

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB EX PARTE NO. 658

THE 25TH ANNIVERSARY OF THE STAGGERS RAIL ACT OF 1980:
A REVIEW AND LOOK AHEAD

COMMENTS OF ALLIANCE FOR RAIL COMPETITION

I. INTRODUCTION

The Alliance for Rail Competition welcomes the opportunity to file comments on the past, present and future of rail regulation. There have been too few opportunities for affected shippers, carriers and others to address the broad range of issues presented by this proceeding. Most Board proceedings focus on a single issue and fail to consider the totality of rail regulation, past, present or future.

II. IDENTITY AND INTEREST OF ARC

ARC is an association of shippers that are captive to rail carriers for significant portions of their freight shipments. ARC members include shippers of agricultural commodities, coal, chemicals and other bulk commodities, and include Fortune 500 companies, small companies, and shipper associations and groups.

ARC was founded in 1997 by shippers who were concerned that ICC and STB regulation under the Staggers Rail Act and subsequent legislation was falling short of meeting the needs of captive shippers. ARC's goal was to help such shippers, as well as competitive shippers and the railroads themselves, by pursuing increased rail-to-rail competition as an alternative to regulatory remedies. ARC and its members believe that the railroad industry's limited exposure to competition accounts for much of the poor service, high rates and lack of responsiveness to customer needs that characterize rail transportation. Greater competition would discourage these characteristics, benefiting the railroads as well as their customers.

In ARC's view, increased rail-to-rail competition was called for by Congress in the Staggers Act. However, implementation of the relevant provisions by the ICC and STB has resulted in less competition due to Class I mergers and regulatory approval of paper barriers neutralizing the ability of smaller railroads to compete with the Class I railroads.

ARC's main focus has been and continues to be on its legislative efforts. ARC is a leading member of a coalition of shipper groups and shippers supporting the Railroad Competition Act of 2005, S. 919, and the Railroad Competition Improvement and Reauthorization Act of 2005, H.R. 2047. However, ARC has also followed regulatory developments, and has filed comments on several occasions with the STB.

ARC and its members, like many other shipper groups and shippers, are concerned that captive shippers today have been placed in an untenable position by increasing railroad monopoly and market power, ineffective rail regulation, and little or no recourse under the antitrust laws. We know of no other industry with the freedom that ma-

for railroads enjoy to pursue their own self-interest without fear of regulatory, legal or competitive challenges. For these reasons, the status quo is unacceptable, even if railroad financial health has improved. Unrestricted railroad monopoly power does not serve the public interest.

In addition to seeking legislative change, ARC therefore calls on the STB to revisit key aspects of current rail regulation. In too many cases, contested issues have been resolved in ways that leave captive shippers remediless. And the cumulative effect of these actions, which has received too little attention from the ICC and STB, has left captive shippers vulnerable to abuse on many fronts.

ARC notes that at least one Class I railroad achieved revenue adequacy in 2004, and more may do so in 2005, even under revenue adequacy standards that clearly favor railroads looking for special consideration in rate cases and rulemaking proceedings. These developments, as well as the elimination of excess rail capacity and the demonstrated falsity of claims that rates cannot be increased on the traffic of non-captive shippers, provide additional grounds for new approaches to rail regulation, and for new measures to enhance rail competition.

Whether or not "long-term revenue adequacy" has been achieved – and ARC believes several railroads would have been found revenue adequate for many years under more accurate standards – the Board should move forward with new approaches tailored to new circumstances. Revenue adequacy and the elimination of excess capacity mean that high rates and poor service for captive shippers can no longer be excused. The Board therefore needs to analyze alternatives to business as usual.

III. ARGUMENT

A. Rail Regulation During the Past 25 Years Has Given Too Little Weight to Competition and Captive Shipper Concerns

ARC has no quarrel with the fundamental decision of Congress, first adopted in the 4R Act of 1976 and refined in the Staggers Rail Act of 1980, to reduce or eliminate rail regulation where the presence of effective competition makes regulation unnecessary. However, implementation of that new approach to regulation during the last three decades has too often reflected a presumption that regulation should be minimized even where competitive pressures are weak or nonexistent. Indeed, ICC and Board decisions have often accorded railroads freedom from regulation to which they are not entitled. The agency appears to have applied a sort of precautionary principle – consistently tolerating under-regulation in the interest of avoiding any possibility of over-regulation – that turns economic and antitrust principles upside down. Normally, the benefit of the doubt does not favor protecting monopolies against competition and regulation.

