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December 7, 2012

Ms. Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423

Re: STB Docket No. EP 715, *Rate Regulation Reforms*

Dear Ms. Brown:

Pursuant to the Board's order served on July, 25, 2012, attached please find the Reply Comments of the Association of American Railroads for filing in the above proceeding.

Respectfully submitted,

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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Ex Parte No. 715

RATE REGULATION REFORMS

REPLY COMMENTS OF THE
ASSOCIATION OF AMERICAN RAILROADS

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ASSOCIATION OF AMERICAN RAILROADS

In a Notice of Proposed Rulemaking ("NPR") served on July 25, 2012, the Surface Transportation Board ("Board") proposed to modify its rules regarding railroad rate reasonableness proceedings. The Association of American Railroads ("AAR") submits these reply comments in accordance with the Board's NPR. The AAR reply comments are supported by the Verified Statement of Michael R. Baranowski, Senior Managing Director of FTI Consulting ("Baranowski V.S.") that is attached as Appendix A.

In the NPR, the Board proposed six changes to its rate reasonableness processes: (1) to remove the limitation on relief for cases brought under the simplified stand-alone cost ("Simplified-SAC") alternative; (2) to improve the accuracy of the road property investment component of the Simplified-SAC test; (3) to double the relief available under the Three Benchmark method; (4) to curtail the use of cross-over traffic in full stand-alone cost ("Full-SAC") cases; (5) to modify the approach used to allocate revenue from cross-over traffic in Full-SAC and Simplified-SAC cases; and (6) to raise the interest rate that the railroads must pay to complainants for reparations when the railroad has been found to have collected unreasonable rates.

The AAR filed opening comments on October 23, 2012. In its comments, the AAR submitted that any changes to the Board's rate reasonableness processes should be grounded first to the fundamental principle of rail rate regulation that railroads must be allowed to establish rates based on demand-based, differential pricing. With regard to the specific proposals in the NPR, the AAR urged the Board not to remove the limit to relief for Simplified-SAC cases. Instead, if the Board is concerned about the levels of relief established in *Simplified Standards for Rail Rate Cases*, EP 646 (Sub-No. 1) (STB served Sept. 5, 2007) ("*Simplified Standards*"), the Board should follow the process it announced in that rulemaking proceeding of taking evidence regarding the cost of the next most accurate type of rate case. With regard to cross-over traffic in Full-SAC cases, the AAR stated that, to the extent the Board is unwilling or unable to apportion revenues properly between the SARR and the residual incumbent for certain types of traffic, the Board would be justified in limiting cross-over traffic in those contexts in the ways it has proposed. With regard to the revenue allocation methodology, the AAR urged the Board to consider the merits of its original Average Total Cost ("Original ATC") methodology to allocate revenue from cross-over traffic. But to the extent the Board concludes that ATC must be modified due to the alleged problem discussed in *Western Fuels Association v. BNSF Railway,* NOR 42088 (STB served Sept. 10, 2007) ("*Western Fuels*"), the AAR supported the proposed rule ("Alternative ATC") as the most reasonable methodology offered to date to solve the perceived problem. Finally, the AAR argued that the NPR's results-oriented proposal regarding interest charged on reparations should not be adopted.

Opening comments were filed by AAR members BNSF Railway Company, CSX Transportation, Inc. and Norfolk Southern Railway Company (jointly), Kansas City Southern Railway Company, and Union Pacific Railroad Company. Opening comments were also filed by the U.S. Department of Agriculture ("USDA"), PPG Industries, Inc. ("PPG"), Arkansas Electric Cooperative Corporation ("AECC"), Consumers United for Rail Equity ("CURE"), The Chlorine Institute, US Magnesium, L.L.C. ("USM"), Occidental Chemical Corporation, and the National Grain and Feed Association ("NGFA"). Joint Comments were filed by the Alliance for Rail Competition, Montana Wheat & Barley Committee, Colorado Wheat Administrative Committee, Idaho Barley commission, Idaho Wheat Commission, Montana Farmer Union, Nebraska Wheat Commission, South Dakota Wheat Commission, Texas Wheat Producers board, and Washington Grain Commission ("ARC"), The American Chemistry Council, the Fertilizer Institute, the National Industrial transportation League, Arkema, Inc., the Dow Chemical Company, Olin Corporation, and Westlake Chemical Corporation ("Joint Chemical Companies"), Western Coal Traffic League, Concerned Captive Copal Shippers, American Public Power Association, Edison Electric Institute, the National Rural Electric Cooperative Association, Western Fuels Association, Inc., and Basin Electric Power Cooperative, Inc. ("Joint Coal Shippers").

In the discussion below, the AAR responds to the opening comments filed in this proceeding. Specifically, the AAR first disagrees with the claims by shippers that the Board cannot and should not place reasonable limits on cross-over traffic in those instances where the revenue allocation methodology cannot prevent distortions. The AAR then points out that the shippers' positions on the proposals related to cross-over traffic, including support for the modified ATC methodology applied in *Western Fuels* ("Modified ATC"), are premised on a misunderstanding of the nature and function of cross-over traffic in a SAC analysis. The AAR also continues to believe that there is no basis to remove the limits on relief for Simplified-SAC cases and that the Board must continue to maintain a reasonable limit on relief for Three Benchmark cases. Finally, the AAR submits that the opening comments did not provide a reasonable basis to depart from the Board's well-reasoned existing rule on interest charges for reparation awards.[1]

Discussion

I. The Opening Comments Do Not Negate the Board's Justification for Placing Limits on the Use of Cross-Over Traffic in Full SAC Cases.

In the NPR, the Board expressed concern that for certain types of cross-over traffic its revenue allocation methodology allocates more revenue to the facilities replicated by the stand-alone railroad ("SARR") than is warranted and that the Board lacks the ability to correct or minimize the bias that allocation creates under its current methodology. NPR at 16. As a result, the Board proposed limits on the use of cross-over traffic designed to minimize the distortions to the SAC analysis. Rail shipper interest comments that addressed the issue opposed any restrictions on the use of cross-over traffic.[2]

Much of the opposition to limiting cross-over traffic is grounded in a mistaken view that the theory of contestable markets underlying the SAC test precludes limitations on cross-over traffic.[3] But the Board rejected the view that cross-over traffic is part of the theoretical framework of contestable markets in *Major Issues in Rail Rate Cases,* EP 657 (Sub-No. 1) (STB served Oct. 30, 2006) ("*Major Issues*"). *Major Issues,* at 32. The objective of the SAC constraint is to simulate a competitive rate standard by determining the rate that a SARR would need to charge in a contestable market environment. *Id.* That is, the SAC analysis inquires as to

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[1] The AAR withholds comment on those issues that are not logical outgrowths of this proceeding. *See, e.g.,* CURE Opening Comments at 8 (commenting on revenue adequacy); ARC Opening Comments at 12 (commenting on the Board's market dominance analysis in the Board's September 27, 2012 *M&G Polymers* decision).

[2] *See, e.g.*, Joint Coal Shippers Opening Comments at 12-26; Joint Chemical Companies Opening Comments at 4-19; AECC Opening Comments at 6.

[3] *See, e.g.,* Joint Chemical Companies Opening Comments at 4-5, Joint Coal Shippers Opening Comments at 26.

what the SARR would need to charge to recover all of the costs, including a reasonable rate of return, on investments necessary to build, operate, and maintain the entire infrastructure necessary to serve the traffic group. The Board has allowed the use of cross-over traffic, but only as a simplifying device that seeks to derive that rate without completing the full analysis. *Id.* In allowing the simplification, the Board seeks "to make the analysis more manageable without introducing bias." *Id.* Thus, the "simulated competitive rate should not depend on how much cross-over traffic is included in the SAC analysis." *Id.*

Contrary to the certain comments,[4] the Board's proposals do not require shippers to forgo any traffic in the SAC analysis. Instead, if shippers want to include a given non-issue movement in the analysis, under the first Board proposal the SARR would simply be required to include either the origin or the destination of the movement to more accurately reflect the costs of the movement in the analysis. Similarly, the Board's second proposal to limit cross-over traffic to movements that move in trainload service would simply avoid the distorting effects of the allocation methodology on carload traffic. Complainants could include non-issue carload traffic in the analysis, but they would need to replicate the facilities necessary to serve that traffic in their analysis, ensuring the accuracy of the test.

The Board's proposals to limit cross-over traffic also cannot be understood as a barrier to entry, as claimed by Joint Coal Shippers.[5] The Board has defined a barrier to entry as "any costs that a new entrant must incur that were not incurred by the incumbent." *West Texas Utilities Co. v. Burlington N. R.R.*, 1 S.T.B. 638, 670 (1996). Here, the Board's proposal would require only that the SARR incur costs being incurred by the incumbent. Indeed, the need to allocate revenues from cross-over traffic only arises when the SARR posited by the complainant does not

[4] *See, e.g.*, Joint Coal Shippers Opening Comments at 26.

