# The Freight Railroad Monopoly: The Problem, The Solution

CURE

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# Freight Rail Monopoly Problem

# Staggers Act of 1980

- Changed railroad regulatory program from strict and pervasive regulation to presumption of deregulation.
- Market competition was to replace government regulation.

# Staggers Act of 1980

- Regulatory program presumes access to competition and presumes no regulation of relationships between rail and its customers.

- Railroad kept their pre-Staggers Antitrust Exemptions.

Thirty years later – Where are we?

# How Staggers Works Today

- No prior approval of railroad rates.
- Railroads can charge shippers whatever they wish.
- Competition can and does restrain rates.
- Very little rail-to-rail competition in the U.S. today.

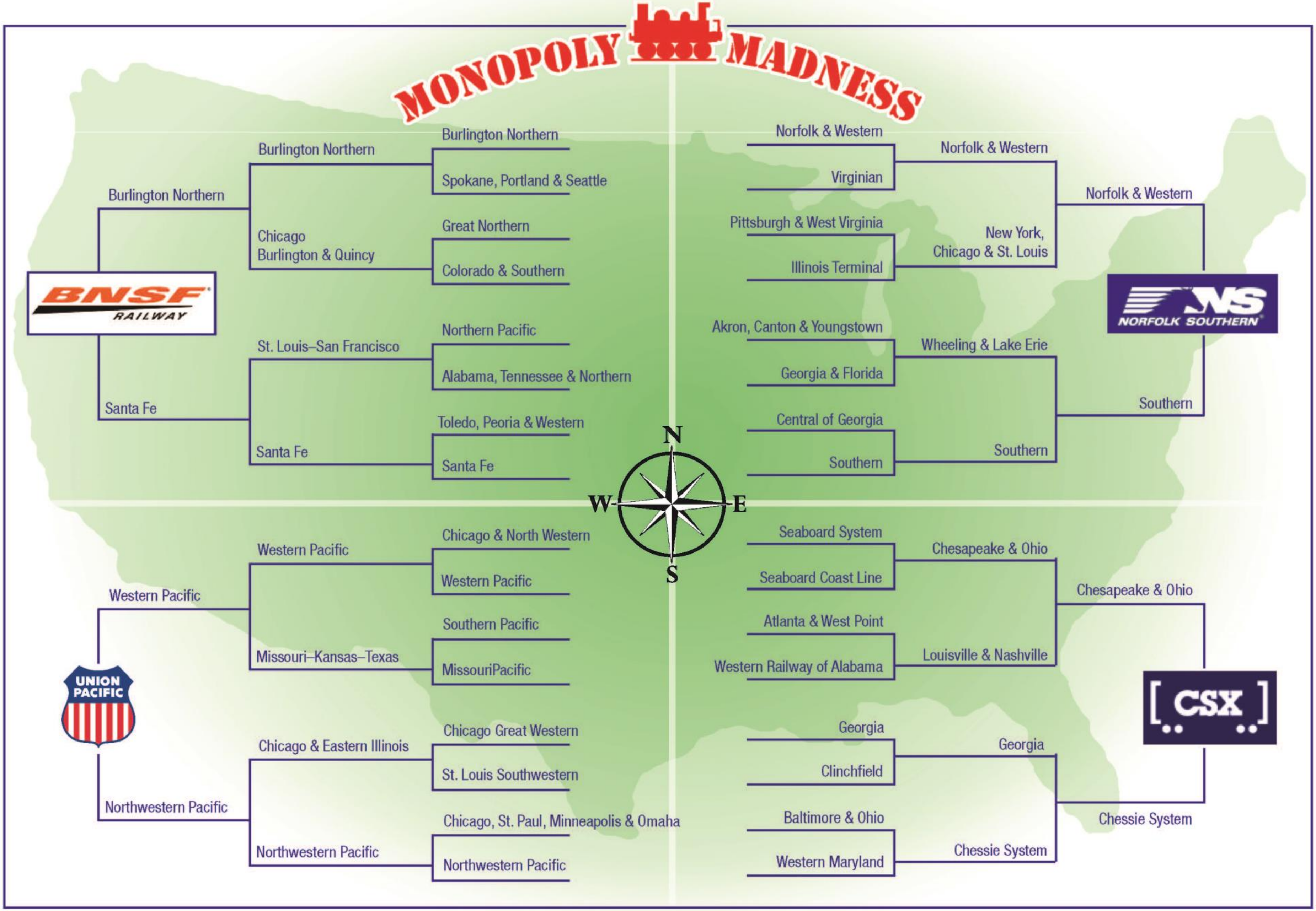
# How Staggers Works Today (cont'd)

- The STB has approved railroad practices that:
  - Close switches that could take freight to a competing railroad.
  - Refuse to provide a rate to a point where a shipper can access a competing railroad.
  - Approve long-term "tie-in" agreements between short-line and major railroads that deny shippers access through the short-line to a second major railroad.
- Shippers that must use rail often confront a take-it-or-leave-it rate, terms and conditions.

# How Staggers Works Today (cont'd)

- If a rate is too high, some rail-dependent shippers can challenge the rate at the STB; shipper bears all the burdens of proof. Must meet several criteria.
- Rail-dependent shippers must pay a minimum of 80% more than the direct cost to the railroad of moving the freight.
- Maximum rate: what the shipper would pay if it built and operated its own railroad at current costs.
- Cost of rate case: $7 million plus.
- Time for a rate cases: many years, one current case is going on 10 years.
- Chance of winning: less than 50%.

