Freight Rail Customer Alliance

Competitive Switching (Access)

FRCA Position

FRCA supports allowing shippers with direct access to only one railroad to have that carrier provide a "switch" for a nearby rail carrier.

FRCA supports the Surface Transportation Board's (STB or Board) Notice of Proposed Rulemaking (NPRM) to determine the pros and cons of requiring railroads to provide the requested switching arrangements (Docket No. EP 711 (Sub No.-1), *Reciprocal Switching)*. This NPRM was issued on July 27, 2016.

Moreover, FRCA is a co-signer of the 2011 National Industrial Transportation League (NITL) petition filed with the STB allowing competitive switching.

Issue Background

Since the U.S. Congress passed the ***Staggers Rail Act of 1980*** (partially de-regulating the freight rail industry), the number of major or Class I freight railroads has declined from 40 to seven, with four essentially operating like regional duopolies controlling 90 percent of all traffic.

While Congress included the concept of reciprocal shipping and terminal trackage rights in the ***Staggers Act,*** the Interstate Commerce Commission (ICC and predecessor agency to the STB) actually made it more difficult for shippers to obtain competitive rail service.

The NITL and other shipper groups, including FRCA's predecessor organization, filed a petition in 2011 asking the STB to issue new rules allowing a captive rail shipper to have that carrier provide a "switch" for a nearby rail carrier where a shipper must show: 1) captivity; 2) lack of inter/intra-modal competition (RVC ratio of 240% or more or a RR handles 75% of all traffic); 3) and reasonable distance to an reasonable distance to an interchange (30 miles). This petition also stated that a RR carrier could avoid switching if unsafe, infeasible or harmful to existing service

FRCA concurs with the NITL's view, as articulated in its petition that STB's longstanding competitive shipping rules and processes has been rendered meaningless. No shipper has attempted to obtain a reciprocal switching order for more than 15 years because of the burden of proving anticompetitive conduct under these STB procedures and the changed market conditions for both railroads and shippers during the past 30 years.

The STB has the statutory authority – again dating back to the ***Staggers Act*** – to modify its rules. No additional Congressional action is necessary. As such, the recently enacted ***STB Reauthorization Act of 2015***, P.L. 114-110, is silent on this competitive access issue.

On July 27, 2016, the STB announced a Notice of Proposed Rulemaking (NPRM) to determine the pros and cons of requiring railroads to provide the requested switching arrangements (Docket No. EP 711 (Sub No.-1), *Reciprocal Switching)*. This STB proposal would allow shippers with access to only a single rail line to request that carrier to provide a switch for freight be moved by a nearby rail line.

In its July 27, 2016 decision, the STB granted in part the NITL petition by initiating this NPRM for new rules on competitive switching arrangements and remedies. The STB has proposed two possible paths for shippers to obtain a competitive switching remedy: 1) switching must be practicable and in the public interest or 2) be necessary to provide competitive rail service.

Status

FRCA filed comments supporting the NPRM on October 26, 2016 and can be accessed via http://railvoices.org/wp-content/uploads/FRCA-Comments-to-STB-EP-711-Reciprocal-Switching-SUBMITTED.pdf

Reply comments were due by January 13, 2017, along with requests for ex parte meetings with Board Members.

On December 23, 2016, the STB announced an indefinite delay in the schedule for requesting the ex parte meetings and the meetings themselves. While ex parte meetings have been held, it is not known when the Board will issue new timeline(s)/deadline(s) for requesting ex-parte meetings or the continuation of formal deliberations in the Docket.