STB EX PARTE NO. 543

REVISION OF REGULATIONS FOR INTERLOCKING RAIL OFFICERS

Decided December 31, 1996

The Board adopts final rules. The Board's authorization is not needed for individuals seeking to hold the positions of officers or directors of more than one rail carrier, except where only Class III railroads are involved. 49 U.S.C. 11328(b).

BY THE BOARD:

The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995) (ICCTA), abolished the Interstate Commerce Commission (ICC or Commission) and transferred certain rail regulatory functions to the Surface Transportation Board (Board). The ICCTA revised the statute concerning restrictions on officers and directors so that, under new 49 U.S.C. 11328, individuals seeking to hold the position of officer or director only of Class III railroads are no longer required to seek Board authorization. In a notice of proposed rulemaking (NPR) served May 10, 1996, and published in the *Federal Register* at 61 Fed Reg. 22,014 (1996), we proposed to revise 49 CFR part 1185 concerning interlocking directorates to reflect this statutory change and to eliminate other unnecessary and redundant provisions. Comments were filed by Joseph C. Szabo, for and behalf of the United Transportation Union, Illinois Legislative Board (UTU), and by the Association of American Railroads (AAR).

Under the prior statute at 49 U.S.C. 11322, a person wishing to hold a position of officer or director of more than one rail carrier of any size was required to seek prior ICC authorization. The ICC, however, exercising its general exemption authority under former 49 U.S.C. 10505, adopted rules at 49 CFR 1185 exempting from regulation, as a class, requests for ICC approval to assume the position of director or officer of a rail carrier while holding the position of director or officer of another rail carrier, except where both carriers

are Class I railroads. *Exemption--Certain Interlocking Directorates*, 5 I.C.C.2d 7 (1988) (*Interlocking Directorates*), *aff'd sub nom., United Transp. Union v. ICC*, 891 F.2d 908 (D.C. Cir. 1989) (*United Transp. Union*), *cert. denied*, 497 U.S. 1024 (1990). The class exemption did not apply to an individual who was an officer or director of a Class I carrier and wished to become an officer or director of another Class I railroad; that individual was required to file either an application or petition for an individual exemption.

The court of appeals in *United Transp. Union* affirmed the ICC's exemption decision, holding that the United Transportation Union lacked standing. The court found that, because it did "not believe that there is any likelihood that interlocking directorates will harm railroad workers, we see no reason to allow petitioner to sue on a theory that the ICC's exemption has made it marginally more difficult for the union to challenge interlocking directorates in the future." *United Transp. Union*, 891 F.2d at 919.

Our May 1996 NPR proposed expressly to affirm and adopt this exemption and to clarify that the class exemption now applies only to interlocking directorates that (a) do not involve an officer of director of a Class I rail carrier who seeks to become an officer or director of another Class I rail carrier, and (b) do not involve only class III rail carriers. The proposed rules would also make clear that, where the class exemption applies, it is not necessary to make a filing with the Board to invoke the exemption.

We also proposed to update and clarify the term "carrier" for purposes of administering the interlocking officer and director provisions of the statute. Furthermore, we proposed to change the requirements for the form of the application to comply with our rules of practice (proposed section 1185.3). Finally, we sought comment on whether to retain proposed section 1185.4, *General authority*, because it was one of three sections (the others being proposed sections 1185.5 and 1185.6) concerning interlocking directorships among carriers in an established system.

PRELIMINARY MATTERS

UTU argues that the NPR gave only 21 days' notice for comments. UTU submits that a 30-day notice period is essential to ensure due process to potential respondents and noted that the former ICC provided 32 days' notice when it revised the interlocking directorate regulations in *Interlocking Directorates*. UTU also argues that, in *Rodway v. United States Dept. of Agriculture*, 514 F.2d 809, 814-15 (D.C. Cir. 1975) (*Rodway*) and *Fund for Animals v. Frizzell*, 530

F.2d 982, 988-90 (D.C. Cir. 1976) (*Fund for Animals*), comment periods of 5 and 10 days, respectively, were found to be inadequate.

