

**Testimony of
Terry C. Whiteside
On Behalf of
Montana Wheat & Barley Committee
Wheat and Barley Commissions in Colorado, Idaho, South Dakota and Washington
Oregon Wheat Growers League
The Alliance for Rail Competition**

**Before the
U.S. Senate Commerce, Science and Transportation Committee
Subcommittee on Surface Transportation and Merchant Marine**

October 23, 2003

Madam Chairwoman and members of the subcommittee, thank you for the opportunity to testify before you today. My name is Terry Whiteside, Principal in Whiteside & Associates, Billings, Montana and I represent many farm producer groups, including the Montana Wheat and Barley Committee, the Wheat and Barley Commissions in Colorado, Idaho, South Dakota and Washington as well as the Oregon Wheat Growers League. The Montana Wheat and Barley Committee is a wheat and barley producer check-off organization representing all Montana farm producers. The Idaho Wheat Commission and Idaho Barley Commission represent all of the Idaho wheat and barley producers, respectively. The Colorado Wheat Administrative Committee represents wheat producers in Colorado. The Oregon Wheat Growers League represents the wheat producers in Oregon. The Washington Wheat Commission and the Washington Barley Commissions represent the wheat and barley producers in Washington.

The Alliance for Rail Competition (ARC) is a diverse coalition of shippers that was formed five years ago for the sole purpose of developing and promoting a consensus-based plan for achieving rail-to-rail competition. I serve as Chairman of that organization. Concerns about railroad market power span all rail dependent shippers and industries. ARC's

growing membership reflects the diversity of those interests: agriculture, coal, chemicals, consumer products, glass producers, industrial products, minerals and petrochemicals, and some of the trade associations that represent many of these groups, as well as port and industrial development authorities. ARC has teamed up with 12 other national organizations to combine our work efforts to bring rail competition back to this industry. These other organizations have pledged to work together in their support for S. 919: Agriculture Ocean Transportation Coalition, American Chemistry Council, American Public Power Association, Consumer United for Rail Equity, Edison Electric Institute, National Association of Wheat Growers, National Barley Growers Association, National Petroleum Refiners Association, National Rural Electric Cooperative Association, Paper and Forest Industry Transportation Committee, The Fertilizer Institute, and The National Industrial Transportation League.

The Heart of the Issue Is Choice

The heart of this issue is the lack of choice for vast numbers of rail customers. The issue is not about excessive rates, poor or erratic service or monopoly practices. They are the symptoms of the problem. The issue continues to be lack of choice for rail customers in the marketplace.

S. 919 is not a re-regulation bill. It does not re-regulate any part of this industry.

S. 919 Does NOT cap rates

S. 919 Does NOT mandate open trackage rights.

S. 919 Does four major things:

1. S. 919 reestablishes that the National Rail Policy is pro-competition to ensure and nurture competition in this vitally important industry.
2. S. 919 restores several provisions that Congress established in 1980 in the Staggers Rail Act to their original intent and purpose taking out the intervening agency interpretations that have altered original Congressional

language and intent (Railroad must quotes rates between any two points on their system and removal of the anti-trust provision in terminal area and switching).

3. S. 919 establishes a final offer arbitration concept being utilized successfully in Canada to bring opportunities for resolutions of disputes on rates or service to rail customers.
4. S. 919 recognizes that with concentration in the rail industry, Congress needs to establish a concept called Areas of Inadequate Rail Competition with advocacy and oversight to focus remedial attention to bring about more competitive balance in market place.

In short, S. 919 restores Congressional language and intent that The Staggers Rail Act sought in 1980. It incorporates an arbitration process that is being successfully utilized in Canada for resolution of carrier/customer issues. It reestablishes for the STB that a competitive rail industry is preferable to a non-competitive rail industry.

Congress has taken a look at many other industries that have been characterized by a monopoly or oligopoly market structure and has seen it necessary and appropriate to introduce competitive balances for the sake of national policy.

Yet, we have seen no real action to address similar issues in the railroad industry. In this national railroad industry in 2001, four mega carriers generate 95% of the gross ton-miles and 94% of the revenue. Two western carriers generate 92% of the gross ton-miles and 90% of the revenues in the west. Four of these carriers handle over 90% of the U.S. coal movements. Three of these carriers control over 70% of the grain movement.

In other industries of national importance, Congress has moved to introduce competition as the best means for ensuring consumer and customer protections. Those

industries include the natural gas pipeline industry, which like the rail industry, is characterized by high fixed costs. The shipping community—of which as many as 1/3 or more of our shipments are captive — is here today to ask you to bring competition to the rail industry as the best means of protecting our collective economic competitiveness.

The 1980 Staggers Rail Act Was A Rail Competition Bill

When the Staggers Rail Act was passed in 1980, shippers understood that regulation of railroads was to be curtailed, and instead, “to the maximum extent possible,” competition was to ensure that rail rates were and remained reasonable. Congress passed a very good piece of legislation in the Staggers Rail Act but its effects have been thwarted by both regulatory interpretation and a massive concentration in the rail industry. The Staggers Rail Act passed by this Committee was intended to foster a competitive railroad system in this country. S. 919 attempts to restore those provisions.

