

STATE ATTORNEYS GENERAL
A Communication From the Chief Legal Officers
Of the Following States:

**Montana, South Dakota, Arizona, Arkansas, California, Connecticut, Delaware, the
District of Columbia, Guam, Iowa, Louisiana, Minnesota, Mississippi, Nevada, New Jersey,
New Mexico, North Carolina, North Dakota, Ohio, Oklahoma and Utah**

November 19, 2007

Via Facsimile

Honorable Harry Reid
Majority Leader
United States Senate
Washington, DC 20510

Honorable Mitch McConnell
Minority Leader
United States Senate
Washington, DC 20510

Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515

Honorable John Boehner
Minority Leader, House of Representatives
Washington, DC 20515

RE: Support for the Railroad Antitrust Enforcement Act of 2007
(H.R. 1650 and S. 772)

We, the undersigned Attorneys General, are writing to encourage Congress to remove the current railroad antitrust exemptions and subject the nation's major railroads to the basic law that ensures competition in our nation. Legislation that has been approved by the Senate Judiciary Committee and that is pending before the House Judiciary Committee (S. 772 and H.R. 1650), is essential to this goal. Similar legislation was introduced during the 109th Congress but it was not acted upon. This year, identical versions of both bills have been introduced in the House and Senate. We respectfully urge you and your colleagues to report and pass these important bills this year in your respective bodies. Rail customers in our states in a variety of industries are suffering from the classic symptoms of unrestrained monopoly power: unreasonably high and arbitrary rates and poor service, and this legislation is a part of the solution.

In 1980, the Congress deregulated most railroad activities through the Staggers Rail Act of 1980. The Interstate Commerce Commission, replaced in 1995 by the Surface Transportation Board (STB), was charged with the responsibility of restraining railroad monopoly power against those rail customers without access to competition. At the same time, the Congress did not remove the antitrust exemptions that had been granted to the railroad industry when they were extensively and tightly regulated.

Since 1980, the major freight railroad industry has consolidated from over 40 Class I providers to seven Class I's, four of which control over 90% of the nation's rail traffic. We understand from our citizens that the Surface Transportation Board has failed in its responsibility

to restrain railroad monopoly power. In fact, a 2004 Department of Justice Antitrust Division letter to the Chairman of the House Judiciary Committee strongly suggests that some of the railroad practices allowed by the STB would be of questionable legality under the nation's antitrust laws.

Thus, today, the citizens of our states often find themselves subject to anticompetitive behavior on the part of the freight railroads, with significant adverse consequences:

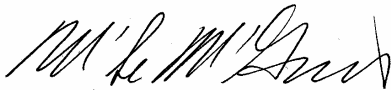
- ! Coal is used to generate about 50% of the electricity in the nation. A number of coal-fired electricity generators in the west, midwest, southwest and southeastern portions of our nation are confronting rate increases that sometimes reach 100%+ and although coal supplies are better now than they have been, many utilities are still not receiving the amount of coal for which they have contracted with the coal producers and railroads for delivery. These utilities have to find supplemental coal, in some cases from foreign sources, including Indonesia, to maintain inventories. The result is increased electricity costs for consumers.
- ! Through pricing and service practices the railroads have forced consolidation of many grain elevators of all sizes into larger companies to build new facilities to load 100-110 car shuttle trains. This has shifted cost to the farming and grain-handling sector. It has also shifted cost to the public road sector as new and increased grain gathering patterns by truck develop to feed these facilities. Service is auctioned to the highest bidder where large companies can buy more. When transportation is tight this access to service is sold through a secondary market with premiums that can boost real transport cost 20-40% over the standard rate. The secondary marketer, not the railroad, gets the excess. This interrupts the market signal back to the railroad to add equipment to its fleet.
- ! Two-thirds of the chemical plants in the nation are served by a single railroad, with many of their customers also subject to single rail service. This railroad monopoly power is resulting in rates and service that is making American manufactured goods from chemical products uncompetitive with imported goods – which normally enjoy more competitive rail transportation rates because they have their choice of entry points into the nation.
- ! Multi-national companies that can site their plants in any number of countries are extremely reluctant to invest in a U.S. site that is served by a single railroad. One global forest products company is currently considering a major investment at the site of its current paper manufacturing facility in a midwestern state. The site is served by a single railroad. The transportation cost of moving finished product from this midwestern state to its market in the southeastern U. S., a distance of about 1,400 miles, is the same as the transportation cost of moving the finished product from Europe to the same southeastern U.S. market, a distance of almost 5,000 miles. This domestic transportation cost disadvantage presents a significant obstacle to increased foreign investment in our nation.

The anticompetitive practices employed by the freight railroads that are exempt from the antitrust laws of the nation allow for the situations described above.

In summary, the major railroads of our nation provide an essential service to our economy. They must be financially viable and efficient. Historically, our nation has found that the best way to ensure economic success and economic efficiency is through the discipline of competition.

We ask that you ensure a strong and viable rail system in the United States by ensuring that the railroads are subject to market competition through full application of the nation's antitrust laws.

Sincerely,



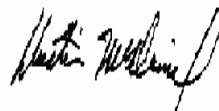
Mike McGrath
Attorney General of Montana



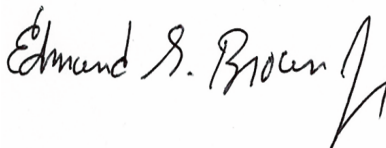
Larry Long
South Dakota



Terry Goddard
Attorney General of Arizona



Dustin McDaniel
Attorney General of Arkansas



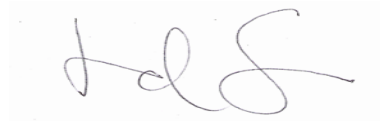
Edmund G. Brown, Jr.
Attorney General of California



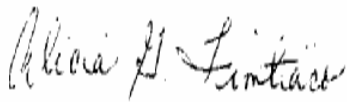
Richard Blumenthal
Attorney General of Connecticut



Joseph R. Biden, III
Attorney General of Delaware



Linda Singer
Attorney General of the District of Columbia



Alicia G. Limtiaco
Attorney General of Guam



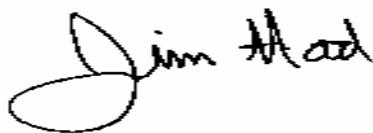
Tom Miller
Attorney General of Iowa



Charles C. Foti, Jr.
Attorney General of Louisiana



Lori Swanson
Attorney General of Minnesota



Jim Hood
Attorney General of Mississippi



Catherine Cortez Masto
Attorney General of Nevada



Anne Milgram
Attorney General of New Jersey



Gary King
Attorney General of New Mexico



Roy Cooper
Attorney General of North Carolina



Wayne Stenehjem
Attorney General of North Dakota



Marc Dann
Attorney General of Ohio



W.A. Drew Edmondson
Attorney General of Oklahoma



Mark Shurtleff
Attorney General of Utah

cc: Honorable Patrick Leahy
Chairman,
Senate Committee on the Judiciary

Honorable Orrin Hatch
Ranking Member
Senate Committee on the Judiciary

Honorable John Conyers
Chairman
House Committee on the Judiciary

Honorable Lamar Smith
Chairman
House Committee on the Judiciary