

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.**

STB EX PARTE NO. 647

**CLASS EXEMPTION FOR EXPEDITED ABANDONMENT PROCEDURE FOR
CLASS II AND CLASS III RAILROADS.**

**COMMENT OF THE AMERICAN SHORT LINE AND REGIONAL
RAILROAD ASSOCIATION**

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The American Short Line and Regional Railroad Association (ASLRRA) submits this Statement in response to the Advance Notice of Proposed Rulemaking published by the Surface Transportation Board on January 19, 2006. ASLRRA represents approximately 425 class II and class III railroads in the United States, Canada and Mexico as well as numerous suppliers and contractors to the short line and regional railroad industry. ASLRRA thanks the Surface Transportation Board for inviting the comments of interested parties.

ASLRRA fully supports the proposed rulemaking contained in STB Ex. Parte No. 647. Its call for expedited procedures for short line abandonment applications is warranted by the fact that Class III (“short line”) and Class II (“regional”) railroads are fundamentally different than Class I railroads: they are truly small businesses whose

economic fundamentals could not be more different than the those of the giant, publicly held class I railroads.

A snapshot of short line statistics illustrates just how small class III railroads are. According to the ASLRRRA's newly published 2005 Edition of "Short Line and Regional Railroads Facts and Figures", the average revenue of Class III railroads is just \$3.15 million annually. Of the estimated 518 short lines in operation, 410 of them have revenues under \$5 million. The average class III railroad employs 23 workers, who handle an average of 15,605 carloads per year. The mean size of their locomotive fleet is 5, most of which are older models purchased used from Class I surplus. Class II and Class III railroads operate over systems that average only 87 miles in length, but most are much smaller. The median track mileage of the short line class III railroads is 32 miles. Class II railroads are marginally larger, averaging 547 miles of track, but still bear no comparison to America's 5 Class I railroads. In its Advance Notice of Proposed Rulemaking, the Board asked for data on the average length of Class II and Class III abandoned rights of way. This information is not compiled by the American Short Line and Regional Railroad Association, but it should not be a speculative to assume that if half of all short lines are less than 32 miles in length, in most cases the miles abandoned on those lines will be measured in single digits or less.

Perhaps the most important distinction between small railroads and the enormous Class I companies is that nearly 80% of Class II and Class III railroads are *privately held*, without access to the financial markets that quench the insatiable thirst of all railroads for capital. As railroading is among the most capital intensive of all American industries,

the difficulty most small railroads face in finding capital sources is a serious and ongoing threat to the long term viability of many.

As the financial size and strength of Class II and Class III railroads is infinitesimal compared to the exponentially stronger fundamentals of the Class I's, the significance of any abandonment to a small railroad is exponentially greater than the limited impact individual abandonments bear on class I railroads. First, even a single mile of abandoned right of way represents a significant reduction to the size of the less-than 32 mile systems which half of the class III railroads operate. Second, typically Class II and Class III railroads simply do not abandon rights of way with *any active* shippers if there is any prospect of handling the traffic profitably.

In contrast, Class I railroads either abandon or spin off to short line operators "light density" right of way which cannot achieve the return on investment standards class I's demand from continuing operations. Many short lines *begin* their business lives by taking on the operation of these discarded class I assets. Entrepreneurial and optimistic, short line operators are loathe to give up when even a single shipper is moving over their lines. Thus, when a short line or regional railroad must abandon a significant portion of its enterprise, it is axiomatic that the line is not anemic. It is dead. The Board has asked for comment on the potential effect of Ex Parte 647 on "low volume" lines, but the American Short Line and Regional Railroad Association asserts that typically there is *no* effect because in most cases short line and regional railroad abandonments involve "no volume" lines where active shippers are only a memory.

The vast and deep pocketed class I railroads can, if they must, patiently endure years of regulatory oversight and procedure before extracting whatever value the assets

locked in an abandonment proceeding may represent. Not so for Class II and Class III railroads. Because most short lines are small and undercapitalized, quickly putting unused assets to work in other parts of the system or realizing their value through sale can be essential to survival. The Class I migration to 286,000 pound standard freight cars has placed added pressure on short lines to upgrade their systems. Those upgrades require capital which is in short supply in the best of times. When valuable capital assets such as rail and switch equipment lie moribund for years during lengthy regulatory approval processes, small railroads fall further behind in the race to upgrade their systems to current and future standards, thus perversely weakening the parts of their systems which remain in operation.

In the view of the American Short Line and Regional Railroad Association, the proposals embodied in Ex Parte 647 address the chronic capital shortages facing Class II and Class III railroads. While the Board notes in its Advance Notice of Proposed Rulemaking that when drafting the Interstate Commerce Commission Termination Act of 1995 Congress chose not to eliminate the “public convenience and necessity standard” for *all classes* of railroad abandonments, subsequently Congress has shown an increased sensitivity to the needs of small businesses in general, and to the capital needs of Class II and III railroads in particular. A year after passing the ICCTA Congress passed the Small Business Regulatory Enforcement Fairness Act of 1996, which, *inter alia*, revised Section 604 of title 5 of the United States Code to increase the standards of analysis federal agencies must make concerning the burden of rulemaking on small business. It added a new provision that requires an agency final regulatory flexibility analysis to contain “a description of the steps the agency has taken to minimize the significant

economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.” 5 U.S.C. 604(5). More recently, in 2004 Congress specifically demonstrated its concern about the very negative effect of short line capital constraints on rail infrastructure when it approved a 50% tax credit for class III railroads that make capital investments in their operating systems. See 26 U.S.C. 45 (G).

The American Short Line and Regional Railroad Association believes that few, if any, short line abandonments ever involve lines with even marginal traffic levels. Thus, in view of recent Congressional action, it is hard to imagine that a regulatory change which would ease the perennial capital shortage of small railroads by waiving the public necessity and convenience review in Class III abandonment procedures would be contrary to Congressional intent. The American Short Line and Regional Railroad Association urges the Board to adopt Ex Parte 647 as the template for new, expedited Class II and Class III railroad abandonment procedures.

Respectfully Submitted,

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Dated: March 6, 2006

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of March, 2006, I served copies of the foregoing COMMENT OF THE AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION ON STB EX PARTE NO. 647 PETITION FOR CLASS EXEMPTION FOR EXPEDITED ABANDONMENT PROCEDURE FOR CLASS II AND CLASS III RAILROADS upon all parties of record in this proceeding by first class United States mail, postage prepaid.

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