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SURFACE TRANSPORTATION BOARD

EX PARTE No. 711 Sub-No. 1

PROPOSED CHANGES TO RULES
REGARDING RECIPROCAL SWITCHING

SUPPLEMENTAL COMMENTS OF THE BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION/IBT, BROTHERHOOD OF RAILROAD SIGNALMEN, INTERNATIONAL ASSOCIATION OF SHEET METAL, AIR, RAIL TRANSPORTATION WORKERS/MECHANICAL DIVISION, AND NATIONAL CONFERENCE OF FIREMEN AND OILERS 32BJ/SEIU

The Brotherhood of Maintenance of Way Employes Division/IBT, Brotherhood of Railroad Signalmen, International Association of Sheet Metal, Air, Rail and Transportation Workers Mechanical Division, and National Conference of Firemen and Oilers 32BJ/SEIU respectfully submit these supplemental comments in response to the Board's August 3, 2016 notice of proposed rulemaking to modify its rules and standards for mandating reciprocal switching, and that is the subject of hearings scheduled for March 15 and 16, 2022.[1]

The unions have reviewed filings in this docket, and the notes of meetings between interested parties and members of the Board that were produced by those parties, and the unions remain opposed to the proposed new regulations. The unions continue to believe that the proposed change to the rules concerning reciprocal switching will have an adverse impact on rail workers; that proponents of the new rules effectively seek to effectively reopen merger and control transactions that were deemed to be consistent with the public interest; that even if

[1] National Conference of Firemen and Oilers 32BJ/SEIU did not participate in the original comments of BMWED, BRS and SMART MD, but NCFO joins these supplemental comments.

adopted, the proposed new rules will not meaningfully remedy the problems identified by shippers; and that there are more effective and appropriate ways to address the concerns raised by shippers.

INTERESTS OF THE UNIONS AND THEIR MEMBERS

These unions represent the Maintenance of Way workers, Signalmen, Sheet Metal Workers and Firemen and Oilers employed by all of the Class I railroads, as well as railroad workers on other railroads. The railroads are the employers of the members of the Unions. When changes in the structure of the industry and regulation of the industry result reduced earnings for the railroads, they usually attempt to pass at least some of their losses on to their employees.

The unions submit that the proposed rule changes must be considered in the context of the mega-mergers/control transactions that occurred in the 1990s. The ICC and STB approvals of the BN-ATSF and UP-SP mergers, and of the CSXT and NSR division, acquisition and control of Conrail were all justified as necessary to improve and support the financial viability of the industry and to preserve and improve service for shippers; those transactions were determined to be consistent with the public interest. A result of those transactions was improved financial health of the industry, substantial improvement of rail infrastructure through reinvestment by more financially sound railroads, and significantly improved rail service and reduced rates for shippers. But deregulation and consolidation of the railroads inflicted a significant toll on railroad workers. It is also the experience of the unions that when there are structural and regulatory changes to the industry and financial losses for the railroads, those can lead to adverse consequences for members of the unions. The unions therefore have a significant interest in regulatory changes that may diminish railroad revenues-- like the proposal of the

National Industrial Transportation League ("NITL"), and proposals of others, to change the rules regarding when the Board will require reciprocal switching by Class I railroads.

POSITION OF THE UNIONS

The Unions oppose the proposed changes to the Board's reciprocal shipping rules.

1. The proposed changes to the reciprocal shipping rules would involve a revision and reordering of the major merger and control transactions of the 1990s that shippers supported, and the unions opposed, that caused significant harm to railroad workers, but were nonetheless approved as in the public interest. The major control and merger transactions of the 1990s were deemed to be in the public interest after extensive proceedings in which large shipper interests were full participants. In each of those transactions, the applicants asserted that improved networks, elimination of interchanges and single-line service would provide significant public benefits; in particular, they claimed that shippers would benefit by the combinations because of the new hub and terminal arrangements, enhanced through service, improved average speeds, reduced terminal delays and fewer interchanges. Many shipper groups supported the transactions; other shipper groups entered settlements with the applicants relatively early in the proceedings, obtaining little from the applicants in return. Now, certain shippers argue that the industry that is the result of those transactions is insufficiently competitive so remedial action is required.