Examples of what ARC and other shippers see as pro-railroad bias are numerous and consistent, as the following survey shows.

1. Revenue Adequacy

In a series of decisions in Ex Parte No. 393, Standards for Railroad Revenue Adequacy, the ICC adopted a definition of railroad revenue adequacy under which the railroads could plead poverty, and demand favorable regulatory treatment, despite achieving financial strength adequate for the funding of major acquisitions like UP's acquisitions of Missouri Pacific and Southern Pacific, and the acquisition of Conrail by NS and CSX. Though ignored by Wall Street and the railroads in their annual and quarterly reports, er-

roneous findings concerning railroad revenue inadequacy have served as tie-breakers in many ICC and STB proceedings.

2. Rail Competition

The intent of Congress in the Staggers Act to deregulate in favor of competitive solutions has, since 1980, been applied to many other industries, including trucking, natural gas, telecommunications, ocean shipping, and electric power generation and sales.

However, competition among railroads has not been promoted, or even preserved.

- a) The last three decades have seen ICC decisions condoning wholesale cancellations of joint rates and through routes. See, e.g., Pittsburgh & L.E.R.R. v. ICC, 796 F.2d 1534 (D.C. Cir. 1980).
- b) In Ex Parte No. 445 (Sub-No. 1), Intramodal Rail Competition, 1 I.C.C. 2d 822 (1985), the Commission adopted rules intended to prevent anticompetitive route cancellations (the so-called "Competitive Access Rules") at 49 C.F.R. Part 1144. These regulations have been ineffective, and the railroads have steadily used their power to foreclose shipper access to disfavored routings.
- c) The ineffectiveness of competitive access regulation was compounded by the interpretation of the statute in Midtec Paper Corporation, et al. v. Chicago and North Western Transportation Co., 3 I.C.C. 2d 171 (1986). Despite statutory language enabling the ICC (and the Board) to prescribe terminal trackage rights and/or reciprocal switching where "practicable and in the public interest," the Commission first imposed the additional

- requirement of a showing of market dominance as a prerequisite to relief, and then held that anticompetitive conduct is a prerequisite.
- d) The STB's Bottleneck Decision also serves to reduce competition among railroads, by enabling a railroad that may have actual market power over only a relatively short segment of a haul to leverage its market power. In this way, the railroad serving a power plant can foreclose access to competing carriers, and to mines served by other carriers.
 - e) Competition between major railroads and short lines has been rendered ineffective by paper barriers in line sale contracts, and by the structuring of trackage rights agreements in such a way as to enable the larger railroad to isolate smaller ones, foreclosing access. Given this imbalance of economic power, it should come as no surprise that the AAR/ASLRRA agreement accomplishes so little.
 - f) In merger proceedings, the agency concedes that it seeks only to preserve existing competition, not enhance competition. Unfortunately, even that modest goal has rarely been achieved.
 - g) Certain Class I railroads have monopoly over entire regions of the country, not just individual shippers. Shippers of agricultural commodities in the upper Plains states, many of whom are small and somewhat isolated from large shuttle-train elevators, have proved particularly vulnerable.

3. Rail Service

In the area of rail service, neither the ICC nor the STB has been a reliable or effective defender of minimal standards of performance by railroads.

- a) When grain car shortages became a serious problem in the 1980s, the ICC responded in several ways, each of which favored the railroads. First, it deprescribed the compensation the railroad industry must pay private car owners who supply well over half the nation's grain car fleet.¹ Second, it allowed the railroad industry to assign second class status to private cars, discouraging utilization.² Third, it allowed the railroads to exploit the shortages they created by underinvesting in cars and by giving preference to railroad owned cars through car auctions like the Burlington Northern "COT" program.³
- b) Today, the railroads provide no tank cars, less than 40% of covered hoppers, and a fraction of the nation's coal cars. Not only have shippers been forced to provide cars in order to obtain service, but erratic rail service has necessitated acquisition of more cars than would otherwise be needed. Having caused these conditions, the railroads now seek to exploit them by imposing "congestion pric-

¹ See, Lo Shippers Action Committee v. ICC, 857 F.2d 802 (D.C. Cir. 1988), cert. denied, 109 S.Ct. 2429 (1989).

