



**U.S. Department of
Transportation**
Office of the Secretary
of Transportation

General Counsel

1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

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Ms. Cynthia Brown
Chief of the Section of Administration
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

**Re: Petition for Rulemaking to Adopt Revised Competitive Switching Rules
No. EP 711**

Dear Ms. Brown:

Please find enclosed for filing in the above-referenced matter the Opening Comments of the United States Department of Transportation. Please feel free to contact me if you have any questions.

Respectfully,

/s/ Christopher S. Perry

Christopher S. Perry
Trial Attorney

(202) 366-9282
christopher.perry@dot.gov

Enclosure

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

WASHINGTON, D.C.

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)
Petition for Rulemaking)
To Adopt Revised)
Competitive Switching Rules)
)
_____)

No. EP 711

**OPENING COMMENTS OF THE
UNITED STATES DEPARTMENT OF TRANSPORTATION**

Pursuant to the Board’s decisions of July 25, 2012 and October 24, 2012, the United States Department of Transportation (Department or DOT) hereby submits its opening remarks and analysis in this matter. The Department is pleased to have this opportunity to present its assessment of the proposal under consideration here.

The Board instituted this proceeding to consider a framework set forth by the National Industrial Transportation League (NITL), by which NITL aims “to modify the Board’s standards for mandatory competitive switching” in certain cases. Decision of July 25, 2012 at 1 (7/25/12 Decision). In particular, “NITL suggests that [the Board] mandate switching where a captive shipper (located in a terminal area) is within 30 miles of a working interchange and the transportation rate charged by the Class I carrier from origin to destination exceeds 240% of its variable costs of providing service.” *Id.* The NITL proposal also contains a provision where a “Class I carrier serving the shippers’ facilities for which switching is sought has handled 75% of the transported volumes of the movements at issue for the twelve-month period prior to the petition.” *Id.* at 4.

The Board requested additional “empirical evidence” on a variety of issues implicated by NITL’s proposal, including the anticipated effects on shippers’ access to competitive options; the impact upon railroad revenue; and the effects upon the rail network generally. *Id.* at 2, 9. The essence of the Board’s inquiry is to assess the potential impact of the NITL’s proposal upon shippers and the railroads, including the number of shippers who could take advantage of this proposal and the impact upon railroad revenues. The Board is also interested in how the proposal would affect shippers that do not qualify, how it would affect rail revenues under the NITL assumed pricing methodology, and how will it affect network efficiency. *Id.* 9.

The Department provides the analysis below to assist the Board in identifying the origin/destination pairs (O/D pairs or shipper markets) that could potentially take advantage of the proposal, as well as the rail revenues reflected in those markets. While the Board offered parties the opportunity to narrow the scope of the analysis to one of the largest Class I railroads, *see* 7/25/12 Decision at 9 n.14, the Department chose to consider the following four carriers combined: Union Pacific Railroad (UP), BNSF Railway Company (BNSF), CSX Transportation, Inc. (CSXT), and Norfolk Southern Railway Company (NS). The Department also chose to narrow the scope of its analysis to three major commodities that represented more than 90 percent of both revenues and carloads for shippers that could meet the revenue/variable cost threshold of the NITL proposal.

In performing its analysis, the Department found that the four Class I railroads examined here originated nearly 27 million carloads in 2010, which generated \$51.8 billion in freight revenues.¹ These results show that around \$1.1 billion in revenues, or 2.1 percent of total revenues of \$51.8 billion, and 360,000 carloads, or 1.3 percent of carloads out of a total of 26.8

¹ *Analysis of Class I Railroads 2010*, Association of American Railroads. Compilation of STB R1 Reports of the Class I Railroads.

million carloads originated, are potentially affected by the NITL's proposed revenue-to-variable cost ratio and 30-mile test. *See infra.*