The ICC and STB decisions expressly considered the impacts of the transactions on competition, including having fewer carriers at specific gateways and reduced connections at various locations. The benefits of elimination of interchanges and increased single-line service were deemed to outweigh the losses in competition and the transactions were approved. As a result of approval of those transactions, thousands of rail industry jobs were eliminated, and collective bargaining agreements were changed through ICC/STB processes, without compliance with the Railway Labor Act. Having supported those transactions, or having acquiesced in them by settlements that required very little of the railroads, the shipper groups should not now be heard to complain of the resulting structure of the industry on the basis that it is insufficiently competitive such that current terminal and interchange arrangements should be changed and reciprocal switching required.

2. If the proposed changes are adopted and are actually effective (an outcome the unions doubt as discussed below), the result would be lower rates for the proponents of required reciprocal switching, which would mean a reduction of revenue for the railroads, which would ultimately be damaging to rail workers. Railroads frequently cite reductions in revenue as a reason to oppose pay increases for their workers. The unions are currently engaged in collective bargaining with the Class I railroads and the unions are concerned that a change to the rules on reciprocal switching will result in the railroads arguing against adequate pay increases. While such arguments would lack merit in the current context, the unions' experience is that they will be advanced anyway, and the unions should not have to respond to them just because certain shippers are no longer satisfied with the transactions they once supported that caused harm to rail workers. The unions believe that adoption of new rules on reciprocal switching are not likely to result in net reductions in costs for shippers, but the railroads will likely cite the threat of lost revenue in opposing needed increases in rail worker compensation. And if new rules would actually result in net reductions in shipper costs, the railroads would certainly cite the lost revenue in bargaining with the unions.

In this regard, the Unions note that issues like this are sometimes presented as conflicts between big railroads and small shippers. But, in reality, the major shipping interests are large corporations too; major participants in the NITL are very large corporations. The Unions urge the Board to recognize that in this clash between corporate titans, and the parties that are likely to be hurt are the employees of the railroads.

3. The proposed changes in reciprocal switching rules are not likely to be an effective remedy for shipper complaints. The unions submit that the reality of rail operations, particularly today's rail operations, makes it highly unlikely that required reciprocal switching will actually have a positive effect for shippers. Consider a simple example: A shipper's cars leave an origination point of terminal A on Railroad #1 headed in single line service to a destination point at terminal B. But along the way there is an interchange point X where there is potential access to Railroad #2 which also has lines that run to terminal B.

Proponents of the rule change would like to have the option of obtaining a rate from Railroad #2 from interchange point X to terminal B. They hope that the combined rate on Railroad #1 from A-X and Railroad #2 from X-B would be less than the rate on Railroad #1 from A-B. But that assumes that Railroad #2 would quote a rate from X-B. Railroad #2 may not have the incentive to quote such a rate. Railroad #2 may not want to change its operations to accommodate that movement; the potential earnings from additional cars may not be worth the effort; the rate quoted by Railroad #2 in combination with the rate charged by Railroad #1 from A-X may not be below the rate quoted by Railroad #1 for the entire distance from A-B; and Railroad #2 may choose not to offer a quote because it does not want to create problems with Railroad #1.

Even if Railroad #2 might theoretically be interested in quoting a rate from X-B, there would also be the cost of an extra switch either by Railroad #1 or by Railroad #2. The savings from the lower quote for a movement from X-B on Railroad #2 compared to Railroad #1 would have to exceed the cost of the extra switch. Then, even if there are potential net savings, there would have to be a crew available at interchange X to separate the shipper's cars from Railroad #1's train to bring them to Railroad #2. And if a Railroad #1 yard crew is not available at the time Railroad #1's train arrives at X, either Railroad #1's through train crew would have to stop and disconnect the cars incurring delays for Railroad #1 and likely charges to the shipper, or Railroad #2 would have to have a yard crew available when Railroad #1's train arrives, or Railroad #2's through train crew would have to stop and disconnect the cars from Railroad #1's train which would result in delays for Railroad #2 and likely charges to the shipper.