We believe that reasonable notice has been provided. The court cases UTU cites are not on point. *Rodway* did not turn on the *length* of the comment period because the court found that, because there had been no notice, there had been no solicitation of comments at all. 514 F.2d at 815. In *Fund for Animals*, appellants' appeal was based in part on the district court's rejection of their argument that they had been denied due process by the insufficient comment period. While the court of appeals indicated its concern about the 10-day comment period, it affirmed the district court's decision denying appellant's motion for a preliminary injunction. Subsequently, in *Omnipoint Corp v. FCC*, 78 F.3d 620, 629-30 (D.C. Cir. 1996) (*Omnipoint*), the court interpreted *Fund for Animals* as finding the comment period reasonable in that instance: "In *Fund for Animals*, we found that the short comment time provided * * * was reasonable as the appellants had actually received notice prior to the August date when the proposed federal regulations were published * * *." (Citation omitted.)

In *Safety Fitness Policy*, 8 I.C.C.2d 123, 131-32 (1991), the ICC noted that 5 U.S.C. 553(b) of the Administrative Procedure Act does not impose a specific notice period for filing comments, and stated that the comment period had to be reasonable. The agency there found a 20-day comment period following open meeting discussions to be reasonable. We believe that the 21-day notice period was reasonable here.[1] While the UTU argues that this period is "insufficient," it does not specify any resulting procedural harm it suffered.[2] Finally, if UTU thought that additional time was necessary to prepare its comments, it could have asked the Board for an extension of the comment period, but no such request was made.

[1] The Board's decision was actually served on May 10, 1996, three days before the May 13 *Federal Register* publication. This potentially provided UTU additional notice. *Cf. Omnipoint*, 78 F.3d at 629-30.

[2] As noted, the court of appeals in *United Transp. Union* declared that there was no likelihood of substantive harm to railroad workers.

DISCUSSION

Class exemption. UTU argues that Congress only desired to exempt interlocking directorships between Class III carriers, and that there is no evidentiary basis for a broader exemption. UTU claims that, since the issuance of *Interlocking Directorates*, the enactment of section 11328 was the second piece of intervening legislation Congress had taken to strengthen railroad interlocking prohibitions. Previously, Congress had revised section 8 of the Clayton Act by the Antitrust Amendments Act of 1990 (1990 Act). These two actions, UTU argues, show Congress' concern about the anticompetitive consequences of interlocking directorates.

We reject these contentions. Turning first to the 1990 Act, we do not believe that its enactment by Congress had any impact on the class exemption for interlocking directorates. The changes made to section 8 by the 1990 Act concerned raising the jurisdictional threshold for application of the section; creating certain "de minimis" exceptions; and expanding coverage to include officers or directors chosen by the board of directors. *See* S. REP. No. 286, 101st Cong., 2d Sess. 2 (1990), *reprinted in* 1990 U.S.C.C.A.N. 4100, 4101. These matters are unrelated to the class exemption issue in this proceeding.[3]

UTU submits that the second action by Congress concerning interlocking directorships was the enactment of new section 11328. UTU contends that the Board has improperly interpreted the statute, thereby thwarting Congress' intent because new "section 11328 is not an attempt to extend the deregulation of interlocking directorates, but is a measured expression that only class III carrier directorates are to be automatically excepted from regulation * * *. Proper administration of the 1995 revision by Congress requires limiting the exemption to that specified by the Congress - class III carriers only." Thus, UTU requests that the current class exemption be terminated.

According to UTU, Congress knew that interlocking directorates were already exempted by the ICC and, thus, no legislation was needed to exempt Class III carriers. So, UTU maintains, by providing a statutory exception *only* for Class III's, Congress was legislatively overturning the class exemption to the extent only Class II's were concerned or combinations of Class I, II, or III carriers were involved.

---

[3] The 1990 Act also repealed section 10 of the Clayton Act and, in response, the former ICC eliminated its competitive bidding regulations. *Removal of Obsolete Competitive Bidding Regulations*, 7 I.C.C.2d 361 (1991).

UTU would have us believe that Congress, without mentioning the class exemption, intended to overturn *Interlocking Directorates* in a complicated and roundabout manner.[4] Even if we were to concede that Congress would act in such a way, UTU's analysis would still be faulty because it has treated a statutory exception to be the equivalent of a Board exemption.

