



# *The Surface Transportation Board*

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**STB Acting Chairman  
Francis P. Mulvey**

**Briefing for Congressional Staff  
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# Transportation Regulation

- Granger Laws – first attempts at railroad regulation
- Act to Regulate Commerce of 1887
- Early history of the act – Strengthening the Act 1887-1917



# Transportation Regulation Continued

- Expanding the scope of regulation
  - Pipelines 1906
  - Motor Carriers 1935
  - Airlines 1938
  - Waterways 1940
- Transportation economic regulation very uneven
- Over time most observers concluded regulation was inappropriate for air and truck and poorly done for rail



# The Deregulation Movement

- Air Cargo Deregulation Act of 1977
- Airline Deregulation Act of 1978
- Motor Carrier Act of 1980
- Staggers Rail Act of 1980
- Bus Regulatory Reform Act of 1982
- Interstate Commerce Commission Termination Act of 1995



# The Surface Transportation Board Today

- Created by ICC Termination Act of 1995
- Successor agency to the ICC—child of deregulation
- Residual economic regulation of the railroads
- Reduced scope of regulatory activity--  
*many rail movements deemed competitive*
- Smaller staff



# STB Mission

- Exclusive review and approval of rail mergers
- Review rail rates and practices to ensure they are reasonable and not discriminatory
- Approval, including environmental review, of
  - (i) construction of any new rail line or
  - (ii) abandonment of existing lines
- Motor carrier collective ratemaking activities
- Rates for water carriers in non-contiguous domestic trade
- Rates for pipelines not carrying energy products



# STB Merger Authority

- Mergers in the post-Staggers Era
- STB merger policy in 1990's
- Merger moratorium
- Categories of merger transactions (major, significant and minor)
- Mergers and downstream impacts



# STB Responsibilities over Rates and Service

- Oversee and monitor rail practices nationally
- Enforce common carrier obligation
- Ensure rail practices are reasonable
- Ensure that rates charged captive customers are reasonable
- Allow railroads to earn adequate revenues
- Determine the railroads' cost of capital and whether they are revenue adequate



# Rate Case Resolution (Large Shipments)

- Determination of market dominance (180% R/VC)
- Constrained Market Pricing and Ramsey Pricing
- Stand Alone Cost Test—*Fact based approach rooted in economic reasoning approved by courts*
- No substitute for preparing a strong case with solid evidence
- Balance railroads need to earn adequate returns and shippers need for fair and reasonable rates



# Changes to Approaches to Large Rate Cases

- SAC approach has been criticized as artificial and overly complex
- SAC approach is very costly and time consuming
- Streamlining reduces time and cost of adjudication
- First cases under new procedures



# Rate Case Resolution (Small Shipments)

- ICC adopted procedures for small rate cases in 1987 but courts struck them down
- STB adopted Simplified Guidelines in 1996 but never used them
- 20 years without finalizing the approach
- Small rate cases guidelines adopted last year
- First cases adjudicated under new guidelines (DuPont)



# Environmental Review

## Authority over New Construction

- DM&E/PRB
- Yucca Mountain
- Tongue River

## Major Acquisitions (CN/EJ&E)

## Abandonment Cases



# Abandonment Cases/Paper Barriers

- Offers of Financial Assistance (OFAs)
- Rails to Trails
- Line sales and paper barriers
- Recent STB action on paper barriers



# Other STB Powers

- Amtrak – Enforce Preference over Freight Rail
- Mediate access to freight rights of way for commuter rail
- Emergency service orders
- Operating issues (e.g. car supply, unreasonable practices)
- Industry specific meetings
- Interchange and switch connections between railroads
- Requests for terminal access



# STB Rail Consumer Assistance Program

- Facilitates informal resolution of disputes with RR's
- Brings issues to RR's attention rapidly
- Solves problems without litigation
- Promotes rail service improvements
- 442 complaints handled in 2008, over 2058 handled since program began in 2000



# Rail Customer Public Assistance Program Contact Information

- Toll-free telephone 866-254-1792
- Written statement of the problem
  - Email: [stbhelp@stb.dot.gov](mailto:stbhelp@stb.dot.gov)
  - FAX: 202-245-0461
- Web form at

