

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB EX PARTE NO. 575

**REVIEW OF RAIL ACCESS AND COMPETITION ISSUES – RENEWED PETITION
OF THE WESTERN COAL TRAFFIC LEAGUE**

COMMENTS OF THE ASSOCIATION OF AMERICAN RAILROADS

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Dated: March 8, 2006

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I. INTRODUCTION

The Association of American Railroads (“AAR”) hereby submits these comments in response to the Surface Transportation Board’s (“STB”) request, served February 1, 2006, seeking comments on the renewed petition (“renewed petition”) of the Western Coal Traffic League (“WCTL”) for a rulemaking to address agreements to sell or lease a rail line that restrict the ability of the purchaser or tenant to interchange traffic with competitors of the seller or landlord railroad. The AAR’s members include all of the Class I railroads, as well as certain smaller railroads, which have entered into line sale or lease transactions which include such terms.

By decision served March 2, 1999, (“Decision”) in this proceeding, the Board refused to grant a prior petition of the WCTL to establish rules which would essentially disfavor the use of such so-called “paper barriers”¹. Six months earlier, on September 10, 1998, the AAR and the American Short Line and Regional Railroad Association (“ASLRRA”) entered into a Rail

¹ As explained in the text at pages 6-7, the term “paper barrier” evokes misconceptions about what is essentially an “interchange commitment” between rail carriers facilitating continued rail service. However, for ease of reference, the term “paper barrier” will be used in these comments.

Industry Agreement (“RIA”) which set forth guidelines for areas of cooperation between large and smaller railroads. With respect to the terms governing “paper barriers,” the subscribing large and smaller railroads “...agree[d] to work cooperatively to increase rail freight business.” (RIA, p. 4) Not wishing to chill the progress of a private sector agreement on the issue and not willing to take precipitous regulatory action without a record before it of the need for such action, the Board decided to hold WCTL’s request for a rulemaking in abeyance and “...revisit the matter later based on experience under the RIA.” (Decision, p. 3)

On March 21, 2005, WCTL filed its renewed petition alleging, in part, that “...after six years of experience under the RIA, the problems that precipitated the filing of WCTL’s 1998 Petition have persisted and grown...” (renewed petition, p. 14) The AAR replied to WCTL’s petition on May 2, 2005, showing that the initiation of a rulemaking proceeding is unnecessary because there were no identified problems to be addressed; there has been no change in the Board’s regulatory policy that would warrant a change in the treatment of “paper barriers”; and any appropriate shipper concerns have been addressed through the RIA.

As set forth in the AAR’s reply and as reflected in the comments below, there are still no facts or circumstances which would warrant a change from the Board’s decision in 1999 that a rulemaking proceeding to address “paper barriers” is unwarranted. Moreover, the railroads’ experience with “paper barriers” since 1999 still shows that there is also no need for the Board to continue to hold WCTL’s request for a rulemaking in abeyance. Accordingly, WCTL’s renewed petition should now be denied.

II. BACKGROUND

Since the passage of the Staggers Act in 1980, Class I railroads have reduced their operating network by over 65,000 route miles, paring down to a national system of approximately 100,000 route miles. Many of the route miles that the Class I carriers no longer retained were sold or leased to literally hundreds of new short line or regional railroad operators whose lower costs and closer ties to their customers and communities have enabled them to operate at a profit in circumstances where Class I railroads could not. These new carriers have preserved railroad jobs and rail service – often in rural areas – that otherwise would have been lost.

At the time of some transactions creating the new short lines, the parties involved negotiated a lower sales price or lease rate in exchange for an agreement by the new railroad to interchange future traffic solely or predominantly with the selling/leasing Class I railroad. These “paper barriers” were part of the consideration for the sale or lease of the line in the first instance and often were the only economic basis upon which a short line railroad operator could afford to take over the line. In other words, the “paper barriers” were part of the economic deal the parties struck that preserved rail service on the line instead of the line being abandoned. They allowed the new operator to pay less cash consideration to acquire the line and avoid carrying heavy debt burdens that would ultimately have to be paid by the shippers. Thus, notwithstanding the negative connotation associated with the term “paper barrier,” those “interchange commitments” had the positive effect of facilitating the preservation of otherwise threatened rail service.²

² As discussed in the separate comments of the Rail Industry Working Group (“RIWG”), the RIA has also been amended to address issues that have arisen during its implementation.

Pursuant to the Board's urging in an April 16, 1998 decision in this proceeding that the large and smaller railroads resolve inter-carrier differences – including those involving "paper barriers" – through private sector solutions, the AAR and ASLRRRA negotiated the RIA. In the RIA, for ease of reference, the term "paper barrier" was used in lieu of "interchange commitments." In that context, "paper barriers" were defined in the RIA as "[c]ontractual obligations incurred when Short Line carriers acquired lines from larger, connecting carriers." (RIA, p. 1) Excerpts from the RIA setting forth the principles by which the large and smaller railroads were to conduct their relationships regarding "paper barriers" are attached as Appendix A. Recognizing that "paper barriers" are "...designed as fair payment for the sale or rental value of the line that created the Short Line..." the Class I and short line subscribers to the RIA nonetheless agreed that "[s]uch barriers should not restrict the Short Line's ability to develop New Traffic with another carrier if the selling or leasing Large Railroad cannot or will not participate in the New Traffic." (RIA, p. 3) Thus, if potential new traffic were to be otherwise lost to the rail network, the "paper barrier" could be waived in order to realize the goal of "...improv[ing] shipper rail service while strengthening the rail industry." (RIA, p. 4)

III. WCTL RENEWED PETITION

To the extent that the Board is requesting comments in response to WCTL's renewed petition, the AAR will first respond to the allegations of WCTL prior to addressing the Board's inquiries in its February 1, 2006 Notice. As noted in the AAR's reply to the renewed petition filed May 2, 2005, and as detailed below, rail industry experience since 1999 shows that the RIA has facilitated and provided an effective process for addressing Class I and short line railroad

“paper barrier” issues. Moreover, WCTL had presented no new facts or circumstances in its renewed petition which would warrant the institution of a rulemaking proceeding on those issues at this or any other time. Thus, it was, and remains, the AAR’s position that WCTL’s request should be denied.³

A. Experience Under the RIA Indicates That a Rulemaking Proceeding on “Paper Barriers” is Unnecessary.

As noted above, the Board held WCTL’s initial petition for a rulemaking in abeyance and said it would “...revisit the matter later based on experience under the RIA.” (Decision, p. 3) In its renewed petition, WCTL states that “...after six years of experience under the RIA, the problems that precipitated the filing of WCTL’s 1998 Petition have persisted and grown...” (renewed petition, p. 14), but notably absent is any specificity as to what those problems may be. WCTL only repeated, with some elaboration, the same arguments it made in its initial petition in 1999 that shippers should be entitled to intramodal rail competition after a line sale/lease transaction between a Class I and short line railroad (although such intramodal competition did not exist before the transaction), and the Board’s failure to grant shippers that additional rail access is “anticompetitive.”

Unfortunately, it seems that allegations that “paper barriers” are anticompetitive may stem partly from the term “paper barrier” itself. That term fosters a misplaced negative impression suggesting some sort of rigid and unyielding restriction. The RIA has clarified that “paper barriers” will not, in fact, impose absolute restrictions on interchange. Under the RIA, Class I and short line railroads “...agree to work cooperatively to increase rail freight business”

³ Since the AAR believes that the initiation of a rulemaking proceeding would be inappropriate and counterproductive, it will not address in these comments the specific elements of the rules proposed by WCTL. (If the Board were to initiate such a rulemaking proceeding, the AAR will address the merits of any proposed rules in that proceeding.)

(RIA, p. 4); and the RIA requires that “paper barriers” be waived in order to ensure that new traffic is not lost to the rail network. The goal remains to “...improve shipper rail service while strengthening the rail industry.” (RIA, p. 4)

Also, the RIA contains a provision acknowledging that “paper barrier” terms in a line sale or lease agreement could be voluntarily renegotiated at any time; and the paper barriers could be waived if the acquiring short line railroad was willing to pay the “additional compensation” due to the selling/leasing Class I carrier reflecting the economic and marketing assumptions upon which the “paper barrier” provision was based. (RIA, p. 4) Therefore, in instances where “paper barriers” were agreed upon and where they remain in effect, it is because they are the only way the sale/lease transaction is feasible.⁴

Moreover, and very importantly, the experience of the rail industry shows that if a rulemaking proceeding as WCTL requests were instituted discouraging “paper barriers,” it would effectively foreclose many future line sales/leases. Interested parties would no longer be able to voluntarily use a legitimate tool that has helped preserve rail service all over the country. It would become more difficult to keep marginal rail lines in operation, since buyers’/lessees’ up-front costs would increase. Thus, an increasing portion of the rail network would likely be lost rather than transferred to short line carriers for continued operation and that would not serve the public interest. This may be of little concern to WCTL, with its single focus on coal shipments, but it does have an impact on the many and diverse shippers on light density lines throughout the country.

⁴ There are circumstances where a Class I and short line railroad have negotiated removal of an “interchange commitment.” (See comments of Mr. Charles Marshall at page 12 below.)

B. There Has Been No Change in the Board's Regulatory Policy That Would Warrant a Change in the Treatment of "Paper Barriers."

WCTL asserted that there have been "significant" Board policy changes regarding rail competition since the Board's 1999 decision holding WCTL's initial petition in abeyance. (renewed petition, p. 12) But the two Board proceedings WCTL cited do not support that assertion.

It argued that the Board's rules involving Class I railroad mergers, adopted in Ex Parte No. 582 (Sub-No. 1), *Major Rail Consolidation Procedures*, (Decision served June 11, 2001) which require that the merging carriers offer conditions that would enhance, rather than only maintain, competition reflect a Board policy favoring intramodal competition which should be extended to "paper barrier" transactions. However, the Board's requirements cited by WCTL apply only to mergers of large Class I railroads. The Board based those additional requirements on its conclusions that a merger of two large railroads could have a negative long-term and transitional network effect on competition and explained its additional requirements as follows:

"The Board anticipates that mergers of Class I carriers would likely create some anticompetitive effects that would be difficult to mitigate through appropriate conditions, and that transitional service disruptions might temporarily negate any shipper benefits. To offset such potential harms and improve the prospect that their proposal would be found to be in the public interest, applicants should propose conditions that would not simply preserve but also enhance competition." (Decision, at 73)

The Board's decision in Ex Parte No. 582 (Sub-No. 1) regarding enhanced competition was clearly limited to specific Board concerns arising from the possible effects of mergers between large Class I railroads.⁵ This "policy" was not extended to any other type of rail transaction or situation subject to Board jurisdiction. Thus, WCTL's assertion that the Board's

⁵ In fact, the Board did not impose the same "enhancing competition" requirements on comparable transactions between a Class I railroad and a smaller railroad, such as the lease transaction subject to review in FD No. 34495, *Buckingham Branch Railroad Company—Lease—CSX Transportation, Inc.* (Decision served November 5, 2004) cited by WCTL in support of its Petition and discussed in the text at page 9.

action in Ex Parte No. 582 (Sub-No. 1) somehow reflects a “significant” policy departure that has application to “paper barriers” is both overreaching and misplaced.

