

**Commissioner Buttrey's Opening Remarks  
Public Meeting to Discuss Study of Competition in the Freight Rail Industry  
Washington, DC; November 6, 2008**

The long awaited Christensen Associates study of competition in the freight rail industry is on the street. Those working on the study should be commended for documenting an impressive number of interview responses and producing some interesting graphics. While I had no input into the study, I have read the Executive Summary and appreciate the effort that went into its completion. In fact, I think it is quite remarkable.

With this in mind and while I have a somewhat “captive” audience, I thought I might share some purely personal thoughts about the presumed subject of the study. In my humble opinion, the thought of a study conducted to look into the state of competition in the freight rail industry strikes me as somewhat humorous. Now, why is that, you say. Because, in my view, to say that there is, or is likely to be, competition in the freight rail industry, is to indulge in a legal fiction. The fact is that freight rail has become so efficient that it has virtually no effective competition. So, we are presuming to study something that essentially does not exist. Only in Washington would we be studying something that does not exist. This is one of the reasons why the Christensen study is so remarkable to me. We actually have before us a document whose unstated conclusion is that the subject of the study does not exist. Could we be in New Mexico?

The basic conclusions I have drawn from the study are three: that competition, in the classical sense, does not exist in the current freight rail industry; that when there is market dominance there is the potential for

misbehavior in the marketplace; and, when there is misbehavior, there should be an accessible process to address that misbehavior. That process resides at the STB. In a perfect world, there would be no need for the STB but we do not live in a perfect world. And, as the often quoted Austrian economist Joseph Schumpeter warned, there is always the temptation for monopolies to act like monopolies.

So what is monopolistic behavior? Mr. Justice Potter Stewart was once asked: “What is hard core pornography.” He responded by saying: “It’s hard to define but I know it when I see it.” So, what is monopolistic behavior in the rail industry? Well, there are a lot of folks running around town who say they know what it is and they have seen it and someone needs to stomp it out before it spreads — like Smokey the Bear stomps out a forest fire. But they have another name for it and that is PROFIT! But, profit is not a bad word. How much profit is enough? How much capital investment is enough? How much dividend is enough? How many dedicated rail cars is enough? How much limitation of liability is enough? How many customers on the line is enough? How much coal or grain or intermodal traffic is enough? Do we really want the Congress answering those questions? I don’t think so!!

I think a lot of folks are asking the wrong question. The question is not how do we get more competition — it is how do we get more infrastructure and more efficiency where we need it and thereby get better results for everyone. So, how do we get better results? Well, one answer is this. We have a process at the STB whereby applicants can come in and get authority to build new rail line to compete with existing rail line. And I can

assure you that any entity that avails itself of that process will get a fair hearing. That is not pie in the sky — it is reality, evidenced by recent Board actions. Regulatory barriers to entry are minimal and there are not regulated rates of return like those in other regulated industries. Is that a feasible answer to the lack of competition in the freight rail industry? Perhaps — although the cost is high.

Short of that, I would suggest that parties who feel they are aggrieved by monopolistic behavior (that is, market dominant behavior) would be much better off working together with their rail partners for the common good rather than conducting guerilla warfare which just dilutes everyone's financial resources and energy. But of course the problem is that the rail competition issue has been very good business for lobbyists—the patient never dies and it never gets well.

On the other hand, (I am beginning to sound like an economist) there is a process in place at the STB. It is being used and it is working. If you are a shipper that has problems with your rail provider that cannot be worked out through private negotiations — come see us. Of course, if you are happier spending your hard-earned money to hire lobbyists to run around pursuing remedies which have virtually no hope of being implemented, go for it. But if you have the courage of your convictions, which means to me that you actually have an evidentiary case, then file it.

In the meantime, we have yet another government study. Marvelous.