

November 7, 2023

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

Submitted via e-filing

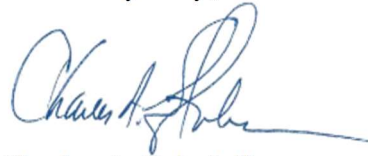
Re: STB Ex Parte No. 711 (Sub-No. 2), *Reciprocal Switching for Inadequate Service*

Dear Ms. Brown:

I am attaching for e-filing in the above captioned proceeding the Comments of the Commuter Rail Coalition.

If you have any questions, please do not hesitate to contact me.

Yours very truly,



Charles A. Spitulnik

Enclosure

cc: All Parties of Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Ex Parte 711 (Sub-No. 2)

RECIPROCAL SWITCHING FOR INADEQUATE SERVICE

COMMENTS OF THE COMMUTER RAIL COALITION

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Dated: November 7, 2023

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Ex Parte 711 (Sub-No. 2)

RECIPROCAL SWITCHING FOR INADEQUATE SERVICE

COMMENTS OF THE COMMUTER RAIL COALITION

The Commuter Rail Coalition (“CRC”)¹ respectfully submits the following comments to the Surface Transportation Board (“STB”) regarding the Notice of Proposed Rulemaking (“NPRM”) titled *Reciprocal Switching for Inadequate Service*, Docket Number EP 711 (Sub-No. 2) (STB served Sept. 7, 2023) (“Proposed Rule”).² CRC is grateful for the opportunity to provide recommendations that reduce the potential for operational interference and delay to commuter and passenger rail operators that could result if the Proposed Rule is adopted in its current form.

The CRC represents over twenty major commuter transit agencies (“Agencies”), the majority of which share track with freight railroads on at least a portion of their rail lines. The Agencies have a significant stake in the impact the Proposed Rule could have on their operations because the Proposed Rule, in its current form, could cause additional delays to the Agencies’ commuter rail services operating on shared corridors. Service reliability and on-time performance are key factors that contribute to the Agencies’ ridership levels. CRC asks that STB review the following comments and incorporate CRC’s recommendations when finalizing the Proposed Rule.

¹ The CRC is an association representing the interests, needs and benefits of the nation’s commuter railroads. The CRC was formed by industry leaders to engage and educate stakeholders and to advocate for the resources necessary to sustain commuter rail assets.

² *Reciprocal Switching for Inadequate Service*, 88 Fed. Reg. 63897 *et seq.* (Sept. 18, 2023).

The Proposed Rule Does Not Account for Passenger Train Operations on Lines Shared With Freight Trains

CRC and its member Agencies are concerned that the Proposed Rule does not consider the possible impacts reciprocal switching can have on passenger train operations, including commuter operations, on shared track. Freight train interference is one of the main causes of service delays to passenger trains.³ In fact, in 2022 Amtrak reported delays of 1.1 million minutes caused by freight train interference.⁴ Reciprocal switching moves can also cause delays and degrade rail service.⁵ Such moves, including those the STB is proposing to require, can delay passenger operations not only in the immediate vicinity of the switching move, but on other parts of the line. These delays can subsequently cause schedule disruptions that affect the entire local rail system, especially passenger trains on shared lines that rely on a predictable freight train schedule.

The Proposed Rule Does Not Account for Existing Agreements Between Freight and Passenger Train Operations

The STB proposes to amend 49 C.F.R. Part 1145 to allow for a prescribed reciprocal switching agreement under the following circumstances:

- 1) the petitioner demonstrates that the incumbent Class I carrier failed to meet one of the performance standards in part 1145 for the petitioner's shipments over that lane;

³ See e.g., <https://www.amtrak.com/on-time-performance>

⁴ <https://railroads.dot.gov/sites/fra.dot.gov/files/2022-08/FY22%20Q2%20Service%20Quality%20Report.pdf>

