UNITED STATES OF AMERICA

SURFACE TRANSPORTATION BOARD

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PETITION FOR RULEMAKING TO ADOPT REVISED COMPETITIVE SWITCHING RULES

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DOCKET NO. EP 711

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Tuesday,
March 25, 2014

Surface Transportation Board
Suite 120
395 E Street, S.W.
Washington, D.C.

The above-entitled matter came on for public hearing, pursuant to notice, at 9:30 a.m.

BEFORE:

DANIEL R. ELLIOTT, III, Chairman

ANN D. BEGEMAN, Vice Chairman

PANEL I:
US DEPARTMENT OF TRANSPORTATION
SCOTT GREENE
RAQUEL HUNT
CHRISTOPHER PERRY

PANEL II:

NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE
BRUCE CARLTON
KARYN BOOTH
NICK DiMICHAEL
JAY ROMAN
WALTER SCHUCHMANN
PANEL III:
ASSOCIATION OF AMERICAN RAILROADS
MICHAEL R. BARANOWSKI
WILLIAM J. RENNICKE
B. KELLY EAKIN
PHIL C. IRELAND
SAMUEL M. SIPE, JR.

AMERICAN SHORT LINE & REGIONAL RAILROAD ASSOCIATION
RICHARD F. TIMMONS

PANEL IV:

ARKANSAS ELECTRIC COOPERATIVE CORPORATION
ERIC VON SALZEN
MICHAEL A. NELSON

INTERESTED AGRICULTURAL PARTIES:

SHARON CLARK

JOINT COAL SHIPPERS

CHRISTOPHER A. MILLS

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P-R-O-C-E-E-D-I-N-G-S

9:30 a.m.

CHAIRMAN ELLIOTT: Good morning, everyone. Today, we begin a two-day public hearing to consider proposals submitted by the National Industrial Transportation League to increase rail-to-rail competition.

We held a hearing in 2011 to consider the state of competition in the railroad industry and what steps, if any, we should take to increase rail-to-rail competition.

Some of the testimony at that hearing focused on our authority to direct switching and asked us to modify our mandatory reciprocal switching standards.

The Board has statutory authority to compel a railroad to enter into a switching agreement, where it finds such agreements to be practical and in the public interest, or where such agreements are necessary to provide competitive rail service.

After the hearing, NITL submitted its proposal, which addresses these mandatory reciprocal switching standards.

Under the proposal, certain shippers located in terminal areas that lack competitive transportation alternatives would be granted access to a competing railroad, if there is a working interchange within 30 miles.

We started this proceeding to gather empirical information about the impact of NITL's proposal. We have received many comments in response to our decision, and I want to thank everyone who has participated.

These comments have raised a number of important issues relating to the proposal, such as: whether to apply a threshold presumption regarding available competition, such as an R/VC ratio, as proposed by NITL; the distance from a shipper facility within which the proposal would apply and whether the distance is in rail miles or within a radius; and the operational feasibility of the proposed changes.

The hearing that begins today will allow us to further explore these issues, the specifics of NITL's proposal and its possible effects.

Before we begin, let me just take a few minutes to review a few procedural points about today's hearing.

We have two full days of testimony scheduled. We ask all witnesses to please summarize their oral statements in the interest of time. We have read your statements and you should not feel obligated to use every second of the time allotted.

Consistent with our practice, we will allow the witnesses on each panel to make full presentations before the members ask any questions. You will have a light before you at the front of the room. One minute before your allotted time has expired, a yellow light will appear. When you see the red light, your time has expired. Please conclude your thought at that point.

After the conclusion of the witnesses' presentations, we will rotate between the members, asking questions. If you are scheduled to testify, please make sure that you check in with the clerk at the front of the room.

I have also been asked to remind witnesses to please speak clearly into the microphone.

In addition, the public should be aware that a video archive of the entire hearing will be placed on the STB website within a few days of the close of the hearing.

In the unlikely event that we have a fire alarm or other event requiring evacuation, please proceed in an orderly fashion out of the double doors at the back of the hearing room and out of the building through the front entrance.

Specific instructions have been

posted at the back of the hearing room for assembly and notification of return, if any, to the hearing room, following any evacuation.

Also, a note regarding PowerPoint presentations:

If you haven't done so, within the next two days, please provide two hard copies of the PowerPoint presentation to the Office of Proceedings.

Finally, if you have not done so already, please turn off your cell phones.

With that, I'll turn it over to Vice Chairman Begeman.

VICE CHAIRMAN BEGEMAN: Thank you. I want to thank everyone who will be testifying over the next two days. We certainly value your input.

I want to also start by commending NITL for putting this proposal forward. It's designed to provide some competitive service options for some shippers.

Clearly, by the lengthy record

that has been developed, it has garnered a lot of interest. I think with it, a lot of questions, and I look forward to the witnesses trying to fill in some of the blanks and answering questions, such as, how this would really work in the "real world."

In the real world right now, some areas in this nation are suffering from severe service problems, and we have been told repeatedly it's because of winter. We know that the calendar says it's spring although it is snowing outside and I'm sure that the rail industry is working to improve the situation. Patience of shippers is running low or has been exhausted, and I certainly hope the situation improves very soon. Thank you.

CHAIRMAN ELLIOTT: Thank you, Vice Chairman. Our first panel today is one party, the U.S. Department of Transportation. You may begin.

MR. PERRY: Thank you. Chairman Elliott and Vice Chairman Begeman, thank you for the opportunity to appear here today.

My name is Christopher Perry and I'm an attorney in the Office of the Secretary of the United States Department of Transportation. I'm joined today by Scott Greene and Raquel Hunt, both of the Federal Railroad Administration, which as the Board knows, is an operating administration of DOT.

Scott is the Chief of the Industry Economics Division of the Office of Railroad Policy and Planning at FRA, and Raquel serves as the Geographical Information Systems Program Manager.

DOT appreciates the Board's consideration of the import issues involved in this proceeding. DOT is charged by statute with promoting transportation policies and programs that contribute to providing fast, safe, efficient and convenient transportation consistent with the public interest.

Thus, DOT and FRA have participated in numerous proceedings before the Board, involving matters of rail policy, taking into account, the interest of the affected railroads, shippers and other parties who depend upon on the rail network.

DOT's role in this proceeding has been a very limited one, and consequently, we have asked for a very brief period of time to address the Board today, primarily for the purpose of summarizing the key points from the Department's written submission.

We will then endeavor to the extent possible, to answer any questions that the Board may have.

At the outset, DOT wishes to emphasize certain points about its submission in this proceeding.

First, DOT has sought to provide an objective, data-driven analysis on a very limited set of issues related to the proposal by the National Industrial Transportation League.

On a variety of aspects of the

NITL's proposal, DOT has offered no opinion.

The Department has not expressed views on the legal issues involved in the proposal or on the wisdom of the proposal, as a matter of policy.

Importantly, although DOT and FRA's first priority is safety, we have not made a comprehensive assessment at this stage of any safety concerns that may arise from the proposal. The DOT has also made no assessment or drawn any conclusions regarding the efficiencies or inefficiencies to the rail network, that might result from the proposal.

Similarly, DOT has not initiated any review or assessment regarding the proposals' potential impact on the level of future investment in the rail network.

Instead, it has been DOT's effort to assist the Board in identifying the origin/destination pairs that could potentially take advantage of the NITL proposal, as well as the rail revenues reflected in those markets.

DOT offered this analysis in response to the Board's request, expressed in the order instituting this proceeding, for empirical evidence on the impact of the proposal on shippers in the railroad industry.

Second, as DOT explained in its comments, the data analysis depends heavily upon the assumptions that are employed. DOT attempted to follow the parameters and guidance provided in the Board's instituting order, but we also made certain additional assumptions, which are explained in more detail in the written submission.

A variety of other assumptions may be reasonably and appropriately employed here, and choosing alternative assumptions may result in significantly different results.

In deed, DOT recognizes that other parties, some of whom are scheduled to present testimony, have used different assumptions in some instances, and DOT encourages the Board to examine the proposal under those alternatives, as well.

Under those caveats and applying the assumptions set forth in the written comment, DOT examined the carload waybill sample, to assess the potential impact of the NITL proposal.

In summarizing DOT's results, I will refer here in certain instances, to the tables provided in the Department's written comment. We also have some slides, which we intend to address very briefly. The Board should have copies of those, and they are duplicates of what was provided in the written comments from DOT.

At the outset, the assumptions that DOT applied had the effect of reducing the data-set for the analysis by a substantial amount, relative to the total waybill data-set as a whole, as noted in Table 1 of DOT's comments.

Among other things, DOT decided to

examine traffic for the four largest U.S. Class I railroads, Union Pacific, BNSF, CSX and Norfolk Southern, which together represent over 90 percent of all Class I freight revenues and carloads.

DOT undertook this effort, not withstanding the Board's willingness to accept a representative analysis, based upon the traffic handled by just one of these railroads.

In sum, as noted in Table 1, DOT narrowed the data-set to 5,161 origin destination pairs and 2.8 million carloads, accounting for $6.7 billion in revenues.

These moves were evaluated further to determine whether they met the NITL 30-mile test for competitive switching. These moves represented 13 percent of total of freight revenues and 10 percent of total carloads originated, per Chart 1.

Next, DOT offered a more detailed breakdown regarding commodities and revenues for the examined traffic, and found that coal, chemical or allied products and farm products are the major commodity groups that could potentially be affected by the NITL proposal.

These three commodity groups taken together represented over 90 percent of the revenues, in over 90 percent of the carloads evaluated. This is shown in more detail in Tables 2 and 3 of the Department's comments.

DOT consequently chose to narrow its examination. Chairman, if I may have an additional moment to wrap up?

CHAIRMAN ELLIOTT: Yes.

MR. PERRY: Thank you. This is shown in more detail in Tables 2 and 3 of the Department's comments, and DOT consequently chose to narrow its examination to origin destination pairs involving these three commodity groups.

The Department then considered specific origin destination pairs, to determine if the shipper at issue could qualify for competitive switching under the NITL proposal.

Where the R/VC threshold of greater than or equal to 240 percent was met, the Department considered the shipper's proximity to a Class I working interchange within 30 miles, and DOT measured this distance by rail route miles, as opposed to linear miles.

After testing each of the origin destination pairs for eligibility under the 30-mile switching proposal, DOT found the roughly 360,000 carloads and $1.1 billion in rail revenues would potentially be eligible. This corresponded to 1,649 origin destination pairs.

In sum, this amounted to about 2.1 percent of railroad revenues and 1.3 percent of carloads that would potentially be affected by the NITL proposal, under the specific assumptions that DOT applied.

Of the commodities that DOT

evaluated, chemicals constituted the largest traffic volumes. Table 4 and Chart 2 of DOT's written comment illustrate these findings.

Again, thank you for considering DOT's submission in this proceeding and for your flexibility with the timing, and we'll be happy to answer any questions, to the extent that we can. Thank you.

CHAIRMAN ELLIOTT: Thank you. Vice Chairman?

VICE CHAIRMAN BEGEMAN: Thank you. I really don't have any questions for this Panel.

I do appreciate the effort that you went to, to be responsive to the Board's request for empirical data, and the way you worked to try to give us something to hone in on. I think it's a good kick-off to what we will be hearing from other Panels, and then different scenarios, but this is certainly a good place to start. So, thank you.

MR. PERRY: Thank you, Vice

Chairman.

CHAIRMAN ELLIOTT: As well, I don't have any questions, but I would like to thank you.

Providing this type of data is very important to the Board. It is nice to receive data of this nature from a neutral party. As a result, it makes it easier for us to base our decisions on data that's not provided by a party.

So, we greatly appreciate your efforts, and I guess Mr. Greene and Ms. Hunt came for no reason today, because we won't give them any questions. Thank you very much.

MR. PERRY: Thank you, Mr. Chairman.

CHAIRMAN ELLIOTT: Now, I'll ask the next Panel to come forward, Panel II.

(OTR comments)

CHAIRMAN ELLIOTT: Feel free to begin any time you're ready.

MR. CARLTON: Thank you, Mr.

Chairman. Thank you.

Mr. Chairman and Vice Chairman Begeman, good morning. Thank you for giving us this opportunity to be here this morning, to testify in this proceeding. Joining me are League Council Karyn Booth and Nick DiMichael from the Thompson Hine Law Firm, Mr. Jay Roman, President of Escalation Consultants, and Walt Schuchmann, Vice President for Railroad Operations Planning at the firm of R.L. Banks. We're pleased to be here.

In July of 2011, we filed a petition for rulemaking to adopt revised rules for competitive switching, and bringing this request to change the existing rules. Our goal was to introduce a straight-forward means to inject at least a measure of competition, economic competition into freight rail markets that are not competitive.

We're not asking the Board to go backward. We're not asking you to re-regulate the freight rail industry. We're asking you to take a necessary step to promote genuine rail competition.

Our proposal would not in any way, re-establish the deep and intrusive economic regulation of the past.

By any measure, the Staggers Act has succeeded in rescuing the freight rail industry, but Staggers was also supposed to promote and protect the legitimate competitive interests of captive shippers.

As you noted in your opening comments, Mr. Chairman, the Staggers Act specifically provided for competitive switching, where practicable and in the public interest, are necessary to provide competitive rail service.

In Staggers, the Congress enacted a pro-competition mandate, but since the passage of Staggers, not a single shipper has been able to hurdle the agency rule barriers that govern competitive switching.

As this slides shows, since 2004,

rail rates have increased 2.5 times since the rate of inflation and truck rates. We're not asking you to open the door to -- we are asking you to open the door to fair competition between healthy, financially strong Class I railroads for captive shippers business, where that is possible.

To realize the promise embedded in Staggers, we need a new rule to govern competitive switching. You reviewed the outline of our proposal. I'll do that just very quickly, Mr. Chairman.

The shipper must show its facility is served by only one Class I carrier, and number two, the shipper must show that there is an effective -- there is a lack of effective inter and intra-modal competition and number three, there is or can be a working interchange within a reasonable distance of the facility.

We've also proposed conclusive presumptions to speed the process and eliminate the need for costly filings and litigation.

If the shipper can show that its carrier has a 75 percent or greater market share for the commodity and movement, or if its R/VC ratio is greater than 240 percent, then that shipper has conclusively demonstrated a lack of competition.

Likewise, if the shipper's facility is located in a switching terminal or within 30 miles of an interchange, then that shipper has conclusively met the reasonable distance criterion, and while these conclusive presumptions are designed to simplify the process, they in no way, limit a captive shippers access to competition.

Importantly and often overlooked, we have also proposed that the incumbent railroad may block the shipper's request by demonstrating that the requested switch is unsafe, infeasible or harmful.

Our proposal is modest. It's fair

to both carriers and shippers, and we don't believe it's harmful to either.

The League has provided analytically sound answers to the questions posed by the Board on the economic impact of the proposal and this morning, we're going to dive deeply into those analyses.

In the United States, competition is our default economic model for one simple reason, it works.

Competition makes every business better. Competition grows the economy. It maximizes efficiency and productivity. There are practical limits on pure competition in the freight rail industry, and no one is suggesting that we build one or 10 or hundreds of railroads to compete for a shipper's business.

We're asking the Board to promote competition, by publishing our proposed rule as a notice of proposed rulemaking.

Head-to-head competition for a

captive rail shipper's business, where physically possible, should not be feared or resisted. Competition was envisioned in Staggers and should be a positive policy goal for the Board, and now, I'll turn this over to Karyn Booth, our Lead Counsel, who will begin our deeper dive into the proposal.

MS. BOOTH: Thank you, Bruce. Let's see, is this on? Good morning. Here we go.

Good morning, Mr. Chairman. Good morning, Commissioner Begeman. It's a pleasure to be with you this morning, on this very important topic. Can we just flip this over?

As you mentioned, this proceeding was started so that the Board could get a much closer look and a better understanding of the impacts of the Leagues' competitive switching proposal on shippers who qualify under the proposal, on those who don't qualify, and on the railroad industry and their networks and their revenue.

As Mr. Carlton indicated, the League has fully responded to your questions, and have provided you with very detailed analyses in our submissions, and we're pleased to be here to share with you, those results.

Now, before we get really deep into some of the details here, I did want to start with just a broad overview and a framework of the findings that NITL has presented to you.

First, the CSP is consistent with the Staggers Act. Mr. Chairman, you outlined the statutory provision and there are alternative standards that can be met under the statute. The CSP meets both of those. It's in the public interest and it will facilitate rail competition.

Second, the CSP, its impacts on both shippers and railroads are balanced. This proposal was balanced right from the start. It was designed to require certain conditions to be met. It is not open access by any stretch.

It includes fair indicators of market power that has to be shown by the shipper, before it can obtain relief, and it also specifically addresses concerns that might exist with safety or service or rail operations.

What we have shown is that the CSP will inject a reasonable amount of rail competition into the market place, and again, it is not open access or it doesn't provide automatic rights to every captive shipper, despite the fact that there are many shippers who would prefer such a system.

We have shown that the CSP will not harm the railroads economically or operationally. This is because the CSP will inject competition that will provide important benefits to shippers, including cost savings, but these cost savings are reasonable and they are a small fraction of the railroad gross revenue and net revenue, which appears in the reporting.

It also would result in a very small fraction of traffic that would actually change hands, and this amount of traffic can be easily absorbed by the very flexible rail networks, which is the most modern and one of the best systems in the world.

Now, when you look at the studies that have been presented, you do need to make some comparisons, and we would note that the NITL analysis is far more consistent with the other studies that have been shown, including that of the Department of Transportation. Some of their findings are more similar to our's, and the approach that they've taken, along with USDA and National Grain and Feed. We've all taken similar approaches.

Okay, in contrast, the AAR (American Association of Railroads) analysis is incomplete, and it's also misleading. They have ignored key questions that you presented in your notice and they've ignored key aspects of the CSP proposal itself.

They have included assumptions that make no sense. They are divorced from reality and they lack credibility.

Competitive switching will benefit the public interest. We have shown that to be so, and you too, will reach that conclusion when you look at the serious studies that have been provided to you.

This proposal supports change that is consistent with Staggers. The data is clear, it will facilitate competition and choice and innovation for captive shippers.

It will allow the market to set prices by giving a shipper who is captive, the opportunity to go to a second carrier and get a bid.

It will reduce the need for regulation, by giving shippers that opportunity.

We strongly urge you, based on the

record in this proceeding, which is now, mountains high, if you combine ex parte 705 and ex parte 711. We urge you to open a rulemaking and allow for additional comment on this proposal.

Now, with that, I'd like to begin following that just general overview of our findings, with a quick summary of your authority to make the changes that are needed, to bring the benefits of competition to qualifying shippers, and then we will get into the specific evidence submitted by NITL and other parties.

So, with respect to the Boards' authority, again, the statute is clear. It is broad. It is permissive. You can grant switching, as long as it's practicable and in the public interest or necessary to provide competitive rail service.

There are no conditions here. There are not restrictions or limitations that require competitive abuse, monopolization, service problems, despite the fact that you're going to hear that. That is not what Congress said needs to be shown.

The legislative history on this provision has been set forth in our filings, and your role is to encourage competition to address problems where they exist.

The existing rules are entirely unworkable. The evidentiary burdens that must be shown by shippers, the complexity of those proceedings, the costs make the current rules insurmountable. No shipper has ever been able to meet those standards. It just doesn't make sense.

It can't be that Congress intended to provide competitive relief, but nobody can access it.

You have the discretion to make change. The statute gives you that discretion and it's ludicrous to hear that the current rules are etched in stone and can never be changed.

The statute is clear. We've given you cases in our filings, which show, as long as there is a need for change, there is a reason for change, you can make that change and you should do that here.

The current rules are just one interpretation. It's been found to be reasonable, many, many years ago. It doesn't mean that it's the only interpretation of Congress' intent.

Now, there is no doubt that we have a very different rail industry today. We're not going to go into all of that. You've got that in the record, but not only should you make change, but you need to make change.

I will now turn to the specific questions posed by the Board, and we'll start with Question Number 1, which you asked for information on existing terminals and shippers.

Now, with respect to this

question, we couldn't get data on this issue from the waybill itself, and so, what NITL did is, it turned to the railroads public tariffs, to see what we could glean in their switching arrangements, and we were able to find some information for you.

Those tariffs show terminals that are currently open to switching. They identified the shippers who will have access to switching. It shows the commodities that can have access to switching, as well as switching rates, and essentially what those show is that all the major railroads engage in this practice, and there are obviously, a number of shippers who can benefit from it.

But it's also very clear that there are shippers at terminals with competition where switching takes place, who can't access it.

So, really today, switching is a one-way street. It's done between railroads by agreement, when it's primarily to their benefit, but that's not what Congress said. That's not the public interest standard.

We also were able to get a view of the switching fees that the railroads have in place, and what we were able to learn is that they're generally consistent.

In the West, we see that on average, $200 to $300 per car and on the East, it's generally about $400 to $500 per car, and we're going to be getting into the assumed methodology that NITL used in this proceeding, which also is very consistent with those current switching arrangements.

I'd like to leave you on this point, to say that what we're trying to do here in this proceeding is simply to expand on an existing practice, on something that's taken place in this country for many years.

The railroads switch every day, and we believe that expanding those switching opportunities to bring competition to those captive shippers is a reasonable approach.

With that, I'd like to turn this over to Nick DiMichael and Jay Roman, to address the next question.

MR. DiMICHAEL: Thank you, Karyn. I would like to focus for a while, Jay and I would like to focus for a while on Question Number 2, that the STB asked, the issues about carloads and revenue that would be subject to switching under the CSP, and just to give kind of a general approach first.

Mr. Chairman, you noted that the NITL proposal dealt with certain shippers that "lack competitive alternatives" and under our proposal, there were two primary presumptions, the 75 percent presumption, where shippers that would be tied to railroads for at least 75 percent of their moves would be presumed to be within that group, as well as shippers who have had an R/VC for their movements of over 240 percent.

Our study looked at both of those presumptions and the effect of both of those.

We were the only ones who really did that. The AAR looked solely at the 75 percent.

Like DOT however, we focused on the 240 percent presumption because that had the key data in the waybill and we've taken a lot of the deep dive into that.

We looked at assumed pricing methodology, and the Board asked us specifically to do that, and we did, and I'll talk about that in just one minute.

We also took into account a whole variety of factors necessary to get to the carloads and dollars, and Mr. Roman will be focusing on those, and we calculated answers to all of the questions asked by the Board, because the Board asked not only to take a look at what the effect was under the NITL proposal, but also to vary it by using, for example, the RSAM instead of the 240, and also, varying the 30 miles and we took at look at that.

In all of this, the idea was to

get how many -- get the answer to the question, how many carloads are actually affected by the NITL proposal?

The first key aspect to that was to get to an assumed access pricing methodology, and the Board in its decision, said that an access price would be a "significant factor in determining the extent to which a broad competitive switching requirement could affect qualifying shippers".

We looked at that, and I will tell you the AAR did not. Our assumed access fee was based on the Canadian switching model, the inter-switching fee that is set by the Canadian Transportation Agency.

We looked at that fee because for a whole variety of reasons. It is cost based. It is reviewed in detail by the regulatory agency. It is based on an analysis of actual operations up in Canada, the number of switches, etcetera, and it's intended to cover the total cost of the switching.

The access fee that we came up with, as you'll see on the screen, is a $300 switch fee for single cars and an $89 switch fee for switches of 60 cars or more.

What is also significant about that switch fee however, is that that $300 is quite consistent with the UP and BNSF average switch fee in the West of about $250 a car, and the NS and CSX average switch fee in the East of about $400 a car.

As Ms. Booth suggested, we took a look at the railroad published tariffs, because the rail -- each railroad publishes tariff which sets forth its switch fee for the various industries that it serves, and we were pleased to see that the switch that we had -- that we had developed, the $300 switch fee, was certainly in the ballpark of existing privately negotiated switch fees that the railroads themselves have developed.

It is important that the switch was done, because on the basis of that switch fee, we were able to calculate then, the number of cars that would fit under the NITL proposal, and Jay, let me turn this over to you and go into the deeper dive.

MR. ROMAN: Okay, thanks, Nick. Let's see, I'm on here.

Let's see, I'm going to go through the methodology we used to determine impacted carloads and impacted revenue under NITL's analysis, and I would say in order to determine the economic impact of the CSP on both the shippers and the railroads, we needed to take a look at both non-revenue factors, as well as revenue factors.

Both these type of factors essentially form sieves or filters that a movement needed to get through, in order to qualify for competitive switching under the CSP.

The first type of factors we looked at were non-revenue factors, and these are important because they essentially represent the conditions of the CSP that a movement must satisfy, in order to even be preliminarily considered under the CSP.

If I could go to the next illustration. Here is an illustration showing our non-revenue factor sieve and the little balls at the top of the sieve all represent different things we needed to look at, to see if a movement will qualify getting through our non-revenue sieve, and I'm not going to touch on all of these, because they're detailed in the testimony, but I do want to reference a few of them.

Number one is the origin of station captive or competitive?

Well, if the answer is, it's competitive, at the origin and destination, it's thrown out because the CSP wouldn't be applicable. It's already competitive.

The next one is a really important factor. If station is competitive, is the industry captive?

There is a very large number of stations where the industry is served by only one railroad, but it is the -- the industry is served out of a station which has competition with more than one railroad.

So, the station has competition, but the industry is captive, and we called these captive industry movements, and we had to develop protocols using the waybill to determine captive at industry movements, and it was an important determination because there is a lot of movements in our analysis that were impacted because they were captive at industry, and it really increased the results.

The next one, is the station within 30 miles of a working interchange, and for this, we looked at 30 rail models, because those were the miles that the railroad had to move from a captive station to a working interchange.

There is a number of other things

that needed to get through our non-revenue factor sieve, but essentially bottom line, in order to get through this sieve, a movement had to currently be captive and as a result of the conditions of the CSP, it had to change to be competitive.

If that change actually occurred, it qualified under our non-revenue factors. It qualified under the conditions of the CSP.

But that data that came through the non-revenue sieve then needed to be summed up, and we -- to sum this data up, we needed to put it through a revenue sieve, and the revenue sieve is really, in its macro-sense, pretty basic.

We had to determine whether on movements that were impacted by the CSP, whether the new rate, including the rate that was provided by the railroad for the movement that was impacted, as well as the access fee, whether that new cost of the movement was greater or less than the existing rate for the movement.

What I've put up on the screen is really what our revenue sieve is, and I'll just go through the numbers here, to show you how this works.

For an impacted move, let's say we have an existing rate of $4,000. Our rate after the competitive switching proposal, the rate that the railroad would provide for movements impacted by the CSP, we're saying the rate is $3,100, the access fee is $300. So, our total cost after the CSP is $3,400.

Well, the existing rate is $4,000. So, the CSP would reduce this movement by $600. So, we would say, this made it through the revenue sieve. It's an impacted movement.

In the next column to the right, we have the calculation for movements that did not make it through this sieve.

Here, we're saying the existing rate is $3,000. Our total cost after the CSP is still assumed to be $3,400. Well, $3,400 is greater than the existing rate of $3,000. So, this movement did not qualify.

So, we needed to put movements through a revenue sieve because shippers are not going to be using the CSP if the rate that would result from this is greater than what their existing rate was.

A lot of movements do not qualify when you put them through the revenue sieve. So, we found it a very important part of our analysis, or to put this another way, if you did not consider the revenue sieve, your impacted carloads and your impacted revenue are just going to be substantially over-stated.

Now, in any economic analysis, we're looking at something general here, but in any economic analysis, the devil is in the details, and our little devilish details up here are in the rate after the competitor switching proposal, because that rate that we assumed the railroads will provide, if it's a very low rate, a lot of movements will make it through the revenue sieve. If it's a high rate, very few movements are going to make it through the revenue sieve.

So, we calculated the rate after the competitive switching proposal, the rate the railroads would provide, two different ways.

First, we assume full competition, and under full competition, we assumed that the railroads would provide the average current competitive rate for this moment that they currently get for competitive traffic.

To do this, we looked at the carload waybill statistics, and we broke the waybill up for all single-line haul movements on each railroad that had less than 180 percent revenue to variable cost ratio. Then we broke that data down and we did it by commodity code.

So, we looked at all the competitive rates that we're assuming under

180 as competitive, all the competitive rates for each commodity code, and we broke down by five -- to the five-digit commodity code and then we broke it down by mileage range.

So, in looking at this, we have developed a database, which shows the average current competitive rate the railroads are providing for each commodity code, and if I could go back to the previous illustration there.

So, in our rate after the CSP, under full competition we have assumed that the railroad would provide the average current competitive rate it currently gets for traffic.

But we also look at this and say, it is really probably not likely that the majority of the rates the railroads provide will be equal to its average competitive rates, because when we look at movements that are impacted by the CSP, the best you're going to get is duopoly competition, only competition between two railroads, and one of those railroads is current access fee. So, they can't compete as vigorously for the traffic.

Here, we're only looking at intra-modal competition, which means competition from other modes is not going to be here.

So, we think it's likely that the railroads would be providing a rate higher than what their average competitive rate is they're currently providing.

So, in order to develop a scenario which was less than full competition, what we looked at was the Lerner Index, and the Lerner Index is an index that is widely known. It represents an economic theory which attempts to qualify the effect of the degree of market power an individual company has, and when we used the Lerner Index, it increased the rate up for our -- for the rate that the railroads would provide after the CSP was applied.

When we raise up the rate for a

rate that isn't totally competitive, all of the sudden, the number of movements that make it through our revenue sieve reduce, and you're going to see that in the results that we'll show now.

In looking at full competition, where the rate is based on the average current competitive rate for a movement, we have 1,240,000 carloads impacted under the 240 percent revenue condition, and this is based on the four railroads, BN, CSX, UP and Norfolk Southern, and it's also based on the 30 rail-mile consideration.

Now, in addition, the CSP references the 75 percent of traffic condition. To determine the movements that would be impacted under the 75 percent condition, we went to a different source. We went to the Department of Commerce.

The Department of Commerce has a commodity flow report, which shows that there are only four commodities which have more than

25 percent of their tons shipped by rail, and then we looked at these as the commodities that would most likely qualify under the 75 percent condition.

So, when we put these movements for these four commodities through our sieves, we come up with 200,000 carloads impacted, and one of the reasons the 200,000 carloads under this condition is so much less than the 240 percent R/VC condition is because any of these movements under the 75 percent condition, if they have a 240 percent R/VC, they're already considered under the 240 percent R/VC condition.

So, we come out with 1.44 million carloads being impacted, and that represents 4.6 percent of all rail carloads. There were 33 million carloads in 2010, the year from the analysis. So, it's 4.6 percent.

When we look at this at less than full competition, all of the sudden, the number of movements reduces because not as many movements make it through the revenue sieve.

So, we have a total carload of 1,200,000, which represent 3.9 percent of the total carloads of the four major railroads.

Now, this is our carload comparison, and we look at these results and we spent a lot of time and a lot of midnight hours, trying to develop a model that could consider all of the conditions of the CSP, but if we could go to the next illustration.

We also find the results that we're providing are over-stated, and they've over-stated for some basic reasons.

Number one, we included all exempt traffic. The only thing we excluded in our numbers was inter-modal movements. So, traffic that is exempt is included in our data.

In addition, we included all contract traffic, and movements wouldn't be applicable until after their contracts applied, but we said they all apply at once. They would actually come in gradually, and we ignored many paper barriers, simply because we don't know where they are.

To the extent that the CSP does not supercede the paper barrier, our numbers are going to be over-stated as -- because the -- where the paper barriers are, would very likely not apply.

So, we've looked at a lot of different scenarios and I guess what we would say, we think that our results probably represent the upper bounds for what would be impacted under the CSP, and with that, I'll turn it back over.

MR. DiMICHAEL: Mr. Chairman, I would note a couple things.

It was very good that DOT was up here first, and we kind of see that our analysis is generally consistent with DOT's.

DOT indicated that about 360,000 carloads would be impacted, focusing on three major commodity groups. We looked at all of the commodity groups, rather than just the three.

DOT excluded exempt commodities. As Mr. Roman just said, we included those, to be sure we covered everything, and DOT looked at single-line movements only. We looked at both single-line and joint-line movements, but our numbers were 1.44 million. It is at least in the same ballpark, we think, as far as DOT is concerned.

Contrast that however, with the results of the AAR's study.

DOT indicates that 360,000 carloads would be impacted. We indicate that 1.44 million carloads would be impacted. The AAR believes that 7.5 million carloads would be impacted, 20 times DOT's figure.

Why is the AAR's figure so high? Well, there is really two reasons for that.

Number one, the AAR addressed only the 75 percent market share under what they called a default assumption. Basically, their default assumption said that we are going to assume that a shipper at a single-serve rail station, all of his traffic, his traffic, his rail traffic automatically meets the 75 percent presumption. Let's just think about that for a minute.