# How Did This Happen?

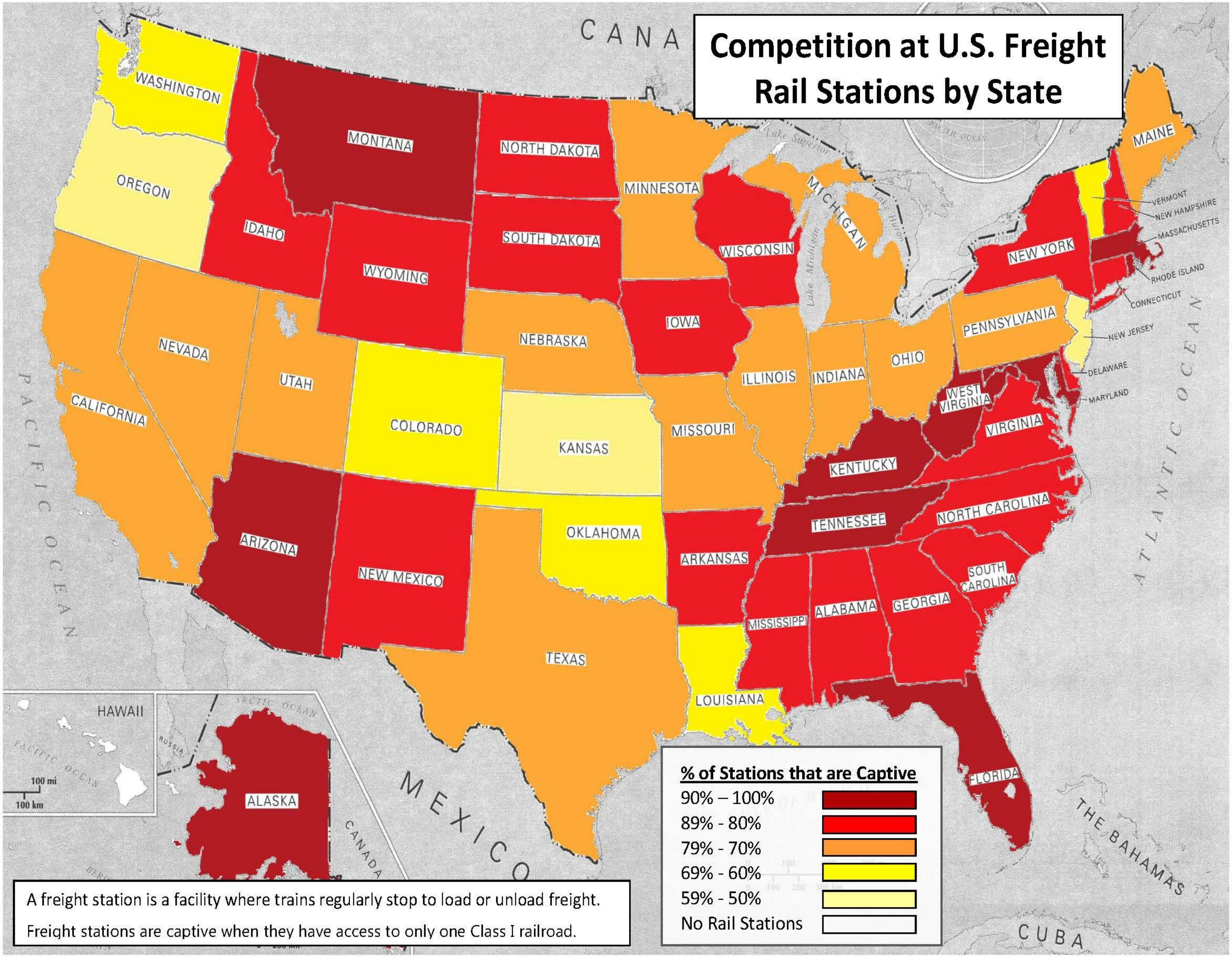



**It's the opposite of competition.** In 1980 there were over 40 railroads. Today there are just four major railroads that have divided the country into their own regional monopolies. Congress needs to stop the Monopoly Madness by reforming the Surface Transportation Board. Because when railroads compete, consumers win.

*[NOTE: Monopoly Madness chart is for illustration purposes only and is merely representative of the mergers and acquisitions that have occurred in the railroad industry.]*

# Results

# Competition at U.S. Freight Rail Stations by State




**% of Stations that are Captive**

- 90% – 100%
- 89% - 80%
- 79% - 70%
- 69% - 60%
- 59% - 50%
- No Rail Stations

A freight station is a facility where trains regularly stop to load or unload freight.

Freight stations are captive when they have access to only one Class I railroad.

# Rail Stations

- Place where freight railroads regularly pick up or deliver freight.
- Over 28,000 rail stations in the United States.
- Over 78% are served by a single railroad.
- Portions of 22% may also be served effectively by one railroad that controls the second railroad.

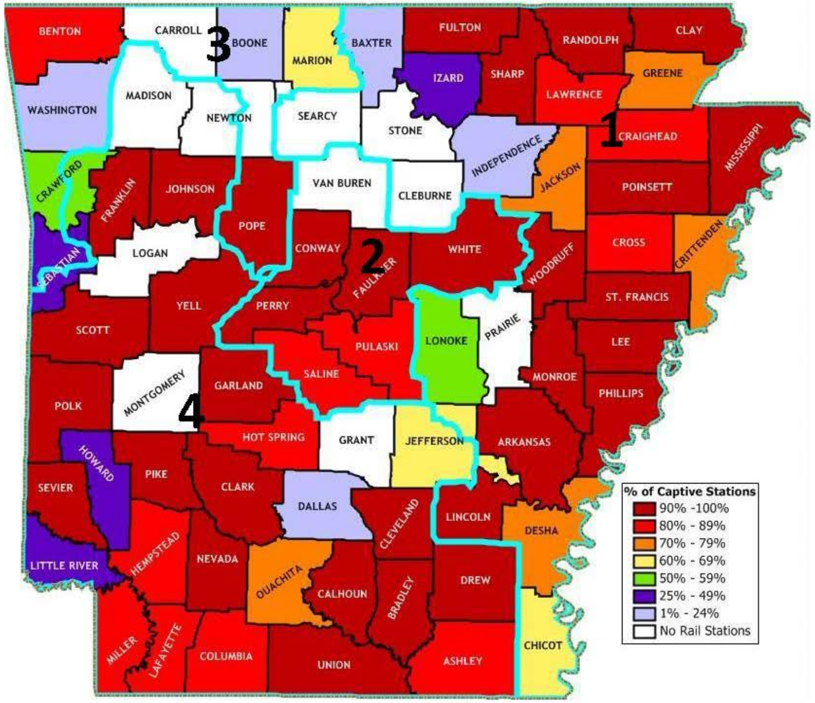
# Rail Stations

- Every state has at least 50% of its rail stations served by one railroad, except
  - Alaska – one state owned railroad, and
  - Hawaii – no rail stations

