NATIONAL RESEARCH COUNCIL
TRANSPORTATION RESEARCH BOARD

STUDY COMMITTEE ON RAILROAD TRANSPORTATION AND REGULATION

THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE
"THE SHIPPERS' VOICE SINCE 1907"

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INTRODUCTION

- CSP followed the STB's inquiry into the state of competition in the freight rail industry in Ex Parte 705

- Captive (or singly-served) shipper witnesses focused heavily on rates that greatly exceed the 180 R/VC threshold and the high cost of pursuing relief at the STB

- NITL reminded the Board that Staggers provided for competitive switching when "practical and in the public interest" or "necessary to provide competitive rail service"

- The plain language of Staggers is clear and permissive. Congress said competitive switching could be used to encourage greater competition

- But the existing rules and precedent are unworkable for shippers

- Competitive switching has never been granted and shippers gave up trying 20 years ago

- NITL supported Staggers and transportation deregulation – Staggers was a success

- Since Staggers the freight rail market has changed dramatically through consolidation

- Our proposal for a new competitive switching rule is balanced and narrow

- The CSP follows from Staggers

- It is not re-regulation; rather, it would inject a reasonable degree of competition into non-competitive markets

- Our analyses of its impact demonstrate it would not harm the Class I railroads

- The Christensen Report said "Incremental policies such as reciprocal switching and terminal agreements have a greater likelihood of resolving shipper concerns via competitive response, and have a lower risk of leading to adverse changes in industry structure, costs, and operations

Ex Parte 711 Timeline

- In July 2011 NITL filed a petition for rule making with the STB
- The petition asked the Board to repeal current rules governing competitive switching and to publish for public comment a new rule to require competitive switching for captive shippers under certain circumstances
- In July 2012 the Board opened a proceeding: Ex Parte 711, and asked interested parties to answer a set of questions about the impact of the NITL proposal if it were to be adopted
- Opening submissions were filed on March 1, 2013; replies were submitted on May 30, 2013
- What are the key elements of the NITL proposal in Ex Parte 711?

NITL Competitive Switching Proposal

- STB "shall require" a rail carrier to allow competitive switching if:
  - The shipper's facility is served by rail only by one Class I carrier
  - There is a lack of effective inter- and intramodal competition
    - carrier has 75% or more market share for movement over prior 12 mos.; OR
    - movement has R/VC ratio of 240% or more
  - There is or can be a "working interchange" within a "reasonable distance" of the shipper's facility
    - facility is located in existing or future terminal where switching occurs; OR
    - facility is located within 30 miles of interchange where switching occurs
  - Switching would not be unsafe, infeasible or harmful to existing service

A shipper that fails to qualify under the conclusive presumptions can still obtain switching relief; but it would need to submit additional proof on the general standards

- In Ex Parte 711 the Board asked reasonable and fair questions

- The Board gave interested parties access to the confidential waybill sample data so that the analyses needed to answer the questions could be performed

Question 1: Identify Existing Terminals Open To Switching

- The Class I carriers' tariffs show
  - terminals that qualify for switching
  - shipper facilities within the terminals
  - commodities covered by switching
  - fees, limitations, etc.

- The tariffs clearly show that switching is part of the ordinary railroading business across the country, and that shippers are charged a fee for switching.

Questions 2 & 3: How many shippers would be able to use the CSP, and what would be the impact on carriers' revenue?

- This was the key analysis that had to be performed for the Board

- Not surprisingly, it was a complex undertaking, using the data set the Board provided to all interested parties

- Recall: two "points of entry" into the CSP--an R/VC ratio above 240%, or a market share greater than 75%

- The waybill data does not contain any information on market share; there are no public data on market shares

KEY STEPS:

❖ Build an access fee using carriers' own tariffs and the Canadian model adapted to our CSP: $300 for <60 cars; $89 for 60 or more

❖ Determine the status of each rail station: competitive or captive?

❖ Identify working interchanges

❖ Use the 30 mile qualifier

❖ Examine current (2010) rates for movements; if the rate was below 180% R/VC that shipper would not be interested

- We next determined the average rates for commodities that were below 180% R/VC, by carrier, to determine the "competitive rate" for that commodity

- With a CSP in effect, "full competition" rates would reduce to these average rates

- We re-ran the data under a different assumption: less than full competition (duopoly) using the Lerner Index

RESULTS

- Under the "full competition" assumption and the 240% R/VC presumption, about 1.24 million carloads would qualify for a competitive switch, out of 31 million carloads for the 4 Class I carriers (about 4%)

- We later added another 200,000 carloads (in our reply comments) from using the 75% market share presumption, yielding about 1.44 million carloads in total or 4.6%

- Re-running the data under an assumption of "less than full competition" and the 240% R/VC presumption, less than 1.1 million carloads out of 31 million or 3.5%

- Adding carloads from the 75% presumption yielded another 123,000 carloads for a total of 1.2 million carloads or just 3.9% of all carloads moved

ESTIMATED DOLLAR IMPACT

- In 2010, the "Big Four" gross income was $52.9 billion; net income before taxes was $14.3 billion

- Under "full competition" total estimated dollar impact using both the 240% R/VC and 75% market share presumptions: $1.4 billion (2.6% of gross income or 9.7% of net before taxes)

- Under "less than full competition", the estimated dollar impact is $945 million (1.7% of gross, or 6.6% of net before taxes)

- For a number of reasons we believe these estimates are overstated

WHAT WILL BE THE IMPACT ON THE RAILROADS' NETWORKS?

- Restated, will every eligible carload be switched?

- The Canadian experience (based on a sweeping statutory matter of right) shows only about one-tenth of the "eligible" carloads are actually switched; i.e. the incumbent railroad keeps its customer 90% of the time

- Applying this real world outcome to our estimated 1.2 million eligible carloads--less than 120,000 would be switched (less than one half of one percent of all traffic)

- Moreover, our CSP gives the impacted railroad the opportunity to demonstrate to the Board that the requested switch is unsafe, not feasible, or will harm its ability to serve other customers.

Question 4: What would be the impact on other shippers (those who do not qualify for the CSP)?

- There would be no effect on them--the carriers already price their services to maximize earnings

- VERY few rate cases are ever undertaken by shippers, so there will be no "regulatory" impact either