Introducing the Railroad Competition
Improvement and Reauthorization Act of 2005

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Twenty-five years ago, Congress voted to deregulate the nation's railroad industry and enacted the Staggers Rail Act. The railroad industry at that time was in dire straits. Years of low profits, deferred maintenance, and ill-conceived regulatory policies had resulted in a very sick industry. We were assured that deregulation was the cure. We were told that economic regulation had outlived its usefulness; that it was preventing the industry from competing effectively with trucks, barges, and pipelines; and that there were still a sufficient number of rail carriers to provide significant rail-to-rail competition. We deregulated the industry.

At the outset, some good things did happen. America's railroads are much healthier today than they were in 1980. Industry rates of return that hovered in the 1-2 percent range in the 1970s were up in the 6-9 percent range in the 1990s. Today, U.S. railroads account for 42 percent of intercity freight ton-miles, more than any other mode of transportation. In fact, U.S. railroads move four times more freight than all of Western Europe's freight railroads combined.

North American railroads currently earn $42 billion in annual revenues. The most recent financial reports are strong. For the first quarter of 2005, BNSF Railway's freight revenues increased $451 million, or 18 percent, to a first quarter record of $2.9 billion. Consumer products revenues increased $203 million, or 22 percent. Agricultural products revenues were up $86 million, or 20 percent, to $524 million. Industrial products revenues increased $84 million, or 15 percent, to $647 million. And coal revenues rose $78 million, or 15 percent, to $598 million resulting from record haulage of 66 million tons for utility customers.

Union Pacific reported a first quarter 2005 record for commodity revenue: $3 billion in 2005, up 8 percent from 2004. Energy revenues were up $81 million, or 14 percent, to $668 million. Agricultural revenues were up $37 million, or 9 percent, to $448 million. Industrial products revenues were up $67 million, or 12 percent, to $630 million. And chemical revenues were up $31 million, or 8 percent, to $441 million.

CSX's surface transportation revenue for the 2005 first quarter was $2.1 billion versus $1.9 billion in 2004. Metals revenues were up $19 million, or 16 percent, to $138 million. Forest products revenues were up $84 million, or 11 percent, to $176 million. Coal, coke, and iron ore revenues were up $84 million, or 20 percent, to $506 million. And automotive products revenues were up $6 million, or 3 percent, to $208 million.

Norfolk Southern's general merchandise revenues for the 2005 first quarter reached a record $1.1 billion, an increase of 12 percent over the same period in 2004. Metals and construction revenues led the growth with a 22 percent increase, followed by paper, up 19 percent, and chemicals, up 14 percent. Coal revenues increased 17 percent to $467 million in the first quarter compared with the same quarter last year.

With the exception of Union Pacific, all of the Class I railroads in the U.S. are making higher profits. BNSF's net earnings for the first quarter of 2005 were $321 million, up $128 million from the same period in 2004. CSX's net income was $579 million, up $30 million from 2004. Norfolk Southern's net income was $194 million, up $36 million from 2004. And although Union Pacific's profits were lower than 2004 figures, the railroad's net income was $128 million in 2005.

But all of these gains have come at a price. Competition requires competitors. Yet since 1980, over 40 Class I railroads have consolidated into just seven Class I railroads serving the entire North American continent, four of which – two in the West (Union Pacific and BNSF Railway) and two in the East (CSX and Norfolk Southern) – control over 95 percent of the railroad business. This unprecedented consolidation has resulted in entire States, regions, and industries becoming captive to a single Class I railroad.

These captive shippers often tell me that the Surface Transportation Board (STB) has been too concerned about the financial health of the railroads and not concerned enough with the financial health of the railroads' customers.

I believe them. The STB's procedures have made it difficult for rail customers to secure meaningful relief from high rail rates and poor rail service, even though the

Staggers Rail Act directed the STB's predecessor, the Interstate Commerce Commission, to ensure that rail rates remain reasonable when there is an absence of effective competition.

During the years since the STB was first authorized in 1997, I have received numerous complaints from captive shippers about the high rates they are charged and the poor service they sometimes receive.

Laramie River Station is an example. Laramie River Station (LRS) is a coal-based electric generating plant that produces power for more than 1.8 million consumers in Colorado, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, South Dakota, and Wyoming. LRS is served by a single railroad, BNSF Railway, which delivers 8.3 million tons of coal annually from the Wyoming Powder River Basin to LRS, a distance of approximately 175 miles. In September 2004, the LRS contract expired and BNSF unilaterally imposed massive freight rate hikes on the LRS traffic. Basin Electric Power Cooperative, one of the owners of LRS, tells me that these increases call for more than double LRS' prior freight rates. The initial tariff rates are projected to double again over time. According to LRS' owners, these increased rates are four times BNSF's average coal rates, and will cost electric power consumers $1 billion over the next 20 years.

Dairyland Power Cooperative, a generation and transmission cooperative located in LaCrosse, Wisconsin, has experienced similar problems. The Cooperative asserts that failure by the Union Pacific Railroad to deliver 25 percent of scheduled shipments of Utah coal resulted in Dairyland's overall fuel budget increasing by roughly 10 percent. Dairyland is also bracing for a 49 percent increase in rail rates in 2006. Other shippers have suffered similar fates.

The lack of true competition has also affected farmers. Montana grain producers advise me that their counterparts in Nebraska -- where a limited amount of rail competition exists – pay less in transportation costs than Montana farmers to ship grain to Portland, Oregon, despite the 200 miles in additional distance the Nebraska grain has had to travel. The Montana farmers estimate that this disparity has cost them about $60 million a year.

In these and other similar cases, the captive shippers have found that there is no realistic possibility of meaningful relief from the STB. This is hardly the competitive environment envisioned when Congress voted to deregulate the railroad industry.