Today, **whole states, whole regions and whole industries** are now captive to a single railroad. Such concentration comes at a time when the regulatory body which approved all of these mergers and allowed this massive concentration of economic power has seemingly chosen to ignore the effects of this concentration on the ever-increasing captive rail customers, even though Congress charged this agency to “maintain reasonable rates where there is an absence of effective competition.” Congress in 1980 never envisioned that 40 Class I’s would be allowed to merge into a system where four major railroads control the industry and there would be no effective backstop for the captive rail customers to shield them from the effects of monopoly pricing. Congress clearly wanted a healthy rail system full of innovation that was driven by rail-to-rail competition. The ICC and now the STB has continued to alter and undermine the spirit of the law by regulatory interpretation.

In 1980, there were over 40 Class I railroads operating in the U.S. Further the 1980 Staggers Rail Act specified that the regulatory agency, the Interstate Commerce Commission

was to “maintain reasonable rates where there is an absence of effective competition.” In other words, if a rail customer found that rail-to-rail competition became ‘absent’ it was Congressional intent that they would have protection from predatory pricing and service abuse. The ICC, now the STB was also charged by Congress to work to see that the financial health of the national railroad system improved and of course, the Congress did not want to see any more railroad bankruptcies.

Montana Agricultural Producers Need Bulk Transportation To Transport Grain To Market And Are Completely Captive To A Single Railroad

The Montana Wheat & Barley Committee (MWBC) represents the wheat and barley producers of the state of Montana. Montana is a natural resources state with the main economies built upon products of the mine, lumber and agriculture as well as tourism. In order for our bulk products of the mine, lumber and agriculture to have value to Montana citizens, they require bulk transportation (rail) to points outside Montana and, in many cases, outside the U.S.

Therefore, the State's economic survival depends on having access to good, affordable, and adequate rail transportation and attendant facilities so that its shippers can deliver a competitively priced product outside the state boundaries.

Montana wheat and barley producers do not have economic alternatives to rail transportation. They are captive and tied to rail with no viable alternatives to movement by rail. The Montana wheat and barley producers are unique because they are the bearers of the freight and cannot pass on increased transportation costs, but must absorb them. Virtually any other industry has some capability of passing on some or all of its increased costs to their consumers or customers. The farm producer is unique because they operate in

an environment where they do not have any control over the price they receive for their crop and they must bear every increase, in all costs, including transportation costs, without any possibility to pass those higher costs on to anyone else. When farm producers sell their grain to a grain elevator or merchandiser the price of rail transportation is deducted from the price the farm producer receives. Thus the farm producer 'bears' the rail transportation cost. The grain producer pays the transportation charges they collect from the farm producers to the railroads. The farm producers are very sophisticated marketers and producers. U.S. farmers are the most efficient and productive agricultural producers in the world. But they must compete in a world market most of which do not have a monopoly rail transportation system between the producer and the ultimate market that can dictate price and profit levels to the producer. One of the challenges for Montana grain producers comes from international competition as well as domestic competition. Most industries that utilize rail face both domestic and international competition. Montana grain producers understand that a lack of choice of rail carriers creates a burden on their ability to competitively market their products in the world.

Montana's Primary Transportation Is A Single Railroad

Montana is a base industry state. In the 1800's, its chief industries were mining, lumber and agriculture; today and in the future, Montana's chief industries will be the same three industries: mining, lumber and agriculture with the addition of tourism. Today, we, in Montana, have one major railroad, operating as a monopoly in the transportation of bulk commodities from the farm to market.

OUTLINE OF INDUSTRY IN MONTANA

- The wheat industry in Montana is characterized by an export-dominant rail movement.
- The barley industry in Montana is characterized by both an export and domestic market dominated by rail.

- The lumber industry in Montana is characterized by both an export and domestic market dominated by rail.
- The coal industry in Montana is characterized by domestic rail movement.