You have a point at which a shipper ships 100 carloads by rail, and ships 1,000 carloads by truck. That doesn't look like a captive situation.

But what the AAR would do is to say those 100 carloads, because they're served at a single-serve rail station, those are potentially, you know, eligible for the CSP.

So, it was a -- this huge expansion in the potential number, and the AAR didn't stop with the problem there. They also went to a second problem. They did not do all of the things that Mr. Roman noted needed to be done in order to actually qualify moves.

So, for example, taking a look at

-- take a look at that 100 carloads again. The AAR never looked at what rate those cars were actually paying.

Was it going to be better or worse than the rate that they could get out of the CSP?

So, the AAR had this huge expansion and then refused to take a look at any factor that would reduce that over-stated number.

With that, Jay, why don't you talk quickly then, about the rates and the revenue that would come out?

MR. ROMAN: Right, as a continuation of the impacted carloads, I'll talk about the impacted revenue. If we could go to the next illustration.

Under full competition, the impacted revenue, for 240 percent R/VC condition, we're dealing with billions of dollars here, $1,294,000,000 would be impacted under the 240 percent R/VC condition on the four railroads with 30 miles to an interchange.

Under the 75 percent of traffic condition, we have 115 million, and once again, the reason this amount is so much smaller than the -- under the 240 percent condition is because it's -- anything with 240 percent is already considered in the first row.

So, our total shipper savings are $1,408,000,000. This represents 2.6 percent of the total revenue for the four railroads, which was $52.9 billion in 2010.

As a percent of net revenue, it represents 9.8 percent of the $14.3 billion in net revenue for the revenue, and that's the condition under full competition.

In the next illustration, we show what the results are in less than full competition. Here, we're looking at total shipper savings of under $1 billion, $946 million. It represents 1.8 percent of the total revenue and it represents 6.6 percent of the net revenue for railroads.

So, when you're looking at both of these scenarios, you're dealing with somewhere around $1 billion in revenue that would be impacted, and $1 billion is a lot of money, but when you take a look at it, how it's broken down, it gives you a different picture. If we could go to the next illustration.

Here is a map of the United States, which shows in the blue pies, the size of the pie represents the total rail revenue of the four major railroads in each state.

The size of the pie is determined by the amount of revenue in each one of the states. The little red slice we have in each one of the pies in the states, that represents the reduced revenue that would result under the CSP under full competition.

Due to the size of the pies in many of these states, you can't even see what the reduction is within those states. So, and this is under full competition.

If we are dealing with reduced competition, these slices of the pie get even smaller, and if you consider the things we were talking about earlier, that we believe that our analysis is the outer range for what would be impacted, this is really demonstrating that there is not a huge impact from a geographic area, when you're looking at these states, and when you consider that this is just static reductions with the railroads, economics is going to dictate if the railroads provide lower rates, they're going to get increased revenue.

This is really demonstrating rather minimal impact on the railroads from the competitive switching proposal, and with that, I'll turn it back over to Karyn.

MS. BOOTH: Jay, thank you very much. The next question would be Question Number 4, what's the impact on existing captive shippers, but in the interest of time, we'd like to move to Question 5.

We have submitted substantial evidence on Question 4 in our filings, and certainly, we'll be happy to answer any questions, and so, with that, I'd like to turn to Question Number 5, which was the impact of the CSP on rail network efficiency, and this is an issue in which NITL and AAR again, have very different perspectives.

You're going to hear in just a very short time, that the CSP is going to be, you know, devastating to the rail industry and that it will harm not only their operations, but service to shippers, but these claims are very much without any merit, and that is because their position is, you know, number one, contradicted by the data in the record, and from what you just heard, which is that there is a very modest number of impacted carloads and additionally, as we're going to talk about in a minute, there is a even a smaller number of cars that would actually be switched.

Their position is also contradicted by the fact that they have a very flexible rail network, and they have shown themselves to be very capable to handle normal traffic swings, which are much greater than the number of switches that would occur under the CSP, and additionally, their position is contradicted by actual experience of an existing switching regime in Canada, which shows that there are -- which is far broader than the CSP and shows that the Canadian railroads have had no difficulty in with their operations and service to other shippers.

So, with that, the AAR is going to try to make this a very complicated issue, but in fact, we submit to you it's not, and that there are really three key issues that you need to look at, when you evaluate the impact on network efficiencies.

Number one, what is the number of carloads potentially eligible to be switched, and we just talked about that.

Number two, within that universe of carloads, what is the percent of that carloads that would actually engage in switching and change carriers, and number three, once you have that figure, what is the ability of the existing railroads and their networks to handle that traffic, and I'd now like to address each of those issues in turn.

I'm not going to spend a lot of time on the first factor. You just heard how NITL, in a very detailed way, developed its carload estimate. So, that is factor number one, the fact that 1.44 million carloads would be eligible, potentially eligible for switching, which is very different from the 7.5 million carloads estimated by the AAR, and our estimate is a very small fraction of the railroads total traffic. That's the big four railroads of 31 million cars.

The second factor is really the important one here, as well, and that is of the universe of those eligible carloads, what is the percentage of cars that would actually change carriers, and what NITL did to try to develop that figure was we looked again, to Canada, an existing switching regime. It's been around for over 100 years. It's gone through extensive reviews, periodically.

We were able to look at the data in Canada, and discern of all of the traffic eligible in Canada for switching, how much of that traffic actually switches, and it's a very small percentage.

Approximately 40 percent of all rail traffic in Canada is eligible for switching, which makes sense under that regime, since that's an automatic right to switching. It's a much broader proposal than what we have here.

What we learned from that data was that only 10 to 17 percent of all that traffic eligible in Canada actually switches to a second carrier, and why is that?

Well, that's because there are strong incentives for the incumbent carrier to actually keep its business.

When you engage in switching, it obviously is going to involve some additional handling. It could increase traffic time. You have to add the switch fee that we already discussed. So, there are service considerations. There are cost considerations that come into play what -- to determine whether or not a car will actually be switched or not, and that incumbent carrier often is in a superior position to perhaps, lower its rate modestly, to keep the business.

So, looking at what we learned from the Canadian system, we applied that 10 to 17 percent, what we're calling diversion percentage, to the NITL carloads, that potentially qualified, and what that yields is that the estimated number of carloads that would actually switch to a second carrier is less than 250,000 cars.

Okay, that is an extremely small percentage of traffic, when you look at the fact that in 2010 alone, 5.4 million cars were interchanged on this rail network.

This is a much smaller percentage than the actual traffic swings these railroads deal with every year, and what I'd like to do is turn now to Mr. Schuchmann, who is going to address in more detail, the ability of the rail industry to handle the number of cars that would actually switch, and to also address some of the other operational considerations.

MR. SCHUCHMANN: Good morning. We are confident that the railroads can handle the traffic swings expected under CSP.

Traffic patterns are constantly changing on the railroads. Not only do total volumes grow and diminish, but lines of business shift and increase and plummet. Traffic changes between carriers. Traffic changes in routing.

So, while it's easy to look at a gross number, underneath that number, rail traffic is constantly changing.

The 250,000 carloads that might change are much less than some of these swings within lines of business and within to total, and as we will see on the following slide, the 250,000 carloads is dwarfed by some of the year-to-year traffic changes.

Look please, at 2007, where we see the smallest change in volume. That was 655,000 cars in a year-to-year change in that year. The mid-point of this slide is seen in 2006, at 972,000 cars. Again, a year-to-year change, and the highest swing was 2009, a decline of 4.5 million cars followed the next year by a rebound of 3 million cars.

Now, no one suggested 2009 was a normal year, nor that it was easy for the railroads to handle these challenges, but the point is, as our railroad system did overcome these challenges, kept operating and certainly can handle the gradual re-routing of only 250,000 cars, if the impacts are in deed, that high.

We submit that the impacts of CSP will be muted, that they will take place gradually, partly because one-third of rail traffic is under contract, and won't be eligible for diversion until those contracts terminate.

Also, logistics managers will be cautious in taking advantage of CSP, and will test routes and they will not rush to throw all their traffic into unproven and unknown routes.

Even if the traffic is the full 250,000 carloads though, the number of interchange activities will be much smaller because many cars travel in blocks, and in fact, many of these activities will just be the addition of a few cars to an existing interchange activity that takes place anyway.

Railroads have been interchanging

cars for nearly two centuries. In a modern era, there's been plenty of time since the Staggers Act and the creation of the mega-system today, to select interchange locations and procedures.

The focus of CSP is on working interchanges, where railroads already have personnel, equipment and procedures in place. Could you go back, please?

Railroads have terrific modern computerized tools to develop their operating plans and to adjust them. Mr. Rennicke's firm of Oliver Wyman produces the widely used software package that is used to develop these plans, and they are capable of change, even on a daily basis, as needed.

Finally, it speaks for itself, that competition will encourage both incumbents and CSP railroads to develop new efficiencies as it occurs in lanes where there currently is no competition.

We can look north of the border

for some indications of what will actually happen, and we've talked about that. Regulated switching has been in place and studied. The diversion percentage is relatively slow, around 10 to 17 percent.

The regulatory proceedings have found that there have been no material impacts on service and operations, and Canadian national and Canadian Pacific have taken place in those proceeding.

Railroads in Canada have never performed better, whether because of or despite inter-switching. Canadian Pacific's operating ratio last year was an all-time record of just under 70 percent, and Canadian National was even better, at approximately 63 percent.

AAR is wrong about the impacts of CSP on our rail network, because they over-state carloads.

We've talked about that. Their gross number that could be eligible is too high because they didn't filter it properly. They use a high and unsubstantiated estimate of 25 percent that will be diverted. The 25 percent is strictly a made-up number.

The Canadian experience is much less, but even if you apply their 25 percent to our base of 1.4 million impacted cars, results in diversion are less than 400,000 cars a year, and that number is much smaller than some of the changes that we've seen in earlier slides, and it's a fraction of the total annual volume of 30 million carloads.

AAR is also wrong about the impact to the rail network, because it under-states the capabilities and over-states the fragility of the U.S. rail network. Now, that, seems to me, an odd position for the AAR to take.

AAR goes into a lot of detail regarding some interchange examples that are speculative and may not even occur. They're really just crying wolf.

They imply that the interchange is

so difficult that the system will be overwhelmed, but I don't think that there is any reason to believe that our system is fine-tuned to the point of collapse.

Look at the ability that has been documented to handle traffic growth and swings, and I can say from personal experience, in supervising interchange activities in Chicago and other places, that whatever the configuration of the traffic, whatever the volume of the cars or the ebb and the flow, whatever the weather and conditions, railroaders just get out and get it done. Interchange is part of railroading and part of a day's work.

AAR is high in the number of interchanges per carload. We submit that it could be much less, as low as perhaps one percent change in the number of interchanges per carload.

AAR implies strongly that the railroad productivity gains are solely a result of the increase in interchanges -- a decrease in interchanges that has occurred, but that is not correct.

All in this room, there are mergers, improved locomotives, concentrations in traffic, higher capacity trains and many other things that have boosted rail productivity.

Railroads have proven that they can and will handle interchanges and increased interchanges, when they want to. Witness the formation of Conrail, which interchanges cars with its parents. Witness the tripling of short-lines since Staggers, and remember that ever car interchange between a Class I and a short-line is a new interchange activity.

Finally, the AAR says in its printed materials, and Mr. Rennicke has said that America has the best freight railroad system in the world, and I fully agree with that.

I think that our rail system will

take the modest over-time manageable impacts of CSP in stride and never look back.

MS. BOOTH: Mr. Chairman.

CHAIRMAN ELLIOTT: Please take your time.

MS. BOOTH: It is -- yes, we'll wrap this up quickly for you. I think we're going to skip a couple slides and if I could, I'd like to make just one more substantive point, and then we'll go ahead and get to our conclusions.

Yes, we're on the correct slide here.

So, despite, you know, our showing and our explanation here that the CSP does not harm railroad networks, we do want to emphasize that the CSP itself is designed to allow for this Board to engage in an evaluation of any safety issues, operational concerns, etcetera, that might exist in the context of a specific location in the country, in the context of a specific switching petition that might be brought.

So, that's because under the CSP, while the shipper has certain conditions it would have to meet, the railroads then would also be able to raise, under the design of the proposal, any concerns that they specifically would have, as mentioned, with service or operations, etcetera, and they would do that by making a showing that the switching may not be feasible operationally, that it might be unsafe for whatever reason, or that it could unduly hamper their ability to serve their own customers.

So, I think that that's just a very important point that serves as really, an extra back-stop here, you know, not withstanding that the data is very clear, that proposal itself is designed to address these concerns.

With that, we would like to wrap up and get to your questions. I am not going to go through all of these again, because I think I hit on almost all these points at the outset.

But what I would like to leave you with is, because you know, you're going to hear in a few moments perhaps, that this is a risky proposition and that you should not go forward and make the changes that we're asking you to change -- to make here today, and that is just not the case.

This is not a risky proposition. This is an opportunity. This is an opportunity for this Board to take a leadership role in fulfilling the promise of Staggers that has not been fulfilled.

The intent of Congress is clear on this reciprocal switching provision. It makes absolutely no sense, that is has never been used and has never been able to provide relief to a single captive shipper in this country.

So, with that, we submit the record is clear. We urge you to move forward, to open a rulemaking on this proceeding.

There can be additional comments, additional vetting on this proposal, and we submit to you, to please do that. Thank you very much.

CHAIRMAN ELLIOTT: Thank you. Do you want to --

VICE CHAIRMAN BEGEMAN: Thank you very much. Could we start with perhaps, you giving an overview as to how you developed the proposal?

In example, why a 240 RVC ratio? How were you able to convince your membership that, "Boy, have I got a great deal for you, less than five percent of traffic is going to get competition."

It is sort of a mixed message, and so, if you could just give some background to pre-2011, when you submitted the proposal.

MR. DiMICHAEL: Commissioner Begeman, let me maybe address that a little bit.

We were very conscience in doing this, that we were -- we're stepping on some new ground here.

It would have been easy and kind of, you know, politically easy, I guess, with our membership to say, "Yes, we're going to go for open access or we're going to go for this."

But I think what we wanted to do was to give you a proposal that was reasonable, it was balanced, that seemed to focus on problems, the problems dealing with shippers who were truly captive.

So, if you kind of start from there, let's not, you know, go for the world. Let's go for where there is a problem, and we can see how that works.

Then we began to think about, okay, well, you know, what do we need to do to develop that? What are some good indicia of captive situations?

One indicia is high-market share, and so, we began to look at well, what is a market share that makes sense, that seems to deal with captivity? Seventy-five percent, the Courts have said a 70 percent market share or more is a good indicia of captivity.

Cost, high R/VC ratios. The Board itself has said a high R/VC ratio is a good indicia of captivity. So, we were looking for those kinds of things.

The second thing, I think we were looking at, is to try to avoid a five-year litigation, millions of dollars. We wanted something that would work, that would be simple, that is business-friendly, that's competition-friendly, that would not bog shippers and carriers down.

So, that is how the concept evolved of looking at these conclusive presumptions, trying to get things that were pretty clear indicia of competitor problems and pretty clear areas where you can say, "Okay, well, this is on this side of the fence, and that's on that side of the fence."

But we were also, as Ms. Booth

said at the very end, conscience of the fact, look, safety is important. Operational efficiency is important, and so, we wanted then to look at things that -- we wanted to have a back-stop, as Ms. Booth said, and so, the fourth condition was the operational back-stop.

So, as I said, it would have been, you know, an easy thing and an easy message for us to say, "Well, we're just going to go for, you know, ever shipper within 40 miles," like they have up in Canada, but we didn't think that that would be, in a sense fair.

It wouldn't be a thing where the Board would feel comfortable frankly, in taking a step that large.

This is a modest step, a step that we can take slowly and see how it works.

VICE CHAIRMAN BEGEMAN: Can you address 240 versus 300, or 500, versus RSAM, versus limit price, and do you have a breakdown by commodity?

MR. DiMICHAEL: Okay.

VICE CHAIRMAN BEGEMAN: So, is it particularly helpful to chemical shipper?

MR. DiMICHAEL: It might be --

VICE CHAIRMAN BEGEMAN: It might be in the record?

MR. DiMICHAEL: Yes.

VICE CHAIRMAN BEGEMAN: It may be in the --

MR. DiMICHAEL: And I'm going to definitely ask Jay to look at this.

But the 240, we thought that that was a figure that was at the very high -- it was higher than the highest captive -- higher than the average captive traffic R/VC.

We looked at a traffic that was higher than what -- than 180, and what is the span of that traffic?

It goes from 180 percent to, you know, 900 percent, and the Board itself publishes a figure, the R/VC greater than 180, which gives you that average. That average is about 240.

We said, "Well, let's take a look at the figures. Let's take a look as our qualifying figure, a figure that is higher than the highest -- than the average captive traffic," and that then is going to be the competitive -- excuse me, is going to be the qualifying figure.

We have, I believe in the record, the information about what commodities are.

MR. ROMAN: The appendix to my testimony has it broken down by commodity code, and coal would be the largest commodity that's impacted, followed by chemicals, as you would expect, when you look at the traffic that moves on the rail system.

We did look at -- we did look at the impact, when we used the RSAM R/VC's of each railroad. Obviously, if we had a 180 percent R/VC, we would have more impacted carloads, but the whole process from our standpoint, in crunching the numbers and taking a look at what was going to be impacted, was you know, what is -- what is logical for the STB to be accepting?

If we make the R/VC too low, it's a bigger bite for the -- for you to bite off from the STB.

So, Bruce can probably address, I'm sure there is a lot of shippers that weren't particularly fond of having a 240 percent R/VC versus a 180 percent R/VC.

But it was -- we're generating an outcome that seems like it's not going to adversely impact the railroads and it's something that STB may feel more comfortable with.

MS. BOOTH: Can I have just one very quick follow up to that?

I just wanted to mention that the proposal is also more flexible to allow for relief beyond proof of the conclusive presumption.

So, that was one way that we could

satisfy certainly, other shippers who have concerns that they may be 35 miles away from the interchange, and therefore, the conclusive presumptions were designed to be what we call the fast-pass.

If you can satisfy those, the indicia is clear. The market power exists and you should be entitled to relief.

If you cannot satisfy the conclusive presumption, the opportunity should still be there to meet the general parameters of the NITL proposal, but it has to be reasonable, and that would allow -- that would have to be litigated, in a sense, and that would be your decisions, as to whether or not 32 miles or 35 miles in the context of a given case, should still qualify. So, I just wanted to make that point.

VICE CHAIRMAN BEGEMAN: There seems to be fairly large disagreement between this panel and the next panel, in terms of what the estimates are on the impact, 20 percent versus less than five percent.

Would the shipper community be satisfied with a cap of up to 4.6 percent of traffic impacts and wait to target -- make sure the rail industry doesn't face a severe crisis with service inefficiencies? You don't really know what I'm asking?

MR. DiMICHAEL: Not quite.

VICE CHAIRMAN BEGEMAN: Well, I mean, so, there is a cap on the number of -- instead of your estimate perhaps being too small, but you're satisfied with up to 4.6 percent of traffic?

MS. BOOTH: If the Board were to establish a cap.

MR. DiMICHAEL: Okay, a cap?

VICE CHAIRMAN BEGEMAN: It can't be unlimited -- so that it can't --

MR. DiMICHAEL: Well, I think those are the kinds of things that would be well investigated, I think, in a -- on a rulemaking, it's tough for me to say, well, you know, 4.6 is --

MR. DiMICHAEL: -- going to be a --

VICE CHAIRMAN BEGEMAN: Could, I'm sorry, I'm kind of monopolizing this--

Could one of you sort of just walk through the basic mechanics from a shippers' perspective of how this actually would work?

I mean, you know, get on the phone, I want to do x', and then you have to kind of deal with the fact that if a carrier is objecting to it, and wants to discuss the inefficiencies or the safety --

MR. DiMICHAEL: I would then --

VICE CHAIRMAN BEGEMAN: -- is every case coming here?

MR. DiMICHAEL: No, I mean, I think this is -- this starts out, and frankly, should end as a business position.

What I would kind of see here, in the real world, and you asked about the real world, what I would see here is shippers taking -- you know, sitting in his office and says, "You know, there is a carrier seven miles away that I'd really like to have access to, and I think it would be good for my business," etcetera.

Well, what I sort of see here is the first thing he does is to call up his rail carrier and says, "You know, the rates you're charging me are too high and I really want something less," and then there is, you know, a back and forth with that.

If the shipper doesn't get, you know, satisfaction there, then probably what the shipper will do is to say, "Well, you know, there is this process at the STB about competitive switching, but instead of going through all of that, will you just grant me competitive switching and we'll just say there is going to be an access fee of -- let's agree on an access fee of x', and so, we'll just let the thing handle."

If the carrier says no to that,

the what I would see at that point is, the shipper would submit a fairly concise pleading at the STB, saying, "I'm served by a single-rail carrier. That rail carrier is x'. My R/VC ratio is 272 percent for this move between Point Y and Point Z, and here is the URCS calculations that show that, and I am seven miles from the other carrier, and here is the map."

Then at that point, a shipper submits that and he has made the prima facie showing.

At that point, the railroad can then come to the Board and say, "Well, even though the shipper has made this prima facie showing that he is within 30 miles and is more than 240 percent and is served by a single rail carrier, I am telling you, Board, that doing competitive switching in this case is going to mess up my service."

"It's going to clog my yard. It's going to mess up my service to the three or four other shippers who are involved."

At that point, then the Board would have to decide, but that is a fairly concise, fairly quick kind of process before the Board, which I would hope that you would not even get to because the parties are able to deal with this on a good business basis.

That's how I kind of see this thing working out in a practice.

If a shipper is, as Ms. Booth said, outside of the 30 miles or has a, you know, 220 percent R/VC ratio, that shipper can't qualify conclusively, automatically, and so, therefore, the shipper would have to come to the Board with a more robust showing, saying, "Look, even though I'm 35 miles, it's fair for me to get competitive shipping," and you may -- and then the Board will have to decide, is 35 miles a reasonable distance, and is 220 percent, you know, okay? That's how I kind of see the whole thing working.

But the idea here is not to have a

millions of dollars, five-year litigation over this. It should be something that should be business-friendly, simple and quick.

VICE CHAIRMAN BEGEMAN: My last question for now, and is probably best directed to you, Karyn.

One of the slides that you jumped over, because of timing, actually is an issue of real concern to me, which is, what about the captive shippers that don't qualify under this?

I guess you guys have touched on it a bit in this last dialogue, that you're not trying to completely shut them out and you want them to be able to make a presentation, but effectively do their rates go up?

MS. BOOTH: We certainly don't believe so, and we've certainly submitted evidence on that point, in our filings.

But what we had planned to talk to you about is, well, we've included -- there seems to be even disagreement amongst the railroads on that issue.

I think it was UP itself, in its comments indicated that shippers who don't qualify are not likely to incur rate increases because the railroads currently have every incentive today to charge the shippers the rates they can in the market.

So, that issue, we're not frankly concerned about. We don't believe that it's going to result in drastic rate increases for other shippers, and we also don't believe that they're going to incur service problems, which have been alleged, and that's for the reasons, as we explained, that we just don't believe the operational impacts and problems that are claimed will occur, are going to occur.

You know, in addition to that, I think the railroads make the point that, you know, this CSP results in winners and losers and the Board shouldn't be put in the position of picking who those are.

But unfortunately, that is the

system we have, and that's that status quo.

I mean, I think today, if you look at exempt shippers versus non-exempt shippers, well, some might call some winners and losers, depending upon, you know, the point in time, and what the market conditions are. Those exempt shippers can't come to you today for relief.

If you look at the differential pricing today, you might say there are some winners and losers.

So, we had to make decisions in how this proposal would be designed. We think it's fair. We think it's balanced and we don't think that it will harm shippers who don't qualify.

MR. ROMAN: I think it could also be referenced. When you look at the -- in practice, what happens in negotiations between shippers and railroads, you have a lot movements, let's say that -- that aren't impacted.

But a lot of companies are going to have movements that some movements aren't impacted and some movements are impacted, and your ability as a shipper to negotiate your whole rate structure with the railroad is predicated upon how much competitive traffic I actually have.

So, if I am a shipper, I have a greater potential to be negotiating better rates for my captive traffic, if I have 20 percent of my traffic competitive, instead of 15, because I'm putting more traffic at risk.

So, for an awful lot shippers, even the movements that aren't impacted, a shipper can have greater leverage in negotiating better rates for those, or preventing big rate increases in those, because as the CSP could create more competitive traffic for them, they'd have greater negotiating leverage with the railroad.

CHAIRMAN ELLIOTT: Thank you, Vice

Chairman. I have just a few questions. My first question is probably also more of a legal question.

With respect to the statute itself, I read it to require, based on the language, that if there is such an arrangement put in place, that the carriers would have to negotiate a rate first, and then if within a reasonable amount of time, they could not reach an agreement, then they would have to come to us.

I know that was raised by several railroads, but I don't know if it was addressed in the shippers or NITL's pleadings, and I was just wondering if you could comment on that reading of the statute.

MS. BOOTH: Mr. Chairman, we agree with your reading of the statute. That is what the statute happens to say. I do have it here with me.

I think for the purpose of this proceeding, of course, you asked for an assumed methodology for access pricing, which we did, so that we could do the calculations.

But we are not here today or in our CSP rulemaking petition, asking you to set the switching fees specifically as is done under the Canadian system.

However, we have set forth certain principles in our filing that we do think are important, relative to the access fee issue, and we do believe that you have the authority and powers to potentially set certain guidelines or principles on that point, without actually setting a rate.

We know that the railroads would like access fees to be put in place that would include lost contributions, so to speak, such that there really would be -- the incumbent carrier would really be made entirely whole. There would be no rate reduction, in essence.

You know, our view of that is that that would gut, you know, the entire point of adopting a competitive switching regime and proposal here.

So, our view is that switch fees should be cost based to allow for perhaps, a reasonable level of contribution of a variable costs, similar to what's done in Canada, and that you could perhaps, set some principles in that area, without actually setting the fee itself.

CHAIRMAN ELLIOTT: And let's say we go forward with such a proposal, and that is how we read it, and then the carriers set whatever rate it is for the switching fee, and then maybe we do come up with some guidelines, but the Court, because it will go up on appeal, will say, "You know, this statute is extremely clear," and if the railroads adopt some kind of switching fee, which I assume has to be reasonable, then you know, that's where you have to keep the price.

I mean, like you said, if it is something like an efficient component pricing type fee, that would gut your idea here today, and I'm just concerned that if that's where we end up, then we may be going through a process for no reason.

MS. BOOTH: Well, I think in that circumstance, it would be unfortunate if the railroad behavior turned out to be entirely consistent in that vane, across this country.

I think it's our hope that there will be opportunities that will incentivise rail carriers to actually vigorously compete for switching traffic and set fees that are reasonable. That is our hope. Maybe it's a dream.

We have, you know, other shippers who are very concerned that the railroads won't vigorously compete and can defeat this by setting fees that high.

I guess if that happens, the remedy is a rate case on the switch fee that's set, so there is another opportunity.

It's not certainly a path that many shippers like to go down. It's too costly, to expensive, etcetera. We're not going to get into the debate on rate cases here.

But that is how we see this potentially working.

CHAIRMAN ELLIOTT: Thank you. A couple other questions -- these are more so I kind of understand your proposal completely.

On the 30 miles, is that track or radius, because I think the railroads raised some good points, with respect to why a radius might not work well versus track miles.

So, I didn't know if you, after reading through your pleadings, if you had take a set position on that, at this point.

MS. BOOTH: The NITL proposal was designed with a 30 mile radius. So, it was radial miles.

For the purpose of this proceeding, and in conducting the analysis that Mr. Roman performed, we did use rail miles in distance.

I think that our view is that the radial miles would be, you know, simple and easier to apply. When Jay got into his analysis, and he can speak to this, there were some anomalies that showed up in that vane, and so to simplify things on the study, we did use rail miles.

We think that this is an issue that again, could be vetted in a rulemaking, you know, where there could be more direct commentary on that point, but for purposes of this proceeding, we had to pick one or the other, and rail miles turned out to be simpler.

MR. ROMAN: One of the issues with radial miles, as the crow flies, you can have some movements that can be, let's say, 10 or 20 miles away from a working junction, from a captive station, but in rail miles, they can be more than 100 miles.

We applied a set switch fee, under our analysis, and for using the set switch fee, we had under our analysis, it looked like it was more reasonable to be using the rail miles.

However you look at the miles, there is -- when you get into the weeds, there is always some problems with it, and one of the problems in our calculations, we're using the waybill and the waybill doesn't get to the industry. The waybill gets to the closest station to the industry.

So, when you're looking at mileage distance, there is this thing of local miles, and we have mileage in our analysis for 30 miles from the captive station. When you actually calculate those miles from the industry, we could very likely have some movements that fall out and are not within the 30 mile range.

So, it's a question of when you're getting into the miles, as Karyn said, it's probably best to have that as a focal point in the decision from STB, as to which miles should actually be used, because is different details in both sides of it.

CHAIRMAN ELLIOTT: Another question. With respect to the service issues, obviously, the railroads have raised quite a large amount of concern about possible service issues, and you addressed that extreme route well, and I thought the Vice Chairman also had an interesting idea on a cap.

But one thing I was wondering about is, would it be possible to create a safe harbor that would permit the railroads to avoid entering into a reciprocal arrangement, so if you have the 240 number, and let's say, if any rate below that R/VC ratio, if any rate falls below that, at that point in time -- if it's above it, the railroads could quote you a rate below it, and then they would come into a safe harbor, and then they wouldn't have to engage in a reciprocal switching, which would cause their service concerns to go away, because then they would control the game.

So, if they really believe, and they are correct, that there will be severe service problems as a result of this, they could just lower their rates below the 240 number to 239, and as a result, some of these service issues that I'm sure concern everyone, including the shippers, because nobody wants to mess with the railroad system, would be eliminated automatically.

Do you have any thoughts on an idea of that nature?

MR. DiMICHAEL: Let me just take a quick whack at that.

The conclusive presumption applies only to 240 or above. So, if it's less than 240, the only way you'd get competitive switching is by coming to the Board and litigating.

The railroads can always avoid that, by simply entering into a contract at something less than 240, and then they'd get the shippers business and they could keep it.

So, in the scenario that I was describing to Commissioner Begeman before, I would think that part of this is that in these initial discussions the railroad has the opportunity to say to the shipper, "Look, you don't have to go there. We'll just enter into a contract at a rate that is less than 240 or acceptable to you, and we're done."

CHAIRMAN ELLIOTT: Thank you.

VICE CHAIRMAN BEGEMAN: That doesn't change the 75 percent cap.

CHAIRMAN ELLIOTT: Yes, I'm assuming out the 75 percent right now, based on that safe harbor.

MR. DiMICHAEL: Right.

CHAIRMAN ELLIOTT: Thank you for the clarification.

One other question that I guess I'd be remiss if I didn't ask.

With respect to the section that we're referring to again, there is a section which references the possibility of labor protection, and I think the railroads did address that, to some extent, and I didn't know what your position was, with respect to how that provision of the statute should be handled.

MS. BOOTH: Mr. Chairman, we haven't specifically addressed, you know, that provision in the statute, but I think that from our perspective again, it would be appropriately raised in the rulemaking.

If this Board had particular concerns or issues or proposals that it would want to make, relative to that specific provision, that would be an appropriate place to do so, and you know, the League would be very glad to address any of those points in any comments that we would make.

But we certainly would not want to -- I guess I can add, have our proposal, you know, adversely impact labor issues, and that's why I think the rulemaking would be the right place to raise any of those concerns, and we could fully respond.

CHAIRMAN ELLIOTT: Thank you. One last question.

I was looking at what the Vice Chairman was mentioning in her last question, and in your third slide, you show the rates increasing, what appear to be significantly on this chart.

Does that chart show that the railroads have the ability to price going forward, and as a result, that would raise some concerns with the issue about the transferring of the money from one captive shipper to another, that is not subject to the reciprocal switching proposal?

I guess I'm not sure who that would be best for -- I just have some concerns about the way the rates are going up, and it seems like the argument, you reference UP's argument, that they're already getting every nickel that they can possibly get, that just makes economic sense.

But it seems like they've been able to price higher going forward over the last nine years, and I just wonder if that would raise any concerns that the railroads would have the ability, if they do lose money as a result of this proposal, that they would transfer it to other captive shippers that don't have the benefit of this, like --

MS. BOOTH: I guess it would just be repeating what we said earlier.

I mean, our view is that we think that is not likely to happen, that that would be a low risk.

I suspect if it did happen, and the non-qualifying shippers would have to look at a rate case or something of that sort.

But our view is that we don't believe that that's a high risk proposition.

