



Railway Association  
of Canada

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de fer du Canada

# Remarks at the House of Commons Transportation, Infrastructure and Communities Committee

*On Bill C-49, the Transportation Modernization Act*

September 12, 2017



**Michael Bourque, President, Railway Association of Canada**

Thank you, Madam Chair.

The Railway Association of Canada represents more than 50 freight and passenger railway operators composed of the six class I rail carriers identified in this bill, and 40 local and regional railways, known as shortlines, from coast to coast, as well as many passenger and commuter rail providers, including VIA Rail, GO Transit and RMT, and tourist railways, such as the Charlevoix Railway.

I should mention at the outset that Bill C-49 potentially affects all of our members, including provincial and commuter railways, because of the proposed safety measures included in the bill.

When I appeared before you last year to comment on the Fair Rail for Grain Farmers Act, I mentioned the negative effect that extended interswitching could have on the short-line rail sector and suggested letting these provisions sunset. We were relieved to see that Bill C-49, by creating the concept of class I rail carriers in its clause 2, has made clear that long-haul interswitching does not apply to short-line railways.

In your report you recommended:

That the Minister of Transport request the Canadian Transportation Agency to examine the railway interswitching rates it prescribes to ensure that they are compensatory for railway companies.

Bill C-49 does not request the agency to review interswitching rates but goes one step in the right direction with respect to LHI, by specifying that the rates set by the agency shall be based on comparable commercial rates.

In addition to setting this average as a minimum, the act says that the agency must consider the traffic density on the line and the need for long-term investments, which, if applied properly, should lead to rates above the minimum, which is the average rate. That is good news, but the devil will be in the details of future decisions from the agency.

There are more experienced people from CN and CP with me to speak to the impact of long-haul interswitching and related service provisions on their businesses. Instead, I thought it would be useful to speak to the recent history of the railway industry, the success of Canadian railways in a public policy context, and some important and hard-won lessons from the past three decades of rail regulation and deregulation.

Successive governments, and indeed this committee, have enabled the positive accomplishments of Canada's railway industry by introducing and improving a regulatory regime that prioritizes commercial freedom and reliance on market forces over government intervention.

Before the introduction of the National Transportation Act in 1967, railway economic regulation in Canada involved increasingly restrictive regulation focused on freight rate control and



uniformity. This approach led to inefficient railways that had difficulty undertaking much-needed capital investments to maintain and grow their networks.

Railways in the United States faced similar challenges, leading to the adoption of the Staggers Act and, as a result, significant deregulation in the U.S. rail industry. Canada's National Transportation Act represented the beginning of a dramatic shift in the regulatory environment for Canada's railways. Rigid regulatory constraints on pricing were removed, allowing railways to compete more effectively.

By the 1990s, decades of incremental deregulation placed an increasing emphasis on market and commercial forces, while maintaining a number of protections to ensure balance between railways and shippers. The passage of the Canada Transportation Act in 1996 introduced additional changes that reduced market exit barriers, allowing railways to discontinue or transfer portions of their networks to other carriers so as to become more efficient. This gave railways greater freedom to control costs and generate efficiencies. It also fostered sharp growth in Canada's short-line rail industry. Around the same time, CN was privatized, creating competition between two privately held, publicly traded national systems.

As a result of these policies, Canadian railways evolved into highly productive companies capable of providing low-cost service while generating revenues needed to reinvest into their respective networks. Shippers meanwhile gained access to a world-class railway system and today benefit from freight rates that are among the lowest in the world. Canadian railway performance, in terms of rates charged, productivity, and capital investment, greatly improved under these regulatory freedoms.

Since 1999, Canada's railways have invested more than \$24 billion in their infrastructure, which has resulted in a safer and more efficient rail network that benefits customers directly.

Despite this record of public policy success, and a national transportation policy that clearly recognizes that competition and market forces are the most effective way of providing viable and effective transportation services, we are here today debating a bill that adds recourse mechanisms for the sole benefit of shippers.

Three weeks ago, the president of the Canadian Transportation Agency gave a speech in Vancouver in which he stated that existing mechanisms—including mediation services, final offer arbitration on rates, arbitration on service levels that allow the agency to craft service-level agreements, and adjudication on the adequacy and suitability of services provided by railways—are not used very often, and that in fact the agency is planning outreach to stakeholders who are not taking advantage of existing provisions. Yet we're here today to discuss new provisions on top of existing recourse mechanisms that are currently underutilized.

Under this bill, long-haul interswitching is available to a rail customer even if they have access to trucking or marine transport, which are competitive services. It is an example of how we can lose sight of the need to recognize competition and move backwards toward regulation.



Let me now turn to safety, and to the locomotive voice and video recording, or LVVR, provisions of the bill.

Yesterday, I sent all members of this committee an article outlining the reasons for our support of LVVR for both accident investigation and accident prevention. For a long time, railways have advocated the right to use this technology as another safety defence within railway companies' safety management systems. It has always been the industry's belief that LVVR will, simply by its presence, help to prevent accidents by discouraging unsafe behaviours and unauthorized activities that may distract crew members from their duties.

We believe that this technology will increase safety and that it can be introduced in a thoughtful way and used responsibly. Even with significant investments, there are still accidents that can be prevented. The record of class I railways in North America is excellent, but it is not perfect. Until we have full automation of both freight and passenger trains, we are going to see accidents that can be traced to human error.

LVVR is not a silver bullet. Rather, it is an important, proven tool that can help identify dangers and act as a deterrent for the very small percentage of employees who might be tempted to use their smart phone or read a book when they should be alert and working. In this respect, it will help to change the culture of the workplace in a positive way. This has been the experience of companies such as Phoenix Heli-Flight, a Canadian helicopter company that today uses voice and video recorders in their aircraft. In addition, it is expected that in most cases the LVVR evidence would corroborate the statements and explanations provided by the crew members themselves.

Let me talk about privacy versus safety. Some have expressed concern about privacy, but we already know from the introduction of other technologies and from video in the workplace that there are tests imposed by the Privacy Commissioner to guide us on the responsible implementation of LVVR. We are anxious to work with you and with the department on the creation of these regulations.

LVVR is a technology that will prevent accidents. Investigative bodies such as the TSB and the U.S. NTSB have called for its use. When there is an accident, investigators from the Transportation Safety Board will better understand what happened, and everyone will learn from it.

Thank you very much.