forth in the Policy Statement. The due dates established by the Commission for the filing of supplemental comments and reply comments are February 26, 1996 and March 7, 1996, respectively. These dates represent an extension of the pleading cycle initially established by Public Notice issued January 31, 1996 (DA 96–105).

Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR Sections 1.415 and 1.419, interested parties may file supplemental comments on or before February 26, 1996 and supplemental reply comments on or before March 7, 1996. To file formally in this proceeding, you must file an original and four copies of all submissions. If you want each Commissioner to receive a personal copy of your submission, you must file an original plus nine copies. You should send your submission to: Office of the Secretary, Federal Communications Commission, Washington D.C. 20554.

A copy of any pleadings should also be sent to Maureen C. McLaughlin, International Bureau, FCC, Room 845A, 2000 M Street NW., Washington, D.C. 20554, and to the Commission's contractor for public service records duplication: ITS, Inc., 2100 M Street NW., Suite 140, Washington, D.C. 20037. Supplemental comments will be available for inspection and copying in the FCC's Reference Center, Room 239, 1919 M Street NW., Washington, D.C. 20554. Copies also can be obtained from ITS at (202) 857–3800.

We will treat this proceeding as non-restricted for purposes of the Commission's *ex parte* rules. *See generally* 47 CFR §§ 1.1200–1.1216. For further information concerning this matter, please contact Maureen C. McLaughlin, Telecommunications Division, International Bureau, at (202) 418–1399.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–6398 Filed 3–18–96; 8:45 am]

BILLING CODE 6712–01–P

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47 CFR Parts 61, 64, and 69

[CC Docket No. 95–116; DA 96–358]

Telephone Number Portability

AGENCY: Federal Communications Commission.

ACTION: Request for comments.

SUMMARY: The Common Carrier Bureau is seeking comment on how passage of the Telecommunications Act of 1996 may affect issues raised in the Notice of Proposed Rulemaking (CC Docket No. 95–116) published August 1, 1995, regarding telephone number portability. The Commission will examine how particular telephone number portability issues may be affected, if at all.

DATES: Comments must be received on or before March 29, 1996; reply comments must be received on or before April 5, 1996.

ADDRESSES: Comments and reply comments must be filed with the Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554. The complete text of the Notice released by the Commission is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M Street NW., Room 239, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Jason Karp (202/418–1517), Mindy Littell (202/418–1394), or Jeannie Su (202/418–0491), Policy and Program Planning Division, Common Carrier Bureau.

SUPPLEMENTARY INFORMATION:

Synopsis of Public Notice

On July 13, 1995, the Commission adopted a Notice of Proposed Rulemaking (CC Docket No. 95–116) regarding telephone number portability. Telephone Number Portability, Notice of Proposed Rulemaking, 60 FR 39136 (August 1, 1995). The pleading cycle in response to that Notice closed on October 12, 1995. On February 8, 1996, the President of the United States signed into law the Telecommunications Act of 1996, which, among other things, requires local exchange carriers ''to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.'' Telecommunications Act of 1996, Pub.L. 104–104, 110 Stat. 56 (1996).

Therefore, the Common Carrier Bureau seeks comment on how passage of the Telecommunications Act of 1996 may affect the issues raised in the July Notice of Proposed Rulemaking. We ask that parties not simply reiterate their previous comments, but confine their discussion to how particular issues have been affected, if at all.

Comments and reply comments in response to this Notice should be no more than 10 pages, and otherwise in compliance with Sections 1.415 and 1.419 of the Commission's rules. Comments must be filed on or before March 29, 1996, and reply comments must be filed on or before April 5, 1996. Comments and reply comments must be sent to the Office of the Secretary, FCC, 1919 M Street, N.W., Washington, D.C. 20554. Two copies should also be sent to the Policy and Program Planning Division, Common Carrier Bureau, FCC, Room 544, 1919 M Street, N.W., Washington, D.C. 20554. One copy should also be sent to the Commission's contractor for public service records duplication: ITS, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. 20554. Copies can also be obtained from ITS at (202) 857–3800.

We will continue to treat this proceeding as non-restricted for purposes of the Commission's *ex parte* rules. See generally 47 CFR §§ 1.1200–1.1216.

