

217032

**American  
Chemistry  
Council** *Good Chemistry  
Makes It Possible*

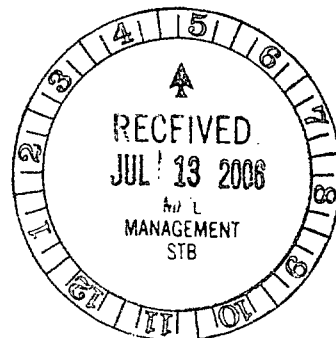
July 13, 2006

The Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, D.C. 20423

ENTERED  
Office of Proceedings

JUL 13 2006

Part of  
Public Record



Attention: STB Ex Parte No. 575: Review of Rail Access and Competition  
Issues – Renewed Petition of the Western Coal Traffic League

Dear Secretary Williams:

Pursuant to the Decision that was served in the above-captioned proceeding on June 2, 2006, the American Chemistry Council (“ACC”) requested ten minutes to present its comments on short line paper barriers at the public hearing on July 27, 2006.

That same Decision called on each party to submit a written summary of its presentation by July 13, 2006. In accordance with the provisions of that Decision, the original and 10 copies of ACC’s comments are enclosed. Please contact me (703-741-5172 or tom\_schick@americanchemistry.com) if you have any questions about ACC’s comments.

Sincerely,

Thomas E. Schick  
Senior Director – Distribution  
American Chemistry Council

Enclosures



Responsible Care®

# **SURFACE TRANSPORTATION BOARD**

**STB Ex Parte No. 575**

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

### **COMMENTS OF THE AMERICAN CHEMISTRY COUNCIL**

ENTERED  
Office of Proceedings

JUL 13 2006

Part of  
Public Record

**July 13, 2006**

The American Chemistry Council (“ACC”) appreciates the opportunity to present its views on “paper barriers” that affect competitive service by short line railroads.

ACC represents the leading companies engaged in the business of chemistry. Under ACC’s Responsible Care® initiative, the 129 member-companies have committed to implement a set of goals and guidelines that go above and beyond federal regulations on safety, health, security and the environment. ACC’s membership accounts for about 85 percent of the productive capacity of basic industrial chemicals in the United States. Each year, chemical shippers depend on the U.S. railroad industry for the safe, secure, and efficient transportation of approximately 170 million tons of products that provide rail carriers with more than \$5 billion in annual revenues.

***Short line paper barriers have long been recognized as constraints on competition in the rail industry. ACC respectfully requests that the Surface Transportation Board (“Board”) take immediate action to remedy the unreasonable and anti-competitive impacts of paper barriers.***

Paper barriers are conditions attached when a Class I road transfers a portion of its track to a short line rail operator. If a short line is created from track that connects physically both to the former owner and to another railroad, traffic could be interchanged with either line-haul carrier. This practice would not only allow the short line to do business with both of the connecting Class I railroads, but would also provide shippers and consignees on that short line to have access to both line-haul carriers.

When track is transferred to a short line railroad under conditions that impose paper barriers, competition is clearly constrained. Furthermore, the Board’s approval of such transactions gives governmental sanction to anti-competitive conduct.

ACC understands and appreciates the economic circumstances under which – over time and with the Board’s permission – Class I carriers rationalize their rail systems and dispose of lines through abandonment, sale, lease, etc. But as the sole agency charged with regulatory supervision of such transactions, the Board should not simply accept each paper barrier condition that is presented.

The Board’s June 2 decision in this docket observed that comments filed in response to the notice published earlier this year (71 Federal Register 6130, February 6, 2006) “raise issues that merit consideration via a public hearing.” ACC applauds this latest step in what has unfortunately been an overly drawn-out review of paper barriers.

The issue is certainly not new. Indeed, paper barriers were a subject of concern to shippers in this very docket (Ex Parte No. 575) eight years ago. At that time, the Association of American Railroads and the American Short Line and Regional Railroad Association entered into the “Railroad Industry Agreement” (“RIA”) in 1998. By its terms, however, the RIA is severely limited because it applies only to “new” rail traffic. Thus the RIA perpetuates the captivity that exists when a short line is spun off by a Class I railroad. In other words, the RIA does nothing to enhance competition for shippers that are served by only one railroad. Among ACC member companies, for instance, 63 percent of rail-served facilities receive service from only a single Class I carrier.

The Board’s approval (or exemption) of paper barriers in individual transactions constitutes a failure to promote competition. This is inconsistent with the Board’s statutory mandate. Congress adopted the following provisions in the Rail Transportation Policy:

- to allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail
- to ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the public and the national defense;
- to ensure effective competition and coordination between rail carriers and other modes;
- to reduce regulatory barriers to entry into and exit from the industry;
- to prohibit predatory pricing and practices, to avoid undue concentrations of market power, and to prohibit unlawful discrimination;

These provisions are found in 49 U.S. Code Section 10101, paragraphs 1, 4, 5, 7 and 12 (emphasis added). The Board’s continued regulatory approval (or exemption) of paper barriers in short line transactions is inconsistent with the competition that is called for in the national rail transportation policy.

ACC is also concerned that the Board, while aware of the paper barrier controversy for many years, has failed to take decisive action. Indeed, on December 21, 1998, the Western Coal Traffic League ("WCTL") filed a petition requesting a rulemaking to eliminate unreasonable paper barriers. The following year, the Board deferred action on WCTL's petition in order to allow for the development of more information regarding the effects of the RIA.

Paper barriers have also been the subject of legislation in both Houses of Congress for several years. Current bills addressing this important rail competitiveness issue are S. 919 (Section 103) and H.R. 2047 (Section 4). Both bills would prevent the Board from approving or exempting paper barriers. In addition, both bills would permit parties to previous short line transactions – including shippers – to request that the Board review and potentially terminate paper barriers that are anti-competitive. The references in those provisions to the "antitrust laws" are significant. Paper barriers are the kind of conditions which, if observed in other industries, would raise serious antitrust concerns. As the agency whose regulatory authority provides the basis for less-than-complete application of the antitrust laws in the rail industry, the Board therefore has a special obligation to correct this problem.

Having called this public hearing to gather views on the impact of paper barriers, the Board should take action as follows:

1. If the Board believes that it has the statutory authority to prohibit paper barriers in future transactions and review those that now exist, it should open a proceeding that will quickly lead to adoption of a rule that will promote competition.
2. But if the Board believes that it lacks such authority, it should promptly recommend to Congress the enactment of the carefully tailored paper barrier provisions in pending legislation.

In conclusion, ACC thanks the Board for this opportunity to comment on the impact of paper barriers on competition in the railroad industry. After eight years, it is time for the Board to take meaningful action to eliminate paper barriers.

Respectfully submitted on behalf of ACC by



Thomas E. Schick  
Senior Director  
American Chemistry Council  
1300 Wilson Boulevard  
Arlington, Virginia 22209  
703-741-5172  
tom\_schick@americanchemistry.com