



ARC

Alliance for Rail Competition

412 First St. S.E., Suite One, Washington, DC 20003
Phone (202) 484-7133, Fax: (202) 484-0770 www.railcompetition.org

Federal News Update August 2, 2007

Dear Colleague Distributed on Capitol Hill

Chairman James Oberstar and Cong. Richard Baker, the original co-sponsors of H.R. 2125, sent a Dear Colleague letter this week to every member of Congress. In the letter, they dispel the railroad claims that the bill is "re-regulation" and call on their colleagues to join them in co-sponsoring the legislation. A copy of the letter is enclosed.

Senate Supporters Calling for Rail Service Hearing

Sen. Jay Rockefeller and Sen. Byron Dorgan sent a letter this week to the Chairman of the Commerce, Science, Transportation Committee requesting a hearing, which would examine the national rail industry and the adequacy of the legal structure to protect captive shippers. The letter lists several pieces of evidence that a legislative solution is necessary. A copy of the letter is attached.

Congress Ready for August Recess

Both chambers of Congress are expected to adjourn this week for August recess. They will return back to Washington the week of Labor Day. During August, most members of Congress will be spending a significant amount of time in their districts/states to meet with constituents. This is an excellent time for ARC members to reach out to their representatives and once again reiterate the importance of H.R. 2125. As the support for our legislation grows, so do the opposition's efforts, and it is critical that we keep the momentum going. With Chairman Oberstar's dear colleague letter in circulation, we are in a position to secure additional co-sponsors, with the necessary grassroots effort.

Executive Committee Conference Call Update

ARC Executive Committee held its regular conference call earlier this week. A major point of discussion was the railroads' effort to portray H.R. 2125 / S. 953 as re-regulation bills. The Executive Committee is crafting a PR campaign, which includes Op-Eds, to counter the railroads claims. The Executive Committee is also collecting information regarding how increased railroad surcharges affect the U.S. consumers. This particular aspect is of great interest to several key members of the House Transportation & Infrastructure Committee, as well as many potential co-sponsors whom we approached this summer.

U.S. House of Representatives
Committee on Transportation and Infrastructure
Washington, DC 20515

August 1, 2007

Dear Colleague:

We are writing to encourage you to cosponsor H.R. 2125, the Railroad Competition and Service Improvement Act of 2007.

Perhaps you have heard from a number of your constituents that are being charged ever higher rail transportation prices while suffering declining service and reliability. Those rail customers without access to competition also report that the Federal system for protecting them from railroad monopoly power is not working. Our own review of this problem has convinced us that several reasonable and moderate changes to current railroad law and policy are required.

However, opponents of H.R. 2125 are misrepresenting the provisions of our proposed legislation. We intend to set the record straight:

First, H.R. 2125 does not re-regulate the railroads. In 1980, Congress passed the Staggers Rail Act to deregulate railroad activities that occur in a competitive environment. Congress did not deregulate the relationship between the railroads and their customer when there is no effective competition from other rail carriers or mode of transportation. In these non-competitive environments, the Staggers Rail Act empowered the Surface Transportation Board (STB), and its predecessor, the Interstate Commerce Commission, to set rates for service to the shipper. Unfortunately, the STB has developed policies which make it unreasonably expensive and difficult for a shipper to obtain STB regulation of the rates of monopoly railroads. H.R. 2125 would require changes in STB policies to provide the regulation of monopoly rates contemplated by the Staggers Rail Act.

Second, H.R. 2125 does not force one railroad to operate on the tracks of another railroad. We have seen railroad advocacy documents that make this claim. This representation is inaccurate. Existing law, 49 USC 1102(c), permits the STB to negotiate a reciprocal switching agreement between two railroads if the agreement is practicable, fairly compensates the impacted railroads, and serves the public interest. Under a reciprocal switching agreement, one railroad transports cars of a competing railroad for a fee. H.R. 2125 makes it clear that these agreements should be required if they are in the public interest.