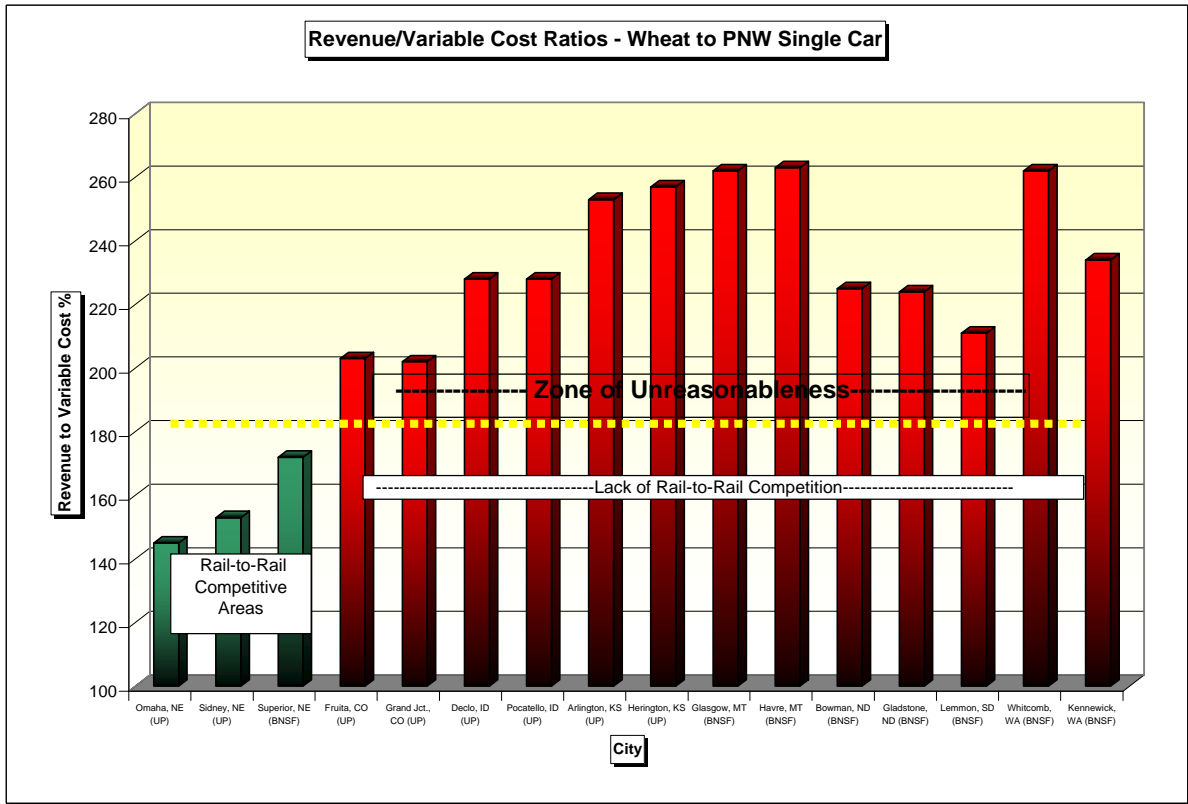
Montana is nationally ranked in agricultural production. Montana ranks 4th in all wheat production, 9th in winter wheat production, 2nd in spring wheat production, 3rd in barley production, and 4th in durum wheat production in the U.S. (Source: Montana Agricultural Statistics Service, May, 1997 Census of Agriculture). Montana is 2nd in Land in Farms and Ranches with about 60,000,000 acres.

For the Montana farm producer, the cost of transporting grain can today represent as much as one third (1/3) the overall price received for the grain up from only 15% 25 years ago when Montana had rail competition.

MONTANA RAIL TRANSPORTATION IS PREDOMINATED BY ONE CARRIER

Montana's rail infrastructure is controlled by a single rail carrier controlling over 96% of all rail miles, over 95% of all grain elevator and terminal sites and move 98%+ of all wheat movements from the state. The rail carrier controls and dictates the rail rates in all movements from Montana eastbound or westbound. Annually, the Montana producers in normal rainfall years move about 150 million+ bushel production that is handled by rail from Montana and bear about \$200+ million in freight transportation charges per year.