Even if the local terminal logistics at X could be worked-out without additional costs exceeding the desired savings by a lower rate on Railroad #2 from X-B, none of this will work unless the through trains from Railroad #1 and Railroad #2 arrive at approximately the same time. The contemporaneous arrivals are unlikely. And, under the current PSR business model neither Railroad #1 nor Railroad #2 will hold its through train at X waiting for the through train of its competitor. Not only would one of the railroads be concerned about delays of the rest of the consist of its train, but the waiting train would likely increase congestion in the terminal or on the rail line and require the attention of train dispatchers. And if the two trains do not arrive contemporaneously, and the shipper still wants its cars switched to Railroad #2, the cars would have to be held on a siding or yard track and there would likely be demurrage or other charges for storage of the cars, which would further undercut any potential savings.

Additionally, if trains of Railroad #2 are allowed to switch on Railroad #1's property, there is a likelihood of added congestion and delays, and the danger of poor communication and confusion among the workers involved. For example, if a train of Railroad #2 crosses onto Railroad #1 to provide switching service for a customer, then the time the train crew of Railroad #2 spends occupying the line to perform the switch and then move off the line will cause all Railroad #1 trains that use that line to wait for the train of Railroad #2 to move off the line. That is time that Railroad #1 crews could have used to switch other customers, or that Railroad #1 through freight trains could have traveled across the line to get to their destinations. Communication problems may result because different railroads use different radio frequencies. Train crews and dispatchers will have to take extra steps to make sure they are communicating effectively. And ground employees working in yards, such as Signalmen and Maintenance of Way workers will have to watch for and be attuned to movements of and communications from trains from foreign railroads that would not regularly be on the property where they work.

Accordingly, while proponents of required reciprocal switching hope that it will help solve some of their problems or lower costs, the practical reality of railroad operations are such that any potential savings will be cancelled out by increased costs, the desired switches will simply not be operationally feasible, and the required switching is likely to cause other problems.

4. Shippers have valid complaints, but required reciprocal switching is not the answer to their complaints. In the last several years there have been increasing complaints by shippers regarding the quality of rail service. The unions are sympathetic to those shippers. Implementation of the new ruthless cost-cutting business model and PSR have indeed degraded the quality of service from the Class I railroads. Cutting over 30% of the work force (who provide or support the actual service), mothballing of equipment, reductions in inspection and maintenance of equipment and infrastructure, and the moves from unit trains to manifest trains and from manageably sized trains to three- and even four-mile-long trains necessarily negatively impacted rail service. Some seem to hope that forcing a small amount of competition will at least lower rates and perhaps result in better service. But required reciprocal switching is not the answer to the problems of rail shippers today. Even if reciprocal switching would be required in the circumstances identified in the NITL proposal, as proposed by others, or as discussed in the Board's order, and even if it actually works as desired, that would really result only in tinkering around the edges of the problem; some limited number of shippers would gain in some limited number of situations. But, even if all of the optimistic assumptions of proponents of required reciprocal switching are realized, that will have only minimal impact on the overall problem of decline in the quality of rail service.

Shippers and the Board should instead look to holding railroads accountable to provide the quality of service historically required of, and provided by, rail common carriers; the quality of service that was promised in the mega-merger and control transaction applications of the 1990s and the ICC/STB decisions approving those transactions, and that existed prior to the railroads' implementation of the new cost-cutting business model.

For all of the foregoing reasons, the Unions respectfully request that the Board decline to change its reciprocal shipping rules as requested by the NITL or as described in the Board's Notice of Proposed Rulemaking.

Respectfully submitted,

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