Surface Transportation Board Chairman Daniel R. Elliott III
Speech to Transportation Research Board Annual Meeting
January 11, 2010

Good afternoon, Happy New Year, and thank you for inviting me to speak today.

I had the great pleasure to speak with members of the Washington chapter last November. Not only was the event thought-provoking and interesting, it was incredibly convenient because it was across the street from my office. But this event—you nailed it perfectly—it's practically across the street from my house. I really appreciate your accommodating me like this.

At any rate, for those of you who were not at that event or who don't work with the Surface Transportation Board, I'll give you a brief overview of what it is that we do.

The Board was established in 1996 after the Interstate Commerce Commission was abolished. The STB inherited some of the ICC's responsibilities, including freight railroad regulation as well as jurisdiction of some pipeline, motor carrier and water carrier matters. And Congress more recently gave the Board oversight of Amtrak's on-time performance.

As railroads go, the STB has sole jurisdiction over mergers and acquisitions, new rail lines and line abandonments. The Board also looks at service levels. And the Board is the final word on rates for captive shippers, who depend on rail as their sole means for transporting their goods.

The three-member STB is decisionally independent, like the Federal Communications Commission or the Federal Trade Commission. While the Department of Transportation provides us with certain administrative functions, we are a bipartisan independent agency.

The theme of your annual meeting, "Freight Rail Sustainability: Opportunities and Barriers," could not be more relevant to the work of the Board.

Economic uncertainty still plagues the country and the industry. It seems that there are more barriers in freight rail than opportunities at the moment. Fewer trains are running on the nation's rail network and fewer employees are on the job.

Last fall, the seven Class I railroads cut another 408 jobs, bringing their total employment level down to 149,020 workers in all.

That is down 6.6 percent from last January and 9.2 percent from October 2008. And the railroads still have thousands of locomotives and railcars in storage, waiting for the economy to bounce back.

There are so many parked, empty railcars around the country that local residents are complaining to public officials. On one California highway, motorists pass so many parked locomotives that they lose count.

But there are some silver linings in today's freight transportation markets. Have you heard of Warren Buffet?

It can't be so bad if Mr. Buffet is in the rail game. For those of us who remember the days of disinvestment and the dismemberment of our rail network, the fact that one of the richest guys in the world has placed a large bet on the future of the industry and our economy is a good sign.

When I spoke with some of your members last November, I was asked if the STB would have jurisdiction over any aspects of the deal. It appears to remain that we won't. There are some issues the STB will review and address. Nothing in the deal will change the reporting requirements of BNSF. We will still get the same mountain of financial and traffic information from this carrier.

We will also need to study the impact of the aquisition on our annual cost of capital calculation. Estimating the cost of equity under the STB's method requires a stock price. With BNSF going private, it will obviously no longer have a stock price. Board staff will be looking at this closely. Out of the economic downturn, opportunities have presented themselves to the railroads to streamline their route structure and make other efficiency improvements. Speeds are up and so is reliability for both the freights and for Amtrak.

I think railroads know that they must work to keep up their efficiency when business comes back. The last thing anyone wants is for the rail industry to be unprepared when the flow of goods eventually increases after billions of dollars have been spent in stimulus funds.

Railroads do the heavy lifting of the American economy, and they must be in shape to keep up with expanding commerce quickly.

And I cannot forget the Congress. Barriers or opportunities? It depends on which side of the industry you're on or how you look at it.

Let me just put it this way: *anything* is possible at the moment in the regulatory realm.

The House Judiciary Committee passed a bill that would remove the limited antitrust immunities provided to the railroads, which could lead to railroads facing more challenges in federal court and allow the Justice Department to review mergers and acquisitions.

On the Senate side, the Committee on Commerce, Science and Transportation recently approved Senator Jay Rockefeller's Surface Transportation Board Reauthorization Act of 2009. If this bill makes it through Congress, it could result in significant changes to the manner in which the economic activities of the freight railroad industry are regulated, as well as to the Surface Transportation Board itself.

The Board could go from three to five members with investigatory authority, a public advocate and an ombudsman. There are provisions that require Class I railroads to quote bottleneck rates. And parties would be in a new position to challenge interchange commitments, or "paper barriers," as they are called.

Rail carriers will be required to publish service expectation ranges, the reasonableness of which the Board will be expected to determine. Terminal access rules will be promulgated.

Arbitration will be more accessible. And last but not least, there are lots of studies for the Board to perform. Which brings me to URCS. I often say that the Uniform Rail Costing System is the heart of the STB organism. It's the methodology that allows us to develop ratios of revenues to a railroad's variable costs, such as fuel and labor.

We use variable costs to determine whether we have jurisdiction in rate disputes between railroads and their customers.

The problem with URCS has been that it's old: from 1938. The first Superman comic came that same year. That's when the minimum wage was established at 25 cents an hour. That was a long time ago, in a completely different transportation landscape.

It has not accounted for the increasing insurance costs for transporting hazardous materials. It has not adapted to the increase in intermodal traffic, computerization and the increasing use of unit trains, which are whole trains that carry one type of cargo, like coal.

Challenges to the URCS methodology have come up often in rate disputes before the Board. Parties would spend a great deal of time and money challenging the URCS data.

Then the Board issued a ruling saying they must use URCS as is. That put the onus on the Board to make sure that URCS is as accurate as possible. The Board has undertaken major initiatives to flush out the flaws in URCS as it currently exists and to receive and evaluate alternatives.

The good news is that the Board received funding from Congress to scope out the parameters of a full URCS study. The reauthorization bill then directs us to do the study—belt and suspenders. All of this is a great signal from Congress that the necessary support and funds are available to help us determine whether we need to save URCS or move to a new costing system that will more accurately measure the variable costs of moving goods by rail.

Let me conclude by saying that I hope 2010 will bring us more opportunities than barriers in the freight railroad industry.

I think the points I've made today highlight, at least, the potential for opportunity.

We can seize that potential by sharing a common vision. Whether you are a railroad, a shipper, an investor or an academic, we all have a common interest in preserving a national railroad system that serves our economy efficiently, fairly, and cleanly.

Thank you again, and I'd be happy to take your questions.