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Surface Transportation Board
Docket No. EP 711 (Sub-No. 1)
RECIPROCAL SWITCHING

Dear Honorable Board Members,

We, the undersigned, maintain a deep interest in free markets and the benefits they provide to the American consumer. We write to state our opposition to the Board's proposal to mandate reciprocal switching on American railroads.

As we have stated before, we believe that the proposed regulations will significantly harm the ability of the nation's freight railroads to continue their strong records of performance and investment since the passage of the Staggers Act in 1980. Those trends have continued without hindrance since the Board considered these proposals in 2011 and 2016.

We consider reciprocal switching to be forced access. Forced access will needlessly complicate an exchange that is already determined by market negotiation. Railroads' property rights will be overridden to enforce a regime of below-market rates, which will lead to less investment by railroads, diminished competitive advantage against other modes of transportation, and in the end higher prices for consumers. There will also be more strain placed on the nation's competing transportation networks, such as the interstate highway network. Second order effects on passenger rail, the environment, and safety will also be costly.

We reiterate that it would be perverse to remove the longstanding requirement to find anticompetitive effects before mandating forced access. At a time when the question of competition policy is a matter of significant national debate, it is odd that the Board seeks to remove any discussion of competitive effects from this aspect of rail regulation. Courts have consistently found that the purpose of competition law is to improve consumer welfare. Moreover, the Board has made no findings of anticompetitive practices that would justify any mandated switching. As the Board's proposals would ultimately reduce consumer welfare, we must protest that the Board is leaving consumers out in the cold with its proposals.

Moreover, we consider it questionable of the Board to bring up this matter again at a time when the nation's supply chains are under considerable strain.

For further discussion, please see the reply comments of the Competitive Enterprise Institute in the Matter of Petition for Rulemaking to Adopt Revised Competitive Switching Rules, Notice of Public Hearing, Docket No. EP 711, 78 Fed. Reg. 49721 (Aug. 15, 2013), and the comments of the Competitive Enterprise Institute in the Matter of Petition for Rulemaking to Adopt Revised Competitive Switching Rules; Reciprocal Switching, Docket No. EP 711 (Sub-No. 1), 81 Fed. Reg. 51149 (September 26, 2016).

As was said in those 2016 comments, "Continuing down the path laid out in the NPRM would constitute a dangerous reregulatory action, one Congress has rejected and precisely the type of agency conduct under STB's predecessor that led to the near-collapse of the railroad industry prior to the enactment of the Staggers Act."

We once again urge the Board to withdraw these proposals.

Sincerely,

Iain Murray
Vice President and Senior Fellow
Competitive Enterprise Institute

James L. Martin
Founder/Chairman
60 Plus Association

Saulius "Saul" Anuzis
President
60 Plus Association

Steve Pociask
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