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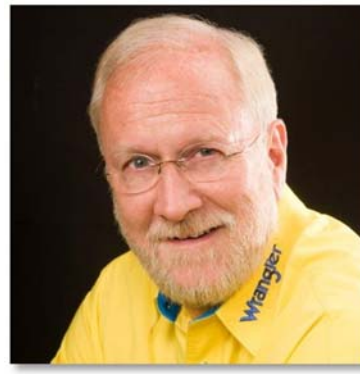
TRANSPORTATION REPORT



From: Terry Whiteside

Date: April 18, 2016

Here at Whiteside & Associates, our Team surveys a broad cross-section of actions by the Executive, Congressional and Federal Administrative agencies to attain a complete picture of happenings that may affect transportation. This is an article describing the findings published in a Council of Economic Advisors Issue Brief on the White House website

Federal Communication Commission (FCC) Issue Prompts White House To Issue An Executive Order to Federal Regulatory Agencies To Focus On Enhancing Competition

Backgrounder:

The Obama Administration apparently is reaching out Friday April 15th to federal agencies to evaluate whether more should be done to alleviate over-concentration in the corporate field.

This report includes a link here of the new Council of Economic Advisors an issue brief on competition issues throughout the American corporate world entitled, "BENEFITS OF COMPETITION AND INDICATORS OF MARKET POWER", posted on the White House

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website: https://www.whitehouse.gov/sites/default/files/page/files/20160414_cea_competition_issue_brief.pdf

From the issue brief, “This issue brief describes the ways in which competition between firms can benefit consumers, workers, entrepreneurs, small businesses and the economy more generally, and also describes how these benefits can be lost when competition is impaired by firms’ actions or government policies.”

“The causes underlying a possible decrease in competition and corresponding increase in market power are not clear, but candidate explanations include efficiencies associated with scale, increases in merger and acquisition activity, firms’ crowding out existing or potential competitors either deliberately or through innovation, and regulatory barriers to entry such as occupational licensing that have reduced the entry of new firms into a variety of markets. Government action can help reverse this trend.”

“This brief argues that consumers and workers would benefit from additional policy actions by the government to promote competition within a variety of industries. In addition, more work is needed to understand how policies that promote competition should be applied in the digital economy and other technologically dynamic sectors.”

In the Conclusion section, the report finds, “Competitive markets promote economic efficiency and growth. Their benefits can include lower prices and better products for consumers, greater opportunities for workers, and a level playing field for entrepreneurs and small businesses that seek to enter new markets or expand their share. When firms take action to impede competition,

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through anticompetitive mergers, exclusionary conduct, collusive agreements with rivals, or rent-seeking regulation to restrict entry, their profitability may increase, but at the cost of even greater reductions in consumer welfare and societal benefits.

In addition, **the White House plans to issue an Executive Order in the next several days; the end of the quote below indicates they want agencies to report back in 60 days. Sixty days for action at the STB is breakneck speed – however, the STB is close to issuing a decision to a three year old proceeding known as Ex Parte No. 711 Competitive Switching and Ex Parte No. 665 Railroad Transportation of Grain Rate Regulation.**

While focusing on FCC matters, please note the last paragraph in bold, posted on the WH website. Here was the wording toward the end of the Executive Order applying to the independent agencies like the STB:

"(b) Independent agencies are strongly encouraged to comply with the requirements of this order."

The STB has made efforts in the past to comply with similar Executive Orders, such as the 2011 one for updating regulations in general, Executive Order 13,563, "Improving Regulation and Regulatory Review" and Executive Order 13,579, "Regulation and Independent Regulatory Agencies." They issued final rules resulting from those Executive Orders on February 18, 2016, in EP 712. The conclusion of transportation experts such as Reamy Ancarrow is that the STB, will, in all likelihood, make an effort to respond to this new Executive Order.

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Issue that prompted the WH and CEA review of competition:

"Obama backs effort to give consumers options on cable boxes **April 15, 2016 by By Kevin Freking"**

"President Barack Obama is throwing his weight behind an effort to give consumers more choice when it comes to the cable boxes that control which television channels they watch.

Most TV subscribers lease boxes from their cable service provider. The Federal Communications Commission is pursuing new regulations giving consumers more options to buy elsewhere. Obama will formally back that effort Friday, the White House said.

Jason Furman, who advises the president on economic policy, said in a conference call with reporters that the administration sparingly weighs in on FCC rulemaking. When the president gets involved, Furman says the issue is of "real great importance in his mind to consumers, to competition and to the economy more broadly."

FCC Chairman Tom Wheeler has said that U.S. consumers typically pay $231 a year to rent their cable boxes. According to one analysis, their costs have nearly tripled since 1994 while the cost of computers, televisions and mobile phones have fallen sharply.

