

**SPEECH OF ROGER NOBER, CHAIRMAN,
SURFACE TRANSPORTATION BOARD,
TO THE TRANSPORTATION TABLE,
NATIONAL PRESS CLUB**

February 14, 2003

I want to thank the Transportation Table and Clayton Boyce of Traffic World for inviting me to speak to you this morning. I appreciate the opportunity to be with you all today.

On July 18, 2002, President Bush nominated me to be the sixth Commissioner of the Surface Transportation Board. He also announced that upon confirmation, I would be designated as its second Chairman.

On November 14, 2002, I was confirmed by the United States Senate and shortly thereafter sworn in and designated as Chairman. The President and the Senate have entrusted me with this responsibility to Chair this agency, and it is with great humility and respect that I take over my new duties. In fact, after the nomination and confirmation process, it would be hard to be anything but humble and respectful.

Now that I have been in my position for nearly two months, I would like to take this opportunity to outline my view of the agency's future and some of my goals for my tenure here at the STB.

At first blush, the STB may appear to be a small agency with a focused mission. And to the world at large, that may in fact be true. I am fond of noting that the breadth of people who care about the STB's mission is an inch wide, but for those that care, their depth of feeling is a mile deep.

I firmly believe that as 2003 begins, the STB is an important agency with a critical mission for the future and a past that must be understood. So I think its best to start, pardon the cliché, by going back to the future.

The STB was created at the end of 1995 as the successor to the ICC. Ironically, its one of the youngest and oldest federal agencies at the same time. I am often asked how did the ICC ever become only the second federal agency ever to be eliminated? During 1993 and 1994, an eclectic, bi-partisan group of members of Congress—headed by then-obscure members of the Republican minority Tom Delay and John Kasich as well as mainstream members of the Democratic majority like Barney Frank—sought to eliminate the ICC.

They argued that the agency was anachronistic and unnecessary, epitomized by the Negotiated Rates Crisis and the infamous candy cane case. For those of you that don't remember it, the candy cane case was a proceeding before the ICC to resolve a dispute over the whether the

same shipping charges should apply to candy canes with bent tips and straight tips. Even for its defenders, it was a case that was hard to defend.

In the summer of 1994, the Democratic-led House of Representatives voted to eliminate all funding for the ICC by a comfortable bi-partisan margin—an astonishing outcome. The agency avoided elimination that year, but fewer than two months later, the mid-term election of 1994 elected a new Republican majority in both houses of Congress, and the fate of the ICC was sealed.

I can tell you from personal experience, eliminating an agency is easier said than done. Congress ultimately eliminated many functions, transferred most remaining motor carrier functions to DOT, and kept a core of primarily rail-related responsibilities at a new, smaller, decisionally independent Surface Transportation Board.

The transition was painful for the agency and presented an unprecedented challenge for its Chairman, Linda Morgan, and its staff. Hundreds of employees needed to be rif-ed (a "rif" or reduction-in-force is federal-speak for lay-off). The magnificent ICC building needed to be closed and the agency moved. At the same time, the remaining staff needed to function and perform the responsibilities given them by Congress. It was a monumental task, one admirably performed by Chairman Morgan under difficult circumstances. And over the past seven years, Chairman Morgan successfully forged a new, stronger, and highly effective STB, and for that I and all of you that are stakeholders in the agency owe her and the staff a debt of gratitude.

It is against this backdrop that I look to the future of the STB.

First, ever mindful of the past, I believe that in the future, the agency must focus its energy and resources on fulfilling its core missions—resolving railroad rate and service disputes, and reviewing rail mergers. Simply stated, I believe Congress kept the agency as an independent body to carry out these two fundamental functions, and it is to these that I will devote the agency's time, energy and resources.

In both rate cases and mergers, Congress set forth statutory deadlines by which the agency must complete its review and issue its decisions. I and my fellow Board members consider meeting our statutory deadlines as imperative. I can assure you that in my term as Chairman, we will do everything possible to meet each and every one of our statutory deadlines.

The STB currently has ten pending coal rate cases—the most ever at one time. Our tenth rate case was just recently filed. Congress has mandated that these cases must be decided within 270 days of the closing of the records. Resolving all of these disputes within their statutory deadlines is a significant management and resource challenge. Mindful of these deadlines, I have already re-allocated some staff resources away from other functions to form a new rate team.

