The Surface Transportation Board

STB Acting Chairman
Francis P. Mulvey

Briefing for Congressional Staff
Washington, DC – April 7, 2009
Transportation Regulation

- Granger Laws – first attempts at railroad regulation
- Act to Regulate Commerce of 1887
- Early history of the act – Strengthening the Act 1887-1917
Transportation Regulation Continued

• Expanding the scope of regulation
  – Pipelines 1906
  – Motor Carriers 1935
  – Airlines 1938
  – Waterways 1940

• Transportation economic regulation very uneven

• Over time most observers concluded regulation was inappropriate for air and truck and poorly done for rail
The Deregulation Movement

- Air Cargo Deregulation Act of 1977
- Airline Deregulation Act of 1978
- Motor Carrier Act of 1980
- Staggers Rail Act of 1980
- Bus Regulatory Reform Act of 1982
- Interstate Commerce Commission Termination Act of 1995
The Surface Transportation Board Today

• Created by ICC Termination Act of 1995
• Successor agency to the ICC—child of deregulation
• Residual economic regulation of the railroads
• Reduced scope of regulatory activity—many rail movements deemed competitive
• Smaller staff
STB Mission

- Exclusive review and approval of rail mergers
- Review rail rates and practices to ensure they are reasonable and not discriminatory
- Approval, including environmental review, of (i) construction of any new rail line or (ii) abandonment of existing lines
- Motor carrier collective ratemaking activities
- Rates for water carriers in non-contiguous domestic trade
- Rates for pipelines not carrying energy products
STB Merger Authority

- Mergers in the post-Staggers Era
- STB merger policy in 1990’s
- Merger moratorium
- Categories of merger transactions (major, significant and minor)
- Mergers and downstream impacts
STB Responsibilities over Rates and Service

• Oversee and monitor rail practices nationally
• Enforce common carrier obligation
• Ensure rail practices are reasonable
• Ensure that rates charged captive customers are reasonable
• Allow railroads to earn adequate revenues
• Determine the railroads’ cost of capital and whether they are revenue adequate
Rate Case Resolution (Large Shipments)

- Determination of market dominance (180% R/VC)
- Constrained Market Pricing and Ramsey Pricing
- Stand Alone Cost Test—Fact based approach rooted in economic reasoning approved by courts
- No substitute for preparing a strong case with solid evidence
- Balance railroads need to earn adequate returns and shippers need for fair and reasonable rates
Changes to Approaches to Large Rate Cases

- SAC approach has been criticized as artificial and overly complex
- SAC approach is very costly and time consuming
- Streamlining reduces time and cost of adjudication
- First cases under new procedures
Rate Case Resolution (Small Shipments)

- ICC adopted procedures for small rate cases in 1987 but courts struck them down
- STB adopted Simplified Guidelines in 1996 but never used them
- 20 years without finalizing the approach
- Small rate cases guidelines adopted last year
- First cases adjudicated under new guidelines (DuPont)
Environmental Review

Authority over New Construction
  --DM&E/PRB
  --Yucca Mountain
  --Tongue River

Major Acquisitions (CN/EJ&E)
Abandonment Cases
Abandonment Cases/Paper Barriers

- Offers of Financial Assistance (OFAs)
- Rails to Trails
- Line sales and paper barriers
- Recent STB action on paper barriers
Other STB Powers

- Amtrak – Enforce Preference over Freight Rail
- Mediate access to freight rights of way for commuter rail
- Emergency service orders
- Operating issues (e.g. car supply, unreasonable practices)
- Industry specific meetings
- Interchange and switch connections between railroads
- Requests for terminal access
STB Rail Consumer Assistance Program

- Facilitates informal resolution of disputes with RR’s
- Brings issues to RR’s attention rapidly
- Solves problems without litigation
- Promotes rail service improvements
- 442 complaints handled in 2008, over 2058 handled since program began in 2000
Rail Customer Public Assistance Program Contact Information

• Toll-free telephone 866-254-1792
• Written statement of the problem
  – Email: stbhelp@stb.dot.gov
  – FAX: 202-245-0461
• Web form at
  http://www.stb.dot.gov/railcustomerpublicassistance.nsf/request?OpenForm
Current Rail Industry Situation
Growth & Decline of Class I Railroad Mileage
Railroad Capacity Issues

• Rail rate and service issues often demand and capacity driven
• Agency’s role on capacity not clearly defined
• Most commodities are deregulated and/or modally competitive
• Interstate Commerce Act laws and doctrine look at reasonableness
• Rail Customers want fairness
• STB Responsibility is to system as a whole
Capacity Issues