MR. ROMAN: I would add to that. As a part of my testimony, we had the rail station captivity map, which had the number of stations that were captive in each state, and there is -- it shows that there is close to 80 percent of all rail stations are captive to one class on the railroad.

The intent of the CSP is to try to reduce that from being 80 percent, and the idea is to create more competitive traffic, which will give many companies the ability to put more traffic at risk, to be -- and that can influence their ability to negotiate better rates for captive traffic.

If the railroads would seize this as it -- because they have to give out better rates to one company and then they would increase their rates to another company, that would have -- also have ramifications for the railroads.

I mean, if that happened, there might -- have more situations where companies would file a rate case, because their -- the question is, how high can a rate go, and if the railroads did attempt to just take that out on the captive traffic, there are other things that shippers can do to try to bring it back in line.

MR. DiMICHAEL: The only other thing I would say, Mr. Chairman, on that, UP said in its testimony, and I quote, "UP already has every incentive to price traffic to maximize contribution."

I think the implication of that is, if they can get more out of the traffic, if this proposal exists, or whether it does -- they will attempt to maximize contribution whether this proposal exists or not.

So, it's going to happen in the sense, anyway. This proposal will hopefully provide a competitive counterweight.

VICE CHAIRMAN BEGEMAN: Just to follow up on one thing I said, and then to ask maybe one final question.

But I wasn't necessarily floating the idea of capping, putting it -- but I was under -- trying to understand, would you be satisfied that adding competition for 4.6

percent of traffic is a game-changer, is enough? A starting point? An ending point?

I know that someone will accuse me of getting a billion dollar check written to you, but that's not what I am advocating here.

MR. CARLTON: I am tempted to discuss the billion dollar check that Mr. Buffet was offering, but my bracket was busted on the first night.

So, not to be flip, yes, I mean, I think that, you know, the injection of competition that we have described through this modest proposal is a wonderful beginning.

You know, we recognize the nature of the industry. We understand how the industry operates. We understand how some shippers have more competitive advantage than others.

But this is a step in the right direction, and if the numbers work out to 4.6, 3.7, 5.2, well, then so be it.

You know, I don't really think we

want to be governed by that consideration. I think we want to come at it from the other direction, which is why don't we try to build a mechanism into this apparatus that encourages competition, that encourages the incumbent carrier, frankly, to say, "I want to keep your business. Let's talk about service levels. Let's talk about pricing. Let's talk about other matters, because I don't want to give you up."

That, for a shipper, who is otherwise facing a 100 percent captive situation, that's a win. That's a win, and it's not a loss for the incumbent.

You know, without getting, you know, artsy about it, I mean, that's the way competition is suppose to work. That's the way the rest of the economy works. That's the way most shippers deal in their market place, and we're just trying to -- you know, bring that back as a consideration in this rather unique and interesting market place of freight rail.

VICE CHAIRMAN BEGEMAN: My last question really is prompted by several of the responses that you provided to the Chairman, on his questions. "Well, we could bring a rate case."

You know, that is a question brought forth in the record. If this would go forward, can you bring a rate case or do you have competition?

So, I think that is something that all the parties really need to talk about.

I realize what your desire is, but I think it certainly is an important issue that would have to be dealt with.

MS. BOOTH: With respect to that point, you know, our view, and I believe it's been clearly stated in our filings, is that we do not view this competitive switching proposal and outright foreclosure of the shippers opportunity to bring a rate case.

You know, rate case options and

switching options, we believe are two independent remedies that exist in the statute, that the shipper should have choice.

Now, if a shipper goes down the path of pursuing competitive switching and obtains competitive switching, then whether or not they can bring a rate case, whether that is effective competition becomes a question in the context of a market dominance determination.

If they pursue switching and the switch rate offered to them is so high, that they can't use the switching option, is that effective competition?

Those are questions -- and we believe it would not be and should never foreclose the opportunity to otherwise then bring rate case.

So, I agree with you, it's a very important issue. I think shippers are very concerned about that. You know, this intent here is not to foreclose any other potential remedies that may exist. We don't believe it does so, but there may be factual circumstances, once switching is pursued, where that has to be evaluated in the context of market dominance.

CHAIRMAN ELLIOTT: One last question. As far as the overall proposal, I think Ms. Booth described this very well earlier, about winners and losers and that's kind of how the system is set up already, with respect to who has competition and who doesn't.

And in this situation, it seems as if whoever would benefit from this, just has to be within 30 miles of the interchange, and obviously, shows that there is market dominance involved.

One concern I have is that that does seem somewhat arbitrary, that these people that we are selecting, if we go forward with this proposal, are just selected on a basis, which does not seem to be tied to anything.

I was wondering, you mentioned, I think in your filings, that the rail industry appears to be healthy, much healthier than it was obviously, when the Staggers Act was put in place, and part of your argument is, things have changed.

With that being said, what if we looked at your proposal and then tied it in some manner, to revenue adequacy and whether or not a railroad's revenue is adequate?

So, in that situation, these types of proposals would apply, if a railroad, based on some of our precedent, would not need as much differential pricing in that situation? Would that be something that you would be interested in exploring?

MR. DiMICHAEL: I think the overall focus of this should be on shippers who have -- who are in a sense, the most captive, and the -- and the proposal is suppose to focus really on that, and I just want to clarify maybe one thing, that the 30 miles is the conclusive presumption, but there is an opportunity for people who are somewhat outside, to be able to do that.

So, I don't think this is a problem, in terms of arbitrariness. There is lots in the record also, showing that the 30 miles makes a fair amount of sense.

The Boards are -- the committee, you know, actually gave you that -- that actual mileage figure.

Just as a rate case is not focused on purely revenue adequacy, you can bring a rate case against a revenue inadequate carrier, if it's -- that carrier is charging too much.

It seems to me, that should be the same kind of focus here. It should be really on captivity and competition, but I think we can certainly say, the rail industry right now is in a very, very, very different financial situation than it was in 1978 or 1980, or for that matter, even in 1990 or even in 2000.

So, it seems to us that you can go forward confidently, because you're dealing with a rail industry that is financially strong.

CHAIRMAN ELLIOTT: Thank you very much for that. We really appreciate you coming today and presenting your position. Thank you.

MR. DiMICHAEL: Thank you very much.

MS. BOOTH: Thank you.

CHAIRMAN ELLIOTT: Okay, I think we're now at Panel III.

Just for planning purposes and possible flights this afternoon, although I can't believe anybody would leave and not watch tomorrow's performance, we intend to just keep working through. So, I just want to let you know that, and in case you're starving or something like that.

But that is our plan, at this

point in time.

So, we are going to begin with Panel III, and I believe that we will start with the Association of American Railroads, who has 50 minutes.

MR. SIPE: Thank you, Mr. Chairman, Vice Chairman Begeman. Good to be here this morning.

My name is Sam Sipe. I'm Counsel for the AAR in this proceeding.

AAR is very pleased to have an opportunity to talk to the Board Members face-to-face about this important proposal, and we look forward to having an opportunity to respond to your questions, as well.

I'm going to take a moment at the beginning, to summarize AAR's key points, and where is our slides meister?

That's us, Association of American Railroads, and these would be our key points.

What I'm going to do is, as I mention these key points, is introduce the various members of the AAR Panel, who will speak to the specific points here.

After my colleagues have made their presentations, I will offer some concluding remarks.

Our first point is that analysis of the impact of the NITL proposal must start with the fact that the proposal is vague and incomplete.

We've already had some questions this morning about how would this thing actually work, and my reaction to what we heard was, that was kind of incomplete, as well.

The fact is, as we sit here now, we really don't have any clear sense of how that would work.

There is also an issue with the modeling that has been done, and the reality is that NITL and the other commenters have not been able to accomplish the Board's objective in this proceeding, which was to determine with some precision, the impact of the NITL proposal on railroads and shippers.

Making matters worse, the parties supporting the proposal failed to model key aspects of the NITL proposal.

AAR's first witness, Michael Baranowski of FTI Consulting, addresses the parties impact analyses, and explains that even with the uncertainties in the proposal, it's clear that the NITL proposal could potentially affect a very substantial number of carloads, and I want to put the emphasis on the word potential, because we don't know with precision, but we've told you what the boundaries of possible impact is, and as the Board thinks about this proposal, you need to recognize that it's not a pinpoint estimate, it's a range, and nobody can tell us what's going to happen.

Regarding our second and third points, William Rennicke of Oliver Wyman will address the two serious risks that are raised by the NITL proposal.

Mr. Rennicke will explain why the proposal poses the risk of potentially serious service disruptions that would harm railroads and shippers alike, including those captive shippers who wouldn't benefit from the proposal.

He will also address the adverse effect of the NITL proposal on railroad infrastructure and investment.

The risks discussed by Mr. Rennicke are not offset by any public benefits, as explained by AAR's next speaker, Dr. Kelly Eakin of Christensen Associates.

Dr. Eakin will address economic aspects of the NITL proposal, including the likelihood that the proposal, if adopted, would produce winners and losers among shippers.

Dr. Eakin will be followed by Phil Ireland, a former officer of Canadian Pacific Railroad.

Mr. Ireland will explain why Canadian inner-switching does not provide a reliable basis for comparing the situation in Canada with the situation that might obtain in the U.S. under the NITL proposal, and he will explain why NITL's predictions of the level of mandatory switching, based on the Canadian experience, are completely unreliable.

At the conclusion of these witness statements, I will explain why the Board should terminate this proceeding, without any further steps.

With that, I'll turn it over to Mr. Baranowski.

MR. BARANOWSKI: Thank you, Mr. Sipe. Thank you for the opportunity to testify as part of the AAR Panel.

My name is Mike Baranowski. I'm a Senior Managing Director for FTI Consulting in Washington, D.C., and head of the firm's network industry strategies practice.

I, along with my colleague Rick

Brown, submitted opening and reply verified statements in this proceeding. I am here today to provide an overview of my opening reply testimony concerning the potential scope of the NITL proposal, to discuss the empirical analysis conducted by other parties, and to answer any questions that the Board may have regarding my testimony.

Our written testimony and my discussion today make two basic points.

First, there are data limitations and ambiguities in the NITL proposal that make it impossible to determine with any precision, the number of carloads that would be covered.

In fact, as I noted in my written testimony, the NITL proposal is more of a concept than a proposed rule. It is also impossible to predict accurately, how railroads and shippers would respond in particular instances to the availability of mandated access.

Never the less, the potential

scope of the NITL proposal is very broad. The available data show that the NITL proposal could potentially affect more than one-third of the non-inter-modal carloads.

Second, NITL and other commenting parties that support the NITL proposal did not attempt to identify the potential scope of the proposal that is before the Board.

NITL's analysis ignored many of the features of its own proposal and applied unsupported and self-serving predictions about how railroads and shippers would respond to mandated switching rules, both of which minimize NITL's estimates of the overall potential effects.

The result is a significant disconnect between the terms of the NITL proposal and its quantification of the proposed effects.

As Figure One, which is projected on the screen, or will be, shows my analysis estimates that the NITL proposal could potentially affect 7.5 million carloads annually, while NITL claims that just over one-million carloads would be affected.

It is necessary to start any discussion of the impact of the NITL proposal with the specific provisions of the proposed rule.

The NITL proposal would conclusively treat traffic at single-serve stations within 30 miles of a working interchange as eligible for mandatory switching if its rate -- either if its rate was above 240 percent R/VC or if 75 percent of the traffic for a given commodity between a given origin and destination moves by rail.

My analysis used reasonable assumptions to model the impact of the proposed rule as NITL proposed it, and this required taking account of NITL's 75 percent provision.

The 75 percent provision in NITL proposal means that many more than simply those carloads with R/VC's above 240 percent at single-serve stations would be eligible for mandatory switching.

Specifically, I considered all of non-inter-modal carloads from single-serve stations within 30 miles of a working interchange as potentially affected, with the exception or carloads originating and terminating a railroad owned special facilities.

My estimate is conservative, in that it does not account for the likely large additional number of carloads from sole-serve customers, customer facilities located at stations served by more than one railroad.

As the Board knows, many rail stations that are served by more than one railroad have individual shippers located on the lines of only of those railroads serving the station.

In many of these cases, the shipper does not have access to the other rail carrier serving the rail station.

Under NITL's proposal, such shippers would be able to obtain mandated switching, but there is no feasible way of using the available data to determine how many shippers fall into this category. So, my scope estimate is necessarily under-stated, and potentially by a large amount.

On opening, NITL ignored important features of its proposed rule and made numerous unfounded assumptions to reduce its potential scope.

Figure 2 quantifies the number of carloads that NITL dropped from consideration by virtue of data screens it deployed. I will now address each of those data screens.

The first reduction in Figure 2, reducing the number of potentially affected carloads from 7.5 million to 5 million is the result of a series of non-revenue screens used by NITL. These include eliminations of carloads from stations on KCS, CN and CP.

Exclusion of all carloads where more than 30 rail miles from the interchange, even though NITL proposes to establish a 30-mile radius.

Limiting the definition of workable interchanges to only those locations identified in the waybill sample as having interchange traffic in 2010.

Exclusion of any carload that would be able to use force switching at an origin or destination, but would remain closed at the other end. There is no basis in the NITL proposal for any of these reductions.

The second group of reductions shown in Figure 2 are the results of three revenue screens applied by NITL. Like the non-revenue screens I just described, the revenue screens are not consistent with the language of the NITL proposal, yet they further reduce NITL's estimate of potentially affected traffic from 5 million carloads all the way down to 1 million carloads.

First, NITL excluded all carloads that have an R/VC below 240, which is contrary to both the 75 percent rule of the NITL proposal and the provision in the proposed rule, allowing shippers to obtain forced access if they can show market dominance, regardless of the R/VC ratio of the movement.

Second, NITL applied a screen that is based on speculation about the level to which rates would fall under a forced access regimen that eliminates the number of shipments with R/VC's over -- that eliminates a number of shipments with R/VC's over 240 percent from consideration.

NITL assumes in effect, that railroads would never set a price below an arbitrary assumed average competitive price in order to obtain new business.

Third, NITL takes its speculation about railroad pricing behavior one step further by applying another revenue screen that reduces potentially affected carloads based on an assumption that forced access would lead it -- lead to what it describes as duopoly pricing.

The method by which NITL establishes this supposed duopoly price is far to convoluted to address at this hearing, but the basic flaw is that there is no credible or reliable way of predicting how railroads would price their service in response to the prospect of forced switching.

The last set of adjustments shown in Figure 2 actually increase slightly, NITL's count of carloads potentially affected by the proposal.

Specifically, on opening, NITL did not include any estimate of the carloads that would be affected by its 75 percent rule.

On reply, it acknowledged its prior failure to address the 75 percent provision and created and submitted a new methodology that supposedly assessed the impact of the provision.

The approach is entirely without foundation and as shown in Figure 2, adds back only a small number of carloads compared with the millions of carloads dropped from NITL's analysis by first ignoring that provision.

While less convoluted than the analyses submitted by NITL, the impact estimates presented by US DOT, USDA and NGFA also fail to assess meaningfully, the potential impact of the NITL proposal.

For example, US DOT's estimate evaluated only a subset of the commodities and a subset of the railroads. It also looked only at single-line movements and movements with R/VC ratios above 240 percent. Similarly, USDA and NGFA limited their analysis to agricultural shippers.

Because these analyses did not attempt to model the NITL proposal, their impact estimates do not assist the Board in assessing the potential scope of the proposal. Thank you very much.

MR. RENNICKE: I am William Rennicke, a partner with Oliver Wyman, a management consulting firm that specializes in transportation strategic planning. I've been a railroad executive of Class I railroads and a consultant to railroads for more than 40 years.

I submitted a verified statement and reply verified statement for this proceeding on March 1st and May 30th, 2013.

Today, I will elaborate on three points I made in my prior statements.

First, that forced switching would adversely affect rail operations and service quality. Second, that forced switching would severely restrict the railroad's ability to make needed infrastructure investments and third, that NITL has presented no justification for imposing the adverse effects of service disruption and reduce infrastructure investment in the railroads or the shippers.

Forced switching would adversely affect rail operations and service quality.

A focus of my opening testimony to the Surface Transportation Board on this matter was the potential for forced switching to lead to a wide ranging disruption of rail operations and the deterioration of service quality.

In fact, shippers have implicitly acknowledged that if forced switching were to become widespread, rail operations would be adversely affected.

NITL claims the Board need not be concerned about the impact of forced switching on rail operations because they will rarely occur. Yet, NITL is aggressively seeking the right to compel railroads to switch, and shippers claim that the threat of switching would lead railroads to substantially lower their rates to hold onto business.

Obviously, for the threat of switching to have this impact, a significant amount of switching must occur. Thus, the Board has to assume that if shippers get the right they are seeking, they will use it.

AAR and its member railroads are the only parties in this proceeding that have presented evidence showing what would happen to rail operations if a significant amount of additional switching were to result from a new forced switching regime, and NITL has offered no evidence to the contrary.

As I have shown, the effects of forced switching could be well severe and widespread.

As Exhibit 1 demonstrates, the reduction of interchanges in the railroad industry over the past 35 years is highly correlated with improvements in rail productivity.

NITL and Mr. Schuchmann's statement does not deny that the reduction of the number of interchanges has greatly improved operating efficiency, yet Mr.

Schuchmann would have the Board ignore the fact that the reduction in interchanges has been among the most important, if not one of the most important drivers of productivity improvements.

Modern railroading is based on the concept of a scheduled operation which rely on predictable repetitive traffic movements that seek to minimize intermediate handling of cars to the greatest extent possible.

The introduction of forced switching into the U.S. system risks taking a predictable, productive operation and making it run unpredictably.

Even the simplest switching events add complexity and unpredictability and can undermine efficient operations.

NITL witness Mr. Schuchmann glosses over the complexity of forced switching by ignoring the many handling events that are required to interchange traffic between two railroads.

An interchange just does not involve a single event. Many individual handlings and switching events are required to effectuate a simple interchange as illustrated in the next two exhibits.

Exhibit 2 shows an example of originating and a single car -- single-line car and single-line service. It requires six events. That is, switches or movements to move the empty car from the local yard to the origin and the loaded car, back to the yard to be switched into an outbound train.

All of these events today are controlled by one railroad.

First, the railroad switches the empty car located in its yard to an eastbound train that serves the origin. Second, the weight-train moves the empty car to the origin.

Third, the weight-train spots the empty at the origin. Fourth, once the car is loaded, a westbound train picks up -- picks it up. Fifth, the weight-train moves the loaded car to the yard and sixth, the loaded car is switched into a road train and begins its journey to its destination.

Now, consider Exhibit 3, which shows what would happen when the simplest possible version of forced -- of a forced switch is made.

As you will see, four additional events are required to originate the car and each of these events would need to be coordinated between two railroads.

First, railroad two, which is the line haul carrier, must switch an empty car located at its yard into a weight-train that serves the interchange with railroad one, the incumbent carrier that serves the origin -- that serves the origin.

Second, the weight-train must move the empty to the interchange with railroad one. At that point, railroad one executes the same six events it would execute in a single line movement, events 3/3.

However, when the loaded car arrives in the yards, instead of being switched onto a train headed to a destination, it is instead, switched into a weight-train headed back to railroad two.

In step nine, the weight-train brings the loaded car back to the railroad two. Finally in step 10, the loaded car is switched into a train beginning its journey to the destination.

However, as I described in my written testimony, most forced switches will occur in complex terminals, where neither the track configuration nor the service plans of railroads involved are necessarily configured to accommodate a new forced switch.

Given that the railroad industry has spent the past 30 years simplifying its infrastructure and operations, and removing inefficient routings and interchanges, this situation will occur frequently.

An example of such a complex move is shown in Exhibit 4, where 24 events are required to implement a forced switch.

The example here starts with the same six events on the incumbent needed to originate the move, however, the example assumes that the forced switch could be made to another railroad, shown in blue, but the switch would involve more complex trackage, as would be typical in many urban areas.

To make the forced switch, 18 additional switch events would be required.

I'd like you to notice two things. Just use your imagination.

The first, the additional complexity introduced by the forced switching, in this case quadruples the number of events required, simply to originate the car.

Second, 12 of the 18 added events required by force switching occur on the line of the incumbent carrier, which is losing the traffic. The incumbent carrier will be required to do three times the work it would do to originate the single-line car.

Each new event introduces the risk of failure. In other words, the risk that the railroad would not be able to meet its service plan.

You will hear from railroad witnesses tomorrow, how important on-time service is to its rail customers, and even if the risk of failure for each event is small, the overall risk of failure increases, as more events are added to the movement, as shown in Exhibit 5.

Even the simplest force interchange increases the number of required events and reduces the likelihood of a successful service plan.

When you consider the thousands of cars that would move daily under forced interchange, and the way that service failures ripple through a complex network, such as a railroad system, even a small decrease in reliability creates a very significant problem, creating system delays and increases supply chain cost to shippers and makes rail service less competitive with truck.

The adverse effect of interchange and switching on service reliability has been well-established for many years. During the 1970's, the United States Department of Transportation funded the freight car utilization program.

Work at MIT funded by that program established, as is shown in Exhibit 5, the probability of successfully executing a service plan declines as the number of interchange and switches -- switch events increases.

Mr. Schuchmann and NITL do not deny that additional events will degrade service quality. They simply ask the Board to assume that they won't occur.

They do not address for the Board, what would happen if these events do, in fact, occur.

My written testimony set out in detail, the factors that allow railroads to improve their productivity and service over the last 30 years. Those factors are summarized in Exhibit 6.

Each of those factors would be undermined by the increased number of service failures caused by force switching.

First, forced switching leads to less efficient use of yards and increased yard congestion.

Second, forced switching would create inefficient line haul movements. Those familiar with the history of the railroad industry will recall that in the 1960's and 1970's, when numerous routings were available, shippers often chose inefficient routings to gain a lower rate.

Third, forced switching would create additional car movements, and that would inevitably degrade service reliability, impact passenger rail service.

Fourth, railroad service planning, which is a complex process under the best of circumstances, would be undermined.

Firth, the forced switching would result in the efficient use of infrastructure, equipment and human capital. Just as stable, predictable traffic flows are essential to optimal service planning, they are also essential to optimized investment in infrastructure, equipment and people.

Finally, forced switching would increase risk to workers. A labor management committee convened by the Federal Railroad Administration found that most fatal injuries suffered by railroad workers occurred during switching operations.

Mr. Schuchmann suggests that railroads are capable of adjusting their service plans to accommodate variations in traffic levels, and that capability would enable them to avoid the adverse impacts of traffic volatility that comes from increased switching, but his argument is flawed.

It is true that railroad traffic volumes can change in response to short-term conditions like weather, as well as long-term changes in the markets. Railroads devote substantial resources to addressing these changes, but despite these efforts, responding to even gradual market changes is challenging.

Adding further uncertainty through regulation would only compound these challenges and interfere with the railroads ability to respond to dynamic markets.

The sources of service disruption from forced switching would also be spread across the network, making it more difficult to anticipate and address.

In Exhibit 7, originally included in my verified statement, I identified 22 regions in the United States with more than 45 potential forced access locations. Including all of the major east/west rail gateways and most U.S. cities, rail lines in these regions also support Amtrak and the expanding regional commuter rail operations.

Maintaining fluidity in these 22 regions across the remaining rail network is essential to ensuring the level of railroad performance shippers have come to expect.

High density segments of the rail network, such as those running through gateways, as shown in Exhibit 7, can operate well under normal conditions, but they are vulnerable and -- two, and recover slowly from disruption, even as small problems can cause gridlock.

As anyone who has ever boarded an airplane can attest, its characteristic in the network industry that problem occurring in one part of the network can quickly spread to other parts of the network.

Forced switching would severely affect the railroads ability to invest in infrastructure.

I now turn to the impact of forced switching on rail investment in infrastructure.

NITL has stated that in terms of gross revenue, the railroads would only lose 1.3 billion in gross revenue. However, as NITL and its supporters well know, the viability of an enterprise is measured in net income and the availability of cash flow for investment.

The gross revenue loss estimated by the NITL would translate into a substantial loss, in terms of net income that the railroads rely on to make infrastructure investments.

Historically, net -- railroad net income has been closely tied to capital expenditures. Thus, while the NITL would have the Board focus only on the loss of 2.4 percent of railroad gross revenues, the more relevant frame of reference is that forced switching, even using the NITL's under-stated estimate, would eliminate revenue close to 13 percent of the railroad industry's capital budget.

Therefore, even the NITL's vastly under-stated estimate would hit the railroads very hard, and that's not the whole story.

As discussed by other witnesses, NITL calculations materially under-state the actual effects of forced switching.

As shown in Exhibit 8, assuming that just 25 percent of the cars eligible for diversion are actually diverted, using NITL's own revenue impact assumptions and the annual revenue lost to the railroad industry in 2010 would be $7.9 billion.

That would be incurred due to forced switching that took in -- with the additional direct cost of $2.5 billion that would be incurred due to forced switching, the total revenue loss would go to $10.4 billion per year, an amount that exceeds the entire capital budgets of the railroads.

This does not take into account indirect costs which cannot even be calculated in advance or the possibility that the amount of switching would be greater than 25 percent.

All of these numbers, both those presented by NITL and the railroads are estimates. The inescapable conclusion however, is that forced switching would have such an adverse effect on railroad net income that it would undermine the railroad's ability to maintain infrastructure, good operating order, to add capacity as it's needed.

Such an outcome is not in the public interest, especially considering that the U.S. Department of Transportation has projected that railroads will need to add 46 percent more capacity by 2040, just to meet the country's freight transportation needs.

There is no need to risk service disruptions and reduce infrastructure spending. The shippers that support the NITL proposal have offered no justification for assuming the potentially severe risk of service disruptions and the adverse impact of reduced revenue to fund rail infrastructure and investment.

Some shippers, particularly chemical shippers, would likely to attain lower rates, while other shippers would suffer the consequences of a forced activist regime without any offsetting reductions, and the chemical industry has not shown the Board why it should go out of its way to give chemical shippers a favored treatment.

As I have described in my prior statements in this proceeding, rail rates overall for chemical shipments have declined 23 percent since the passage of the Staggers Act, a period during which the chemical industry itself raised its own rates by 151 percent.

In closing, let me emphasize that the railroad network in the United States is a national asset. Under the current regulatory structure, it has become the best in the world. Unlike the nation's highways, waterways, ports and airports, the railroad network is privately financed.

Public interest is best served by maintaining it in good condition and expanding to meet growing demand in the future. There is therefore, a strong public interest in ensuring reliable railroad industry that has the financial where-with-all to maintain and grow as a vital component of the U.S. transportation system. Thank you.

MR. EAKIN: Good morning. Thank you for the opportunity to make these comments.

My name is Kelly Eakin. I am Senior Vice President of Christensen Associates, an economics research and consulting firm, located in Madison, Wisconsin.

My colleague Mark Meitzen and I, have submitted a joint verified statement and a joint verified reply statement in this proceeding.

My brief comments today emphasize the following two key points. One, the mandatory switching proposal represents market intervention that would create a relatively small set of winners, while imposing costs on a much larger group of non-beneficiaries, and two, arguments by proponents that traffic growth will mitigate impacts on railroads are flawed.

Let me turn to the first point, that the proposal would interfere with markets in a way that creates winners and losers.

Proponents argue that mandatory switching would introduce competition. Instead, it would constitute a regulatory intervention that could lead to resource mis-allocations, decreases in rail maintain and investment and other inefficiencies inconsistent with competition.

That is, mandatory switching would

not improve market performance and promote efficiency the way true market based competition does, and would likely harm market performance.

This proposed market intervention would have other negative consequences by creating winners and losers among shippers.

Proponents and other shipper comment -- and other shipper commenters appear to believe that chemical shippers would be the beneficiaries of the mandatory switching proposals.

Coal and agricultural shippers appear at best, luke warm about the proposal, and shippers of other commodities have largely been silent.

Even within a generally favored industry, there would be winners and losers.

Some shippers will be located near working interchanges and would enjoy lower rates made possible by the proposal, but other shippers will be beyond a reasonable distance from an interchange. Those other shippers would be left at a competitive disadvantage in their own markets, as compared to the winners.

Most shippers would also face higher costs. As the other AAR witnesses have demonstrated, mandated switching has the potential to degrade network efficiency and increase system-wide costs.

All but a narrow group of favored shippers would bear a share of these costs without receiving any benefit from mandated shipping.

Now, onto the second point. Proponents suggest that the impact mandated switching on railroads would be mitigated because of substantial traffic growth. This assertion is nothing more than speculation.

It is difficult to envision the source of traffic growth. Any traffic growth potential would be limited to the set of favored shippers who obtain lower rates, as a result of mandatory switching.

But where would the favored shippers additional -- where would the favored shippers additional traffic come from?

Traffic growth that occurs because the favored shippers gain market share from their non-favored competitors is not net traffic growth to the railroads, nor is it likely that favored shippers will shift traffic from other modes of rail -- from other modes to rail, since the mandatory switching proposal is aimed at traffic for which there are no existing competitive alternatives.

Furthermore, there would be expected traffic declines by the non-favored shippers because of service deterioration and possible higher rates, and even if mandatory switching were to lead to some traffic growth, the additional revenues would not offset the lost contribution that railroads would incur, and it is the impact on railroad contribution, not revenue, that is the issue.

As we demonstrated in our opening

comments, if railroads are already pricing in an economically rational manner, any traffic growth resulting from the proposal cannot improve the railroads bottom line.

To conclude, motivation for the proposal is clear. Lower prices for the favored shippers. Also clear as the adverse impacts, system inefficiencies and higher costs born by all. That is, the proposed mandated switching would result in a private interest, re-distribution of value among stakeholders, rather than a public interest improvement in market performance.

The guiding principle since the Staggers Act has been deference to market forces, where possible, with a regulatory back-stop to protect those shippers who lack effective competitive alternatives.

The Board and the ICC before it follow this guiding principle to largely achieve the vision of the Staggers Act. The rail industry today is financially much healthier than the moribund industry of 1980, and shippers have benefitted.

The mandatory switching proposal moves away from this guiding principle. Foremost, the proposal represents interference in, rather than deference to markets.

The impact would be primarily the re-distribution of value among stakeholders, rather than the improvement in market performance.

This impact would go beyond the railroad industry and could alter the competitive process and product markets that use rail transportation.

In summary, the mandatory switching proposal represents market interference rather than deference. The result will be creation of winners and losers by regulation. Thank you.

MR. IRELAND: Chairman and Vice Chairman, thank you for the opportunity to speak with you.

My name is Bill Ireland. I'm currently an independent consultant with Jexi, Incorporated.

I was a railroad executive with Canadian Pacific Railroad for more than 29 years, before retiring in January 2013. My last position at CP was Vice President Service Design and Asset Optimization, and through my experience with Canadian railroad operations, I have direct knowledge of Canadian rail inter-lining and switching, as well as U.S. rail operations.

So, the purpose of my comments today is to explain why the Canadian experience with inter-switching provides no basis what so ever for predicting how a forced switching regime would affect rail operations and the quality of rail states -- rail service in the United States.

To start, the Canadian rail system, its history, its development, structure, markets and shippers is fundamentally different from the U.S. rail system. Inter-switching was adopted in Canada some 100 years ago, to avoid duplication of rail infrastructure.

Since traffic patterns in Canada have adapted the inter-switching over a long period of time, Canada's experience with inter-switching today says nothing about the impact of a new mandated switching regime in the United States, which has no history of mandated switching.

In addition, Canada's population is one-ninth the size of the U.S. population. Its population density is lower and it has a half-dozen major cities, compared to more than 50 large cities in the United States.

Distribution patterns are thus, much simpler in Canada, and its rail network has evolved to serve a small thinly distributed population, spread along a largely east/west line, as shown in Exhibit 1.

The size and the structure of the

Canadian rail network is also the product of a national policy focused on resource development and export. By comparison, the rail system in the United States, the worlds' largest economy, consists of a complex spider-web network of rail lines that connect a wide array of commodity production and distribution hubs, as shown in Exhibit 2.

U.S. rail traffic flows are dominated by products moving internally and destined for domestic consumption.

U.S. rail route miles are nearly five times Canada's, and the U.S. railroads now carry six times as many carloads. Clearly, the different level of scale and complexity of the two countries have a direct impact on the potential risk of congestion and service deterioration that could result from mandated switching.

Unlike Canada's simple linear and parallel network, the complex U.S. rail network could be highly susceptible to service interruptions due to the unpredictable and unstable traffic flows created by new mandated switching regime.

The spider-web nature of the U.S. network results in more complicated classification activity in major yards, adding more car handling activities, as a result of forced switching, on top of these already complicated car handling activities and yards, particularly those that are already capacity constrained, would significantly increase the risk of service disruptions.

Moreover, Canada's largely parallel rail network has only 67 locations where inter-switching takes place between Canada's two Class I railroads, while there are some 1,500 potential interchange points in the United States.