"Like the 1980s with telephones, that's a symptom of a market that is cordoned off from competition. And that's got to change," Furman and fellow economic adviser Jeff Zients wrote.

An industry group made up of cable companies has said the FCC's proposal could lead to higher prices, "eliminates security protections, and provides no reassurance on privacy rights." The group also notes that many consumers are already watching cable through different kinds of apps and devices.

> *Editors Note: It is interesting that monopolies continue to espouse that "increased competition" in their monopolistic driven industry – will result in HIGHER PRICES to consumers – a fact that has never been borne out by fact.*

Obama plans to issue an executive order in the next several days calling on federal agencies to explore areas where they could promote more competition. The agencies will be required to report back with their findings in 60 days. The White House calls the cable box issue a "mascot" for the broader initiative.

Read more at: http://phys.org/news/2016-04-obama-effort-consumers-options-cable.html#jCp

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COLORADO WHEAT ADMINISTRATIVE COMMITTEE SUPPORTING AND WORKING TOGETHER WITH THE NEWLY FORMED COLORADO PACIFIC RR (OWNED BY KCVN LLC) WON A VICTORY AT THE STB IN FINANCE DOCKET FD 36005

A fascinating case - The "Towner" rail line in Colorado, as it is known has been owned by a company called V and S who has a reputation of buying lines (this line purchased from the Colorado DOT), then driving off service on the line and filing for abandonment before scrapping the line. The Colorado Wheat Administrative Committee, Colorado Association of Wheat Growers and the Colorado Wheat Research Foundation working with KCVN, owner of farm land adjacent to the Towner line, had successfully opposed last spring and summer (2015) and ultimately stopped, the V and S Railroad (owner of the Towner line) from tearing out the line that they had not formally abandoned. Next, KCVN sought to force abandonment by V and S of the line in order to place an OFA (Offer of Financial Assistance) before the STB, however, V and S withdrew its abandonment application. Next KCVN sought and filed what is known as a 'feeder line' application to force sale of the non-operating V and S Towner rail line. (see below)

From the STB April 15th order in Docket FD 36005: "On March 18, 2016, KCVN, LLC (KCVN) and its wholly owned subsidiary, Colorado Pacific Railroad, LLC (Colorado Pacific) (collectively applicants) jointly filed an application under the feeder line provision at 49 U.S.C. § 10907 to acquire a 121.9-mile line of railroad owned by V and S Railway, LLC (V&S) in southeast Colorado. The line, known as the Towner Line, extends between

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milepost 747.5 near Towner and milepost 869.4 near NA Junction in Pueblo, Crowley, Kiowa, and Otero Counties, Colo. As discussed below, the application is substantially complete and will be accepted. However, the applicants should provide certain supplemental material described below by April 29, 2016. This decision also establishes a procedural schedule.

KCVN and Colorado Pacific filed a 'feeder' line application on March 18, 2016. A feeder line application is an expression of willingness to purchase the line for its value (Net Liquidation Value).

From the STB order: On March 18, 2016, KCVN and Colorado Pacific initiated this proceeding by filing a feeder line application under 49 U.S.C. § 10907 to acquire the Towner Line and 12 miles of related track and facilities. Under § 10907(b)(1), the Board is authorized to require the sale of a rail line to a financially responsible person if the public convenience and necessity require or permit the sale.3 The applicants claim that the proposed sale is required under the public convenience and necessity criterion and that Colorado Pacific is a financially responsible person willing to pay not less than the constitutional minimum value of the line. The applicants allege that V&S engaged in a systemic plan to drive traffic off the Towner Line with the ultimate aim of abandoning it and selling the line's rail assets. The applicants assert that V&S raised rates to a prohibitive level around 2011 and engaged in other behavior forcing traffic off the line rather than meeting its common carrier obligation and maintaining the line. The applicants argue that the Board has found previously that this type of behavior can lead to a forced sale under the feeder line statute. See *Keokuk Junction Ry.—Feeder Line Acquis. — Line of Toledo Peoria & W. Ry. Between La Harpe & Hollis, Ill., 7 S.T.B. 893 (2004)…*

The Board has determined that the applicants have provide substantially all the information required by § 1151.3 and therefore accepts the feeder line application."

"According to the applicants, Colorado Pacific seeks to acquire the Towner Line and its related track and facilities and lease them to a connecting carrier, Kansas & Oklahoma Railroad (K&O), to operate. Although the parties are still in negotiations, the applicants provide a supporting verified statement from a representative of K&O's owner. The applicants also include verified statements supporting the application from a local farmer and representatives of Bartlett Grain Co., LP, Tallman Grain Co., Inc., and Thunderbird L&L, Inc."

Stayed tuned as the STB set May 16th as the day that any competing applications are due. That will be followed with June 14th for Verified Statements and Comments addressing both the initial (and if any competing applications are filed) and the July 5th for the Verified replies by applicants and other interested parties.

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