Concerning the Class III issue, the regulations we are adopting make the minimal substantive changes in response to the new law, a law that liberalized the restrictions on interlocking directorates: we are simply clarifying our rules to indicate that Board authorization for interlocking directorates is not needed where only Class III carriers are involved. The new statute, as the old statute at former section 11322, states that Board authority is required to hold a position of officer or director of more than one carrier. 49 U.S.C. 11328(a). Unlike the former law, however, under ICCTA there is a statutory exception to Board authorization: "This section shall not apply to an individual holding the position of officer or director only of Class III rail carriers." 49 U.S.C. 11328(b). In *Interlocking Directorates*, the ICC exercised its authority under former section 10505 and exempted all interlocking directorships not involving only Class I carriers.[5] Here, we need no longer exempt interlocking directorates between Class III carriers because, by statute, they do not need Board authorization. Congress has provided Class III carriers, in effect, with a statutory exemption. In providing this statutory exception, Congress has further deregulated Class III interlocking directorates, because an exception by statute, unlike a discretionary exemption, is not subject to agency revocation. *See* 49 U.S.C. 10502(d).

Finally, UTU contends that the present class exemption should not be presumed valid. UTU argues that the Board may exempt other carriers under new section 10502, but this must be done upon a new record with proper findings. There is allegedly no evidentiary basis in the instant proceeding for issuing a class exemption for interlocking directorates.

---

[4] Congress gave no indication of any intent to restrict our exemption authority, either in section 11328 or in section 10502, with respect to interlocking directorates. *Cf.* 49 U.S.C. 10502(e).

[5] The concurring opinion of the *United Transp. Union* court stated:

[The Commission] relied on forty years' experience to conclude that an exemption not expanded to cover interlocks between class I railroads would advance the welfare of the railroad industry consonant with the deregulatory thrust of the Staggers Act. In short, the Commission sensibly exercised the discretion Congress entrusted to it. 891 F.2d at 919 (Ruth B. Ginsburg, concurring).

This argument is also without merit. Section 204(a) of the ICCTA provides that all ICC rules in effect on the date of the enactment of the ICCTA "shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the Board * * * or operation of law." Therefore, the exemption was kept in place by the ICCTA. Moreover, we proposed in our NPR to reaffirm the class exemption. The class exemption has been in effect for over 8 years and appears to be working well, and Congress has recently liberalized the statute as far as Class III carriers are concerned. With the exception of the issue of filing a notice, discussed *infra*, UTU has not specified any problems with the proposed regulations. Accordingly, except as indicated below, we will continue the exemption.

Notice. UTU requests that, if the Board exempts other carriers besides only Class III carriers, we should require that exercise of the exemption should be subject to a specific notice requirement as is done for the class exemption for non-carrier acquisitions, trackage rights, control of non-connecting carriers, and intercorporate mergers.[6] UTU also requests that we make provisions for revocation of the exemptions.

The Board already has provisions for revocation of exemptions. *See* 49 CFR 1121.4(f). Furthermore, we see no need to require the filing of a notice to exercise the class exemption. Such a requirement would add an unnecessary burden on the filer and the Board.

When the ICC exempted as a class interlocking directorates except where both carriers are Class I railroads, it did not find the notice requirement to be necessary.[7] In response to a comment by Patrick W. Simmons, Illinois

---

[6] UTU is presumably referring to class exemptions found at 49 CFR 1150.31 (*See, Class Exemption - Acq. & Oper. of R. Lines Under 49 U.S.C. 10901*, 1 I.C.C.2d 810 (1985) and 4 I.C.C.2d 309 (1988)) and 49 CFR 1180.2(d) (*See, Railroad Consolidation Procedures*, 363 I.C.C. 200 (1980) and 366 I.C.C. 75 (1982)). These class exemptions require the filing of a notice of exemption.

[7] Previously, in *Revised Regulations Governing Officers*, 336 I.C.C. 679 (1970) (*Governing Officers*), the Commission had issued regulations concerning authority to hold interlocking directorate positions with carriers lawfully operated under common control as well as with a carrier and a terminal railroad whose facilities are operated or used by the carrier jointly with other carriers. The Commission found, 336 I.C.C. at 683, that:

[a]pplications and individual orders of authorization to hold interlocking positions with carriers in a lawfully established system cast an unnecessary and expensive paperwork burden on the carriers involved and our staff. We know of no current regulatory purpose served thereby.

(continued...)