Exhibit 3 shows where forced switching would occur in the United States, with each red circle on the map indicating an area with more than 45 potential forced switching points.

As you can see, there are many U.S. urban areas where the total number of potential mandated switching locations is higher than the number of inter-switch points in all of Canada, nor is there a single yard in Canada that comes close to the size or complexity of a major terminal area like Chicago, Saint Louis, Houston or Kansas City.

I would also like to address the analysis of Canadian inter-switching data by the NITL's consultants.

The NITL's claims regarding the frequency of inter-switching in Canada are highly misleading and provide no support for the estimates to the level of switching that would occur in the United States under a mandated switching.

Specifically, as shown in Exhibit 4, the NITL uses 2007 Canadian switching data to suggest that while the United States has 22 times as many switching locations, and six times as many carloads as Canada, mandated switching in the U.S. would produce half the number of switches that occur in Canada.

The results of NITL's analysis are implausible in part, because the NITL's calculations are seriously flawed.

For example, included Canadian inter-modal traffic and domestic U.S. traffic of CN and CP U.S. subsidiary railroads in its calculations, even though Canada's inter-switching rules do not apply to any of this traffic.

Simply correcting this obvious error would increase the NITL's estimate of switched cars to the United States by a factor of at least 14, as shown in Exhibit 5.

In conclusion, I hope these points make it clear that Canada's experience with inter-switching cannot be used to predict the potential impacts of mandated switching on the U.S. rail system. The differences between the two systems are significant enough that using

Canada as some kind of model for a U.S. switching regime is entirely unwarranted. Thank you.

MR. SIPE: As I said at the outset, I am going to conclude our Panel's presentation by highlighting AAR's position regarding the important issues raised in this proceeding.

First, let me remind all of us sitting here this morning, that the broader context of this proceeding is a proposal for a fundamental change in STB economic regulatory policy.

NITL proposes a rule that would require rail carriers to permit use of their facilities and services by their competitors.

If a proposal of this sort were directed at any of NITL's members, it would elicit howls of protest, and it should. That's not the way markets work, not the way real markets work.

Maybe markets that have been, and

we heard this four times this morning, "injected with competition", but when I think of an injection, I think of something painful, delivered by a long needle, and that's kind of the way AAR thinks of this artificial competition.

In addition to impairing rail operations, the NITL proposal would undermine two cornerstones of rail transportation policy that have been in place since Staggers.

The policy to rely on competition that exists naturally in the market place to the maximum extent possible, and the policy to minimize Federal regulatory control over the rail transportation system.

In other words, NITL wants to restructure rail transportation markets through a new set of regulatory rules. That is the opposite of what Congress legislated in Staggers and ICCTA, and it's the opposite of what has worked well for nearly 35 years.

Regarding the specific objectives

of this proceeding, the Board sought information that would enable it to assess the likely impacts of NITL's switching proposal. It sought empirical data on specified topics, so that it would be sufficiently informed to make this assessment.

But the empirical evidence submitted by the parties supporting the NITL proposal does not allow the Board to predict with confidence, what would happen if the proposal were adopted.

The shipper parties, including NITL itself, failed to model various aspects of the proposal. The empirical evidence is not only incomplete, it diverges widely from party to party, and as you heard DOT say this morning, there are different reasonable assumptions that could be made, which produce such wide ranges of estimates.

Apart from the uncertainty regarding the impact in the NITL proposal, the proponents of the proposal have presented no reliable evidence of any public benefits would flow from it. They asserted public benefits specifically, in their testimony this morning, and they have asserted public benefits in their written testimony, but I don't think you'll find anything in the record that constitutes an effort to specify or quantify what kind of public benefits they're talking about.

I urge you to read the testimony of AAR witness Mark Fagan, who submitted reply testimony on our behalf.

Mr. Fagan presents a framework for assessing public benefits and in particular, assessing the potential benefits of an injection of competition against the costs and opines, based on his experience and his analysis of the NITL proposal that no public benefits have been put forth.

In deed, the only benefits that NITL and its supporters anticipate are purely private benefits in the form of rate reductions for a subset of shippers.

This is simply an alternative and redundant form of rate regulation, but the governing statute and Board rules already provide well-defined vehicles for addressing unreasonable rates, and the Board continues to refine its standards and fine-tune its procedures to make rate cases more accessible to shippers that believe they are entitled to rate reductions.

While there is no evidence of public benefits, AAR's and individual railroad comments show that there is a high likelihood that the NITL proposal would result in reduced capital investment in the railroad industry and serious declines in the service levels that today's carrier -- that today's customers enjoy.

It would be poor public policy to incur these risk without clear evidence of public benefits that substantially outweigh the risks, but there is none.

Notably, the likely degradation of service would affect shippers across the network, regardless of whether their geography made them possible recipients rate reductions.

Some shippers might accept service degradation as the price to pay for rate reductions, but many other shippers would be unequivocal losers.

This phenomenon of winners and losers argues strongly against the adoption of a risky change in regulatory policy.

Instead of empirical evidence of likely public benefits, which is what the Board would need to see from NITL to move forward toward a rulemaking, NITL builds its case for a fundamental change to the Boards' regulatory regime on decidedly non-empirical propositions.

One of those propositions is that inter-switching has worked in Canada. Another is that hardly any mandated switching would actually occur if the NITL proposal were adopted.

These propositions are no substitute for empirical evidence of benefits and neither justifies imposing switching in the United States.

You've heard Mr. Ireland explain that the U.S. rail network bears almost no resemblance to the Canadian rail network, and therefore, attempted extrapolations from the Canadian experience are meaningless.

As for NITL's attempt to justify a regime of mandated switching by claiming that hardly any switching will actually occur, that argument conveniently avoids addressing the very real disruptive effects of forced switching, and if true, would only underscore the point that NITL is not really interested in switching, but only interesting in an alternative method of pursuing lower rates.

It would not be rational policy for the Board to adopt a new regulatory regime in the hope that it would not be implemented, knowing that if it were implemented, it could cause major operating problems.

NITL contends that the Board has a sufficient basis to move forward to a notice of proposed rulemaking. The record compiled in this proceeding demonstrates nothing of the sort.

The record establishes that NITL's switching proposal pertains nothing but risk and uncertainty, risk of serious service degradation, risk of reduced investment and uncertainty as to whether the efficiency gains that have benefitted both shippers and railroads in the post-Staggers area, will be sustained.

The Board should dispel the risk and uncertainty by rejecting the NITL proposal and terminating this proceeding.

On behalf of AAR, thank you, and I believe General Timmons now has a chance to speak on behalf of the Short-Lines.

CHAIRMAN ELLIOTT: Do you want to

go together in this fashion, or would you rather wait for us to question the AAR and then -- it's up to you.

MR. TIMMONS: I am fine, going forward now.

CHAIRMAN ELLIOTT: Okay.

MR. TIMMONS: Well, good afternoon, Chairman Elliott, Vice Chairman Begeman. Can you hear me okay with this?

CHAIRMAN ELLIOTT: Very well.

MR. TIMMONS: My name is Rich Timmons, and I am the President of the American Short Line and Regional Railroad Association, and the Association represents 550 Class II and Class III railroads, most of which are small and locally based, and on behalf of those members, I thank the Board for inviting interested parties to testify this afternoon.

In summary, the three major concerns of the small railroads are as follows:

The ASLRRA continues to oppose the NITL proposal, as being injurious to the National Rail Network, as explained by the Class I participants in this proceeding in significant detail.

The NITL proposal is likely to cause substantial issues with the fluidity and efficiency of the rail network, including small railroads.

Class I service issues directly impact the services that small railroads can provide to their customers and small railroads have a limited ability to manage their own recovery from network issues.

It is the short -- it is the Association's position that the STB should deny the relief NITL seeks in its proposal and retain its current competitive access rules codified in 49 CFR Part 1144.

The imposition of the NITL proposal on small railroads would be harmful to them, their customers and the communities they serve, due to the fact that small carriers' traffic is particularly subject to diversion already, and allowing Class I to cherry-pick traffic would greatly exacerbate that, and while the NITL proposal that is the basis for this hearing, provides that small railroads would be exempted from the provisions of any revised competitive switching rules, the proposal is ambiguous on that point, and if its proposal is adopted by the STB, any such rule must specifically exempt small railroads from any new rules on this subject.

The Association submits that if any new competitive access rules are adopted by the STB, those rules should specifically and unequivocally exempt small railroads, whether they are part of the routing of the traffic or not.

The balance of my testimony will address these points in more detail.

The small railroad segment of the

National Rail System is largely the product of de-regulatory initiatives started under Staggers. That Act allowed small entrpreneurial companies to purchase or lease light-density lines from the Class I carriers, thus preserving rail operations, rather than having those lines fall victim to abandonment.

As of 2012, there are 560 small railroads operating over 40,000 -- over 43,000 miles or approximately 38 percent of the nation's rail lines. The traffic base of the small railroads is largely made up of general merchandise traffic, highly susceptible to diversion to other modes, and if the NITL proposal is adopted, to Class I carriers, as well.

For small railroads, the average route mile distance is 91 miles and the median route mileage is only 34. Small railroads provide competitive service to more than 10,000 rail dependent employers, participate in about 44 percent of all carload movements other than coal and inter-modal and play a critical role in the communities that those carriers serve, particularly to those in rural areas.

The shippers served by small railroads employ on average 100 employees and nationwide, more than one-million people are employed at facilities served by small railroads.

Short lines employ approximately 20,000 employees, of which more than half are represented by unions. These railroads transport shippers' traffic over relatively short distances to interchange with Class I carriers. This part of the rail industry is known to provide service on the first mile and last mile of rail freight movements.

Their traffic densities are light and their fixed costs are high, and competition from trucks, inter-modal operations, barges and trans-loading operations is fierce.

Moreover, relatively few customers account for the majority of traffic on this small railroad line. It is not unusual for three or four customers to account for two-thirds of a small carriers' rail traffic. Loss of all or a portion of the revenues from those moves would be devastating to small railroads.

Permitting a Class I to take the traffic away by virtue of the imposition of the rule proposed by NITL would not only deprive the short lines of its ability to survive, but also harm other shippers on a line, that the Class I divested in the first place, because it was a money-losing proposition.

The position of the ASLRRA in this proceeding is as follows:

As stated in ex parte 705 and again, in its reply comments in this proceeding, the Association does not believe that changes in the current regulatory structure would serve any valid or justifiable purpose.

While the NITL petition exempts Class II and Class III railroads from the provisions of the proposed rule, the NITL petition is ambiguous.

If the STB adopts the proposed rule, it must specifically exempt Class II and Class III railroads, to ensure that the small railroads who have no market power in the first place, are not collaterally damaged under the proposals' terms and under any future imposition of it.

For example, if the Board decides to adopt the NITL petition, it should expressly limit the application to situations in which no Class II or Class III railroad participates at any point in the movement of the traffic, whether or not the small railroad appears on the waybill.

Absent the addition of the specific exemption described above to this rule, an example of how small railroads would be drawn inadvertently into any mandatory switching rules, involves movements in which the small railroad is not shown on the waybill, but still negotiates its own pricing for the final few miles of transportation to and from the customer.

As written, if the small railroads connecting Class I railroad must offer a competing Class I access to a shipper, the connecting carrier may be forced to grant access over the small railroads route.

Though unintended by the proposed rule, the small railroad would involuntarily exchange its compensatory short-haul rate for a modest Government imposed access fee that would certainly impact the overall viability of the small railroad.

To be clear, there is no access fee which could adequately compensate the small railroad for the loss of customers and corresponding revenue.

Another example of an additional adverse effect, the imposition of the proposed rule on small railroads might be when a small railroad is merely providing contractual switching services to a Class I carrier as its first mile/last mile.

If the Class I either A) is required to provide another Class I access or B) reduces its switching charge to meet the requirements of a mandated switching rule.

As a practical matter, the Class I carrier will pressure the small railroad to re-negotiate its contract to a lower rate, reflecting the regulatory limitation applicable to the Class I carrier.

The ASLRRA submits that the STB should retain the current regulatory structure that has promoted the development of a viable and sustainable national rail network, to change the current regime without a clear understanding of the implications and without a clearly established benefit for all customers would be detrimental to the small railroads by virtue of the potential damage to the rail industry.

The NITL proposal could add unnecessary switching activity on the rail network, decrease the efficiency of an already complicated series of operations, with a potential to disrupt traffic patterns, produce congestion in rail yards and drive down switching costs to the short lines, which as explained below, will undermine the long-term viability of the rail service provided by the short line railroads.

In addition, the reduced efficiency of any one rail carrier, Class I or otherwise, impacts connecting small railroads to the detriment of customers. With these risks in mind, and without clearly established benefits for all customers, the Association continues to oppose the NITL proposal as being injurious to the National Rail Network.

With particularly adverse

consequences for the 560 small railroads operating in 49 states, and their customers and the communities they serve, while a Class I carrier could, as a result of re-regulation of switch charges, absorb a reduction in overall revenues that generally compensate the Class I for long-haul moves, it is a far different matter for small railroads.

The average length of haul for switching in terminal small railroads, for example, is 14 miles and their median length of haul was only five. Switching operations would represent a disproportionately high amount of small railroad revenues, if the switching -- is switching is defined as movements of less than 30 miles, as proposed in the NITL position.

In fact, about 45 percent of the nation's small railroads are less than 30 miles in length.

Moreover, unlike Class I carriers, small railroads have virtually no bargaining opportunity to enter into reciprocal switching arrangements, since they typically operate at only one or two interchange locations.

The ability of small railroads to maximize revenues from their single limited operating territories is critical to their viability.

None of the analyses submitted by advocates of the NITL petition identified shipments involving small railroads at the origin or destination that are not shown on a waybill. Thus, the small railroads' role in those movements is likely much greater than realized.

In the short -- in the Association's study conducted for EP 705, 40 percent or more of the carloads in many commodity classifications were handled by small railroads at either origin or destination.

Thus, the advocates of the NITL

position -- petition fail to acknowledge both the frequency with which small railroads would be involved in moves subject to the proposed rule, and the dis-proportionateley adverse effect a Government imposed fee would have on small railroad revenues.

The NITL assertion that the potential loss of railroad revenue would be small, in the low single digits as a percent of overall carrier revenues for Class I railroads, is certainly inaccurate concerning small railroads. The problem for short lines is that a significant revenue reduction from even one large customer has an outsized impact, since three or four customers typically generate the majority of the small railroads revenues, and while there are positive indicators of continued short line growth, the Board should be aware that the small railroad industry has not returned to the 2006 peak year for carload volume and small railroads earn barely six percent of national freight revenues.

The modern small railroad industry sector has been created largely by Class I railroad system rationalization, whereby lines that did not meet return on asset standards were divested to new operators.

In the future, the unintended consequence of the downward pressure on short-haul rates through either mandated switch charges or Government set access fees, may minimize the ability of Class I's to continue the process of transferring lines to small railroads when it makes operating or financial sense to do so, not to mention, disrupting the negotiated economics of those already in existence.

With the eventual downward pressure on short-haul rates, it is very unlikely that a small railroad would be able to profitably operate labor-intensive switching operations. As a consequence, the short line model that has saved rail infrastructure will cease to exist. Abandonments and fewer service options for shippers will be the end result.

Moreover, imposition of the NITL proposal will immediately make it more difficult for small railroads to obtain capital to build and maintain their systems at a reasonable cost, as the market quickly marks down their future cash flow.

Another impact not addressed in the NITL proposal is the degree of disincentive future rail shippers or receivers would have to locate on a small railroad.

Currently, rail customers are attracted to locations served by small railroads, as a result of superior local service and where available, unbiased access to multiple Class I carriers.

Imposition of the NITL proposal would provide a potentially serious artificially induced disincentive against future customers locating on small railroads.

Regarding the various fee proposals that have been suggested by the advocates of NITL -- of the NITL proposal, none of them works for small railroads. A single fee schedule imposed upon small railroads would present an insurmountable, economic obstacle for most. It would inevitably be much lower than the revenue generated now and there would no place to find and off-setting increase in revenue or a matching reciprocal arrangement.

Some comments suggest that in lieu of a rigid fee schedule, an URCS based limit on revenue over variable costs, such as 180 percent, would be a reasonable alternative.

In fact, any notion that revenue over variable cost might be appropriate for limiting the price of a movement between a customer facility and an interchange point would be extremely harmful to short lines.

First, URCS costs are based on Class I operations and have not relevance to small railroad costs of operating light-density, labor-intensive properties, delivering carload traffic over short distances.

Second, the nature of terminal operations equates to high fixed costs. A regulatory limit based on any kind of variable cost analysis would deprive small railroads of any recover of the real cost driver for terminal switching movements.

In fact, the pricing model for most small railroads is completely different than for Class I railroads, whose rates are based in part on length of haul. Most small railroads are not.

The issue of cost variability is completely different for Class I carriers and small railroads. In the face of limits tied to the revenue to variable cost formula, small railroads would have no option to adjust.

Under this scenario, many small railroads would likely shut down if forced to cut their switch charges below current market rates, since there is no corresponding opportunity to cut costs or increase revenues elsewhere. Of necessity, these costs would be passed to other customers.

The proposal to adopt inter-switching rules such as those administered by transport Canada is the wrong approach, as those rules are largely inapplicable to the U.S. rail industry as a whole, and are wholly irrelevant to the operations of small railroads in this country.

In Canada, there are only two large trans-continental railroads and very few independent short line carriers. The concern of small railroads about the ambiguity of the current NITL proposal is based on a number of factors.

Without a specific exemption written into any new rule -- just a moment more, sir?

CHAIRMAN ELLIOTT: Please

continue.

MR. TIMMONS: It will prove hard to keep the new rule from imposed on small railroads because of the inevitable anomalies, the ambiguousness of the language proposed by the NITL rule will create over time.

Shippers will begin to shift their business from perceived high-cost switching carriers to locations where cheaper Government mandated access fee prevails to the detriment of short lines.

This logical strategy would lessen competition over the longer term and the availability of rail infrastructure that is currently maintained by small railroads for the benefit of those shippers that are not within a reasonable distance of a working interchange.

This is a critical issue for shippers, if it's keeping rail transportation up and options available to the light density fringes of the National Rail Network is the very essence of the small railroads role.

On the other hand, by imposing the exemption in the rule, the interest of the public, the shippers, the small railroads would be protected from the unintended consequence of NITL's proposed rule. Up to 80 percent of small railroad traffic is subject to competition from trucks or barges, and the presence of the small railroad is strong evidence that competition to the interchange already exists, thus limiting the application of the rule to movements where no small railroad participates should not have any adverse implications for shippers.

In conclusion, the Short Line Association believes that little good and significant harm would be risked by adopting the NITL proposal, but in any event, we implore the STB to include a clear and unambiguous exemption in any rule, to protect the small railroads from the unintended consequences of any regulatory changes.

This will continue to allow the short line industry to function effectively for the benefit of shippers, the small railroads and their employees and community stakeholders.

Mr. Chairman, Ms. Vice Chairman, I thank you for your time and your attention.

CHAIRMAN ELLIOTT: Thank you for your testimony. A few questions.

What I've heard here today are two entirely different stories, one from NITL and one from AAR.

With respect to the service issues that you raised, and for good reason, we don't want any service issues of great magnitude that destroy the system, NITL raised in their argument or their testimony, about significant changes in the amount of traffic year over year that occurs, and also noted that there are numerous examples of reciprocal switching situations across the country now, I assume including the shared assets area.

How do the railroads, those statements against what you've just said?

I mean, is there a reason why this would create more problems than the problems or the situations that already exist, with respect to the changes in traffic and the existing reciprocal switching situations?

MR. RENNICKE: If I could just make a couple of comments on that?

CHAIRMAN ELLIOTT: Sure.

MR. RENNICKE: One of the -- I think the issues get -- to address that gets back at what has been the evolution of the infrastructure that supports the railroads as they sit today.

If you go back to this freight car utilization program, which I participated in, back in the 1970's, it was clear that the connection points between railroads, both commercial and physical, were so large that it became almost impossible to optimize or offer good services.

So, several things happened, you know, including the creation of Conrail, which combined a whole bunch of entities in to one.

There were -- the regulations allowed certain route closings or regulatory things on the commercial side.

The result of that has been the change in the network, so that for example, there is over 10,000 miles of yard tracks that have been removed in the last 20 years. Hundreds of interchanges have been closed.

Yards that exist today, that would be subject to this provision, may only handle 10 cars, but the potential for reciprocal switching or for forced switching may be adding 50 or 60 cars from a yard next door.

So, you're taking in essence, a network, an infrastructure, a machine, if you think of it, that's been designed and configured to handle certain types of traffic flows, and certainly, they go up and down, but they're going up and down within the confines of an infrastructure network that's been crafted and existed to meet it, and now, you're saying that there can be all kinds of new artificial changes to it.

I think that's probably where one of the most fundamental changes is going to be. The infrastructure just isn't there any longer to support this wide-ranging reopening of -- or creation of switch points.

MR. SIPE: If I may elaborate. Another point that is in Mr. Rennicke's testimony, and I think he alluded to it this morning, is that switching necessarily introduces a need for communication between two railroads, and the experience of operational planning is that it goes considerably more smoothly when it's under the auspices of a single planning entity, and doesn't require communications back and forth, particularly if things happen in the switching world where you don't have an operating plan that calls for somebody to arrive on your doorstep with a car and say, "Hey, here it is. We want it to be switched."

MR. RENNICKE: One other point, and one of the real breakthroughs that came out of the work that was funded by the DOT in the 70's and 80's was that the more events you create, if you think of your airline experience.

If you have a choice of going point-to-point on an airline trip, your probability of making it there is much greater than if you decide to take a route that's going to go through three different hubs, and why? Because it's just a physical principle.

The more situations there are, the more events, the more times that things could happen, something happens, there is a certain probability, and that -- and the railroad industry and part of this technology that was mentioned that our firm has, for example, is focused on driving down the numbers of those events, so that you can have a whole bunch of non-stop trips, or as close to non-stop trips as you want.

When you introduce this kind of switching, you're now suddenly opening up, to use the airline example, the kind of -- the five-hub or the five airplane change trip, just to get from Washington to Los Angeles, for example.

So, that's just the -- it was the physical nature of the way networks work with any kind of network, that the more things you do, the more possibility there is for error.

So, the introduce -- introduction of these situations is going to create, as we've tried to show, a much higher probability of failure. Exactly what we don't know is that, but it's going to be much larger than it is now.

CHAIRMAN ELLIOTT: And that leads me to my next question.

Earlier, when NITL was testifying, I posed a possible safe harbor. In this instance, if you were one point below 240 and that would automatically take you out of that -- NITL's proposal, as a safe harbor.

So, if you were up in the 280's or 290's, and NITL or a shipper came to you and said, "We'd like access here," if you fit within all the other parameters, what if you had the option of saying, "Okay, instead of doing that, we'll drop it to 239, your rate?"

Would that eliminate, and as a result, then they would not have the opportunity to engage in any type of access claim, would that type of safe harbor solve these service issues that you've been raising here today?

MR. SIPE: Well, if railroads behaved in such a manner, as to voluntarily take their wallets out and give up a chunk of their revenue, in order to avoid service problems, I suppose that could be a result, but you know, why would anybody say that made this proposal acceptable?

They are pressing for a specific form of regulatory change, which would allow access to a second carrier, where it doesn't currently exist.

In order for that to be a meaningful threat, it would have to happen in a significant number of circumstances, and I don't think you can solve what is a fundamental problem with a regime that is not pro-competitive, by saying, "We're going to ease the pain by letting you buy your way out of this problem, Mr. Incumbent Railroad," by paying a smaller price than if it went all the way down to marginal cost.

CHAIRMAN ELLIOTT: So, if I'm hearing you correctly, I'm not sure if I did, that in essence, it would solve the service issue problem, but it's not something that is exactly what the railroads would like to do, because like we referred to earlier, write a one-billion check or whatever the check would be.

MR. SIPE: You certainly heard the second part of that right.

I don't know -- I don't know how railroads would respond to that. I mean, maybe some of them would avail themselves of the safe harbor in some instances, but not others. Maybe they wouldn't.

But it's -- it's not something that has the contours in my mind, of a real viable compromise, because it's basically simply saying that we're going to minimize the hit on you, or limit the hit.

CHAIRMAN ELLIOTT: Okay, second question, I guess this is more to Mr. Baranowski.

When I was looking at the differences in the estimates of the effect, they were clearly significant, and you can correct me if I'm wrong, that the other groups that made these estimates that were significantly lower did not include the 75 percent traffic number. Is that accurate?

MR. BARANOWSKI: They didn't, that's accurate.

CHAIRMAN ELLIOTT: Yes?

MR. BARANOWSKI: They didn't include that as -- or they filtered out --

CHAIRMAN ELLIOTT: Right.

MR. BARANOWSKI: -- without recognizing or acknowledging the 75 percent portion of the proposal.

CHAIRMAN ELLIOTT: And then with respect to your numbers, if you did take that portion out, what would that do to your numbers, as far as the effect?

So, let's say you were based on the assumption that the Board said no to the 75 percent, and we just went with the 240. What would that do to your numbers, as far as how the proposal would affect you?

MR. BARANOWSKI: It's not something I've calculated, but it would reduce the numbers by a number of million carloads. I don't know how many.

You can get some idea by looking at my Figure 2 and just looking at the differential between the two -- the first top two red bars, and you can see that I started with the 7.5 million.

There is a reduction that occurs in the NITL filters to exclude the KCS, CP and CN, and that's the big chunk of what gets you from 7.5 down to five. Some of those would -- some of those are above 240. Some of those would be subject to the 75 percent rule.

But then the next filter is, okay, from the five-million, what happens if you limit the filter-only on 240 percent, and that's the difference between the five-million and the 1.6.

CHAIRMAN ELLIOTT: Okay.

MR. BARANOWSKI: So, it's 3.4 million.

CHAIRMAN ELLIOTT: Got it, thank you. Vice Chairman?

VICE CHAIRMAN BEGEMAN: Thank you.

Mr. Rennicke, if I could start with you.

One of the charts that I thought was quite interesting, although I'm not sure if I understood it fully, dealt with the six steps that happens in, just one generic switch.

It was six steps and then it became 12 and then somehow, it became 21 or 24, and I'm trying to understand, is it that six steps happen in just one carrier switch all the time, correct?

MR. RENNICKE: What we tried to do is -- was to be as conservative as possible, is to demonstrate that in the simplest form, a simple interchange -- a simple activity of originating a car would take six steps.

The car has to arrive in the yard. The empty gets spotted. The car is loaded. It's pulled.

Then the next --

VICE CHAIRMAN BEGEMAN: Day-to-day business, that's the way it works?

MR. RENNICKE: Day-to-day business. The next situation said, all right, let's take the absolute simplest forced switch that we could think of, and that was where we added the other four, because now, the empty car does not come on the serving railroad. It comes on the new railroad.

So, the empty car -- so, there is four extra events to get the car from the new railroad onto the existing -- the incumbent railroad, so that it can be spotted.

Where the 24 comes in is that there is very few places in the North American network that I've seen, that really look like that pure case.

There is basically -- in many cases, the 30 miles -- the lines may be close by 30 miles, even if it's directly connected by rail, but the two points aren't continuous.

So, you've got to go down to a junction and then come back.

What we tried to do was think of a

reasonable surrogate for those complicated situations and said that in those cases, because you're passing an empty car from railroad one to railroad two, there were going to be, in a large number, 24, there could even be 30 or 40 different events that have to take place, as the car tumbles through the system.

I think tomorrow you'll see from the railroad, some actual graphics and pictures of what that will look like.

But I don't think that that situation is that uncommon. If you look at big terminal areas like Chicago, Saint Louis, Kansas City, the ability to be passing cars back and forth in that kind of complex network is going to -- it's going to require multiple events, far more than the simply throughput that the current carrier has.

If I could, those have -- those events then, going back to just the research that was done in the 70's and 80's, every one of those, because there is a potential risk, and we took a very small -- a very conservative view that it was only a two percent risk of failure.

I mean, in most cases, it's like three or four percent, that every time you expose yourself to an event, and it's not just with railroads, with anything you're doing, you expose yourself to an existence of failure.

So, the railroads have worked to squeeze out as many of those events as possible, to make their system as simple as point-to-point as they can, and that's how service reliability has come up. I mean, it's one of the main reasons why railroads work a lot better in 2014 than they did in 1978.

You know, they've vastly simplified how the system works, and this process introduces a whole bunch of new events, of things that have to happen, that have the possibility of a failure at each one of those points. The locomotive is not there in time, the track is blocked, there is a mechanical failure of some kind, all of those things that happen every day in railroading, which -- bad weather.

But the more exposure you have to events, the more -- the higher the probability of failure.

VICE CHAIRMAN BEGEMAN: And I am not discounting the events and the risks that you're talking about, but it is true that the railroads are doing this all the time. I mean, that's their business; they're switching traffic. They're --

MR. RENNICKE: Right, they are doing it all the time, but they've conscientiously, I mean, my experience, for the last --

VICE CHAIRMAN BEGEMAN: They're doing it the way they want to do it.

MR. RENNICKE: They've conscientiously tried to engineer-out that kind of multitude of events over the last 30 or -- or since Staggers, since the 1980's.

There has been -- if you look at the planning, and there will be some -- some, I think will testify here tomorrow. The planning departments of railroads have tried to engineer a network that supports a high degree of customer service, by engineering-out a lot.

So, does -- is there switching that does occur? Yes. Is it -- interchanges do occur, but there is less and less of that today and every day, than there has been in the past, and that gives you a network that allows, as we pointed out, you know, traffic goes up, traffic goes down.

But it's going through a network that has been streamlined to be very efficient, and it's not just the carload network.

If you go back to the 1980's, there were 400 or 500 inter-modal terminals in the country. You'd have little -- they call them circus ramps, out in the middle of the corn fields in Iowa, where you could take a trailer off.

The railroads found that they couldn't do business that way. They had to pick 15 or 20 major hubs for inter-modal to -- where they would originate or terminate traffic and suddenly, the service took off because they would use the trucking industry to do the last mile.

So, it's network simplification that has led to better reliability. To me, this proposal goes in the opposite direction. It starts reopening a whole bunch of areas where complex activities have to occur that would lead to more failure.

VICE CHAIRMAN BEGEMAN: Well, I guess if you could contrast that with what happens when there is a railroad merger, it hasn't happened in my time here.

But the Board of ICC have -- before they've agreed to mergers, imposed various conditions, including some type of competition, terminal access, switching, etcetera.

The railroads happily take that decision and start conducting business. Sometimes, not without pains, in implementing it, but they figure it out.

MR. SIPE: As I understand your question, Vice Chairman, there are two dimensions to it, and one of them, the first one, very much reinforces what Mr. Rennicke was just saying, which is, the network rationalization dimension of rail mergers.

Everyone that I've been involved in, and I was involved in most of the big ones of the 90's up through Conrail, there is a huge focus on single-line carriers and reducing the number of carriers in the route.

That's consistent with all of these other network rationalizations that Mr. Rennicke has been describing, which have contributed to evolution of the modern railroad.

Another dimension of your question, I think I was hearing was, the conditions to basically, maintain competitive options, which in certain transactions, were -- the conditions were quite widespread, and UP-SP is a good example of where there were widespread imposition of conditions, which did involve two carriers working together, so that a second carrier would have access to shippers over the lines of one of the merging carriers, in order to avoid a reduction in competition.

Yes, the carriers have learned to live with an accommodate those matters. I will point out, however though, that the big beneficiary of the access in the UP-SP merger was BNSF, and my understanding, although I have not personally been involved in those matters, is that there has been a fairly significant docket of issues involving the implementation of those conditions over time.

I mean, it's not easy. They do

it, and it has worked to preserve competition, but it's been challenging.

MR. RENNICKE: I think if you go back to the -- and it's been a long time since there has been a big complex merger, but there were big sections of that process, where you had to disclose and lay out the operating plan, and our operation up there in Princeton that has the models to do that.

Part of the decision that allowed the merger was the -- STB and the regulators getting confident that in fact, there was a true benefit, in terms of cost reduction, efficiency, better service.

If you got into the details of what's behind those plans, they're basically streamlining the system. They're closing yards. They're closing interchanges. They're building volumes of traffic that one railroad didn't have, but now, two of them do, so they can through blocks of -- or entire units -- trains of traffic from Point A to Point B without switching.

So, as you look back, for example, on the UP-SP merger, whole yard were closed in downtown -- in Los Angeles, in California, because you didn't need them anymore, because the efficiency you got out of combining the two, and that's what -- that's all been part of a multi-step, every year, make it run better program that the railroads have done to try to cut out the duplicative events and unefficient events -- inefficient events.

VICE CHAIRMAN BEGEMAN: Well, if I can ask then, sir, with that back-drop, what level of competitive switching could the industry manage?