[5] *See* Joint Coal Shippers Opening Comments at 28.

replicate the costs the incumbent incurred to construct and operate the entire rail network needed to serve the selected traffic group. The Board has already concluded that requiring the SARR to account for the total origin-to-destination costs of serving the traffic group does not create a barrier to entry; to the contrary, it is what a SAC analysis requires. *See Major Issues,* at 32 ("Nor does the concept that a full analysis would examine the total costs of serving the selected traffic group represent a barrier to entry, as claimed by Coal Shippers… Here, we are not imposing a cost on the SARR that the incumbent did not actually incur, as the need to allocate revenues from cross-over traffic only arises when the SARR does not replicate the costs the incumbent incurred to construct and operate the entire rail network needed to serve the selected traffic group."). Moreover, as cross-over traffic is an analytic shortcut and not part of the theory of contestable markets, as discussed above, restrictions on its use cannot be understood as a barrier to entry for the SARR.

Moreover, the Board's proposals would not make SAC analyses impracticable. The concept of cross-over traffic was not even contemplated by *Coal Rate Guidelines*. *See Major Issues,* at 31. The Joint Coal Shippers and Joint Chemical Shippers point to the Board's concerns in *Public Service Co. of Colorado d/b/a Xcel Energy v. Burlington Northern & Santa Fe Ry.*, 7 S.T.B. 589 (2004) ("*Xcel*"). In *Xcel,* the Board expressed concern that if cross-over traffic was disallowed altogether for that case, a much larger SARR would be required to include all of the traffic in the traffic group selected by that complainant. *See id.* at 601-02. However, the Board's proposals would not require that complainants add substantial portions of the defendant's network to their SARRs. Instead, the Board's proposals would merely limit the inclusion of cross-over traffic where the cross-over revenue allocation methodology cannot prevent distortions of the Board's SAC analysis.

II. Shipper Support for Modified ATC Is Premised on a Misunderstanding of the Nature of Cross-Over Traffic and the Board's Goals in Establishing a Cross-Over Traffic Revenue Allocation Methodology.

As detailed in its opening comments, the AAR does not believe that the Board has identified a true need to modify the Original ATC methodology. To the extent that the Board is determined to modify its Original ATC approach, the AAR supported the Board's Alternative ATC proposal as the most reasonable solution offered to date to solve the perceived problem. The proposal is narrowly tailored to solve the alleged problem: that the revenue allocated to the facilities replicated by the SARR or those of the residual defendant could fall below the defendant's URCS variable costs for the movement over those segments. The proposed methodology would take into account the economies of density in the railroad industry by allocating cross-over revenues based largely on a measure of the defendant's average total costs of providing service over different line segments.

In contrast, the Modified ATC approach applied in *Western Fuels* and favored by the shippers systematically biases revenue allocation in favor of high-density segments, apportioning them a larger share of revenues than is warranted. Comments of shipper interests in support for the Modified ATC approach appear to ignore what the Board was trying to accomplish in adopting the average total cost approach in the first place. The Joint Chemical Companies erroneously claim that both Original ATC and Alternative ATC produce "illogical" and "absurd results" by making low density lines "more profitable" on a per-ton basis than high density lines.[6] Similarly, the Joint Coal Shippers mistakenly contend that the Board's proposed Alternative ATC is not demonstrably superior to Modified ATC and produces "illogical" and

[6] Joint Chemical Companies Opening Comments at 21-22.

"unintended" results.[7] But these claims do not highlight flaws in the Board's proposal; rather, they reflect objections to the Board's stated goal in designing its revenue allocation methodology-- objections that have already been answered by the Board.

In *Major Issues*, a group of coal shippers made objections similar to the arguments made here in defense of Modified ATC. Those coal shippers contended that Original ATC arbitrarily allocated more revenue to lighter-density lines. But the Board held that "[r]ather than arbitrarily allocating revenue to low-density lines, the ATC method more accurately is keyed to the defendant carrier's relative costs of providing service over the two segments." *Major Issues,* at 35. It is Modified ATC, and not Original ATC or Alternative ATC that fails to achieve the Board's goals in allocating cross-over traffic revenue in relation to the defendant carrier's relative costs of providing service.

There are two fundamental flaws in those claims of shipper interests. First, it makes no sense to refer to real-world expectations about whether the higher-density parts should be more "profitable"—or, more accurately, make a larger contribution to fixed costs—than the lower density parts.[8] Use of cross-over traffic is an artificial exercise that divides up a single movement into discrete parts. In developing a revenue allocation methodology, the Board was simply doing its best to allocate revenues to each segment in an attempt to approximate the outcome of a SAC analysis in which the SARR provides origin-to-destination service for the entire traffic group. *See* Baranowsi V.S. at 11-12.

[7] Joint Coal Shippers Opening Comments at 52-55.

[8] The revenues that a railroad earns on a movement in excess of the movement's variable costs are not a railroad's economic "profits." They are the movement's contribution towards the railroad's fixed costs. If and only if a railroads' revenue exceeds its total variable and total fixed costs, including its cost of capital, does a railroad earn an economic profit. Thus, "profit" cannot be measured by comparing revenue to variable costs for individual movements. *See* Baranowski V.S. at 9.

Second, by labeling Original ATC's and proposed Alternative ATC's results as "absurd" or "illogical," the shippers are simply attacking the Board's well-considered decision in *Major Issues* to create a revenue allocation methodology based on the average total costs of each segment. The response is straightforward. By allocating revenues based on average total cost, the Board's intent was to ensure that low density line segments, with their higher average total costs, are allocated relatively more revenue from each individual movement than the high density segments, because low density segments have fewer movements to help cover the fixed costs. *See Major Issues*, at 35. For this reason, AAR continues to support Original ATC as the better solution and believes any perceived problems with it are not problems at all.

The Joint Coal Shippers suggest three alternatives to Alternative ATC: "Corrected" Modified ATC," "Three Step ATC," and "Variable Cost Allocation." Each reflects a transparent effort to allocate revenues to high density segments replicated by complainants' SARRs that are greater than average total costs. The Joint Coal Shipper proposals, if adopted, would undermine the Board's conclusion that cross-over traffic revenues should be allocated by average total cost if both the SARR and the residual incumbent are to have a fair opportunity to cover their total costs from the available revenue.

The first alternative methodology put forth by the Joint Coal Shippers, "Corrected" Modified ATC incorporates the flaw in the Modified ATC approach applied in *Western Fuels* and then makes the situation even worse by attempting to allocate even more cross-over revenue to high density lines. "Corrected" Modified ATC presumes that line segments with more track miles—*i.e.*, higher density segments—should be assigned more fixed costs. However, the Board has already concluded that because URCS system-average variable costs reflect all railroad costs that vary with volume, so the remaining costs (i.e., fixed costs that do not vary with volume) would be the same on average for light-density as for heavy-density lines. *Major Issues* at 35. Moreover, even assuming *arguendo* that fixed costs did vary with density, "Corrected" Modified ATC would overstate revenues for high density line segments because many types of fixed costs are not associated with track miles, and because even investment that is associated with track miles does not increase linearly with the number of track miles. *See* Baranowski V.S. at 3-5.

Similarly, the proposed Three-Step ATC methodology would also conflict with the Board's determination that cross-over revenue should be allocated on the basis of average total costs. As Mr. Baranowski discusses in his verified statement, Three-Step ATC uses variable costs, rather than average total costs, to allocate all revenue above the level necessary to cover a movement's variable costs and its alleged share of fixed costs as calculated using "Corrected" Modified ATC. *See* Baranowski V.S. at 9. This is entirely inconsistent with the Board's basic conclusion that cross-over revenue should be allocated on the basis of average total costs.

Finally, the Joint Coal Shippers' third proposal to allocate cross-over revenue based solely on variable costs completely ignores the Board's conclusion that cross-over revenue should be allocated based on average total costs. The proposal rests on claims that economies of density in the railroad industry have been exhausted.[9] The study by Laurits R. Christensen Associates commissioned by the Board and cited by the Joint Coal Shippers,[10] calculated the density measures for the four largest Class I railroads. Certainly, a general measure of the economies of density of the four largest railroads does not reveal anything about the possible economies of densities of every railroad potentially subject to a rate complaint. But, even assuming that this single statement could be extrapolated to mean that all economies of densities

[9] *See* Joint Coal Shippers Opening Comments at 73.

[10] *A Study of Competition in the U.S. Freight Railroad Industry and Analysis of Proposals That Might Enhance Competition* (2008) and *An Update to the Study of Competition in the U.S. Freight Railroad Industry* (2010) ("Christensen Studies").

had been exhausted for all railroads, the Christensen Studies focused on railroads as a whole, not individual line segments included in a rate complaint. Because a SAC analysis looks at individual line segments, the question of whether or not economies of density for a railroad as a whole have been exhausted is irrelevant. If there were no remaining economies of density, complainants would have no incentive to select a SARR route that departs from the incumbent's route to "'tak[e] advantage of economies of density.'" *See Ariz. Elec. Power Coop., Inc. v. BNSF Ry.*, NOR 42113, slip op. at 14 (STB served Nov. 22, 2011) (quoting *Coal Rate Guidelines, Nationwide*, 1 I.C.C.2d 520, 542 (1985)) (explaining why complainant was allowed to re-route issue traffic over longer route). Indeed, by definition, low density segments have different economies of density compared to higher density segments. The relevant inquiry is instead whether the fixed costs over the individual line segments replicated by the SARR and those assumed to be left to the residual incumbent are correctly calculated and properly weighted in the development of average total cost. *See* Baranowski V.S. at 10. Thus, the Board must continue to take fixed costs into account when allocating revenues and cannot simply allocate revenues according the relative variable costs of the segments as advocated by the Joint Coal Shippers.

