

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB EX PARTE NO. 575

**REVIEW OF RAIL ACCESS AND COMPETITION
ISSUES – RENEWED PETITION OF THE
WESTERN COAL TRAFFIC LEAGUE**

**OPENING COMMENTS OF
NASSTRAC, INC.**

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Dated: March 8, 2006

I. INTRODUCTION

NASSTRAC, Inc. is a leading national association of shippers of freight.¹ NASSTRAC has been active in many proceedings before the ICC and STB with respect to trucking issues, including pending proceedings concerning motor carrier collective ratemaking. NASSTRAC has not previously participated in ICC or STB rail proceedings because its members ship the majority of their freight by truck. However, recent changes in the marketplace for transportation services have led NASSTRAC to broaden its advocacy program to better address the needs and concerns of its members and of shippers generally with respect to other modes.

II. THERE IS A PRESSING NEED FOR IMPROVED RAIL AND INTERMODAL SERVICE

As the Board is aware, the volume of freight that shippers need to have transported has increased faster than the ability of carriers to provide the necessary services. The resulting problems have been exacerbated by the capacity constraints faced by carrier service providers of various modes, and particularly by rail and motor carriers.

The key issues affecting the ability of the trucking industry to haul more freight have been the driver shortage, artificial limits on truck sizes and weights, and increases in operating costs due to such factors as fuel cost increases, congestion, rising insurance premiums, and increasingly costly health, safety, environmental and security regulation.

NASSTRAC has addressed many of these issues through its advocacy program, in the hope of arriving at the right balance of interests. NASSTRAC members strongly support safety, for example, but have found that regulators with a safety focus sometimes

¹ NASSTRAC was formerly the acronym commonly used for National Small Shipments Traffic Conference, but the organization's name has recently been changed to NASSTRAC, Inc.

do not understand that increasing safety and maintaining trucking industry productivity are not necessarily antithetical. It is possible to develop programs that improve carrier safety while recognizing the importance to the American economy of effective and efficient transportation and commerce.

In addition, politicians and regulators do not always fully appreciate that lost productivity imposed on the trucking industry in the interest of other social goals is often borne by the nation's shippers, and through shippers by the nation's economy. It is noteworthy that when Congress established the Department of Homeland Security, it acknowledged that economic security is part of homeland security. See 6 U.S.C. § 111(b)(1)(F), providing that, as part of its "primary mission," DHS shall "ensure that the overall economic security of the United States is not diminished by efforts, activities and programs aimed at securing the homeland."

By and large, NASSTRAC members and other majority truck shippers have not responded to the constraints affecting motor carrier transportation by significantly increasing their use of railroads. A number of NASSTRAC members use some rail service for shipments of inbound raw materials. However, modern supply chain management practices for companies that manufacture and distribute finished products rely heavily on just-in-time logistics principles.

The ability of trucking companies to meet one hour delivery windows with 95+ percent on-time accuracy has led to major improvements in productivity and efficiency for supply chains. Warehouses that formerly kept "just-in-case" stock have been closed or sold off, reducing the costs of producing and storing excess inventory.

While rail service has shown some improvement in some areas, it has generally not improved enough to meet the needs of just-in-time supply chains, with one partial exception. Intermodal freight transportation, with truck pickups at origin and truck distribution at destination, and with rail transportation of truck trailers for long distances (generally over 500 miles) in between, has shown promise.

Increased use of intermodal transportation could help ameliorate the capacity constraints and other issues shippers face, by combining the low costs and economies of scale of rail transportation with the high service quality and customer responsiveness of trucking. Fuel use could be reduced, driver hours more easily controlled helping ameliorate the driver shortage,² and capacity shortfalls and congestion might be eased through increased reliance on intermodal service.

However, many of the same service issues that restrict shippers' direct use of rail service also restrict shippers' indirect use of rail service in intermodal arrangements. As explained above, reliable scheduled service is no longer something that is nice to have. It has become critical at a time when warehouses and distribution centers have been closed and cannot economically be replaced.

It has been widely reported that efforts by UPS and UP to provide intermodal service for customers were terminated due to the inability of the railroad to meet the service standards required by UPS and its customers, including many NASSTRAC members. FedEx Freight reportedly makes little or no use of railroad partners, due to poor rail service. NASSTRAC believes truck-rail intermodal service can be an important

² Driver jobs are easier to fill for motor carriers that can arrange for drivers to work routes permitting increased time with their families.

component of the nation's transportation service mix, but only if railroad service quality and customer responsiveness improve.

III. RELIEF FROM PAPER BARRIERS CAN LEAD TO IMPROVED RAIL SERVICE

The major railroads have indicated in many ways that their business plan emphasizes long hauls over high-density mainlines using trains of 100 cars or more. Lighter density lines have been spun off to short lines, and carload service has received less resources in terms of car supply, locomotives, crews and management focus than trainload and unit train service.