- Map only works if you are rail dependent.  Does not apply to situations where rail customers can use truck or water transportation.

# Competition at Freight Rail Stations in the Congressional Districts of Arkansas

Average Arkansas Rail Station Captivity 81.0%




- Numbers represent Congressional District numbers, Congressional Districts are outlined by a heavy blue line.
- A freight station is a facility where trains regularly stop to load or unload freight.
- Freight Stations are captive when they have access to only one Class I railroad

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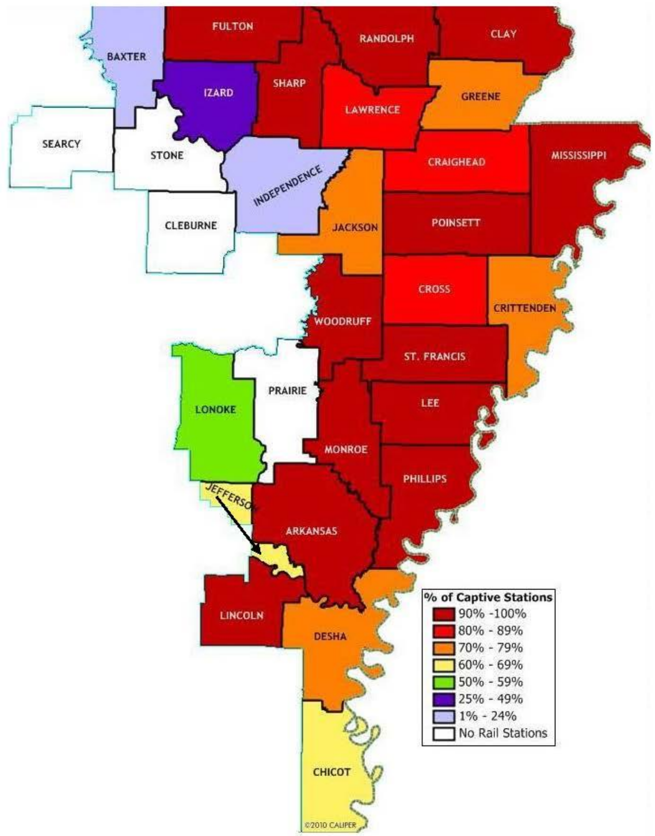
## Competition at Freight Rail Stations in the 1st Congressional District of Arkansas

Average Rail Station Captivity 77.6%




- Average Rail Station captivity is the average of all counties included in a Congressional District.
- A freight station is a facility where trains regularly stop to load or unload freight.
- Freight Stations are captive when they have access to only one Class I railroad

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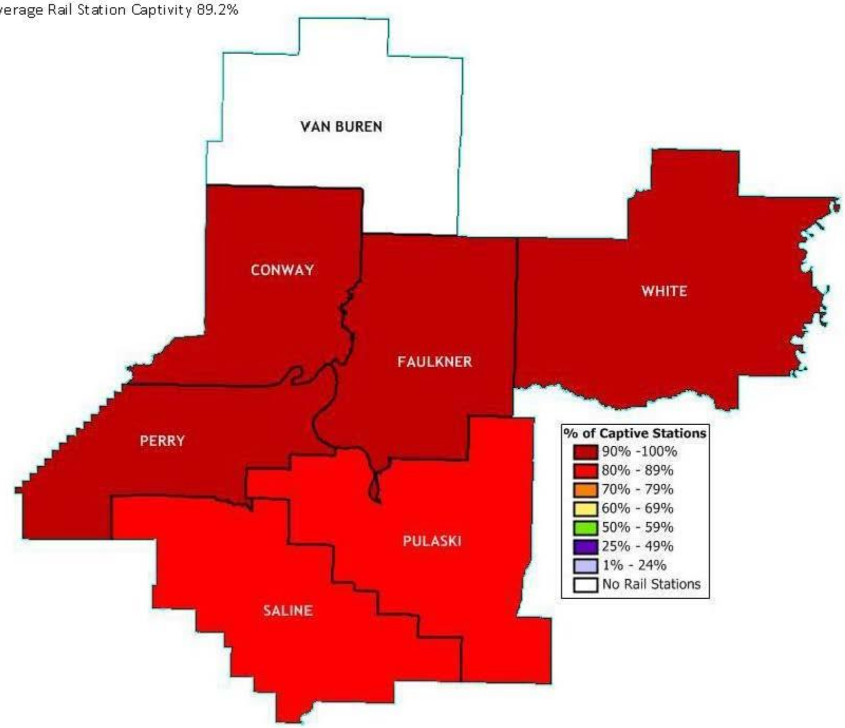
## Competition at Freight Rail Stations in the 2nd Congressional District of Arkansas

Average Rail Station Captivity 89.2%




- Average Rail Station captivity is the average of all counties included in a Congressional District.
- A freight station is a facility where trains regularly stop to load or unload freight.
- Freight Stations are captive when they have access to only one Class I railroad

