



U.S. Department
of Transportation

1200 New Jersey Avenue, SE
Washington, DC 20590

**Federal Railroad
Administration**

307406

November 7, 2023

VIA ELECTRONIC FILING

Ms. Cynthia Brown
Chief, Section of Administration
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

ENTERED
Office of Proceedings
November 7, 2023
Part of
Public Record

Re: Docket No. EP 711 (Sub-No. 2) – *Reciprocal Switching for Inadequate Service*

Dear Ms. Brown:

Please find attached for filing in the above-referenced proceeding the comments of the United States Department of Transportation and the Federal Railroad Administration (FRA), signed by Amitabha Bose, FRA Administrator. Please contact the undersigned if there are any questions. Thank you for your attention to this matter.

Respectfully,

/s/ Sydney L. Johnson

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Enclosure

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. EP 711 (Sub-No. 2)

RECIPROCAL SWITCHING FOR INADEQUATE SERVICE

**COMMENTS OF THE UNITED STATES DEPARTMENT OF TRANSPORTATION
AND FEDERAL RAILROAD ADMINISTRATION**

Thank you for the opportunity to submit comments on the Surface Transportation Board's (Board) Notice of Proposed Rulemaking (NPRM) in *Reciprocal Switching for Inadequate Service*, Docket No. EP 711 (Sub-No. 2) (STB served Sept. 7, 2023). We are pleased to offer this commentary on behalf of the United States Department of Transportation (DOT) and the Federal Railroad Administration (FRA), an operating administration of DOT. Competition is a pillar of the Biden-Harris Administration's economic agenda. We commend the Board for taking this important step to deliver on a key transportation recommendation in Executive Order 14036, *Promoting Competition in the American Economy* -- strengthening regulations pertaining to reciprocal switching agreements. This proposal, if finalized, would spur greater competition in the rail industry, improving service and lowering costs for the thousands of businesses who rely on railroad freight shipping to get their products to market.

Reciprocal switching is an integral part of rail operations, in which an incumbent carrier transports a shipper's traffic to an interchange point, where it switches the rail cars over to the competing carrier and the competing carrier pays the incumbent carrier a switching fee. Reciprocal switching agreements facilitate this transfer and can be voluntary or required by the Board pursuant to 49 U.S.C. § 11102(c)(1). We appreciate the Board's dedicated work on this important issue of reciprocal switching reform over the last decade and find the Board's proposal

to be a fair and equitable approach to addressing inadequate rail service issues experienced throughout the country. FRA and DOT remain ready to assist the Board, where appropriate, as this effort proceeds.

FRA’s mission is to enable the safe, reliable, and efficient movement of people and goods for a strong America, now and in the future. The NPRM on reciprocal switching aligns with FRA’s mission by “addressing inadequate rail service.”¹ In recent years, the Nation has experienced major rail service problems that have negatively impacted shippers, industry, and the public, as well as our economy. The NPRM presents an opportunity to address critical rail service issues through reciprocal switching reform. FRA and DOT are encouraged by the Board’s proposed performance standards “intended to reflect a minimum level of rail service below which regulatory intervention may be warranted.”² The use of objective performance standards to determine when a reciprocal switching agreement is required would provide certainty among stakeholders, including carriers, shippers, and receivers, and create a level-playing field. Moreover, these benefits have the potential to contribute to a more reliable, fluid, and efficient rail network.

FRA and DOT also see benefits in the Board-proposed data requirements. First, the NPRM proposes service-metric data reporting requirements on Class I rail carriers that would be publicly accessible and generalized. Second, the NPRM proposes that Class I rail carriers would be required to provide, upon written request by customer (*i.e.*, a shipper or receiver), that customer’s own individualized service data. FRA notes that certain metrics related to service and employment, currently reported on a temporary basis in *Urgent Issues in Freight Rail Service*—

¹ *Reciprocal Switching for Inadequate Service*, EP 711 (Sub-No. 2), slip op. at 5 (STB served Sept. 7, 2023).

² *Id.* at 2.

Railroad Reporting, Docket No. EP 770 (Sub-No. 1), have provided FRA and DOT with invaluable insight into factors that affect the safety, reliability, and efficiency of railroad operations. Additionally, the Board’s proposed data requirements would promote transparency among rail customers and the broader public. FRA and DOT suggest that the Board considers maintaining intermodal traffic data as a reporting requirement. While intermodal is not rate-regulated traffic, it is a valuable metric to monitor supply chain efficiency.

As described further in DOT’s February 14, 2022 submission to the Board in Public Hearing, *Reciprocal Switching*, Docket No. EP 711 (Sub-No. 1) (Mar. 15-16, 2022), FRA and DOT respectfully ask the Board to consider the following principles as part of the rulemaking: safety, any adverse effects upon passenger rail service, and competition. First, safety remains FRA and DOT’s primary concern; any new or revised switching requirements must ensure that switching operations are safely executed.³ Second, it is critical that any reciprocal switching proposal would not hinder the ability of passenger rail service to run smoothly. Third, while the NPRM’s focus on existing and recent service issues will undoubtedly improve current competitive conditions, FRA and DOT encourage the Board to continue to consider additional reciprocal switching reforms to address emerging harms and enhance future competition in the freight rail industry.⁴

³ In general, FRA and DOT do not foresee safety concerns with reciprocal switching because railroads are required to operate safely and in compliance with all applicable FRA safety regulations at all times, which would include while conducting reciprocal switching moves.

⁴ See *Reciprocal Switching for Inadequate Service*, EP 711 (Sub-No. 2), slip op. at 7 (STB served Sept. 7, 2023) (stating, “[i]ndeed, in choosing to focus reciprocal switching reform on service issues at this time, the Board does not intend to suggest that consideration of additional reforms geared toward increasing competitive options—e.g., further changes to the reciprocal switching regulations (either with regard to the public interest prong or the competition prong) . . . is foreclosed, whether in this subdocket or otherwise.”).

FRA and DOT look forward to hearing the views of other commenters in response to the Board's proposed rulemaking. On behalf of FRA and DOT, we appreciate the opportunity to submit comments on the NPRM and for the Board's consideration of our views.

November 7, 2023

Respectfully,

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Paul M. Geier
*Assistant General Counsel for
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Erin D. Hendrixson
Senior Trial Attorney
United States Department of Transportation

/s/ Amitabha Bose
Amitabha Bose
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