Finally, the Joint Coal Shippers argue that the Board's practice of constantly changing cross-over traffic revenue allocation methodologies to decrease SARR revenues is manifestly unfair to captive coal shippers.[11] However, it appears that the Board has simply attempted to improve its revenue-allocation methodology: whether particular changes help or hurt shippers or railroads depend on the facts of particular cases. The need for the Board to address the revenue allocation methodology at this time stems from the Board's ill-advised application of Modified

[11] Joint Coal Shippers Opening Comments at 67.

ATC, which was manifestly unfair to the railroad defendant in that case. Thus, the Board must act to address the undesired consequences of Modified ATC by either returning to Original ATC or adopting its proposed alternative.

III. The Board Should Not Remove the Limits on Relief for Simplified-SAC Cases Even If the Board Improves The Accuracy of the Road Property Investment Analysis.

In its opening comments, the AAR argued that the Board should not remove the limits on Simplified-SAC cases, regardless of whether the Board improves the accuracy of the road property investment ("RPI") analysis, for three reasons. First, the proposed rule violates 49 U.S.C. § 10701(d)(3). Second, Simplified SAC is less precise than Full SAC and therefore should not afford complainants the potential for unlimited relief. Third, Simplified SAC places a heavy procedural burden on railroads to assemble the complainant's case in the form of the "second disclosure," and limits on relief provide the only protection against frivolous claims. Nothing included in shipper opening comments contradicts these points.

To the contrary, the opening comments of a number of shipper interests seek to support the Board's removing limits on relief for simplified SAC cases, but seek to maintain the RPI analysis. Those comments, however, do not provide an evidentiary record on which the Board can rely to conclude that removing all limits on relief for Simplified SAC is consistent with 49 U.S.C. § 10701(d)(3), necessary, or good public policy. Those shipper interest comments only demonstrate a desire for lower rates through greater regulatory intervention into the marketplace and larger rate prescriptions. Certain shipper interest comments base their support for eliminating the limit on Simplified SAC on their desire that a Simplified SAC analysis afford the same level of relief as Full-SAC.[12] However, it is noteworthy that shipper interests also want to

[12] *See, e.g.,* CURE Opening Comments at 3; Joint Coal Shippers Opening Comments at 75 & n.128.

retain the oversimplified RPI analysis. In other words, they want the Board to eliminate the cap on relief for Simplified SAC, but they also want the Board to maintain the RPI analysis and also keep in place the extraordinary burden on the railroads imposed by the second disclosure requirements, as discussed in the AAR opening comments. Such a position is unreasonable and fails to recognize that the Simplified SAC methodology was adopted to provide a less costly alternative to Full-SAC only when the latter is too costly, given the value of the case.

Indeed, comments of shipper interests do not provide any meaningful support for their contention that the Board should remove the limits on relief for Simplified SAC. For example, as evidence of their position that Simplified SAC relief is currently insufficient, the Joint Chemical Companies include a verified statement of Thomas Crowley and Robert Mulholland ("Crowley/Mulholland V.S."). But Messrs. Crowley and Mulholland simply asserts that "the continued inclusion of real world inefficiencies in the SSAC analysis" will act as a "natural constraint" on the amount of relief available in Simplified SAC, making the "artificial constraint" of a regulatory limit on relief unnecessary.[13] Messrs. Crowley and Mulholland's point is unpersuasive for three reasons. First, imposing a limit on relief is not "arbitrary" at all, but rather it is necessary to comply with the statutory requirement of 49 U.S.C. § 10701(d)(3) that the Board establish simplified methods for determining the reasonableness of challenged rail rates for those cases in which a Full-SAC presentation is too costly, given the value of the case. Second, the statement completely ignores the fact that the Board adopted the limit on relief for Simplified SAC with full knowledge that that methodology would be "a less precise application of CMP, because it [would] not identify inefficiencies in the current rail operation." *Simplified Standards,* at 14. The fact that Simplified SAC does not seek to address inefficiencies in rail

[13] Joint Chemical Companies Opening Comments, Crowley/Mulholland V.S. at 54.

operations did not prevent the Board from imposing a limit on relief for that methodology, and indeed, the fact that Simplified SAC is less precise than Full-SAC weighs in favor of the cap, not against it. Third, if any shipper believes that the level of relief in Simplified SAC is already "naturally constrained" so as to make the Board's limit on relief unnecessary, then it should have no problem with the limit's existence, as it would never come into play.

In sum, comments from shipper interests have provided no evidence that would justify raising the limit on relief in Simplified SAC cases, let alone removing that limit altogether. To the extent the Board is concerned with the current level of relief in Simplified SAC cases, the Board should follow the methodology announced in *Simplified Standards* and commence a proceeding to evaluate the cost of litigating a Full-SAC case in order to determine a new limit on relief.

IV. The Board Must Maintain A Reasonable Limit on Relief on the Crude Three Benchmark Method.

A number of comments representing shipper interests also called on the Board to remove the limits on relief under the Three Benchmark method, which would violate 49 U.S.C. § 10701(d)(3).[14] As the Board has acknowledged, the use of rate comparisons to establish the maximum lawful rate is "crude", *Simplified Standards*, at 52, and "imperfect." *Id.* at 74. In part, this is so because of the potential for ratcheting. If a test sets the maximum lawful rate at the mean of a comparison group of traffic, repeated application would result in a ratcheting effect, whereby rates charged to demand-inelastic shippers would be systematically lowered to the jurisdictional floor. Both the courts and the Board have expressed concern that such an effect is likely. *See id.* at 72-73 (citing *Burlington N.RR v. ICC,* 985 F.2d 589, 597 (D.C. Cir. 1993)). However, in *Simplified Standards*, the Board pointed to the limit on relief for two of its three

[14] *See, e.g.*, PPG Opening Comments at 5.

reasons for dismissing this concern.[15] *Id.* at 74. First, the Board noted that "the potential for ratcheting [would] be severely constrained by the limit on the relief available" under the Three Benchmark approach and concluded that most rates would be constrained by the more robust SAC methodology. Removing the limits altogether would eliminate this protection against ratcheting. Second, because of the cap on relief, "even if every single potentially captive shipper were to seek, and obtain, the maximum relief available under the Three-Benchmark approach, this would result in a reduction in total rail revenues by less than 2.4%." *Id.* This rationale also would no longer be viable should the Board remove the limit on relief. Thus, if the Board removes the cap on relief in Three Benchmark cases, by the Board's own logic, the potential for ratcheting greatly increase.

As detailed in the AAR's opening comments, the Board has put in place a system that adheres to the statutory guidance that limits the simplified methodologies to cases of limited value. Moreover, by tying the limits on relief for each methodology to the estimated cost to bring the next more complicated type of case, the Board has established a framework to guide any increases to the limits. The Board should follow this framework and require detailed evidence as to the cost of Simplified SAC before it considers raising the cap on the Three Benchmark approach. Such evidence is not present in this proceeding.

Since *Simplified Standards*, there have been four Three Benchmark decisions issued on the merits of the case[16] and there has been only two Simplified-SAC complaints filed, but those complaints were dismissed when the parties reached a commercial settlement. USM, the

[15] The Board also pointed to differences in comparison groups, for example, differences in mileage, as limiting the ratcheting effect. But over time, as rates were reduced by comparisons, all traffic could see reductions as the lowered rates entered into comparison groups.

complainant in those proceedings, states in its opening comments that it cost approximately $750,000 for completing discovery and preparing opening evidence in the first simplified-SAC case it filed, NOR 42115. USM Opening Comments, Kaplan V.S. at 6. While the AAR is not in a position to comment on the specifics of USM's argument, it offers this general response. The Board has estimated that a Simplified-SAC case would cost approximately $1 million to bring to the Board and it appears that the USM experience would have generally been in line with this estimate, as much of the costs of litigation are up front. Further, later simplified-SAC cases would likely see cost savings from the experience of parties, attorneys, consultants, and the Board gathering experience in the workings of a Simplified-SAC case. A sample size of one is not the basis on which the Board should raise the limits on Three Benchmark cases based on the costs of Simplified SAC.

If the Board gains experience with Simplified-SAC cases and compiles evidence that bears out the reasonable suggestions of shipper groups like NGFA to modestly increase limits on relief for Three Benchmark cases to $3 million over 5 years[17] the AAR would support such an approach.