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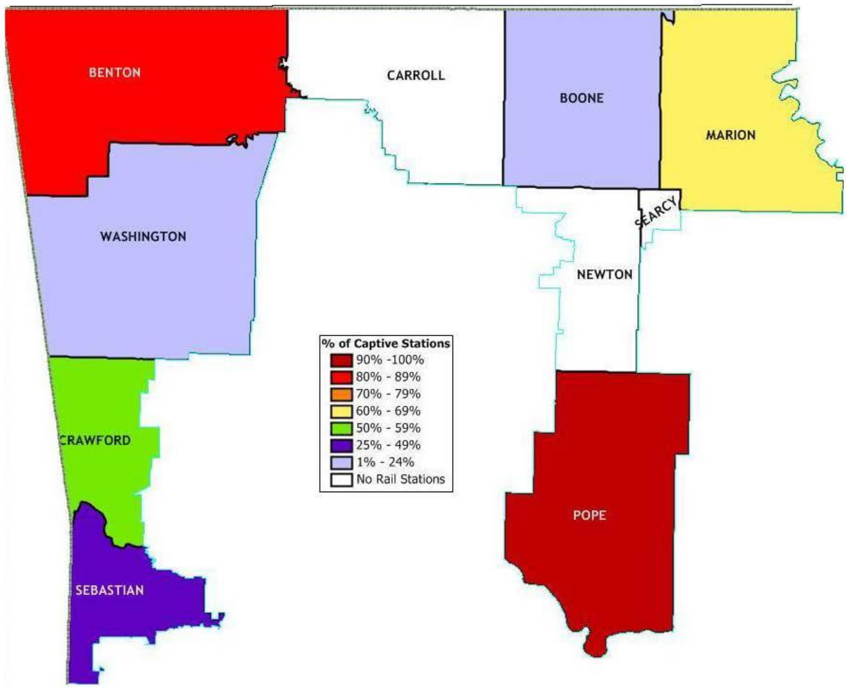
## Competition at Freight Rail Stations in the 3rd Congressional District of Arkansas

Average Rail Station Captivity 60.0%




- Average Rail Station captivity is the average of all counties included in a Congressional District.
- A freight station is a facility where trains regularly stop to load or unload freight.
- Freight Stations are captive when they have access to only one Class I railroad

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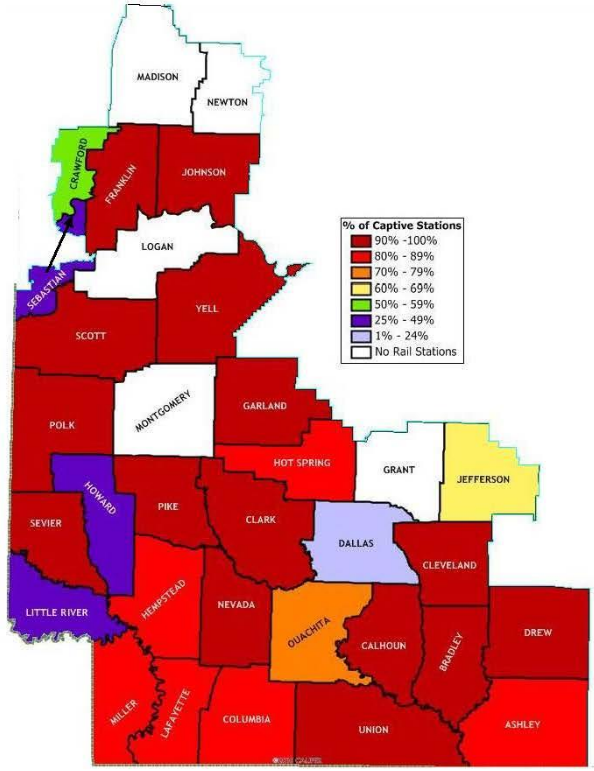
# Competition at Freight Rail Stations in the 4th Congressional District of Arkansas

Average Rail Station Captivity 82.9%




- Average Rail Station captivity is the average of all counties included in a Congressional District.
- A freight station is a facility where trains regularly stop to load or unload freight.
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# Cost of Captivity: Chemical Industry

- A recent study by the American Chemistry Council showed:
  - Chemical companies overcharged nearly $4 billion/year
  - Eliminating those captive rates would create over 24,000 jobs and generate $6.8 billion in economic output
  - Survey showed more than one third of chemical shippers do not file a complaint at the STB due to costs or other barriers
- Similar studies have been done for several other commodities

