BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. EP 711 (Sub-No. 1)

RECIPROCAL SWITCHING

SUPPLEMENTAL COMMENTS OF THE
AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION

The American Short Line and Regional Railroad Association ("ASLRRA") is a non-profit trade association representing the interests of approximately 500 short line and regional railroad members and 500 railroad supply, contractor, and service company members in legislative and regulatory matters. Short lines operate 50,000 miles of track, or approximately 30% of the national freight network by mileage, employing approximately 18,000 people, and connecting manufacturers, businesses and farmers in communities and small towns to larger markets, urban centers, and ports. Short line railroads play a vital role in maintaining rail service over tens of thousands of miles of light density lines throughout the country that in many cases had been targeted for abandonment by their former owners. Short lines take that responsibility extremely seriously and do not take our critical role for granted. Compared to larger railroad carriers, short lines have shorter lengths of haul, higher fixed costs, and larger capital needs for infrastructure investment, including the task of upgrading bridges and track to handle modern, heavier freight cars. Short line railroads provide high touch, customized service to a small number of customers (an average of 18 per railroad), while facing pervasive competition from trucks, barges, and transloading operations for freight traffic.

ASLRRA filed written comments on February 14, 2022 in this Docket and participated in the public hearing that the Board held on March 15 and 16, 2022. During this proceeding, ASLRRA has expressed its opposition to new rules that would mandate reciprocal switching, noting its concerns that such new regulations could harm the overall efficiency and productivity of the national rail system. If, however, the Board determines to impose new reciprocal switching regulations, the Board should categorically exclude traffic moving either to or from facilities served by Class II and III railroads from those new rules in keeping with the intent of the 2016 NPRM and the original proposal of the National Industrial Traffic League as well as the other shipper associations that are part of its coalition. The adverse effects of imposing the rule on short line railroad traffic would be severe, and could threaten some smaller railroads with insolvency, an unintended consequence of the regulation that would, in turn, harm short line customers, the economy, and the environment.

In its 2016 NPRM, and as discussed at the public hearing, the Board proposes to remove references to reciprocal switching from 49 C.F.R. Part 1144 (which also governs the prescriptions of through routes) and to create a new Part 1145 to govern reciprocal switching under either of the two statutory prongs provided in 49 U.S.C. § 11102(c), which allows the agency to order switching arrangements where (1) it is practicable and in the public interest, or (2) it is necessary for purposes of competition. In either case, the Board said it must weigh and balance the various elements of its rail transportation policy at 49 U.S.C. §10101 as applicable. Under either prong, the proposed rule provides that a railroad can offer affirmative defenses showing the proposed reciprocal switch is unsafe, infeasible, or that it would interfere with service to other shippers.

On March 16, 2022, ASLRRA presented a panel of speakers including ASLRRA President Chuck Baker, Consulting Engineer Dr. David Clarke, and Chairman of the ASLRRA Board Doc Claussen. ASLRRA's panel advocated that excluding traffic moving either to or from facilities served by short line railroads from the scope of the Board's proposed rule is both necessary and appropriate to achieve the Board's intent. While a Class I carrier could at least potentially absorb a relatively small reduction in overall revenues due to mandated reciprocal switching, it would be a far different matter for short lines. Unlike larger railroads, the costs of short line railroads cannot be spread over a vast rail system or large customer base. All the freight revenues generated by customers on a short line are vitally necessary to sustain the financial viability of that line. Loss of even a portion of the revenues from a single shipper could have a significantly adverse effect on the financial viability of a short line railroad given the high infrastructure and fixed costs that must be supported by those revenues.

During the hearing, there was a line of questioning from Chairman Oberman and Board Member Fuchs that sought to clarify what percentage of freight rail industry traffic would be excluded from the proposed reciprocal switching rule if the rule fully excluded all traffic that was moving to or from a short line at the relevant end for the switching case. ASLRRA evaluated this question and can provide some additional points for the Board's consideration.

As discussed during the hearing, short line railroads handle at some point roughly 20 percent of the traffic on the rail system. In examining interchange data provided by the Association of American Railroads, ASLRRA found that 53 percent of short line operations have access, either direct or indirect, to two or more Class I railroads. Therefore, the relevant amount of traffic volume that would not be subject to a reciprocal switching mandate by excluding short line traffic from this proposed rule is less than 20 percent, and most likely closer to 10 percent, as roughly half of short line operations already provide their customers with a competitive option. However, it should be noted that the data does not reflect that some railroad connections have paper barriers in place that limit or deter a short line from accessing more than one Class I railroad. As these are private contractual matters that are not regularly reported, ASLRRA is not able to provide an exact percentage of short line operations that have unrestricted access to multiple Class I partners.

Further, although short line railroads operate approximately 30 percent of the freight rail network by mileage and handle roughly 20 percent of carloads by volume, short line railroads produce only about 6 percent of the annual revenue generated by the freight rail industry. In fact, all the Class II and Class III railroads together generate less annual revenue than that generated by any single Class I railroad. Excluding all Class II and Class III railroads from any mandatory reciprocal switching requirements would impact only a small percentage of the total railroad freight traffic.

ASLRRA and its member railroads oppose new regulations mandating prescribed switching access due to serious concerns that such a regime would harm the safety and efficiency of the national rail system, unduly complicate railroad freight service, and cause new supply chain disruptions. If, however, the Board determines to promulgate a reciprocal switching rule, that rule must completely exclude traffic moving to or from short lines at the relevant location in question from the scope of the agency's intended remedy. In order to do that, the Board should include the modest wording edits ASLRRA proposed in our February 14, 2022 comments.

Respectfully submitted,

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