• After years of excess capacity, shortages arose in md-2000’s
• Economic growth spurred intermodal traffic
• Trucking capacity grew limited due to higher fuel prices, driver shortages, etc
• Traffic down dramatically in past 6 months—tens of thousands of cars and thousands of locomotives idled
Capacity Issues
Long-term

• Future demand for freight movement predicted to increase, but by how much?
• Challenge for private companies to meet that demand
• Constraints on rail capital investment
  – RR’s inability to earn adequate revenue
  – Demands of investors
  – Undercapacity and overcapacity at the same time
• Demands of changing freight flows
Potential for Public Investment in Rail Infrastructure

- Can railroads earn enough to maintain and expand the network and fund needed investments such as PTC
- Railroad Trust Fund concept – Class I opposition
- Public Private Partnerships (PPPs) –
  - Create
  - Alameda Corridor
- Short Lines and 286K ton car problem
- Investment tax credits—Railroad’s Solution
## Railroad Industry Cost of Capital and ROI 1996-2007

<table>
<thead>
<tr>
<th>Year</th>
<th>Cost of Capital</th>
<th>BNSF</th>
<th>CSXT</th>
<th>NS</th>
<th>UP</th>
<th>KCS</th>
<th>SOO</th>
<th>GT</th>
</tr>
</thead>
<tbody>
<tr>
<td>1996</td>
<td>11.9%</td>
<td>8.6%</td>
<td>8.9%</td>
<td>13.0%</td>
<td>9.3%</td>
<td>7.2%</td>
<td>23.5%</td>
<td>0.0%</td>
</tr>
<tr>
<td>1997</td>
<td>11.8%</td>
<td>8.4%</td>
<td>9.8%</td>
<td>13.1%</td>
<td>5.2%</td>
<td>3.6%</td>
<td>12.3%</td>
<td>5.2%</td>
</tr>
<tr>
<td>1998</td>
<td>10.7%</td>
<td>9.7%</td>
<td>8.1%</td>
<td>10.5%</td>
<td>2.9%</td>
<td>9.1%</td>
<td>4.9%</td>
<td>3.0%</td>
</tr>
<tr>
<td>1999</td>
<td>10.8%</td>
<td>9.5%</td>
<td>3.8%</td>
<td>5.2%</td>
<td>6.8%</td>
<td>6.4%</td>
<td>2.5%</td>
<td>25.4%</td>
</tr>
<tr>
<td>2000</td>
<td>11.0%</td>
<td>8.8%</td>
<td>3.6%</td>
<td>5.5%</td>
<td>6.9%</td>
<td>6.3%</td>
<td>5.6%</td>
<td>5.9%</td>
</tr>
<tr>
<td>2001</td>
<td>10.2%</td>
<td>7.1%</td>
<td>4.6%</td>
<td>8.3%</td>
<td>7.6%</td>
<td>7.0%</td>
<td>5.9%</td>
<td>4.9%</td>
</tr>
<tr>
<td>2002</td>
<td>9.8%</td>
<td>6.4%</td>
<td>5.2%</td>
<td>9.1%</td>
<td>8.6%</td>
<td>6.5%</td>
<td>5.7%</td>
<td>3.1%</td>
</tr>
<tr>
<td>2003</td>
<td>9.4%</td>
<td>6.2%</td>
<td>4.0%</td>
<td>9.1%</td>
<td>7.3%</td>
<td>3.7%</td>
<td>0.01%</td>
<td>4.5%</td>
</tr>
<tr>
<td>2004</td>
<td>10.1%</td>
<td>5.8%</td>
<td>4.4%</td>
<td>11.6%</td>
<td>4.5%</td>
<td>8.3%</td>
<td>3.3%</td>
<td>6.0%</td>
</tr>
<tr>
<td>2005</td>
<td>12.2%</td>
<td>10.3%</td>
<td>6.2%</td>
<td>13.2%</td>
<td>6.3%</td>
<td>5.9%</td>
<td>8.9%</td>
<td>8.1%</td>
</tr>
<tr>
<td>2006</td>
<td>9.9%</td>
<td>11.4%</td>
<td>8.2%</td>
<td>14.4%</td>
<td>8.2%</td>
<td>9.3%</td>
<td>11.6%</td>
<td>9.5%</td>
</tr>
<tr>
<td>2007</td>
<td>11.3%</td>
<td>10.0%</td>
<td>7.6%</td>
<td>13.6%</td>
<td>8.9%</td>
<td>9.4%</td>
<td>15.3%</td>
<td>10.1%</td>
</tr>
</tbody>
</table>
Legislative Initiatives

• STB reauthorization—House and Senate bills. Designed to enhance competition, but railroads call them re-regulation

• Change in antitrust immunity for railroads
STB/Rail Presentation

• Thank You. Any Questions