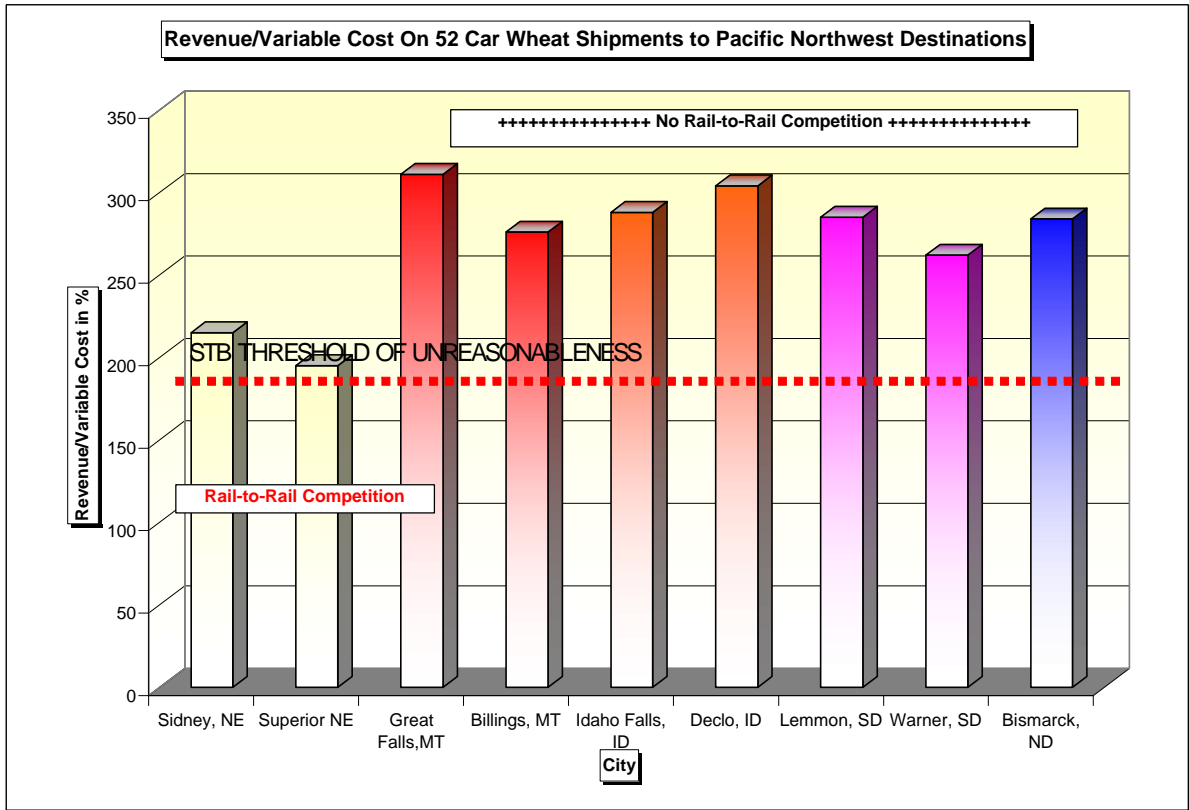
Montana grain producers are being required to pay more for their rail service than their counterparts in the grain producing industry where effective rail-to-rail competition



exists. That payment has come in the form of increased transit times, upward adjustments in rail rates and tight car supplies.

From Plentywood, Montana to Portland, Oregon, it is 1,207 miles on the BNSF. From Nebraska origins, e. g. Sidney, Nebraska to Portland, it is 1,566 miles on the BNSF. To ship a 52 car shipment of wheat from Plentywood to Portland, is \$67/car (\$3,484) more than to ship a 52 car shipment of wheat from Alliance, NE even though Alliance is 359 miles further from Portland than is Plentywood, and even though the trains from Alliance pass right through Montana on there way to Portland. Why? In Central Nebraska, e. g. the Sidney area of Nebraska, the BNSF has rail competition from the UP for its wheat traffic going to the same destination - Portland, but in Montana, the BNSF has no competition.

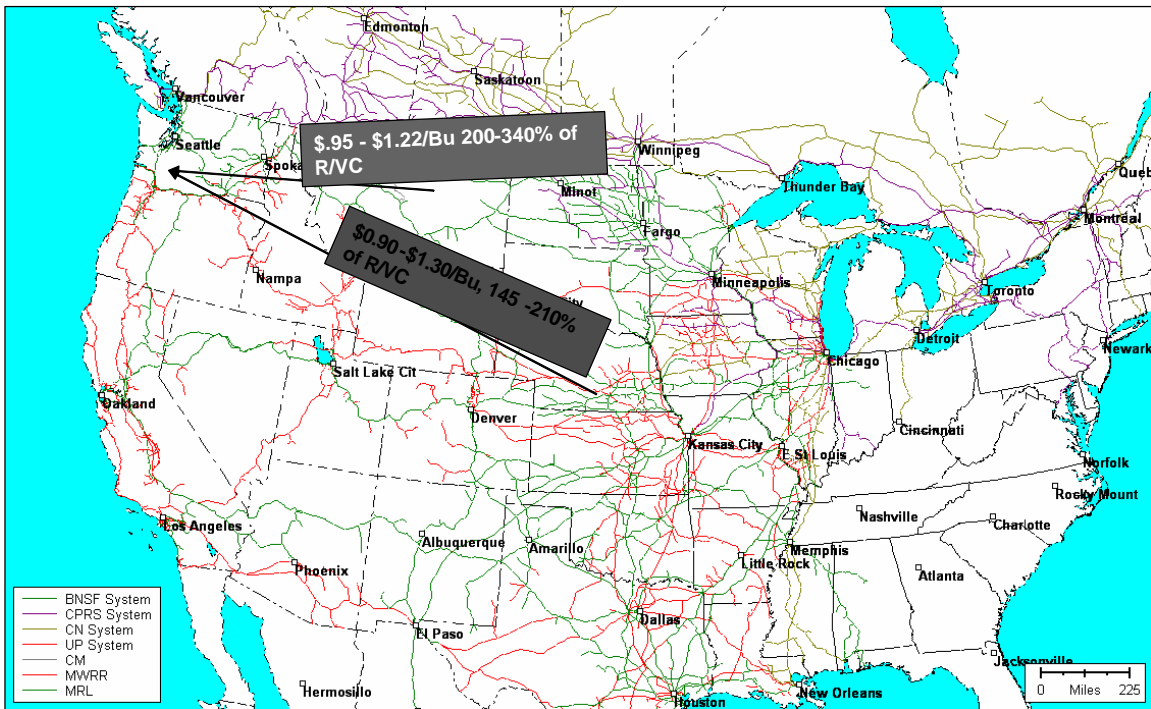
This is modern rate discrimination that has gone on for many decades. The graph below show the revenue to variable cost that emanate from the rate differential between Nebraska origins (where BNSF and UP compete) and Montana, Idaho, South Dakota and North Dakota origins (where there is also no rail-to-rail competition).



