

**WDB Opening Remarks, STB Hearing—Paper Barriers,**  
**7/27/2006**

Good morning. I'd like to call this hearing to order, and welcome everyone here today for the Surface Transportation Board's public hearing on Paper Barriers, in the proceeding entitled STB Ex Parte No. 575. I am pleased that today's hearing is being simultaneously video-webcast and is available for viewing through the Board's website. I'd like to welcome all those who are tuned in and watching over the internet, in addition to those who are here in person.

Vice Chairman Mulvey and I are aware of concerns that have been raised about so-called "paper barriers." The Western Coal Traffic League has filed a renewed petition requesting that the Board adopt rules to limit the extent to which agreements for the sale or lease of railroad lines, by larger railroads to existing or newly created short line railroads, may contain paper barriers that restrict the incentive or the ability of the purchaser or tenant to interchange traffic with connecting carriers that could compete with the seller or landlord carrier. The Board has received written comments from interested parties in response to the petition, and the

Board is holding this public hearing to further explore this matter.

With that background, let's turn to today's hearing. We have a number of interested parties that will testify. Some of the questions that may be raised concern our statutory authority to address pre-existing paper barriers, the short and long term economic effects of paper barriers, the specific proposals for action from those opposed to paper barriers, and other matters discussed in our notice announcing the public hearing.

In particular, there is a threshold issue that we would like the parties to address. There has been discussion about antitrust immunity attaching to these transactions resulting from Board approval. The vast majority of these transactions, however, appear to have been approved under 49 U.S.C. 10901 and, more recently, 49 U.S.C. 10902 enacted by ICCTA, or have been exempted from those provisions. But, under our statute, Federal antitrust immunity is specifically conferred only on transactions approved under, or exempted from the provisions of, 49 U.S.C. 11321 - 11328. Thus, participants should address whether interchange restrictions created by short line spin-offs under sections 10901 and 10902 are subject

to Federal antitrust law and whether parties are able to pursue relief in court under those laws.

The Board, of course, must maintain an open mind about all these issues until all of the testimony, both oral and written, has been given full consideration.