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To: Daniel Elliott, Chairman Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001
RE: Docket No. EP 711, Petition For Rulemaking to Adopt Revised Competitive Switching Rules
Date: October 25, 2016

Honorable Chairman Elliott:

This letter is in response to the Board's proposed rulemaking for competitive switching rules as stated in its decision dated July 25, 2016 related to Docket No. EP 711 (Sub-No. 1). Patriot Rail Company, LLC, is a shortline railroad holding company that operates 15 railroads in 14 states. We oppose the proposed Rule in its entirety. The proposed Rule would directly threaten the economic health of the shortline industry and create operational inefficiencies across the nation's entire rail network which our customers depend on. The Rule undermines key provisions of the Stagger's Act that has produced a vibrant industry that benefits all rail customers. It also violates the fundamental principle that all public railroads must serve <u>all</u> customers on their lines.

<u>Shortline Exclusion is Tenuous:</u> The shortline exclusion as presented in the proposed Rule appears tenuous and would likely be eliminated as our customers complain that they have been relegated to 'second class' status. As the Board itself states "The Board prefers a reciprocal switching standard that makes the remedy more equally available to all shippers, rather than a limited subset of shippers".

<u>Devastation of Shortline Railroads:</u> Many shortlines are characterized by a few large and many small customers (from a volume, revenue and economic contribution viewpoint). The proposed Rule would permit a nearby carrier to 'cherry-pick' the most profitable customers, leaving the shortline with the requirement to serve the remaining – not so profitable – ones. This would deprive the shortline of needed revenue to cover fixed costs, maintain its infrastructure, invest in new facilities and provide services for <u>all</u> of its customers. Shortline railroad cost structure is characterized by relatively high fixed costs. The loss of revenue from one or two large, more profitable customers would financially devastate many - if not a majority - of shortlines leaving the remaining shippers with poor or no service.

This situation is not limited to the shortline rail industry.

<u>Weakening of Class I Railroads:</u> Class I railroad branch lines have similar economic characteristics as shortlines. As noted above, the loss of revenue from the more profitable shippers – the ones most likely to be 'cherry-picked' – leads to lower investment and declining service on these essential feeder lines. Those terminals with <u>existing</u> voluntary agreements for competitive access are those with sufficient business levels to support investment and maintenance and in which all parties benefit from the arrangement. Forced access, however, leads to destructive competitive behavior harming railroads and customers alike. Shortlines would experience the damaging effects quickly, but Class I's would just as assuredly face the same fate over time.

<u>Conflict with Common Carrier Requirements:</u> Railroads - of all Classes - have a common carrier requirement to serve <u>all</u> customers. Forced access that permits a foreign carrier to 'cherry-pick' the most profitable customers is in direct conflict with our common carrier obligation to serve <u>all</u> customers. Forced access creates an asymmetric relationship in which one carrier can select which customers to serve while the incumbent carrier must serve the remaining customers (unless/until the line is abandoned). We further note that the Board has consistently enforced common carrier obligations over many years, for example when the chemical industry protested railroad's request to limit certain PIH (Poisonous Inhalation Hazards) and TIH (Toxic Inhalation Hazards) shipments due to their very high risks.

<u>Terminal Inefficiency and Degradation of Overall Network Velocity:</u> The primary factor in terminal efficiency is the number of switch events (including interchange events) required to handle each carload. The proposed Rule would result in additional switch and interchange events that in turn create inefficiencies at terminals, leading to a decline of network performance on a national scale. We note that one of the primary benefits of industry consolidation in the 1990's was the reduction of many switch and interchange events, resulting in improved overall network velocity.

The proposed Rule appears to favor a selected set of shippers at the expense of the entire rail network, negatively affecting <u>all</u> shippers. From a shortline viewpoint, any degradation in the performance of the nation's overall rail network also negatively affects our customers, potentially leading them to switch to less efficient modes of transportation.

<u>In Summary:</u> The proposed Rule has many negative consequences, not just for the shortlines, but for the nation's rail industry in general. We serve many customers, some large, some small. It is those customers that depend more heavily on our services and which derive the greatest value from our services that must contribute a relatively larger share of the fixed costs that make our industry viable. The proposed Rule alters this fundamental economic balance by allowing a few high-value high-volume customers to opt-out of contributing their fair share to the rail network they benefit the most from.

The proposed Rule would ultimately undermine economic conditions under which the rail industry has prospered since the Stagger's Act, ultimately harming <u>all</u> shippers that depend on us.

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