

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.**

STB EX PARTE NO. 575

REVIEW OF RAIL ACCESS AND COMPETITION ISSUES

**COMMENT OF THE AMERICAN SHORT LINE AND REGIONAL
RAILROAD ASSOCIATION TO RENEWED PETITION OF THE WESTERN
COAL TRAFFIC LEAGUE FOR RULEMAKING TO ELIMINATE
UNREASONABLE "PAPER BARRIERS" TO INTERCHANGE**

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The American Short Line and Regional Railroad Association (ASLRRA) submits this Comment in response to the Request for Comments published by the Board on January 30, 2006 in the matter of the Renewed Petition of the Western Coal Traffic League For Rulemaking to Eliminate Unreasonable “Paper Barriers” To Interchange filed on March 21, 2005. ASLRRA represents approximately 425 class II and class III railroads, most of whom are affected in a variety of ways by paper barriers. In addition, the ASLRRA is a party to the amended Railroad Industry Agreement (RIA), which has guided its members in the interpretation and resolution of multiple railroad interchange issues for the past six years. In response to the particular questions posed in the Request for Comments, ASLRRA adopts and subscribes to the Comments of the Association of American Railroads. ASLRRA will draw upon the collective experience of its numerous

and diverse member pertaining to the issue of “paper barriers” to inform its own additional observations with reference to two of the questions raised in the Board’s Request for Comments.

The Board has specifically asked in question (e) for comment on the effectiveness of the agreement between the ASLRRRA and AAR known as the Railroad Industry Agreement which in part addresses paper barriers. Fundamentally, the six year history of the Railroad Industry Agreement supports the conclusion that the RIA has been an effective private sector framework for the reasonable interpretation and use of paper barriers. Since its inception Class III railroads have informally and widely worked with their Class I connecting carriers when paper barriers have been contentious to the extent that with rare exceptions disputes have been resolved amicably without resorting to the STB for relief. During this period the Railroad Industry Working Group has been created in part to facilitate paper barrier interpretation and dispute resolution. Concurrently, the STB has monitored and observed the functioning of the Railroad Industry Agreement, and symbolic of the Board’s interest in it, in September of 2004 the Amendment to the RIA was signed in the STB Conference Room in the presence of the Commissioners. During the multi-year existence of the RIA, nothing has occurred which has caused this watchful Board to intervene. ASLRRRA believes that there is no reason now for the STB to trump the private sector and initiate rulemaking.

The Board has also asked participants to comment on the short and long term economic impacts of paper barriers. Underlying the current Renewed Petition and in part the Railroad Industry Agreement itself is the economic reasonableness of paper barriers. The very reference to paper barriers in the RIA is witness to the reality that their role can

generate conflicting opinions, even within the short line rail industry. Nevertheless, in assessing the broad experience of its members ASLRRA concludes that without the boundaries and predictability that paper barriers create for divesting class I carriers, a large number of its members would never have been created in the first place. Class I railroads spin off light density lines on their systems because they can be superior economic alternatives to abandonments. However, they are less likely to choose to sell or lease the lines if it means handing over existing customers to competitors. The RIA and its Amendment create definitions, boundaries and statements of principle to assure that acquiring short lines are not precluded from harnessing their entrepreneurial instincts to handle new business with any connections available to them, but fundamentally short lines accept contractual restrictions on existing class I business because there is no other realistic way to incent the divesting carrier to sell or lease them a line in a structure that is economically viable for the acquiring line. This is not a criticism of paper barriers. It is merely a reflection of the realities of intense global competition not only for business, but for scarce capital as well. In that context, paper barriers play an important and productive role. In his testimony before the Board on the occasion of the Hearing in *STB Ex Parte No. 658: The 25th Anniversary of the Staggers Rail Act of 1980: A Review and Look Ahead*, Charles Marshall, Vice Chairman of Genesee & Wyoming Inc., a short line holding company whose railroads are members of ASLRRA, explained the role paper barriers play:

If you think about it, paper barriers are just like requirements contracts in any other business. A supplier says to a buyer if you will buy everything you need from me, I will give you a break, and that is really what paper barriers are.

They are an agreement between a Class I and a short line that the short line will favor that Class I with all of the business or pay a penalty. And, generally speaking, there can be a negotiated change in those paper barriers for a price and the short line either decides to pay that price or not

Anything that takes money away from the Class I, and thereby makes our business less competitive and shifts that money to us, is not in the long run good. That might surprise you, but unless our joint product with the Class I succeeds competitively, we're going to fail. So we don't want artificially to take money from the Class Is and transfer [the money] to the short lines or the shippers, because it will make the product less competitive and that is not good.

It is unrealistic to suggest that if "requirements" provisions (paper barriers) in line acquisition or line lease agreements are eliminated, the value of resulting lost business to the divesting carrier can simply be structured into a front end premium on the sales or lease price for the line. Many class II and class III railroad companies are viable solely because of their lower cost structures. Often they are marginally capitalized or worse, and in only a few instances have ready access to Wall Street capital markets. Even in the unlikely event that the divesting class I railroads opt to sell or lease light density lines without the assurance of paper barriers, front loading additional costs to replace their value will necessarily eliminate the ability of many smaller railroad operators to finance the acquisition of the lines at all. ASLRRRA asserts that in that environment, deals will not get done, and abandonments of otherwise-viable parts of the national rail infrastructure will again be lost to abandonment.

ASLRRRA believes that the private sector can work best work through issues presented by paper barriers to achieve a commercial balance that maximizes the utilization of the light density components of the national rail infrastructure and that the

experience of the last five years under the Railroad Industry Agreement supports that conclusion. ASLRRA urges the STB to use its existing oversight powers to monitor that balance and to refrain from additional rulemaking.

Respectfully Submitted,

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