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April 17, 2008

Hon. Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0001

Re: STB Ex Parte No. 677 – Common Carrier Obligation of Railroads
– Comments

Dear Acting Secretary Quinlan:

Enclosed for filing in the above referenced matter are the Comments of CSX Transportation, Inc.

CSXT is e-filing these comments. Thank you for your assistance, and please do not hesitate to contact me if you have any questions regarding this matter.

Respectfully submitted,

A handwritten signature in black ink that reads "Paul R. Hitchcock". The signature is written in a cursive, flowing style.

Paul R. Hitchcock

PRH/krb

Enclosure

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Ex Parte No. 677

COMMON CARRIER OBLIGATION OF RAILROADS

COMMENTS OF CSX TRANSPORTATION, INC.

CSXT thanks the Board for this opportunity to submit written comments on the issues to be discussed at the public hearing on April 24 and 25, 2008. CSXT joins in the submission of the Association of American Railroads (AAR), and submits these additional comments.

CSXT Must Invest to Serve Customers

First and foremost, CSXT is in business to serve our customers. Fundamentally, CSXT seeks to serve customers, wants to serve customers, and can only exist thanks to our customers. Legal obligations to serve customers play a minor role in CSXT's overall business decision making. The common carrier obligation to provide transportation on reasonable request enters into business decisions only in an exceedingly small number of situations.

In considering the rare issues that arise with respect to a rail carrier's legal obligations, it is important first to consider some of the dynamics of the rail transportation marketplace. Some customers contract with CSXT to ship predictable volumes in given lanes. For larger volume movements, this enables CSXT to plan car supply, plan train movements, and even to hire crews for larger volume movements. Some customers ship in relatively predictable volumes and lanes, even though they do not formally commit to specific volumes. Again, for these customers it is possible for CSXT to plan effectively and marshal resources in advance of their actual need.

For other customers, demand is far less predictable. For example, some customers are seasonal. Eastern grain transportation demand is considerably more consistent than in the West, but there is some seasonality as the harvest comes in. The building supply business (lumber, brick, cement, etc.) is cyclical and tied very much to new home starts. Sometimes customers have sudden changes in their transportation needs. For example, a customer who may have been relying on trucks may make a sudden decision to shift back to rail. This might be a direct economic decision, or the customer might change its source from a short haul to a longer movement. In each case, CSXT attempts to respond to the transportation needs of these customers as they compete in their own dynamic marketplaces. Every one of our customers wants to sell more of its products -- and to ship it right away.

Challenges arise when customer demand presses the “supply” or “capacity” of the CSXT rail network. Most business enterprises can react to increased demand by increasing production – but not without limits. Factories can speed up assembly lines, and add shifts. But at some point, every business enterprise can be tested by increased demand. These are the kinds of challenges businesses want. But they do require difficult decisions when further expansion involves long-term capital investment.

Similarly, constraints will affect railroads when demand for their “output” (transportation service) exceeds supply. It is important to remember that demand and supply are equal considerations. Unfortunately, there is a tendency to view capacity constraints in the rail industry solely from the supply side. CSXT urges the Board to weigh both sides of the supply-demand dynamic, and to recognize that demand for that capacity is an equal consideration in determining if there is “sufficient” capacity.

The concept of “capacity” includes many different elements. Freight cars, crews, locomotives, customer facilities, yard infrastructure, and line of road infrastructure all contribute to the capacity of the rail network to handle freight. Indeed, customer facilities at both origin and destination can play an important role in the capacity of a rail network. If customer facilities cannot accommodate on location the number of cars that the customer needs to receive, loads that arrive must be held by the railroad in its local serving yard – or a yard tens of miles away if none

is nearby. Similarly, if a customer facility is located adjacent to a main line track, loads must be switched by a local crew operating on and off of the main. Pick up and delivery may thus entail blocking the main to through traffic for extended periods of time. In these instances, limited customer facilities which result in impacts on line of road will reduce the capacity of the network to serve other customers. CSXT believes it is reasonable for a railroad to ask the customer to invest in more than the barest minimum of infrastructure needed to accommodate its own traffic. If a better design (albeit more expensive) is needed to avoid adverse effects on the network -- and on other customers who rely on that network -- then it may well be reasonable to insist on that better design.

Therefore, capacity must be understood in the context of rail networks and not in the context of specific elements. That being understood, the way the network must be operated is seen to affect capacity as well. Decisions about train priorities, passenger versus freight, speed differentials, and need for main line switching are all important factors that affect the network's overall capacity to transport freight for our customers.