I realize, you know, you've certainly done a good job at saying that the previous Panels' estimate -- like, no one really knows. There is still -- we don't know the scope, etcetera, etcetera.

Is there any level of competitive switching that would be acceptable from your

--

MR. SIPE: I don't know the answer to that. We haven't looked at that, and I would be guessing and speculating, which I don't think would be helpful to the Board.

You will, as Mr. Rennicke indicated, you will have specific railroad witnesses testifying tomorrow, and several of them are going to be addressing service issues, and I think you'll have an opportunity to talk to people who are considerably more knowledgeable about operations than I am.

VICE CHAIRMAN BEGEMAN: Mr. Ireland, could we talk about your experience or insight from the Canadian rail side-- and I understand the message, do not use the Canadian model here.

But as I asked the other Panel, try to walk through how it works.

How it does work in Canada? Does a shipper actually call up, or is it already worked out and it's standard operating procedure and it's just on automatic pilot at this point?

MR. IRELAND: Yes, there are certain inter-switch locations and again, you know, similar to what's being proposed, you know, that it's a radius within -- you know, if a customer is located within a radius of the two railroads, then they can access another one.

I would say the maximum there is 30 kilometers, which is actually only 18.6 miles. So, it's smaller than what's being proposed.

I would say, you know, similar to what you've heard here before, you know, the inter-switch locations tended to be the places that gave us the most problems, because you don't have the visibility into the traffic flows, and then you can't plan and resource for it, the way you can, you know, for the volumes that you had to deal with on your own network.

So, you know, you're relying on a communication process between two different companies, and that always doesn't work as well, and they're both managing their networks for various issues, and so, it doesn't always coordinate as nicely as you would like, if you had it all under your control.

So, my experience was inter-switch locations tended to give us the most problems around planning, resourcing and executing, and there was knock-on impacts to other customers, as well too, because when it goes bad at a certain location, it's not just the inter-switch traffic that's impacted. It's all the other traffic that's, you know, touching or involved in that area, that can be negatively impacted.

MR. IRELAND: And then I guess the final thing I would just add again is that, you know, again, it's a very simple network in Canada, basically two parallel lines.

So, you know, I'm telling you,

we've had problems. It's just not as complex as what you've got in the U.S.

Again, only 67 locations potentially in Canada, where inter-switching could occur, versus you know, 1,500 in the U.S.

VICE CHAIRMAN BEGEMAN: But is it being used? Is it actually being executed or is it a back-stop for negotiating rates?

MR. IRELAND: It is being used in some locations.

You know, I'm not on the commercial side of the business, so, you know, but I'm sure it's being used to discuss rates, as well, too.

VICE CHAIRMAN BEGEMAN: I guess I'll just have one last question, and that will be for Mr. Eakin.

One of the things that -- hopefully I'll have your quote right, but you basically said, this is picking winners and losers, and that losers are going to be left at a competitive disadvantage. Isn't that where they already are?

MR. EAKIN: No, that was within a generally favored industry, those within the radius would get lower rates. Those outside the radius will not get lower rates. That changes the competitive framework within that industry, and so, that's how those -- the non-beneficiaries within the generally favored groups become losers within their industry, because they stay the same and the others get a rate cut.

So, the others have a lower cost and they're in a competitive -- the non-beneficiaries are at a competitive disadvantage.

VICE CHAIRMAN BEGEMAN: So, they're treated the same as they were or they're actually being treated worse, the rates will go up or what?

MR. EAKIN: It's a relative statement. They're the -- their costs are staying the same. Their competitors costs are going down.

VICE CHAIRMAN BEGEMAN: So, they're not affected?

MR. EAKIN: No, they are affected, because they now have to -- they are now at a competitive disadvantage. They may go out of business because they have higher costs than their competitors.

VICE CHAIRMAN BEGEMAN: That's it.

CHAIRMAN ELLIOTT: Quick follow up with Mr. Baranowski.

So, I made the assumption that we were going to take out the 75 percent, and you showed me, as best you could, the effect that that would have.

What also would happen if we, instead of the 240, used the RSAM number as the cut-off point? What different effect would that have?

MR. BARANOWSKI: It would change the numbers. Again, it's not something that

I calculated.

The RSAM's are moving around a little bit and they're different for each carrier, and I apologize for not remembering exactly where they are.

To the extent that they're higher than 240, the number of relative shipments would be reduced. To the extent that they're lower, it would work the other way.

CHAIRMAN ELLIOTT: One further question, and I'm not sure if this will make sense.

But I was earlier, raising a possibility of safe harbor, which would hit at 240.

So, I would assume if the railroads -- I know Mr. Sipe may disagree, that if they dropped their number to, instead of something above 240, to 239, to get out of having to participate in one of these reciprocal switching situations.

So, if in all of these situations,

the railroads dropped their rate to 239, as opposed to letting competition take place, which I assume was built into your numbers, do you know what effect that would have if we just stayed right around that 240 number?

MR. BARANOWSKI: I don't, and there are too many ambiguities in the proposal for me to have looked at any potential revenue impacts, including what would happen if you changed R/VC ratios.

CHAIRMAN ELLIOTT: Okay, and then I have two more questions, more general, and I'll let Mr. Baranowski off the hook.

The Vice Chairman asked earlier, with respect to -- I guess it relates to the discussion of winners and losers, and she raised the question with the NITL panel, that what would happen if this was implemented?

Would the pricing flow more to shippers that are captive or subject to market dominance, and as a result, they would end up paying more than they're paying now, and that the shippers that had been captive in the past, would get lower rates?

Would the money just flow elsewhere?

MR. EAKIN: This is, in an accounting sense, what I call pushing on the balloon, that it's got to come from somewhere.

The rates are going to be going down to the favored shippers. So, it will either come -- it will come somewhere, but and no value is being created, and also possibly, some inefficiencies are being introduced. So, there might be more burden to collect.

So, there is a shift that goes on, as the favored shippers now have lower rates. That's going to be made up from some -- from the other stakeholders, from the other subset, and that's either the railroads or the other shippers, which can either be shippers with only one railroad or shippers elsewhere.

But somehow, it's got to be accounted for there.

Now, if the railroads are pricing to extract every nickel in every market, well, then it can't come from those other markets, but if there is some slack in there, it can come from those other markets.

So, you know, just in an accounting sense, it's got to come from somewhere, and it will either come from the railroads, which will then reduce their revenues, or it will come from other shippers in the form of higher rates.

MR. RENNICKE: One thing maybe from a practical sense, if you look at maintenance away and spending and CAP-X and locomotives, there is a very high correlation between operating income and that amount.

If you look at the physical condition of the railroad, there is a -- you know, as time marches on, things happen, ties have a 30 year life. Rail wears out, so much as 10 miles. So, they have to put so much money into it.

So, you would think that if you're going to solve or continue to put money into the system, to build it out to the 240 predictions that the DOT says, you're going to have to get money from somewhere.

So, any loss from one place, if in fact, you want to keep the infrastructure and equipment up to the level, you're going to have to look for it somewhere else, unless you get, you know, get into some kind of Government subsidy, which I don't think is going to happen, because you can hardly subsidize -- the Government hardly covers all the other modes.

I mean, there is not enough money for barges, for airports, all these other things.

So, that is the kind of reality check, I think, that the industry looks at, and investors in the industry look at is, how much money has to go into the infrastructure and the rolling stock, to keep up the movement, and if you cut in one place, you're going to have to find it somewhere else, because time will march on and you'll wear out, and you'll have to put money into it.

MR. SIPE: Just one final comment on that scenario, and a comment on Dr. Eakin's, "It's got to come from somewhere," and putting that in an accounting framework.

I think I understood what he was saying, is that it may, coming from somewhere, may simply mean that a certain amount of wealth would be transferred from the rail industry to favored shippers, if railroads did not have an opportunity to make that up by charging higher rates, and I think we probably all believe that for the most part, railroads are trying to charge profit-maximizing rates, and that unless there were some changes in demand, which seems to me, to be unlikely to result from -- for the non-favored shippers in particular, changes in demand are not going to result from this proposal. Unless there are, you're not going to be able to get those rates up.

So, what that means is you are going to have less revenue available to spend on maintaining infrastructure, let alone expanding it, and I believe this Agency concluded, back in the 1990's, when we had a previous go-round on competition and access in the rail industry, that the most likely consequence of a material revenue reduction for the rail industry, would be a contraction of the industry.

Railroads would be able to afford less capacity. That is how the accounting would balance out, over the long-run.

CHAIRMAN ELLIOTT: One final question. If in the situation where -- and I know this really hasn't been determined by the Board, but where it's determined that the railroads or a railroad is revenue-adequate, would this proposal be the type of situation or type of method that would be useful in dealing with a revenue-adequate railroad, meaning that they're meeting their cost to capital?

MR. SIPE: I don't think so. I don't think the rail industry would agree with that.

There are potentially a host of issues associated with revenue adequacy, including determining what constitutes long-term revenue adequacy, before you even get to a question of, do we do something to trim revenues back?

But I think it would be a mistake to link those two, the issue of switching to the issue or revenue-adequacy. Different statutory provisions involved. The economics gets really complicated, really fast.

VICE CHAIRMAN BEGEMAN: Just one last question. Thank you, General Timmons, for your message. I think we understood it. Perhaps, you'd have the other Panels agree. We'd have one yes' out of this whole conversation.

Are there any short line railroads in the world that deal with competitive access requirements?

MR. TIMMONS: I don't think so. If I can frame the short line business up, if you'll think of Mr. Rennicke's chart, where the increasing numbers suggested the complexity of what was taking place, if you had this mandatory reciprocal switch.

If you plug the short line into that, which is actually serving the customer, you just increase the complexity of that diagram pretty dramatically, because the Class I is now moving his cars, not directly, ultimately to the destination. He is now interchanging with the small railroad. He's moving it up into the destination, picking up the empty, etcetera.

So, the small railroad, and they're -- keep in mind, you've got 560 of these guys that are engaged across North

America every single day.

So, not all of them are going to be involved in this competitive reciprocal switch business. But a number of them will.

You asked a question earlier, is any level of reciprocal switching acceptable, and for the short lines, the answer is clearly not, no level.

If you look at the very, very high fixed costs for all of these small railroads, and the relatively low variable costs, and the small operating territories within which they operate, they have very little flexibility to make up losses anywhere.

So, if you've got an average of 25 customers on a small railroad, and the top three or four are generating about 65 percent of the revenue, those are the guys that the Class I guys will focus on, if the small railroads aren't protected, because those are good opportunities to cherry-pick these guys off.

Well, if you do that, the impact on that small railroad is pretty dramatic. He can't make up that top customer, that second or third or fourth customer that he's got, that is so very important to his revenues.

He's got another 20 maybe, that are generating revenues, but the real money makers are at the top of the pile.

So, what you end up with at the bottom, at the bottom of the thought chain here is very, very thin margins, and so, anything that gets in the way of -- or that impacts those margins, whether that's reciprocal switch or bottleneck or anything else, or any other thing that happens to reduce those revenues, has a pretty dramatic impact on those small railroads.

So, they are very nervous about this and watch this with great intensity, and so, the shippers and others that might be affected as a result of this, not only will the small railroad that has to endure the reciprocal switch arrangement, but others that are on that line, may also be affected by it, is a very, very serious step.

So, I think from a variety of perspectives, whether it's in increased congestion that you experience, or whether it's a variety of shippers that are very, very difficult to predict, that will be impacted on it -- on that requirement, are significant.

The extent of congestion and uncertainty and problems associated with this thought, I think is unknowable to some degree, but to be sure, it's significant and serious.

MR. RENNICKE: The World Bank, you know, does overviews of the world's railroads, and in there, you'll find analysis that may not be right up there every year, about what goes on in most of the rest of the railroad world, but just where there's open access, or you know, virtual open reciprocal switching.

If you look at the -- and you can look at it and draw your own conclusions, but basically, they think a good day is if they can get 50 percent of out-of-pocket costs, of variable costs, out of the rail rates, they think they're in a good position, and the Government is underwriting the infrastructure.

So, it's all there. It's -- you know, they do it every three or four years, but I think to answer your question, there is very few situations anywhere in the world, and we've done things like privatized all the railroads and they've been privatized in South America and Mexico and Australia, very few places can the fair-box cover even out-of-pocket costs, where you have open access. It's just, that's where the -- ultimately, that's where the rates wind up.

CHAIRMAN ELLIOTT: Thank you. I want to thank the Panel for their testimony, and I think we're up with our final Panel for the day, Panel IV.

Okay, why don't we get started with our final Panel, Panel IV, and I believe starting us off is Arkansas Electric Cooperative Corporation, and you have 20 minutes.

MR. VON SALZEN: Thank you, and I think I'm on.

Good morning, or good afternoon, Chairman Elliott, Vice Chairman Begeman. I'm Eric Von Salzen, an attorney for Arkansas Electric Cooperative Corporation, and with me is Michael A. Nelson, AECC's Transportation Consultant.

I will outline some of the legal principles that AECC believes the Board should consider in reaching a decision in this matter, and then Mr. Nelson will address some of the economic principles, data and public interest issues that the Board should consider.

AECC supports the NITL proposal for reasons discussed in our written comments.

Today however, we are focusing on an overarching issue. The railroads opposition to the NITL proposal should be rejected because they want the Board to ignore the fact that railroads have achieved revenue adequacy, and that during the past few years, they have enjoyed earnings substantially above competitive levels, that is supra-competitive returns on earnings.

Mr. Nelson will describe these supra-competitive earnings in further detail in a few minutes.

Achieving revenue adequacy represents a dramatic change from the situation that prevailed in the U.S. railroad industry when the Staggers Act was passed.

In 1980, the ICC's revenue adequacy determination found that 34 of the 37 Class I railroads were revenue inadequate. The achievement of revenue adequacy that now has been revealed by the Board's findings, may fairly be regarded as one of the great success stories of Federal policy in modern times.

But revenue adequacy was only one

of the goals of the Staggers Act. The Act established a national rail transportation policy that set several goals, the first of which was to allow to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail.

During the past three decades, the ICC and the Board focused on another goal of the transportation policy, to allow rail carriers to earn adequate revenues, as determined by the Board.

In upholding this approach, the Courts explicitly accepted the goal of achieving revenue adequacy as a valid reason for the Board to refrain from exercising its powers to promote competitive alternatives, thereby permitting the exercise of rail market power.

Just to cite two examples, in Central State's Enterprises versus ICC in 1985, the 7th Circuit upheld the ICC's denial of a request for reciprocal switching, because it would have an adverse effect on a revenue inadequate railroad.

Similarly in Coal Exporter's Association versus U.S., the D.C. Circuit said in 1984 that, "Use of market power is justified where needed for revenue adequacy."

However, there can be no doubt that Congress expected the Board to take effective steps to curb any supra-competitive earnings, after revenue adequacy was achieved.

The rail transportation policy expressly calls for the Board to maintain reasonable rates where there is an absence of effective competition and where rail rates provide revenues which exceed the amount necessary to maintain the rail system and to attract capital.

So, now, after three decades, we are at the point where the public interest requires that the Board move away from promoting railroad earnings, and toward using the tools at its disposal, to curb supra-competitive earnings where they occur.

The railroads argue that the policy judgements the ICC made in an earlier era, when virtually the entire rail industry lacked adequate revenues, are written in stone and cannot now be changed to reflect changed circumstances. No Court has ever said that and no Court ever will.

On the contrary, the Courts made clear that they were holding only that the regulatory policies adopted by the ICC later by the Board, were permissible within the discretion granted by Congress under the circumstances that then existed, as the NITL has discussed in its presentation today.

Today, railroads have achieved revenue adequacy and more. This demands a different approach to accommodate the policies of the Act.

As Mr. Nelson will explain in a few moments, supra-competitive earnings have escalated rapidly, are now in the billions of dollars annually.

There is no public interest justification for allowing railroads to exercise their market power, to extract these supra-competitive earnings from shippers.

On the contrary, the reduction or elimination of such earnings should be viewed as a public benefit.

The Board properly can and should reflect the changed circumstances stemming from the achievement of revenue adequacy in changes to its policies and practices.

Congress has clearly indicated that competition is an appropriate, in deed, a favored means to restrain railroads from extracting supra-competitive earnings from their customers.

The rail transportation policy repeatedly identifies competition as a way to curb market power. It says, "To allow competition and the demand for services, to establish reasonable rates to transportation by rail." It say, "To foster a rail system with effective competition among rail carriers and to avoid undue concentrations of market power."

Congress has given the Board tools to use, to foster railroad competition.

With revenue adequacy achieved and railroads earning billions in supra-competitive profits, the time has come for the Board to begin to exercise its power granted by Congress, to require rail carriers to enter into reciprocal switching agreements "where such agreements are necessary to provide competitive rail service".

The ability of a railroad to extract supra-competitive earnings from captive shippers can be constrained by a mechanism that gives such shippers a rail transportation alternative. The NITL proposal provides such a mechanism.

Mr. Nelson will now explain in

further detail, the economic and public interest bases for AECC's position.

MR. MILLS: Is this one? Good afternoon, Chairman Elliott, Vice Chairman Begeman.

I'm going to be talking about the Board's recent revenue adequacy determinations and some of their implications for the Board's competition policies, including the Board's consideration of NITL's competitive switching proposal.

Before getting into the numbers though, I'd like to talk a little bit about two principles of competitive markets that are part of the theory of constrained market pricing or CMP.

CMP has guided the Board and the ICC regarding the permissible exercises of market power by railroads essentially since the time of the Staggers Act.

To keep everybody from falling asleep, I'll try to keep the theory part short.

The first competitive market principle is that in a competitive market, a firm is unable to sustain excessive profits. A firm that achieves big profits unavoidably draws the attention of competitors and potential competitors who try to find ways to capture those high profits for themselves, by innovating to find even better ways to serve those markets.

This could include things like development of lower cost methods of production and offering more attractive price service options to customers.

This is a fundamental part of the way competitive markets limit the market power of individual firms and produce efficiency in what economists call the allocation of resources throughout the economy.

Implementing this principle in the rail industry is challenging for at least two reasons.

First, the industry has some amount of -- excuse me, some of the properties of a natural monopoly, so the exercise of some amount of market power is needed to cover costs if public subsidies are to be avoided.

Second, various practical considerations make it difficult or impossible for new competitors to actually enter the industry. This is known as barriers to entry.

The Board's standalone cost test deals with these issues for individual rates by analyzing the economics of a hypothetical new railroad and imposing a bright line limit on allowable differential pricing at the exact point where the earnings of the new railroad, after paying all expenses, just cover the cost of capital it uses.

This is how the Board already implements the competitive market and CMP principle that excessive profits not be allowed.

All else equal, net earnings that

just cover the costs of capital reflect the highest level of differential pricing, that is consistent with the public interest, while providing a railroad with access to the capital it needs.

We refer to earnings in excess of that level as supra-competitive earnings.

The second principle of competitive markets since CMP is that cross-subsidies are to be avoided. In a competitive marketplace, firms face continuous incentives to either improve the performance of or divest under-performing assets or lines of business.

In the Board's standalone cost test, this principle is reflected in the shippers ability to select the traffic to be served by the hypothetical railroad. If the shipper can identify non-issue traffic, that profitably can be served by the hypothetical railroad it proposes, it can hold down the amount of differential pricing needed for the hypothetical railroad to cover its cost of capital.

Even if other portions of the defendant railroad don't cover their cost of capital, the portions that do are not and should not be allowed to cross-subsidize the portions that don't.

So, the things to remember are no supra-competitive earnings and no cross-subsidies.

For anyone who hasn't heard enough of the theories, there is a very informative presentation in the consensus, verified statement of economists supporting the principles of constrained market pricing, which was submitted to the ICC in June 1983, in Docket No. EP-347 of the Coal Rate Guidelines nationwide.

This verified statement was signed by 16 pre-eminent economists and addressed the ICC's plans for implementing CMP under the Staggers Act.

I'm glad to have been a student of

one of the signatories, Professor Ann Friedlaender of MIT.

We have a chart to put up. This chart was developed from information the Board recently provided in its updates of the rail revenue adequacy findings for 2010, 2011 and 2012.

The three lines depict different groupings of the data. It's probably hard to see, but the green line shows supra-competitive earnings for the Class I rail industry as a whole.

Using the Board's methodology, the earnings of the Class I railroads as a group did not exceed the level needed to cover the estimated cost of capital in 2010, but did exceed that level by about $500 million in 2011, and over $1.3 billion in 2012.

This doesn't show the full extent of supra-competitive earnings however, because it does not control for the cross-subsidy issue I mentioned a moment ago.

In fact, the four largest Class I's, UP, BNSF, NS and CSX, collectively achieved supra-competitive earnings of over $800 million in 2011, and over $1.6 billion in 2012. This is shown by the red line in the chart.

To put this in perspective, over 14 percent of the $11.4 billion of net income reported by these four railroads in 2012 represents supra-competitive earnings that in excess of the amount required to cover their cost of capital and therefore, are inconsistent with CMP and with the public interest.

Supra-competitive earnings by the big four are larger than the values on the green line because the green line implicitly includes a cross-subsidy from the big four to the three smaller Class I's, which did not achieve supra-competitive earnings during that time.

For the big four railroads which

collectively account for about 88 percent of rail net investment base and over 91 percent of the net operating income of the Class I railroads, the data plainly shows supra-competitive earnings are substantial and trending upwards.

To test the validity of this conclusion, I performed one additional analysis to account for two factors that may be affecting the big four totals.

First, because BNSF data no longer are included in the cost of capital determination, the supra-competitive earnings values implicitly assume that BNSF's cost a capital is the same as that of the three reporting railroads, UP, NS and CSX.

Second, the totals have been affected by transitory changes the Board made in the permissible treatment of the write up of BNSF asset values stemming from its acquisition by Berkshire Hathaway.

To make sure these factors are not

the cause of the finding of substantial and upward trending supra-competitive earnings, I considered only the earnings data for UP, NS and CSX as a group.

These data shown in blue in the chart, indicate that supra-competitive earnings began at a low level in 2010, but still escalated to over $1 billion in 2012.

Almost 15 percent of the $7.8 billion of net income reported by these three railroads in 2012 represents supra-competitive earnings.

In short, the findings of supra-competitive earnings by the big railroads that I have presented are not an artifact of the Board's treatment of BNSF's asset base or cost of capital during this time.

Quarterly data for 2013 presented on the Board's website suggests that this trend has continued. Net revenue for the big four appears to have increased by over $900 million, relative to 2012. So, there is no reason to think that the issue of supra-competitive earnings is going to remedy itself without Board action.

The existence of an upward trend in supra-competitive earnings indicate that the Board currently is not succeeding in applying fundamental CMP principles to the large railroads.

The application of those principles to hypothetical railroads and individual rate proceedings is a starting point, but most shippers won't ever file a rate case at the STB, either because they don't qualify to be able to do so, or are dissuaded by the cost, time and uncertainty associated with rate case procedures.

Even if there were more challenges to individual rates, the Board currently has no procedures for applying CMP principles to the overall performance of actual railroads, and the evidence demonstrates that the largest railroads now exercise more market power than is needed for them to achieve returns that fully cover their cost of capital.

From an economic perspective, the time has come for the Board to treat the policy objective of revenue adequacy as having been achieved, at least for the largest railroads, and to now devote effort to remediating the substantial public interest harms that flow from the sustained occurrence of supra-competitive earnings.

The NITL proposal for liberalized competitive access is the kind of measure that current conditions require. While the railroads in this proceeding have objected to the curtailment of differential pricing that could accompany the competitive switching proposal, the data say that such a curtailment would be a public benefit.

Even the limitation of the competitive switching proposal to higher rated traffic is consistent with CMP because that is the traffic that is least elastic for which a change in price will produce the smallest impact on resource allocation.

The same elasticity consideration that makes it appropriate to engage in differential pricing in the first place, also makes it appropriate to apply rate compression to higher rated traffic, as would occur under the NITL proposal.

More generally, the Board's revenue adequacy findings support the proposition that the time has come for the Board to relax the restrictive posture it has taken in the past regarding competitive access.

Beyond the curtailment of supra-competitive earnings that can be provided by competitive access, introduction of market forces can produce important benefits for efficiency and service quality.

The Boards' own study performed by Christensen Associates, showed that the mega-mergers of the 1990's produced unanticipated harmful effects on railroad efficiency and cost. Likewise, multiple episodes of service quality problems on the big four have imposed huge burdens on rail customers and on the economy has a whole.

The data say it is past time for the Boards to turn loose, the dogs of competition, at least on the big four, to allow market forces to finally play the role envisioned for them over 30 years ago.

CHAIRMAN ELLIOTT: Are you done, this group? Why don't we continue with the interested agricultural parties? Ms. Clark?

MS. CLARK: Thank you. Good afternoon, Chairman Elliott and Vice Chairman Begeman. My name is Sharon Clark, and I am Senior Vice President of Transportation and Regulatory Affairs for Perdue Agri Business, a domestic and international grain and commodity trading and processing company, based in Salisbury, Maryland.

I am also a member of the National

Grain and Feed Association's Board of Directors and Executive Committee.

I appear today on behalf of the interested agricultural parties, a broad-based consortium of agricultural organizations, from producers to end-users, including the NGFA.

The other organizations comprising the group are listed and described in our filing.

I am accompanied by Thomas Wilcox of the law firm of GKG Law PC, who helped prepare and submit the groups' comments. He is available to assist in responding to any questions the Board may have about our submissions.

The interested agricultural parties appreciate the opportunity to present their collective thoughts on this proceeding, and the National Industrial Transportation Leagues competitive switching proposal.

Access to rail transportation via efficient and cost-effective switching between carriers is of extreme importance to agricultural users, because of the nature of our industry and its rail transportation patterns.

First, grains, oil seeds, feed ingredients and other agricultural commodities are produced in diverse geographic locations, rather than centralized production centers.

Rail movements from these diverse production areas to destination customers vary, and are influenced heavily by fluctuating seasonal and weather-related conditions, as well as domestic and export market demand.

For these reasons, agricultural commodity shipments are characterized by multiple origin and destination payers, which differ markedly from the comparatively static origin and destination payers of many non-agricultural movements.

Supply and demand dynamics change shipping patterns from year to year, highlighting the need for competitive switching to access different markets. In addition, in years like this, serious disruptions in rail service reinforce the importance of having the flexibility to shift traffic, when possible, between different rail carriers, to keep businesses operational and meet customer needs.

Agricultural producers and shippers now rely primarily upon four Class I carriers to haul the vast majority of grain and oil seeds shipped by rail.

In 2001, according to the U.S. Department of Agriculture, these four carriers originated 85 percent of grain and oil seed rail traffic, compared to only 53 percent in 1980.

The lack of effective, competitive switching rules limits more extensive access to markets for agricultural commodities and the ability to shift traffic between rail carriers when necessary.

These characteristics of today's rail industry and the transportation needs of agricultural markets explain why the interested agricultural parties are adamant about achieving a more competitive rail environment consistent with free enterprise principles.

The interested agricultural parties commend the National Industrial Transportation League for submitting its petition, and concur with its overall premise, that the Board can and should replace its existing rules, implementing the Board's authority to order a rail carrier to provide reciprocal switching at facilities that are captive to that carrier.

We believe NITL's proposal provides a workable framework for developing new rules and regulations, but as I will explain momentarily, we think some aspects of the proposal should be modified, if it is to be more accessible and useable by agricultural rail shippers.

We do not believe the modifications we propose would unduly burden the railroads or other captive rail shippers.

Fully responding to all of the Board's requests for empirical data was not possible because of the unavailability of data, as well as the limited time and resources available to the interested agricultural parties for this proceeding.

Never the less, our analysis involved more than 44,000 individual records, comprising more than three-million rail shipments of agricultural products, totaling more than $9.2 billion in freight revenue, sufficient to provide a rough estimate of the impact of NITL's proposal on shipments of commodities listed in the NGFA's rail arbitration rules.

To summarize, our analysis show the following:

First, the raw 2011 waybill data

indicates that at most, only around six percent of these agricultural product carloads theoretically could qualify for the conclusive presumption of market dominance, when a rate was 240 percent or more of variable cost.

But in reality, the figure is much less than six percent, when the raw waybill data is more closely examined, because of the exclusion of movements that don't qualify for various reasons, such as short lines involved in the haul movements, rail contract movements and shipments of exempt commodities.

Second, we did not attempt to quantify how many agricultural shippers could meet the alternative presumption of the incumbent railroad hauling 75 percent or more of a shipper's traffic, because such an analysis would have entailed an expensive and time consuming special study.

However, as we have explained in our opening submission, we believe this alternative has little relevance or application to agricultural rail shippers, since very few shipments of light commodities are railed from the single origin to only one destination in a single year.

Third, of the agricultural commodities shipments analyzed that exceeded the 240 percent threshold, many do not meet either of the two criteria of NITL's second conclusive presumption, namely that the alternate carrier be a reasonable distance from the shipper's facility.

For example, none of the wheat and barley shippers in the State of Montana could meet this presumption of being within the boundaries of an existing terminal or 30 miles from a working interchange.

The interested agricultural parties therefore, join NITL and other parties, in urging the Board to initiate a formal rulemaking proceeding on revised rules, implementing the Board's statutory authority to order a carrier to provide competitive switching.

But in doing so, we recommend that several changes be made to the NITL proposal, so that it's more accessible and relevant to agricultural rail shippers.

First, the revenue to variable cost threshold that establishes one of the conclusive presumptions of market dominance for purposes of obtaining a competitive switching order should be reduced to 180 percent, to match the statutory jurisdictional threshold. This recommendation has also been made by USDA.

Second, many agricultural commodity shippers cannot meet the conclusive presumptions for the reasonable distance component of the NITL proposal, particularly in the western regions of the country.

For that reason, we recommend that the Board expand the distance that creates the conclusive presumption and adopts standards that allow individual captive agricultural rail users to demonstrate on a case-by-case basis, that their facility is a reasonable distance from a working interchange point, if the R/VC ratio exceeds the regulatory threshold.

Again, this recommendations reflects the vast geographic dispersion of agricultural production and utilization, and the longer distances that exist to an interchange point in rural America, particularly in the west.

In these situations, shippers may be able to make a case economically or operationally, that a greater distance should apply.

Third, rules that create a right to competitive switching will have little practical use to rail users unless there is an access fee that makes it economically feasible to use an alternative railroad.

While the interested agricultural parties did not allocate a specific access fee proposal, we believe it should be cost based, with a reasonable return for the incumbent railroad.

For instance, many current railroad imposed switch charges can be higher than $500 per car, which in some cases, can be approximately five times the variable cost for providing the switch service.

Another example is the NITL Conrail reciprocal switching agreement, which was reached in 1999, which capped reciprocal switching rates at $250 per car for a five year period, but reciprocal switching rates published by eastern Class I's have been on an upward spiral since 2004, as have those of the western carriers.

Cost based access fees would limit the current ability of railroads to exclude captive agricultural rail users from existing markets, by setting switch charges at levels that limit access to markets or effectively make markets too expensive to reach.

Fourth, we believe competitive switching fee should vary based upon unit size, such as carloads, unit trains, shuttle trains and other rail shipments.

The current reciprocal switching rates on Class I's are the same, regardless of unit size, even though differential pricing is employed elsewhere. In our view, this one-size-fits-all approach won't work for a competitive reciprocal switching model.

Finally, we believe estimating the ultimate impact of adopting the NITL proposal on railroad revenues, rail rates and railroad operations, even with a modification suggested by the interested agricultural partners, is made more difficult, simply because there is no guarantee that railroads will actually compete and line haul rate levels will decline if competitive switching is established.

For this reason, we believe that wherever a competitive switching is ordered, the Board should not adopt a conclusive presumption that effective competition exists, and therefore, that the STB has no jurisdiction over rate levels.

Instead, the Board should make market dominance determinations on a case by case basis.

Regarding rail rates, the interested agricultural parties take this opportunity to commend the Board for instituting a separate proceeding to examine ways to improve its procedures available to grain rail users, to challenge rates they believe are unreasonable.

We believe it is essential for the Board to improve its rail rate reasonableness rules for agricultural shippers, to not only consider the reasonableness of rates where competitive switching is ordered if circumstances warrant, but also to protect captive shippers who cannot meet the standards for competitive access from unwarranted rate increases.

In conclusion, the interested agricultural partners believe that rail carriers should not have a free hand to deny captive agricultural shippers access to markets through absolute closures of intersection points or by pricing switch charges beyond any justifiably reasonable economic level.

Therefore, we support the institution of a rulemaking on revised competitive switching rules that includes the recommendation submitted in our filings. Having such rules in place to enhance competitive switching of movements is integral to maintaining a national rail freight network and to preserving the competitive fabric of U.S. agricultural and the nation's economy.