² See, Shippers Committee OT-5 v. ICC, 968 F.2d 75 (D.C. Cir. 1992).

³ See, National Grain & Feed Ass'n. v. Burlington Northern R. Co., et al., 8 I.C.C. 2d 421 (1992), aff'd in part and rev'd in part, sub nom. National Grain & Feed Assn. V. United States, 5 F.3d 306 (8th Cir. 1993).

ing," increased demurrage charges, and new empty car storage charges.

- c) During the "meltdown" that followed the UPSP merger, the Board's exercise of its emergency powers was too little, too late.
- d) In the face of similar problems in the Northeast, the Board opted for "informal remedies," and excluded operational problems from the scope of its Conrail Oversight proceedings.
- e) The Board's answer to shipper service concerns appears to be that railroads need to invest more, at the expense of captive shippers. However, the Board has no policies in place to require or even to encourage the railroads to use additional profits extracted from captive shippers to improve service quality for those shippers, or even for shippers as a whole. Exorbitant captive shipper rates appear to be funding service improvements for intermodal freight, but railroads could divert excess profits away from rail service entirely without fear of STB regulatory action.

4. Rail Rate Issues

Twenty-five years after enactment of the Staggers Act, too many shippers paying high rail rates (i.e., rates well above the threshold of regulatory jurisdiction) have no remedy whatsoever. Remedies are available only for a minority of captive rail shippers, and even these remedies are limited. Consider the following:

- a) When the ICC first developed regulations governing market dominance determinations, it developed workable rules relying on pre-

sumptions. Those were quickly discarded in favor of an approach that made market dominance determinations as costly as rate reasonableness determinations. The statutory requirement that competition be "effective" was ignored, and many shipper complaints were rejected based on vague allegations of "potential" competition.

- b) Three of the four constraints in "constrained market pricing," the maximum reasonable rate methodology adopted in Coal Rate Guidelines – Nationwide,⁴ have never been used in a rail rate case.
- c) For 16 years after enactment of the Staggers Rail Act, shippers of commodities other than coal had no remedy other than stand-alone cost, which is not even theoretically practicable for shippers who do not ship large volumes between a small number of origins and destinations. The methodology adopted in Ex Parte No. 347 (Sub-No. 2), Rate Guidelines -- Non-Coal Proceedings, has never been applied in a litigated rate case. The statutory requirement that where there is an absence of effective competition, rates "must be reasonable," is meaningless for most captive shippers.⁵
- d) Even if the small rate case methodology "works," it appears unlikely to produce rate prescriptions at revenue levels below

⁴ Coal Rate Guidelines, Nationwide, 1 I.C.C. 2d 520 (1985), aff'd sub nom. Consolidated Rail Corp. v. United States, 812 F.2d 1444 (3d Cir. 1987).

⁵ In testimony before Congress, STB Chairman Nober stated: "[I]f no small cases are brought, this means that, in practice, only about 75 shippers have a meaningful opportunity to challenge rail rates. This is unacceptable."

200% of variable cost, and may result in far higher rates being found reasonable.

- e) In implementing the statutory requirement of a mechanism for quarterly rail cost adjustments, the ICC adopted procedures that produced windfall profits for railroads. The initial RCAF suffered from a ratchet effect (i.e., rates went up with RCAF increases but not down with RCAF decreases). This was corrected, but the ICC then resisted for nine years the adoption of a productivity adjustment to the RCAF. As a result, the railroads were able to base unchallengeable rate increases on increases in hourly wage rates, while ignoring the fact that their labor force was being cut in half. When a productivity adjustment was finally adopted, the RCAF-U was preserved, relegating many contract shippers to unjustified rate escalation. These arrangements were so generous that for a decade, hardly any rail tariff rate increases were published.
- f) In the Bottleneck Decision, shippers were required to litigate the reasonableness of entire through rates, even where market dominance exists only for part of the route. The Board created a contract exception based on its lack of jurisdiction over contract rates, but held that its lack of jurisdiction in the absence of market dominance was trumped by equivocal 80 year old case law on railroad routing initiatives. As a result, rates for short stretches or for

switching may exceed the threshold of jurisdiction by a factor of 10 with no remedy.