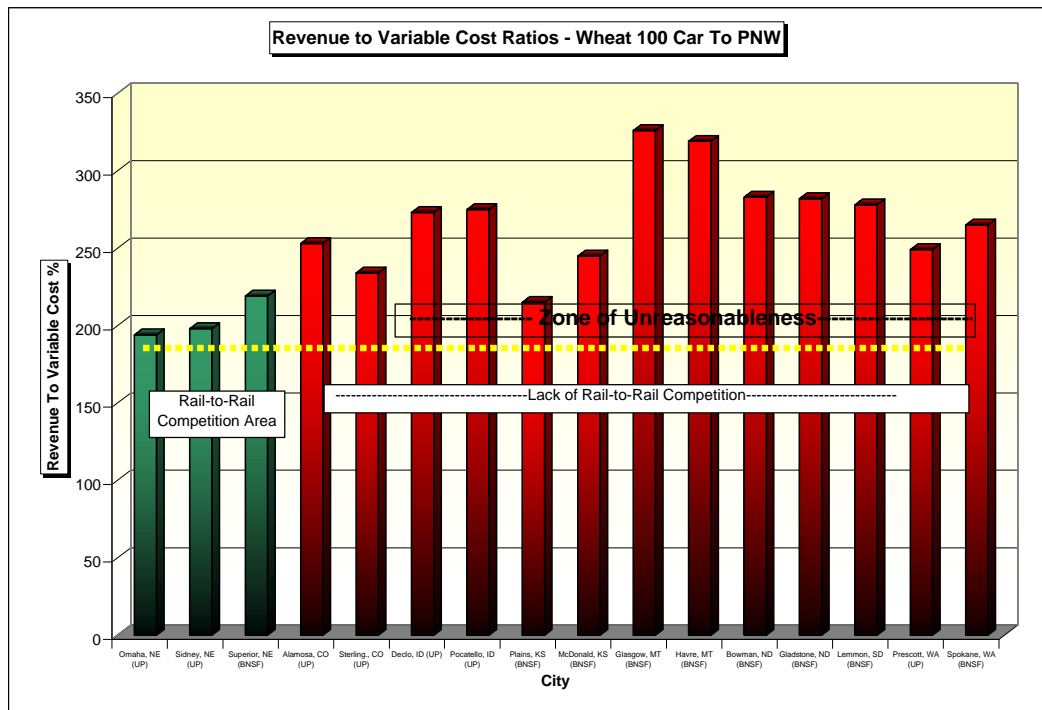
The wheat rates, from Western Nebraska are not river compelled rates, but rather are compelled by competition between two railroads on movements to the Pacific Northwest (PNW).

Rate spreads between Montana origins and Nebraska origins to Portland have increased since the passage of the Staggers Rail Act of 1980. The result is that Montana, Colorado, Idaho, South Dakota, North Dakota and Washington farm producers are worse off today against their traditional competitors due to their increased captive shipper status which results from the lack of choice of carriers.

The Montana Captive Rail Customers Are Burdened With The Highest Rates In The Nation



The captive rail customers in the grain country are paying rail rates which range from 200 to 400+% of revenue to variable costs well above the 180% threshold of unreasonableness established by Congress in the Staggers Rail Act.



Captive Rail Traffic in the U.S. Now Comprises 1/3 of All Shipments

The result of a June 1998 study conducted by L.E. Peabody & Associates, Inc. reflects quantitatively the amount of rail captivity. Fully 1/3 of all U. S. rail movements are captive and it is spread over virtually all major shipping commodity groups.

Peabody found that for movements included in the 1996 Costed Carload Waybill Sample:

- Over 31% of the revenue was generated by "captive rail traffic;"
- Captive rail traffic on average has a revenue/variable cost ratio of 2.44; and,
- Movements of captive rail traffic were comprised of 129 different industry groups including coal, agriculture, chemicals, fertilizers and many manufactured goods.