We appreciate this opportunity to express our views and recommendations on this important proceeding, and would be pleased to respond to any questions the Board may have. Thank you.

CHAIRMAN ELLIOTT: Thank you, Ms. Clark. We'll now hear from Mr. Mills from the joint coal shippers.

MR. MILLS: My name is Chris Mills and I represent four electric utilities who have named themselves the joint coal shippers for purposes of this proceeding.

These utilities, three of them have power plants that burn western coal and that are potentially -- potentially could use competitive switching, depending on the parameters that may ultimately be adopted by the Board, if it adopts NITL's proposal in some form, and one of which is an eastern coal user, for the power plant of Florida.

The four are Energy Services, Incorporated, Kansas City Power and Light Company, Seminole Electric Power Cooperative and Wisconsin Electric Power Company, which does business as WE Energies.

The joint coal shippers principle concern involving this proceeding, relates to the question that Vice Chairman Begeman asked the last -- the last question she asked the NITL Panel this morning, and that relates to the inter-play between a possible -- possible availability of a joint switching array -- competitive switching remedy and the rate case remedy, maximum rate regulation.

The joint coal shippers do not really have enough information at this point to either support or oppose the NITL proposal, because there are too many uncertainties, as to the distance over which switching might be available and the level of the incumbent switching charge.

But the goal -- the joint coal shippers do oppose any change in the Boards' current qualitative market dominance standards and maximum rate cases involving origin to destination service, as a result of the adoption of any competitive switching remedy.

In other words, the mere availability of a reciprocal switching remedy should not establish a presumption that the incumbent carrier lacks market dominance over any particular movement, and we are not absolutely certain that the Board intended there be such a presumption, but it is at least suggested by the Board, and it's a language on page six of its July 25, 2012 decision, which initiated this proceeding.

As far as we are aware, no part of this proceeding has advocated that any new switching rules that may be adopted by the Board should be viewed as a substitute for a full market dominance analysis in an origin to destination rate case, that is a rate case that might be brought if you have a -- an incumbent has a single-line route and a -- and the shipper has available switching remedy.

The competitive railroad is able to use the switching service that provides competitive rate and the shippers are satisfied with the rate level. The shipper should remain free to bring a maximum rate case against the incumbent for the full origin or destination movement, and the fact that a switch charge has been offered, should not be determinative of market dominance, but rather a -- one factor to be considered.

The current market dominance standards in rate cases require the shipper to make a prima facie case. There is no inter -- no effective inter-modal or intra-modal competition for the movement at issue, after which, the burden shifts to the defendant railroad to establish that there is, in fact, a competitive alternative that effectively constrains its rate.

If a competitive switching option exists, it should be treated like any other potential competitive alternative, in valuing market dominance in a rate case involving the incumbents origin to destination service.

That would mean for example, that under the current standards as they've been modified by the recent decision in the M&G

Polymers case, the rate offered by a second railroad that has switching service available at the origin or the destination, including the incumbent switching charge, would serve as the limit price for purposes of determining in part, whether effective competition exists.

In the joint coal shippers comments, which were filed in March of last year, at pages 13 and 14, they presented four scenarios where the mere existence of a possible switching alternative at origin or destination would not necessarily provide effective competition under the Board's current market dominance standards, and with those situations in mind, again, we submit that the Board should make it clear, if it proceeds with the rulemaking on NITL's proposal, that the market dominance rules in maximum rate cases would not be altered. Thank you.

CHAIRMAN ELLIOTT: Thank you, Mr. Mills.

VICE CHAIRMAN BEGEMAN: Ms. Clark, you mentioned the service difficulties in certain areas of the country, and efforts between the carriers and shippers, to try to get grain, feed, and supplies moving.

Could you give us a little more background into what your experience has been? Are you being affected by the winter service crisis or --

MS. CLARK: Yes, actually we started seeing, in fact, National Grain and Feed Association members began seeing declinations in service as early as last October, on a few of the Class I carriers, and those folks of us with competitive locations currently, with reciprocal switching, have had to use that as an option, just in order to keep plants running, to keep us supplied with goods, and we've seen a lot of what -- of operational shifts in the last six months, both in the east and the west, because certain Class I's were providing a better service profile and had access to markets that could keep certain processors, feed mills, export market supplied in what has been a very challenging environment.

So, it lends itself to speaking, how a competitive access scenario for those captive shippers could also benefit, not only form a price perspective, which has been kind of primarily the focus of discussion today, but also from a service and market access perspective.

I think we've proven that in space, over the last six months with the types of issues we've been dealing with.

VICE CHAIRMAN BEGEMAN: And have the carriers been receptive to working with you?

MS. CLARK: Well, as I mentioned, the locations we've -- we personally have exercised our reciprocal switching rights. We obviously weren't captive. So, it's an option, and we know about the locations that have not -- that have reciprocal switching, that are not captive, but have not exercised those rights in several years, who this year are exercising those rights, and I think all the carriers are trying to work together to ensure that, you know, a chicken doesn't have to go on a diet, necessarily.

VICE CHAIRMAN BEGEMAN: You certainly provided a list of areas that you would like the Board to further explore through rulemaking, to modify NITL's proposal, so that it is more accommodating to AG interests. I'm curious to know if ACC is satisfied with the proposal that's been put forward, or if you have suggestions that you think need to be considered to improve it?

MR. VON SALZEN: I think ACC recognizes, and we said in our reply filings, that there are certain aspects of the NITL proposal that could probably use some fine-tuning, in dealing with unit train service, and there may be some other areas like that.

The basic structure of the proposal, we think is reasonable, but yes, I think in a rulemaking proceeding, we might have some constructive suggestions to make.

CHAIRMAN ELLIOTT: Just a couple of questions. First of all, I noted in reading through some of the comments, including I think the interested AG parties' comments, that some of the shippers believe that there may be some issues, with respect to the railroads, adequately competing to get this business, and if that's, in fact the case, and if that's your experience, would this proposal made by NITL, to introduce competition be effective? And that's not just you, but to the panel.

MS. CLARK: Well, as we mentioned in our comments today, we do think that the STB needs to continue to take an active role in reviewing what's going on with these different scenarios, as they're presented on a case by case basis.

We also think that the rulemaking on the reasonableness of grain rates and providing a mechanism there to more effectively challenge rates in our rate case, is very important in this scenario that we're discussing, that's another option.

So, on balance, I think we do have concerns, just as you would with any new framework that is going to be effective right out of the gate. However, I think people have pointed to examples through the hearing so far today, things like the shared services areas that were created after Conrail.

We actually have facilities in some of those shared access areas, and I will say that they had their hiccups at the beginning, but they've smoothed out over the years, and so, it's just something that I think we're going to have to work together, to make sure we have an effective process in place and that we truly have ensured competition.

CHAIRMAN ELLIOTT: Thank you. One further question.

I noted that AECC, in their comments, mentioned, and I think Mr. Nelson continued upon the theme that the railroads, in your eyes, have reached revenue adequacy, or at least are very close, and maybe that it's time to introduce this type of competition as a mechanism to reach what is revenue adequacy, if they are, achieving super profits in this situation, at this point in time?

Do you see this proposal, the NITL proposal as an effective way of the Board dealing with revenue adequacy, if in fact, it is reached, as you, I think mentioned in your testimony?

MR. NELSON: Yes, I would see that type of proposal as being effective.

The thing to remember is that these super competitive earnings are above and beyond what the railroads legitimately need to cover their cost of capital, and they should not be afforded the same type of weight by the Board, as the earnings needs of the railroads that fall short of the revenue adequacy standard.

So, when they pass the revenue adequacy threshold, it really becomes a public interest problem for the Board to address, to sort of reign it in, because I don't want to get into a big economics lecture, but it sort of messes up the allocation of resources in the economy, if you have one segment where the earnings are easy because the -- you know, this spigot on the exercise of market power has been left too far open and investment dollars see the choice between easy money there and sort of the more harder -- harder gains to get, by investing elsewhere in the economy, where there is real competition.

So, there is very tangible harms that come from allowing sustained super competitive earnings, so, it's not so much that this specific proposal is the exact thing that's needed to remedy that, but a more open view by the Board and a more accepting posture by the Board, to the whole family of competitive access remedies, I think is called for by the movement into the realm of super competitive earnings.

CHAIRMAN ELLIOTT: And if we --

MR. VON SALZEN: Can I just --

CHAIRMAN ELLIOTT: Sure, go ahead.

MR. VON SALZEN: If I can just add to that. Because this is -- this NITL proposal is very narrowly crafted. This is, you know -- you've heard all sorts of claims about what it might do and so forth and so on, but what it's actually intended to do is very narrow.

We are not suggesting that that remedy alone is going to solve the problem of super competitive earnings in the big four railroad industry.

But every journey of 1,000 miles

starts with a single step, and this is a productive step that the Board can and should be considering now, because of the change in the economic environment of the railroad industry.

This is not 1980 anymore, but it is a world that Congress contemplated when it wrote the Staggers Act in 1980, the revenue adequacy would be achieved and when it was, then competition is one of the things, in fact, the most important thing I think, that the rail transportation policy says is it the job of this Board to foster.

CHAIRMAN ELLIOTT: And if we hypothetically, did impose this on that basis, what would we do, at the part where we decreased the spigot, as you put it, and the railroads fall down to a number where they're not earning these types of profits?

I mean, how would we control that?

MR. NELSON: Through your ongoing authority over all forums of competitive access, individual rate proceedings, to some extent, but it's a balancing act that the Board is going to be faced with, going forward, now that the revenue adequacy threshold has either been attained or is close to being attained by the remainder of the Class I's.

Where in the past, the posture of the Board has, at the direction of Congress, been to foster the attainment of revenue adequacy. Once it's attained, then you have a balancing act, where you can't attain it too much and you don't want to push it below, but you don't want to let it run wild up above either.

So, it's going to be an ongoing balancing act, where you would need to be monitoring and keeping track of, you know, how much traffic was actually able to make use of pro-competitive initiatives that you might implement, because AECC certainly isn't advocating pushing things below the revenue adequacy level, it's striking the right balance of competition, so that the super competitive earnings don't accrue on any kind of sustained basis.

CHAIRMAN ELLIOTT: If we set the number, instead of 240 at RSAM, would that get us to that type of balancing that we might need?

MR. NELSON: I'll confess, I haven't really considered that question enough to give you a good answer here. That might be the kind of thing that would be addressed in a rulemaking proceeding or something, or some further opportunity to think about that one.

CHAIRMAN ELLIOTT: I won't put you on the spot, if you haven't thought about it. Any further questions?

I don't have any further questions. I want to thank everyone for coming today. Thank you for your excellent testimony and all your hard work, and also thank you, to our Board employees and Court

Reporter for their work today.

This will end this portion of the hearing and we'll reconvene here at 9:30 a.m.

Just as a reminder, remember to check in, if you're one of the parties participating tomorrow. So, thank you very much.

(Whereupon, the above-entitled matter concluded at approximately 2:00 p.m.)

G

C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: PETITION FOR RULEMAKING TO ADOPT REVISED COMPETITIVE SWITCHING RULES

Before: STB

Date: 03-25-14

Place: Washington, DC

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.

Neal R Gross

Court Reporter

Testimony of Phil Ireland: Exhibits

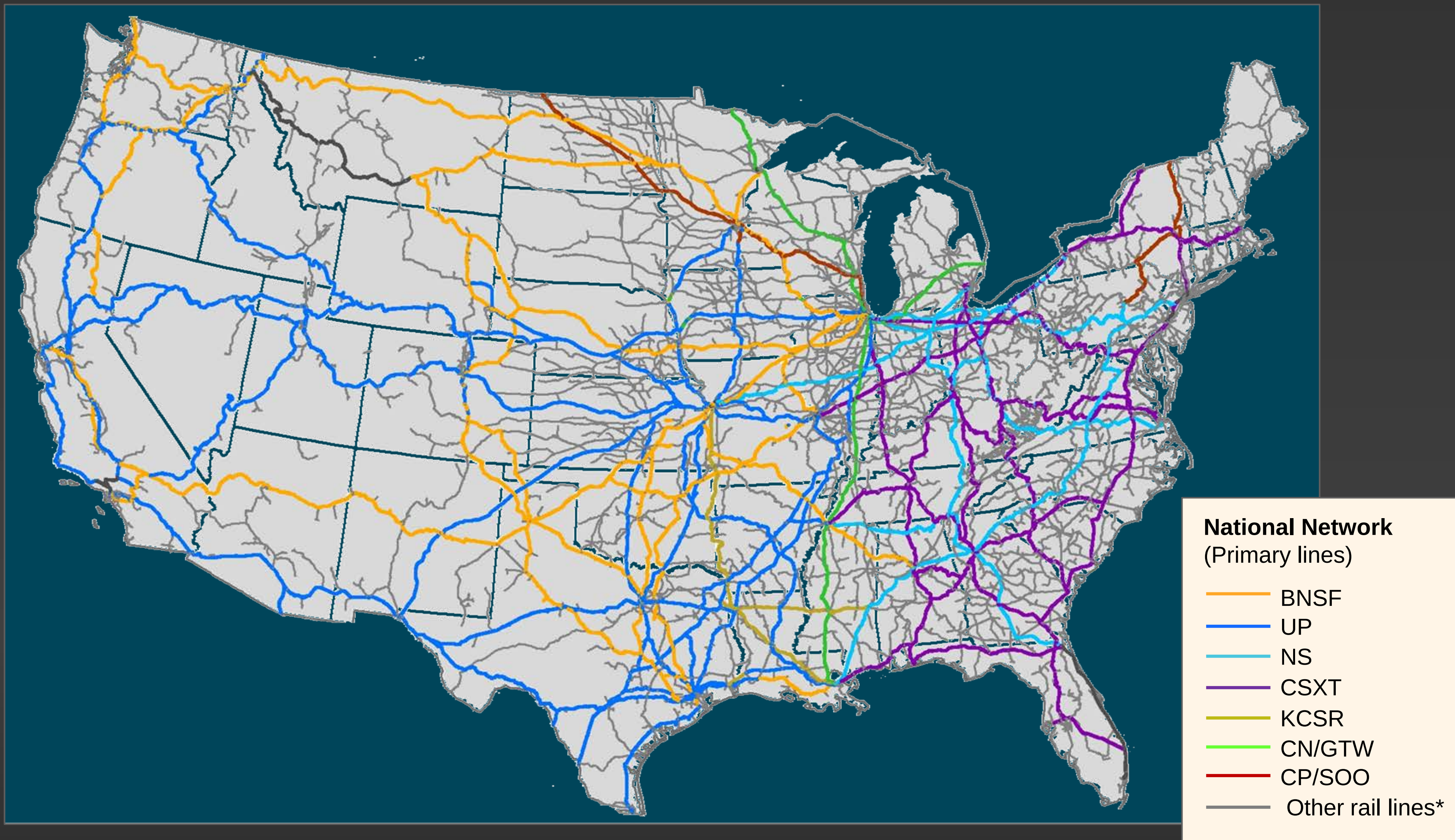
March 25, 2014

Before the Surface Transportation Board
In the Matter of Ex Parte No. 711, Petition for Rulemaking to Adopt Revised Competitive Switching Rules

Exhibit 1: Canadian Rail Network

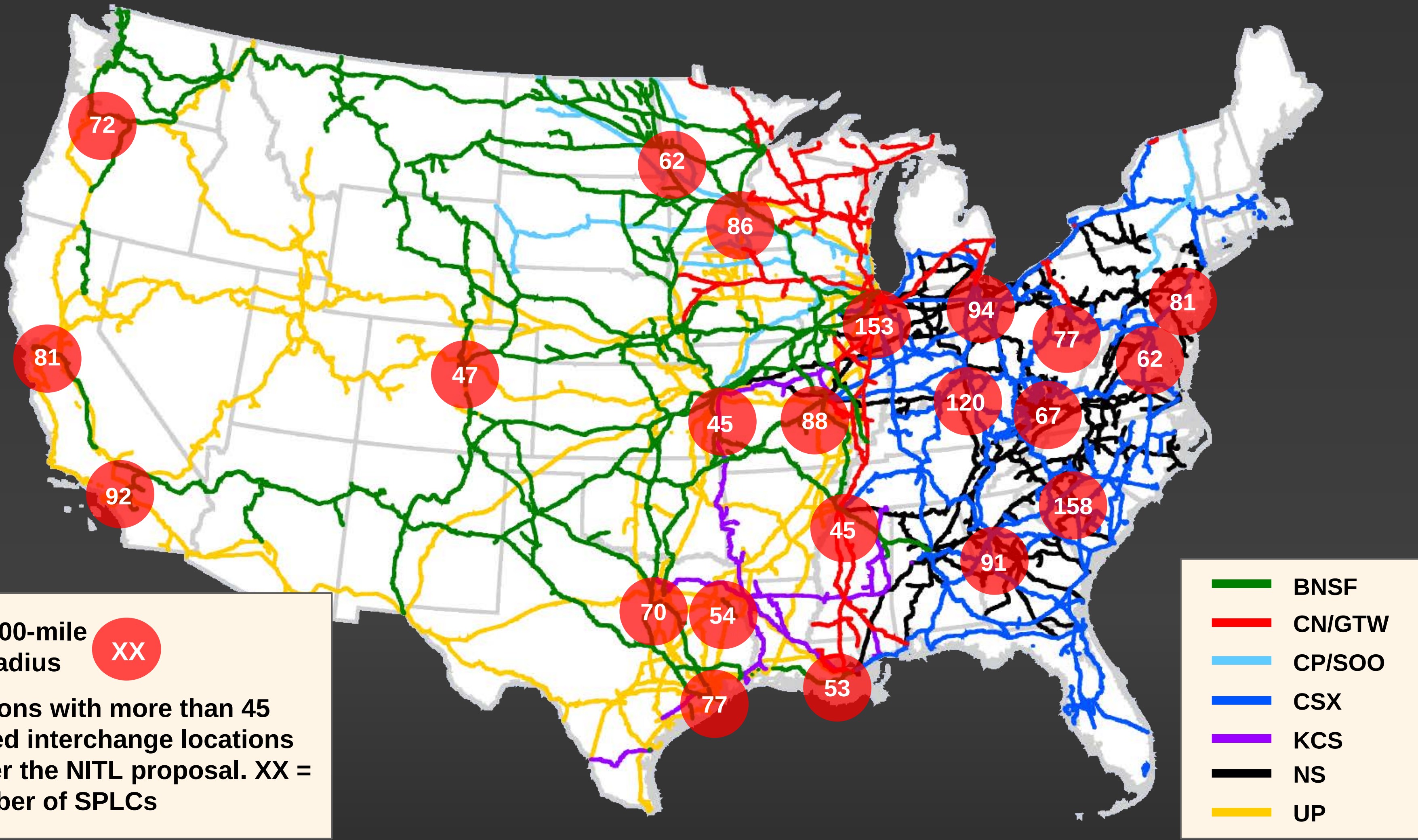
Source: Transport Canada.

Exhibit 2: U.S. Rail Network



*Non-primary Class I rail lines, as well as regional and shortline rail lines.
Source: Association of American Railroads.

Exhibit 3: U.S. Class I Rail Network with Major Forced Access Regions Under the NITL Proposal



100-mile radius **XX**

Regions with more than 45 forced interchange locations under the NITL proposal. XX = number of SPLCs

Source: William J. Rennicke Testimony, Exhibit 7.

Exhibit 4: NITL Assertions for U.S. and Canadian Switching, 2007

	Total Switching Locations	Total Non-Intermodal Carloads	Carloads Switched
US/Canada	22/1	6/1	1/2.3
United States	1,500	19,094,000	**120,000** *(NITL projected)*
Canada	67	3,095,000	279,900 *(actual)*

Source: NITL Opening Submission, op. cit., pp. 60-61. 2007 data used, as this is the basis of NITL's calculations. Numbers may not add due to rounding. The NITL projected impacted carloads for BNSF, CSX, NS, and UP only.

Exhibit 5: NITL Assumption of U.S. Carload Switching

	Assumed US Carload Impact
NITL Original Assumption	120,000
NITL Assumption W/ Corrected Total Carloads	1,726,700
Magnitude of Under-Statement	14x

Source: [Cite and refer to Exhibit V-4].

OLIVER WYMAN

Testimony of William J. Rennicke: Exhibits

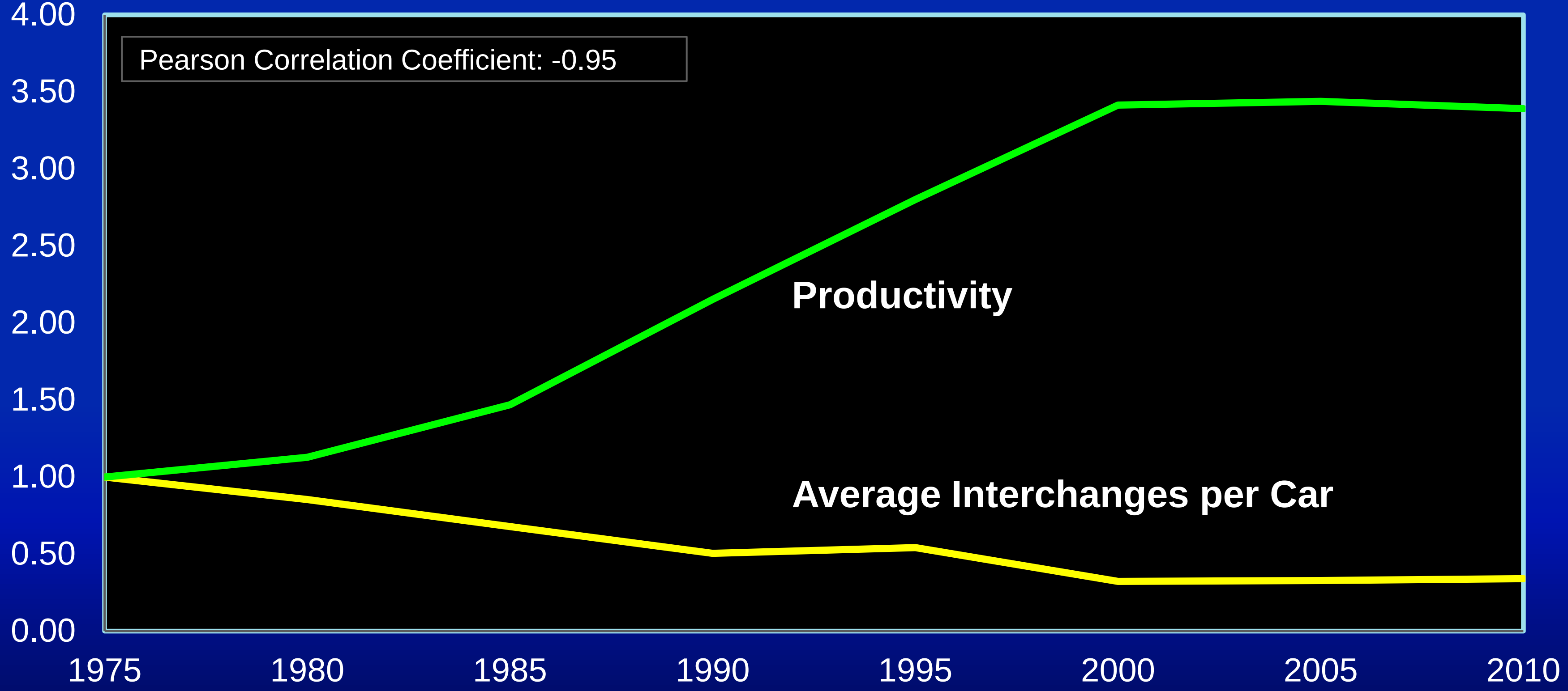
March 25, 2014

Before the Surface Transportation Board
In the Matter of Ex Parte No. 711,
Petition for Rulemaking to Adopt Revised Competitive Switching Rules

MARSH & McLENNAN COMPANIES

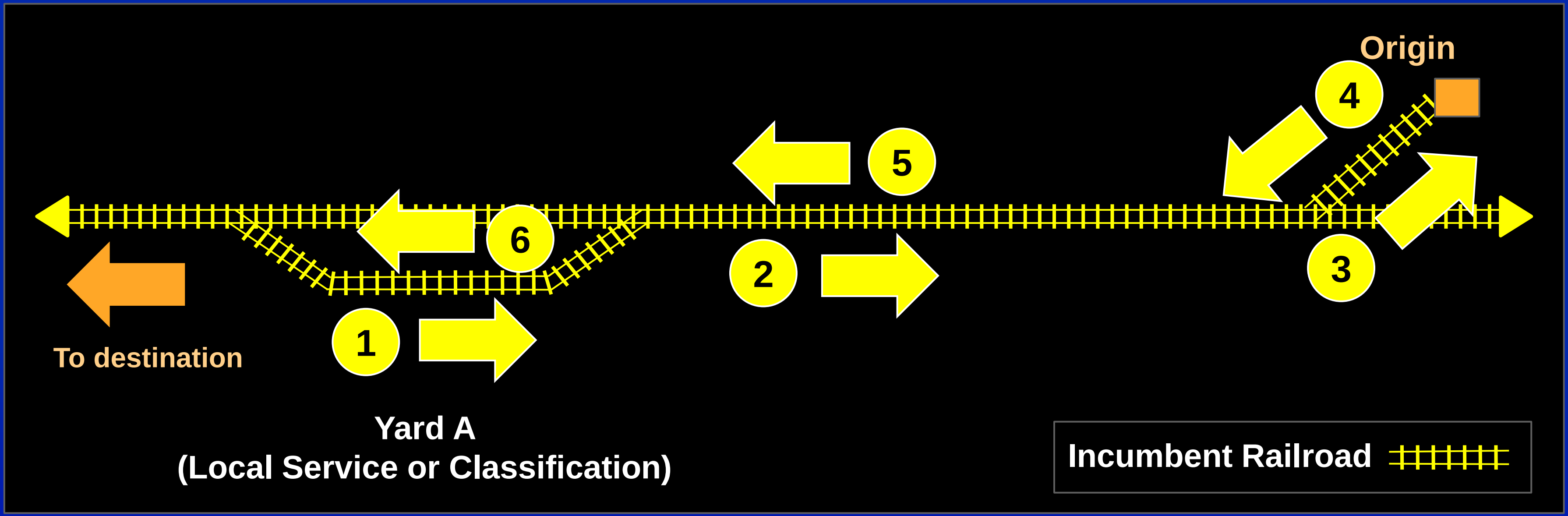
Exhibit 1: Indexed Average Interchanges per Railcar vs. Productivity, 1975-2010

Productivity = revenue ton-miles/$ of inflation-adjusted operating expense



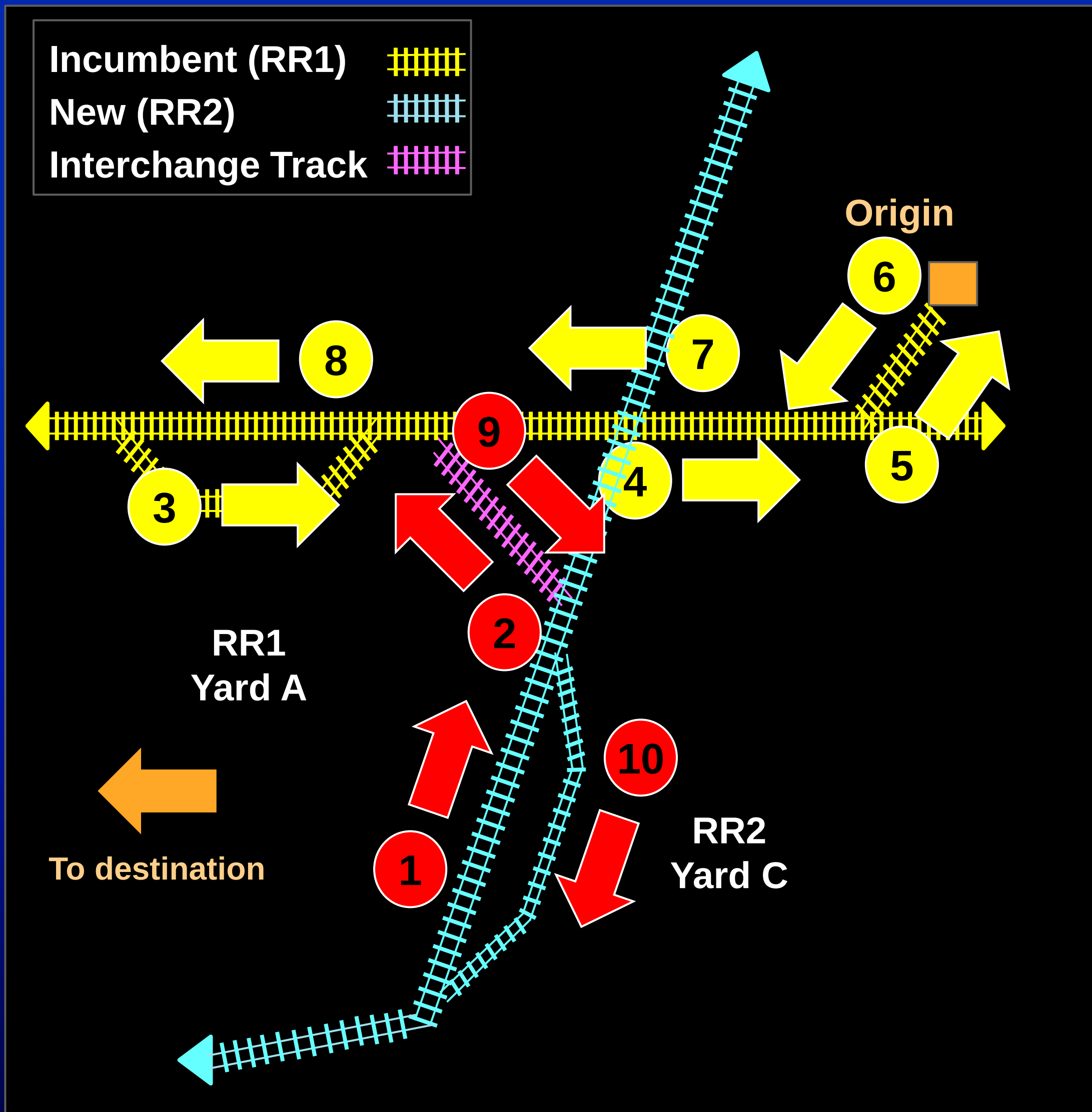
Source: Rail Fact Book, 2012 edition, Association of American Railroads, pp. 14 and 27 (opex and RTM); Association of American Railroads email (avg. interchanges); ftp://ftp.bls.gov/pub/special.requests/cpi/cpiai.txt (CPI); Oliver Wyman analysis. The correlation coefficient was generated from actual values, not indexed values

Exhibit 2: Single-Line Car Origination



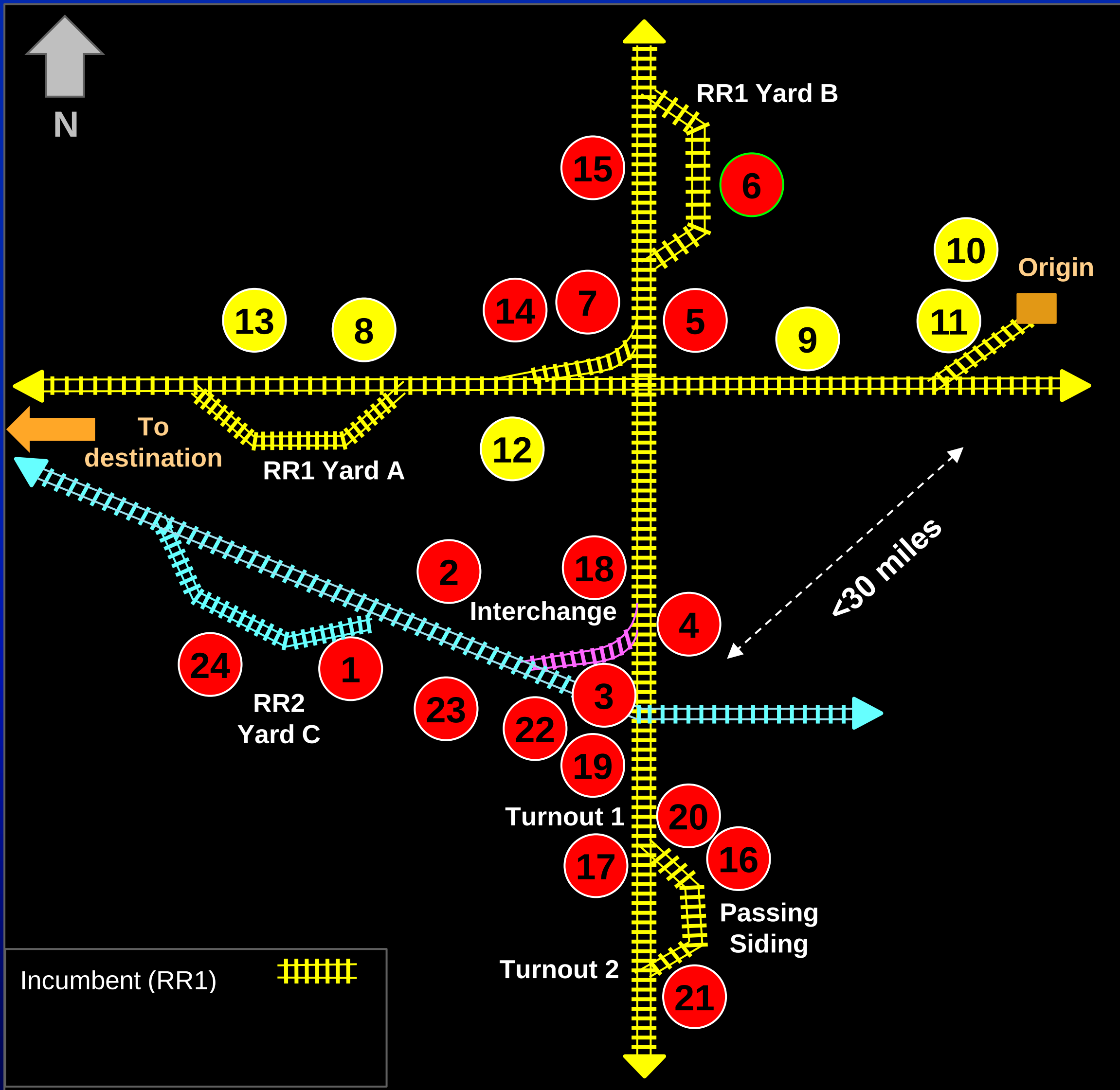
Step	Description
1	Yard switch to move empty car to way train
2	Way train moves empty car to Consignor
3	Industry switch to spot empty car at Consignor for loading
4	Industry switch to retrieve loaded car from Consignor
5	Way train moves loaded car to yard
6	Yard switch of loaded car to outbound road train