A) The Department's Analysis

The Department undertook an analysis of the 2010 Carload Waybill Sample provided in this proceeding by the Board to assess the effects of the NITL competitive switching proposal. In that proposal, as described by the Board, competitive switching would be mandated where a captive shipper is within 30 miles of a working interchange and the transportation rate charged by the Class I railroad from origin to destination is greater than or equal to the revenue-to-variable cost ratio of 240 percent ($R/VC \geq 240$) for that move (the revenue-to-variable cost). 7/25/12 Decision at 3-5. The NITL also proposes that a Class I railroad that carried 75 percent or more of a shipper's traffic between origin and destination would be eligible for competitive switching under the 30-mile rule (the 75-percent test).²

The Department notes that while it is possible to extract the data from the Waybill and construct a data set to assess the NITL proposal, there are varying interpretations and corresponding methodologies on how much traffic should be included in that data set. For example, one might exclude all shipments from the 2010 Waybill that do not come under the Board's jurisdiction. This would include all exempt traffic as well as contract traffic. Others might include contract traffic while removing exempt traffic. The analysis and results may vary depending upon how such assumptions are made.

² The Department did not undertake an examination of the NITL's 75 percent test proposal. First, to perform such an analysis, one would have to know the mode share for the shipper. In other words, the analysis would need to show how many tons are moving by rail and how many tons are moving by some other mode. Second, in order to develop this information on the scale that would be needed here, either the Waybill would need more detailed information or another data set containing O/Ds for the other mode similar to the Waybill's rail flows would be required. The Department is not aware of a data set that meets these immediate needs.

In constructing its data set for the analysis from the total Waybill sample, the Department excluded Waybill traffic that had an origin or a destination outside of the U.S. For example, the Waybill contains moves that originate in Canada and terminate in the U.S. Since the Canadian portion of the move is outside the jurisdiction of the Board, that traffic was removed. The Department's analysis only considered traffic that originates and terminates in the U.S.

From this smaller data set the Department removed exempt trailer-on-flatcar and container-on-flatcar (TOFC/COFC) traffic, as well as other exempt commodity traffic. This traffic, by its very nature, should have an $R/VC \leq 240$ in that there are competitive options for these shippers. In its review of the Waybill for this proceeding, the Department identified some TOFC/COFC traffic that had an $R/VC \geq 240$. Those records were, nonetheless, removed under the assumption that there exists both intramodal as well as intermodal competition. The Department also examined additional exempt traffic aside from TOFC/COFC that carries a designation on the Waybill through the "deregulation flag."³ This traffic was also removed. Equipment exemptions, such as boxcars, as well as traffic moving under contract, were not removed from the study set, even though neither come under the Board's jurisdiction. Incorporating these types of traffic into the study set makes the analysis more complete by providing a fuller data set. In addition, the Department's analysis worked under the assumption that while the traffic moved under contract for the 2010 Waybill, it may not move under contract in the future.

The Department then considered $R/VC \geq 240$ and Class I single-line moves. From Table 1, below, which summarizes the number of Waybill records, origin/destination pairs (O/D pairs), carloads originated, and rail revenues, the iterative steps are demonstrated by which the Waybill

³ See *Reference Guide for the 2010 Surface Transportation Board Carload Waybill Sample*, RAILINC, January 26, 2012, p. 63. The deregulation flag on the Waybill designates commodity movements that are exempt.

was pared down to create a data set for analysis that would meet the characteristics of the NITL proposal. The Department limited the analysis to single-line Class I moves, which preserves the NITL proposal of examining the “transportation rate charged by the Class I carrier from origin to destination” that meets the $R/VC \geq 240$ condition for the move. 7/25/12 Decision at 1.

Understanding that the analysis would be substantial, the Board offered participating parties the opportunity to narrow the scope of the undertaking, and stated that any railroad or shipper interest may choose to focus on the impact of this proposal on one of the four largest U.S. Class I railroads—UP, BNSF, CSXT, or NS—as illustrative of the impact to the industry. *Id.* at 9 n.14. The Department chose to examine these four carriers, which represent 92 percent of all Class I freight revenues as well as 92 percent of carloads originated. But, as will be demonstrated later, the Department also narrowed the analysis to focus on several specific commodities that are significant to these carriers.⁴

⁴ In the analysis below, percentage figures may total to an amount slightly different than 100% due to rounding.

