

**TESTIMONY BEFORE
THE RAILROAD SUBCOMMITTEE
OF THE
HOUSE TRANSPORTATION AND INFRASTRUCTURE COMMITTEE**

NATIONAL RAIL INFRASTRUCTURE FUNDING PROPOSALS

JUNE 26, 2003

SUBMITTED BY:

**CHARLES E. PLATZ
PRESIDENT, BASSELL NORTH AMERICA, INC.**

ON BEHALF OF

**CONSUMERS UNITED FOR RAIL EQUITY
AMERICAN CHEMISTRY COUNCIL**

6/26/03

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to testify today on this important subject. My name is Charles E. Platz. I am President of Basell North America Inc., which is headquartered in Elkton, Maryland. Basell has manufacturing facilities in Texas and Louisiana and markets product manufactured at a plant in Linden, New Jersey. We produce raw material plastic resin that our customers use in a variety of applications such as automobile components, textiles, packaging, medical products and numerous household goods. I appear today as Co-Chair of Consumers United for Rail Equity, on behalf of captive rail customers; and on behalf of the American Chemistry Council; and on behalf of my own company.

Mr. Chairman, I approach this issue from the perspective of an executive responsible for running a successful manufacturing business in this country that competes in an extremely competitive global market. I am very concerned not only that our company succeeds in this dynamic global economy, but also that American manufacturing jobs remain in this country. Our company is completely dependent on rail transportation and at some of our facilities is dependent on, or captive to, a single railroad for the movement of our product to our customers. As a business dependent on the railroad industry, we are vitally interested in the financial health of America's railroads. We simply cannot operate successfully in this country without a financially viable railroad industry and a secure railroad infrastructure.

None of us seeks a return to the "bad old days" of the 1970's when several of the major railroads were in bankruptcy and the industry lacked the capital necessary to maintain their systems. Unfortunately, over twenty years since passage of the Staggers Act, the industry apparently continues to fall short of the revenue needed to provide a first class rail system for the nation. Perhaps the time has come to move toward a partnership between government, the railroad industry and their customers: a partnership that will ensure a national rail system that can meet the demands of our nation's role in a global economy.

I am deeply involved and committed to these issues, which are critically important to our business and to the greater American economy. Over the past year, I have been engaged in a dialogue with the CEOs of the railroad industry about both the lack of an acceptable commercial relationship with our rail carriers and the financial needs of the railroads. These conversations began at the request of then Chairman of the Senate Surface Transportation and Merchant Marine Subcommittee, Senator John Breaux (D-LA), after both John Snow, then Chair of the CSX Corporation, and I testified before Senator Breaux on the captive rail customer issue last July 31st. At the end of the hearing, Senator Breaux asked Mr. Snow and me to enter into a dialogue on this issue and involve other shipper and railroad CEOs. More specifically, Senator Breaux asked us to seek consensus on a mechanism for resolving rate disputes. We had an initial meeting. After Mr. Snow was selected by the President shortly thereafter to serve as Secretary of

the Treasury, our dialogue has continued with Matt Rose, CEO of the Burlington Northern and Santa Fe Railroad. Frankly, Mr. Chairman, we find that the railroads in today's environment are very reluctant to change the status quo, which they feel would be to their disadvantage. Nevertheless, we have appreciated this opportunity and are ready to continue our discussions if the dialogue can be directed toward developing a new relationship.

THE BASELL RAILROAD EXPERIENCE

Mr. Chairman, I want to relate to you Basell's recent unsatisfactory experiences with some of our rail carriers. Basell is completely dependent on the railroad industry for transportation. To be specific, 100% of Basell's finished product is loaded directly into rail hopper cars. The vast majority of our customers require that our product arrive at their facilities by rail. Basell operates a fleet of nearly 4000 hopper cars to deliver our product to market. The replacement value of those cars is approximately \$260 million. The operation of the fleet is strictly to Basell's account.