The *Buckingham Branch Railroad Company* case cited by WCTL likewise does not represent any Board policy change regarding rail competition. In the *Buckingham* case, the Board *approved* a lease transaction, with a “paper barrier,” between a Class I railroad and a short line. The “paper barrier” was not raised as an issue on the record of the proceeding and was not briefed by the parties. The proposed lease transaction, with the “paper barrier,” was supported by 14 shippers as well as four public entities. No shipper or public entity opposed the arrangement. The “paper barrier” was only raised in a question during oral argument. In its decision, the Board held that “...there is no claim that competition would be reduced or a monopoly created.” and that the lessee short line railroad “...would simply replace CSXT...” with respect to moving traffic subject to the “paper barrier.” Rather than using any enhanced competition test, the Board noted that it was governed in the proceeding by statutory criteria requiring that the Board must approve the transaction unless “...there is likely to be a substantial lessening of competition...” (Decision, p. 6-7)

C. Shipper Concerns Have Been Properly Addressed Through the RIA Process.

In its Petition, WCTL complained that shippers were excluded from the deliberations regarding the RIA, as well as from its ongoing interpretation and implementation. However, the RIA was an inter-carrier agreement covering a wide range of rail carrier relationships, besides “paper barriers.” Accordingly, it was proper for the discussions to be limited to the railroad parties. Nonetheless, shippers’ interests are not ignored in RIA related deliberations. As previously noted, a goal of the RIA is to “...improve shipper rail service...” and the RIA

provides that rail carriers "...agree to work cooperatively to increase rail freight business." (RIA, p. 4) If the railroads are to achieve those objectives, they have to offer shippers commercially attractive packages; and because of their local relationship with shippers on the line, short line railroads play an especially critical role in representing shippers' views in commercial negotiations. In fact, under the RIA, short line requests for "paper barrier" waivers are made because of the desire to provide shippers with the benefit of rail service.

With respect to rail service offered under the provisions of the RIA, shippers retain all of the regulatory protections that they had prior to a transaction creating a "paper barrier." There is the same regulatory oversight by the Board of the reasonableness of the rail rates and the rail practices provided by the carriers for shippers on lines subject to "paper barriers" as for all other shippers. They have no less recourse to the Board because they are on a line with a "paper barrier."

Therefore, WCTL is not seeking regulatory protection for shippers that is lost due to a "paper barrier". Instead, WCTL is seeking the creation, by regulatory fiat, of artificial intramodal rail competition. There is no policy or factual justification for such regulatory intervention displacing the economic terms of successful deals negotiated by private sector parties and creating such artificial intramodal rail competition.

IV. BOARD INQUIRIES

In its Notice the Board has asked for additional comments on the renewed petition of the WCTL and has specifically expressed interest in obtaining information on six subjects. The AAR's responses are as follows.

A. There is No Basis for the Board to Take Any Action Which Would Have a Retroactive Effect on the Terms of Contracts With “Paper Barriers.”

The Board’s statutory authority to approve line sale/lease transactions is pursuant to 49 U.S.C. §§ 10901, 10902 or 11323.⁶ Such transactions, including those with “paper barriers,” are approved by the Board unless they are found to be inconsistent with the public interest. As discussed below at page 14, transactions with “paper barriers” have resulted in win-win-win benefits for the railroads, the shippers and the public. Shippers not only retain continued rail service but the public receives economic, environmental and other benefits from the maintenance of rail operations on the subject lines. These benefits are clearly in the public interest.

Moreover, the RIA provides a private sector process to ensure that those rail shipper and public benefits are protected in transactions with “paper barriers.” Under the RIA, Class I and short line railroads must work cooperatively to increase rail freight business and the RIA requires that “paper barriers” are to be waived in order to ensure that new traffic is not lost to the rail network. (RIA, p. 4) In addition, with respect to the term of a “paper barrier,” the RIA contemplates that “paper barrier” terms in a line sale/lease transaction may be waived if the acquiring short line railroad is willing to pay the additional compensation reflecting the economic and marketing consideration for the commitment. Thus, “paper barriers” do not necessarily have perpetual terms but can be renegotiated and/or “bought out” at any time if the parties agree. In fact, Mr. Charles Marshall, of Genesee Wyoming, Inc., in testimony before the Board on October 19, 2005, in Ex Parte No. 658 – The 25th Anniversary of the Staggers Rail Act of 1980: A Review and Look Ahead, noted those circumstances as follows: “...we have seen

⁶Certain transactions have been consummated pursuant to exemptions from these statutory requirements by the Board under 49 U.S.C. § 10502.

railroads buy out paper barriers,...and we have negotiated our way out of paper barriers on some of our railroads that Class I's aren't interested in handling." (Transcript, p. 354)

Also, if "paper barriers" are discouraged, it would have the effect of foreclosing many future line sales/leases. To the extent that transactions with "paper barriers" are beneficial to the public, regulatory intervention that would adversely affect such arrangements would be counterproductive and not consistent with the public interest. Mr. Marshall in his testimony expressed this concern as follows:

"But the issue about should we put some sort of sunset on paper barriers will have a chilling effect on the willingness of Class Is to create short lines, and if there are not to be more short lines for merchandise handling lines, I think that that business, which today is less competitive than the unit trains, will be in danger. I think it is in the public interest to have as much of the retail railroading in this country in the hands of short lines as possible, and to monkey with paper barriers is to jeopardize that short line growth in my view." (Transcript, p. 354-5)

Finally, while it focuses its comments on whether any action by the Board is appropriate here, the AAR would point out that it is uncertain, absent an express reservation of authority in its approval orders, whether the Board can reopen a consummated line sale or lease transaction and modify a material term of the underlying arms-length agreement. Indeed, the Board itself has consistently recognized that retroactively adjusting the terms of consummated transactions can undermine broader notions of commercial certainty and fairness; and it has indicated that, in considering requests for post-transaction relief, it is guided by concerns that it not impose remedies which are disproportionate and inconsistent with those notions.⁷

In short, the private sector self-polices, through the RIA, transactions with "paper barriers" to ensure that rail service options are retained; short line railroads have the flexibility to exit such "paper barriers" upon mutually acceptable terms which reflect the economics of the

⁷ See e.g., Union Pacific/Southern Pacific Merger (Houston/Gulf Coast Oversight), 3 S.T.B. 1030, 1032-3)

transaction; and a significant adverse effect on notions of commercial certainty and fairness and the public interest would come from regulatory action discouraging “paper barriers” in line sale/lease transactions. Accordingly, no public interest considerations provide a basis, statutory or otherwise, for the Board to take any action with respect to retroactive adjustments to previously approved transactions with “paper barriers.”

B. “Paper Barriers” Vary By Transaction.

“Paper barriers” are contractual terms in line sale/lease transactions; and are part of the economics of the transaction. Thus, the form and nature of such “paper barriers” may vary depending upon the type of transaction, the commodities covered, the geographic area involved, the parties to the transaction and myriad other factors. Since 1980 there have been literally hundreds of short line sales/lease transactions which, again, have benefited the railroads, the shippers and the public. Most short line transaction arrangements are covered by confidentiality agreements, and the AAR’s members are reluctant to discuss their terms with other railroads in the context of industry comments. The arrangements are negotiated one deal at a time, and no industry-wide general statement can be made. Furthermore, the AAR’s members strongly prefer not to disclose their arrangements or negotiating positions to potential buyers or in a public forum which includes competitors. The Board has in its possession many of these commitments in confidential filings that have been made over the years in the actual proceedings under protective orders, and may review those confidential contractual “paper barriers.”

C. “Paper Barriers” Do Not Place Shippers at a Disadvantage.

To the extent that the Board seeks information on problems experienced by shippers as a result of “paper barriers,” that line of inquiry implicitly presumes that a shipper’s commercial choices with respect to rail transport are impacted by a transaction with a “paper barrier.” However, “paper barriers” do not result in any reduction in the competitive options for rail transportation that a shipper had before the transaction. The shipper on the affected line retains access to the same Class I carrier both before and after a “paper barrier” transaction. The only difference is that access before the transaction is direct and after the transaction, it is through the Class I railroad’s short line connection.

The “problems” that have been asserted by WCTL in this proceeding are not the loss of any rail options due to a “paper barrier.” Instead, WCTL’s “problem” is the absence of its much sought after intramodal competitive alternatives even though such intramodal competition was not present prior to the transaction with the “paper barrier.” WCTL would have the regulator inject competition where the market had previously determined competition was unsustainable. The criticisms of the “paper barriers” by WCTL are nothing more than attempts to seek the arbitrary creation, through regulatory intervention, of artificial intramodal competition.

D. Contractual “Paper Barriers” Have Benefited Railroads, Shippers, and the Public.

Since 1980, literally hundreds of new short line or regional railroad operators acquired lines from Class I railroads and preserved railroad jobs and rail service that otherwise would have been lost. Many of these acquisitions included “paper barrier” terms that were part of the consideration for the transaction and often were the only economic basis upon which the transaction could occur.

As a result, these “paper barrier” arrangements reflect a private sector success story that offers a “win-win-win” result for large and small railroads, shippers, and the public. Large railroads are afforded the opportunity to divest themselves of unprofitable and burdensome rail operations while retaining the long-haul revenues from the traffic involved. Short line railroads are afforded the opportunity to acquire and operate a rail line where they otherwise would not have the financial capability to do so. Shippers are afforded continued, and usually enhanced, rail service where that service was otherwise in danger of elimination. The public is afforded the economic, environmental and other public benefits that derive from the retention of portions of the national rail network.

E. The RIA Has Been an Effective Instrument in Addressing “Paper Barrier” Issues.

As discussed in the separate comments filed by the RIWG⁸, experience over the past seven years shows that the implementation and application of the RIA with its “paper barrier” provisions have been effective in fostering stronger Class I/short line railroad relationships to the benefit of both the rail network and rail shippers.

The RIA is intended to be self-executing with respect to “paper barriers.” If a short line railroad identifies new traffic which its Class I connection is unable or unwilling to handle and that traffic would otherwise be lost to motor carrier competition but for a “paper barrier,” the short line railroad is expected to request and the Class I carrier is expected to grant a waiver of the “paper barrier.” As discussed in the RIWG’s comments, that activity should be handled in the normal course of connecting carrier business relationships and never become a separately identifiable issue. However, the RIWG encouraged the submission of more formal waiver

⁸ As explained in its reply to the Petition, the RIWG is a committee of Class I and smaller railroad representatives formed to, in part, maintain and facilitate Class I/smaller railroad communications and to monitor RIA activities, including those involving “paper barriers.”

requests to assess the scope of “paper barrier” concern. Based upon information provided by the RIWG, there have been only approximately 75 RIA waiver requests since 2002 (not all of which even involved “paper barriers”); and, in most instances (i.e., approximately 60) the requests were granted. The remainder were either deemed to be not subject to the RIA or were handled in some other manner.