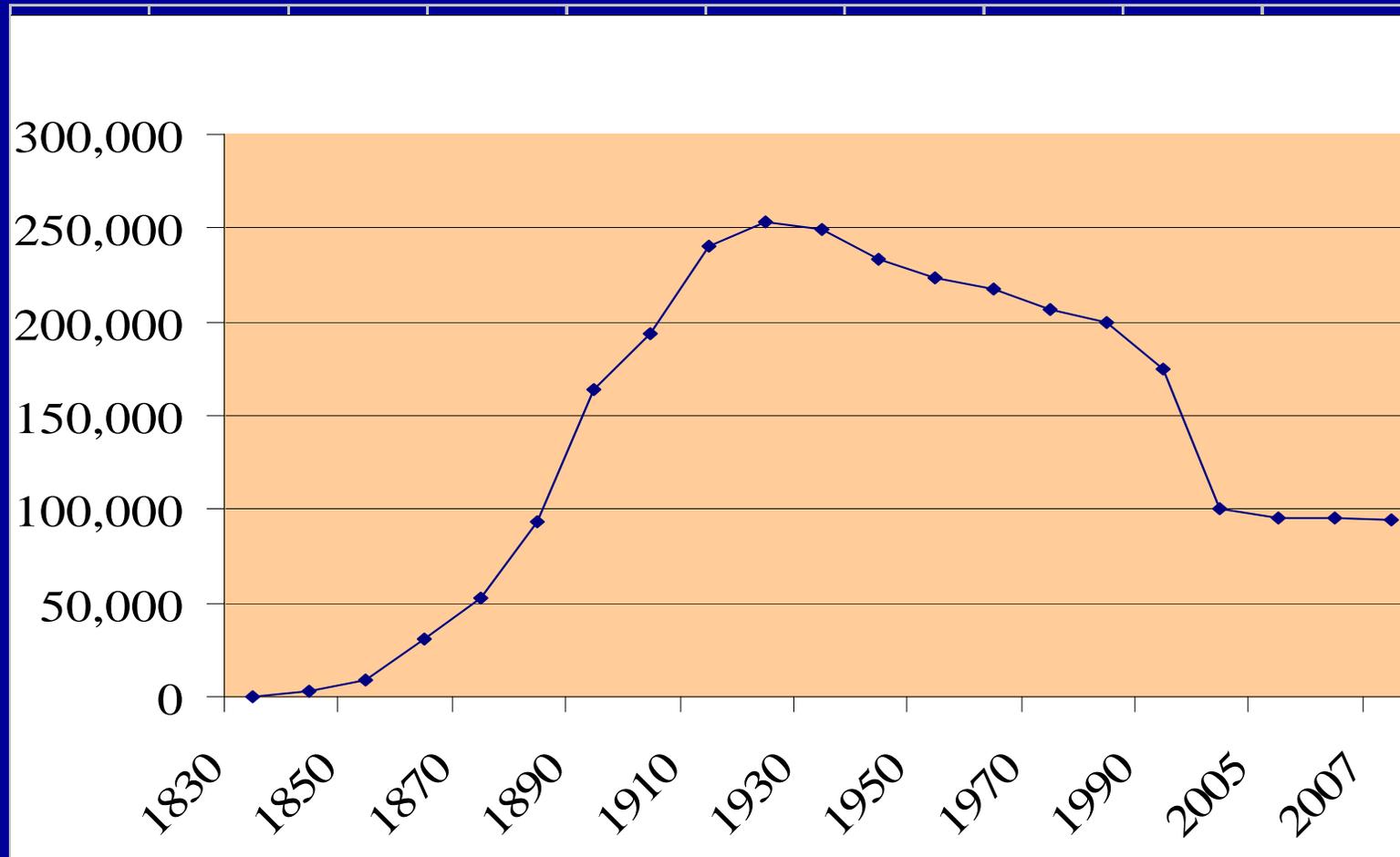
<http://www.stb.dot.gov/railcustomerpublicassistance.nsf/request?OpenForm>