List of Subjects in 47 CFR Parts 61, 64, and 69

Communications common carriers, Telephone.

Federal Communications Commission.

Regina M. Keeney,

Chief, Common Carrier Bureau.

[FR Doc. 96–6660 Filed 3–18–96; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Parts 1105 and 1152

[STB Ex Parte No. 537]

Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The ICC Termination Act of 1995 revised the law governing applications by rail carriers to abandon or discontinue service over lines of railroad and related offers of financial assistance that would continue rail service after approval of abandonment or discontinuance by the Surface Transportation Board (Board). The Board proposes to revise part 1152 to implement the changes and to streamline and update the pertinent regulations and to make conforming changes to the environmental rules at part 1105.

DATES: Comments are due on May 3, 1996.

ADDRESSES: Send comments (an original and 10 copies) referring to STB Ex Parte

No. 537 to: Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue NW., Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (ICCTA), enacted on December 29, 1995, abolished the Interstate Commerce Commission (ICC) and transferred the responsibility for economic regulatory oversight of rail transportation, including the proposed abandonment and discontinuance of rail lines, to a new Surface Transportation Board (Board). The transfer took effect on January 1, 1996. Section 204(b)(1) of the ICCTA provides that proceedings and applications pending before the ICC on January 1, 1996, insofar as they involve functions retained by the ICCTA, including abandonment proceedings and applications, shall be decided under the law in effect prior to January 1, 1996. Abandonment applications and proceedings filed on or after January 1, 1996, shall be decided under the law as revised in the ICCTA. Under section 204(a), regulations, including those at 49 CFR part 1152, issued by the ICC and effective as of January 1, 1996, shall remain in effect ''until modified, terminated, superseded, set aside, or revoked in accordance with law by the Board * * *.'' In this notice, the Board is proposing to revise part 1152 to implement the changes brought about by the ICCTA and to streamline and update the regulations. Included in the proposed revisions are deletions of obsolete references. While we are not proposing major revisions at this time to our environmental rules at 49 CFR part 1105, or our Trails Act rules at 49 CFR 1152.29, we are proposing some notice and timing changes to those regulations in this proceeding, because the changes are directly related to our efforts to streamline and improve the abandonment process. For the same reason, we are proposing here some conforming changes to our procedures for handling abandonments exempted as a class, and petitions for individual abandonment exemptions, to reflect statutory changes resulting from the ICCTA.

In the supplementary information portion of this notice, when referring to the provisions of the United States Code affected by the ICCTA, we use the word ''former'' to refer to sections of the law in effect prior to January 1, 1996, and the word ''new'' to refer to sections of the law in effect on and after January 1, 1996. In the proposed rules themselves, the section references are to the law in effect on and after January 1, 1996.

Availability

The full text of the proposed rules is available to all persons for a charge by phoning DC News and Data, Inc., at (202) 289–4357. This represents a change from prior practice, but because of limited resources, we are no longer able to publish in full, or make available at no cost, the text of the proposed regulations.

Background

The key changes brought on by the ICCTA, insofar as part 1152 is concerned, are found in new sections 10903 and 10904 (49 U.S.C. 10903 and 10904). Implementation of these two sections is the focus of this notice of proposed rulemaking. New section 10903 (''Filing and procedures for application to abandon or discontinue'') has replaced former section 10903 (''Authorizing abandonment and discontinuance of railroad lines and rail transportation'') and former section 10904 (''Filing and procedure for applications to abandon or discontinue''). New section 10904 (''Offers of financial assistance to avoid abandonment and discontinuance'') has replaced former section 10905 bearing the same title.

Revisions found in three other new sections bear directly on the procedures found in part 1152. New section 10905 (''Offering abandoned rail properties for sale for public purposes'') has replaced former section 10906 bearing the same title. New section 10907 (''Railroad development'') has replaced former section 10910 bearing the same title. New section 10502 (''Authority to exempt rail carrier transportation'') has replaced former section 10505 bearing the same title.

