ASSOCIATION OF
AMERICAN RAILROADS

Office of the President
Edward R. Hamberger
President and Chief Executive Officer

September 27, 2016

The Honorable John Thune
Chairman, Committee on Commerce, Science, and Transportation
United States Senate
Washington, D.C. 20510

The Honorable Bill Shuster
Chairman, Committee on Transportation and Infrastructure
United States House of Representatives
Washington, DC 20515

The Honorable Bill Nelson
Ranking Member, Committee on Commerce, Science, and Transportation
United States Senate
Washington, D.C. 20510

The Honorable Peter DeFazio
Ranking Member, Committee on Transportation and Infrastructure
United States House of Representatives
Washington, DC 20515

Dear Chairman Thune, Ranking Member Nelson, Chairman Shuster, and Ranking Member DeFazio:

The Association of American Railroads ("AAR") is writing to you to express the railroad industry's concerns with recent actions by the Surface Transportation Board ("STB" or "Board"). Last year, Congress reauthorized the agency for the first time since its inception in 1996 by passing the bipartisan STB Reauthorization Act focused on improving the agency's processes for rendering decisions. Despite a massive lobbying campaign to the contrary, Congress wisely declined to alter the regulatory framework that has governed the industry since the Staggers Rail Act of 1980.

That stable regulatory environment has allowed railroads to spend over $600 billion in private capital to make the nation's freight rail network the best in the world. Congress has charged the STB to recognize that where railroads face competition for their services – from other railroads, from other modes of transportation, or from market forces that allow customers to substitute products or obtain them from different sources – the market, not regulation, should govern. The regulatory framework provides that in the limited instances where railroads do not face effective competition for their services, economically-based rate regulation should be available.

Today, railroads continue to face fierce competition for their transportation services for shipments that can be directly loaded to or from trucks, barges or other railroads and also where those shipments can be transloaded to or from those competitive options. For example, according to the Department of Agriculture, railroads move about 24% of the nation's grain, with most grain shipments moving by truck or truck-and-barge combinations. Similarly, railroads account for only approximately 20% of chemical shipments. Those are hardly numbers that support the contention that railroads do not face competition for their services.

Railroads also face competitive constraints on the demand for their service from shippers and receivers that can substitute products in end markets or obtain goods from different geographic locations around the world. Shippers, even those served by one railroad, can and do use all of these competitive forces as leverage in negotiating freight rates at competitive levels.

Any claim that competition for freight transportation has lessened as a result of consolidations in the rail industry is simply not true. Due to conditions placed on those transactions by the Interstate Commerce Commission and the STB, shippers who had access to two or more rail carriers prior to mergers retained access to at least two rail carriers after consolidations. In several mergers the number of customers served by multiple carriers increased, not decreased.

Moreover, shippers have regulatory avenues to challenge the reasonableness of rail rates in appropriate circumstances, as confirmed recently by an independent consultant retained by the STB. Shippers have shown a willingness to bring cases under the rate regulatory system. But railroads have equally shown that they have comported their behavior to that system, naturally limiting the number of rate cases that could be brought and won by shippers.

Recently, the STB has embarked on two initiatives – and announced a third – to expand the agency's regulatory reach, despite this competitive landscape and the uncertain economic climate. First, the Board has recently proposed to abandon its long standing rules and is now contemplating rules that would allow the Board to order a railroad to switch traffic to its competitor without a showing that the railroad engaged in any anticompetitive conduct or violated any rule. Rather than enhancing competition, the proposal is direct government intervention into markets, ordering one railroad to use its privately financed infrastructure to benefit another railroad. It is like ordering Coke to use its facilities to manufacture for Pepsi.

Widespread forced switching would degrade rail service for all customers. Because switching operations on a track from one railroad to the next requires extensive work – a switch of one rail car requires a minimum of ten steps to occur as a car has to be moved and sorted from a train from one carrier, into a yard, and into the train of another carrier – forced switching would significantly compromise the efficiency of the nation's rail network. Unnecessary movements of rail cars slow the network by clogging yards and slow the overall movement of goods to all rail customers.

In a previous administrative proceeding, the AAR and individual railroads submitted extensive evidence on the potential impact of changes to the Board's forced switching rules from an operational and investment perspective. The Board's recent proposal did not even analyze these potential operational or economic impacts. The proposal failed to consider that evidence or to explain why the Board was not concerned that its proposal would degrade operations or create disincentives for railroads to invest in facilities that ultimately may be used to benefit their competitors.

Second, the STB is also considering re-regulating certain commodities (crushed stone, coke produced from coal, primary iron and steel products, cement, and iron and steel scrap), that the agency has previously determined are subject to pervasive competition. The STB proposed this major reversal without an evidentiary record showing that market conditions which have governed movement and pricing of these products have changed adversely.

In addition, the STB is considering a "revenue adequacy" proposal that would overturn these decades of progress by imposing government price controls through a rate cap. This is directly contrary to the 2015 statutory directive that railroads be allowed to earn sufficient revenues for the infrastructure and investment needed to meet present and future demand for rail service.

These proposals indicate a reversal of the market-based approach established by Congress. Such action is especially troubling when Congress just last year laid out the path for the agency without making any of the changes the STB is now pursuing. In fact, every time Congress has considered such proposals, they have been soundly rejected. Today's uncertain environment is no time for the STB to depart from the path Congress has laid out. Freight railroads are justifiably proud of our contribution to the nation's economy and look forward to keeping America moving in the right direction under the regulatory framework prescribed by Congress.

Sincerely,

Edward R. Hamberger