In the event of an unresolved interchange commitment issue between a Class I and short line railroad, there are processes to provide guidance and facilitate resolution. The smaller railroad representatives on the RIWG are available to informally assist the short line in understanding its rights and obligations under the RIA and, subject to confidentiality considerations, by bringing the issue to the attention of the RIWG. For example, the recent Amendment to the RIA described in the RIWG’s reply to the Petition was drafted in response to questions presented to the RIWG as to how the term “new traffic” should be interpreted.

The AAR and ASLRRRA also have an informal, confidential and non-binding dispute mediation process to assist in resolving outstanding issues between parties in specific cases; and, under the terms of the RIA, “paper barrier” disputes may be submitted to the Board for arbitration. However, since 2000, there have been only three requests for informal AAR/ASLRRRA mediation; and there has been only one request to the Board for arbitration.⁹

While a dispute between a Class I railroad and a short line railroad may arise from time to time over the application or interpretation of a specific “paper barrier,” rail industry experience in the aftermath of the RIA indicates that “paper barriers” in general are no longer contentious railroad issues.

⁹ The request for arbitration was subsequently withdrawn and the Board dismissed the proceeding with prejudice in STB Docket No. 42076, *Albany & Eastern Railroad Company v. The Burlington Northern and Santa Fe Railroad Company* (Decision served January 9, 2004).

F. RIA Information.

The background and purpose of the RIA has been briefly described above and is more fully described in the comments of the RIWG. In response to the Board's request, attached hereto as Appendix B is a copy of the RIA and the amendment thereto.

V. CONCLUSION

For the reasons set forth above, the AAR believes that a rulemaking proceeding regarding “paper barriers” is both unnecessary and counterproductive. Accordingly, the AAR requests that the Board deny WCTL’s Petition.

Respectfully submitted,

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RIA EXCERPTS REGARDING PAPER BARRIERS

Paper Barriers

Only legitimate “paper barriers” should be enforceable. Paper barriers are restrictions on interchange imposed by contract at the time of the creation of the Short Line. Legitimate paper barriers are those that are designed as fair payment for the sale or rental value of the line that created the Short Line. Such barriers should not restrict the Short Line’s ability to develop New Traffic with another carrier if the selling or leasing Large Railroad cannot or will not participate in the New Traffic. Excessive per car charges or other penalties imposed if a car is interchanged to another Large Railroad (other than legitimate paper barriers) are unreasonable and should not be permitted. (RIA, p. 3)

Paper Barriers and New Routes (applies to participating Class I and III Railroads)

- a) **General Premise:** If the requested Access or routing helps the connecting Short Line and does not harm the Large Railroad, then the request should be approved as it will improve shipper rail service while strengthening the rail industry.
- b) **Paper Barriers and New Routes:** The Large and Short Line Railroads agree to work cooperatively to increase rail freight business. Joint initiatives designed to increase Short Line freight business under certain circumstances include, but are not limited to, waiver of contractual interchange restrictions and Large Railroad haulage of Short Line traffic.

In other cases, Large and Short Line Railroads may voluntarily agree at any time to renegotiate the terms of sale agreements including, but not limited to, terms relating to limitations on interchange (legitimate paper barriers). The renegotiations of limitations on interchange shall include consideration of additional compensation due to the Large carrier reflecting changes to the economic and market assumptions made by the Large and Short Line carriers at the time of original sale based upon the limitations on interchange at the time of such sale as well as all other relevant factors. (RIA, p. 4)

RAILROAD INDUSTRY AGREEMENT

I. BACKGROUND

On April 2 and 3, 1998, the Surface Transportation Board ("STB") conducted two days of informational hearings to examine issues of rail access and competition in today's railroad industry.

In Ex Parte No. 575, the STB described the areas of concern expressed by the Short Line Railroads:

"Paper Barriers"--Contractual obligations incurred when Short Line carriers acquired lines from larger, connecting carriers;

Inadequate car supply; and

Lack of alternative routings.

The STB noted that private-sector negotiations were already underway and urged the parties to resolve these issues expeditiously.

In order to promote a stronger rail industry, this Railroad Industry Agreement ("Agreement") is entered into by the Association of American Railroads ("AAR") on behalf of participating Large Railroads (Class I carriers as defined by the regulations of the STB who subscribe to this Agreement) and by the American Short Line and Regional Railroad Association ("ASLRRA") on behalf of participating Small Railroads (Class II and III rail carriers as defined by the regulations of the STB who subscribe to this Agreement).

II. DEFINITIONS AND OTHER NOTES

For purposes of this Agreement and accompanying attachments, the following apply:

"Access" means interchange, intermediate switching, or haulage (or trackage rights at grantor's option);

No new Access to industries, shippers or receivers not now served is granted or created; all Access is Railroad to Railroad;

Carrier providing interchange, switching, haulage, trackage rights, or other service will be entitled to fair compensation for use of its facilities and/or services;

"New Traffic" means traffic that (1) is not now moving by rail (except for reasons of seasonality or unusual disruptions of shipping patterns outside the control of the Large Railroad, such as plant shutdowns) and (2) does not unreasonably negatively impact the Large Railroad.

"Congestion Problem" means that Access to or through a terminal, or to or via a track segment, need not be granted because incremental traffic caused by the New Traffic cannot be handled without causing unreasonable interference with the owner's operations. If the interference can be reasonably remedied by additional facilities and/or services, the carrier seeking Access is entitled to such facilities and/or services, provided it pays fair compensation;

"Short Line" ("SL") is a Class III railroad;

"Small Railroad" ("SRR") is a Class II or III railroad;

"Large Railroad" ("LRR") is a Class I railroad;

"Non-Short Line" ("Non-SL") is a Class I or II railroad.

"Railroad" ("RR") is a Class I, II or III railroad.

III. PRINCIPLES OF RELATIONSHIP

The parties agree that this Agreement shall be guided by the following public policy principles:

General

Laws and regulations must be consistent with the fundamentals of rail economics.

That was the genius of Staggers reforms such as permitting differential pricing, authorizing contracts and allowing most rates to be set by the market led to a rail renaissance.

Private sector solutions are best. Railroads and shippers are better served with market based solutions. Parties should turn to government only when the market cannot operate effectively and then only when private negotiations fail.

U.S. freight railroads are the most efficient in the world and wholesale changes in how they are regulated should not be made in the absence of compelling evidence of significant problems. American railroads form the world's most efficient rail system and contribute to the international growth and competitiveness of U.S. industry. It is not sound public policy to mandate major changes unless there are serious problems and proven alternatives.

Large and Small Railroads are integral to the provision of rail service in the U.S. The business common to each is a collective effort for the benefit of both Large and Small Railroads and the railroad shipping public, made possible by the unique contributions of each.

Small Railroads deserve fair and workable solutions. When a Small Railroad has a legitimate grievance, the available remedy should be as fair, quick and inexpensive as possible, particularly for minor disputes. Arbitration should be available to settle most matters.

Paper Barriers

Only legitimate "paper barriers" should be enforceable. Paper barriers are restrictions on interchange imposed by contract at the time of the creation of the Short Line. Legitimate paper barriers are those that are designed as fair payment for the sale or rental value of the line that created the Short Line. Such barriers should not restrict the Short Line's ability to develop New Traffic with another carrier if the selling or leasing Large Railroad can not or will not participate in the New Traffic. Excessive per car charges or other penalties imposed if a car is interchanged to another Large Railroad (other than legitimate paper barriers) are unreasonable and should not be permitted.

Routing Alternatives and Access

Rail networks should be operated to maximize the efficiency of the network for ALL its users. A law or regulation that requires a Railroad to put the needs of the few ahead of the overall needs of the network is not sound public policy. Both Large and Small Railroads are dependent on interchanges and manifest train schedules.

A Large Railroad seller/lessor should not be able to block a Short Line's reasonable attempts to gain New Traffic that the Large Railroad cannot handle or for which it cannot offer a competitive package. The Short Line's attempt to gain New Traffic is not reasonable, however, if (1) the incremental traffic caused by the new business cannot be handled without causing unreasonable interference with the Large Railroad's operations; or (2) the Large Railroad is not adequately compensated for use of its tracks, yards and other facilities necessary to accommodate the traffic between the Short Line and another Railroad; or (3) the traffic of the Large Railroad is negatively impacted by such action.

Rail revenues, service and routing choices are intertwined. Railroads are networks that require huge amounts of capital investment in order to function most efficiently. A law or regulation that reduces a Railroad's ability to invest in infrastructure is not sound public policy.

Car Supply

Car supply is a problem of mutual concern to Small and Large Railroads. The answer should not lie in government regulation, but in private industry negotiation.

IV. PRINCIPLES OF AGREEMENT

1. Car Supply Policy (applies to all participating Class I, II and III Railroads)

A joint committee of senior representatives of Large and Small Railroads will meet to explore opportunities where they can work together to meet customers' car supply needs for existing and new business. In general, this committee will examine a long list of potential cooperative policies and innovative programs that will enhance car supply within the bounds of sound business principles and appropriate return on investment. A detailed protocol for car supply is attached as Exhibit A.

2. Cooperative Service Actions (applies to all participating Class I, II and III Railroads)

Large and Small Railroads agree to develop and implement Interchange Service Agreements ("ISA's") with each other to include standards for service and measurements to be used to manage improvement. Regular meetings between Large and Small Railroad corporate and operating personnel will be scheduled to resolve issues and improve service to customers. A more detailed protocol governing service is attached as Exhibit B.

3. Paper Barriers and New Routes (applies to participating Class I and III Railroads)

a) **General Premise:** *If the requested Access or routing helps the connecting Short Line and does not harm the Large Railroad, then the request should be approved as it will improve shipper rail service while strengthening the rail industry.*

b) **Paper Barriers and New Routes:** The Large and Short Line Railroads agree to work cooperatively to increase rail freight business. Joint initiatives designed to increase Short Line freight business under certain circumstances include, but are not limited to, waiver of contractual interchange restrictions and Large Railroad haulage of Short Line traffic. See Exhibit C (Examples 1-7).

In other cases, Large and Short Line Railroads may voluntarily agree at any time to renegotiate the terms of sale agreements including, but not limited to, terms relating to limitations on interchange (legitimate paper barriers). The renegotiations of limitations on interchange shall include consideration of additional compensation due to the Large carrier reflecting changes to the economic and market assumptions made by the Large and Short Line carriers at the time of original sale based upon the limitations on interchange at the time of such sale as well as all other relevant factors.

