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CAPTIVITY MAP EXPLANATION

Escalation Consultants and CURE have collaborated to produce freight railroad "captivity" maps for the United States, each state and all congressional districts, except Hawaii.[1] The purpose of the maps is to illustrate the lack of freight rail transportation competition available in different parts of the nation for those shippers that must use a railroad for their transportation.

The maps are based on a data base of the more than 28,000 "freight rail stations" that exist in the United States. A freight rail station is defined as a location where a freight railroad picks up or delivers freight. The analysis performed for the captivity map determined whether each of the rail freight stations has access to more than one Class I (major) railroad in order to determine the number of railroads that can actually serve a station. The data base developed from this analysis shows the captive or competitive status of each rail freight station. When a station is captive it can only be served by one major railroad; and when a station is competitive it can be served by more than one major railroad. The captivity map shows that at least 78.4% of the freight rail stations in the United States are served by a single major railroad. Further analysis shows that this number is even greater.

The 78.4% rail station captivity number understates the actual captivity of rail dependent shippers for the following reasons:

- A portion of the remaining 22% of "competitive" rail stations are captive to a single railroad because some regional and short line railroads are controlled by the major railroad serving the station. This inhibits competition between railroads and causes more stations to be captive;
- "Paper barriers" (long-term track lease provisions) prevent regional and short line railroads from routing traffic to some major carriers that they interchange with; and, in addition,
- Many facilities are captive to a single railroad even if the station that serves their plant has access to more than one major railroad. This commonly occurs because only one railroad is able to serve a plant out of many stations.

These situations occur frequently and cause our 78% rail freight station captivity number to understate the magnitude of the problem resulting from the lack of rail competition in our national freight rail system. Unfortunately, there is no way to identify these situations from the available freight station data base.

Shippers that are located at or near single served freight rail stations are captive if they must use a railroad for their transportation. Shippers who must use a railroad

[1] Hawaii has no railroads except for company owned railroads that operate in agricultural production.

include: shippers moving a commodity or product a distance that is not economic to transport by truck; shippers moving oversized equipment that cannot be moved on the highway; and shippers moving a commodity or product that is too hazardous for highway movement. This analysis shows that at least 78.4% of the rail stations of the nation are "captive". No State has more than 50% of its freight rail stations served by more than one railroad.

PROBLEM

The captivity maps illustrate a serious problem with the current law governing the relationship between the major freight railroads and their customers. The Staggers Rail Act of 1980 presumes rail customer access to transportation competition and therefore presumes the deregulation of the relationship between the railroad and its customer. The Staggers Act was based on the assumption that competition between rail carriers was the force that would keep rates reasonable and would keep service at a high level for most freight rate customers.

Under the Staggers Act, today the freight railroads are free to charge any rate they choose to all of their customers, without any prior approval by the federal regulator. Almost all other terms and conditions governing freight rail traffic may also be unilaterally established or modified by the railroad without any prior regulatory approval. If the rail customer does not have access to competition, then the rail customer has only one possibility of relief from monopoly rates, unreasonable practices and poor service. That possibility is to file a complaint at the Surface Transportation Board (STB) challenging the reasonableness of the rate. The STB is the only federal agency with economic regulatory authority over the railroads. At the STB, the customer bears all burdens of proof and the expense of proving to the regulator the need for regulatory protection – while paying the rate the railroad has chosen to charge throughout the two to four years normally required to obtain a decision in a rate challenge proceeding.

Unfortunately, the captivity maps show that, thirty years after Congress last acted on railroad regulatory policy, the central assumption of the 1980 Act is totally incorrect: instead of rail customers having access to freight rail competition more than 78% of our nation's rail stations are served by only one major railroad. Based on geography, rail-dependent shippers have only a 22% chance of having access to two major rail systems.

Data on file at the STB show that rail customers pay at least twice as much for railroad transportation when they have no access to competition. This freight transportation disadvantage often denies American companies access to markets, reduces their profitability and can even force companies to relocate from "captive" locations, with the resulting loss of jobs and tax base for local communities. Multinational companies have testified at the STB that this freight-transportation disadvantage may cause them to shift production from American facilities to those in other countries or even to shut down American plants completely. Testimony received by the STB in the summer of 2011 by several large manufacturers indicates that the cost of seeking relief from "captive" rail rates at the STB can be as much as $18 million where multiple routes and destinations are involved.

THE SOLUTION

Federal regulatory policy that maximizes rail customer access to rail competition and an affordable rate-challenge process for those rail customers without access to transportation competition is urgently needed.