

Comments
of the
ALLIANCE FOR RAIL COMPETITION

BEFORE THE SURFACE TRANSPORTATION BOARD

STB Ex Parte No. 628

Expedited Relief for Service Inadequacies

June 15, 1998

Introduction

The Alliance for Rail Competition is located at 1100 New York Avenue, NW, Suite 750, Washington D.C. 20005, telephone: 202-216-9270.

The Alliance for Rail Competition is a diverse coalition of shippers that was formed for the sole purpose of developing and promoting a consensus-based plan for achieving rail-to-rail competition. Concerns about railroad market power span all rail-dependent shippers and industries. ARC's rapidly growing membership reflects the diversity of those interests: agriculture, coal, chemicals, consumer products, industrial products, forest and paper products, minerals and petrochemicals, and some of the trade associations that represent many of these groups, as well as port and industrial development authorities.

Given the competitive implications of the Board's proposed rulemaking under this proceeding, the Alliance for Rail Competition submits the following comments for the Board's consideration.

Competitive Rates and Quality of Service are Inextricably Linked

In its notice of proposed rulemaking, the Board emphasizes that this decision "does not address whether to revise the competitive access regulations with respect to competitive issues *not related to quality of service*." Yet basic market principles demonstrate that there is no instance in which the availability of competitive service is not directly linked to both the cost and quality of service received by a customer. Customers who have competitive access generally receive higher quality service at a lower cost than those with no options do. During a service crisis, shippers with competitive access have an alternative, and therefore, are the first customers to have their needs addressed. Shippers that are captive to one carrier receive whatever quality of service the carrier chooses to provide at rates that can be as much as 30% higher or more than those with competitive options. In times of emergency, captive shippers have no choice but to wait and hope for the best. During good times and bad, captive shippers are not receiving the quality of service that they could and should expect under a competitive environment.

Separating service issues from rate issues within the debate over competitive access is an impossible task. The fact that captive shippers pay more and receive less demonstrates the inexorable connection between rates and service in the debate over competitive access regulations. Shippers' concerns about service and

rates can only be addressed by factoring competitive forces into the existing regulatory environment in the short-term, and encouraging the growth of true competition in the long-term.

Expediting Remedies to Service Failures

On its face, the Board's proposed rulemaking would appear to provide further options to shippers seeking expedited relief for poor service. Clearly, the thirty-day decision time is a great improvement over the existing lengthy processes. However, there are aspects of the proposed rulemaking that would likely undermine its value to shippers.

First, it is unclear what would have to occur in order for a shipper to qualify for relief. In order to assist shippers, the Board should identify circumstances that might more clearly identify what would be considered as proof of a "substantial, measurable deterioration" in service. For example, proof might be determined by specified increases in car cycle times, erratic car deliveries, increases in incidents of unsatisfactory car condition, etc. Such a discussion would assist shippers in identifying circumstances that might qualify for relief.

Second, ARC would note that the Board's proposed rulemaking assumes that shippers would always be complaining about deterioration in a service that was once good. Certainly, the bulk of recent complaints has been largely due to the Western service crisis. Yet, service issues have been a serious concern for many years prior to the current service crisis. These shippers will not necessarily be able to demonstrate a measurable *deterioration* in service because their service has always been less than exemplary. Certainly, this rulemaking is intended to address the most serious service deterioration. However, the Board's rules should be broadened to incorporate the situations of shippers faced with chronic service inadequacies.

Finally, the burden of proof that service has deteriorated remains on the shipper. In most service-oriented businesses, customers have a right to have their service providers justify the value of those services. This is usually achieved by having service providers compete for business. However, since there is no rail-to-rail competition to speak of, carriers should be responsible for proving the value of their performance. Shippers are not interested in undertaking frivolous regulatory actions—they want to move their goods efficiently and at a reasonable cost. When a dispute arises over the quality of a carrier's performance, that carrier should be required to prove that it is, in fact, providing the highest quality service possible, especially in cases where a shipper cannot access even one alternative carrier.

As noted previously, ARC believes the availability of competitive rail service is inextricably linked to shippers' concerns about the quality of the service received and the rates paid for such service. Until the STB recognizes that the best means for providing shippers with "expedited relief" is to encourage rail carriers to compete for a customer's business, and as a result, strive to improve their services to meet growing and changing customer needs, the STB will remain in the untenable position of having to arbitrarily determine what constitutes "adequate" service.

Carriers and shippers alike have opposed efforts to "reregulate" the railroads. ARC remains committed, in the long-term, to fundamental structural changes that permit

competition rather than regulation to be the dominant influence over the railroad industry. Such changes will undoubtedly require legislative action, and we hope that the STB will join with shippers to identify the best means for moving the rail industry into a more competitive stance that relies less and less on regulatory interventions.