

## Ed Hamberger Testimony Outline

The AAR is pleased to have the opportunity to present its members' views on the Board's rail competition rules and the Board's responsibilities in carrying out its statutory obligations in the context of those rules.

To offer a perspective at the outset, there are four fundamental considerations that we believe the Board must keep in mind as it evaluates the comments and testimony in this proceeding.

First and foremost, today's balanced regulations work. They work for the railroads – and they work for our customers. After decades of decline, attributable in large measure to over-regulation for much of the 20<sup>th</sup> century, America's freight railroads today connect American businesses to the global market, support millions of jobs across the country and deliver the goods consumers want and need. We have succeeded in achieving enviable productivity gains and solid economic growth in an era of decreased regulation.

This country's rail system is second to none in the world because today's regulatory framework supports the private investments freight railroads make each and every year to meet customer expectations and help keep the economy running. Since the passage of the Staggers Act in 1980, freight railroads have reinvested some \$480 billion in private funds growing and modernizing this country's rail network. That's more than 40 cents out of every revenue dollar. And we do it so U.S. taxpayers don't have to.

President Obama recently called on U.S. companies to “get off the sidelines and invest.” Well, last year alone, during the worst recession in decades, the Class I railroads invested nearly \$10 billion in capital funds. And in 2011, this nation’s freight railroads have committed to investing another \$12 billion in capital expenditures. We are not sitting back and waiting until the economy is fully recovered. We are already on the playing field today, planning and building for tomorrow.

The freight railroads’ private investments must continue unabated in the face of customer demands for more capacity and more service. The Administration’s draft National Rail Plan recognizes that the public benefits when more freight is moved by rail. Less fuel is consumed. Less pollution released. There is less congestion on the nation’s highways. And fewer public dollars needed to maintain and build highways.

Forced access will reduce railroad revenues. That will, in turn, severely harm our ability to reinvest. And without our private investments, customers can’t grow their businesses and support new jobs. .

Our nation can ill afford this scenario, particularly as our fragile economy looks to recover. We need to preserve those regulations that encourage private investment and, in turn, allow us to anticipate and meet the needs of our customers large and small.

Secondly, yes, there are fewer railroads today and, yes, railroads are in better financial condition than they were before 1980. But that isn't why some are calling for changes. Truth is those customers calling for forced access really only want lower rates by eliminating differential pricing. But changing the rules for access is not a remedy for rate concerns. The Board has today – and exercises it - the authority to address customers concerns in individual rate proceedings or, as it has done, in reviewing the standards for rate review. There is no basis from the testimony in this proceeding to change the access rules.

Third, requiring forced access will significantly affect the level of service and network operations today's freight railroad customers have come to expect. The record clearly shows - and other railroad testimony presented here will confirm - that changes in the access rules proponents suggest will actually make the railroads less efficient.

Today's freight railroads are highly efficient networks that deliver high quality service to their customers. Since Staggers, productivity is up more than 160 percent, traffic volume has nearly doubled and average inflation-adjusted rail rates are down 51 percent. That means the average rail shipper today can move twice as much freight for the same price as it paid nearly 30 years ago.

The Class I railroads achieved their current level of efficiency in large measure because railroads were able to manage their complex networks by choosing which routes were most efficient from an overall cost and network perspective, how and where various train and cargo operations

should take place, and where interchanges with other railroads or other modes of transportation should be performed.

Allowing shippers, rather than railroads to specify routes and interchange points eliminates the ability of railroads to best manage their traffic, streamline their operations and determine how to best maximize economies of density. Overall costs would go up and service quality would go down.

Lastly, there has been no change in the law or Congressional policy regarding rail competition.

Statutory provisions as well as attendant Congressional policy and guidance to the Board has not changed. The Board and its predecessor, the Interstate Commerce Commission, have followed the direction of Congress with respect to its Midtec, Bottleneck, and other decisions regarding competitive access; and Congress has not found fault with the agency's approach by directing it to do otherwise.

Since the Board has appropriately followed Congressional policy and that policy has not changed, there is no legal or policy requirement for the Board to change its approach to rail competition issues. In fact, not only is there no Congressional mandate to change the law or policy, you have received the strongest possible warnings from members of Congress in both parties that changes of the type being proposed in this proceeding will have the most severe consequences on not only the railroads, but the customers they serve, the employees that work for them, and US exports.

Reexamination of the Board's competitive policies is unwarranted and is counterproductive. The Board's current competition rules have contributed to the on-going rail renaissance and there is nothing in the law, in Congressional policy, in economic theory, or in the testimony in this proceeding which would justify the Board taking any further action to consider or to reverse the proper course it has followed to date.

In conclusion, the changes some call for are actually systemic changes to the economic model of the rail industry. These fundamental policy changes are more appropriately resolved by Congress, not an administrative agency.