December 5, 2019

The Honorable Deb Fischer
Chairman
Subcommittee on Transportation and Safety
Committee on Commerce, Science, and Transportation
United States Senate

The Honorable Tammy Duckworth
Ranking Member
Subcommittee on Transportation and Safety
Committee on Commerce, Science, and Transportation
United States Senate

The Honorable Daniel Lipinski
Chairman
Subcommittee on Railroads, Pipelines, and Hazardous Materials
Committee on Transportation and Infrastructure
United States House of Representatives

The Honorable Rick Crawford
Ranking Member
Subcommittee on Railroads, Pipelines, and Hazardous Materials
Committee on Transportation and Infrastructure
United States House of Representatives

Dear Chairmen Fischer and Lipinski, Ranking Members Duckworth and Crawford, and Members of the Subcommittees,

We write to you today to emphasize the significance of the Surface Transportation Board's (STB) forthcoming December 12 and 13, 2019, hearing on railroad revenue adequacy (Docket Nos. EP 722 and 761). Congress has made substantial efforts to reduce heavy-handed railroad regulation, including the expansion of strict rate regulation. The potential for the STB to use revenue adequacy as a means to institute price controls is deeply troubling.

Going forward, we recommend that Congress exercise close oversight of the STB and its remaining authorities. Partial freight rail deregulation by Congress has allowed this industry to become highly efficient in recent decades. As a result, America's private freight railroads provide innumerable benefits to U.S. businesses and the economy.

Specifically, we would like to highlight several concerns with the STB's approach to revenue adequacy raised by leading railroad regulation scholars, who authored the 2015 report *Modernizing Freight Rail Regulation* (TRB Special Report 318) for the National Research Council's Transportation Research Board of the National Academies of Sciences. These experts' concerns regarding possible changes to revenue adequacy determinations and the use of those determinations in administering railroad regulations were submitted to the STB on October 29, 2019, and include:

- **Arbitrary calculations:** "The proposal would establish rate increase caps based on the relationship of a shipper's rates to a benchmark calculated using costs derived from the inherently arbitrary Uniform Rail Costing System (URCS) and arbitrary allocations of profits that exceed the cost of capital."
- **Divorced from economic reality:** "We are deeply concerned that this approach creates a rate increase constraint that is divorced both from economic reality and from a well-articulated goal that the proposal is designed to achieve."
- **Contrary to stated intent:** "This proposal could move STB rate regulation in the direction of public utility regulation rather than the protection of captive shippers."

Such an approach runs counter to Congress's intent in partially deregulating the railroad industry and would threaten the future health of America's railroads—which in turn would risk the massive gains to consumers from reforms enacted over the last four decades. We urge you to closely monitor the December 12 and 13 hearing and the two revenue adequacy proceedings at issue to ensure the United States will preserve these societal benefits far into the future.

Sincerely,

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Competitive Enterprise Institute

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President
American Commitment

Steve Pociask
President
American Consumer Institute

Roslyn Layton
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