Exhibit 3: Several Additional Car Handlings Are Required for Even the Simplest Forced Switch



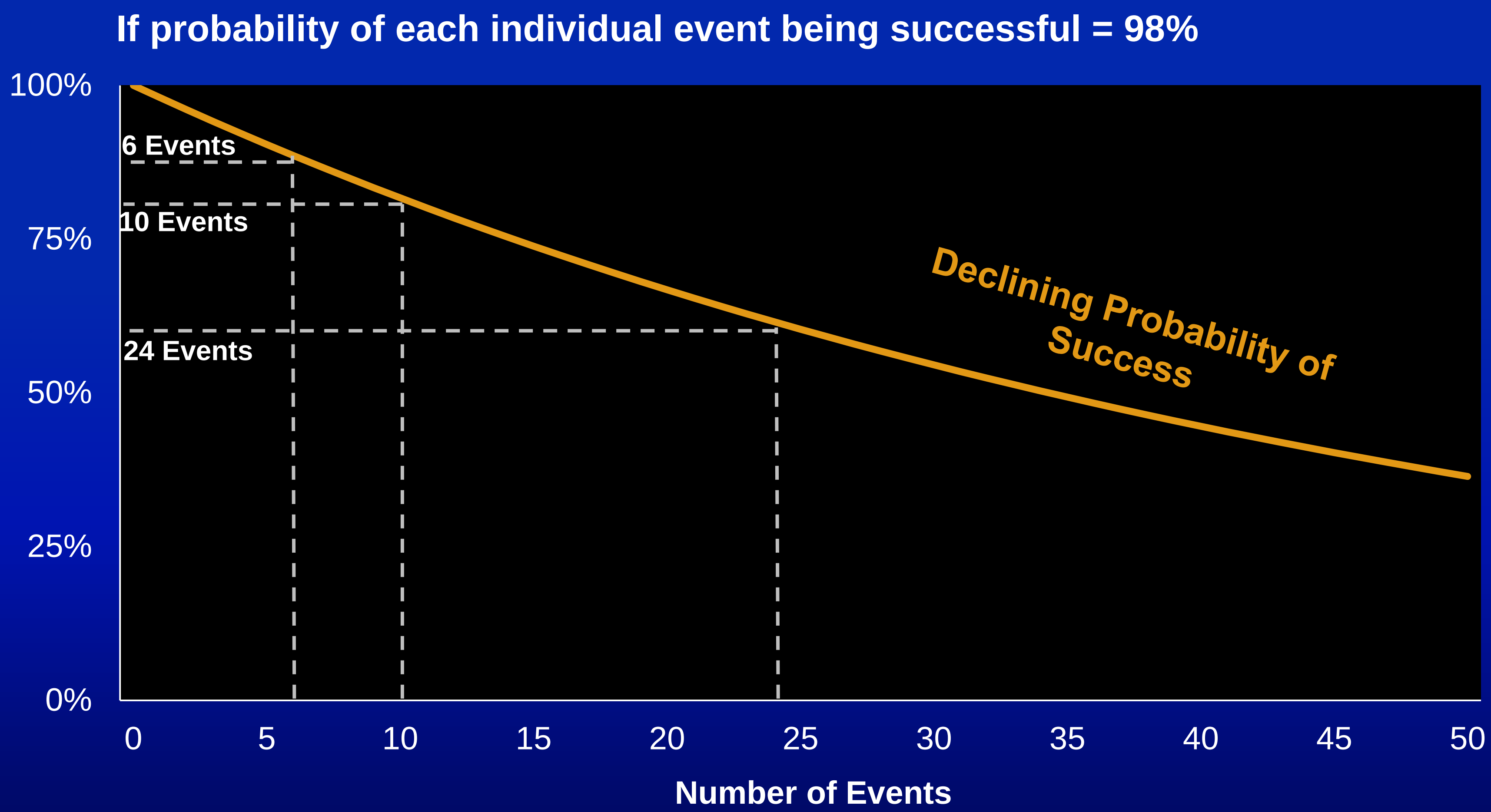
Step	Description
1	Yard switch Yard to move empty car to interchange train at Yard C
2	Interchange train moves empty car from Yard C to Yard A
3	Yard switch to move empty car to way train at Yard A
4	Way train moves empty car to Consignor
5	Industry switch to spot empty car at Consignor for loading
6	Industry switch to retrieve loaded car from Consignor
7	Local service way train moves loaded car to Yard A
8	Yard switch to move loaded car to interchange block at Yard A
9	Interchange train moves loaded car from Yard A to Yard C
10	Yard switch to move loaded car to outbound road train at Yard C

Exhibit 4: Many Forced Switches Will be Much More Complex



Step	Description
1	Yard switch to move empty car to way train at Yard C
2	Way train moves empty car to interchange track
3	Interchange switch to spot empty car on interch. track
4	Interchange switch to retrieve empty car from interchange track
5	Way train moves empty car to Yard B
6	Yard switch to move empty car to way train serving Yard A
7	Way train moves empty car via Connection to Yard A
8	Yard switch to move empty car to way train serving Consignor
9	Way train moves empty car to Consignor
10	Industry switch to place empty car into Consignor’s siding
11	Industry switch to retrieve loaded car from Consignor’s siding
12	Way train moves loaded car to Yard A
13	Yard switch to move loaded car to way train serving Yard B
14	Way train moves loaded car to Yard B
15	Yard switch to move loaded car to way train serving interchange
16	Way train moves loaded car to passing siding
17	Way train locomotive runs around train and couples to the end of the train
18	Way train moves to clearance point beyond Interchange
19	Interchange switch to spot loaded car on interch. track
20	Way train backs to passing siding
21	Way train locomotive runs around way train, couples to front and proceeds
22	Interchange switch to retrieve loaded car from interchange track
23	Way train moves loaded car to Yard C
24	Yard switch to move loaded car into outbound road train

Exhibit 5: The Probability of Successfully Executing a Trip Plan Decreases as the Number of Switch Events Increases



Note: A 98 percent probability of performing each individual switching event according to plan is above levels normally experienced by the Class I railroads. The probability of meeting a trip plan is equal to the probability of performing each individual switching event according to plan, raised to the power of the number of switching events.
Source: Oliver Wyman analysis.

Exhibit 6: Post-Staggers Improvements vs. Service Impacts of the NITL Proposal

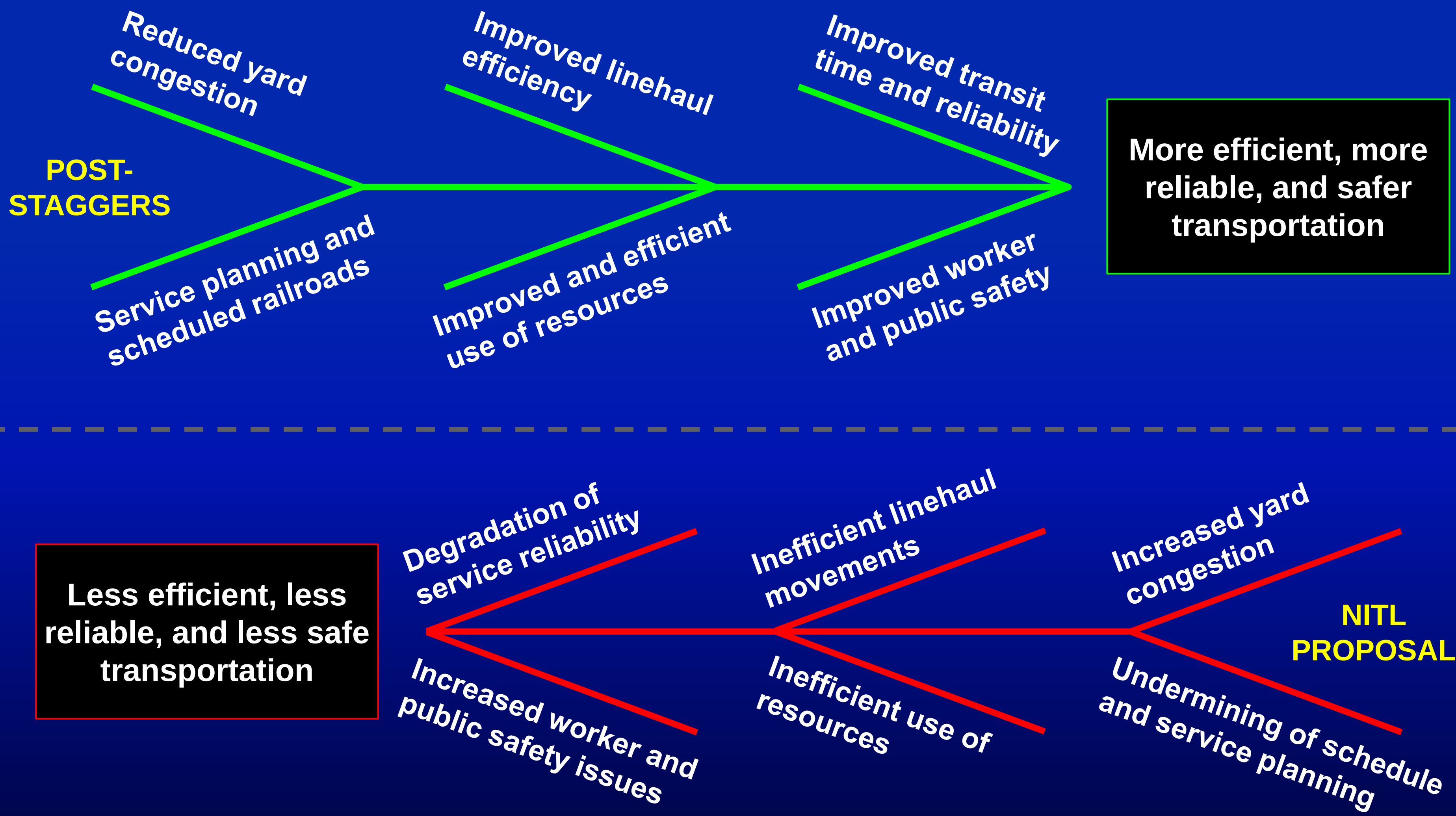
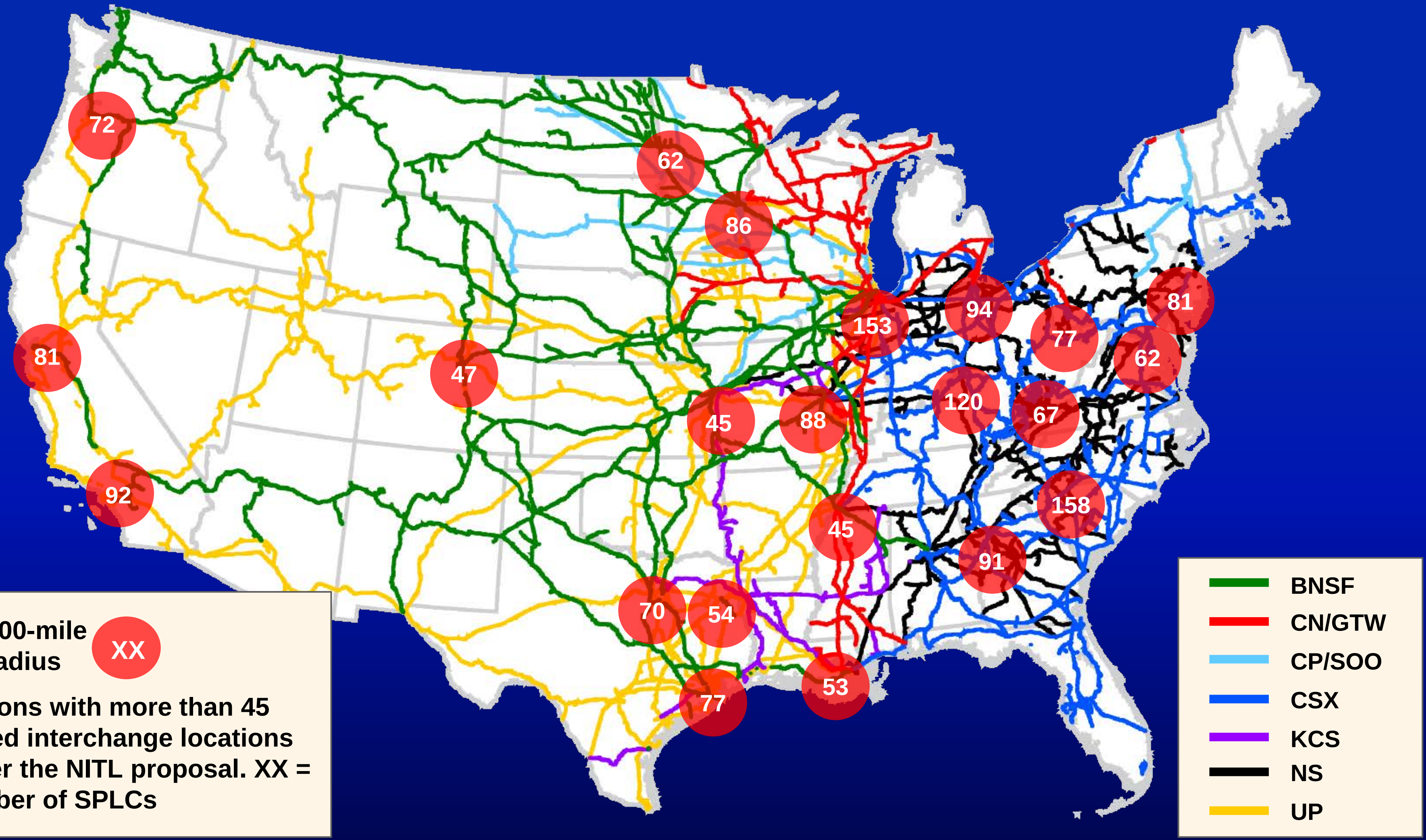


Exhibit 7: U.S. Class I Rail Network with Major Forced Access Regions Under the NITL Proposal

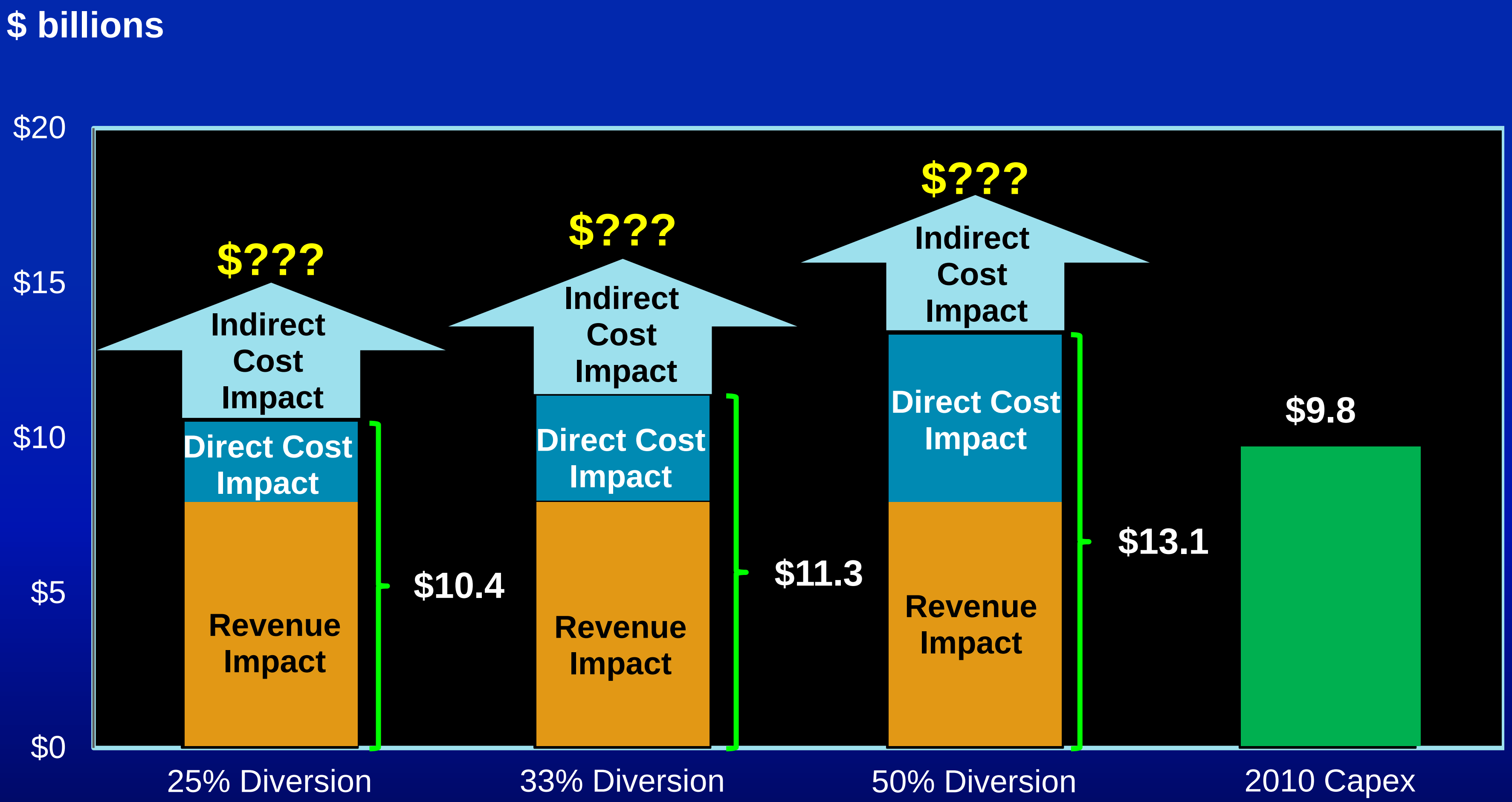


100-mile radius XX

Regions with more than 45 forced interchange locations under the NITL proposal. XX = number of SPLCs

Source: Data: Rennicke Verified Statement, op. cit., p. 97. Map: Source: U.S. Department of Transportation, Bureau of Transportation Statistics, *National Transportation Atlas Database 2011.*

Exhibit 8: Potential Impacts of Mandated Switching Due to Revenue Loss and Increased Direct and Indirect Costs



Source: Revenue impacts based on Oliver Wyman analysis of the NITL and FTI data contained in the EP 711 filing, Uses the FTI projection of 7.5 million impacted carloads. March 1, 2013. 2010 capex is from Railroad Facts, 2011 edition, op. cit., p. 44.

Association of American Railroads

AAR’s Key Points

- Vague and incomplete proposal
- Adverse effect on freight and passenger service
- Undermine future capacity investment
- No public benefits
- Canadian experience is irrelevant
- This proceeding should be terminated

FTI CONSULTING

Ex Parte 711 Public Hearing
Charts for Michael R. Baranowski

3/25/2014

Figure 1: Carload Estimates Developed from Non-Revenue and Revenue Screens

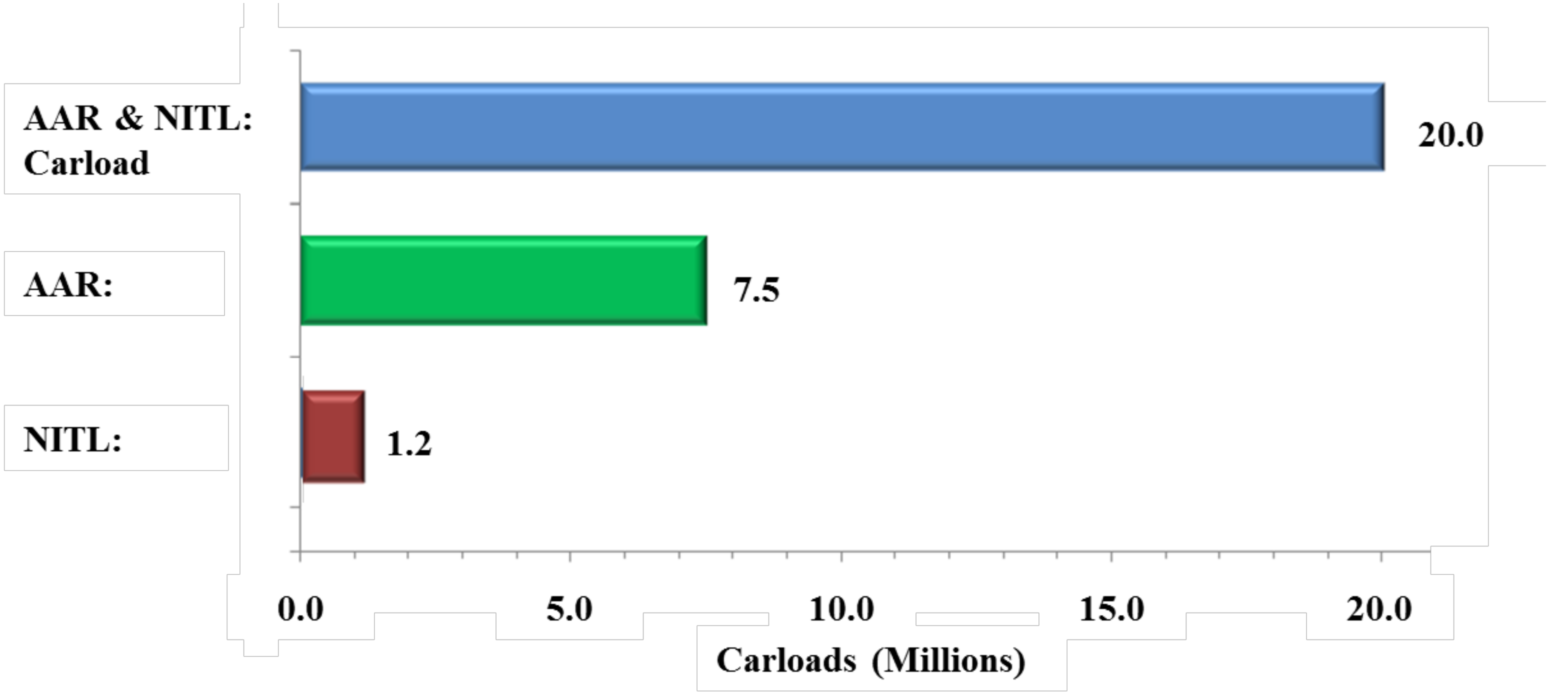
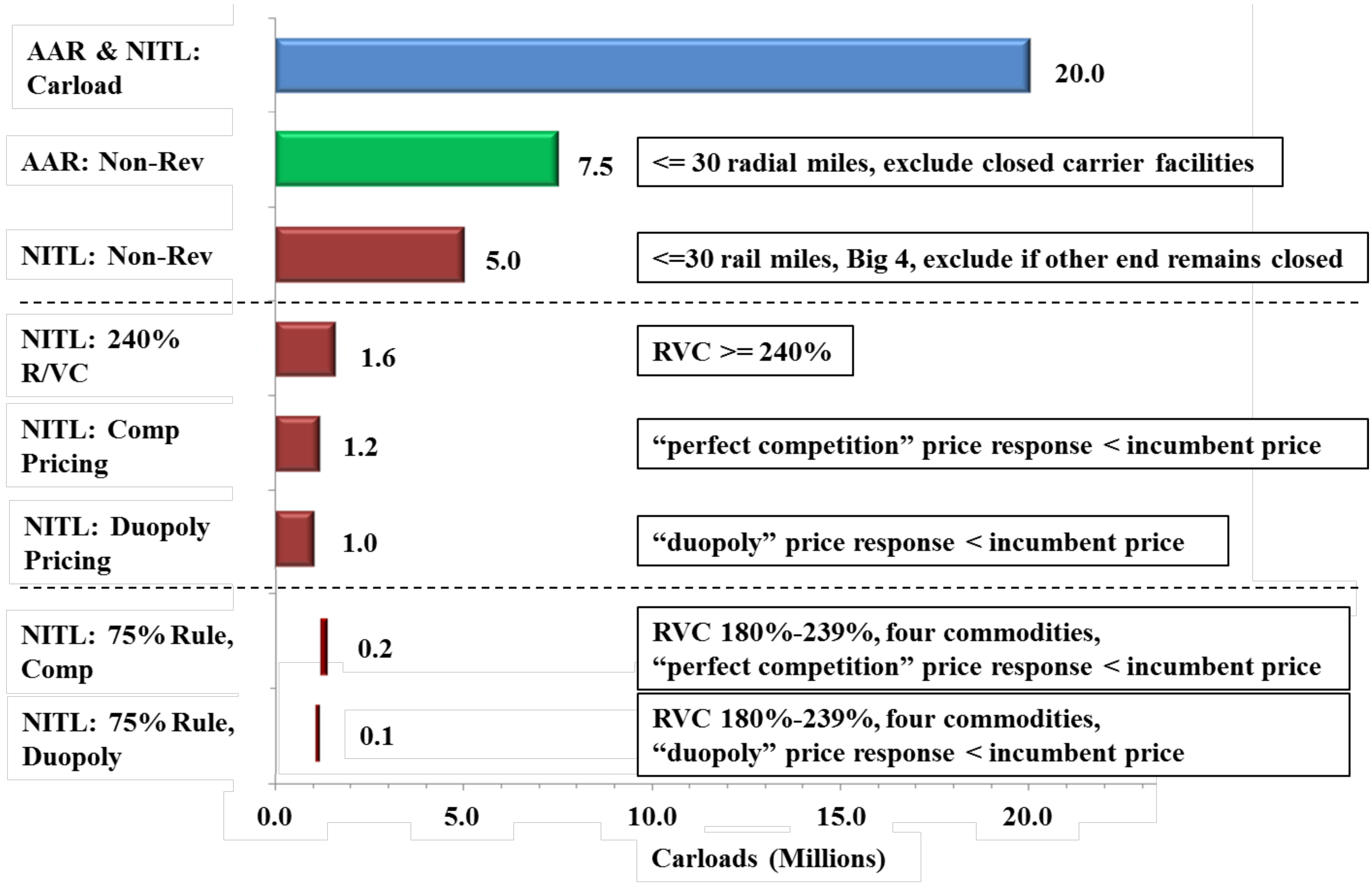


Figure 2: Carload Estimates Developed from Non-Revenue and Revenue Screens



STB Ex Parte No. 711
Petition for Rulemaking to Adopt Revised Competitive Switching Rules

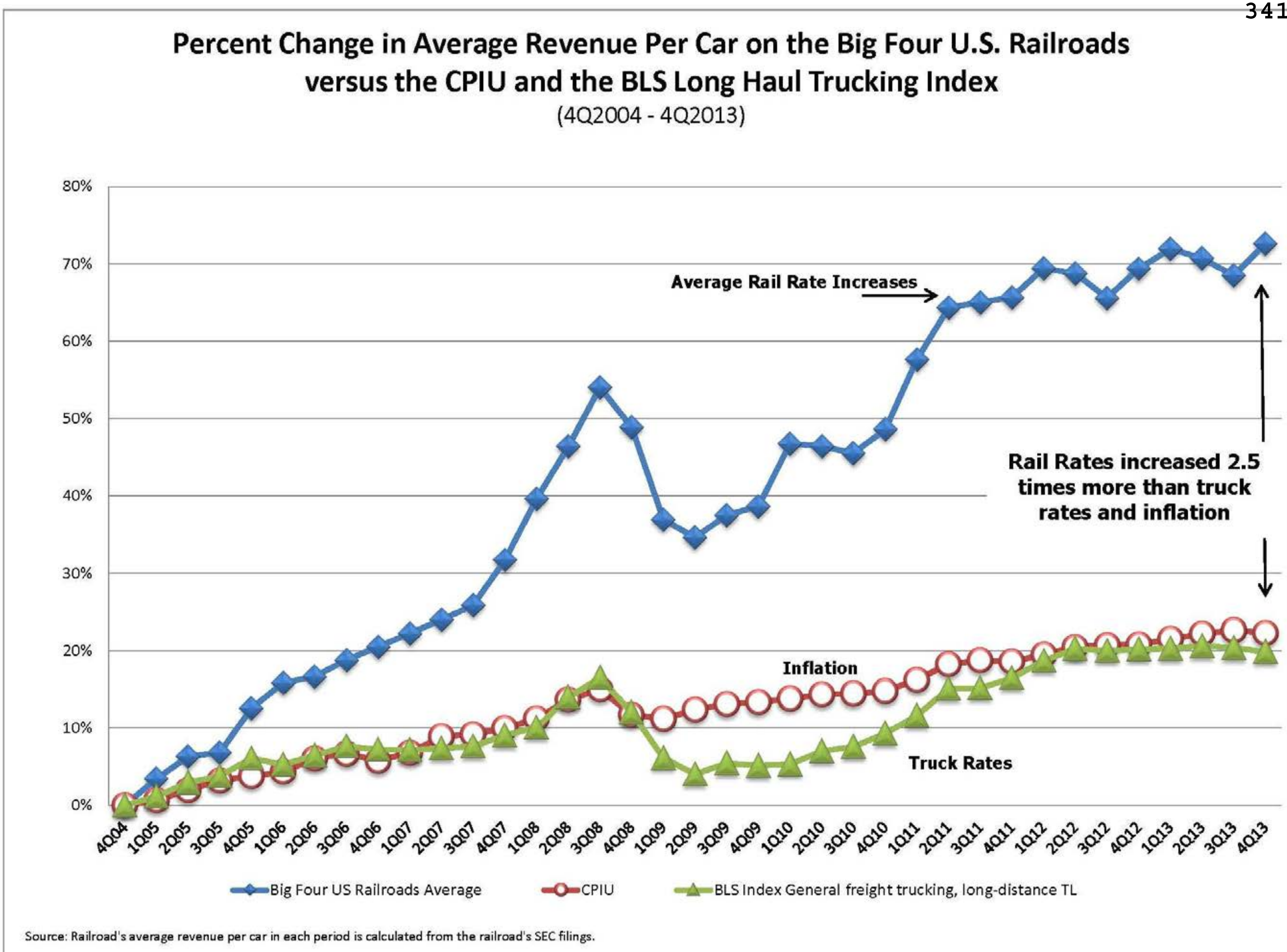
Presentation of

The National Industrial Transportation League

March 25, 2014

Witnesses

- Bruce Carlton, President, The National Industrial Transportation League
- Karyn Booth and Nicholas DiMichael, Thompson Hine LLP
- Jay Roman, President, Escalation Consultants
- Walter Schuchmann, Vice President, Operations Planning, R.L. Banks & Associates


Percent Change in Average Revenue Per Car on the Big Four U.S. Railroads
versus the CPIU and the BLS Long Haul Trucking Index
(4Q2004 - 4Q2013)
80%
70%
60%
50%
40%
30%
20%
10%
0%
Average Rail Rate Increases
Rail Rates increased 2.5 times more than truck rates and inflation
Inflation
Truck Rates
4Q04
1Q05
2Q05
3Q05
4Q05
1Q06
2Q06
3Q06
4Q06
1Q07
2Q07
3Q07
4Q07
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1Q11
2Q11
3Q11
4Q11
1Q12
2Q12
3Q12
4Q12
1Q13
2Q13
3Q13
4Q13
Big Four US Railroads Average
CPIU
BLS Index General freight trucking, long-distance TL
Source: Railroad's average revenue per car in each period is calculated from the railroad's SEC filings.