Table 1: Data Set Development for Competitive Switching Analysis

| | Number of Records | Origin/Destination Pairs | Carloads Originated (millions) | Rail Revenues (billions) |
|---|-------------------|--------------------------|--------------------------------|--------------------------|
| A. Total Waybill | 580,928 | 55,788 | 33.3 | \$60.9 |
| B. U.S Origins/Destinations (revenues & costs >0) | 537,494 | 48,140 | 31.4 | \$55.0 |
| C. U.S Origins/Destinations (revenues & costs >0) excluding exempt traffic | 126,519 | 15,537 | 5.9 | \$11.5 |
| D. U.S Origins/Destinations (revenues & costs >0); R/VC≥240; excluding exempt traffic | 26,704 | 7,229 | 3.5 | \$8.3 |
| E. Class I single line moves--U.S Origins/Destinations (revenues & costs >0); R/VC≥240; excluding exempt traffic | 22,031 | 5,511 | 3.1 | \$6.9 |
| F. BNSF, UP, NS, CSXT single-line moves--U.S Origins/Destinations (revenues & costs >0); R/VC≥240; excluding exempt traffic | 19,646 | 5,161 | 2.8 | \$6.7 |

B) Characteristics of the Four Examined Carriers

In the Department’s assessment of the four examined carriers, we looked at the number of O/D pairs, revenues, and carloads that are associated with each carrier’s single-line moves with an R/VC≥240. Row F, the last row (shaded row) in Table 1 above, shows the characteristics of that data. Overall, the Department identified 5,161 O/D pairs and 2.8 million carloads accounting for \$6.7 billion in revenues. These are the moves that will be evaluated to determine if they meet the NITL 30-mile test for competitive switching. For the four carriers, Chart 1 below shows the percent of revenues and carloads with an R/VC≥240. This aggregation

shows that moves representing 13 percent of total freight revenues and 10 percent of total carloads originated will be further examined.

Chart 1: Revenues and Carloads for Traffic with $R/VC \geq 240$ as a Percent of Total Revenues and Total Carloads for Four Examined Class I Railroads

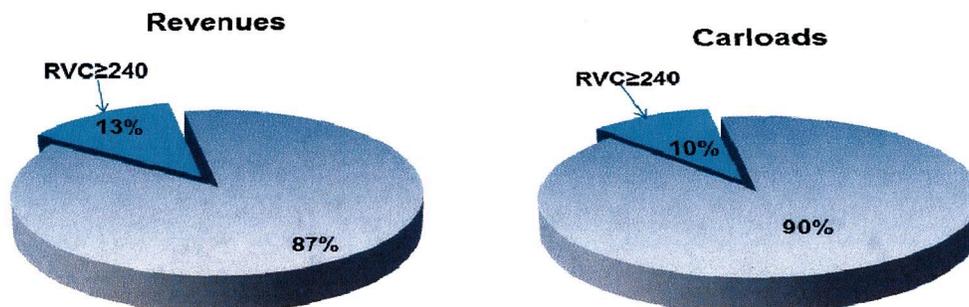


Table 2 below shows a more detailed breakdown with regard to commodities and revenues for the examined traffic. Table 2 also illustrates that the commodity groups of coal, chemical or allied products, and farm products are the major commodity groups that could potentially be affected by the NITL proposal. In approximate terms, Table 2 shows that coal represents 73 percent of the carloads and nearly 63 percent of the revenues that meet the NITL condition of $R/VC \geq 240$. Chemical or allied products are 12 percent of carloads and 21 percent of revenues, while farm products are 6 percent of carloads and 6 percent of revenues. Because of this finding, the Department chose to narrow its examination to O/D pairs involving these commodities.