V. The Board Should Not Adopt its Results-Oriented Proposal Regarding Interest on Reparations

In its opening comments, the AAR reviewed the reasoned explanation this agency set forth establishing its existing interest rate for reparations payments. Reparation payments generally result from a Board determination that a complainant has made an overpayment on a current liability (transportation charges), which involves the use of short-term working capital funds. Overpayments represent an essentially risk-free "investment" of funds because the funds involved in reparations proceedings are analogous to idle funds that corporations keep in short-

[17] *See* NGFA Opening Comments at 10.

term government securities, certificates of deposits or a money market account. The Board's current rule recognizes this and utilizes the 90-day Treasury Bill rate, recognized as the standard risk free investment used by this agency and other tribunals. *Railroad Cost Recovery Procedures*, 1 I.C.C.2d 207, 213 (1984). Though today's marketplace for short-term government securities, certificates of deposits or money market accounts have established rates that are at historic lows, the Board should not adopt the proposed change to simply substitute its judgment for that of the marketplace for what an appropriate risk-free rate should be.

A number of comments representing shipper interests endorsed a higher rate of interest on reparations, though few provided a justification for raising the interest rate and none considered the agency's reasoned analysis supporting its existing rule. Some of those comments suggested that the Board should adopt its proposal or otherwise raise the interest rate level for the sole reason that it would be favorable result for them.[18] Similarly, USDA asserts, without elaborating, "[s]etting the interest rate at the U.S. Prime rate, rather than the T-Bill rate is more appropriate and is fair to railroads and shippers alike."[19] Such assertions do not provide the Board with a reasoned basis for departing from its established rule.

The few parties that attempted to offer reasoned arguments offered in favor of changing the interest rate made arguments that reflect a misunderstanding of the role of reparations in the Board's regulatory regime. A railroad rate is presumed to be lawful, unless a complainant demonstrates that it is not. When a railroad rate is challenged before the Board, the monies collected are potentially subject to reparations should the Board determine the rate to be unreasonable. If a rate is ultimately found to be unreasonable by the Board, the complaining shipper is entitled, at most, to interest reflecting its loss of the use of the funds it overpaid, not a

[18] ARC Opening Comments, Fauth V.S. at 14.

[19] USDA Opening Comments at 4.

regulatory windfall from a rate of return reflecting risk that the shipper did not incur. As the agency concluded in adopting the Treasury Bill as the applicable interest rate, "a neutral, surrogate measure of the time value of money, applicable equally to all complainants in reparations proceedings, is accordingly both necessary and appropriate." *Revised Procedures to Calculate Interest Rates*, 42 Fed. Reg. 20701 (April 21, 1977). Thus, the railroad industry cost of capital or commercial lending rates are irrelevant in calculating a risk-free return rate of interest applicable to reparations.

Joint Coal Shippers point to the fact that the Federal Energy Regulatory Commission ("FERC") utilizes the U.S. Prime Rate for calculating interest on some amounts held subject to refund.[20] But there are two important distinctions to note. First, FERC administers a different regulatory regime and its rate-making authorities are more comprehensive than the Board. Second, FERC has not applied the same reasoned approach to interest payments as the Board. In upholding the FERC rule, the Court of Appeals for the Fifth Circuit deferred to FERC's discretion, but did not endorse the conclusion that refunds were analogous to commercial loans. The court explicitly noted that "not only is a comparison to loans for the most credit-worthy borrowers a strained one, but any analogy to commercial loans may cause misperceptions." *United Gas Pipe Line Co. v. FERC*, 657 F2.d 790 (5[Th] Cir. 1981).

In sum, the AAR continues to urge that the Board's proposal regarding interest rates should not be adopted.

Conclusion

As demonstrated above, nothing contained in the opening statements demonstrates that that the Board cannot and should not place reasonable limits on cross-over traffic in those

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[20] Joint Coal Shippers Opening Comments at 77.

instances where the revenue allocation methodology cannot prevent distortions. Shipper opposition to the Board's proposals to limit the use of cross-over traffic in Full-SAC cases and support for the "Modified ATC" methodology is premised on a misunderstanding of the nature and function of cross-over traffic in a SAC analysis. For the reasons discussed above and in the AAR opening comments, the Board should return to the Original ATC revenue allocation adopted by notice and comment rulemaking in *Major Issues*. If, however, the Board determines that it must alter that rule, the proposed Alternative ATC methodology should be adopted. The opening comments of parties provide no basis to remove the limits on relief for Simplified-SAC cases and demonstrate that the Board must continue to maintain a reasonable limit on relief for Three Benchmark cases. Finally, the opening comments of parties do not provide a reasonable basis to depart from the Board's well-reasoned existing rule on interest charges for reparation awards.

Respectfully Submitted,

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Appendix A

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. EP 715	)))))))	**Rate Regulation Reforms**

Verified Statement

Of

Michael R. Baranowski

Filed: December 7, 2012

I. Introduction

I am Michael R. Baranowski. I am a Senior Managing Director of FTI Consulting and lead its Network Industries Strategies practice with offices at 1101 K Street, NW, Washington, DC 20005. A statement of my qualifications is set forth in Exhibit 1 to this statement. I have been ask by the Association of American Railroads ("AAR") to respond to new proposals made by Western Coal Traffic League, et al. witnesses Thomas D. Crowley and Daniel L. Fapp ("Crowley/Fapp") regarding methodologies for allocating revenues from crossover traffic in stand-alone cost ("SAC") rate reasonableness proceedings between the portion of the incumbent's rail network replicated by the hypothetical SAC entrant and the residual carrier. Specifically, I address Messers. Crowley and Fapp's proposals for "Corrected" Modified ATC, Three Step ATC and Variable Cost SAC crossover traffic revenue allocation.

II. Crowley/Fapp Proposed Crossover Revenue Allocation Alternatives

1. "Corrected" Modified ATC

Messrs. Crowley and Fapp first propose a variation of the Board's Modified ATC that they refer to as the Corrected Modified ATC methodology. The primary difference between Modified ATC and Corrected Modified ATC is that the Crowley/Fapp approach assumes that fixed costs vary by location and that higher total fixed costs should be allocated to higher density rail lines and lower total fixed costs to lower density rail lines. Their 'correction" to Modified ATC involves allocating fixed costs based on relative on-SARR and off-SARR track miles rather than route miles. They justify their proposed "correction" to Modified ATC by likening rail lines to highways and claiming that a ten-lane super highway has greater fixed costs per mile than a one-lane country route.[1] They further attempt to rationalize their proposal by claiming the logic behind allocating fixed costs on a track mile basis is straightforward, focusing on the physical characteristics of high density segments with multiple tracks and track related facilities compared with their low density counterparts. There are two critical flaws with the Crowley/Fapp proposal to allocate fixed costs relative to track miles.

First, the underpinning of the Crowley/Fapp proposal is based on a misrepresentation of fixed costs that are calculated using URCS. Costs that Messrs. Crowley and Fapp would have the Board treat as fixed costs are not, in fact, fixed; instead they are variable with density. As the Board has already determined correctly in *Xcel*,[2] and reiterated in *Major Issues*,[3] when the Uniform Rail Costing System (URCS) quantifies system-average variable costs, it is accounting for the portion of railroad costs that vary with volume, including those costs associated with the use of relatively more track miles on lines that handle higher volumes of traffic. As a result, system average fixed costs (i.e., costs that do not vary with volume) are the same for high and low density lines, by definition.

Second, even if URCS-based fixed cost did vary with density -- which the Board has concluded they do not -- use of track miles as an allocation method would overstate the allocation of costs to high density lines. There are two reasons for this. First, although Crowley/Fapp focus only on track miles and track related facilities, URCS fixed costs include a

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[1] Crowley/Fapp at 33 - 34

[2] *See Xcel* Recon. at 10-11.

[3] *See Major Issues* at 35. "Then in Xcel, after further briefing by the parties, the Board found on reconsideration that, because the first step of DARA requires the hypothetical division to cover each carrier's variable costs as calculated by URCS, the remaining fixed costs (i.e., costs that do not vary with output) would indeed be the same on average for light-density as for heavy-density lines."

variety of other costs that bear no relation to the densities or track miles over individual line segments. Second, because of economies related to the individual components of railroad track infrastructure, railroad road property investment is not linear with the number of tracks. For such components, assuming that the costs are proportional with the number of tracks would over-allocate to higher-density lines and produce distorted results.

a. Composition of URCS Fixed Costs

Crowley/Fapp propose to use mainline track miles including all passing sidings, turnouts and crossovers, and excluding way and yard switching tracks, as the basis for allocating fixed costs.[4] These are generally considered running track miles in URCS, which are calculated as the sum of miles of road, miles of second main, miles of other main tracks and miles of passing tracks, crossovers and turnouts from Schedule 700 of the Railroad Annual Report R-1. In addition to costs for running tracks, however, URCS fixed costs also include costs for switching track ownership and maintenance, road operations, yard services, clerical and carload costs, freight car costs, special services costs and general overhead costs. Table 1 below shows the breakdown of URCS fixed costs for the eastern and western region[5] from the STB's 2010 URCS data.

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[4] Crowley/Fapp at 34 fn. 29

[5] Eastern region includes Norfolk Southern, CSXT and Canadian National. Western region includes BNSF, Union Pacific, Kansas City Southern and Canadian Pacific.