4. Switching, Heavy Axle Loads, and Certain Rate Policies (applies to all participating Class I, II and III Railroads)

a) Switch Charges:

i) **General Premise:** *The Large and Small Railroads agree that, subject to (iii) and (iv) below, existing (or future) intermediate and reciprocal switching charges*

between Large and Small carriers shall be comparable to existing (or future) charges between Large Railroads in similar circumstances and conditions.

ii) Any intermediate (switching between carriers) or reciprocal (switching between customer and carrier) switch charges existing between Large and Small Railroads on or after the effective date of this agreement shall be comparable to existing charges between Large Railroads in similar circumstances and conditions. See Exhibit D (Examples 8 – 12).

iii) This provision will not grant reciprocal switch Access for any carrier to any industry for which Access is not otherwise provided.

iv) This provision shall not apply with respect to any switch charges that are the subject of any administrative or judicial proceeding as of the date of this Agreement.

b) **Heavy Axle Loads:** With the growth of heavy axle load rolling stock (286,000 lbs. or greater), the Large Railroads agree to proportionately increase the Small Railroad share of the increase, if any, in overall revenue for handling heavy axle loads to reflect tonnage in situations where traffic is priced on a per-car basis for the Small Railroad.**

c) Certain Rates Policies:

i) **General Premise:** *The Large and Small Railroads commit to provide market-based competitive pricing for their customers, regardless of whether located on a Class I or connecting Small Railroad, that is non-discriminatory under similar circumstances and conditions.*

ii) Recognizing that the establishment of rate and service levels are matters of individual rather than collective consideration, assessment of market conditions upon which joint line price levels are based will reflect consideration of capital and/or operating savings for the Large Railroads resulting from services provided by the Small Railroads in the route. See Exhibit E for the sole application of this subsection(c).

V. APPLICATION

All sections of this Agreement apply to Large Railroads (Class I) and Short Line Railroads (Class III) that indicate their participation by individual subscription to this Agreement. All sections of this Agreement except Section (IV)(3)—“Paper Barriers and New Routes” apply to Class II Railroads that indicate their participation by individual

** Subsection IV(4)(b), Heavy Axle Loads, shall not apply to Montana Rail Link, Inc.; provided that this carve-out is without prejudice to the rights of Burlington Northern Santa Fe or Montana Rail Link, Inc. under their existing agreement.

subscription to this Agreement. All items provided for in this Agreement shall be binding upon all participating Railroads. Any relief available to any party under this Agreement shall be prospective only. To the extent that relief is granted by an arbitrator pursuant to the terms of this Agreement, such relief shall be limited solely to the period commencing on or, at the arbitrator's discretion, after the date that the subject arbitration proceeding was initiated.

VI. ARBITRATION

The participating Large and Small Railroads agree that if they have a dispute arising under Sections (IV)(3)—“Paper Barriers and New Routes” or Section (IV)(4) —“Switching, Heavy Axle Loads, and Certain Rate Policies” of this Agreement that cannot be resolved through discussion and negotiation between the parties involved, the parties will submit any unresolved issues to arbitration under the auspices of the STB (Ex Parte No. 560). Such arbitration will be based on the policies and principles of those sections of this Agreement, and to the extent applicable, the associated examples and exhibits, and will be binding on the parties.

VII. SENIOR POLICY COMMITTEE

A joint “Senior Policy Committee” shall be created to provide oversight, review, and, if applicable, non-binding recommendations on all matters relating to the relationship between Large Railroads and Small Railroads created by this Agreement and on all policy aspects and issues relating to the application and effects of this Agreement. This Senior Policy Committee shall be comprised of six members consisting of the Chief Executive Officers of the AAR, the ASLRRRA, two Large Railroads (to be designated by the Large Railroads) and two Small Railroads (to be designated by the Small Railroads). It shall meet semi-annually and, in addition, at any time upon the request of any member of the Committee or upon notification from a participant of its intent to withdraw from this Agreement. The Senior Policy Committee shall not have authority to set rates or charges or reach any agreement respecting rate-related matters.

VIII. AMENDMENT AND TERM

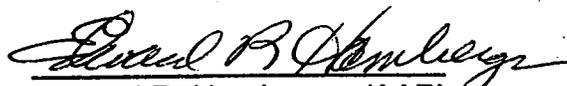
(a) The parties to this Agreement recognize that changes may occur which require modification of the terms of the Agreement. In the event of such changes, the parties agree that they will negotiate in good faith to modify appropriately the Agreement.

(b) The initial term of this Agreement shall be for a period of five years from the date hereof. The provisions of Section IV(4), including Exhibits D and E, shall not become effective until the Board has entered an order approving those provisions pursuant to 49 U.S.C. § 10706. After the initial term, this Agreement shall remain in effect for additional

successive one-year terms; provided, however, that during any such additional term, any party to this Agreement may withdraw from participation in this Agreement, only if such party has first (i) presented the reason(s) for such withdrawal to the Senior Policy Committee and (ii) provided 90 days written notice to the AAR and the ASLRRRA.

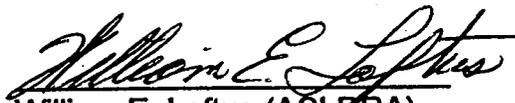
The parties agree to the policies, principles and procedures stated herein and to advise the Surface Transportation Board of this Railroad Industry Agreement. Individual Large and Small Railroads will indicate their acceptance of this Agreement by executing a separate document indicating their agreement to subscribe to and be bound by the terms and conditions of this Agreement.

For the Large Railroads:


Edward R. Hamberger (AAR)

Date: 9/10/98

For the Small Railroads:


William E. Loftus (ASLRRRA)

Date: 9/10/98

LIST OF EXHIBITS

- Exhibit A: *Car Supply Protocol* (applies to all participating Class I, II, and III Railroads)
- Exhibit B: *Service Policy Protocol* (applies to all participating Class I, II and III Railroads)
- Exhibit C: *Guidelines for Paper Barriers and New Routes* (applies to all participating Class I and III Railroads)
- Exhibit D: *Guidelines for Intermediate and Reciprocal Switching* (applies to all participating Class I, II and III Railroads)
- Exhibit E: *Guidelines for Certain Rate Policies* (applies to all participating Class I, II and III Railroads)

DEFINITIONS AND OTHER NOTES

"Access" means interchange, intermediate switching, or haulage (or trackage rights at grantor's option);

No new Access to industries, shippers or receivers not now served is granted or created; all Access is Railroad to Railroad;

Carrier providing interchange, switching, haulage, trackage rights, or other service will be entitled to fair compensation for use of its facilities and/or services;

"New Traffic" means traffic that (1) is not now moving by rail (except for reasons of seasonality or unusual disruptions of shipping patterns outside the control of the Large Railroad, such as plant shutdowns) and (2) does not unreasonably negatively impact the Large Railroad.

"Congestion Problem" means that Access to or through a terminal, or to or via a track segment, need not be granted because incremental traffic caused by the New Traffic cannot be handled without causing unreasonable interference with the owner's operations. If the interference can be reasonably remedied by additional facilities and/or services, the carrier seeking Access is entitled to such facilities and/or services, provided it pays fair compensation;

"Short Line" ("SL") is a Class III railroad;

"Small Railroad" ("SRR") is a Class II or III railroad;

"Large Railroad" ("LRR") is a Class I railroad;

"Non-Short Line" ("Non-SL") is a Class I or II railroad; and

"Railroad" ("RR") is a Class I, II or III railroad.

CAR SUPPLY

(Applies to participating Class I, II and III Railroads)

Large and Small Railroads will explore opportunities where they can work together, consistent with the antitrust laws, to meet customers' car supply needs for existing and new business.

A joint committee of senior representatives of Large and Small carriers will identify car types for which existing fleets (Railroad, shipper, etc.) are projected to be inadequate for current and future demand. Further, the joint committee will examine the ability of Small Railroads to provide freight cars for their customers for the purpose of developing cooperative policies and programs to enhance the ability of the Small Railroads to have the use of more new and used freight cars. Return on investment will be a consideration.

The joint committee will report its recommendations quarterly to the appropriate representatives of the Large and Small Railroads.

Policies and programs to be considered to determine if they are feasible and mutually beneficial include, but are not limited to:

TTX ownership and operation of general service cars

Regional pools for specific car types operated by interested Railroads

Joint ownership of equipment by Large and Small carriers

Underwriting of Small Railroad ownership by a larger carrier

Continued review of rate arrangements

Refurbishment of older cars

Improvement of transit and turnaround times

Opportunity for Small Railroads to buy surplus cars from Large Railroads on a mutually beneficial basis

Longer term bilateral agreements to facilitate equipment financing

Private agreement to establish car hire rates

SERVICE POLICY

(Applies to participating Class I, II and III Railroads)

Most Small Railroads are dependent upon and serve merchandise traffic that moves in non-unit manifest or local trains. Therefore, frequency and reliability of both interchange and manifest train schedules are of critical importance to the ability of Small Railroads, as well as Large Railroads, to serve their customers and to grow traffic and revenue.

To maintain a higher level of service, Large and Small Railroads agree to establish procedures for Small Railroad corporate and/or operating personnel and Large Railroad senior corporate and/or operating officers (all of whom having authority within their respective companies to effect a resolution of service issues) to meet on a regular basis in order to review, among other items, train service and interchange priorities.

Each Large Railroad and each Small Railroad connecting with a Large Railroad will develop and implement Interchange Service Agreements ('ISA's') with each other. These ISA's will include agreement on terms and standards to govern service and common procedures to measure interchange performance, manifest and/or local train performance, and car cycle time for the purpose of providing Small Railroad customers with the equivalent level of service provided to similarly situated Large Railroad customers taking into account factors such as volumes, commodities transported and locations.

