What in the World is Going on at the STB?

Presented by: William C. Sippel, Partner
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606
Railroad Industry – 1970’s

- 63 Class I railroads (30 independent rail systems)
- Excess capacity
- Deferred maintenance/inadequate capital investment
- Money-losing intercity and commuter passenger service
- Many light-density lines candidates for abandonment
- Low return on investment/major railroad bankruptcies
- Railroad rates set collectively in rate bureaus
- Contracts with shippers not permitted
- Filed rate doctrine in effect
- 100% of rail traffic regulated by ICC (no exempt traffic)
- Rate increases subject to suspension and investigation by ICC
- Merges, trackage rights, abandonments all by application without deadlines for ICC action
- Vocal shipper unhappiness and push for regulatory reform
Railroad Industry – 2008

- 7 Class I railroads
- Large number of shortlines operating former Class I trackage
- Well-maintained lines
- Constrained capacity
- Intercity and commuter passenger service provided by Amtrak and public authorities
- Substantially improved ROI/no major railroad bankruptcies
- Rail rates set independently or bilaterally
- Contracts with shippers common
- Majority of rail traffic exempt from STB rate regulation
- Exemptions common for abandonments, line sales and trackage rights
- Vocal shipper unhappiness and push for regulatory reform
Major Deregulation Statutes

- Regional Rail Reorganization Act (3R Act) – 1973
- Railroad Revitalization and Regulatory Reform Act (4R Act) – 1976
- Staggers Rail Act – 1980
- Interstate Commerce Commission Termination Act (ICCTA) – 1995
Regional Rail Reorganization Act (3R Act) – 1973

- Articulated as national rail policy that adequate and efficient rail service is essential in the NE and the US and that rail service offers economic and environmental advantages
- Establish USRA/directed creation of Final System Plan for NE
- Authorized federal loans for acquisitions and modernization
- Provided emergency assistance funding to bankrupt railroads
- Provided for expedited abandonment of rail lines in the NE
Railroad Revitalization and Regulatory Reform Act (4R Act) - 1976

- Articulated as national rail policy that railroads need to earn adequate revenues, have greater freedom to raise and lower rates in response to market demands and that competition rather than regulation should be relied upon to promote adequate and efficient rail service and attract investment
- Encouraged independent railroad pricing and less reliance on collective ratemaking
- Permitted rate incentives for capital investment (i.e., an early form of contract rate)
- Limited ICC rate regulation to traffic on which the railroad has market dominance
4R Act – continued

- Authorized ICC to exempt from regulation entire categories of traffic where regulation was unnecessary
- Imposed time and other limitations on ICC actions (mergers, abandonments, rate complaints, ability to suspend rate changes, cancellation of joint rates and the effective date of ICC orders)
- Mandated changes in ICC practice and procedure
- Prohibited discriminatory tax treatment of railroads
- Simplified regulation of railroad securities
- Mandated a new uniform cost and revenue accounting system
Staggers Rail Act – 1980

- Established current National Rail Transportation Policy
  - Allow competition and demand to establish reasonable rail rates
  - Minimize the need for federal regulatory control and require fair and expeditious regulatory decisions
  - Promote safe and efficient rail system by allowing rail carriers to earn adequate revenues
  - Ensure development and continuation of a sound rail system to meet the needs of the public and the national defense
  - Foster sound economic conditions in transportation and effective competition and coordination between railroads and other modes
  - Maintain reasonable rates where there is an absence of effective competition and where rail rates provide revenues exceeding the amount necessary to maintain the rail system and attract capital
  - Reduce regulatory barriers to entry and exit
Staggers Rail Act - continued

- Operate transportation facilities and equipment without detriment to the public health and safety
- Assure that regulation of interstate rates is exercised consistent with federal standards
- Encourage honest and efficient management of railroads and elimination of non-compensatory rates
- Require railroads to rely on individual rate increases
- Encourage fair wages and safe and suitable working conditions in the railroad industry
- Prohibit predatory pricing and practices, avoid undue concentrations of market power and prohibit unlawful discrimination
- Ensure availability of accurate cost information while minimizing burden on railroads to develop and maintain the capability of providing it
- Encourage and promote energy conservation
Interstate Commerce Commission Termination Act (ICCTA) – 1995

- Restated NRTP from the Staggers Act and provided for the expeditious handling and resolution of all STB rail proceedings
- Abolished the ICC and transferred remaining functions to the STB
- Authorized the STB to exempt a person, class of persons or a transaction or service
- Provided for 1-year severance pay labor protection for Class II transactions and no labor protection for Class III transactions
- Provided for broad federal preemption of state and local regulation of railroad transportation

- Ex Parte No. 575 (Sub-No. 1) Disclosure of Rail Interchange Commitments

Mar. 2006  Ex Parte No. 661:  Rail Fuel Surcharges

- Ex Parte No. 661 (Sub-No. 1) Rail Fuel Surcharges

Jul. 2006  Ex Parte No. 646 (Sub-No. 1):  Simplified Standards for Rail Rate Cases

- Ex Part No. 646 Rail Rate Challenges in Small Cases
<table>
<thead>
<tr>
<th>Date</th>
<th>Ex Parte No.</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oct. 2006</td>
<td>665</td>
<td>Rail Transportation of Grain</td>
</tr>
<tr>
<td>Sep. 2006</td>
<td>664</td>
<td>Methodology to be Employed in Determining the Railroad Industry’s Cost of Capital</td>
</tr>
</tbody>
</table>

- Ex Parte No. 558 (Sub-No. 10) Railroad Cost of Capital
- Ex Parte No. 552 (Sub-No. 11) Railroad Revenue Adequacy-2006 Determination
- Ex Parte No. 679 Petition of AAR to Institute a Rulemaking Proceeding to Adopt a Replacement Cost Methodology to Determine Railroad Revenue Adequacy
<table>
<thead>
<tr>
<th>Date</th>
<th>No.</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mar. 2007</td>
<td>Ex Parte No. 671:</td>
<td>Rail Capacity and Infrastructure Requirements</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Ex Parte No. 676 Rail Transportation Contracts Under 49 U.S.C. § 10709</td>
</tr>
<tr>
<td>Jun. 2007</td>
<td>Ex Parte No. 672:</td>
<td>Rail Transportation of Resources Critical to the Nation’s Energy Supply</td>
</tr>
<tr>
<td>Oct. 2007</td>
<td>Ex Part No. 673:</td>
<td>Information Required in Certain Notices of Exemption</td>
</tr>
<tr>
<td>----------</td>
<td>----------------</td>
<td>-----------------------------------------------------</td>
</tr>
<tr>
<td>Feb. 2008</td>
<td>Ex Parte No. 677:</td>
<td>Common Carrier Obligation of Railroads</td>
</tr>
</tbody>
</table>