While I am confident that we have done enough to meet our current workload, we would have trouble analyzing this number of rate cases as well as evaluating a major merger at the same time. Therefore, we must determine whether this number of rate cases is a short-term

bulge, or a long-term ramp-up. The most recently filed rate case signals to me that this represents a long-term shift. As a result, in our budget request for 2004, we asked Congress for additional resources.

Representatives of both the railroad and the shipping communities have raised questions about the complexity, length and cost of bringing a rate case before the Board. And it is undeniably true that bringing a major case here is a long, complex and expensive proposition.

As Chairman, one of my priorities is to look closely at our procedures for bringing and resolving rate cases to see if there are ways to make the process faster and more efficient. Last fall, Chairman Morgan began a proceeding, ex parte 638, which is bureaucrat-speak for a proceeding to look at whether there are expedited procedures for rate cases that the Board could adopt.

In order to continue this process, I have scheduled a public hearing to look at these issues for February 27. At that hearing, we will invite testimony on the suggestions made by the Board in Ex Parte 638.

Now I want to encourage all of those in the rail and shipping communities to take this opportunity to speak directly to the Board about ways they feel our rate cases could be adjudicated better, faster and more cheaply. Now we have already received many comments on the suggestions made by the Board in Ex Parte 638, but will of course be interested in any other suggestions any stakeholders may have. I know I have many questions for the witnesses about these cases, and look forward to this hearing.

I am hopeful that this hearing, combined with our focus on the problem, will help us find some solutions.

I am also not just concerned with large rate cases. In 1996, the Board issued expedited procedures in small rate cases. However, not a single case has ever been brought under these guidelines. Perhaps that is because there are no small rate cases, or perhaps it is because there is something about our guidelines that makes bringing such cases difficult. Either way, I have heard many concerns about these procedures, so I intend to schedule a hearing on this in April or May.

While I do not know what the outcome of our look at the small rate cases will be, I do know that we will treat this issue seriously, and hope all of you will help us understand the problems of smaller shippers.

I feel strongly that the relationship between railroads and shippers must be one of businesses and customers settled in the world of business, rather than arbitrated by Washington regulators. Railroads are concerned about their ability to demonstrate to investors that they can meet their cost of capital. All of those who rely on railroads are concerned about rates and service issues. Ultimately, railroads are businesses that must succeed just as shippers are businesses that must succeed, and for that reason it is my hope that these entities all will work together—as all who have business relationships must—to find a path to success.

I am confident that this is indeed the case. In the past few weeks, I have met with the CEO's of the four largest U.S. railroads. Each of them has told me that their railroads strategic plans for success include greater emphasis on improved service and customer relations. I applaud those efforts. Of course, those who are their customers will ultimately be the judges of their efforts.

While it is critical to understand that railroads do have market power over certain shippers, the laws that we at the STB administer are there to help when the market does not work. I can assure you that as Chairman, I take this responsibility seriously and we will carry out our mandates under the Interstate Commerce Act.

I am also frequently asked about whether I foresee any major rail mergers being proposed. And I answer each time that, of course, I have no idea. In my view, any new rail merger will be proposed because of the merging railroads feel that such a merger will help them meet the needs of their customers and investors. While I support the merger guidelines adopted by the Board in 2000, I think the views of Washington regulators like myself will be a relatively minor factor in whether railroads proceed with any major mergers.

It is my hope that Congress will consider legislation this year to reauthorize the STB. Congress has not reauthorized the STB since 1995—eight years ago. For only in the reauthorization process will Congress, the Administration and the agency's stakeholders all review the agency's performance and make adjustments to the agency's mission. For all the criticism it receives, I believe that the political process is still the best way to reach consensus on the broad outlines of our mission and to clearly set forth the expectations upon us.

Second, I believe the STB—like all federal agencies—is a public body that must do its business in public. During my nomination and confirmation process, I heard a great deal of commentary from the Congress and agency stakeholders that not enough of the agency's business was done in public. While I believe there were good reasons for that, we have an opportunity to make changes since, for the first time in many years, the Board has a full complement of Commissioners.

I intend to hold periodic public voting conferences to resolve cases. This is the practice of most independent agencies—and an ICC tradition as well. These will be scheduled from time-to-time, when circumstances warrant, but it is my intention that we will vote on cases in public whenever possible.

