public Record

Ex Parte No. 711 (Sub-No. 1)*RECIPROCAL SWITCHING*

**THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE'S
REPLY IN OPPOSITION TO THE AAR PETITION FOR EXTENSION OF TIME**

The National Industrial Transportation League ("NITL" or "League") submits this Reply in Opposition to the Petition for an Extension of Time ("Petition") filed by the Association of American Railroads ("AAR"). AAR contends that the Board should expand the procedural schedule in this proceeding "[t]o allow for the development of a full record...", to "provide parties sufficient time to prepare comprehensive comments," and "to evaluate and respond to the comments of other parties." Petition at 1. The League commends the Board for instituting this Notice of Proposed Rulemaking ("NPRM") and it opposes the AAR's request to extend the procedural schedule as unnecessary based on the very comprehensive record that has already been developed on the matter of revised reciprocal switching rules, and the straight-forward proposals included in the NPRM. Despite NITL's strong view that an extended procedural schedule is not warranted, the League is willing to accept, and proposes herein, a shorter extension of time that would partially accommodate the AAR's members, while avoiding unnecessary further delays in the updating of the Board's outdated reciprocal switching rules.

AAR's Petition completely ignores the history of this long-standing proceeding which was initiated by the League over five years ago in 2011. During this period, the legal and policy issues concerning revised reciprocal switching rules have been vigorously debated, and the

Board has received substantial evidentiary filings and held a two-day public hearing. There is no need to expand the procedural schedule to allow for re-argument of these issues.

Additionally, the Board's proposals in the NPRM do not involve novel concepts that require extensive vetting by interested stakeholders. To the contrary, the proposals are closely aligned to familiar statutory provisions, policies, and Board practices. The switching remedies included in the NRPM involve two potential prongs that are derived directly from the switching statute (49 U.S.C. § 11102(c)) and would require case-by-case determinations based on the presentation of factual evidence. The first prong of the Board's proposals implicates its long-standing responsibility to balance the elements of the Rail Transportation Policy at 49 U.S.C. § 10101, among other relevant factors; and the second seeks to apply the well-known market dominance test used in rate reasonableness cases. *See* NPRM at 18-19, 21-22.¹ The Board also has included two access fee proposals in the NPRM which provide a starting point for comments on this issue. Thus, the NPRM does not involve overly-complicated novel concepts that would be time-consuming for stakeholders to analyze and there is no need to extend the procedural schedule into next year as proposed by AAR.

Although NITL does not agree to AAR's proposal, NITL is willing to provide a short 15-day extension to the due date for Opening Comments, and to agree to extend the Board's period for Replies from 30 to 50 days, which accounts for the Thanksgiving holiday. This reasonable limited extension would provide AAR's members with sufficient additional time to prepare its comments on the Board's proposals and still allow the Board to conduct its Ex Parte meetings and receive all relevant submissions on this matter by the end of 2016.

¹ Other requirements included in the NPRM concern the existence of working interchanges and the feasibility of the switching arrangements, both of which were proposed by NITL in its original Petition and have already been the subject of extensive debate in the EP 711 proceeding.

AAR cites to other on-going STB proceedings as a reason for extending the procedural schedule in this proceeding. However, if there is any pending proceeding that has already incurred substantial delays it is this one; thus, the League strongly rejects AAR's contention as a sufficient reason for further delaying *this* proceeding to update the outdated reciprocal switching rules.

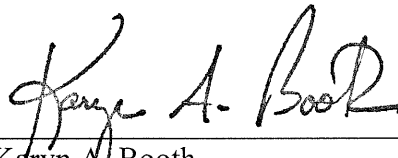
Accordingly, the League respectfully requests that the Board reject AAR's Petition and that it adopt a reasonable limited extension to its procedural schedule as follows:

- Opening Comments due date: October 11, 2016
- Reply Comments due date: November 30, 2016
- Notice of Ex Parte meetings due date: October 31
- Ex Parte meetings occur: November 30-December 21, 2016

Respectfully submitted,

THE NATIONAL INDUSTRIAL
TRANSPORTATION LEAGUE

By Its Attorney:

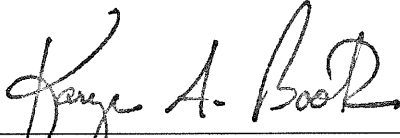
A handwritten signature in black ink, appearing to read "Karyn A. Booth", is written over a horizontal line.

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August 15, 2016

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of August 2016, I served a copy of the foregoing upon all parties of record via U.S. first-class mail, postage prepaid.



Karyn A. Booth