**GUIDELINES FOR
PAPER BARRIERS AND NEW ROUTES**

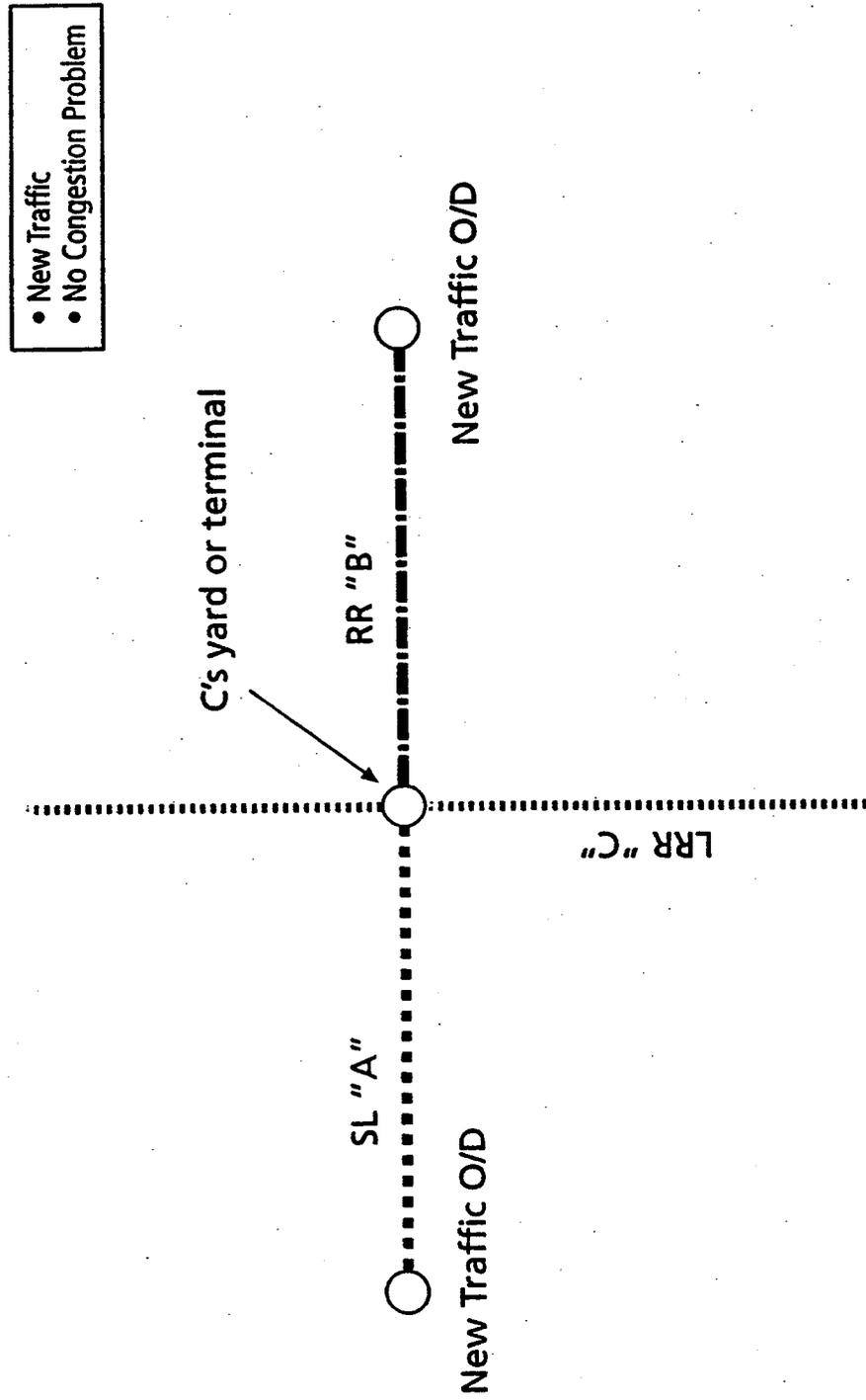
(Examples 1 – 7)

(Applies to participating Class I and III Railroads)

Raper barriers

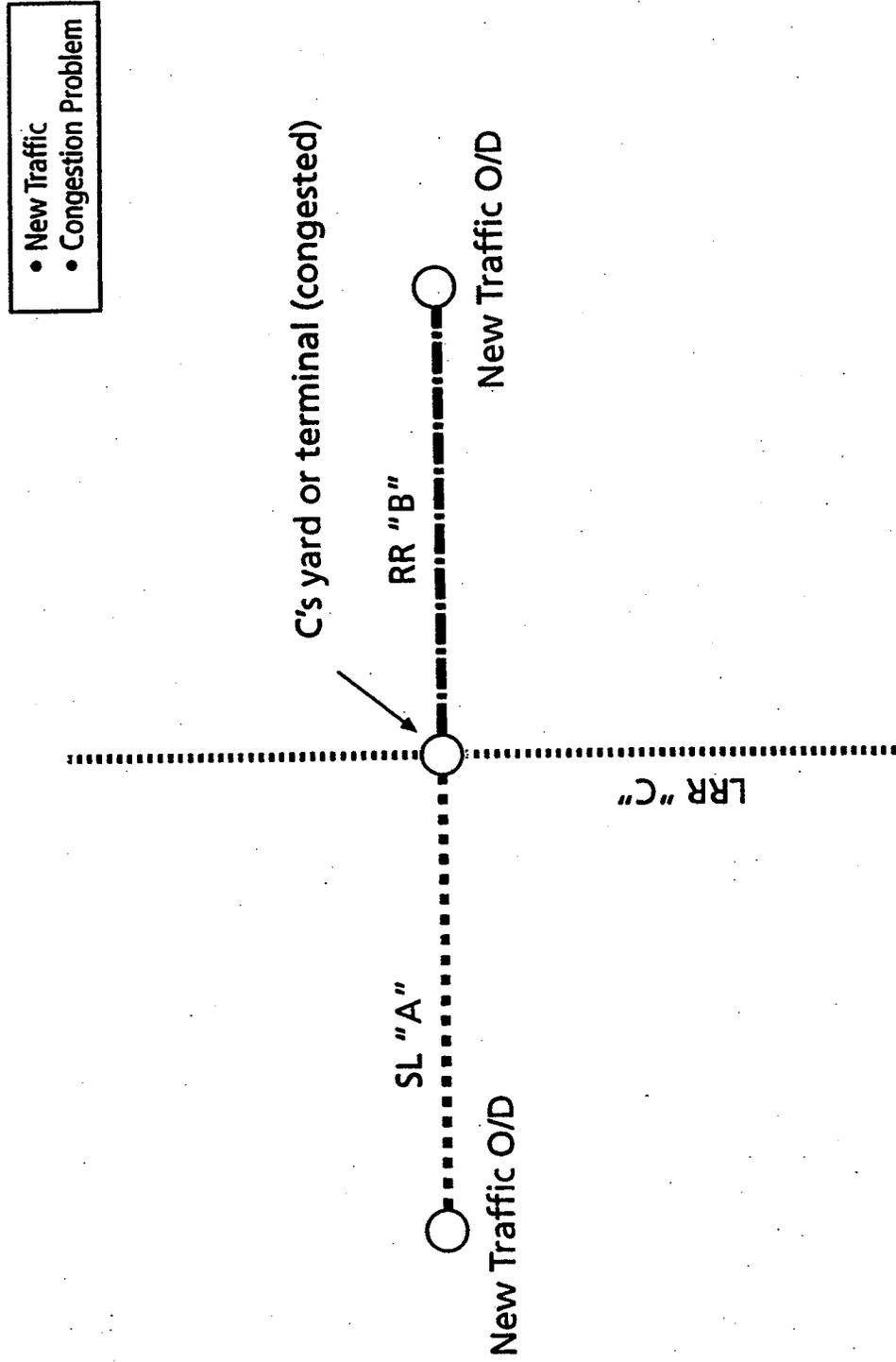
Short Line "A" (SL "A") and Railroad "B" (RR "B") both connect with Large Railroad "C" (LLR "C") either in a common yard or terminal area. There is an opportunity for New Traffic that would originate on "A" and terminate on "B", or vice versa. There is no Congestion Problem. "C" must grant Access by either allowing "A" and "B" to connect directly or by handling the traffic between "A" and "B" within the yard or terminal.

If existing movements between "A" and "B" are provided for by a reasonable intermediate switch charge published by "C", "A" and "B" are already deemed to have Access.



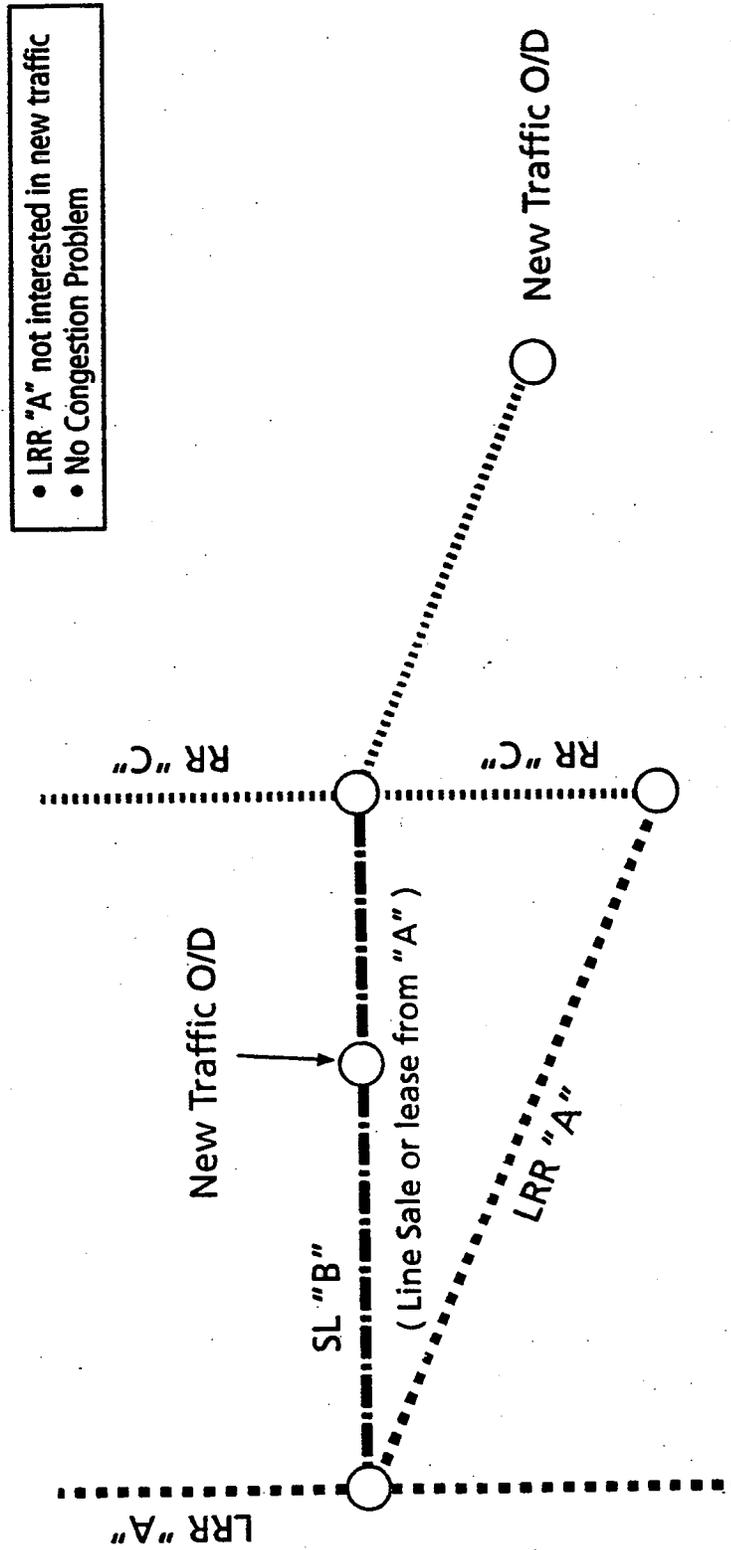
Case Studies

Same facts as Example 1, except there is a Congestion Problem. Large Railroad "C" may deny Access.