# Monopoly Pricing Power?

## In 2008, During the Sharpest Economic Downturn in Decades ...

### The Big Four Railroads' Revenues Were Up ...


### As Were Railroad Profits ...


### Even as They Shipped Lower Volumes.


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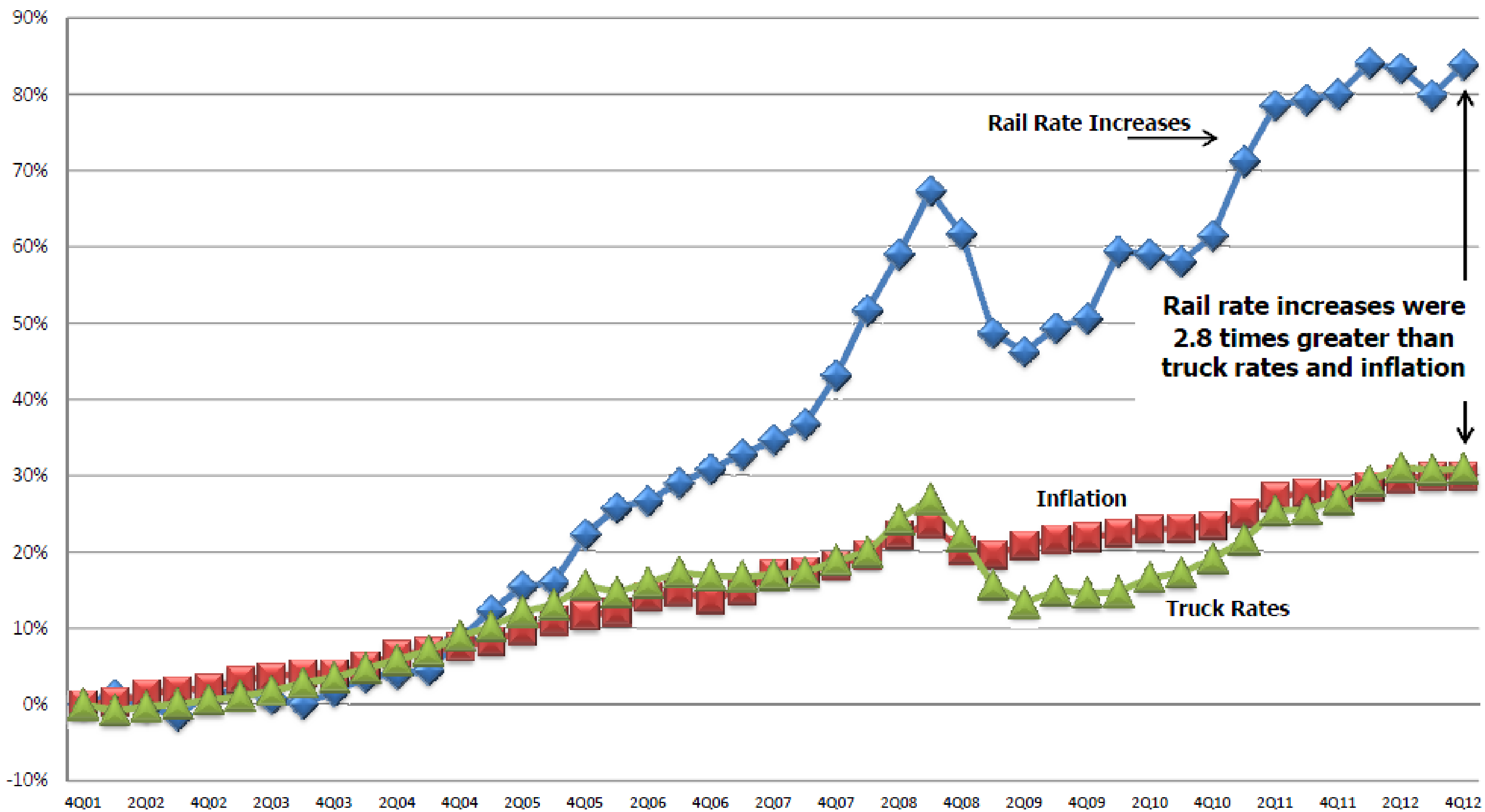
# Rail Industry Consolidation has Allowed Railroads to Increase Rates Dramatically More than Inflation and Trucking




The number of large railroads in the US have reduced from 26 in 1980 to only 7 by 2001. Following 2001 the percent increase in Rail Rates on the Big Four U.S. railroads has been 2.8 times greater than Inflation and Long Haul Trucking

Source: Rail Rate Increases - Big four railroad's average revenue per car isummed up from their SEC filings. Trucking Rates - BLS Long Haul Truck Rate Index , Inflation - uses CPI

# Today

By the Surface Transportation Board’s own studies, about 35% of the annual rail traffic, by weight, is “captive” – must move by rail and has access to only one railroad.