⁵ See generally, *Comment, Petition for Rulemaking to Adopt Revised Competitive Switching Rules*, Docket No. EP 711, Reciprocal Switching, Docket No. EP 711 (Sub-No. 1), Union Pacific Railroad Company, March 1, 2013; *Comment, Petition for Rulemaking to Adopt Revised Competitive Switching Rules*, Docket No. EP 711, Reciprocal Switching, Docket No. EP 711 (Sub-No. 1), BNSF Railway Company, March 1, 2013; *Comment, Petition for Rulemaking to Adopt Revised Competitive Switching Rules*, Docket No. EP 711, Reciprocal Switching, Docket No. EP 711 (Sub-No. 1), Kansas City Southern Railway Company, March 1, 2013; *Comment, Petition for Rulemaking to Adopt Revised Competitive Switching Rules*, Docket No. EP 711, Reciprocal Switching, Docket No. EP 711 (Sub-No. 1), Norfolk Southern Railway Company, March 1, 2013; *Comment, Petition for Rulemaking to Adopt Revised Competitive Switching Rules*, Docket No. EP 711, Reciprocal Switching, Docket No. EP 711 (Sub-No. 1), CSX Transportation, Inc., March 1, 2013.

(2) with respect to the lane of traffic that is the subject of the petition, the petitioner (a shipper or receiver) has practical physical access to only one Class I carrier that can serve that lane;

(3) the carrier fails to establish an affirmative defense; and

(4) the prescription would be practicable.⁶

The NPRM describes which parties are permitted to bring a practicability argument as follows:

Should a legitimate practicability concern arise, however, the Board would consider whether the switching service could be provided without unduly impairing the rail carriers' operations. The Board would also consider an objection by the alternate rail carrier or incumbent rail carrier that the alternate rail carrier's provision of line-haul service to the petitioner would be infeasible or would unduly hamper the objecting rail carrier's ability to serve its existing customers. The objecting rail carrier would have the burden of proof of establishing infeasibility or undue impairment.⁷

The NPRM refers to an "alternate rail carrier," as a freight rail carrier that is not the originating carrier that receives a shipment pursuant to a reciprocal switching agreement and does not offer rail services that share the affected lines, such as commuter railroads.⁸

The reciprocal switching agreements proposed by the NPRM have the potential to impact existing agreements between freight and passenger rail providers for shared use, on-time performance goals, safety, and dispatching priority. Existing shared use and/or operational agreements between freight and passenger rail providers ensure the efficient functioning of shared corridors. Often these agreements also include incentives or penalties for on-time performance. Adding additional freight providers to shared lines could interfere with both the existing freight

⁶ NPRM at 63902-03.

⁷ NPRM at 63909.

⁸ See *e.g.*, NPRM at 63898 ("Alternate access generally refers to the ability of a shipper or receiver or an alternate railroad to use the facilities or services of an incumbent railroad to extend the reach of the services provided by the alternate railroad.").

and passenger services and can result in service delays and/or potential penalties for one or both parties.

Moreover, requiring a reciprocal switching agreement between freight operators on shared corridors that do not account for the impact on the relevant passenger operator will increase the potential for conflicts and delays. As currently drafted, the Proposed Rule does not provide an avenue for impacted passenger rail operators to be included in the calculus of whether to approve a prescribed reciprocal switching agreement that has the potential to negatively impact their service. Given the widespread impact reciprocal switching agreements can have on a shared corridor, the passenger operator must be considered and included in any assessment undertaken by the Board before it approves a reciprocal switching arrangement.

**The Proposed Rule Does Not Account For Costs Associated With Passenger Railroads
Hosting New Tenants On Their Property**

It is unclear how the Proposed Rule will impact passenger and commuter railroads that host Class I line haul operations and terminal switching, and the costs associated with hosting such operations. Where existing contractual relationships generally cover compensation for such activities, new operating agreements would need to be established to address the needs, responsibilities, and resulting activities and associated costs with bringing a new tenant onto the railroad. These activities could include, but would not be limited to: testing and integration of Positive Train Control (PTC) systems, training and certification of engineers and conductors, and the provision of host railroad employees to support these activities. The time and costs associated with executing these activities would need to be factored in when how to implement a reciprocal switching agreement.