Legislative Director for the United Transportation Union, (Simmons) that then present ICC procedures[8] were simple and should be retained and that a public record concerning relationships better provides public protection, the ICC stated in *Interlocking Directorates*, 5 I.C.C.2d at 10-11:

> The delay inherent in Commission approval of an interlocking directorate under present procedures complicates the proxy solicitation process, may raise concerns about compliance with the disclosure obligations of federal securities laws, and ultimately, may threaten the nomination or election of an officer or director candidate who is otherwise qualified and competent to serve. Thus, while the current procedures may not be complex, they continue to impose burdensome processing requirements with attendant delay on the parties and the Commission. Our exemption will remove these burdens * * *.

UTU has not addressed these concerns.[9] There has been no requirement to file a notice in these circumstances for 8 years, and this procedure appears to be working well both from the standpoint of the public and the agency.[10] Thus, we will not require the filing of a notice of exemption.

Other issues. The UTU objects to changing the definition of an interlocking directorate at proposed section 1185.1(c) from a person who performs duties, *or*

---

[7](...continued)
The ICC later amended these regulations to provide that the prior approval requirements were also not applicable to interlocking directorates of carriers whose common control or management had been exempted by the ICC pursuant to former 49 U.S.C. 10505. *Revised Regulations Governing Officers*, Ex Parte No. 260 (Sub-No. 1), published at 44 Fed. Reg. 75,386 (1979).

[8] In *United Transp. Union*, 891 F.2d at 918, the court referred to these procedures as those "requiring prior approval."

[9] Simmons raised the issue of prior notice before the *United Transp. Union* court. The court quoted from Simmons' petition for review: "The non-filing of a notice that the interlocking directorate exemption is being invoked requires [petitioner] to seek review of the class exemption to prevent injury prior to a specific exercise of the exemption * * *." 891 F.2d at 918. In response, the court stated that the alleged procedural injury of making it "more difficult for the union to challenge interlocking directorates in the future because it will not have prior notice of them * * * [did not] confer standing on the petitioner since it bears no plausible nexus to a 'substantive' injury." *Id.*

[10] In *Southern Elec.--Petition for Exemption--Construction of a Rail Line in Shelby Co., AL*, Finance Docket No. 31498, *et al.* (ICC served September 19, 1989), the ICC dismissed a notice of exemption concerning interlocking directorates, noting that under 49 CFR 1185.1, the parties were exempt.

any of the duties, ordinarily performed by various listed officials. The NPR deletes the phrase "or any of the duties." We will restore this language.[11]

We also proposed in our NPR to update and clarify the term "carrier" for purposes of administering the interlocking officer and director provisions of the new statute. UTU contends that the definition of carrier should not be enlarged to include "corporation organized to provide transportation by rail carrier."

Under former 49 U.S.C. 11322 as well as the regulations at 49 CFR 1185.2, a rail carrier was "defined in section 11301(a)(1) * * *."[12] New 49 U.S.C. 11328, on the other hand, does not separately define "carrier" or refer to a statutory definition of carrier. The general definition of "rail carrier" in new 49 U.S.C. 10102(5) differs from the former statute by adding "for compensation," and excluding "sleeping car carrier" and the "corporation organized to provide transportation" language.[13]

In our NPR, we proposed to exclude "sleeping car carrier" from, and to add "for compensation" to, the definition of carrier. We also proposed that, in the context of interlocking directorates, the term "rail carrier" should be interpreted to embrace corporations organized to provide transportation. As noted, this provision, while found in former section 11301(a)(1), is not found in new section 10102(5). UTU objects to the corporation provision, claiming that inclusion of this proposal was made by the Senate Committee but rejected by the Conference.

We will adopt our proposed definition. Because the statutory reference to the definition for carrier had been deleted from section 11328, we needed to reconsider how to define the term carrier. We proposed to adopt the general definition of carrier found at 49 U.S.C. 10102(5), and we proposed to supplement that definition by adding the "corporation organized to provide

---

[11] The only other modifications we are making to the proposed regulations are editorial.

[12] The definition in former section 11301(a)(1) reads:

"carrier" means a rail or *sleeping car carrier* providing transportation subject to the jurisdiction of the Interstate Commerce Commission under subchapter I of chapter 105 of this title (except a street, suburban, or interurban electric railway not operated as part of a general railroad system of transportation), and *a corporation organized to provide transportation by rail carrier subject to that subchapter*. (Emphasis supplied.)

