RAILROAD-SHIPPER TRANSPORTATION ADVISORY COUNCIL
Washington DC

White Paper on New Regulatory Changes for the Railroad Industry

October 16, 2009

Under the Interstate Commerce Commission Termination Act of 1995 (ICCTA), Congress created the Railroad-Shipper Transportation Advisory Council (RSTAC) for the purpose of advising Congress, the U.S. Department of Transportation and the Surface Transportation Board (STB) on rail issues affecting small shippers and small railroads. RSTAC is a 15 member council with 9 voting members representing small shippers and small railroads and the other 6 non-voting members represent large shippers and large railroads. RSTAC's membership represents a balanced cross section of industries which use rail service, including the grain, petro-chemical, coal, paper, forest products, steel, autos and ports industries. RSTAC has been actively studying and analyzing potential changes being considered in the rail regulatory environment for the past several months and would like to offer its advice on certain strategic matters of importance to small shippers, small railroads and most importantly the rail industry as a whole.

The rail industry is at a pivotal moment in its history, as Congress considers applying new regulations to the industry with the goal of fostering more competition and more options for shippers in a manner that may affect the long term viability of certain lines. This would be a marked change from the deregulatory approach established under the Staggers Act of 1980 (Staggers), which enabled railroads to consolidate, streamline networks, improve operating efficiency, dramatically improve safety, and price their service in ways that were heretofore not possible. After two decades of restructuring, and several mergers, the railroad industry emerged as a profitable industry able to invest in the modernization and expansion of the nation's rail network. Along the way, many light density lines were sold or leased to short line operators, improving service to retail customers and saving many lines from abandonment.

The voting members of RSTAC believe that more competition and options would be good for the rail industry as long as any new regulatory option should not unduly infringe on the benefits that have come from Staggers. We understand we may be asking Congress to thread the proverbial needle with this advice, but our members feel a healthy, viable rail system is extremely important for the economic well being of the United States. We believe any regulatory change must be balanced in its effect to both railroads and shippers.

RSTAC understands there are several issues being considered by Congress today and we have not attempted to provide advice on each issue. But the majority of the voting members of RSTAC believe the implementation of the regulatory changes listed below would achieve a balanced, moderate approach for the mutual benefit of the shippers and the railroads.

- **Reciprocal Switching –** *The Railroads should be required* to open up shippers closed to reciprocal switching as long as they are within an acceptable mileage distance (suggest 30 miles) from an interchange with another railroad in a terminal area. Canadian railroads and shippers have long experience with such a system; it provides equity between "similarly situated" shippers who today may face different competitive circumstances due to historical accident. Application of such a system to the United States, where carriers are more numerous and switching operations more complex, requires consideration of the operational impacts and the financial implications to carriers. A universal reciprocal switching regime should allow carriers to charge each other fair rates that provide not only operating profits but also an acceptable return on terminal infrastructure. Short lines in particular require sound economics in this area as switching charges may comprise all or most of their revenue

- **Paper Barriers –** *The Railroads should be allowed to use* paper barriers or interchange restrictions in past, current or future short line agreements, subject to the reciprocal switching requirement outlined above and subject to current STB review processes for future transactions. Efficiencies in "first mile/last mile" and customer service improvements depend on increasing use of short lines to handle customer switching. Categorical elimination of paper barriers will inhibit this trend, as Class I carriers will place significant revenue at risk.

- **Anti-Trust Exemption –** *The Railroads should not be forced* to give up their anti-trust exemption. The impact of changing the railroads' anti-trust regime is unclear, and is likely to be litigated for a decade or more. The resulting uncertainty will act as a major deterrent to future investment and redirect management focus to litigation, rather than expansion.

- **Stand Alone Cost –** *The rate standard* used by the STB to calculate the maximum rate a hypothetical efficient railroad would charge on a challenged rail movement *should not be changed.* The stand alone cost formula has been developed, and modified, through extensive use and STB investigation. Tens of millions of dollars have been spent in this pursuit. Even if the process could be improved, the uncertainty involved with new standards and the development of new precedent would be damaging to both carriers and customers. The Board should maintain, or improve upon, the current simplified process for small rate cases, and the time frame for which shippers may get rates reduced

RSTAC also reviewed the following modification to the Bottleneck issue as outlined below but the voting members did not come to a conclusion on whether to support it or not.

- **Bottleneck –** When a railroad controls a bottleneck line segment (a line owned by a single carrier that serves a particular origin or destination, which is also served by another carrier), it is not required to provide the rail customer with a rate for transportation over that segment to a point where the rail customer can reach a competing railroad. The position considered by RSTAC was whether *the Railroads should be required* to quote rates to any point on their network and be subject to STB jurisdiction for rate reasonableness. Current and previous proposals to change bottleneck regulation (outside of the terminal areas covered by the reciprocal switching recommendation) could not gain an RSTAC voting member majority. RSTAC members remain concerned over potential reductions in network routing efficiency as well as other issues RSTAC stands ready to evaluate alternative bottleneck proposals when and if such proposals are put forth.

We know during times of historic change there is an urge to make the most of it by implementing as much change as possible or in the words of some in Washington to "take advantage of every crisis." RSTAC doesn't believe there is a crisis in the rail industry that requires massive changes. We believe an approach of well thought out, incremental change for the benefit of the shippers without causing a significant detriment to the railroads is the best path. Many of us date our involvement in rail transportation to the pre-1980 regulated era. Then, the laws of unintended consequences, applied over long periods of time, had resulted in massive bankruptcies and the specter of rail nationalization. We believe that prudential and incremental change will best serve the nation. Therefore we advise Congress to make the changes we have proposed and we look forward to continuing to assist in any way possible.

Rick Webb
Chairman

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Secretary