- g) Even the rate stability theoretically offered by contracts is unavailable where railroads refuse to enter contracts. BNSF resists using contracts for grain shipments. CSX recently announced that it would reduce its use of contracts.
- h) Switching to tariffs permits a railroad to increase its rates at will. Tariff (or common carrier) rates are subject to challenge, but the railroads clearly regard the risk of a successful challenge as negligible. This view is reportedly shared by Wall Street, which has interpreted recent STB coal rate case decisions as signaling a "green light" for massive rail rate increases.
- i) Rising rail rates on non-captive traffic have not led to smaller rate increases for captive shippers. On the contrary, market dominant railroads have "gamed" the system by publishing unprecedented rate increases on captive traffic with impunity at a time when their need for differential pricing is declining.

5. Merger Proceedings

In ICC and STB merger decisions, as in too many decisions addressing other regulatory issues, the concerns of captive shippers have been given short shrift.

- a) Promises by the applicant railroads of public benefits have been credited, and warnings of adverse effects on competition, including

warnings by the U.S. Department of Justice, which has extensive expertise with mergers, have been brushed aside.

- b) Neither the ICC nor the Board has ever taken steps to prevent railroads from recovering acquisition costs from captive shippers.
- c) The ICC and the Board have used the "one-lump" theory to ignore all reductions in competition other than a reduction from two-railroad service to one-railroad service. Downstream and upstream losses of competition due to lost or impaired access to mines or other sources of raw materials, or to markets, are neglected, even though such downstream effects are not explained away by the one-lump theory.⁶
- d) No action has been taken to promote competition through conditions imposed on merging railroads, as is routinely done in merger proceedings before other agencies. The ICC and Board have said they will attempt only to preserve pre-existing competition, and have fallen short of meeting that goal.
- e) All too often, the agency's response to complaints raised in merger proceedings about the conduct of the applicants has been that the issue should be raised elsewhere, in a rate case or a competitive access case. These alternative remedies are generally ineffective.

⁶ Under the one-lump theory, a coal-fired utility captive to NS would be deemed to suffer no loss of competition if NS merged with BNSF, even though that shipper's access to mines served by UP, and competition for the shipper's business between UP-served and BNSF-served mines, would surely be reduced if not eliminated.

The current STB is not responsible for every aspect of the regulatory environment that shippers find objectionable. The current regulatory environment has been shaped by the governing statutes and by numerous ICC and STB decisions. Some of these were made under circumstances that no longer exist (e.g., when there were more Class I railroads, or when the industry's financial condition was more precarious). ARC also acknowledges that reasonable people may be able to differ as to the wisdom of some ICC and STB decisions, and that some decisions were well intended.

The fact remains that 25 years of ICC and STB rulemakings and adjudications have produced a regulatory environment offering very few protections for captive shippers, and no safe havens. It should come as no surprise that most captive shippers regard recourse to the STB as, at best, a waste of time and effort, and at worst, a costly exercise in futility which is more likely to lead to railroad retaliation than to reasonable rates or service. See e.g., GAO Report No. 99-46, "Railroad Regulation – Current Issues Associated with the Rate Relief Process," which found that 70% of shippers "believe the time, complexity and costs of filing complaints are barriers that often preclude them from seeking rate relief." (Report at 4).⁷

B. The Agency's Few Positive Regulatory Developments for Shippers Have Been of Limited Help

Despite the glaring preponderance of agency actions that have paid more attention to the needs of railroads than to the needs of captive shippers, there have

⁷ See also Report at 9: "Some shippers and their associations also contend that the improvements already made to the rate complaint process are at best incremental steps and point to a lack of competition in the railroad industry as the underlying problem."

been a few occasions on which the ICC or STB has attempted to help captive shippers. Unfortunately, the agency's efforts have been of limited benefit.

- a) The RCAF-A was adopted at the urging of captive shippers, but the process took a decade and involved several trips to the D.C. Circuit, both for review of the initial ICC refusal to adjust the RCAF for productivity, and to challenge agency action unreasonably delayed under 5 U.S.C. Section 706(1). When the RCAF-A was finally adopted, much of the hoped-for benefit was lost because of the Commission's decision to preserve an adjusted version.
- b) The STB finally eliminated consideration of product and geographic competition from market dominance determinations, reducing the burdens and costs of such determinations. However, it took 18 years to accomplish this change, and streamlining market dominance determinations does not help if relief is always denied even when market dominance is found.
- c) Between 1995, when the ICC issued Coal Rate Guidelines, and 2001, when the STB issued its decision in Docket No. 42051, Wisconsin Power & Light Co. v. Union Pacific RR, a handful of large captive coal shippers obtained meaningful rate relief under the stand-alone cost test. Other captive shippers were able to negotiate contract rates that were acceptable (even if well above the jurisdictional threshold) based on those shipper victories. Both sides had