Whole States, Whole Regions and Whole Industries Are Now Captive

Today, whole states, whole regions and whole industries are now captive to single railroad practices. Such concentration comes at a time when the regulatory body which approved all of these mergers and allowed this massive concentration of economic power has seemingly chosen to ignore the effects of this concentration on the ever-increasing captive rail customers, even though Congress charged this agency to “maintain reasonable rates where there is an absence of effective competition.” Congress in 1980 never envisioned that 40 Class I’s would be allowed to merge into the a system where four major railroads control the industry and there would be no effective backstop for the captive rail customers to shield them the effects of monopoly pricing and service abuses. Congress clearly wanted a healthy rail system full of innovation that was driven by rail-to-rail competition. The ICC and now the STB has continued to alter and undermine the spirit of the law by regulatory interpretation.

Upon its inception in January 1996, the new Surface Transportation Board was faced with the products of the ICC’s regulatory policies: a drastically consolidated rail market

place and grave concerns from the shipping community about the growing level of monopoly rate abuse and deteriorating service levels. But the new STB also had a choice. At that time, the STB could have chosen to protect the shipping community from growing rail market dominance and begin to balance the scales between shippers and the railroads by promoting a competitive rail market—either by modifying existing regulatory rulemakings or requesting changes to its statutory authority—or it could continue the record of its predecessor, approving virtually any proposed merger and defining the success of its decisions based upon the success of its lawyers in the appeals court.

Based on its record, it is clear what choice the STB made. Not only did the STB in 1997, approve the largest parallel merger of two railroads in history in the name of “efficiency” –a merger that produced service deterioration unprecedented in the annals of railroad history – but it also handed down the now-legendary “bottleneck” decision and continues to wonder why shippers are reluctant to bring “competitive access” cases despite significant law and precedent that was promulgated under the ICC.

The Issue Is Not About Railroad Rates, Service or Thwarting Economic Development – The Issue is that Federal law Does Not Protect the U.S. Public from Monopoly Practices

The issue here is not about rates, or service or thwarting economic development by market dominant railroads. The examples of monopoly pricing and control are legion whether it is jeopardizing the economic development plans of a truck assembly plant in Texas, or a chemical plant in Louisiana, a fructose sugar plant in North Dakota and Minnesota that wasn't allowed by the railroads to be built, plant closings in Idaho due to rail transportation costs or rate and service issues all across the grain states. The railroads are not the villain here. They are doing exactly what the law, as interpreted by the regulatory body, allows. The concentration by merger in the railroad industry has changed the balance. The issue here is competition. The issues are of fairness that comes from competition. The issue

is that the federal law that is designed to protect the U.S. public from monopoly market abuse does not work. The law needs fixing to restore balance.

The agricultural producers have supported the Alliance for Rail Competition since its inception. They have worked hard to bring together a multitude of shipper organizations whose common bond is the belief that increasing competition in the railroad industry is the right thing to do. They believe that a continuation of the status quo is unacceptable, and that changes to existing regulatory policies must be legislated to ensure that the STB will begin to promote competition as originally directed and intended by the 1980 Staggers Act. Therefore, ARC and the Montana Wheat & Barley Committee and the agricultural rail customers urge this committee to pass S. 919 which will restore major portions of the Staggers Rail Act to their original state and further serve to promote the reemergence of competitive forces within the rail industry.

As I've noted before, the members of the Alliance for Rail Competition believe that the only real long-term solution to their concerns about rates and service quality is increasing competitive choice in the market place.

But how do you achieve free market competition in an industry that has only four major U.S. Class I railroads—two of which are in the West, and two in the East? ARC believes that S. 919 will initiate the necessary reforms to bring competitive forces and establish the goals that the captive rail customer community wants:

- **A SAFE, GROWING AND FINANCIALLY STRONG RAIL INDUSTRY**
- ***ELIMINATION OF MONOPOLISTIC PRACTICES BY FURTHERING THE DIRECTION DEVELOPED IN THE STAGGERS RAIL ACT***
- **COOPERATIVE INNOVATION AND CREATIVITY DRIVEN BY RAIL-TO-RAIL COMPETITION**

Today, railroad customers do not have the right to any of these things—and in fact, based on the way existing regulations have been interpreted, they barely have the right to anything at all.

S. 919 Issues:

Competitive Reciprocal Switching and Terminal Trackage Rights – The Congress should provide increased rights to competition through reciprocal switching and terminal trackage rights, affirmatively requiring the grant of these rights within an established distance of existing interchanges in order to promote rail-to-rail competition.

Under the current statute, the STB is empowered to grant trackage rights and reciprocal switching in a terminal or for a “reasonable distance” outside of a terminal, when it finds such remedies to be “practicable” and “in the public interest,” or where reciprocal switching is necessary to provide “competitive rail service.” These rights, which are set forth at 49 U.S.C. 11102, have been in the statute for a number of years and were broadened in the Staggers Rail Act.

Despite these broad and seemingly pro-competitive provisions, the agency, by rule and policy, has drastically restricted the application of these rights. The agency’s rules, promulgated in 1984, have been interpreted in the *Midtec* decision (1984) and later cases to require the shipper to prove competitive “abuse” in order to qualify for competitive relief, and raise numerous other barriers. In fact, a shipper has never won a case brought under the current rules, and the precedent set by the half-dozen or so cases decided to date establish tests that no shipper could possibly meet.