Table 1
URCS Fixed Costs by Major URCS Cost Component

URCS Major Fixed Cost Component	Eastern Region	Western Region
Running Track Ownership & Maintenance	44.7%	43.3%
Switching Track Ownership & Maintenance	9.9%	16.5%
Road Operations	21.4%	19.6%
Yard Operations	5.4%	4.6%
Clerical & Carload	0.8%	0.8%
Freight Cars	2.6%	2.7%
Special Services	1.2%	1.4%
General Overheads	14.0%	11.2%
Total	100.0%	100.0%

As Table 1 shows, the only costs potentially aligned with track miles – running track ownership and maintenance – represent less than one-half of URCS fixed costs. As such, an allocation method that relies on track miles will over-allocate most URCS fixed costs to higher density lines.

b. Road Property Investment is Not Linear with the Number of Tracks

In addition to including other cost categories that are unrelated to track miles, the running track ownership and maintenance fixed costs are in fact not linear with track miles, as Crowley/Fapp assume. Because multiple running tracks often share the same roadbed and infrastructure, the cost of constructing a double track main line are less than twice those of single track. A few examples of these economies that Crowley/Fapp's approach ignore include:

- Right of way – While clearance distances between mainline running track typically range from 15 to 25 feet, many railroad rights of way range in width between 100 and 400 feet. As a result, most railroad rights of way can accommodate multiple tracks without any material incremental increase in land costs. These investments are not proportionally more for segments that have more tracks per mile, as the Crowley/Fapp approach assumes.

- Roadbed – Second and third main line and passing tracks share roadbed infrastructure with first main track. Adding a second track to a typically shaped trapezoidal cross-section of roadbed essentially involves inserting a rectangle into the middle of the trapezoid, resulting in only a marginal increase to the both earthwork quantities and costs. While the relationship can vary with terrain, adding a second main track to a railroad roadbed increases roadbed earthwork quantities by approximately forty percent and not 100 percent as the Crowley/Fapp approach implies.

- Culverts – Similar to roadbed, second and third main line and passing tracks share culvert infrastructure with the first main track. For culverts that are perpendicular to the right of way, the increased culvert investment to accommodate additional track is limited to the distance between the first and second track.

- Bridges – Many bridges that carry multiple tracks share common substructure (abutments and piers) and superstructure (bridge decks) that are constant across the number of tracks, not proportionally greater as Crowley/Fapp's track-based assignment assumes.

- Communications systems – Communication systems need to cover the entire railroad system and are not directly related to the number of track miles.

Because investment in many different components of railroad road property is not linear with the number of tracks, Crowley/Fapp's proposal to allocate fixed costs based on running track miles will overstate the allocation to line segments with multiple tracks, and understate the allocation to lower density, single track segments.

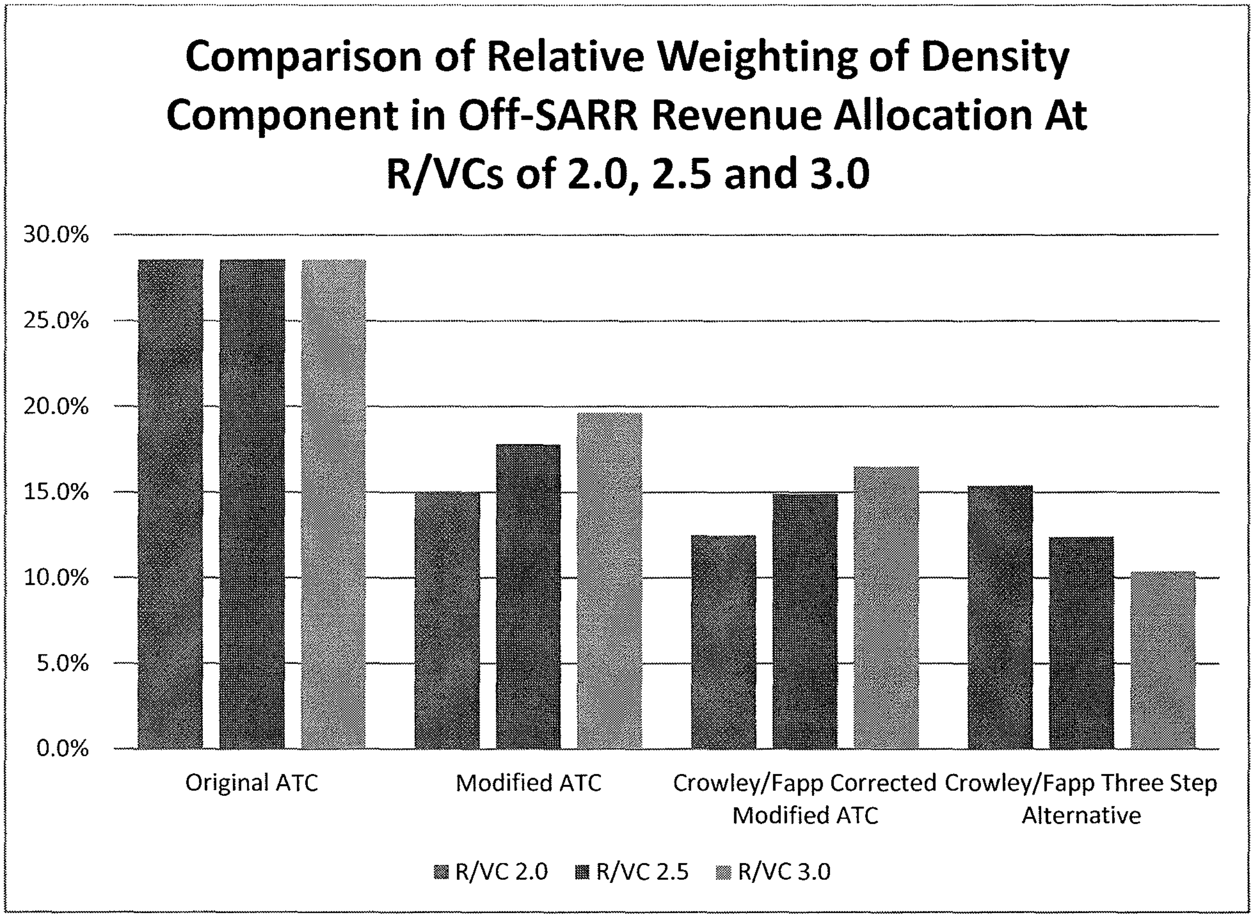
2. Three Step ATC

Crowley/Fapp offer another variation of ATC: Three Step ATC, which they describe as follows:

> Step 1: crossover traffic revenues up to the level of URCS variable cost would be allocated to cover on-SARR and off-SARR using URCS Phase III variable costs.
>
> Step 2: revenues in excess of URCS variable cost, if any, would be allocated to cover on-SARR and off-SARR fixed costs as calculated using the ATC formulation for fixed costs with a substitution of the track mile allocation proffered for the Correct Modified ATC for the Board's route mile based allocation of fixed costs.
>
> Step 3: remaining revenues or what Crowley/Fapp refer to as profits (if any) would be allocated on a variable cost basis.

Crowley/Fapp's Three Step ATC is essentially a variation of Corrected Modified ATC that further suppresses the effects of density in the crossover revenue allocation process as contribution above variable cost increases and reduces the amount of crossover revenue allocated to the lower density line segments. This proposed approach, like Modified ATC and Corrected Modified ATC, turns the Board's original ATC revenue allocation formula on its head by allocating more revenue based on variable cost, which does not include a density component, and should be rejected. Chart 1 below compares the relative weight of the density component of the revenue allocation to a hypothetical lighter density off-SARR segment under Original ATC, Modified ATC, Crowley/Fapp proposed Corrected Modified ATC and Crowley/Fapp proposed Three Step ATC for a shipments with a rate of $20.00, $25.00 and $30.00 and R/VC ratios of 2.0, 2.5 and 3.0, respectively.