Table 2: Total Carload and Revenues by Commodity for R/VC≥240

| Commodity | Carloads | % of Total R/VC≥240 Carloads | Revenues (\$ in millions) | % of Total R/VC≥240 Revenues |
|---|------------------|------------------------------|---------------------------|------------------------------|
| Coal | 2,074,566 | 73.43% | \$4,190.29 | 62.74% |
| Chemical or Allied Products | 343,121 | 12.14% | \$1,426.67 | 21.36% |
| Farm Products | 163,280 | 5.78% | \$428.69 | 6.42% |
| Food or Kindred Products | 52,504 | 1.86% | \$162.77 | 2.44% |
| Petroleum or Coal Products | 58,125 | 2.06% | \$144.24 | 2.16% |
| Nonmetallic Minerals; except Fuels | 27,789 | 0.98% | \$61.70 | 0.92% |
| Metallic Ores | 47,989 | 1.70% | \$56.23 | 0.84% |
| Transportation Equipment | 27,145 | 0.96% | \$45.07 | 0.67% |
| Electrical Machinery, Equipment or Supplies | 1,212 | 0.04% | \$36.51 | 0.55% |
| Machinery; except Electrical | 3,110 | 0.11% | \$31.33 | 0.47% |
| Clay, Concrete, Glass or Stone Products | 9,492 | 0.34% | \$31.10 | 0.47% |
| Miscellaneous Freight Shipments | 6,512 | 0.23% | \$24.96 | 0.37% |
| Hazardous Wastes | 3,255 | 0.12% | \$15.56 | 0.23% |
| Waste or Scrap Materials Not Identified by Producing Industry | 4,992 | 0.18% | \$12.76 | 0.19% |
| Ordnance or Accessories | 1,344 | 0.05% | \$8.73 | 0.13% |
| Pulp, Paper or Allied Products | 828 | 0.03% | \$2.19 | 0.03% |
| Crude Petroleum, Natural Gas or Gasoline | 120 | 0.004% | \$0.30 | 0.004% |
| TOTAL R/VC>240 | 2,825,384 | 100% | \$6,679.1 | 100% |

Table 3: Characteristics for the Three Examined Commodity Groups for the Four Examined Railroads

Table 3 is an aggregation of the four examined carriers based upon the three major examined commodities. It illustrates carloads, revenues, and the number of O/D pairs that will be examined. The table shows that these commodities represent 77 percent of the O/D pairs evaluated.

| Commodity Description | Carloads | Revenues (\$ in millions) | Number of O/D Pairs |
|-----------------------------|------------------|---------------------------|---------------------|
| Coal | 2,074,566 | \$4,190.3 | 954 |
| Chemical or Allied Products | 343,121 | \$1,426.7 | 2,489 |
| Farm Products | 163,280 | \$428.7 | 532 |
| Other | 244,417 | \$633.4 | 1,186 |
| Sum | 2,825,384 | \$6,679.1 | 5,161 |

C) Assessment of Competitive Switching Eligibility

Working with the extracted data from the Waybill that meets the NITL condition of $R/VC \geq 240$, the Department undertook an analysis of the specific O/D pairs (markets) to determine if the shipper at issue could qualify for competitive switching. Having met the $R/VC \geq 240$, the Department considered the captive shipper's proximity to a Class I working interchange that is within 30 rail route miles.⁵

A critical part of the test was to assess rail route miles from either the origin or the destination to the interchange rather than using great circle distance. Because of geographic barriers, for example, assessment of miles to the nearest interchange might be well within 30 miles using great circle distance, while the mileage by rail might be much greater and fall outside of the 30-mile test.⁶

Again, this analysis only considered four Class I railroads, BNSF, UP, CSXT and NS, which together account for 92 percent of Class I freight revenues and 92 percent of Class I carloads originated. The analysis also only took into consideration three commodities—coal, chemical or allied products, and farm products. These three together represent nearly 91 percent of the revenues and slightly over 91 percent of the carloads where the $R/VC \geq 240$.

For this portion of the analysis, each O/D pair was assessed at the first or last 30 miles to test for competitive switching eligibility as illustrated in the Board's schematic diagram in the

⁵ Class II and Class III railroads were not examined in this analysis.