Unfortunately, my concerns have fallen on deaf ears at the STB. This year, Chairman Roger Nober has discussed the possibility of moving a "clean" STB reauthorization bill (i.e. one with no change to existing law other than funding levels) in the 109th Congress. I have told him the same thing I told him in the 108th Congress and the same thing I told his predecessor: I believe that any STB reauthorization bill must adequately address the concerns of captive shippers.

That is why I introduced legislation in the 106^{th} Congress, the 107^{th} Congress, and the 108^{th} Congress that would reauthorize the STB and reform its policies and procedures. Other Members of Congress, including Congressman Richard Baker, introduced similar legislation to reform railroad regulation. But to date Congress has failed to act upon these bills, and the STB has operated without an authorization since 1998.

When the Transportation and Infrastructure Committee held hearings on railroad competition last Congress, it was obvious that Congressman Baker and I shared the same concerns about captive shippers and the lack of competition in the railroad industry. So this year, we've decided to join forces. Congressman Baker and I, and 13 of our colleagues on both sides of the aisle, are introducing a bipartisan STB reauthorization and reform bill, entitled the Railroad Competition and Improvement Act of 2005. A bipartisan companion bill, S. 919, has been introduced in the Senate.

This bill will preserve existing rail-to-rail competition in areas of the United States where competition is working, and take action to reduce impediments to competition that adversely affect rail customers. The bill establishes four new primary objectives of U.S. rail transportation policy, all of which focus on competition and shipper needs. These primary objectives are: (1) to maintain consistent and efficient rail transportation service for shippers, including the timely provision of rail cars requested by shippers; to promote effective competition among rail carriers at origins and destinations; and to maintain reasonable rates in the absence of effective competition.

The bill will also:

- Eliminate "bottlenecks." Under the bill, on the request of a shipper, the carrier must establish a rate for any two points on the carrier's system where traffic originates, terminates, or can be interchanged. In addition, the reasonableness of the rate would be subject to challenge. This bill will give shippers access to competitive rail service even if a single carrier has monopoly control over a short, bottleneck portion of a route.
- Create competitive rail service at switching points. The bill requires rail carriers to enter into reciprocal switching agreements where the STB finds that such agreements are in the public interest or where agreements are needed to ensure rail service is competitive. The bill also prohibits the STB from requiring that the petitioning carrier show conduct inconsistent with antitrust laws.
- Eliminate "paper barriers." These barriers are contractual agreements that prevent short-line railroads that cross two or more major rail systems from providing rail customers access to competitive service on one of these systems. The agreements require the short-line railroads to deliver all or most of its traffic to the major carrier that originally owned the short line

facilities. Under the bill, where such restrictions were approved prior to the enactment of this Act and have been in effect for at least 10 years, the STB must terminate the restriction, upon request, unless the STB finds that the termination would be inconsistent with the public interest or materially impair the ability of an affected rail carrier to provide service to the public.

- Establish a new regulatory process for "Areas of Inadequate Rail Competition." The bill allows the STB to designate a State or substantial part of a State as an Area of Inadequate Rail Competition (AIRC), upon petition of a Governor or Attorney General of a State, Member of Congress, or the Rail Customer Advocate of the Department of Transportation. Upon the designation, the STB has 60 days to provide remedies authorized by current law to resolve the anti-competitive conduct. The bill also requires the Rail Customer Advocate to conduct an oversight study of AIRCs within one year of the date of enactment.
- Highlight rail service problems. The bill requires the STB to post on its website a description of each complaint from a customer about rail service. The STB is also required to submit an annual report to Congress regarding rail service complaints, and the procedures the STB took to resolve them.
- Create an arbitration process for certain rail disputes. The bill allows either party to submit a dispute over rail rates, rail service, and other matters under

the jurisdiction of the STB for "final offer" binding arbitration, for relief within the jurisdiction of the STB.

- Eliminate fees for filing rail rate cases. Shippers are now required to pay a $61,000 fee for filing a rate case. Effective May 6, 2005, this filing fee will double to $102,000. The filing fee for all other complaints will increase from $6000 to $10,100.
- Improve the rate reasonableness standard. The bill prohibits the STB from using their current practice of requiring shippers challenging rail rates to submit estimates of the costs of constructing and operating a new, hypothetical railroad that carries only the commodity that the shipper transports. The STB currently compares the expense of the hypothetical railroad with existing rates to determine whether the challenged rates are reasonable or not. Under the bill, the STB would be required to adopt a new method based on the railroad's actual costs, including a portion of fixed costs and an adequate return on debt and equity.
- Create an Office of Rail Customer Advocacy in the Department of Transportation. The Rail Customer Advocate would accept rail customer complaints; collect, compile, and maintain information regarding the cost and efficiency of rail transportation; and participate as a party in STB

proceedings. The Rail Customer Advocate may also petition the STB for action.

- Authorize a study of rail transportation competition. The bill requires the National Academy of Sciences to conduct a comprehensive study of rail carrier competition since the enactment of the Staggers Rail Act of 1980.
- Require the STB to consider all effects of mergers. Under the bill, the STB must consider the effects of mergers on local communities and is required to impose conditions to mitigate the effects of those mergers.
- Reauthorize the STB. The bill provides the STB $24 million for FY2006, $26 million for FY2007, and $28 million for FY2008.

I am pleased that a number of organizations are supporting this bipartisan effort, including the Alliance for Rail Competition, Consumers United for Rail Equity, the American Chemistry Council, the National Industrial Transportation League, Edison Electric Institute, the National Association of Wheat Growers, and the National Barley Growers Association.

I join with my colleagues from both sides of the aisle, in introducing this bill. Together, we will work to ensure passage of this important legislation.