# Current Rail Industry Situation

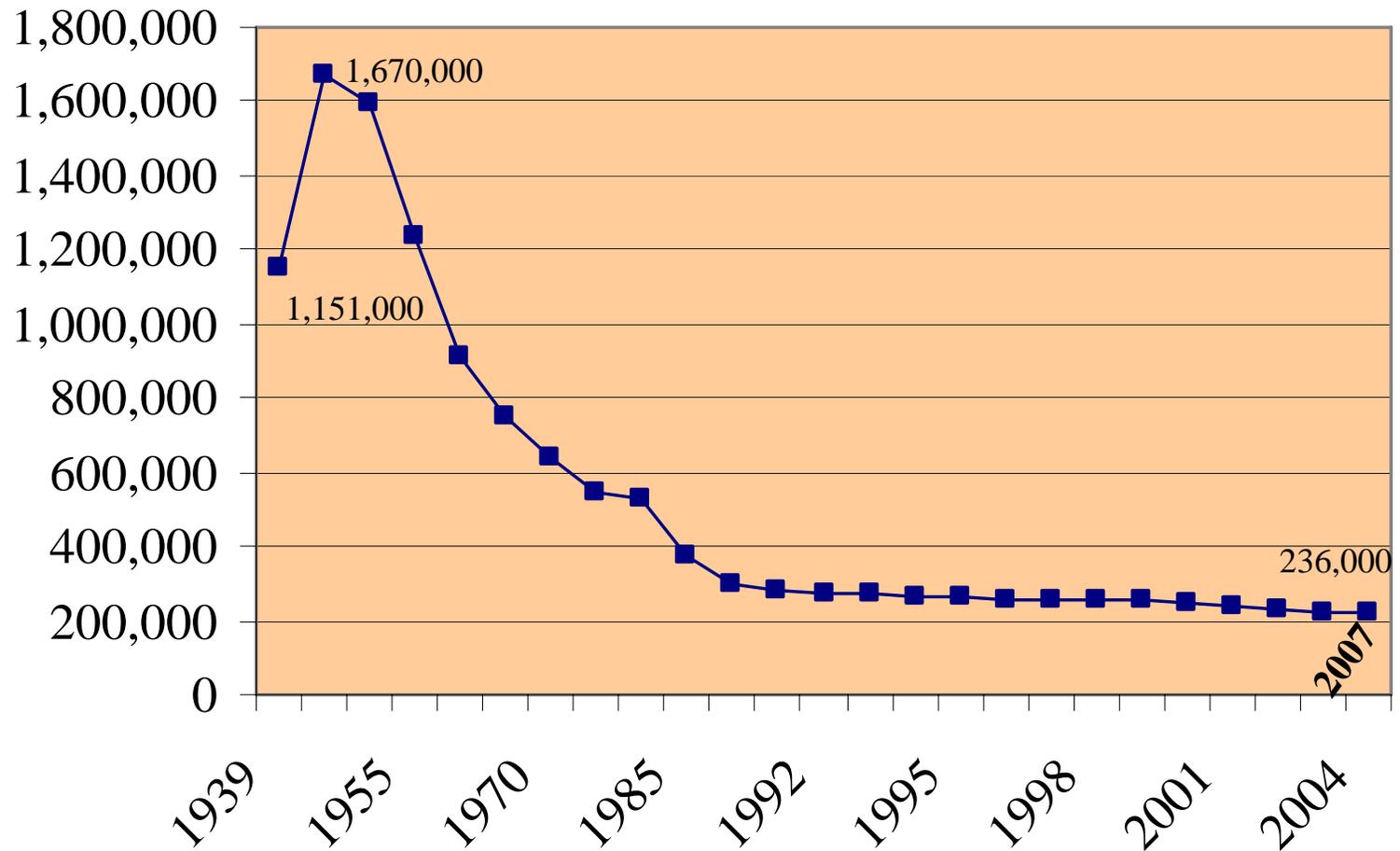


# Growth & Decline of Class I Railroad Mileage





# Railroad Employment 1939-2007





# Railroad Capacity Issues

- Rail rate and service issues often demand and capacity driven
- Agency's role on capacity not clearly defined
- Most commodities are deregulated and/or modally competitive
- Interstate Commerce Act laws and doctrine look at reasonableness
- Rail Customers want fairness
- STB Responsibility is to system as a whole



# Capacity Issues

- After years of excess capacity, shortages arose in mid-2000's
- Economic growth spurred intermodal traffic
- Trucking capacity grew limited due to higher fuel prices, driver shortages, etc
- Traffic down dramatically in past 6 months—tens of thousands of cars and thousands of locomotives idled



# Capacity Issues Long-term

- Future demand for freight movement predicted to increase, but by how much?
- Challenge for private companies to meet that demand
- Constraints on rail capital investment
  - RRs inability to earn adequate revenue
  - Demands of investors
  - Undercapacity and overcapacity at the same time
- Demands of changing freight flows



# Potential for Public Investment in Rail Infrastructure

- Can railroads earn enough to maintain and expand the network and fund needed investments such as PTC
- Railroad Trust Fund concept – Class I opposition
- Public Private Partnerships (PPPs) –
  - Create
  - Alameda Corridor
- Short Lines and 286K ton car problem
- Investment tax credits—Railroad's Solution



# Railroad Industry Cost of Capital and ROI 1996-2007

	Cost of Capital	BNSF	CSXT	NS	UP	KCS	SOO	GT
1996	11.9%	8.6%	8.9%	13.0%	9.3%	7.2%	23.5%	0.0%
1997	11.8%	8.4%	9.8%	13.1%	5.2%	3.6%	12.3%	5.2%
1998	10.7%	9.7%	8.1%	10.5%	2.9%	9.1%	4.9%	3.0%
1999	10.8%	9.5%	3.8%	5.2%	6.8%	6.4%	2.5%	25.4%
2000	11.0%	8.8%	3.6%	5.5%	6.9%	6.3%	5.6%	5.9%
2001	10.2%	7.1%	4.6%	8.3%	7.6%	7.0%	5.9%	4.9%
2002	9.8%	6.4%	5.2%	9.1%	8.6%	6.5%	5.7%	3.1%
2003	9.4%	6.2%	4.0%	9.1%	7.3%	3.7%	0.01%	4.5%
2004	10.1%	5.8%	4.4%	11.6%	4.5%	8.3%	3.3%	6.0%
2005	12.2%	10.3%	6.2%	13.2%	6.3%	5.9%	8.9%	8.1%
2006	9.9%	11.4%	8.2%	14.4%	8.2%	9.3%	11.6%	9.5%
2007	11.3%	10.0%	7.6%	13.6%	8.9%	9.4%	15.3%	10.1%



# Legislative Initiatives

- STB reauthorization—House and Senate bills. Designed to enhance competition, but railroads call them re-regulation
- Change in antitrust immunity for railroads



# STB/Rail Presentation

- Thank You. Any Questions