We recommend that legislation reversing the agency's approach should be adopted. This will reestablish what Congress intended in the Staggers Rail Act. The agency should have an affirmative obligation to establish competition via reciprocal switching and trackage rights at or within a reasonable distance of an existing interchange between rail carriers, and the "abuse" test established by the agency should be specifically abolished.

A substantially broadened right to competition via reciprocal switching or trackage rights would provide the benefits of competition to a number of shippers, where such shippers are at or within a reasonable distance of another carrier. Because such trackage rights would be limited to rail service at or within a reasonable distance of where two carriers already interchange cars and locomotives, such competitive rail service would be operationally feasible. Trackage rights are frequently used by carriers: indeed, as part of the UP/SP merger, the UP/SP granted the BNSF of 4,000 miles of trackage rights over its system. Our recommendations would require the agency to interpret the statute in a pro-competitive, rather than a restrictive, manner, where relatively short-distance trackage rights or switching can provide competitive opportunities

Shipper's Right to Competitive Routings and Reasonable Rates Over Bottlenecks – The Congress should restore to shippers the right to competitive rail routing through existing interchanges to encourage rates produced by the competitive market, and should require the provision of reasonable rates in a timely manner over rail bottlenecks.

In the agency's 1996 "bottleneck" decision, the STB ruled that, in most situations, a rail carrier with a "bottleneck" monopoly can lawfully foreclose alternate and competitive rail routings by another carrier, where the "bottleneck" carrier can provide origin to destination service. This interpretation altered what Congress had intended in the Staggers Rail Act in 1980.

The STB's bottleneck decision should be reversed legislatively, to restore to shippers the right to route over competitive routings at rates produced by the competitive market through existing interchanges, and to clarify that the STB can establish a maximum reasonable rate over a bottleneck segment. These changes would ensure that the monopoly bottleneck carrier couldn't take advantage of its pricing power to foreclose competition over the competitive portion of the route. They would permit competition to flourish where it can. These changes would not bring a return to the old "open routing" system, whereby carriers were required to keep even inefficient interchanges open and were required to charge the same rate over all possible routes. Rather, only interchanges already utilized by the carriers would qualify, and rates over various routes would vary as costs and competition demand. Where a carrier controls a bottleneck, its pricing initiative would only be subject to current statutory restrictions against charging unreasonably high rates where there is no effective competition.

Finally, the Congress should also reverse the bottleneck decision to clarify that the STB can prospectively prescribe a maximum reasonable rate so that the rate is available to a shipper immediately upon expiration of the shipper's contract.

Competition and Reasonable Rates – The Congress should require that significant weight be given to the level of rates produced in the presence of rail-to-rail competition for shipments of the same or similar commodities when reasonable rates are prescribed where effective competition does not exist. Congress should also adopt objective, easy to apply rate standards for agricultural shippers, and direct the STB to consider similar standards be considered for other non-coal shippers.

Under the STB's current so-called "Constrained Market Pricing" standards, the STB requires shippers to hypothesize the rates that would be produced if a new railroad were built from the ground up to serve the complaining shipper in competition with the existing carrier.

This exercise in “imagining” a new railroad – the calculation of so-called “Stand Alone Cost” – requires massive amounts of evidence as to such things as the cost of land acquisition for this new “stand alone” carrier, the cost of track, locomotives, operating costs, etc. Hundreds of thousands of dollars can be spent in legal and consultant fees on this exercise in competitive hypothesis. In the McCarty Farms case filed by Montana producers, the ICC/STB took 19 years and cost the producers over \$3.2 million (without lawyer fees). The result even though the railroad was judged market dominant and its rates judged excessive, the ICC changed the judgment standard three times to ensure the complainants never succeeded even though the rates were 200-300+% of variable – again well in excess of the 180% standard for unreasonableness. This was not the ICC/STB’s finest hour but it is illustrative of the pervasiveness of the problems faced by captive rail customers.

Yet, throughout the process of determining what a maximum rate should be to a captive shipper, the STB never considers what that same carrier is already charging shippers for movements of the same commodity where rail-to-rail competition actually exists.

This “never-never land” of regulation should be injected with a dose of reality.

Congress should require the STB, in determining what rate should be charged where there is an absence of competition, to consider like rates that are actually charged where there is the presence of competition. The STB should give significant weight to this evidence, though other types of evidence, such as evidence on stand alone cost current utilized by the Board, could be considered as well.

Finally, ARC recognizes that agricultural shippers, and especially the smaller agricultural shippers, have particular difficulties in bringing maximum reasonable rate complaints, given their size and the circumstances of their transportation. The Congress should establish and mandate the STB develop such standards, particularly for small

agricultural shippers, and should direct the STB to consider similar standards for other non-coal shippers.