Chart 1[6]

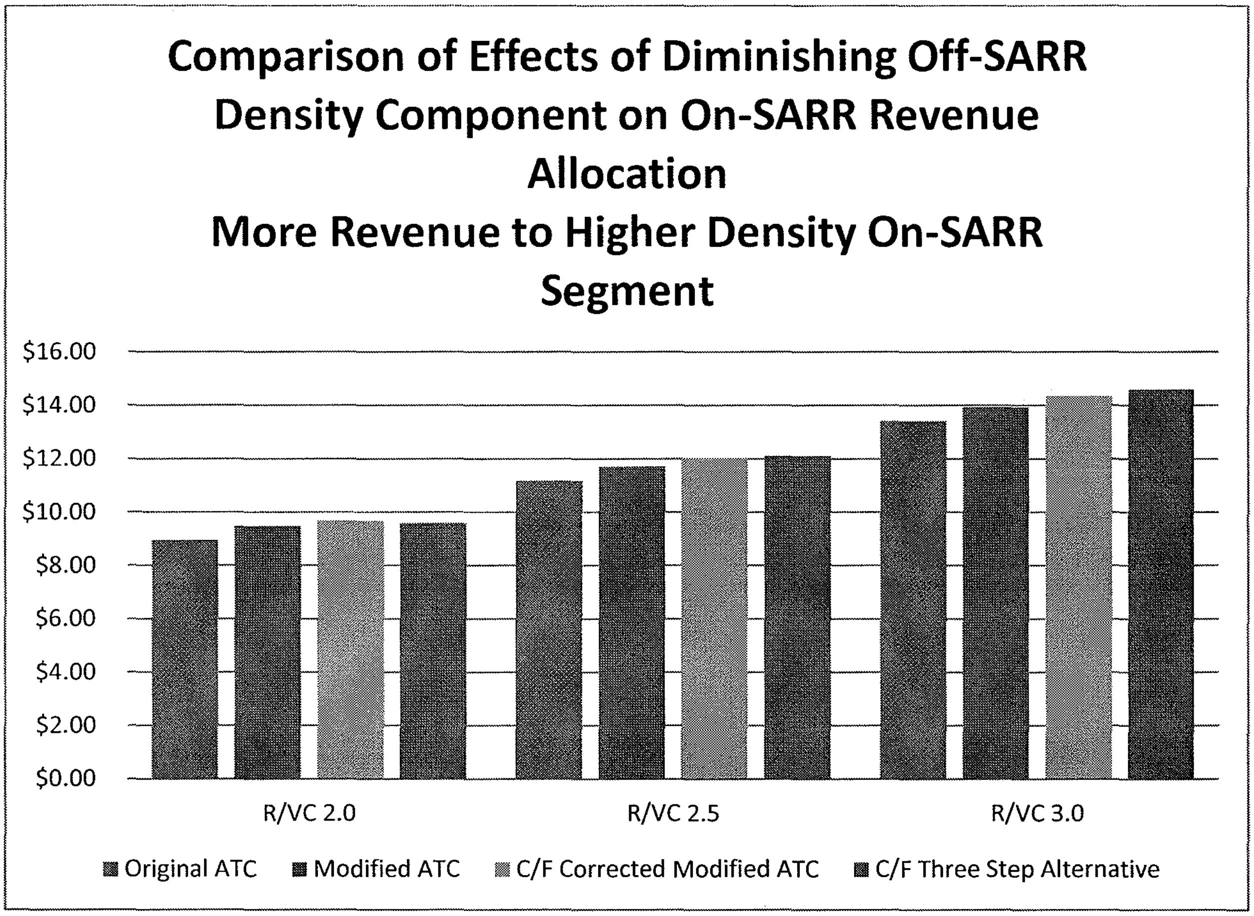


As Chart 1 shows, the relative weighting of the density component is suppressed below that of Original ATC under both of the proffered Crowley/Fapp alternatives. The effect of this suppression of the relative weight of the density component for the lighter density off-SARR segments in the revenue allocation process is to overstate the revenue allocated to the higher density on-SARR segments. Chart 2 below compares the revenue allocated to the higher density

[6] The results depicted in Chart 1 are for an assumed shipment of 1,000 miles with 500 miles on-SARR and 500 off-SARR. On-SARR densities are assumed to be 75 MGT and off-SARR densities 25MGT. Fixed cost per route mile equals $100,000 and fixed cost per track mile equals $80,000. Tracks per mile for the on-SARR segment equal 1.5 and for the off-SARR segment 1.0.

on-SARR segment under Original ATC, Modified ATC and the two new Crowley/Fapp proposals of Corrected Modified ATC and Three-Step ATC.

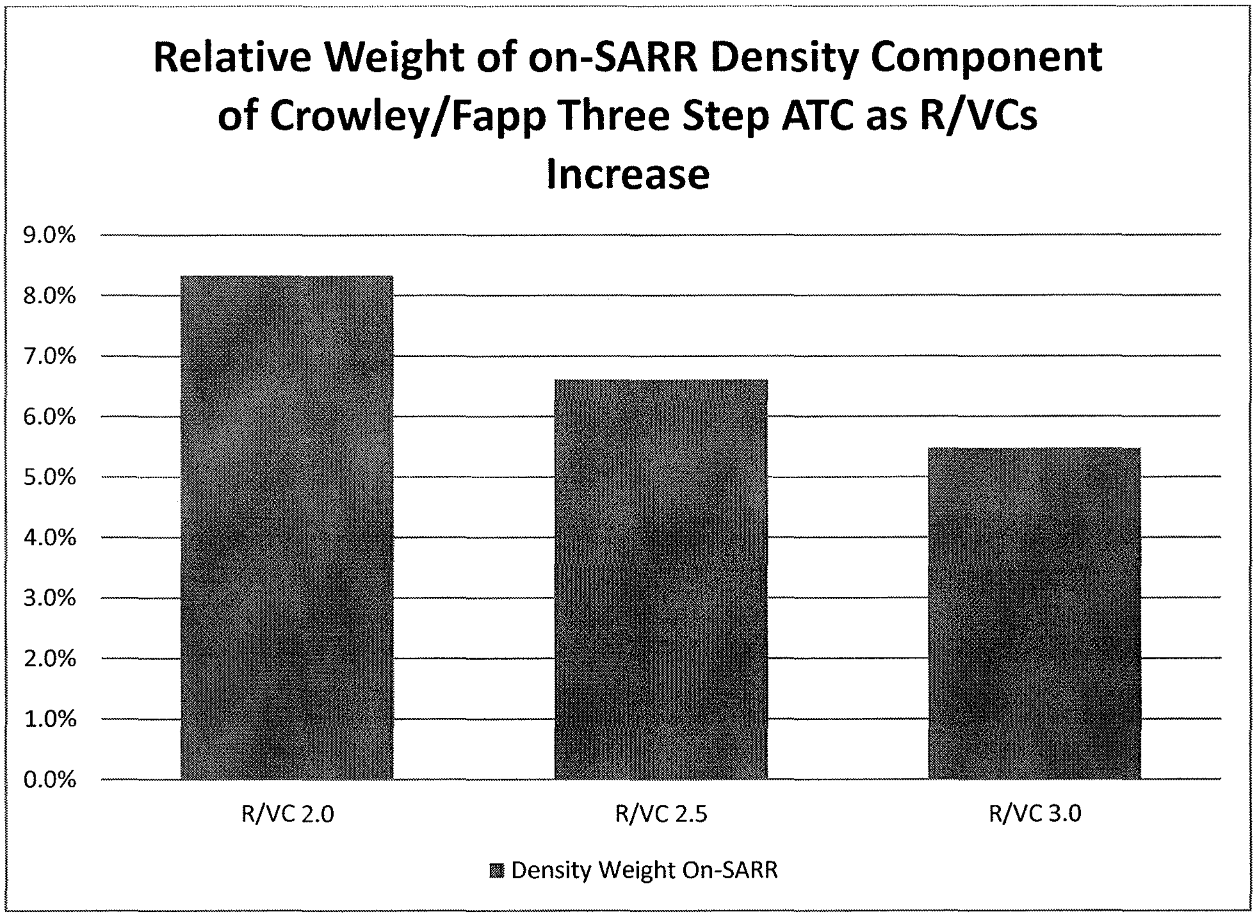
Chart 2



As Chart 2 demonstrates, the suppression of the off-SARR density component in Modified ATC, Corrected Modified ATC and Three-Step ATC result in higher revenue allocations to the higher density on-SARR segment than under the properly balanced Original ATC method.

For the new Crowley/Fapp proposed Three Step ATC alternative, the suppression of the fixed cost component occurs in step 2, which requires only that the calculated fixed cost allocation be covered by contribution above variable cost. The remaining contribution above variable cost – which Crowley/Fapp refer to as "profit" (but is really contribution to fixed costs)[7] – is allocated again based on variable cost. Chart 3 shows the declining relative weight of the density component of under the Three Step ATC for R/VCs corresponding to Chart 2 above. Specifically Chart 3 shows the relative weight of the density component at R/VCs of 2.0, 2.5 and 3.0.