⁶ The Federal Railroad Administration's (FRA) rail network was used in conducting this test. The network is a geo-spatial representation of the North American rail system. It has been developed from a number of data sources including detailed geo-spatial data from the railroads and State Departments of Transportation. It allows users to route traffic over the network. The network is in the public domain and is available through the National Transportation Atlas Database on the DOT's Bureau of Transportation Statistics website at <https://2bts.rita.dot.gov/pdc/user/products/src/products.xml?p=3389>.

instituting decision. 7/25/12 Decision at 6. Along with this, the railroad gaining access through an interchange had to be able to serve at least one of the markets. In addition, if any one of the other Class I railroads outside of the four examined here could meet the 30-mile test and provide the potential for competitive switching, then that railroad and market were included. For example, the examination of an O/D pair could result in the Canadian National Railway as a potential competitive switching alternative on a BNSF move. Overall, the Department reviewed 3,975 markets. The Department relied on FRA's rail network for this part of the analysis.⁷

D) **Results**

As previously mentioned, the Department looked at single-line moves for the four Class I railroads involving coal, chemical and allied products, and farm products that had an $R/VC \geq 240$. These three commodities represented approximately 91 percent of the revenues and 91 percent of the carloads evaluated. After testing each of the O/D pairs for eligibility under the 30-mile competitive switching proposal, the Department found that roughly 360,000 carloads and \$1.1 billion in rail revenues would potentially be eligible. Table 4 below presents the results of the analysis, demonstrating that there are 1,649 O/D pairs meeting the eligibility requirement. Of the commodities evaluated, chemical shipper/receivers constituted the largest traffic volumes with roughly 183,000 carloads at 1,416 O/D pairs (markets) that could potentially benefit from competitive switching. This was followed by coal shippers/receivers seeing approximately

⁷ Since the Waybill does not designate working interchanges, the Department, in conjunction with the FRA network, relied on RAILINC's Centralized Station Master (CSM) file. The CSM is a geographic location file, which contains data about rail and motor carrier points for North America and international areas. The file is primarily used by the railroads to plan freight movements from origin to destination in an efficient and timely manner. The interchange data is a subset of the CSM file of the operational junction between two or more railroads. The CSM is copyrighted by RAILINC and is available from them for fee.

105,000 carloads at 34 O/D pairs (markets) and farm products shippers/receivers at approximately 72,000 carloads and 199 O/D pairs (markets).

On the revenue side, Table 4 shows railroad revenues for this traffic for each commodity group. Here, chemical and allied product traffic revenues are \$773 million, followed by coal at \$143 million, and finally farm products at \$171 million, approximately.

Table 4. Carloads, Revenues, and O/D Pairs Meeting R/VC \geq 240 and 30-Mile Interchange Test

| Railroad Commodity Totals | Carloads | Revenues (\$ in millions) | Number of O/D Pairs |
|-------------------------------------|-----------------|--------------------------------------|--------------------------------|
| Coal | 105,152 | 142.62 | 34 |
| Chemicals or Allied Products | 182,904 | 772.95 | 1,416 |
| Farm Products | 72,086 | 170.73 | 199 |
| Total | 360,142 | \$1,086.30 | 1,649 |

Overall, the four Class I railroads examined here originated nearly 27 million carloads in 2010, which generated \$51.8 billion in revenues. These results show that around \$1.1 billion in revenues (or 2.1 percent of total revenues of \$51.8 billion) and 1.3 percent of carloads (out of a total of 26.8 million carloads originated) are potentially affected by the NITL’s proposed revenue-to-variable-cost-ratio and 30-mile test. Chart 2 below illustrates these findings for both revenues and carloads, approximately.

**Chart 2: Railroad Revenues and Carloads Meeting NITL Proposal
R/VC \geq 240 and 30-Mile Interchange Test**



Conclusion

The Department is pleased to have the opportunity to submit its analysis in this matter and may offer further remarks or data to the Board at a later stage if appropriate.

March 1, 2013

Respectfully submitted,



Amy Tovar
Associate General Counsel