We have a plant near Bayport, Texas that is captive to a major western railroad. Our facility is served by a single rail line owned and operated by this major carrier. However, within a short distance of our plant, is a second major railroad that intersects the line of the carrier that provides the exclusive service to our plant. At that intersection point, our hopper cars could be moved to the second railroad where competition could be utilized with the potential for better service and more cost-effective transportation to our customers.

Under current law, as interpreted by the Surface Transportation Board in 1996, the carrier to which we are captive in Bayport is under no obligation either to quote a rate for moving our cars to the competing railroad or to allow us to reach that competing railroad. Over time, that carrier charged us such an excessive rate on our movements from the Bayport plant that it jeopardized the continued successful operation of that plant in a highly competitive plastics industry.

When this occurred, we considered all of our options. One option might have been to file a rate complaint at the Surface Transportation Board, but rate cases are not a viable option for the chemical industry. The chairman of the STB has testified that rate cases are costly and long and that what we call "small rate cases" have not been used. We applaud the Chairman for identifying these issues, beginning a process to review and revise the procedures and for seeking to bring about needed change. Nevertheless, prospective alterations can't change the fact that today, just as when our situation in Bayport became critical, the only available remedy is pursuit of a build-out to competition.

In joining with other producers on the solely served Bayport facilities, we're using the only remedy really afforded to us under the law. But, that's no easy task. The process for obtaining permission for that line has been arduous, the line has been controversial, and the line will be costly – about \$80 million. An application to build and operate this new rail line is currently pending before the STB. While this new rail line will bring much needed relief, the

reality is that the \$80 million is being spent on duplicative rail facilities. That money could have been better spent on improvements to existing infrastructure. Finally, upon completion of the line, for at least the time being, the railroad that today holds us captive will have lost the origin business.

Mr. Chairman, it's questionable whether this is a success or not. We will achieve competition, but capital will be invested where it's not needed and the incumbent rail carrier that demanded too much will lose business and the related revenue. I believe if a normal commercial relationship existed between the railroads and their captive rail customers, we would have been able to negotiate a mutually acceptable transportation agreement and avoided both the disruption to the community and the unnecessary capital investment. Unfortunately, captivity obstructs this type of commercial relationship.

A FLAWED RAILROAD BUSINESS MODEL

Mr. Chairman, based on my experience, I believe the major railroads in the nation are pursuing a flawed business model. Even the railroads agree that the gap between their annual revenue needs and their annual revenues is expanding, not shrinking. This is despite the fact that they have been allowed to consolidate to achieve cost synergies. These synergies should allow them to operate more efficiently and in a fashion that permits them to recover their cost of capital. They've also had the opportunity to transfer less profitable track to short line railroads while keeping their market dominance over that track and they have been able to increase the burden on captive rail customers. The result is simply that those customers with no alternative pay the most. The railroads call the practice of putting more costs on captive customers "differential pricing." But differential pricing should not be determined by captivity alone. In normal business models, customers utilizing facilities more contribute the most to their cost. But under the current application of "differential pricing," that is not the case. The questions I am posing aren't focused on whether they are allowed to do it - they are. Rather, the questions we should be asking are: one, whether the way they are applying "differential pricing" works and; two, whether it will allow them to sufficiently grow their business and close the gap on their existing financial shortfalls.

Mr. Chairman, pursuing a strategy of continually loading more costs on captive rail customers does not appear to be a business model that will result in healthy American railroads in the long run. As our example at Bayport indicates, the universe of captive rail customers is likely to be reduced over time. Some captive customers will construct rail line "build-outs". Some captive customers will shift their manufacturing activities to facilities that have transportation competition. Some captives will shift their manufacturing to foreign countries, exporting American jobs overseas. Under this business model, the industry will be required to load up even more costs on the remaining captives, thus accelerating the cycle.

A BETTER WAY

Mr. Chairman, there must be a better way for the railroad industry to achieve long-term financial viability while providing efficient service at prices that will allow American business to compete successfully in the global market. I think that better way has two components, both of which are essential.