Recommendation

CRC does not object to STB's proposed test to determine inadequate service, nor does it take issue with the concept of STB requiring freight railroads to enter into a reciprocal switching agreements where there is inadequate freight service. However, CRC requests that, as part of the final rule, STB require freight railroads and/or the STB to timely notify passenger railroads along the shared corridor of petitions for reciprocal switching agreements. CRC also requests that the STB then provide an opportunity for the passenger railroads to comment on and participate in any proceedings or negotiations for such arrangements to determine how the resulting switching moves could affect passenger rail operations, including whether the proposed switching moves could negatively impact the on-time performance of or otherwise interfere with passenger services that share track with the incumbent or alternate freight railroad. This evaluation would include an assessment of the operational environment, any existing agreements between railroad operators on the shared track, the proximity to the switching location, and any other factors that STB deems relevant. In the case where STB finds that there is a potential for negative impacts to passenger railroad operations, the STB should require the freight railroads to mitigate those impacts to the greatest extent possible

Finally, CRC requests that STB add language to the final rule that requires the proponent of a reciprocal switching arrangement to provide notice to any passenger railroads that own, use or have the right to use a subject line, and allows passenger rail providers operating on the shared corridor to participate fully in a petition for a prescribed reciprocal switching agreement. CRC also encourages the STB to require that all users of the shared corridor be a party to any prescribed reciprocal switching agreement.

CRC Recommended Changes to Proposed Part 1145

In addition to the above requested changes, CRC recommends that the STB amend the language of proposed Part 1145 to include passenger rail carriers that operate on shared track as a party to a prescribed reciprocal switching agreement.

1. CRC requests that STB add the following definitions to proposed § 1145.1 (additional language underscored):

“Alternate Rail Carrier” means a Class I rail carrier that currently does not provide line-haul service to the petitioner, but that the petitioner has requested to provide such service instead of the Incumbent Rail Carrier under Part 1145.

“Potentially Affected Rail Carrier” means any provider of either passenger or freight rail services that operates on shared track as one of the rail carrier parties to a prescribed reciprocal switching agreement.

2. CRC also recommends that § 1145.5(c) be amended to include potentially affected rail carriers as follows:

“The petition must have been served on the Incumbent Rail Carrier, the Alternate Rail Carrier, any Potentially Affected Rail Carriers (including passenger rail carriers), and the Federal Railroad Administration.”

3. Additionally, CRC recommends that § 1145.6.(a) be amended to include potentially affected rail carriers as follows:

“(4) The reciprocal switching agreement will not cause any unreasonable and unmitigable delays to Potentially Affected Rail Carriers.”

4. CRC recommends that § 1145.6.(b) be amended to include potentially affected rail carriers as follows:

“. . . the Board will not prescribe a reciprocal switching agreement if the Incumbent Rail Carrier, Alternate Rail Carrier, or Potentially Affected Rail Carrier demonstrates that: switching service under the agreement, i.e., the process of transferring the shipment between carriers within the terminal area, could not be provided without unduly impairing any of the rail carrier's operations; or the alternate rail carrier's provision of line-haul service to the petitioner would be infeasible or would unduly

hamper the incumbent rail carrier, the alternate rail carrier, or a Potentially Affected Rail Carrier's ability to serve its existing customers without unreasonable and unmitigable service delays. . .”

5. Finally, CRC recommends that § 1145.6.(e) be amended to include potentially affected rail carriers as follows:

“(e) If the affected carriers cannot agree on compensation within 30 days of the service of the prescription, then the affected rail carriers must offer service and petition the Board to set compensation. If reciprocal switching requires operations over a third-party host railroad, that railroad shall be compensated for training, certification, systems integration and testing, or the provision of pilots or other personnel required to permit tenant operations over a third-party host railroad.”

Conclusion

CRC and its member Agencies appreciate the opportunity to provide comments to the STB about the potential effects that this Proposed Rule may have on passenger operations. The Proposed Rule, as currently presented in the NPRM, has the potential to harm passenger operations and result in less efficient passenger services. CRC urges the STB to accept the above recommendation and amend the Proposed Rule accordingly.

Respectfully submitted this 7th day of November 2023.



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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of November 2023, I caused a true and correct copy of the foregoing COMMENTS OF THE COMMUTER RAIL COALITION to be served by ECF on all parties of record.

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