It is also a fact that some locations are physically very difficult, sometimes impossible, to serve. A request for service in such a case might only be deemed "reasonable" with significant investment by the customer in infrastructure.¹

¹ As a business development practice, CSXT will often negotiate "advance and refund" arrangements whereby a newly locating customer makes the capital investment (and takes the risk) of building a sidetrack, and CSXT agrees to refund a negotiated amount per car tendered

More likely to lead to controversy are situations where customers make unreasonable demands for service. Potential shippers who insist (against the advice of CSXT) on locating facilities in places that simply do not lend themselves to practical rail service should not be allowed to express surprise or invoke "common carrier obligations" when the railroad cannot accommodate them. Few people would demand that the state construct a residential driveway outlet directly onto an interstate highway. Similar considerations, in the railroad context, enter into some of the more unreasonable demands that some would place on CSXT. And, when the unreasonable demands of one shipper would impose substantial burdens on other customers, they should certainly be rejected.

Capacity constraints can also rise when demand exceeds supply. Demand can spike in specific geographic areas such as port congestion caused by large influxes in volume. Similarly, demand can fluctuate in particular markets, as in the grain harvest season when demand in some parts of the country accelerates rapidly. Changes in customer demand can drive traffic to particular corridors, as was the case in building supply materials after hurricane Katrina. The Board is very familiar with the fall peak in transportation demand, and of course, monitors the major rail carriers' planning process every year. Amtrak and commuter

until the cost of construction is refunded. This is a standard kind of arrangement where the business potential makes it a win-win for CSXT and the customer.

demands for capacity are relatively stable from month to month, but have been increasing steadily in recent years.

Capacity constraints caused by these changes in demand can be short term -- or long-term. Solutions need to be commensurate with the demand. Rail infrastructure (bridges, track, sidings, signals) has a useful life of 20 to 50 years. Solving short term issues with long term assets is a risky business decision. Addressing long term issues with short term solutions is likely to prove expensive over time. Regardless of approach, responses require different lead times, depending upon the nature of the constraint, the nature of the demand change, and the time line of each. Crews take approximately 9 months to hire and train. Small quantities of rail can be purchased almost immediately, but buying the quantities of rail required for large-scale track programs requires many months advance purchase. Major construction projects take years of advanced planning to permit, design and build. New locomotives have a long lead-time, and freight cars may have a longer or shorter lead-time depending on the overall demand in the freight car construction industry. Development of intermodal terminals requires many years of lead-time as the permitting, design, and construction timeline varies depending on the size of the projects. In all, the ability of a railroad to respond to changes in demand is limited and capital intensive.

CSXT's top priority is, and must be, to meet long-term, predictable demand. But capital investment comes with risk. Investing to meet other, less predictable

demand requires a risk-reward analysis. CSXT must act prudently, but is prepared to take reasonable, calculated risks in its investment strategy to position itself for growth in the future. Thus, CSXT has plans to spend \$5 Billion in capital expenditures in 2008, 2009 and 2010. That investment will include line of road capacity expansion, intermodal facilities, coal cars, locomotives, and other assets directed at improving service and recoverability and increasing the capacity of the CSXT network to serve customers.

Rail Customers Have Long Made Capital Investments in Rail Service.

At both origin and destination, shippers and receivers have a role to play in loading and unloading railcars. Customers have long invested in loading equipment and have funded their own sidetracks to connect their facilities to the rail network. Many customers find it serves their industrial operation well to have extensive industrial sidings, storage tracks, and / or loading facilities. Indeed, large manufacturing centers have often chosen to perform their own intraplant switching with their own crews and their own locomotives. Historically, many rail customers have found it beneficial to invest in freight cars dedicated to their service. Ports invest heavily in their own infrastructure and continue to do so as US foreign trade grows. Like railroads, many of these investments are in long-term, fixed infrastructure.

Customers also have a role to play in assisting CSXT in planning to meet their needs CSXT's traffic base depends on the markets that our customers compete in

- Coal
- Grain
- Plastics
- Chemicals
- Automotive
- Ethanol
- Consumer
- Lumber
- Fertilizer
- Minerals
- Intermodal
- Cement

Each of these markets fluctuates and, at times, they are dependent on each other. In each case, CSXT is called on to respond to those changes and to bear the risk of downturns in those marketplaces where CSXT assets cannot be reallocated For example, a few years ago, center beam flat cars used for transporting lumber and wall board as well as general service box cars were in very short supply and customers were calling daily seeking more cars Today, CSXT has over 3,000 of these cars in storage, generating no revenue whatsoever Such is the risk of capital investment in the rail industry

Customer volume commitments in transportation contracts can help in planning power, crews, and freight car supply. This is particularly true in high volume, bulk product movements such as coal. But it is also true in the high value automotive market where customers provide CSXT (and other rail carriers) detailed lane-by-lane forecasts, a substantial aid in freight car planning.