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

OFFICE OF OVERSIGHT AND INVESTIGATIONS
MAJORITY STAFF

# THE CURRENT FINANCIAL STATE OF THE CLASS I FREIGHT RAIL INDUSTRY

**Staff Report for Chairman Rockefeller**
**September 15, 2010**

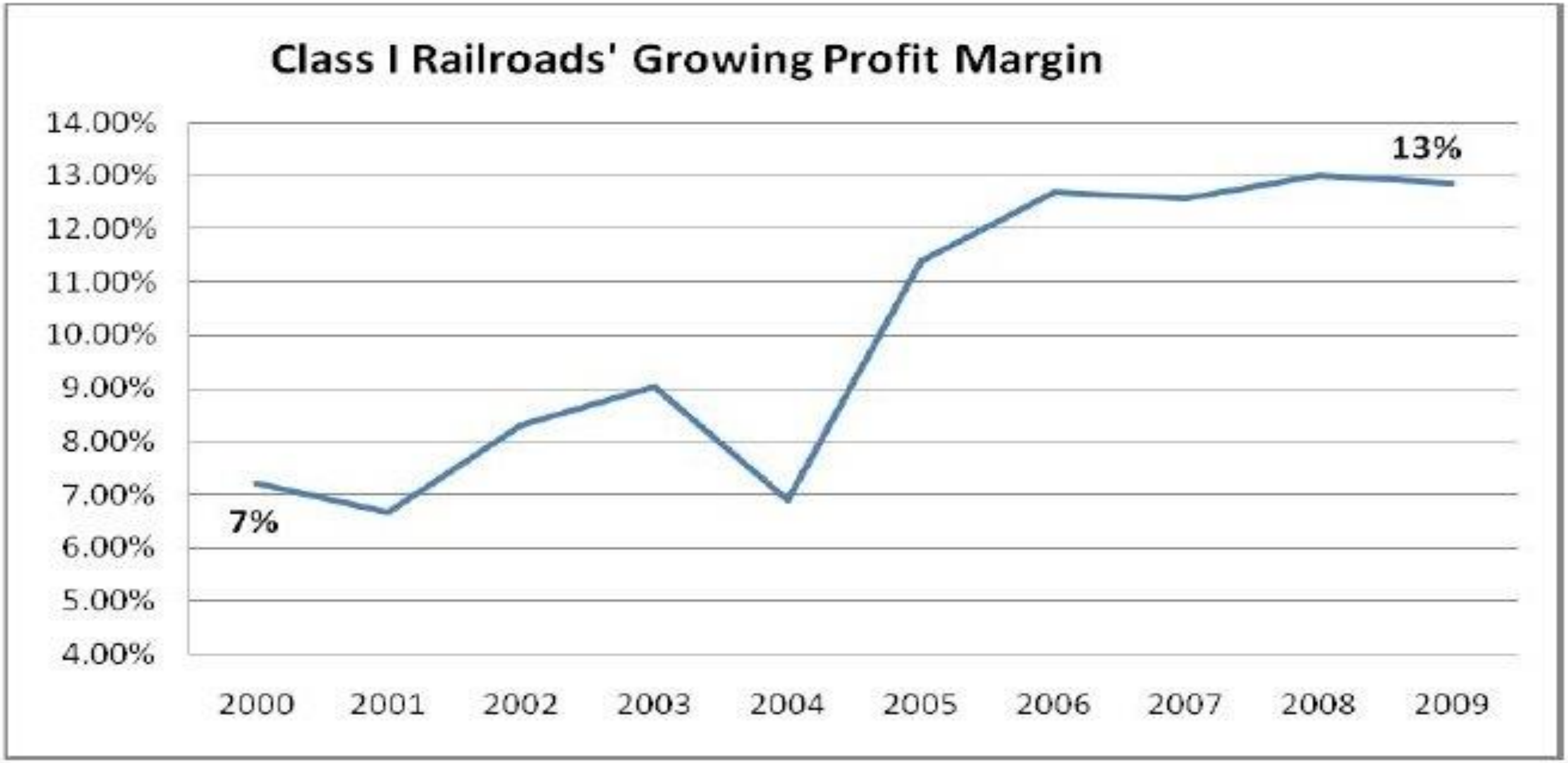



***Figure 1 – Combined Profit Margins (Net Income/Revenue) for BNSF, Union Pacific, CSX, and Norfolk Southern, 2000-09 (Source: SEC filings)***

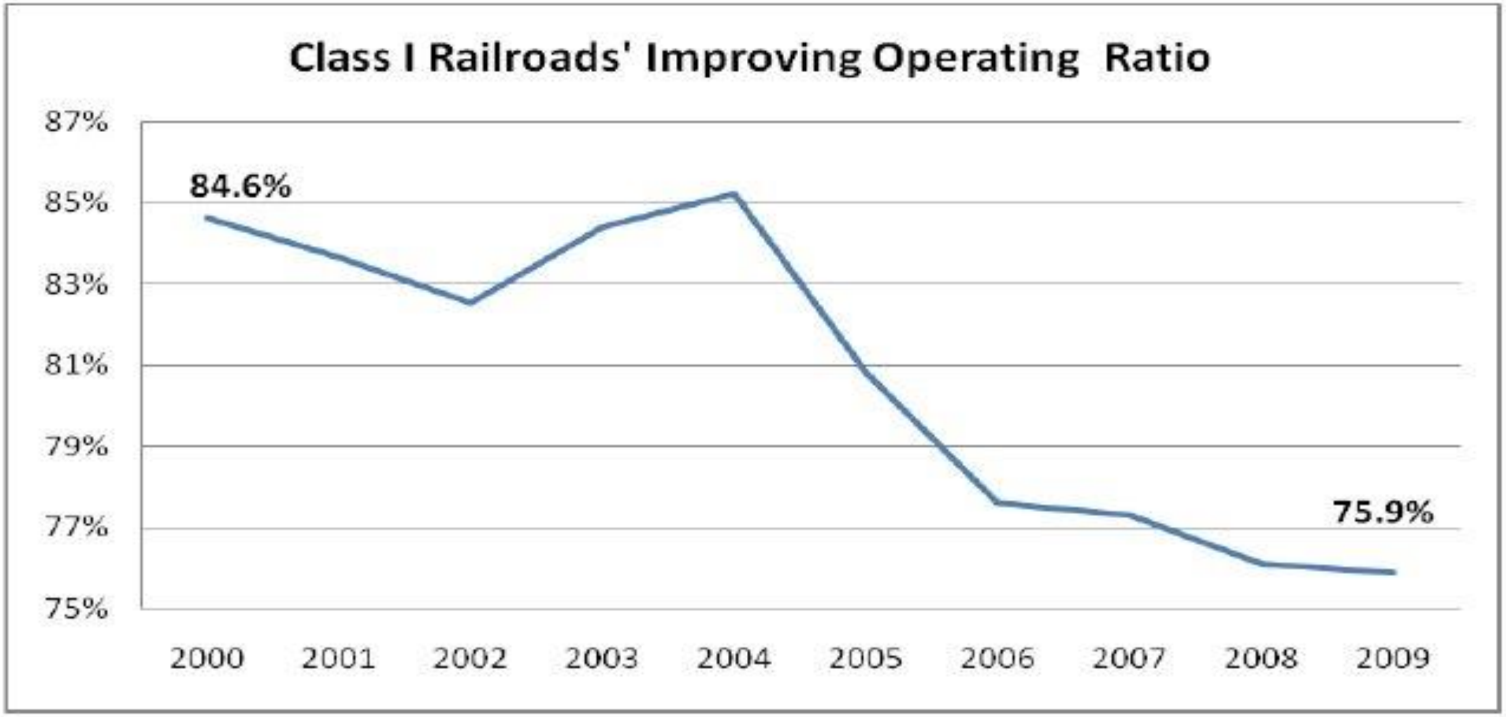



***Figure II – Combined Operating Ratios (Expenses/Revenues) for BNSF, Union Pacific, CSX, and Norfolk Southern, 2000-09 (Source: SEC filings)***


*Figure III – Stock Performance of BNSF, Union Pacific, CSX, and Norfolk Southern Compared to the S&P 500 Index, 2000-09 (Source: Google Finance)*