Large Railroads

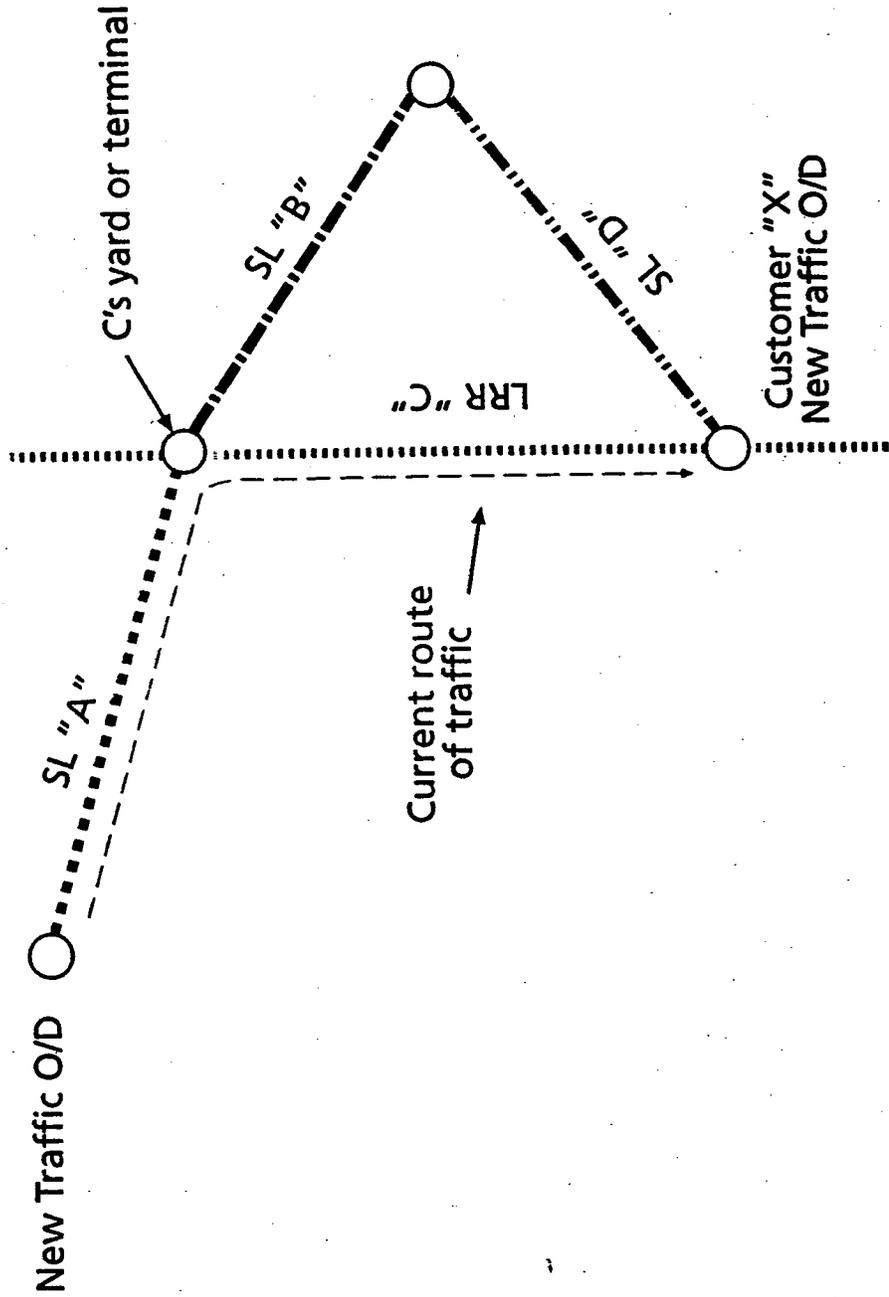
A legitimate paper barrier [see Section (III)(6)] resulting from a line sale or lease by Large Railroad "A" to Short Line "B" which restricts "B" from interchanging with Railroad "C" will be suspended to allow "B" to interchange New Traffic with "C" without penalty if, after request by "B", "A" does not establish a competitive package (rates, service and car supply) and "C" does.



Diagram

Short Line "A" can physically connect with Short Line "B" via Large Railroad "C's" yard or terminal but a paper barrier restricts "A" from interchanging with "B". "B" connects with Short Line "D" and "D" serves Customer "X" also directly served by "C". "A" and "D" wish to develop business with Customer "X" that is not New Traffic. "C" may deny Access.

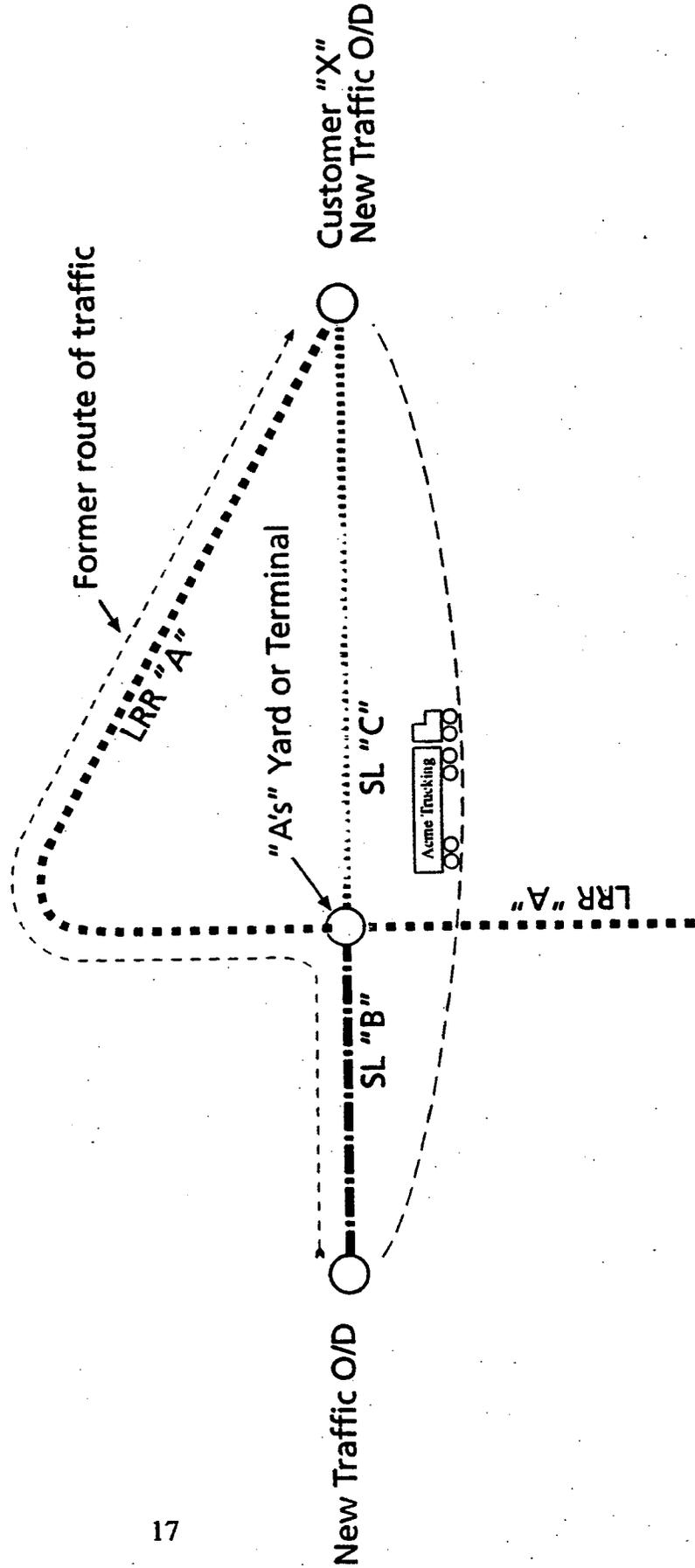
• Not New Traffic



Paper barriers

Large Railroad "A"/Short Line "B" traffic for Customer "X" has been lost to truck. "B" and "C" had no role in causing the truck diversion to happen. "A" must grant Access to "B" and Short Line "C" through "A's" terminal or yard to redirect traffic to rail from truck (New Traffic). There is no Congestion Problem.

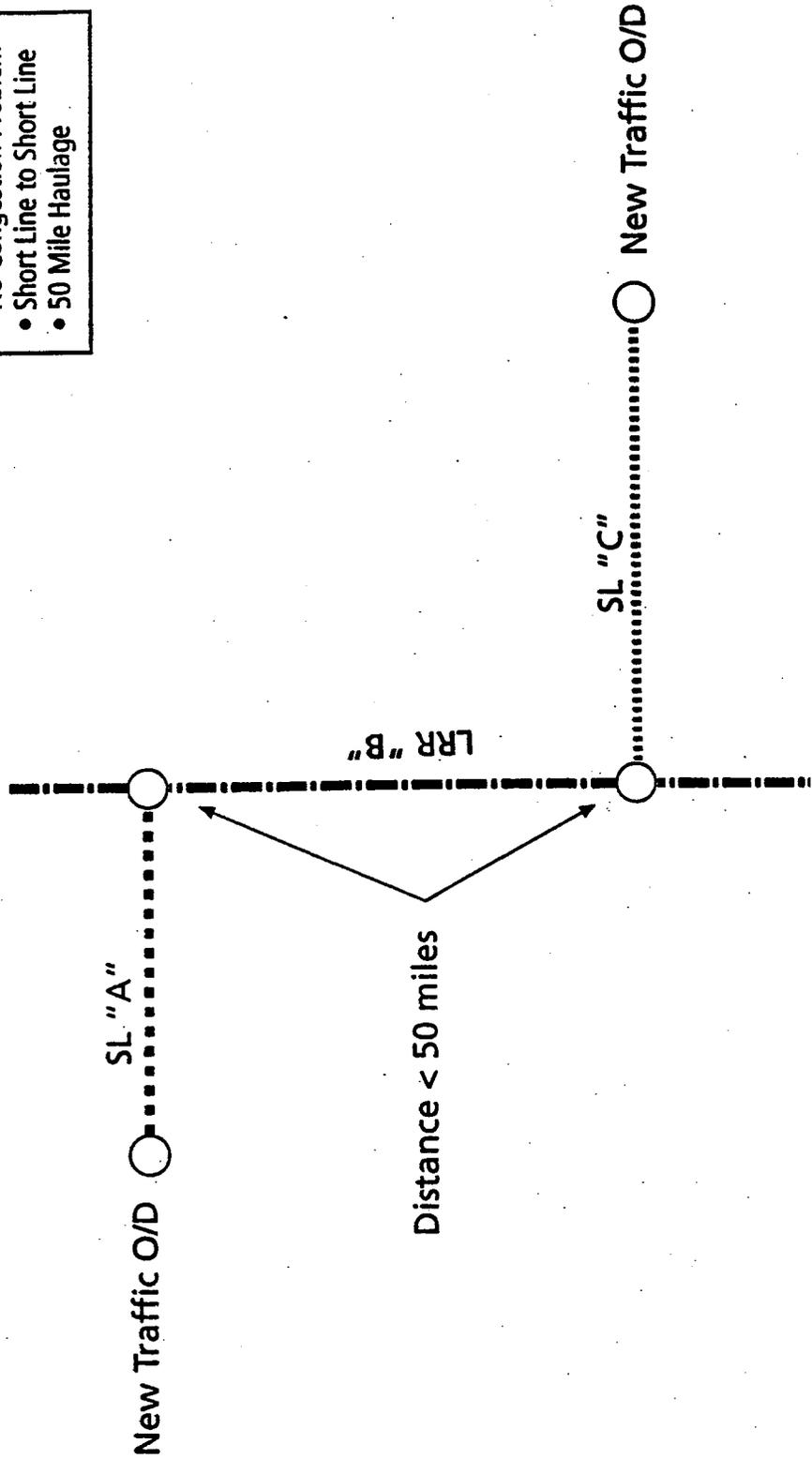
- New Traffic
- No Congestion Problem



New Routes

Large Railroad "B" must grant Access via haulage (or trackage rights at "B's" option) for New Traffic originating on Short Line "A" and terminating on Short Line "C", or vice versa, for distances up to fifty (50) miles along "B's" line of railroad connecting "A" and "C" as long as there is not a Congestion Problem. "B" is not obligated to provide equipment. Haulage (or trackage rights at "B's" option) may be for longer distance by mutual agreement. If "B" does provide equipment, "B" is entitled to participate as a line-haul carrier in the rate if it so chooses.