Overview of NITL Presentation

- NITL performed detailed analyses of the CSP
  - CSP is consistent with the Staggers Act
  - CSP impacts on shippers and carriers are balanced
  - CSP would inject a reasonable level of rail competition into the marketplace
  - CSP will **not** harm the railroads economically or operationally
- NITL analysis consistent with other credible CSP studies (e.g. USDOT, USDA, NG&FA)

Overview of NITL Presentation

- AAR analyses are incomplete and misleading
- AAR analyses are based on faulty assumptions which drastically overstate CSP impacts
- Record supports action by STB to initiate a rulemaking on competitive switching
- Competitive switching would benefit the public interest

The Board Has Broad Powers to Adopt New Competitive Switching Rules

- Statute seeks to encourage competitive switching
  - authorizes competitive switching when "practical and in the public interest" <u>OR</u> when "necessary to provide competitive rail service"
- Existing rules are unworkable
  - competitive switching has never been granted under the 1985 rules, and no shipper has even tried for over 15 years.
- Board has broad discretion to adopt new rules
- Changes in railroad market since 1985 support adoption of new rules

STB Question #1: Existing Terminals and Shippers

- Switching arrangements exist today:
  - All major RRs, where RRs have agreed
  - But, many shippers are excluded
- Existing switch fees in RR tariffs:
  - In the West, generally \$200-\$300 per car
  - In the East, generally \$400-\$500 per car
- CSP would expand on existing practice
- AAR provided no information on existing switching arrangements

STB Question #2: Carloads/Revenue Subject to Switching under CSP

- NITL Approach
  - Calculated the effect of both the 240% R/VC presumption and 75% market share presumption
  - Like DOT, focused on 240% R/VC presumption
  - Developed assumed access pricing methodology
  - Took into account all factors necessary for identifying impacted carloads and dollars
  - Calculated answers for all the questions asked by the Board
- This yields the <u>total</u> carloads & revenue potentially impacted by the CSP

NITL’s Assumed Access Pricing Methodology

- An assumed pricing method is required to estimate the number of cars potentially impacted and the revenue effect
- NITL’s assumed fee based on Canadian interswitching fee (determined by CTA)
- NITL assumed switch fees:
  - $300 per car for switches of < 60 cars
  - $89 per car for switches of 60 cars or more

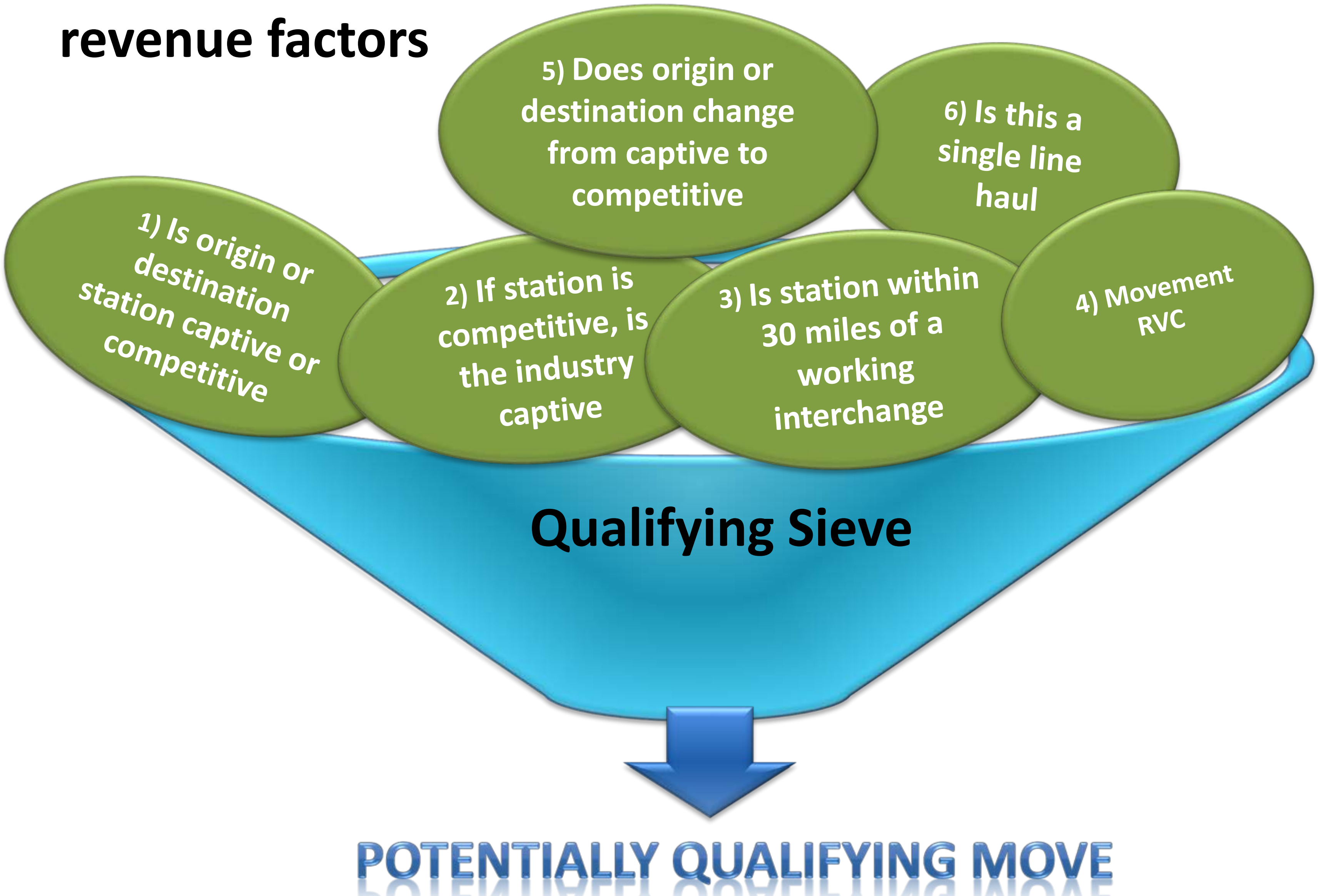
NITL Access Fee Consistent With Current Railroad Tariff Switching Charges

- BNSF and UP average switching fee is ~ $250 per car
- NS and CSXT average switching fee is ~ $400 per car
- AAR/railroads did not contest NITL's $300 per car access fee
- AAR/railroads did not offer any access fee of their own

Impacted Carloads and Revenues: Non-Revenue and Revenue Factors

- A movement must satisfy CSP criteria to be eligible for competitive switching. These are the "non-revenue factors"
- NITL also examined "revenue factors" to determine potentially impacted movements
- The sum of movements that satisfy both factors provides the total number of carloads and revenue impacted by the CSP

Non-Revenue Factors – Movement factors that must get through the Qualifying Sieve before considering revenue factors



Impacted Carloads and Revenues: Revenue Factors

- In addition to non-revenue factors or "sieves," NITL examined each potentially eligible movement to determine if a competitive rate plus the assumed access price results in a rate lower than the shipper's current rate
- This "revenue factor" establishes a separate "sieve" for determining the potentially impacted movements

Revenue Factors – How NITL Identified Potentially Impacted Moves

	Impacted Move			Non-Impacted Move	
Existing Rate		$4,000			$3,000
Rate After CSP	$3,100			$3,100	
+ Access Fee	$300			$300	
Total Cost After CSP		$3,400			$3,400
Change in Rate		**-$600**			**$400**
Impacted Move?		Yes			No

“Full” vs. “Reduced” Competition Scenarios

- “Full Competition” scenario assumes that CSP results in a rate equal to the average “competitive” rate, for that carrier, commodity and mileage block
- “Reduced Competition” scenario assumes that CSP results in a rate higher than the average competitive rate
  - Not all forms of transportation competition apply to CSP traffic (only intramodal competition, in a concentrated rail market)
  - Competition muted because access fee must be paid

Results of NITL Analysis - Full Competition Scenario (carloads)

CSP Condition	Carloads (in millions)	Percent of All Rail Carloads[1]
240% RVC Condition	1.24	
75% of Traffic Condition	0.20	
Total Carloads	**1.44**	**4.6%**

[1] 31 million total carloads for BNSF, CSXT, NS and UP.

Results of NITL Analysis - Less Than Full Competition Scenario (carloads)

CSP Condition	Carloads (in millions)	Percent of All Rail Carloads[1]
240% RVC Condition	1.08	
75% of Traffic Condition	0.12	
Total Carloads	**1.20**	**3.9%**

[1] 31 million total carloads for BNSF, CSXT, NS and UP.

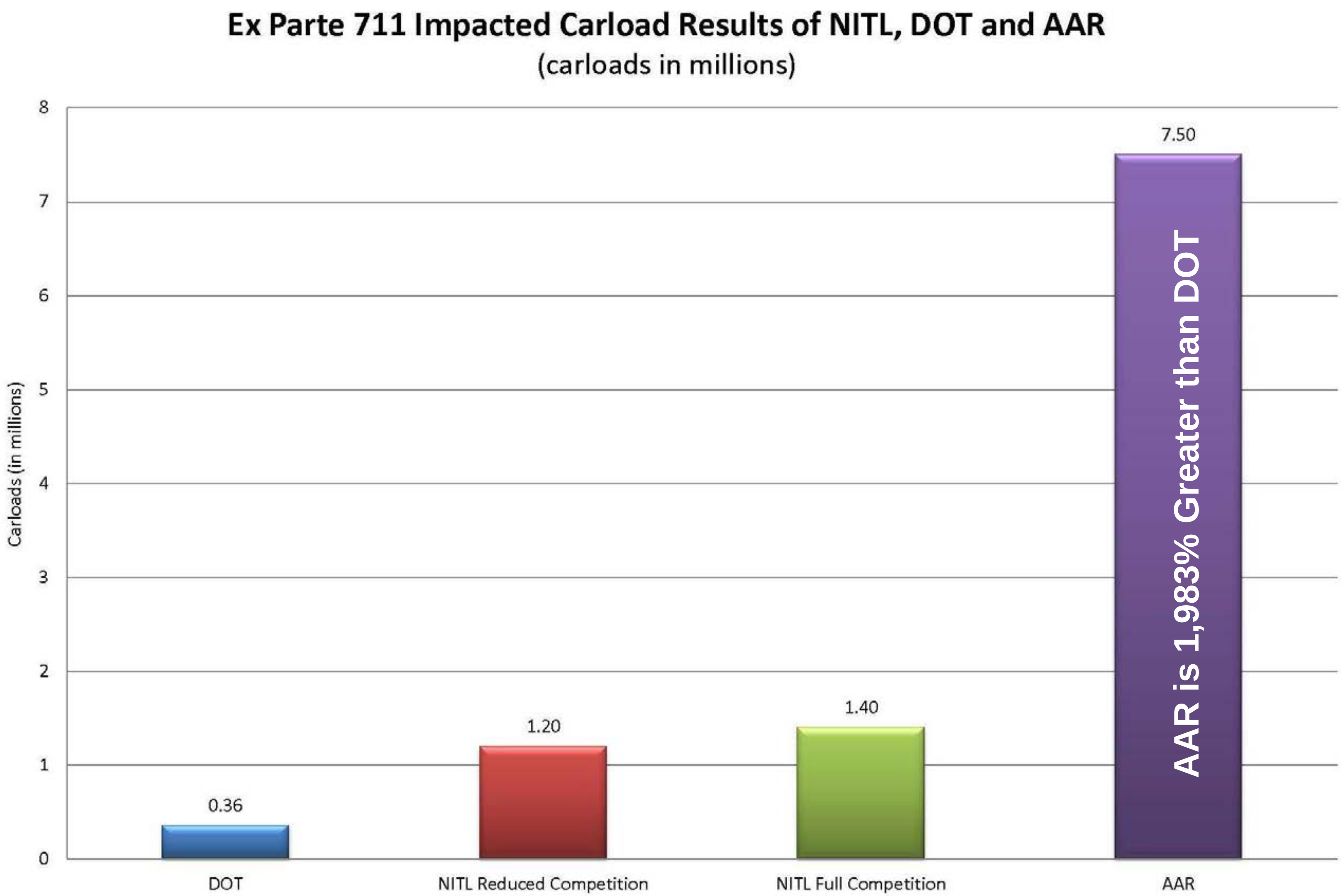
NITL Analysis Overstates CSP Impact

- NITL developed reasonable assumptions
- NITL analysis overstates the potential effect of the CSP:
  - Included all exempt traffic
  - Included all contract traffic
  - Ignored many paper barriers that would prevent many Class II and III carriers from competing
  - Assumed that all qualifying shippers applied for competitive switching

NITL Analysis Is Generally Consistent With DOT

- DOT focused on 240% presumption, as did NITL
- DOT focused on three major commodity groups (coal, chemicals and farm products)
- DOT found that 360,000 carloads of these commodities would be potentially impacted by the CSP
- This compares to NITL's estimate of 1.44 million carloads impacted, for all commodities

AAR Results Are Not Realistic



AAR's Estimate of Potentially Affected Carloads Is Overstated

- AAR's estimate of 7.5 million carloads affected is over 20 times DOT's estimate
- AAR only addressed the 75% market share presumption
- AAR admitted: "it is impossible to determine whether 75 percent of total traffic moves on the incumbent railroad" from the data
- AAR's "default assumption": RR that solely serves a station carries **all** traffic at that station is absurd
  - ignores the entire trucking, waterways and pipeline industries

NITL responded to all STB requests for empirical analysis to better understand the impact of Ex Parte 711, THE AAR DID NOT

Analysis	NITL	AAR
240% RVC and 75% Market share presumption	Yes	No
Potential access fee	Yes	No
Apply revenue factors	Yes	No
Identified captive shippers served by competitive stations	Yes	No
Results based on different mileage ranges	Yes	No
Results based on RSAM RVC's	Yes	No

STB Questions #3(a): How much would CSP Lower Rates/Reduce Railroad Revenue?

Full Competition Scenario

CSP Condition	Shipper Savings (in billions)	Percent of Big 4 Total Revenue[1]	Percent of Big 4 Net Revenue[2]
240% RVC Condition	$1.294		
75% of Traffic Condition	$0.115		
Total Shipper Savings	**$1.408**	**2.6%**	**9.8%**

[1] 2010 Total revenue for BNSF, CSXT, NS and UP is $52.92 billion on the Waybill.
[2] 2010 Net Revenue Before Taxes as reported by the four major US railroads is $14.3 billion.

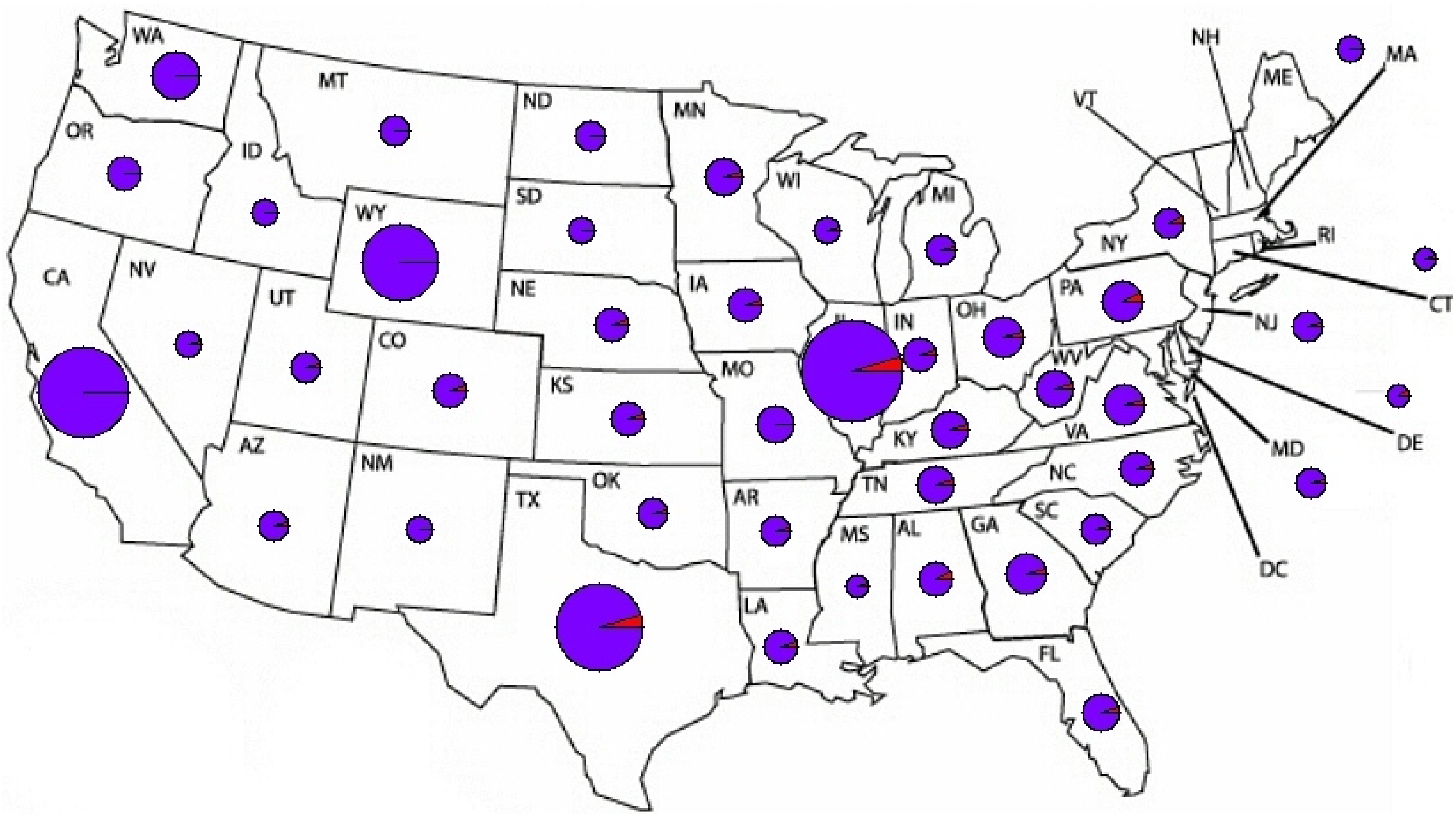
STB Questions #3(a): How much would CSP Lower Rates/Reduce Railroad Revenue?

Less than Full Competition Scenario

CSP Condition	Shipper Savings (in billions)	Percent of Big 4 Total Revenue[1]	Percent of Big 4 Net Revenue[2]
240% RVC Condition	$0.908		
75% of Traffic Condition	$0.038		
Total Shipper Savings	**$0.946**	**1.8%**	**6.6%**

[1] 2010 Total Revenue for BNSF, CSXT, NS and UP is $52.92 billion on the Waybill.
[2] 2010 Net Revenue Before Taxes as reported by the four major US railroads is $14.3 billion

Impacted Revenue as Percent of Total Rail Revenue by State (Full Comp)



STB Question #4: Impact on Existing Captive Shippers

- Rates would <u>not</u> increase:
  - Union Pacific comments stated "UP believes widespread rate increases would be unlikely . . . UP already has every incentive to price traffic to maximize contribution."
- No danger of regulatory effects:
  - SARRs not likely to be affected
  - Few captive shippers bring rate cases

STB Question #5: Effect of CSP on Rail Network Efficiency

- Key factors are:
  - (1) Number of cars potentially eligible for switching under the CSP
  - (2) Percent of eligible cars that are likely to actually switch carriers
  - (3) Ability of rail carriers to handle the traffic swing from one carrier to another

Number of Potentially Eligible Cars

- NITL's study results in a credible estimate of carloads potentially eligible for switching under the CSP (1.44 million)
  - AAR carload estimate is not credible
- This estimate is only a small fraction (4.6%) of the railroads' total traffic (31 million cars)

Number of Cars Likely To Be Switched

- NITL analyzed Canadian inter-switching data to estimate the number of cars that are likely to switch carriers
- Canadian experience indicates that only a small fraction (10% - 17%) of eligible carloads will actually switch carriers
- The incumbent is usually in the stronger competitive position

Number of Cars Likely to be Switched

- The estimated number of cars likely to be switched under the CSP is <250,000
- This is an extremely small percentage of the 5.4 million cars actually interchanged in 2010

Railroads Can Handle the Traffic Swings Expected Under the CSP

- Traffic patterns constantly change and railroads routinely deal with these changes
- Estimated <250,000 cars re-routed under CSP is much less than ordinary year-to-year swings in railroad traffic

Actual Year-to-Year Traffic Changes Far Exceed the CSP

U.S. Railroads – Carloads Originated			
Year	Total Carloads Originated	+ / - From Previous Year	% + / - From Previous Year
2011	30,000,000	**790,000**	2.7%
2010	29,210,000	**3,204,652**	12.3%
2009	26,005,348	(4,619,425)	(15.1%)
2008	30,624,773	(834,158)	(2.7%)
2007	31,458,931	(655,468)	(2.0%)
2006	32,114,399	**972,182**	3.1%
2005	31,142,217	**1,047,421**	3.5%

Source: AAR *Railroad Facts* and AAR website

Impacts Will Be Muted

- Traffic swings under CSP will take place gradually
- Many cars move in blocks
- CSP traffic takes place at existing interchanges: RR personnel, equipment and procedures are already in place
- RRs have modern routing tools
- Competition encourages efficiencies

Canadian Interswitching Provides A Reasonable Basis for Analyzing Impacts

- Regulated Interswitching in Canada has existed for decades
- A small fraction of eligible cars in Canada actually switch carriers
- No material impacts on operations or service
- RRs in Canada are highly profitable and have become <u>more</u> efficient and productive over time

AAR is Wrong that CSP Will Harm RR Networks – Carloads Overstated

- AAR relies on absurd estimate that 7.5 million carloads are eligible for switching under CSP
- AAR relies on an unsubstantiated estimate that 25% of eligible carloads will be diverted
- Applying AAR's est. 25% diversion percentage to NITL's est. of impacted cars (1.4 million) results only in diversion of <400,000 cars per year
- Impact of <400,000 cars is vastly smaller than AAR's diversion estimate of nearly 2 million cars

AAR is Wrong that CSP Will Harm RR Networks – Capabilities Understated

- AAR examples are highly speculative and do not estimate probability of occurrence
- AAR estimate of number of interchanges per carload is wrong
- RR productivity gains do not depend <u>solely</u> on reductions in interchanges and interchanges do not necessarily result in lost productivity
- RR have easily handled new interchanges in the past, *e.g.*, Conrail Shared Asset Areas, shortline spinoffs
- “America Has the Best Freight Rail System in the World” (AAR quote) and it will easily accommodate the modest impacts of CSP

Conclusions Regarding Effect of CSP on Rail Network Efficiency

- The number of cars potentially eligible for the CSP is far smaller than RRs estimate
- Only a small number of cars are expected to “switch” to a new carrier (<250,000)
  - Less than usual swing in rail traffic year to year
- Railroads can easily handle the expected diversions
- NITL evidence is more credible

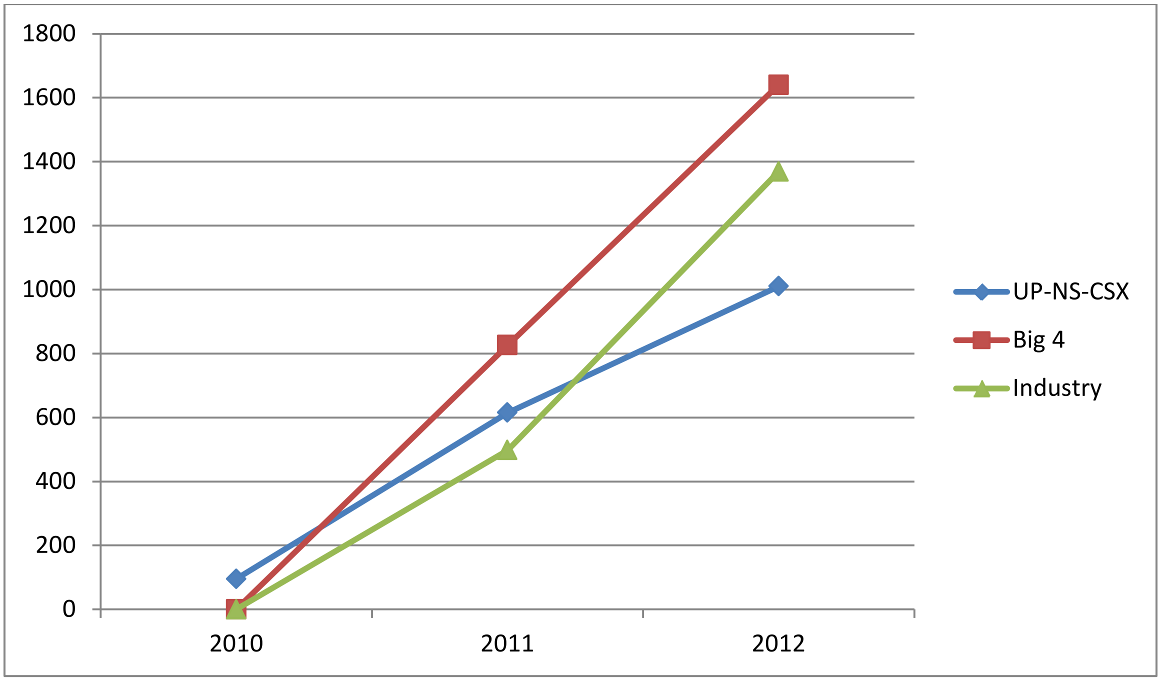
CSP Provides for Evaluation of Adverse Operational Impacts

- Under CSP, carrier can contest request for competitive switching
- Carrier must show that competitive switching:
  - would not be feasible
  - would be unsafe or
  - would unduly hamper the ability of the rail carrier to serve its own customers

Overall Conclusions

- Board's existing rules are unworkable and inconsistent with statutory purpose
- STB has broad discretion to adopt the CSP
- CSP is reasonable, balanced and narrowly-drawn to provide relief to captive shippers
- CSP would inject a reasonable amount of competition into system, without harming railroads
- Record strongly supports action by STB to promptly issue a NPR on the CSP

Supracompetitive Rail Earnings, 2010-2012 ($ Millions)



Source: STB Docket No. EP 552 (Sub-Nos. 15, 16 and 17), Appendix B.

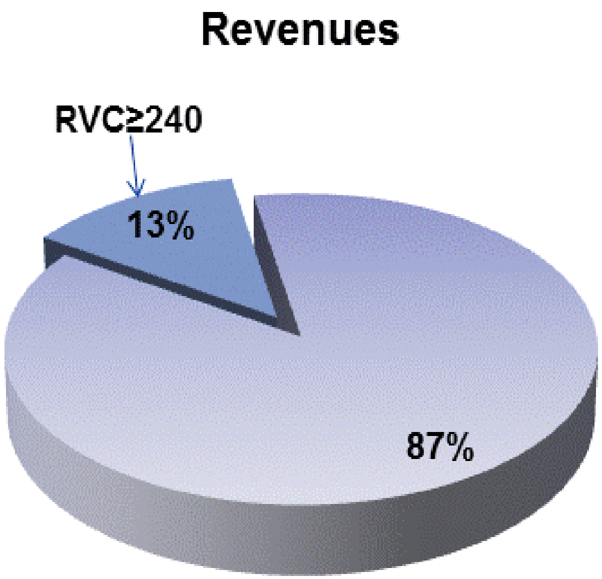
Surface Transportation Board
Ex Parte No. 711
Public Hearing on
Petition for Rulemaking To Adopt Revised Competitive Switching Rules

U.S. Department of Transportation
March 25, 2014

Table 1: Data Set Development for Competitive Switching Analysis

	Number of Records	Origin/Destination Pairs	Carloads Originated (millions)	Rail Revenues (billions)
A. Total Waybill	580,928	55,788	33.3	$60.9
B. U.S Origins/Destinations (revenues & costs >0)	537,494	48,140	31.4	$55.0
C. U.S Origins/Destinations (revenues & costs >0) excluding exempt traffic	126,519	15,537	5.9	$11.5
D. U.S Origins/Destinations (revenues & costs >0); R/VC≥240; excluding exempt traffic	26,704	7,229	3.5	$8.3
E. Class I single line moves--U.S Origins/Destinations (revenues & costs >0); R/VC≥240; excluding exempt traffic	22,031	5,511	3.1	$6.9
F. BNSF, UP, NS, CSXT single-line moves--U.S Origins/Destinations (revenues & costs >0); R/VC≥240; excluding exempt traffic	19,646	5,161	2.8	$6.7

Chart 1: Revenues and Carloads for Traffic with R/VC ≥ 240 as a Percent of Total Revenues and Total Carloads for Four Examined Class I Railroads



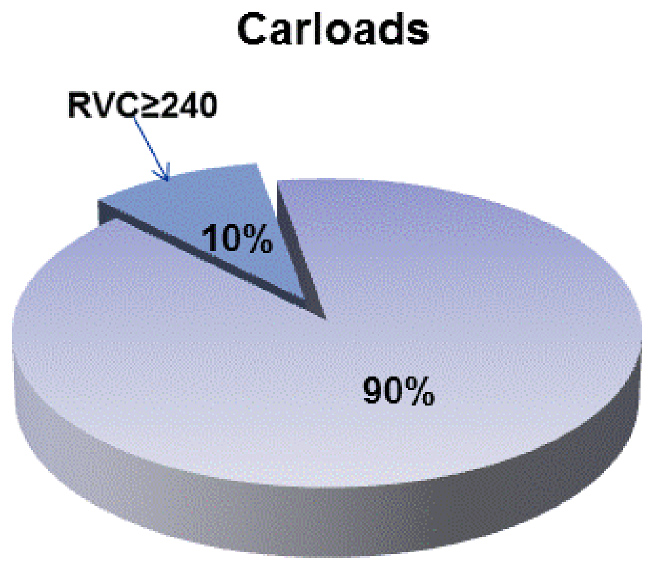


Table 2: Total Carload and Revenues by Commodity for R/VC≥240

Commodity	Carloads	% of Total R/VC≥240 Carloads	Revenues ($ in millions)	% of Total R/VC≥240 Revenues
Coal	2,074,566	73.43%	$4,190.29	62.74%
Chemical or Allied Products	343,121	12.14%	$1,426.67	21.36%
Farm Products	163,280	5.78%	$428.69	6.42%
Food or Kindred Products	52,504	1.86%	$162.77	2.44%
Petroleum or Coal Products	58,125	2.06%	$144.24	2.16%
Nonmetallic Minerals; except Fuels	27,789	0.98%	$61.70	0.92%
Metallic Ores	47,989	1.70%	$56.23	0.84%
Transportation Equipment	27,145	0.96%	$45.07	0.67%
Electrical Machinery, Equipment or Supplies	1,212	0.04%	$36.51	0.55%
Machinery; except Electrical	3,110	0.11%	$31.33	0.47%
Clay, Concrete, Glass or Stone Products	9,492	0.34%	$31.10	0.47%
Miscellaneous Freight Shipments	6,512	0.23%	$24.96	0.37%
Hazardous Wastes	3,255	0.12%	$15.56	0.23%
Waste or Scrap Materials Not Identified by Producing Industry	4,992	0.18%	$12.76	0.19%
Ordnance or Accessories	1,344	0.05%	$8.73	0.13%
Pulp, Paper or Allied Products	828	0.03%	$2.19	0.03%
Crude Petroleum, Natural Gas or Gasoline	120	0.004%	$0.30	0.004%
TOTAL R/VC≥240	2,825,384	100%	$6,679.1	100%

Table 3: Characteristics for the Three Examined Commodity Groups for the Four Examined Railroads

Commodity Description	Carloads	Revenues ($ in millions)	Number of O/D Pairs
Coal	2,074,566	$4,190.3	954
Chemical or Allied Products	343,121	$1,426.7	2,489
Farm Products	163,280	$428.7	532
Other	244,417	$633.4	1,186
Sum	2,825,384	$6,679.1	5,161

Table 4. Carloads, Revenues, and O/D Pairs Meeting R/VC≥240 and 30-Mile Interchange Test

Railroad Commodity Totals	Carloads	Revenues ($ in millions)	Number of O/D Pairs
Coal	105,152	142.62	34
Chemicals or Allied Products	182,904	772.95	1,416
Farm Products	72,086	170.73	199
Total	360,142	$1,086.30	1,649

Chart 2: Railroad Revenues and Carloads Meeting NITL Proposal R/VC≥240 and 30-Mile Interchange Test