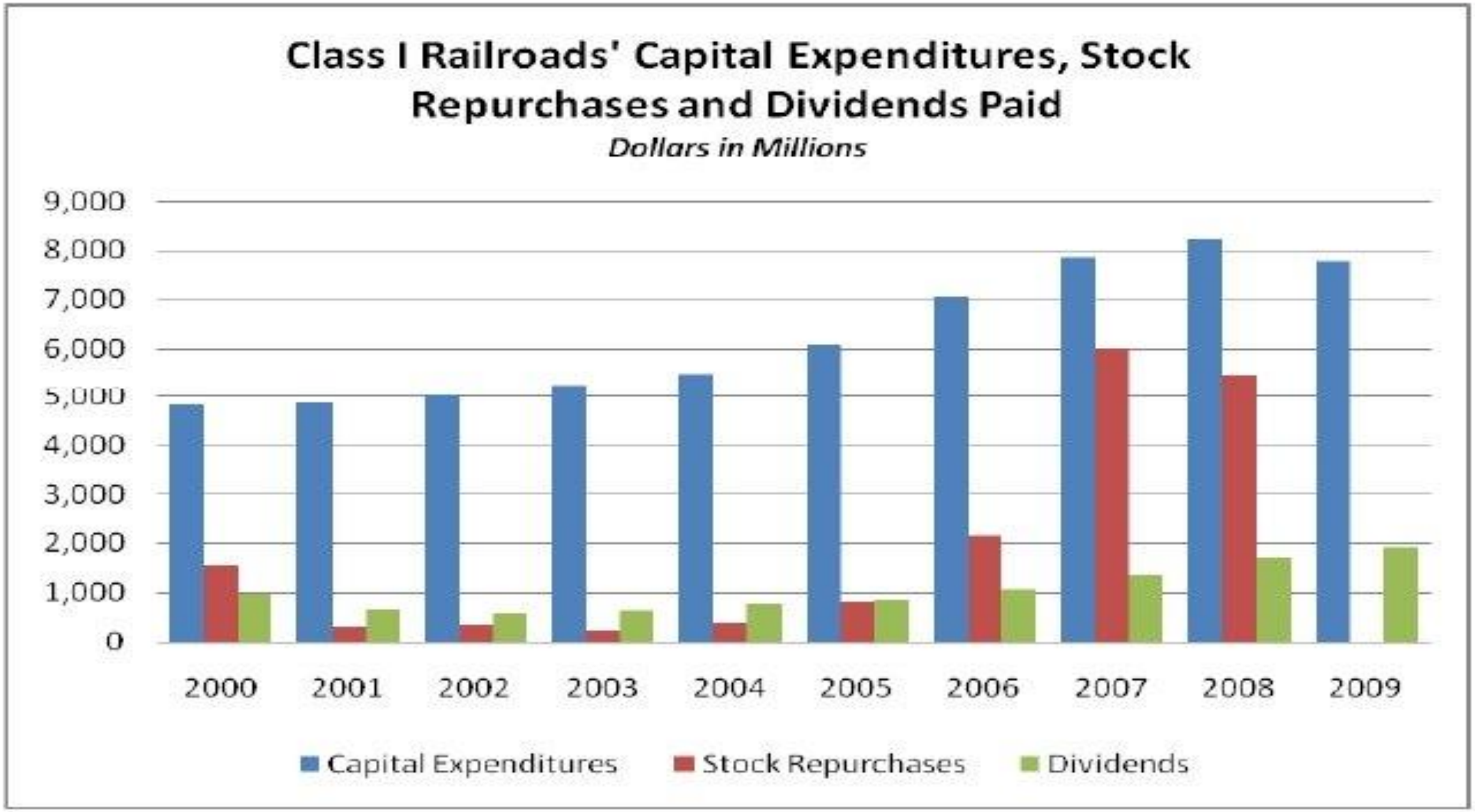
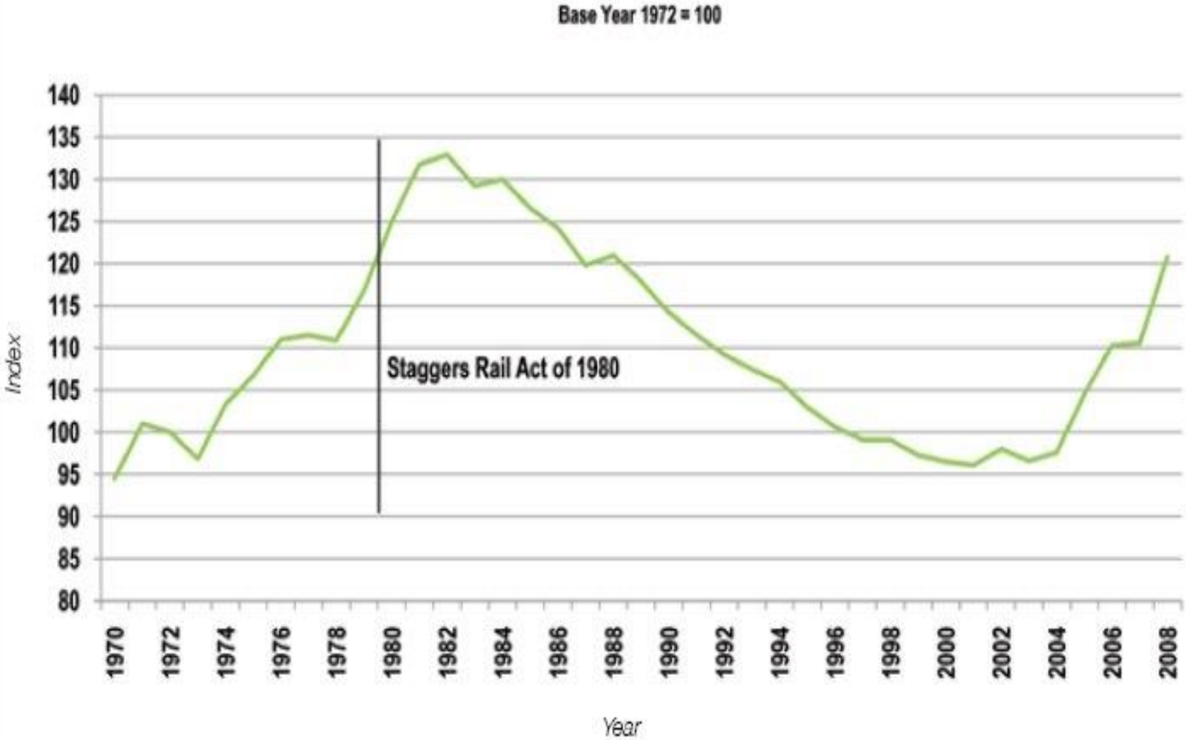