Chart 3

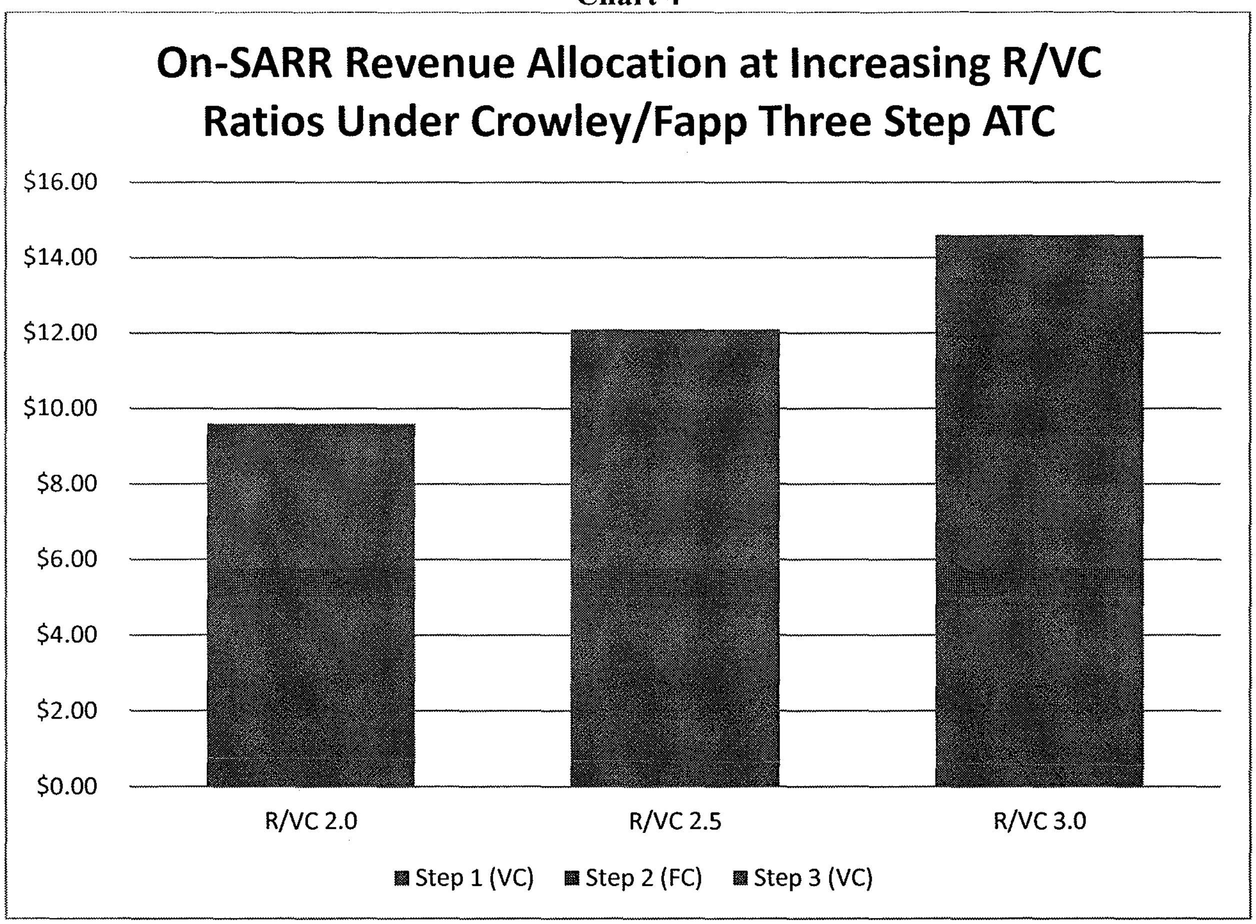


[7] The revenues that a railroad earns on a movement in excess of the movement's variable costs are not a railroad's economic "profits." They are the movement's contribution towards the railroad's fixed costs. If and only if a railroads' revenue exceeds its total variable and total fixed costs, including its cost of capital, does a railroad earn an economic profit. Thus, "profit" cannot be measured by comparing revenue to variable costs for individual movements.

Chart 3 shows that as R/VCs increase and there is more contribution available to cover fixed costs, the relative amount of contribution actually used to cover fixed cost declines under the Three Step ATC alternative, leaving the excess contribution above fixed costs to be allocated based on variable costs.

The corollary to the decline in the relative weight of density in the revenue allocation formula is an increase in the influence of variable costs. Chart 4 shows the total revenue allocated to the on-SARR segment at each assumed R/VC level under each of the steps of the Three Step ATC, separated between those revenues allocated with variable costs and those allocated with fixed costs.

Chart 4



As Chart 4 demonstrates, under the new Crowley/Fapp Three Step ATC virtually all of the crossover traffic revenue is allocated using variable cost and only a small portion of the revenue addresses contributions to fixed costs. Further, as contribution increases and more revenues are available to cover fixed costs, the Three Step ATC process holds fixed costs constant. Fixed costs per unit of density are lower for high density segments and higher for low density segments. URCS variable costs, however, are constant for the line haul portion of a rail movement because they do not capture changes in density. Using variable costs as the basis for the crossover traffic revenue allocation will overstate the contribution to fixed costs on high density segments and understate the contribution to fixed cost on lower density segments. In SAC proceedings shippers determine the configuration of the SARR and in virtually all SAC proceedings to date, the on-SARR densities have been higher than the off-SARR densities. The residual incumbent is typically left with the burden of consolidating traffic from its low density lines and feeding that traffic to the high density SARR. A revenue allocation that does not capture properly the economies of density will leave the residual incumbent in SAC cases without adequate revenues to cover its fixed costs -- and therefore to sustain the network that feeds crossover traffic that the SARR depends on.

3. Variable Cost Allocation

Crowley/Fapp propose a third alternative that allocates revenues based solely on URCS variable costs. In their effort to launch a collateral attack on ATC and ignore fully any effect of density, citing findings from a study by Laurits R. Christensen Associates,[8] Crowley/Fapp claim

[8] "A Study of Competition in the U.S. Freight Railroad Industry and Analysis of Proposals That Might Enhance Competition" November 2008 and "An Update to the Study of Competition in the U.S. Freight Railroad Industry" completed in 2010. ("Christensen Studies")

that economies of density in the railroad industry have been exhausted.[9] On this basis they opine that the Board may decide that a crossover traffic revenue allocation approach that captures economies of density is no longer needed.[10] While the Christensen Studies focused on the railroad industry as a whole, the Board in *Major Issues* explained that the ATC method calculates the average total cost per ton associated with the *segments* at issue.[11] The Board continued to explain that the combination of the average variable cost and average fixed cost provides the average total cost per ton that takes account of both economies of density and diminishing returns.[12] Because ATC considers the average total cost of the incumbent carrier over the line segments assumed to be replicated by the hypothetical SARR entrant (which are typically high density line segments) versus the average total cost over the lines of the residual incumbent used by the crossover traffic and not replicated by the hypothetical SARR, the question of whether or not economies of density in the railroad industry as a whole have been exhausted is irrelevant. The relevant inquiry is whether the fixed costs over the individual line segments replicated by the SARR and those assumed to be left to the residual incumbent are correctly calculated and properly weighted in the development of average total cost.

There is no dispute that economies of density on low density line segments are different (and lower) than the economies of density on high density line segments. The Board confirmed this in *Major Issues*, explaining that more revenue should be allocated to segments that are

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[9] Specifically, Crowley/Fapp refer to an excerpt from the Christensen Studies explains that the density measures for the four largest Class I railroads approximates 1.0 – which suggests in simple terms that economies of density in the railroad industry have been exhausted.

[10] Crowley/Fapp at 40.

[11] *Major Issues* at 34.

[12] *Id.*

lighter density lines, because those segments, holding other factors constant, will have higher average total costs than higher density segments.[13] This principle applies today, and a crossover revenue allocation method like Crowley/Fapp's that fails to consider segment-specific economies of density will improperly over-allocate revenues to higher density line segments.

Crowley/Fapp also suggest that the variable cost only allocation is more simple to administer. So was the modified mileage prorate. While this may be so, the inequity and inaccuracy produced by the failure to account for segment-specific economies of density far outweigh the incremental effort to better account for such economies.

III. Cross-over Traffic Is Not Part of Contestable Market Theory and Is Simply a Shortcut For a SAC Case

Messrs. Crowley and Fapp also lodge multiple complaints regarding the perils of restricting the use of crossover traffic in SAC proceedings. Indeed, as the Board explained in Major Issues, the concept of cross-over traffic was not contemplated by the ICC when it adopted Guidelines, and is thus not a component of Constrained Market Pricing.[14] As the Board aptly described, the name of the test itself (the "stand-alone" cost test) reflects an implicit assumption that the SAC analysis would examine a stand-alone network designed to meet the transportation needs of the SAC traffic group. According to the Board, a SARR that includes cross-over traffic would not stand alone in any meaningful sense, but rather would be dependent on the residual defendant carrier to provide the feeder network needed to sustain its operations.[15]

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[13] *Major Issues* at 25 - 26.

[14] *Major Issues* at 31.

[15] *Id.*

As the ICC concluded in *Nevada Power*, the use of cross-over traffic was permitted only to "allow shippers to make effective cases . . . using smaller hypothetical SARRs than would otherwise be required."[16] At its heart, the SAC test is a tool to simulate a competitive rate standard for non-competitive rail movements by determining the rate that would be available to shippers in a contestable market environment. The Board concluded in Major Issues that the outcome of the test should not depend on the amount of crossover traffic that is included in the analysis, which is exactly what is occurring in recent SAC cases. Shippers in SAC cases have expanded their reliance on crossover traffic from zero percent in *McCarty Farms*, *Arizona Public Service* and *West Texas Utilities*, to virtually all crossover in the more recent *AEPCO* and *SunBelt* proceedings.

[16] Nevada Power II, 10 I.C.C.2d at 280 (Chairman McDonald, commenting).

I declare under penalty of perjury that the foregoing is true and correct. I further certify that I am qualified and authorized to sponsor and file this testimony.

Executed on December 7, 2012

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Mike Baranowski provides financial and economic consulting services to the telecommunications and transportation industries. He has special expertise in analyzing and developing complex computer costing models, operations analysis, and transportation engineering. Much of his work involves providing oral and written expert testimony before courts and regulatory bodies.