[13] Under new 49 U.S.C. 10102(5), rail carrier is defined as:

a person providing common carrier railroad transportation for compensation, but does not include street, suburban,or interurban electric railways not operated as part of the general system of rail transportation[.]

transportation" language consistent with the prior definition for these rules. The new statute did not specifically limit the definition of carrier to the one in the general definition section. Because an individual would need Board approval after a corporation becomes a carrier, we believe it is appropriate to allow an individual to obtain early Board consideration, thereby providing more commercial certainty. This would also benefit the Board by giving us an earlier opportunity to analyze a potential interlocking officer position or directorate.

In its comments, the AAR supports the adoption of the proposed rules. The AAR also has responded to the question we posed in the NPR as to whether we need three separate provisions concerning interlocking directorates for an existing rail system. These provisions are: (1) proposed section 1185.4, *General authority*, regarding general authority to hold a directorship with subsidiary or affiliated companies; (2) proposed section 1185.5, *Common control* (currently section 1185.10), concerning authority to hold interlocking directorate positions with carriers lawfully operated under common control; and (3) proposed section 1185.6, *Jointly used terminal properties*, pertaining to authority to hold interlocking directorate positions with a carrier and a terminal railroad whose facilities are operated or used by the carrier jointly with other carriers. We questioned whether the *General authority* section was needed because all three of these provisions concern interlocking directorships among carriers in an established system. *See, Governing Officers*, 336 I.C.C. at 681 & 683 (1970).

The AAR notes that the *General authority* section concerns not only the interlocking directorates encompassed by the *Common control* and *Jointly used terminal properties* sections, but also interlocking directorates not addressed by those sections. In particular, AAR argues that the *General authority* section applies to all companies affiliated with a carrier (not only carriers under common control or management) as well as any property (not only terminal railroads) operated or used by the carrier with other carriers. According to the AAR, only the *General authority* rule "would cover a director of one carrier who wants to become a director of a non-terminal railroad in which the first carrier has a minority interest." Thus, we will retain these provisions as proposed.

The Board certifies that this rule will not have a significant economic effect on a substantial number of small entities. We received no comments in response to the NPR on the effects on small entities. This rule will reduce regulation and it imposes no new reporting requirements on small entities. Requirements for

the form of the application have been slightly modified to conform to the Board's rules of practice.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects

49 CFR Part 1185

Administrative practice and procedure, Railroads.

It is ordered:

1. The final rules set forth in the Appendix to this decision are adopted. Notice of the rules adopted here will be published in the *Federal Register* on January 15, 1997, and will be transmitted to Congress pursuant to Pub. L. 104-21 (March 29, 1996).

2. This decision is effective on February 14, 1997.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Appendix

For the reasons set forth in the preamble and under the authority of 49 U.S.C. 721(a), title 49, chapter X, part 1185 of the Code of Federal Regulations is revised to read as follows:

PART 1185 -- INTERLOCKING OFFICERS

Sec.

Authority: 5 U.S.C. 553 and 559 and 49 U.S.C. 721, 10502, and 11328.

§ 1185.1 *Definitions and scope of regulations.*

(a) This part addresses the requirement of 49 U.S.C. 11328 authorization of the Surface Transportation Board (STB) needed for a person to hold the position of officer or director of more than one rail carrier, except where only Class III carriers are involved. STB authorization is not needed for individuals seeking to hold the positions of officers or directors only of Class III railroads. 49 U.S.C. 11328(b).

(b) When a person is an officer of a Class I railroad and seeks to become an officer of another Class I railroad, an application under 49 U.S.C. 11328(a) (or petition for individual exemption under 49 U.S.C. 10502) must be filed. All other "interlocking directorates" have been exempted as a class from the prior approval requirements of 49 U.S.C. 11328(a), pursuant to 49 U.S.C. 10502 and former 49 U.S.C. 10505. For such interlocking directorates exempted as a class, no filing with the STB is necessary to invoke the exemption.

(c) An "interlocking directorate" exists whenever an individual holds the position of officer or director of one rail carrier and assumes the position of officer or director of another rail carrier. This provision applies to any person who performs duties, or any of the duties, ordinarily performed by a director, president, vice president, secretary, treasurer, general counsel, general solicitor, general attorney, comptroller, general auditor, general manager, freight traffic manager, passenger traffic manager, chief engineer, general superintendent, general land and tax agent or chief purchasing agent.

