

ICLE Comments to Surface Transportation Board on Reciprocal Switching  
February 15, 2022  
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## **Comments of the International Center for Law & Economics**

### **Before the Surface Transportation Board**

#### **STB Ex Parte No. 711 (Sub-No. 1)**

#### **Reciprocal Switching**

**Submitted Feb. 14, 2022**

On behalf of the International Center for Law & Economics, a nonpartisan nonprofit that promotes the use of law & economics methodologies to inform public-policy debates, I offer the following comments to express concern about the potential finalization and promulgation of the Surface Transportation Board's (STB) 2016 Notice of Proposed Rulemaking (NPRM) regarding the imposition of a reciprocal-switching requirement for U.S. freight-rail operations.

The STB's renewed efforts on reciprocal switching have come as part of a push by the administration to spur competition in the U.S. economy.<sup>[1]</sup> This proceeding responds specifically to a call by President Joe Biden to: "strengthen regulations pertaining to reciprocal switching agreements."<sup>[2]</sup> Unfortunately, like much of the administration's broader effort, the regulatory solutions the STB offers are in search of competition problems, evidence of which remains conspicuously absent. Worse, the STB offers these new regulations on the basis of a docket that is now dated and that itself relied on even older data.<sup>[3]</sup> As a procedural and factual matter, the STB should use this proceeding to abandon consideration both of the 2016 NPRM, specifically, and of a reciprocal-switching mandate altogether.

Toward that end, these comments speak to the manifest infirmities of the proposal under consideration by examining how the STB has failed in its statutory duty to identify a problem suitable for regulatory redress; by identifying the proposed solution's most likely outcomes and exploring how poorly they satisfy the Proposed Rule's stated goal; and by detailing the inevitable costs associated with promulgating the Proposed Rule.

Competition within the freight-rail sector and the larger U.S. economy is vital to the nation's economic health, and by the STB's most recent assessment, is robust.[4] But the role of regulation is to make markets regular in a manner that fosters efficiency, not to reflect the whims or will of a regulator to the detriment of a disfavored party.

[Read the full comments here.](#)

[1] Executive Order 14036, 86 FR 36987-36999, "Promoting Competition in the American Economy." July 9, 2021. <https://www.federalregister.gov/d/2021-15069>.

[2] Ibid.

[3] Docket No. EP 711, Docket No. EP 711 (Sub-No. 1), 81 FR 51149-51165, "Petition for Rulemaking To Adopt Revised Competitive Switching Rules; Reciprocal Switching." Aug 3, 2016. (NPRM). <https://www.federalregister.gov/d/2016-17980>.

[4] Laurits Christensen Associates report to Surface Transportation Board, "A Study of Competition in the U.S. Freight Railroad Industry and Analysis of Proposals that might Enhance Competition." November 2009.  
<https://www.stb.gov/wpcontent/uploads/files/docs/competitionStudy/Executive%20Summary.pdf>.

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