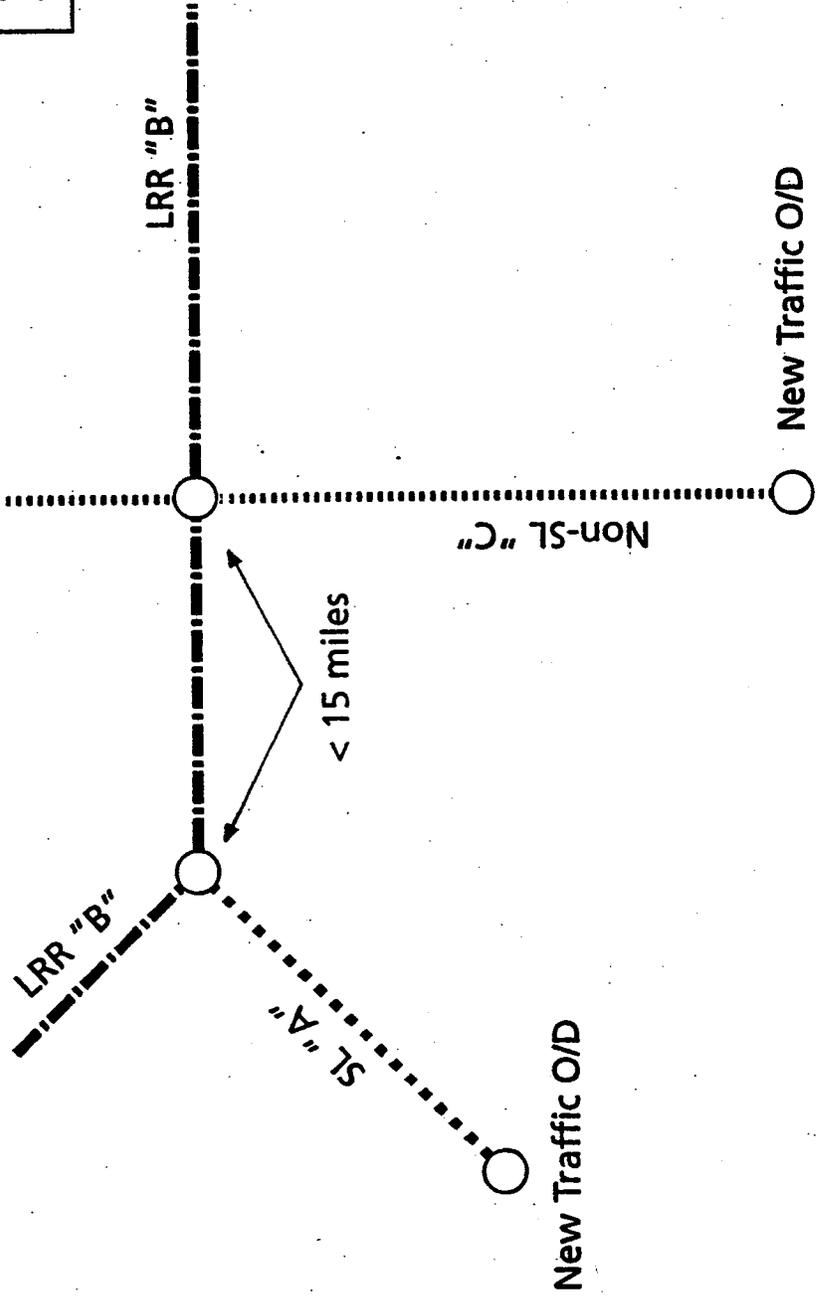
- New Traffic
- No Congestion Problem
- Short Line to Short Line
- 50 Mile Haulage



New Routes

Large Railroad "B" must grant Access via haulage (or trackage rights at "B's" option) between Short Line "A" and Non-Short Line "C" to move New Traffic handled by "B" for distances up to fifteen (15) miles along "B's" line of railroad connecting "A" and "C" as long as there is not a Congestion Problem. "B" is not obligated to provide equipment. Haulage (or trackage rights at "B's" option) may be for longer distance by mutual agreement.

- New Traffic
- No Congestion Problem
- Short Line to Non-Short Line
- 15 Mile Haulage



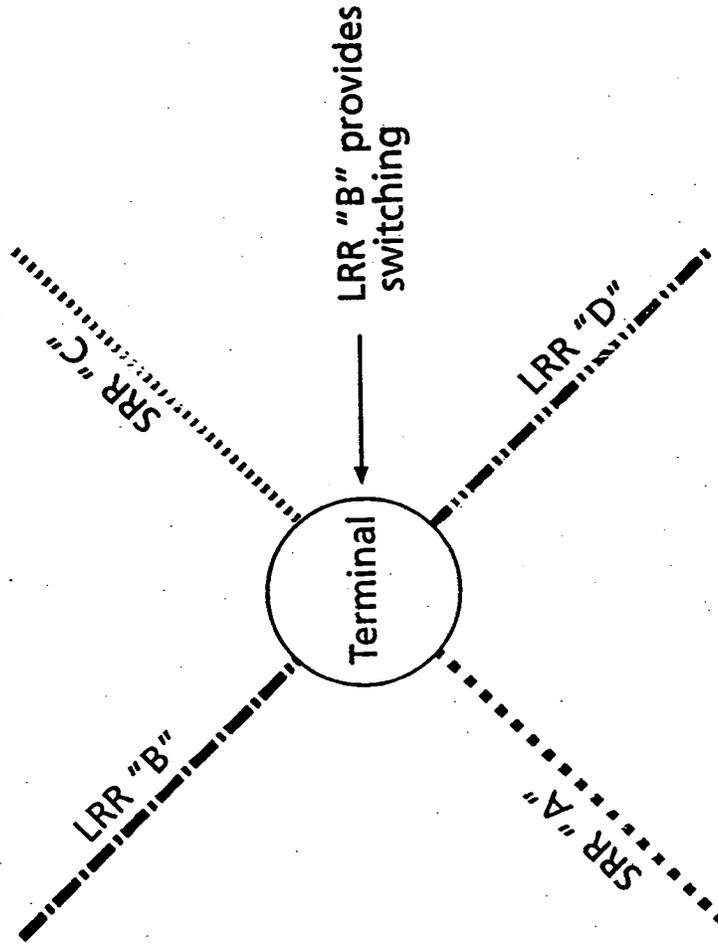
**GUIDELINES FOR
INTERMEDIATE AND RECIPROCAL SWITCHING**

(Examples 8 – 12)

(Applies to participating Class I, II and III Railroads)

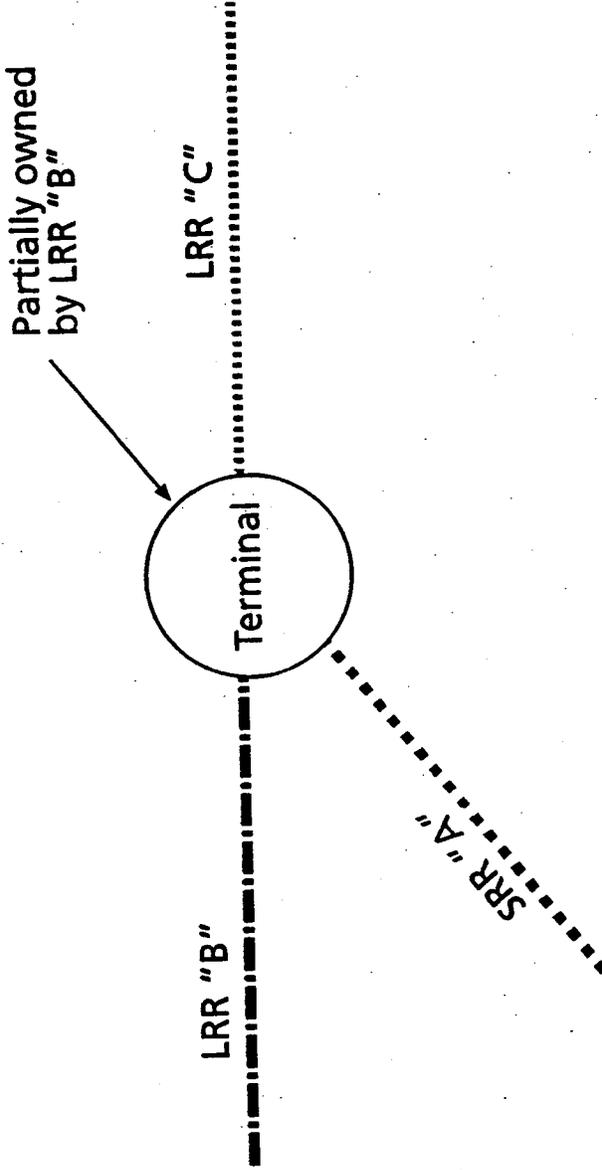
MULTI-CARRIER SWITCHING SUMMARY

Small Railroad "A" serves a terminal where Large Railroad "B" currently provides intermediate terminal switching between a number of carriers including Small Railroad "C". Small Railroad "C" serves the same terminal as does another Large Railroad. Assuming the operating conditions are similar, "A" and "C" should pay the same or similar charges as the other Large Railroad for receipt of similar services.



INTERMEDIATE SWITCHING CIRCUITS

Small Railroad "A" serves a terminal, as do Large Railroad "B" and Large Railroad "C". "B" owns a share of the terminal switching company and "A" and "C" own no share of the terminal switching company. "A" and "C" may pay a higher per car intermediate switch charge than "B", reflecting its ownership interest. Assuming the operating conditions are similar, "A" and "C" should pay the same or similar charges for receipt of similar services.



Reciprocal Switching Charges

Large Railroads "A" and "B" and Small Railroad "C" serve a terminal. No other Large Railroads serve the terminal. "A" and "B" charge each other \$400 per loaded car for reciprocal switching within the terminal. "A" charges "C" \$500 per loaded car, and "B" charges "C" \$600 or more per loaded car. "A" and "B" must each charge "C" \$400 per loaded car, assuming similar circumstances and conditions.

