

**BEFORE THE SURFACE TRANSPORTATION BOARD**

**Docket Number: EP 711 Sub-No.1**

**Title: Reciprocal Switching**

**Comments of Thomas J. Brugman**

**Date: November 1, 2016**

241947

Email Filing to: EP 711 Sub-No.1

Cynthia Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation board  
395 E Street SW  
Washington, DC 20423

Chairman Daniel R. Elliott III  
Vice Chairman Deb Miller  
Member Anne Begeman

ENTERED  
Office of Proceedings  
November 2, 2016  
Part of  
Public Record

Dear STB Commissioners,

Please accept this message as comment on the Surface Transportation Board's (Board) notice to grant in part a petition for rulemaking initiated by the National Industrial Transportation League (NITL) proposing changes to reciprocal switching regulations in the United States.

As a US citizen who has dedicated his professional life to the US railroad industry (working 27 years with the commercial side of a major class one US railroad, culminating in 10 years as the head of that railroad's agricultural, consumer products, and fertilizer marketing group; and then followed by eight and one half years as a Transportation Industry Analyst for the Surface Transportation Board, rising to Deputy Director of the Office of Public Assistance, Government Assistance, and Compliance, also referred to as OPAGAC; and most recently 2 years and one month as a rail industry/shipper consultant), I wish to commend the STB for undertaking the important issue of competition in the US railroad industry – an examination of access rules commonly referred to as “reciprocal switching.” This review is consistent with the Board's first responsibility under Title 49, Subtitle IV, § 10101, 1) “to allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail”, which needs to be protected, preserved, and expanded.

My first-hand experience dealing with rail competition, setting rail rates, establishing and revising rate and service tariffs and later, authorizing rate quotations and transportation contracts, has clearly shown a decades long trend by the railroad industry to reduce competitive access through strategies to restrict use of the long established industry standard of reciprocal switching – where one rail carrier voluntarily grants access for a small fee (fee access) for some of its locally served shippers, to other competing and non-competing railroads, in return for fee access to some of their local shippers.

My first personal knowledge of the trend to reduce reciprocal switching access dates back to the 1980's while assigned to a marketing group reviewing predecessor railroad pricing files showing back and forth retaliation between the old Southern Railway and Seaboard Air Line Railroads to restrict access to large geographical groups of shippers in southeastern US rate making territories. Typically, one of these railroads would declare all shippers within a reciprocal switching district to be “closed” in order to capture new long-haul business, and the other carrier would automatically retaliate by not only closing all shippers in that same switching district, but then going an additional step to close another switching district somewhere else. To protect themselves in individual cases, shippers could protect their access rights by petitioning the ICC under old regulations, and identifying other shippers on the same line, still enjoying reciprocal switching access that were geographically further away from the actual point of interchange. Geography was always the key to historical reciprocal switching. But all this is ancient history, and only useful as background information here.

As head of a major class-one railroad commodity marketing group in the 1990's and 2000's, I witnessed a subtler method of restricting reciprocal switching access, as several of our connecting railroads began footnoting their Industry Tariffs (the obsolete regulation term “tariff”, still being used at the time to describe public lists of reciprocal switching shippers “open” to access by other carriers) to “close” certain commodities, “close” specific directions of shipment (e.g. East or West), or even “closing” access to routings wherever the serving carrier possessed a competitive direct routing. Rail industry innovations to further restrict reciprocal switching continued into 2014, highlighted by one class-one carrier's decision to “close” all high-wide and hazmat shippers on their railroad to reciprocal switching, while another declared “open” shippers on their system that had not used their reciprocal switching rights over a period of one year, to be “closed” permanently. In effect, that rail carrier was saying the shipper no longer needed competitive access because it had failed to use it over one calendar year.

Along with these examples, some railroads adopted a strategy of attrition to reduce competitive access: by changing the basis of reciprocal switching access itself, from geographical areas and locations, to individual shippers and their company names. Shippers have been finding that if they change corporate ownership, change the name of their company, merge, or even buy a rail served facility that previously was listed in railroad switching or industry tariffs as “open” to reciprocal switching, that they can lose the “open” status and

become “closed” to reciprocal switching simply because some railroads have unilaterally changed the basis for competitive access from a geographic location, to a particular company. My concern with all these examples is the major trend could eventually reduce US small shipper access to steel wheel railroad competition to zero.

Only the Board has the authority to modify this trend. Even though the STB’s number one responsibility under Title 49, Subtitle IV, § 10101, item 1, is “to allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail”, the Board in effect has had little to no historical opportunity to do so. Small shippers giving up on non-competitive rail rates and service to the point that the railroads are removing their sidings, do not generally bring formal complaints to the Board. Small shippers losing reciprocal switching access and switching the majority of their traffic away from rail do not generally complain to the Board. Shippers being told by their railroads that their new facilities, formerly open to reciprocal switching by previous owners, but to be “closed” to the new owner/operator, as at least one shipper has mentioned in their current EP 711-1 filing, do not generally tackle the formidable cost of bringing a formal case before the Board. In effect, for lack of shipper complaint, the railroads have had a free hand for years, in reducing competitive access across their systems.

Historically, the Board has been able to do little to meet the task set for it in Title 49, Subtitle IV, § 10101, item 1. In 1999, the single most pro-competitive development in the Board’s history, the division of Conrail between Norfolk Southern (NS) and CSXT, the Shared Assets Regions, was not proposed or requested by the Board, but initiated by the petitioning railroads themselves. To its credit, the Board approved that plan in FD 33388-0, and that action stands as the finest example of enhanced rail competitive access that I am aware of. Other than that, the Board has had precious few opportunities to do more for this regulatory task.

Now, in the current instance of EP 711-1, the Board has that once in a career opportunity to initiate something beneficial to rail competition with geographical access to competitive rates and service through reciprocal switching. It is not a large opportunity. The number of shippers that could possibly benefit is probably small. But, reciprocal switching does represent the only “low-hanging” fruit of steel wheel competitive access before the Board. There is nothing easier or simpler out there to examine or review. If the Board cannot see its way to forge a simple, open, geographical access rule based on low reasonable mileage from a historically active reciprocal switching station, then it will probably never be able to do anything to “allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail.” Steel wheel rail competitive access in the United States will be dead once and for all.

In summation, I heartily commend the Board's courage in considering this proposal. The railroads themselves, as well as their close supporters, can be expected to object to the additional cost and inconvenience involved, but those claims may well be exaggerated for the small number of shippers involved. Please take courage and find a reasonable resolution for all.

Sincerely,

A handwritten signature in cursive script that reads "Thomas J. Brugman". The signature is written in black ink and is positioned above the typed name and address.

Thomas J. Brugman  
128 Whittier Circle  
Falls Church, VA 22046  
(540) 798-5856