At the same time that they have been showing less interest in the services best performed by short lines, however, Class I railroads have also refused to allow short lines and their customers to reach their own decisions over pricing, service, routing and interchange. These inefficiencies are at least partly due to the existence of paper barriers relegating short lines to second-class status as carriers.

Absent paper barriers, short lines would enjoy more freedom to provide service to shippers and more competition to major railroads. Shippers, short lines and major railroads would all benefit, along with the public interest.

Shippers needing intermodal or rail service would have additional choices, and might receive better on-time performance or lower rates or more attention to service requirements from short lines than shippers get today from major railroads. Short lines would have an opportunity to add to their customer bases, strengthening their finances and enhancing their ability to invest in their infrastructures and operations. Major railroads that are currently foreclosed from interchanging freight with certain short lines

(because of a paper barrier imposed by a competing Class I railroad) could have better routing choices and better service options.

High priority time-sensitive freight service would improve. It could be scheduled using short lines when short line service offered the best results. In the alternative, short lines could handle more low priority freight, freeing major railroads to handle more high priority shipments, including intermodal shipments.

The culture of the Class I railroads might also be improved as a result of new competition from short lines. It has been the experience of many NASSTRAC members who have dealt with major railroads that the Class Is reflect a monopoly mentality even when they are serving shippers with transportation alternatives. Short lines are far more likely than Class Is to demonstrate the desire to respond to shipper needs quickly that we see from trucking companies. However, paper barriers have prevented the short lines from being able to match their good attitudes with good service. Paper barriers have also sheltered major railroads from the benefits of competition.

Competition has done a great deal to produce good service at good rates for the trucking industry. The major railroads sorely need a similar incentive to improve their performance.

The Association of American Railroads (“AAR”) and the American Short Line and Regional Railroad Association (“ASLRRA”) have suggested that their Railroad Industry Agreement (“RIA”) addresses any legitimate shipper concerns.³ In fact, the RIA locks short lines into a subordinate “subcontractor” role. There is no true competition when short lines are eligible for relief from paper barriers only when and as approved by Class Is.

³ See their May 2, 2005 filings in this docket.

In fact, the current system has all the characteristics of market division, and possibly price fixing, by horizontal competitors. These features would expose the participants to sanctions under the antitrust laws but for the immunity that is provided, along with STB approval under 49 U.S.C. § 11321, of transactions involving paper barriers. The fact that the RIA is a “private sector solution” is no recommendation if the agreement is anticompetitive and disserves the public interest. Many such agreements are “private,” and produce primarily private benefits.

The AAR states that, since 2002, there have been only 55 instances of short lines requesting relief from paper barriers under the RIA “waiver” procedures. Shippers may take little comfort from the fact that 45 of these waiver requests were granted by the Class Is. This statistic suggests two possibilities, neither of which indicates that the status quo is in the public interest.

One possibility is that there have been an average of only 12-15 waiver requests a year because hardly any freight constitutes “new business” which short lines have any hope of serving under the RIA. The vast majority of rail freight is not even theoretically subject to short line competition.

The other possibility is that there have been hundreds or thousands of instances of new business which short lines could handle better and/or more economically than Class Is. However, in all but 55 instances over four years, the message to the short lines from Class Is – jealous of their market share and market dominance – was “Don’t even think about seeking a waiver under RIA for that business.” The Board needs to gather more facts about these issues.

Because its members have benefited so much from motor carrier competition since 1980, NASSTRAC has difficulty comprehending the rationale for paper barriers. If the basis for approving them in the past was that their shortcomings are mitigated by the RIA, this rationale needs to be reexamined. For all we know, the RIA exacerbates the problem.

If the rationale for approving paper barriers in the past has been that some anticompetitive conduct on the part of Class I railroads needed to be condoned in order to help those railroads regain financial strength, that rationale also needs reexamination. The Class Is have not hesitated to capitalize on truck capacity shortages through significantly higher rail rates and charges. Reports by Wall Street analysts indicate that the major railroads are enjoying record revenues and profits.

IV. CONCLUSION

The argument that paper barriers are tolerable, notwithstanding their anticompetitive and market distorting effects, because the Class Is will not otherwise sell track they do not intend to use amounts to holding the public interest hostage to the self-interest of a regulated industry. It makes no sense.

NASSTRAC supports the call of the Western Coal Traffic League for a new review of this important issue. If not prohibited outright, paper barriers need to be

severely curtailed so that shippers' needs for more services by more carriers can be met as the economy grows.

Respectfully submitted,

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