reason to compromise because both sides had a reasonable sense of the level at which rates might be found excessive. In recent years, the rules have changed, often without notice to shippers, relief has been nonexistent or minimal, and no one knows how high is too high. The railroads have recently argued that 350% of variable cost should be presumptively reasonable, even under SAC (presumably, they would argue that higher rates should be approved under the small rate case methodology). The difference between rate regulation for market dominant railroads and pure monopoly pricing limited only by railroad self-interest is vanishing.

- d) The Board has a good record of approving build-outs. However, these are useless for shippers not located near a competing railroad, and expensive and duplicative for shippers with access to a competitor. In addition, there have been credible recent reports that Class I railroads are electing not to compete, in order to exploit their own franchise monopolies without interference.
- e) The Board has also adopted more open and transparent procedures. However, more oral arguments, hearings and public voting conferences provide little consolidation if shippers are consistently denied relief.

C. Enough is Enough

ARC assumes that the absence of a level playing field with respect to rail regulation, as detailed above, reflects deliberate policy preferences adopted by the

ICC and STB. The agency has plainly been reluctant to jeopardize progress toward railroad revenue adequacy, even where market dominance exists, and has been equally reluctant to second-guess railroad management as to service issues, despite repeated and severe instances of mismanagement.

ARC does not believe these positions were correct on legal or policy grounds, and we believe further that the railroads' problems have been largely self-inflicted. Surely no one can seriously contend that the railroad industry's failure to achieve greater financial health resulted from excessively vigorous ICC and STB rate regulation.

However, even if it is assumed that the ICC and STB have, on balance, done more good than harm in allowing major railroads a free hand in adapting to post-Staggers changes, enough is enough.

D. New Approaches to Rate Regulation Should be Explored

Revenue adequacy is being achieved by more than one railroad even under the Board's tests, and the trend lines are positive for other railroads. The Board has already acknowledged that achieving revenue adequacy constitutes a watershed for railroad rate regulation. See Coal Rate Guidelines, 1 I.C.C. 2d at 535-6:

[C]aptive shippers should not be required to continue to pay differentially higher rates than other shippers when some or all of the differential is no longer necessary to ensure a financially sound carrier capable of meeting its current and future service needs.^{36/}

^{36/} A railroad seeking to earn revenues that would provide it, over the long term, a return on investment above the cost of capital would have to demonstrate with particularity: (1) a need for higher revenues; (2) the harm it

would suffer if it could not collect them; and (3) why the captive shipper should provide them.

ARC is aware that the ICC was discussing “long-term” revenue adequacy, which has not been defined. However, it makes no sense to postpone addressing the implications of revenue adequacy for rail regulation until it is definitively achieved. Given the slow pace of ICC and STB regulatory change, such delay could mean that railroads are allowed to differentially price captive shipper rates for many years after the point at which the justification for such pricing has disappeared.

Moreover, Coal Rate Guidelines does not necessarily contemplate an abrupt transition from an environment in which differential pricing is essentially unlimited to one in which differential pricing is completely prohibited. Even after revenue adequacy is achieved and differential pricing becomes presumptively unlawful, some differential pricing of some captive traffic on some occasions might be tolerated. It should also be recognized that the new approach summarized in footnote 36 may be more readily applicable in challenges to rail rate increases than proceedings as to the reasonableness of base rates.

The public interest would be served by an orderly transition from the status quo to rate regulation based on limited differential pricing on captive traffic as indicated in Coal Rate Guidelines. Even if the Board is not yet prepared to cap captive shipper rates at current levels, or require evidence by defendant railroads as to why differential pricing of issue traffic should be condoned, the Board can

and should adopt new policies in rate cases involving railroads that have achieved or are achieving revenue adequacy.