Some of Mr. Baranowski's representative accomplishments include:

- Overseeing the development of computer cost modeling tools designed to simulate the cost of competitive entry into local telecommunications markets and directing the efforts of a nationwide team of testifying experts presenting the cost model results in multiple proceedings across the country.
- Directing the analysis, critique and restatement of a variety of complex cost models developed by major telecommunications companies designed to simulate the forward-looking cost of competitive entry into local telecommunications markets.
- Designing multiple PC-based spreadsheet models for use in calculating the stand-alone cost of competitive entry into the railroad and pipeline markets. These models have been used to assist clients in all three network industries in making internal pricing decisions that are in compliance with governing regulatory standards.
- Conducting detailed analyses of railroad operations and developing the associated capital requirements and operating expenses attributable to specific movements and the incremental capital and operating expense requirements attributable to major changes in anticipated traffic levels.
- Calculating marginal and incremental costs for a major petroleum products pipeline company, an approach that is now used regularly by the company in making internal day-to-day pricing decisions.

Mr. Baranowski holds a B.S. in Accounting from Fairfield University in Fairfield, Connecticut and has pursued supplemental finance studies at Kean College in Union, New Jersey.

TELECOMMUNICATIONS TESTIMONY

Federal Communications Commission

February 1998	File No. E-98-05. AT&T Corp. v. Bell Atlantic Corp. Affidavit of Michael R. Baranowski.
March 13, 1998	File No. E-98-05. AT&T Corp. v. Bell Atlantic Corp. Supplemental Affidavit of Michael R. Baranowski.
June 10, 1999	CC Docket No. 96-98. Implementation of the Local Competition Provisions of the Telecommunications Act of 1996. Reply Affidavit of Michael R. Baranowski, John C. Klick and Brian F. Pitkin.

July 25, 2001	CC Docket No. 00-251, 00-218. In the Matter of Petition of AT&T Communications of Virginia, Inc. and WorldCom, Inc., Pursuant to Section 252(e)(5) of the Communications Act, for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon-Virginia, Inc. Panel
June 13, 2005	WC Docket No. 05-25;RM-10593. In the Matter of Special Access Rates for Price Cap Local Exchange Carriers; AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services, Joint Declaration on Behalf of SBC Communications, Inc.
July 29, 2005	WC Docket No. 05-25;RM-10593. In the Matter of Special Access Rates for Price Cap Local Exchange Carriers; AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services, Joint Reply Declaration on Behalf of SBC Communications, Inc.

Public Service Commission of Delaware

February 4, 1997	PSC Docket No. 96-324. In the Matter of Bell Atlantic - Delaware Statement of Terms and Conditions Under Section 252(F) of the Telecommunications Act of 1996. Testimony of Michael R. Baranowski.

Public Service Commission of the District of Columbia

March 24, 1997	Formal Case No. 962. In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996. Testimony of Michael R. Baranowski.
May 2, 1997	Formal Case No. 962. In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996. Rebuttal Testimony of Michael R. Baranowski.

Public Service Commission of the State of Maryland

March 7, 1997	Docket No. 8731, Phase II. In the Matter of the Petitions for Approval of Agreements and Arbitration of Unresolved Issues Arising Under Section 252 of the Telecommunications Act of 1996. Direct Testimony of Michael R. Baranowski.
April 4, 1997	Docket No. 8731, Phase II. In the Matter of the Petitions for Approval of Agreements and Arbitration of Unresolved Issues Arising Under Section 252 of the Telecommunications Act of 1996. Rebuttal Testimony of Michael R. Baranowski.
May 25, 2001	Case No. 8879. In the Matter of the Investigation into Rates for Unbundled Network Elements Pursuant to the Telecommunications Act of 1996. Panel Testimony on Recurring Cost Issues

Public Service Commission of the State of Michigan

January 20, 2004	Case No. U-13531. In the Matter, on the Commission's Own Motion to Review the Costs of Telecommunication Service Provided By SBC Michigan. Initial Testimony of Michael R. Baranowski and Julie A. Murphy.
May 10, 2004	Case No. U-13531. In the Matter, on the Commission's Own Motion to Review the Costs of Telecommunication Service Provided By SBC Michigan. Final Reply Testimony of Michael R. Baranowski and Julie A. Murphy.

New Jersey Board of Public Utilities

December 20, 1996	Docket No. TX 95120631. Notice of Investigation Local Exchange Competition for Telecommunications Services. Rebuttal Testimony of John C. Klick and Michael R. Baranowski.

North Carolina Utilities Commission

March 9, 1998	Docket No. P-100, Sub 133d. In the Matter of Establishment of Universal Support Mechanisms Pursuant to Section 254 of the Telecommunications Act of 1996. Rebuttal Testimony of Michael R. Baranowski.

Pennsylvania Public Utility Commission

January 13, 1997	Docket Nos. A-310203F0002 et al. MFS-III. Application of MFS Intelenet of Pennsylvania, Inc. et. Al. (Phase III). Rebuttal Testimony of Michael R. Baranowski.
February 21, 1997	Docket Nos. A-310203F0002 et al. MFS-III. Application of MFS Intelenet of Pennsylvania, Inc. et. Al. (Phase III). Surrebuttal Testimony of Michael R. Baranowski.
April 22, 1999	Docket Nos. P-00991648, P-00991649. Petition of Senators and CLECs for Adoption of Partial Settlement and Joint Petition for Global Resolution of Telecommunications Proceedings. Direct Testimony of Michael R. Baranowski.
January 11, 2002	Docket No. R-00016683. Generic Investigation of Verizon Pennsylvania, Inc.'s Unbundled Network Element Rates. Panel Testimony on Recurring Cost Issues

State Corporation Commission Commonwealth of Virginia

April 7, 1997	Case No. PUC970005. Ex Parte to Determine Prices Bell Atlantic - Virginia, Inc. Is Authorized To Charge Competing Local Exchange Carriers In Accordance With The Telecommunications Act of 1996 And Applicable State Law. Affidavit of Michael R. Baranowski.
April 23, 1997	Case No. PUC970005. Ex Parte to Determine Prices Bell Atlantic - Virginia, Inc. Is Authorized To Charge Competing Local Exchange Carriers In Accordance With The Telecommunications Act of 1996 And Applicable State Law. Direct Testimony of Michael R. Baranowski.

June 10, 1997 — Case No. PUC970005. Ex Parte to Determine Prices Bell Atlantic - Virginia, Inc. Is Authorized To Charge Competing Local Exchange Carriers In Accordance With The Telecommunications Act of 1996 And Applicable State Law. Rebuttal Testimony of Michael R. Baranowski.

Washington State Utilities and Transportation Commission

December 22, 2003 — Docket No. UT-033044. In the Matter of the Petition of Qwest Corporation To Initiate a Mass-Market Switching and Dedicated Transport Case Pursuant to the Triennial Review Order. Direct Testimony of Michael R. Baranowski.

February 2, 2004 — Docket No. UT-033044. In the Matter of the Petition of Qwest Corporation To Initiate a Mass-Market Switching and Dedicated Transport Case Pursuant to the Triennial Review Order. Response Testimony of Michael R. Baranowski.

Public Service Commission of West Virginia

February 13, 1997 — Case Nos. 96-1516-T-PC, 96-1561-T-PC, 96-1009-T-PC, 96-1533-T-T. Petition to establish a proceeding to review the Statement of Generally Available Terms and Conditions offered by Bell Atlantic in accordance with Sections 251, 252, and 271 of the Telecommunications Act of 1996. Testimony of Michael R. Baranowski.

February 27, 1997 — Case Nos. 96-1516-T-PC, 96-1561-T-PC, 96-1009-T-PC, 96-1533-T-T. Petition to establish a proceeding to review the Statement of Generally Available Terms and Conditions offered by Bell Atlantic in accordance with Sections 251, 252, and 271 of the Telecommunications Act of 1996. Rebuttal Testimony of Michael R. Baranowski.

June 3, 2002 — Case No. 01-1696-T-PC, Verizon West Virginia, Inc. Petition For Declaratory Ruling That Pricing of Certain Additional Unbundled Network Elements (UNEs) Complies With Total Element Long-Run Incremental Cost (TELRIC) Principles. Direct Testimony of Michael R. Baranowski

July 1, 2002 — Case No. 01-1696-T-PC, Verizon West Virginia, Inc. Petition For Declaratory Ruling That Pricing of Certain Additional Unbundled Network Elements (UNEs) Complies With Total Element Long-Run Incremental Cost (TELRIC) Principles. Supplemental Direct Testimony of Michael R. Baranowski

RAILROAD TESTIMONY

Interstate Commerce Commission

March 9, 1995 — Finance Docket No. 32467. National Railroad Passenger Corporation and Consolidated Rail Corporation -- Application Under Section 402(a) of the Rail Passenger Service Act for an Order Fixing Just Compensation.

October 30, 1995 — Docket No. 41185. Arizona Public Service Company and Pacificorp v. The Atchison, Topeka and Santa Fe Railway Company.

Surface Transportation Board

July 11, 1997	Docket No. 41989. Potomac Electric Power Company v. CSX Transportation, Inc. Reply Statement and Evidence of Defendant CSX Transportation, Inc.
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