

**Remarks of Michael E. Grisso  
Executive Director  
Alliance for Rail Competition  
Before the  
Eastern Fuel Buyers Conference**

**Orlando, Florida**

**May 7, 2004**

Good morning. Here I am, the last speaker of the last day of this conference. With all of the distractions of this beautiful place, you are here listening to me. Thank you.

I appreciate the invitation to be with you, but must tell you that you have caused a threshold to be crossed in my family. You see, I have a nine-year-old son who has never been to Florida. For all of these years I have felt the breath of pursuit just behind me. I have tried to hide in dark places where I could not be seen. I have fled to the cleansing warmth of daylight to avoid capture. I have delayed, I have excused, and I have used all of my wiles, experience and persuasive powers. But now...thanks to you....I have lost....THE MOUSE HAS FOUND ME.

When I told my wife a couple of months ago that I was coming here, she looked at me and said, "You're not under the impression that you're going to Orlando alone are you?" I could only reply, "No ma'am." So my wife and son are here as well, exploring some beautiful place even as I speak. You know....the Mouse ain't so bad after all.

You all have incredibly challenging jobs. Jobs that people depend on you to do. And, you do them so well that they don't have to consider the logistical legerdemain that is required for the lights to come on when they flip the switch. That's a great thing...but also a daily challenge.

High on the list of those challenges is transportation, particularly rail transportation, and that's what I'm here to talk about. Now, you know more about the intricacies of transportation than I'll ever know. My background is in federal legislation and on January 15 of last year I was asked to take over as Executive Director of the Alliance for Rail Competition.

### ABOUT ARC

The Alliance for Rail Competition is comprised of a broad cross-section of businesses from across America. Our members are leaders in energy generation such as PPL and Xcel and leaders in the chemical industry such as DOW and DuPont. The Glass Producers Transportation Council and its members are part of ARC, as are wheat and barley producers in many states. In fact we work closely with the National Association of Wheat Growers in our quest for rail competition.

All of these diverse business groups have one thing in common. They are, in many if not most locations, captive to one railroad for their shipping needs. ARC was formed for the sole reason of seeking solutions to this vexing problem.

In 1980, when Congress passed the Staggers Act, the last major piece of railroad legislation, we had 42 Class I railroads in the U.S. Today, after mergers and acquisitions, we are down to about 5. This has led to more and more businesses being served by only one railroad, exercising virtual monopoly power to price according to its needs, not according to market value and competition. This has led to a serious degradation of service and quality. And it has led to rate escalation that threatens American productivity and jobs. Freight rail is the only industry in the country that operates with this lack of competition... and exemption from most anti-trust law. So ARC was formed to seek public policy solutions.

My Executive Committee gave me the primary initial task of producing unity among captive shippers in support of one proposal. In the past there had been widespread agreement about the problems of captivity, but widespread disagreement about solutions and legislation. This lack of unity has been a major factor in the failure to achieve public policy changes in this problem that aches for solutions. So, armed with rather broad discretion given by my Executive Committee, I engaged in meeting after meeting with rooms full of lawyers, with industry groups and individual companies. I found that others were tired of the status quo and disparity. It was a little like herding kittens on Prozac...but the result has been shippers united like never before in support of solutions. I have distributed an information paper on the legislation on which you will see the logos of many organizations which comprise a broader Rail Customer Coalition which meets regularly and cooperates in communications with policy makers. This coalition represents approximately 55 percent of all freight rail revenues. We approach critical mass.

**ARC IS PRO COMPETITION.**

**ARC IS PRO RAILROAD.**

Yes, you can be for both. The strength and vitality of America's freight railroads is of vital importance to ARC. We want more railroads ...not fewer.

But we believe that marketplace conditions would improve the lot of shippers and railroads alike. Indeed the current scheme of things where railroads rely on their ability to differential price solely on the basis of captivity is a one-legged stool approach that is doomed to fail. This country can ill-afford the failure of this vital industry. Railroads are not a luxury. Railroads are essential to the American marketplace and our national security. Therefore, it is necessary that public policy makers address this problem and work with all parties toward solutions before a larger crisis presents itself to us all. Left on our present course, we are sure to see a final round of mergers proposed to leave the entire country with only two Class I railroads.

This is an issue that is vital to American competitiveness and productivity. This issue is vital to the retention and creation of American jobs and the health of our economy. This lack of competition is like an invisible tax, tolerated if not sanctioned by federal policy that works its way into the costs of goods and services across the country. All because the arcane nature of the arguments have baffled and frightened elected officials into inaction.