My fellow Board members and I held the first of these open voting conferences on January 31. We considered and decided six cases and approved a new rulemaking to streamline some of our regulatory processes, and I considered the voting conference a big success.

Today, I am pleased to announce that we will hold our next voting conference on March 21. At that meeting, I intend for the Board to vote on a decision in a major stand alone cost rate case, the Texas Municipal Power versus BNSF, as well as decide other matters. Its statutory deadline falls just a few days later. It will be the first major rate case decided in an open voting conference in anyone's memory here, but I am confident that it will be beneficial to the Board,

the parties and the public to decide rate cases at public meetings.

In addition to voting conferences, I also intend to hold a series of public hearings on issues facing the STB. As I previously mentioned, our first will be a public hearing on Ex Parte 638 on February 27, and our second will be on our guidelines for small rate cases.

Third, I intend to continue the STB's reputation for being fair and open minded in all its actions. As an adjudicatory body, the STB must maintain the trust of all of its stakeholders. I have an open door policy—I will meet with anyone who requests a meeting, my schedule and the pendency of cases permitting.

Finally, we have a specialized, highly skilled workforce, and the STB needs to look to the future to ensure that it has a new generation of skilled professionals in place. Over 50 percent of the agency is currently eligible for retirement. Over 70 percent of the agency is age 50 or older, and 83 percent of the agency is over the age of 40. If even a fraction of the STB's skilled professionals who are currently eligible decided to retire in the near future, we would have great difficulty replacing them with people of similar skills. Our ability to fulfill our core mission would be in question. And this issue is not unique to the STB, it is a chronic, government-wide problem.

Our agency must plan for the future, and therefore I have placed a high priority on hiring new professionals to come to the STB. I have spent most of my career in government, and am personally working to help recruit new staff. Of course, we'll have to see if my involvement helps or hurts this effort. I will ensure that when we prepare our budgets, funding new positions will take on the highest priority.

The good news is that we are already making progress in this direction. So far, at least, we have been successful in recruiting several new people with the skills to make important contributions to the Board. We recently hired six new professional staff, who started during January, with more to come aboard soon. For the first time, an employee is being given paternity leave. Why, we even have a college intern this spring, the first in the history of the STB. We may even have a softball team if someone volunteers to be captain. We're on our way.

While these are some of the areas I intend to focus on, I do not want to lose sight of one critical fact – we are the Surface Transportation Board. While I am the Chairman, I am but one of three Board members. We all have one vote. I can't accomplish anything unless I can convince at least one—and hopefully both—of my other Board members to agree. I am committed to working closely with both Vice Chairman Burkes and Commissioner Morgan. I have consulted them on all decisions I have made, and it is my intention that we will act unanimously wherever possible.

Before closing, I would like to take a few moments to discuss a surface transportation matter not directly in the jurisdiction of the STB, but one on the minds of most of Washington in 2003, and that is the reauthorization of the nations surface transportation programs in TEA 21. As many of you are aware, I have a bit of experience working in that area.

Now there are large, national issues that must be worked through by the Congress and the Administration, ranging from the amount at which fuel is taxed to the distribution of highway and transit funds between States. Those are going to be tough, and I wish my friends in Congress and at DOT well in their efforts.

Now one important part of this area that I have been asked about since I have come to the STB is addressing the need for capital funding for freight railroad projects from the highway trust fund. It is a difficult and divisive subject, which has pitted railroads and trucking companies against one another. And it is no secret that I have historically been opposed to funding freight railroad projects from the Highway Trust Fund.

However, I believe that in this reauthorization, there is an opportunity to make progress on this subject. So I urge those that are concerned about this problem to look at what are the core policy goals that are broadly shared, and I think it centers around facilitating the movement of freight. It is no secret that our transportation planning process—which is focused on ensuring public participation and transparency in transportation planning—has not funded many freight oriented projects. In part this represents a success.

But I believe that the Administration, Members of Congress, Senators and stakeholders would all broadly agree that our national program ought to help facilitate the funding of projects that help facilitate the national movement of freight, and that would include freight rail as a component of that. For example, the freight railroad and trucking industries have joined together to support a gateways coalition.

Now translating those general principles to specific programmatic details is difficult, but I think is surmountable. It certainly will be an interesting year.

I thank you for the opportunity to express my views here, and look forward to working with all of you in the months and years ahead.

Thank you very much for your time, and I am happy to answer any questions anyone might have.