First, the railroads must develop a new relationship with their captive rail customers. The old saying that “absolute power corrupts absolutely” in some ways can be applied to the relationship between captive rail shippers and the railroads. The relationship between the railroads and their captive customers is so out of balance that a viable commercial relationship does not seem possible. Too often captive rail customers are confronted with both a lack of competitive options and no swift or effective remedy at the Surface Transportation Board. Thus, railroads are free to approach captive customers with a take it or leave it attitude. If the railroads were at risk of losing business to competition or faced risk at the STB, railroads would have an incentive to work with us to achieve a mutually beneficial commercial relationship. We believe rail legislation pending in the Senate and soon to be introduced in the House will strike the balance that will result in normal commercial relationships between the railroads and their captive customers.

Second, the railroads need the financial resources to be viable. Perhaps federal financial assistance for railroad infrastructure should be provided to the railroads, which we would hope resolves their capital shortfall. If federal loans and loan guarantees don’t work, then perhaps infrastructure grants or beneficial tax treatment should be considered. Captive rail customers would be pleased to work with the rail industry and Congress to address this issue. During this interim time period, the government should study seriously the current railroad model and determine if there is a better way to ensure a viable national rail system. Captive rail customers, such as Basell, will participate gladly in that dialogue.

Both balanced commercial relationships and financially strong railroads are necessary to provide the secure, effective transportation system the nation needs to remain competitive in the global market. A continuation of the status quo in the relationship between major railroads and captive rail customers is not sustainable and, I believe, adversely affects our nation’s ability to compete in the global economy. Thus, we support legislation that has been introduced in the Senate as S.919, the Railroad Competition Act of 2003, which is supported by at least twelve national trade associations and hundreds of companies around the country. Similar legislation is expected to be introduced in the House in the very near future. I am attaching a one-page explanation of this legislation

Mr. Chairman, thank you for allowing me to testify today. Captive rail shippers are not the enemies of the railroad industry. We are their customers and we seek a new and healthy commercial relationship with our rail service providers. We believe that balanced, fair legislation is needed to bring about that positive relationship. Infrastructure investment is important for the long-term competitiveness of the United States, and we support that investment. However, for that level of investment to be successful, and for it to provide a

meaningful benefit to the American economy, we must re-visit and resolve the needs of those shippers most dependent upon rail – the captive rail customers. These two issues must be addressed and resolved together or the effort to fund infrastructure will fall far short of the objective. Indeed, if the railroads are allowed to continue current practices, the end result will be that more American jobs leave our borders for destinations overseas. I suggest that's a result we all must work to avoid.



ENACT S. 919 NOW! THE RAILROAD COMPETITION ACT OF 2003

Clarification of National Rail Policy: Clarifies that the STB has the following primary objectives: (1) ensuring effective competition among rail carriers at origins and destinations; (2) maintaining reasonable rates in the absence of effective competition; (3) maintaining consistent and efficient rail transportation service for rail shippers, including the timely provision of rail cars; and (4) ensuring that small carload and intermodal shippers are not precluded from accessing the rail system.

Requirement that Railroads Must Quote Rates to Their Customers: In order to increase rail customer access to competition, railroads must quote rates between any two points on their systems where freight movements can originate, terminate or be transferred, when requested by the customer.

Arbitration of Certain Rail Rate, Service and Other Disputes: Provides “final offer” arbitration (baseball arbitration), at the choice of the non-rail party to a dispute, for all rail rate matters and other disputes at the STB involving a railroad charge.

Removal of “Paper Barriers:” Prohibits including “paper barriers” in future sales or leases of rail line to short line or regional railroads and allows the STB to invalidate such provisions that have been in existence for 10 years.

Removal of “Anti-Competitive Conduct” Test from Terminal Area and Switching Agreements Policy of ICC/STB: Changes the “antitrust” test added in mid-1980s by the former Interstate Commerce Commission to the statutory “public interest” test included in the terminal area and switching agreement provisions of the ICC Termination Act.

Tri-Annual DOT Study of Extent of Rail-to-Rail Competition

Areas of Inadequate Rail Competition: On petition of a state, the STB may declare all or part of a state to be an area of inadequate rail competition. Special rail customer remedies apply in such areas.

Rail Customer Advocacy Office Established at Department of Agriculture