For example:

- a) Railroads should no longer be allowed to "game" the outcome of rate cases through exorbitant rate increases that will result in far higher rates after application of the percentage reduction method even if the railroad loses the rate case.
- b) Railroad attempts to use the Board's Revenue Shortfall Allocation Method (RSAM) figures as a rough guide to rate reasonableness in SAC cases should be rejected. The RSAM numbers are designed for use in small rate cases under the Board's decision in Ex Parte No. 347 (Sub-No. 2), Rate Guidelines – Non-Coal Proceedings (a decision the railroads have attacked as invalid), not SAC cases. In addition, the RSAM benchmark assumes no contribution from traffic below 180% r/vc to railroad fixed costs. This assumption is untenable at a time when rates on "non-captive" traffic are increasingly rapidly.
- c) At a minimum, The Board should exclude from RSAM calculations all traffic carried at rates below 100% of variable cost.
- d) The Board should not allow railroad fuel surcharges to remain effectively unregulated. So long as railroads may supplement base rates with fuel and other surcharges far exceeding the costs the surcharges purport to recover, a narrow focus on base rates or base rate increases is inadequate.

E. New Approaches to Rail Service Issues Should Be Explored

Impending determinations of revenue adequacy and the impact of those determinations on rate reasonableness are not the only new facts of life the Board needs to consider. Capacity constraints, congestion, and the reduction or elimination of excess rail capacity (which appear to have contributed to some degree to improved railroad balance sheets) also affect service issues. Under these circumstances, what rationale is there for railroads to transport any freight at rates at or below variable cost?

In addition, ARC has referred above to a number of decisions of the ICC and Board that approve, tolerate, or facilitate anticompetitive conduct by Class I railroads in the interest of promoting revenue adequacy. Examples include paper barriers, the Midtec anticompetitive conduct threshold test, the failure to require terminal access where "practicable and in the public interest" or to require reciprocal switching where necessary to provide competitive service, application of the one-lump theory to avoid pro-competitive merger conditions, the STB's Bottle-neck policies, etc. These policies must be reexamined.

It will no doubt be argued in Class I railroads' comments in this proceeding that any change in any of these policies will condemn the railroad industry to financial ruin. This is nonsense. To the extent that reduced capacity in the transportation system as a whole leads to higher rates and charges on all rail traffic, captive and nonjurisdictional, the railroad industry no longer needs more and higher captive shipper rates, or the anticompetitive conduct that supports such rates.

In any event, the choice facing the Board is not between minimizing rail-to-rail competition and maximizing rail-to-rail competition, even if ARC would prefer the latter. There are middle grounds, test cases, and pilot projects that can be considered and approved as warranted. For example, a time limit on paper barriers would increase competition gradually rather than precipitously. The judicious use of terminal area trackage rights and reciprocal switching in accordance with 49 U.S.C. § 11102 would not cause the sky to fall.

The Board should also rein in the tendency of Class I railroads to use service, rates, or both to force on shippers the railroads' preferred vendors, markets, routings and schedules. Railroad market power should not foreclose access to otherwise competitive coal mines, grain elevators and ports, chemical plants, end-users, etc.

The railroads' common carrier obligation and historic concerns about discrimination are related issues that should be reexamined. Is it really the case that a railroad is free to decide which of two similarly situated shippers succeeds and which one fails, so long as every mile of track over which they are served is not identical? It is really in the public interest for railroads to force industry consolidation, notwithstanding the demise of smaller elevators, mines, power plants and factories nationwide, because unit train service is more efficient? Should intermodal freight always displace bulk freight for an extra penny a ton in profit?

IV. CONCLUSION

This proceeding was instituted without advance notice and with a short deadline – 30 days in which to comment on the past, present and future of rail

regulation. Even a hasty analysis supports two propositions. The marketplace is changing, and the regulatory regime established with railroad revenue adequacy as its top priority no longer comports with sound law, economics or policy, assuming *arguendo* that it ever did.

Broad change is needed, and ARC welcomes change because the regulatory status quo for captive shippers could hardly be worse, and because unrestricted monopoly capitalism is not good in the long run even for monopolists. The nation needs rail services, and a strong railroad industry, competing where possible and effectively regulated in the absence of effective competition, to provide those services. It is the hope of ARC and its members that this proceeding results in a new understanding of the public interest, and a willingness by the Board to question outmoded assumptions, policies, and regulations.

Respectfully submitted,

A handwritten signature in black ink, reading "Terry C. Whiteside". The signature is written in a cursive style with a large initial "T".

Terry C. Whiteside
Chairman
Alliance for Rail Competition
101 Constitution Avenue, N.W.
Suite 800
Washington, DC 20001
(202) 742-4435