Ultimately, CSXT must respond to fluctuations in all of our customers' markets. And, additional customer demands lay claim to rail capacity on an equal footing with those who have made long term commitments to make rail a part of their business. The concept of a common carrier obligation with a duty to provide service on reasonable request to anyone seeking service can sometimes create conflict between customer interests. New customers' requests may be at odds with the long-term, stable and predictable demands of long standing customers that have made long term commitments to rely on CSXT. There is no simple answer to this occasional conflict. CSXT will attempt to serve all customers on reasonable request. We ask only that the Board recognize that there will be times when these conflicts will arise, and that the legal reasonableness of our decisions be weighed against practicality, economic reality, and the interests of all customers.

Occasionally the Board will hear negative comments about customer acquisition of freight car capacity. It is important to understand that there are real benefits to rail shippers in acquiring their own private cars. First and foremost is the value that comes from greater assurance of car supply. When customers acquire freight cars by lease or purchase, it gives them immediate and long-term commercial advantages. CSXT has never purchased tank cars, given that they are specialized pieces of equipment designed for specific purposes, as opposed to general purpose cars. Chemical companies have favored purchasing (or leasing) tank cars because it enables them to dedicate a car for extended

periods of time to a single product That ensures product integrity and avoids product contamination Other commercial advantages of owning freight cars include the ability to have "on wheel" storage at origin and destination, thus increasing flexibility in addition to greater assurance of car supply

This flexibility can give a seller sales advantages in its dealings with its buyers. Finally, for some customers, the freight cars themselves can, essentially, become a part of an extended production line linking intermediate steps in the production process at distant plants

Ironically, the customer's cost savings from using rail (and other benefits from car investment) can sometimes provide a better financial return than CSXT can earn transporting freight.

Toxic Inhalation Hazard Chemicals Pose Unique Issues for Rail Carriers.

Under the current state of the law, CSXT cannot refuse to transport shipments of even the most highly poisonous gasses, such as Chlorine, Anhydrous Ammonia, Ethylene Oxide, and Titanium Tetrachloride, provided only that they are tendered for transportation in compliance with federal regulations. Given a choice, CSXT would decline to handle these Toxic Inhalation Hazards, except where absolutely essential to the health and safety of the public. CSXT does not solicit these

commodities, and has actively encouraged our customers to consider substituting products, and finding alternatives to shipping TIH on CSXT.

The risk inherent in transporting TIH commodities is not new. But, there *is* a new paradigm in the 21st Century. The US tort system -- as a practical matter -- has deemphasized fault. Runaway jury verdicts impose risk of ruinous liability.

Communities, by and large, blame the railroad for bringing these chemicals through their cities. Some have pursued legislation to "ban" movement of TIH's through their jurisdictions. Activists generally focus on the railroad, rather than the companies that demand that the railroad transport

Growing regulatory attention to TIH is imposing additional burdens. Some of these requirements merely add cost. Others may require circuitous routings and speed restrictions that will affect network operations -- and other shippers. Other regulatory initiatives, such as proposals to prohibit use of certain interchanges may make some movements impossible.

It is not CSXT's intent to criticize well-intended regulatory initiatives designed to reduce the risk to the public, which is inherent in moving large quantities of these commodities long distances. And, in a post 9/11 world, public concerns about international and domestic terrorism must be addressed. However, the overall approach of shippers and government seems to be that the railroads must continue to take on this burden, and that the railroads must re-design their

operations – even to the point of reinventing themselves-- to accommodate TIH shipments. While some shippers of TIH have shown real commitment to change, others insist on “business as usual.”

Short term, CSXT has encouraged customers to purchase TIH products from closer sources. CSXT has joined with other railroads through the AAR to propose legislation that would limit carrier and shipper liability for TIH incidents. Thus far, little shipper support has been forthcoming.

In the longer term, however, none of these options truly solves the problem. Eventually, shippers and receivers must find alternative products that do not create such risk to the public in transit. It is true that these alternatives are expensive, inconvenient, and in a few cases may require development of new technology. But, ultimately, the solution is to find ways that these commodities need not move at all.