Reciprocal Switching Charges

Large Railroads "A" and "B" and Small Railroad "C" serve a terminal. No other Large Railroads serve the terminal. "A" and "B" have a system-wide reciprocal switching arrangement with each other that provides for a per-car charge less than or equal to \$250 per loaded car. The charge (assessed by "A" and/or "B" to "C") for switching in this particular terminal exceeds \$250 per loaded car. If 115% of the actual cost of performing the reciprocal switch service is greater than \$250, "A" and "B" shall each charge "C" no more than said 115% of actual cost. If 115% of actual cost is less than or equal to \$250, "A" and "B" shall not charge "C" more than \$250 per loaded car. Nothing in this example prohibits a lower switch charge to "C" if such is mutually agreed to by "A" and/or "B" and "C."

Reciprocal Switching Charges

In terminals containing multiple Railroads (greater than three), the carrier, on which the particular customer to be Accessed by reciprocal switch is located, must not charge a Small Railroad a charge that is higher than the highest charge to a Large Railroad or \$250 per loaded car, whichever is greater. (The involved Large Railroads may be parties to one or more system-wide reciprocal switching agreements providing charges to each involved carrier of less than or equal to \$250 per loaded car.)

Note: Nothing in the provisions of Examples 10, 11 and 12 will grant reciprocal switch access for any carrier to any industry for which Access is not otherwise provided.

GUIDELINES FOR CERTAIN RATE POLICIES

(Applies to participating Class I, II and III Railroads)

In the event that a Small Railroad has only one Class I connection or a Large Railroad has rate making authority on behalf of a Small Railroad, and the Small Railroad is trying to generate New Traffic or is threatened with the loss of existing traffic, and the Small Railroad believes that the Large Railroad is not adequately reflecting the Large Railroad costs or relevant market conditions in a rate charged to a shipper of a comparable commodity located on the Large Railroad in close proximity to a similar shipper located on the Small Railroad (similar circumstances and conditions), then the Small Railroad can request the Large Railroad, within ninety (90) days, to examine its costs and relevant market conditions and meet to discuss the matter. For purposes of this Agreement, a haulage agreement between a Large Railroad and a Small Railroad does not give the Large Railroad rate making authority on behalf of the Small Railroad.

The Large Railroad shall study its costs and the relevant market conditions, on an annual actual total cost basis, from the area requested by the Small Railroad to the first crew change location common for the similar Small Railroad and Large Railroad shipments in question. This study shall include all costs relevant to this segment of the Large Railroad (including any savings attributable to the then present Small Railroad operations as well as including any applicable handling charges paid by the Large Railroad to the Small railroad as part of the costs incurred by the Large Railroad) and shall consider the volume and seasonality of the traffic in question and capability of the Large Railroad, due to economies of scale, to reallocate assets and personnel during periods of slow demand.

After the requested cost study has been completed, the Railroads shall meet to discuss the results. Terms of confidential transportation contracts to which both Railroads are not a party will not be revealed. Acting on the results of the study, the Large Railroad may choose to adjust one or more rates and/or charges or may elect to retain the status quo.

The Small Railroad, if not satisfied with the result, may invoke arbitration under Section VI of this Agreement. Both parties and the arbitrator will treat all cost information involved in the arbitration as confidential. Particular rates charged to individual shippers or receivers in transportation contracts shall not be considered in arbitration under the terms of this Agreement. The arbitrator's decision can only deal with the rate complained of, that is, the joint Large Railroad/Small Railroad rate.

If the arbitrator determines that the rate charged by the Large Railroad to the Small Railroad shipper improperly favors the shipper on the Large Railroad, then the arbitrator may order a reduction of the rate, but only to the extent needed to eliminate such favoritism. The rights provided in this Exhibit E reflect unique circumstances and create no rights for any third parties.

AMENDMENT TO
RAILROAD INDUSTRY AGREEMENT

The American Short Line and Regional Railroad Association (“ASLRRA”), on behalf of the Small Railroads, and the Association of American Railroads, on behalf of the Large Railroads, entered into the Railroad Industry Agreement (“Agreement”) on September 10, 1998. The ASLRRA hereby further agree as follows:

1. The Agreement is hereby amended as follows:
 - a. The section of the Agreement entitled “Paper Barriers” on page 2 is amended by adding, at the end thereof, the following sentence:

“See Exhibit F for interpretation of this principle.”

- b. Section VII of the Agreement is stricken in its entirety and the following is inserted in its place:

“VII. RAIL INDUSTRY WORKING GROUP

(a) A joint “Rail Industry Working Group” (“RIWG”) shall be created to address all policy aspects and issues relating to the application and effects of this Agreement. It shall also provide a forum for the discussion of opportunities and concerns relating to issues between the Large Railroads and Small Railroads and to assure that the expectations of this Agreement are attained by having the terms of this Agreement consistently interpreted and applied throughout the railroad industry. The RIWG shall be comprised of Large Railroad managers who are responsible for the development of business with the Small Railroads and of Small Railroad operators who have first-hand knowledge of relevant rail transportation problems, issues, and opportunities. It shall consist of 16 members. There shall be one member designated from each of the seven Large railroad subscribers to this Agreement, seven members from Small Railroads who are subscribers to this Agreement (to be designated by the ASLRRA), and one member each from the AAR and the ASLRRA. (The AAR and ASLRRA representatives shall be non-voting members.)

(b) The RIWG shall meet at least quarterly and, in addition, at any time upon the request of any member of the RIWG or upon notification from a party of its intent to withdraw from the Agreement pursuant to Section VIII(b). RIWG members may participate in meetings either in person or by conference call. Counsel from the AAR and/or the ASLRRA shall attend RIWG meetings. Unless an objection is raised by any member,

technical and other issue-specific experts and advisors may be invited to attend portions of RIWG meetings relevant to their respective interests.

(c) The RIWG may, from time to time, issue opinions or interpretations regarding the provisions of this Agreement. Any such opinion or interpretation must be in writing and by unanimous vote of the RIWG.

(d) The RIWG shall not, in any circumstance, have authority to set rates or charges or reach any agreement respecting rate-related matters.”

c. Section VIII of the Agreement is amended by: (1) deleting the term “Senior Policy Committee” in subsection (b) and inserting, in its place, the term “RIWG”; and (2) adding a new subsection VIII(c) at the end thereof as follows:

“Opinions and interpretations adopted by the RIWG in accordance with the requirements of subsection VII(c) of this Agreement shall be delivered to each then current subscriber by the AAR (to the Large Railroads) and the ASLRRRA (to the Small Railroads). Each such opinion or interpretation shall be deemed to be a part of this Agreement and shall be binding upon all subscribers hereto; provided, however, that if, within 30 days of receipt of an opinion or interpretation, a subscriber gives notice pursuant to subsection VIII(b) of its intent to withdraw from this Agreement and withdraws from the Agreement 90 days thereafter, such subscriber shall not be bound by the interpretation or opinion.”

d. Attachment 1 hereto is incorporated into the Agreement after Appendix E (page 25) as a new Appendix F (pages 26 and 27) and made a part of the Agreement.

e. The “LIST OF EXHIBITS” on page 8 of the Agreement is amended by inserting, at the end of thereof, the following:

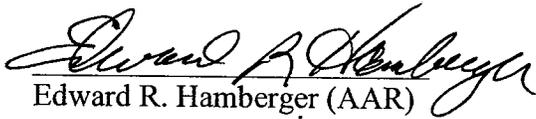
“Exhibit F: *Interpretation Relating to Paper Barriers*
(applies to all participating Class I and III
Railroads)”

2. Individual Large and Small Railroads who are current subscribers to the Agreement shall indicate their acceptance of this Amendment by executing a separate document (“Acceptance Agreement”) indicating their agreement to subscribe to and be bound by the terms and conditions of the Agreement, as amended by this Amendment.
3. Notwithstanding any provisions of Section VIII(b) of the Agreement to the contrary, the delivery by a subscriber of an Acceptance Agreement as described in Section 2 of this Amendment shall also be considered giving notice to the AAR, ASLRRRA, and the Senior Policy Committee, pursuant to Section VIII(b) of the current Agreement, of such subscriber’s withdrawal from such original

unamended Agreement 90 days after such subscriber's delivery of the Acceptance Agreement.

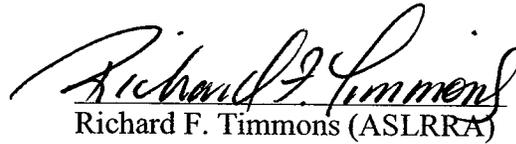
4. Capitalized terms not otherwise defined in this Amendment shall be as defined in the Agreement.
5. Except as amended hereby, all other terms and conditions in the Agreement shall remain in full force and effect between and among the subscribers thereto.

For the Large Railroads:


Edward R. Hamberger (AAR)

Date: 10/7/04

For the Small Railroads:


Richard F. Timmons (ASLRRA)

Date: 7 October 2004

INTERPRETATION RELATING TO PAPER BARRIERS

(Applies to participating Class I and III Railroads)

The following situations shall be considered to meet the first element in the definition of "New Traffic" pursuant to the RIA:

1. Traffic to or from newly constructed customer facilities on the Short Line by a new customer to the Short Line. Expansions, relocations, or replacements of customer facilities from which traffic is currently or had been previously moving by any mode of transportation (whether or not such existing facilities were previously located on the Short Line) do not satisfy the first element of the definition of "New Traffic" under this paragraph.
2. Traffic to or from an existing facility located on the Short Line that has been shipped by any mode or modes of transport other than by rail for a period of twelve consecutive months immediately prior to a request made pursuant to the RIA.
3. Traffic to or from an existing facility located on the Short Line if that facility has not shipped for a period of twenty-four consecutive months immediately prior to a request made pursuant to the RIA.

For purposes of computing the time periods in paragraphs 2 and 3, periods during which there were unusual disruptions of shipping patterns outside the control of the Large Railroad and the Short Line, such as plant shutdowns, shall not be included.

This list is not intended to be exhaustive, and traffic not meeting these criteria may still be considered to meet the first element of the "New Traffic" definition as determined by individual facts and circumstances.

In all these cases, in order to be considered "New Traffic" the traffic in question must also meet the second element in the definition of "New Traffic" under the RIA, i.e., it must not have an unreasonable negative impact on the Large Railroad. Factors in assessing whether there is an "unreasonable negative impact" on a Large Railroad would include, but not be limited to, circumstances where the traffic at issue was diverted from an existing movement elsewhere on the Large Railroad.

In all instances the identification of "New Traffic" on a rail line shall not require the waiver of a "paper barrier" unless the Large Railroad that sold or leased the rail line in question, and has the contract with the Short Line, cannot offer a transportation package for the traffic which is competitive on a rate, service, and car supply basis with motor carrier alternatives.