Increasing Rail-to-Rail Competition from Short Line Carriers – The Congress should make unlawful any restrictions by Class I carriers on short line carriers from interchanging with other carriers.

The railroads will state that they have, by spinning off branchlines into shortline carriers, created a more balanced and competitive system. This just is not true.

Since the passage of the Staggers Act, short line carriers have become an important part of the nation's rail transportation system. ARC believes that Congress should make statutory changes that would enable short line carriers to facilitate increased competition in the rail industry.

Short line carriers are often “captive” to a particular Class I carrier. Frequently, however, this captivity is not due to the fact that a particular short line connects solely to one Class I carrier, but rather is the result of restrictions placed upon the short line at the time that the newly-established Class III is “spun off” by the Class I parent. Specifically, when a planned short line can interchange with a carrier besides the Class I parent, restrictions are placed on the short line at the time of its spin-off that prevent the short line from interchanging with any carrier other than the Class I parent. Shippers served by the short line, then, are held captive. The Class I parent obtains the benefits of the short line spin-off, including lower labor costs, without jeopardizing its hold on its captive shippers.

This is poor public policy. ARC and the agricultural rail customers believe that Congress should make unlawful any restrictions by Class I carriers that prevent short line carriers from interchanging with other carriers. A legislative prohibition on such restrictions

would free both shippers and short lines from the control of a particular Class I carrier, bringing the potential for increased traffic to the short line, and the potential for increased competition to the shipper.

Summary:

We believe that the freight rail marketplace does not behave like a marketplace at all. There are federal protections for railroads that do not exist for any other industry, such as anti-trust exemptions. We have shown in this testimony that the regulatory mechanism has skewed the Congressional intent that Congress relied upon when it passed the Staggers Rail Act in 1980.

We, as rail customers, are captive to the railroads and we also dependent upon the railroads. Captive rail customers are the last ones that would ever want to see harm come to availability of rail service or further contraction in the rail industry. We simply do not believe that this mighty and historic industry cannot function in a competitive American marketplace, as do all other businesses in the country.

We believe that competitive conditions will produce greater volumes of traffic and market share for the railroads. Our studies confirm this belief. We believe that it is unhealthy to have railroads operate in the current federally sheltered environment. This artificial habitat is unhealthy for rail customers ... and unhealthy for railroads too.

Railroads may say here today that they cannot survive in an S. 919 world. In other words, a world in which competition drives prices and innovation, not captivity. If that is true...if it is true that an American industry cannot survive without these kinds of unfair and non-competitive market practices, then the whole issue bears even closer examination.

Congress has taken a look at many other industries that have been characterized by a monopoly or oligopoly market structure and has seen it necessary and appropriate to introduce competitive balances for the sake of national policy. The consuming public ultimately pays for all of this.

Yet, we have seen no real action to address similar issues in the railroad industry. In this national railroad industry, four mega carriers generate 95% of the gross ton-miles and 94% of the revenue. Two western carriers generate 92% of the gross ton-miles and 90% of the revenues in the west. Four of these carriers handle over 90% of the U.S. coal movements. Three of these carriers control over 70% of the grain movement.

In other industries of national importance, Congress has moved to introduce competition as the best means for ensuring consumer and customer protections. The shipping community—of which as many as 1/3 or more of us are captive to only one railroad—is here today to ask you to bring competition to the rail industry as the best means of protecting our collective economic competitiveness.

For the record, characterizing such changes as “reregulatory,” as the railroads have done, would require that no regulatory system exist at all. That clearly is not the case as in July, 2003, two months ago, this Subcommittee took up the issue of reauthorization of the regulatory body empowered to oversee the railroad industry. ARC and the agricultural rail customers are interested in promoting market-based competition as a long-term replacement for regulation, and in order to achieve that end, existing regulations must be reformed to encourage the gradual re-emergence of competition.

Clearly, there are areas where the STB itself can make immediate improvements within the parameters of authority already granted by existing statutes. To date, however, STB decisions have demonstrated either an unwillingness or inability of this body to include

the legitimate measurement of competition in its deliberations. It is for this reason that the Alliance for Rail Competition and the agricultural rail customers believe that these issues must be addressed legislatively. Captive rail customers will continue to advocate the passage of legislation that will encourage competition in the rail market place in both the short and long-term.

While the wheat and barley groups, along with ARC and the coalition of rail customer groups support S. 919, we know that there may be better ideas out there. In an ideal world we would like to join an effort to find solutions, which includes all parties, certainly including the railroads. But we do believe that something substantive must be done. The day has long since passed when anyone can credibly say that there is no problem, or that things are just great as they are. For those of you who make policy, to avoid acting will sure produce problems that will be larger, more complex and more expensive to fix. The time to begin solving this is right now.

Madam Chairwoman, I'd like to thank you once again for the opportunity to testify before you today about these important issues. I'd also like to request that both my written and oral statements today be made a part of this hearing record

Thanks for your consideration, and I'd be happy to answer any questions that you may have.

s/  _____ |