Oh, there are a lot of confusing arguments being made by opponents of balance. But I'm from the country and we have a simple way of looking at it. I say to Members of Congress: you have been bamboozled. No legislator wants to take action that might cause the failure of one of our railroads. Neither does ARC. No one has a greater interest in sound railroads than shippers, not even the railroads themselves. We do not believe for a moment that our proposals would cause harm. Indeed, we believe quite the opposite to be true. In testimony before the House Transportation Committee earlier this year Dr. Curtis Grimm of the University of Maryland delivered compelling testimony to that effect. That testimony is on our website and I invite you to read it.

**ARC is calling upon Members of Congress to take their heads out of the sand and address this unhealthy imbalance in the freight rail marketplace. We have endorsed legislation designed to restore competitive balance. S. 919 in the Senate and H.R. 2924 in the House are under active consideration in the Congress.**

**This legislation would create a streamlined binding arbitration process for disputes. It would end forced contracts that prolong monopolies and act as paper barriers to competition. It would mandate that carriers quote a rate across bottleneck segments and it would create the ability to designate areas of inadequate rail competition for special attention and focus of the STB to bring balance. It would not cap rates. It would not mandate open trackage rights. It is not reregulatory. In fact, the bill would finish the job of deregulation and take off the nice furry federal helmet that now protects freight railroads from the real world marketplace that all of you compete in every day.**

We are not convinced of our own infallibility here. There may be other options out there for addressing this serious problem. But we have not seen evidence that the Surface Transportation Board is a source of any relief for shippers, to the contrary. Even STB Chairman Nober has said that he is not willing to make the kind of structural changes we feel are needed. So we go to the Congress with the case that the original intent of the Staggers Act has been skewed by years of unfortunate regulatory rulings. Indeed, what we now have is a federally protected monopoly. And we have never seen any monopolist voluntarily change.

In the decisions rendered by the STB this year, shippers have taken away the message that there is no upward limit on what the board will allow. They have also come to believe that the STB is not relevant to them when it comes to seeking some relief and balance.

It strikes me that this is a lot like the board game with one difference. Remember the game...during the holidays when family gathers round someone pulls out the Monopoly game and you play. Eventually the big, jolly uncle winds up with all the properties and all of the money, and you drag your little dog, or hat, or car around the board time and again only to be hit with a huge charge with every roll of the dice because the guy has created a monopoly, he has won. Eventually everyone gets tired, or mad, or both and the game folds. Freight rail is exactly the same...except...that federal policy compels you to sit there and keep dragging yourself around the board...over and over and over.

We know this has been a problem for years...but it is still getting worse as freight rail consolidation and contraction continue. You only have to look at the car shortages for grain shipments this past harvest season that made the front page of the Wall Street Journal, or this new change back to tariff-like rates, or the incredible fact that one of our major railroads is paying customers to ship by truck because they can't get their act together and honor standing contracts. It's an embarrassment. It's hardly a successful model that comforts policy makers. And it's expensive to us all, as consumers.

**There is a difference now in our quest for change. The legislation now pending in Congress has the support of every major shipper organization.**

**We are seeing positive signs of change. Chairman Nober continues to meet with us and his openness is welcome and appreciated. But it is clear to us that change needs to come from the legislative level and we continue to push in unity for that change. We have had hearings on our legislation both in the Senate Commerce Surface Transportation subcommittee, where Chairman Hutchison voiced her support for action, and in the House Transportation Committee where all parties, except the railroads acknowledged that there is a problem. Commerce Committee Chairman McCain, at the STB confirmation hearing called the STB “moribund” and declared that his committee was deadlocked on how to deal with the captive shipper problem. He then tasked the two new nominees to the board to concentrate on this issue.**

**With the STB in a state of irrelevance and railroads as seemingly the only party not engaged in the search for constructive solutions, the choices are clear:**

**Do Nothing.....**

**Or Do Something....**

**The something that is available right now is to push legislation and changes in public policy. Legislative efforts are not cheap, nor are they quick...but the cost of trying is trivial compared to the astronomical cost of doing nothing and accepting an ever worsening status quo.**

**I have been involved in public policy and legislation for 22 years, and I tell you change can happen. We can restore balance to this marketplace but only if shippers want it badly enough. Shippers have to get off bended knee and take a stand. Shippers have to get involved and stay involved with energy, ideas and funding for this effort. In my ideal scenario, enough pressure is created so that railroads sit down together with policy makers and us and address the problem together. But it is clear that such a thing will not happen until railroads see that we have the leverage to produce real change. I invite you all to join us.**

For more information I also invite you to visit our website at  
[www.railcompetition.org](http://www.railcompetition.org).