Freight Rail Customer Alliance

March 10, 2026

The Honorable Cynthia T. Brown
Chief of Case Administration
Office of Chief Counsel
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0001

Re: EP 788,
Eliminating Regulatory Barriers to Competition: Review of Part 1144

Dear Ms. Brown:

The Freight Rail Customer Alliance ("FRCA") and National Coal Transportation Association ("NCTA") respectfully submit these comments in response to the Notice of Proposed Rulemaking ("NPRM") that the Surface Transportation Board ("Board" or "STB") served in the above-captioned proceeding on September 7, 2023.

The Freight Rail Customer Alliance (FRCA), www.railvoices.org, is an umbrella membership organization that includes large trade associations representing more than 3,500 electric utility, agriculture, chemical, and alternative fuel companies, and their consumers. The mission of FRCA's growing coalition of industries and associations is to obtain changes in Federal law and policy that will provide all freight shippers with reliable rail service at competitive prices.

The National Coal Transportation Association, www.movecoal.org, is a non-profit corporation comprised of electric utilities, coal producers, shippers of coal-related commodities, and entities that produce, repair, and manage all facets of railcar component parts and systems, as well as provide services for railcar operations. Its primary purpose is to promote the exchange of ideas, knowledge, and technology associated with the transportation and beneficial uses of coal.

FRCA and NCTA commend the Board for issuing its proposal. The requirement in the regulations to demonstrate anticompetitive conduct before being able to obtain reciprocal switching and through route prescription to attain the benefits of competition has proved insurmountable in practice, so much so as to have a profound chilling effect on efforts to pursue what could prove to be a very valuable form of competition. Enhanced competition is needed for the benefit of not only for shippers, who have on average faced real rate increases (as measured against the GPD-IPD) for over two decades,[1] but also for the railroads, whose excessive exploitation of their market power has led to stagnating and falling volumes over the past two decades.[2]

FRCA and NCTA do not believe that there was ever a sufficient justification for the *Midtec*-type requirement to demonstrate anticompetitive conduct. But even if there were in the early and mid-1980s, that time has passed both factually and legally. Factually, the railroad industry is no longer anywhere near the brink of financial collapse. Operating ratios have soared since then, railroads have achieved and surpassed revenue adequacy, mergers have taken place at substantial, even enormous, premiums relative to book value and even fair market value of assets, and railroads have managed to increase their profit margins despite (or at the expense of) the stagnating and declining volumes. Shippers, especially the coal shippers represented by FRCA and NCTA members, have borne the financial burden of the railroad recovery and renaissance(s). Having done so, it is now appropriate that shippers share more fully and fairly in the return on their investment, even more so as the carriers increasingly focus on their intermodal business to the detriment of their carload traffic.

Legally, the requirement to demonstrate anticompetitive conduct was never compelled by statute, and imposition of restrictions and requirements that go beyond what is required by the statute are at a minimum problematic after the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024). The Board's proposal to focus on the specific text of the statute and proceed on a case-by-case basis comports with the statute itself, *Loper Bright*, and the recent Executive Orders, especially those calling for the removal of anticompetitive regulations, which Part 1144 plainly is, and for promoting the use of coal and other energy resources.

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[1] For example, see the Board's most recent Tornqvist index rate analysis*, Annual Rail Rate Index Study: 1985-2022*, available at https://www.stb.gov/wp-content/uploads/Annual_Rail_Rate_Index_Study_2022.pdf.

[2] *E.g.*, EP 775, *Growth in the Rail Industry* (STB hearing held September 16-17, 2024).

Whether the proposed regulatory reform will result in enhanced competition is another question. At least three elements are required, and each entails considerable uncertainty. The first is that the Board must be willing to grant reciprocal switching for competitive switching in specific instances. FRCA and NCTA respectfully submit that the bar should be set low here, particularly considering the state of the railroad industry and that over 45 years have passed since enactment of the Staggers Act, including the statutory provision that is now 49 U.S.C. 11102(a), without even one grant of reciprocal switching to provide competition.

Second, the railroads must be willing to compete against one another and risk the possibility that today's new entrant may become tomorrow's challenged incumbent. In light of the established trends towards increased consolidation, ever-higher rates and profit margins, and associated reductions in the quality and reliability of service, it is far from self-evident that shippers and the public will benefit substantially, even if the Board is willing to authorize reciprocal switching to provide competition on a case-by-case basis.

Third, and not unrelated to the second, the price for access must not be set so high as to discourage new entry. The *SSW Compensation* formula can be applied in a way that does exactly that, as the Board soundly recognized in its decision in EP 711 (Sub-No. 2), *Reciprocal Switching for Inadequate Service* (STB served April 30, 2024), at 94.[3] Use of the capitalized earnings method for the interest rental component using enterprise value, or replacement cost new less depreciation in at least urban areas of the country, has the potential to do exactly that, and devolve into a variant of the inappropriate efficient component pricing rule. Application of book value (untainted by merger premium write-ups) or the inverse cost of capital as the multiplier in capitalizing earnings are better suited for producing results that promote competition while leaving the incumbent adequately compensated (particularly considering that the incumbent will enjoy an advantage by virtue of being an established presence and known commodity,

[3] "While the Board has accounted for differential pricing in rate reasonableness proceedings, the Board has consistently viewed it as appropriate to set reciprocal switching fees based on the direct cost of providing service and not include any lost profits from lost line-haul service…. To compensate the incumbent carrier for that loss [of profits] would seem to defeat the purpose of introducing a competing carrier and associated legislative objectives and could be tantamount to rewarding the incumbent carrier for inadequate service." (Citations omitted.)

plus typically not involving the delay and cost of an additional switch). In that regard, increasing the ability to obtain through route relief may prove to be of considerable benefit since it does not strictly involve one carrier handling traffic for another, should not present issues of practicability, at least when conducted over already existing main lines and established interchanges, potentially involves greater route miles, should avoid the compensation issues under reciprocal switching since each carrier operates for itself over its own lines, and can serve to balance against the consolidation and associated loss of competition that has occurred from the wave of mergers, both past and present. For that reason, FRCA and NCTA oppose the "alternative proposal" that would limit the repeal of part 1144 to reciprocal switching and would leave that regulation in place as to the prescription of through routes and through rates.

Notwithstanding these concerns, FRCA and NCTA welcome the proposal as a much needed and long awaited correction to the harm inflicted by the *Midtec* approach. While there may be challenges, the proposal adheres to the statutory language and has the potential to result in meaningful competition, lower rates, and improved service, none of which can be said of the status quo.

Respectfully submitted,

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