(d) For purposes of this part, a rail carrier means a person providing common carrier railroad transportation for compensation (except a street, suburban, or interurban electric railway not operating as part of the general system of rail transportation), and a corporation organized to provide such transportation.

§ 1185.2 *Contents of application.*

(a) Each application shall state the following:

(1) The full name, occupation, business address, place of residence, and post office address of the applicant.

(2) A specification of every carrier of which the applicant holds stock, bonds, or notes, individually, as trustee, or otherwise; and the amount of, and accurate description of, such securities of each carrier for which the applicant seeks authority to act. (Whenever it is contemplated that the applicant will represent on the board of directors of any carrier securities other than those owned by the applicant, the application shall describe such securities, state the character of representation, the name of the beneficial owner or owners, and the general nature of the business conducted by such owner or owners.)

(3) Each and every position with any carrier:

(i) Which is held by the applicant at the time of the application; and

(ii) Which the applicant seeks authority to hold, together with the date and manner of his or her election or appointment thereto and, if the applicant has entered upon the performance of his or her duties in any such position, the nature of the duties so performed and the date when the applicant first entered upon their performance. (A decision authorizing a person to hold the position of director of a carrier will be construed as sufficient to authorize that person to serve also as chairman of its board of directors or as a member or chairman of any committee or committees of such board; and, therefore, when authority is sought to hold the position of director, the applicant need not request authority to serve in any of such other capacities.)

(4) As to each carrier covered by the requested authorization, whether it is an operating carrier, a lessor company, or any other corporation organized for the purpose of engaging in rail transportation. (If any such carrier neither operates nor owns any railroad providing transportation that is subject to 49 U.S.C. 10501, the application shall include a copy of such carrier's charter or certificate or articles of incorporation, with amendments to date or, if already filed with the former Interstate Commerce Commission (ICC) or with the STB, a reference thereto, with any intervening amendments.)

(5) A full statement of pertinent facts relative to any carrier involved which does not make annual reports to the STB.

(6) Full information as to the relationship--operating, financial, competitive, or otherwise--existing between the carriers covered by the requested authorization.

(7) Every corporation--industrial, financial, or miscellaneous--of which the applicant is an officer or director, and the general character of the business conducted by such corporation.

(8) The reasons, fully, why the granting of the authority sought will not affect adversely either public or private interests.

(9) Whether or not any other application for authority has been made on behalf of the applicant and, if so, the date and docket number thereof, by whom made, and the action thereon, if any.

(b) When application has been made on behalf of any person, a subsequent application by that person need not repeat any statement contained in the previous application but may incorporate the same by appropriate reference.

§ 1185.3 *Procedures.*

The original application or petition shall be signed by the individual applicant or petitioner and shall be verified under oath. Petitions and applications should comply with the STB's general rules of practice set forth at 49 CFR part 1104. Applications or petitions may be made by persons on their own behalf.

§ 1185.4 *General authority.*

Any person who holds or seeks specific authority to hold positions with a carrier may also request general authority to act as an interlocking officer for all affiliated or subsidiary companies or properties used or operated by that carrier, either separately or jointly, with other carriers. A carrier may apply for general authority on behalf of an individual who has already received authority to act as an interlocking officer. However, a carrier may not apply for general authority for an individual who holds a position with another railroad which is not an affiliate or subsidiary of the carrier or whose properties are not used or operated by the carrier, either separately or jointly with other carriers.

§ 1185.5 *Common Control.*

It shall not be necessary for any person to secure authorization to hold the position of officer or director of two or more carriers if such carriers are operated under common control or management either:

(a) Pursuant to approval and authority of the ICC granted under former 49 U.S.C. 11343-44 or by the STB granted under 49 U.S.C. 11323-24; or

(b) Pursuant to an exemption authorized by the ICC under former 49 U.S.C. 10505 or by the STB under 49 U.S.C. 10502; or

(c) Pursuant to a controlling, controlled, or common control relationship which has existed between such carriers since before June 16, 1933.

§ 1185.6 *Jointly used terminal properties.*

Any person holding the position of officer or director of a carrier is relieved from the provisions of this part to the extent that he or she may also hold a directorship and any other position to which that person may be elected or appointed with a terminal railroad the properties of which are operated or used by the carrier jointly with other carriers.