Further, our legislation makes five necessary changes in current law that will expand rail competition and protect those rail customers who lack access to rail competition:

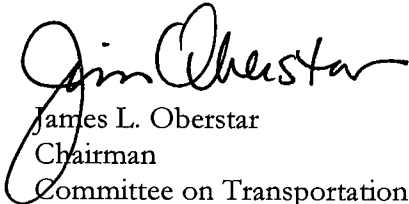
- Remove artificial barriers that block rail customer access to railroad competition;


- Improve the inaccessible and unworkable process for challenging the reasonableness of rail rates where the customer lacks access to competition;
- Ensure a pro-active STB that will protect rail customers from unreasonable rail practices, such as the excessive fuel surcharges that have occurred over the last several years;
- Clarify the railroad “obligation to serve” and empower the STB to enforce that obligation; and
- Reduce the fees and time associated with bringing rate dispute cases before the STB.

Please join us by cosponsoring H.R. 2125, the Railroad Competition and Service Improvement Act of 2007. Our national rail system is essential to the nation. Today’s rail industry is financially robust, but rail customers without access to competition are not being protected from railroad market power. Our legislation will correct this problem.

If you wish to cosponsor H.R. 2125, please contact John Drake of the Transportation and Infrastructure Committee at x5-3274 or Stuart Crigler with Congressman Baker at x5-3901.

Sincerely,


James L. Oberstar
Chairman
Committee on Transportation
& Infrastructure


Richard Baker
Member of Congress

United States Senate
WASHINGTON, DC 20510

July 30, 2007

Chairman Daniel K. Inouye
Committee on Commerce, Science and Transportation
United States Senate
508 Dirksen Senate Office Building
Washington, DC 20510

Dear Mr. Chairman:

We are writing to request that you schedule a hearing in the Commerce Committee on competition in the rail industry and the adequacy of the existing legal protections for those rail customers without access to transportation competition. We would appreciate it if the hearing were to occur before the August recess.

As you are well aware, rail customers have complained for years about the absence of competition in the rail industry and problematic policies of the Surface Transportation Board. Since the Commerce Committee's last hearing on this subject last June, there have been a number of significant developments:

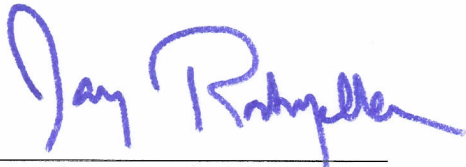
- The Government Accountability Office (GAO) filed a report in October of 2006 that found a lack of competition in the rail industry, refusal of the Surface Transportation Board (STB) to address the competition issue, and inadequate STB protections for rail customers.
- The STB, in January, found that the major railroads had been "double dipping" and otherwise overcharging most rail customers through fraudulent fuel adjustment clauses - but they ordered no refunds. One economist has estimated that the total fuel overcharges paid by rail customers was \$3 billion.
- The STB has taken no steps to improve its "inaccessible" rail customer protections, and, in fact, made rate cases even more inaccessible by raising the filing fee for full rate cases from \$140,200 to \$178,200 effective this May.
- The four major Class I railroads, even while seeking a very generous 25% investment tax credit from the Congress for infrastructure investment and continuing to load up on rail customers without access to competition, are spending billions of dollars in cash and debt to buy back their stock. In the first quarter of 2007, the four major Class I railroads invested about \$2 billion in infrastructure improvements and maintenance and \$1 billion to buy back their stock. The CSX recently announced a \$3 billion stock buy-back program with \$2 billion financed with cash and \$1 billion with new debt.

- Finally, this year, hedge funds and other aggressive investors have discovered the stock of the major railroads. These investors have bought major quantities of stock in each of the large Class I railroads. At a recent gathering of railroad investors hosted by Bear Stearns on Wall Street, a London-based hedge fund investor, who was the keynote speaker, called for the railroads to double their rates over the next decade, continue to cut their costs and spend their cash buying back their stock. This investor made clear that he and other hedge fund investors are going to hold railroad management accountable if these goals are not achieved.

All of these developments, Mr. Chairman, suggest that the Committee needs to consider whether the national rail system is developing as it should and whether current law is working as intended by Congress.

Thank you for your attention to this matter that is of such fundamental interest to our constituents and to the future of our nation.

Sincerely,



John D. Rockefeller IV
United States Senator



Byron L. Dorgan
United States Senator