***Figure V – Combined Capital Expenditures and Public Stock Repurchases of BNSF, Union Pacific, CSX, and Norfolk Southern – 2000-09 (Source: SEC filings)***

## Figure 9: Index of Railroad Rates After Inflation

*Sources: U.S. Dept. of Labor, Bureau of Labor Statistics, Producer Price Index of Line-Haul Operating Railroad*
*U.S. Dept. of Commerce, Bureau of Economic Analysis, Implicit Price Deflator for Gross Domestic Product*




*Note: The period of declining rates ended in 2000. Through late 2007, due to increased demand and little excess capacity, freight rates began to move higher. Much of the increase in 2008 was due to the increase in fuel prices.*

U.S. Department of Transportation
Federal Railroad Administration

**National Rail Plan**

MOVING FORWARD

A PROGRESS REPORT | SEPTEMBER 2010

# The Solution

# 1. Stronger and Better STB

- New Commissioners
  - Commissioner Frank Mulvey's term expired at the end of 2012. Mulvey served his "bonus" year to the end of 2013.
  - Then the President nominated Deb Miller, former KS DOT Secretary. She has been confirmed by the Senate and has started to work at the STB. Her positions on rail shipper issues are unknown.
  - Chairman Dan Elliott's term expired at the end of 2013. He can serve a "bonus" year if the President does not nominate a replacement. Chairman Elliott could be renominated for another term but it is not known at this time if that will occur.

# 1. Stronger and Better STB (cont'd)

- Solve Government in the Sunshine Act Problem
  - No more than a quorum of a Federal Board or Commission can discuss pending matters.
  - STB has 3 Commissioners; 2 is a quorum.
  - Thus, no 2 STB Board members can discuss a pending matter.

# 1. Stronger and Better STB (cont'd)

- Increase Funding for STB
  - Current funding $30 million annually.
  - Insufficient resources to move matters through STB in reasonable time.
  - President's budget asked for an additional $1.5 million in funding.

# 2. Remove Railroad Antitrust Exemption

- Today – freight railroads not subject to antitrust law on any issue jurisdictional to STB.

- S. 638, the Railroad Antitrust Enforcement Act
  - Introduced on March 21, 2013, by Senators Klobuchar (D-MN) and Vitter (R-LA). Cosponsors are Senators Leahy (D-VT), Tester (D-MT), Franken (D-MN) and Baldwin (D-WI).

  - Senator Klobuchar chairs the Senate Judiciary Subcommittee on Antitrust and serves on the Senate Commerce Committee.

# 2. Remove Railroad Antitrust Exemption (cont’d)

- S. 638, the Railroad Antitrust Enforcement Act (cont’d)
  - Railroads have already made statements against the bill and asking Senators not to cosponsor.
  - Railroads do not want Department of Justice looking over their shoulders.
  - Subcommittee hearing expected this fall.

# 3. Guarantee of Competition Legislation

- Railroads “deregulated” in 1980 with presumption that transportation markets would develop.
- Deregulation works in competitive markets. 78% of rail customers serviced by only one railroad.
- At least 35% of the annual rail traffic by weight is “captive”.
- Result: monopoly pricing power.

# 3. Guarantee of Competition Legislation (cont'd)

- Legislation would:
  - Guarantee rail customers access to competition.
  - Empower the STB to implement.
  - Ensures Ex Parte 711 if successful, will result in competition.

# 4. Other Possible Reforms

- Allow STB Commissioners to Discuss Cases in Private.
- Competitive Switching/Access to Terminal Access.
- Quote a Rate to a Competing Railroad.
- Repeal Most Exemptions from STB Jurisdiction.
- STB to Develop New Maximum Rate to Replace “Stand Alone Cost” Methodology.

# 5. Farm Bill Amendments

- Farm bill that passed contained two amendments:
  - 1) updates a study of rural transportation issues released by USDA / USDOT in April 2010
  - 2) directs Secretary of USDA to participate in STB proceedings that establish policy that affects relevant to rural America

# 6. Educate Members of Congress

- 197 Members of Congress elected since 2010 (approx. 36%) of congress
  - 30 Senators
  - 167 House Members

- Most have no knowledge of freight rail monopoly problem.

# Railroad Opposition

# Railroad Opposition

- Four big U.S. railroads (NS, CSX, UP and BNSF) and AAR spent over $34 million lobbying Congress in 2012.

- 44 lobbying firms plus Washington office staff of the railroads.

- In addition, the railroads have several paid grassroots organizations, advertise "freight rail works" extensively in the print media, on the internet, on the radio and on television.

# Railroad Opposition (cont'd)

- Railroads estimated to spend $75 to $100 million annually preserving their monopoly.

- Their lobbyists, Washington office staff – and their CEOs – work Congress and the Administration constantly.

- The filing of the recent petition at the STB confirms our suspicions:  the regulatory program is not yet to their liking and they plan to be aggressive.

# For More Information

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