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August 25, 2011

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423-0001

ENTERED
Office of Proceedings
AUG 25 2011
Part of
Public Record

Re: **Ex Parte No. 705**
Competition in the Railroad Industry

Dear Ms. Brown:

Attached please find supplemental information regarding paper barriers which is being filed by the American Short Line and Regional Railroad Association ("ASLRRRA") in this proceeding pursuant to the request of Commissioner Mulvey at the hearing in this proceeding.

Very truly yours,



Myles L. Tobin
Attorney for the American Short Line and Regional
Railroad Association

Attachment

cc: Richard F. Timmons, President, ASLRRRA
Michael Ogborn, Chairman, ASLRRRA

BEFORE THE
SURFACE TRANSPORTATION BOARD

EX PARTE NO. 705

COMPETITION IN THE RAILROAD INDUSTRY

**THE AMERICAN SHORT LINE AND
REGIONAL RAILROAD ASSOCIATION'S
SUPPLEMENTAL INFORMATION**

During the course of the hearing in this proceeding, the American Short Line and Regional Railroad Association ("ASLRRA") presented extensive testimony and evidence which established that the marketplace in which small railroads operate does not need the intrusion of further regulatory constraints to function competitively and efficiently. The revitalization of a light-density rail line network in this country which began thirty-five years ago should not be cut off in the name of controlling the market power that small railroads do not have. ASLRRA presented testimony that the nation's small railroads transport their customers' traffic over relatively short distances to interchanges with Class I connections. Their traffic densities are light and their fixed costs are high. The extensive capital necessary to maintain and upgrade rail infrastructure is a significant drain on freight revenue resources. Intramodal and intermodal competition is intense, and small railroads struggle on a daily basis to maintain and grow their traffic base. Small railroads' rates are constrained by their competition and they rarely, if ever, have rate flexibility. For the Board to depart from the traditional regulatory model, and ignore the absence of market power and the inability of small railroads to abuse market power which they do not possess serves no valid regulatory purpose, and could have the very real effect of undermining the financial viability of many small railroads.

During the course of ASLRRRA's testimony, Commissioner Mulvey noted references in ASLRRRA's filings with respect to the number of small railroads which have contractual obligations limiting their access to more than one Class 1 railroad (commonly known as "paper barriers"), as well as the number of waivers of these contractual obligations obtained by small railroads pursuant to the Railroad Industry Agreement ("RIA"). Commissioner Mulvey requested additional details regarding that data, and in particular, the manner in which the data was collected and the results of the data collection process.

The data in ASLRRRA's comments regarding paper barriers and RIA waiver requests was not derived from the 2011 survey which economic expert Carl Martland utilized in developing his verified statement and testimony in this proceeding. Rather, in 2010, certain senators working on draft legislation with respect to the railroad industry requested that ASLRRRA provide data as to the number of small railroads which have contractual obligations limiting their access to more than one Class 1 railroad. ASLRRRA promptly queried its membership and 66 small railroads indicated that they were subject to such paper barriers. In ASLRRRA's Initial Comments, that number was adjusted to 70 railroads which is an approximate number reflecting the fact that some Class 1 and small railroads define paper barriers differently than others.

With respect to the RIA waiver request data, the ASLRRRA – AAR Railroad Industry Working Group maintains data on the number of paper barrier waiver requests made pursuant to the terms of the RIA.

Data for the last five years is as follows:

Year	RIA Waivers Granted	RIA Waivers Requested	Requests Otherwise Disposed of *
2010	20	35	15
2009	30	45	15
2008	30	35	5
2007	20	30	10
2006	15	30	15

*"Requests Otherwise Disposed of" means that the small railroad either withdrew the waiver request, the small railroad and the Class I railroad privately negotiated a solution outside the scope of the RIA, the request is still pending (in the case of 2010), or the request fell outside the scope of the RIA.

The foregoing reflects the entirety of the additional information requested by Commissioner Mulvey.

Respectfully submitted,

By: 
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Dated: August 25, 2011