New section 10903 retains the requirement that rail carriers may abandon or discontinue service only if the present or future public convenience and necessity require or permit the abandonment or discontinuance. The new section also generally preserves requirements for public notice and the opportunity for public participation in development of a record upon which abandonment and discontinuance applications will be decided. New section 10903 has not retained the specific processing timetable found in former section 10904, but new section 10904 (in preserving the opportunity in former section 10905 to offer financial assistance for continuation of rail service) has established a 4-month deadline after an application is filed for the submission of offers of financial assistance. In large part due to this 4-month deadline, which would seem to dictate a Board decision on the abandonment before the submission of an offer of financial assistance, we are proposing a processing schedule for abandonment and discontinuance applications that would provide for a Board decision on the merits of an application in all cases before expiration of this 4-month period.

With the above-noted changes found in new sections 10903 and 10904 central to our preliminary analysis, we are seeking public comments on proposed revisions to part 1152, which would establish a process and schedule to accommodate the new law. Not every specific change to the existing regulations will be discussed here, but we will highlight the most significant proposed changes, additions, and deletions.

We view the ICCTA as reform legislation. As a result, we are taking this opportunity to examine, reform and streamline the existing rules and process. Our goal is to revise part 1152 to meet the letter and spirit of the ICCTA. We are proposing new procedures but propose to retain elements of the current part 1152 that are consistent with streamlining, expedited development of a record in each proceeding, and prompt decisionmaking. We have also attempted to update the regulations to improve notice to the public and ensure ample opportunity for full public participation early in our proceedings, which we believe will ultimately result in an expeditious resolution satisfactory to the interested parties. Finally, certain obsolete or otherwise unnecessary references are proposed for deletion. Because of the importance of proposing rules to implement the new law as soon as possible, we recognize that we may have overlooked some potential improvements or may have proposed to retain provisions or language that no longer serves a useful purpose. We therefore welcome public comments on these proposals, and on any other areas where changes might be made, to streamline our abandonment regulations further and to assist us in carrying out the will of the Congress in the most efficient manner possible.

Discussion

1. Uniform Schedule

One of the major changes we are proposing here is a new uniform schedule for processing all abandonment applications within the

statutory parameters of new sections 10903 and 10904. While new section 10903 does not contain the requirement of former section 10904(a)(1) that railroads file a ''notice of intent'' with the Board (previously, with the ICC), the new statute continues to require that rail carriers prepare, publicize, and serve on designated entities advance notice of an abandonment or discontinuance application. We view the notice as a critical step in meeting the new timeframes applicable to the abandonment process, because the notice apprises the public of proposed abandonments and ensures that potential concerns are brought to light at an early stage in the process and addressed. Because of these important benefits and because of the similarity in the handling of notice under the former and the new statute, we propose to retain the existing rules regarding notices of intent, including the requirement that an applicant serve its notice of intent on the board. As before, the notice of intent would be due no more than 30 days and no less than 15 days before the application is filed. We are also proposing to update the list of entities due to receive the notice, including the addition of the Rails to Trails Conservancy and the National Association of Reversionary Property Owners, to provide the earliest possible notice that a particular right-of-way might be used as a trail, helping to assure more timely trail use requests, and to facilitate our meeting our trail use and rail banking responsibilities under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act).[1] These responsibilities have not been altered by the new law.

As part of our effort to make conforming changes to our environmental rules, we are proposing to amend 49 CFR 1105.7 and 1105.8 to require railroads to serve their environmental and/or historic reports on the required agencies at least 20 days prior to filing with us their application, petition for exemption, or notice invoking the class exemption.[2]

Furthermore, as discussed in more detail below, a Federal Register notice would be published at the beginning of the abandonment application process, which has not been the case in abandonments decided under former 49 U.S.C. 10903, or in petitions for exemption under former section 10505. In addition, to facilitate identification of the lines proposed for abandonment we propose to require that railroads identify lines proposed to be abandoned by United States Postal Service ZIP Codes.

To permit development of a sufficient public record in all cases within the statutory time frames of the ICCTA, we are proposing that applicants present their entire case with the application, that protestants submit their entire opposition case no later than 45 days after the application is filed, and that any reply by applicants be filed no later than 60 days after an application is filed. This would produce a complete record by the 60th day after the application is filed. We also propose that the Board's decision on the merits be served no later than 110 days after the application is filed (10 days before the latest date for filing offers of financial assistance). A final decision on the merits would normally be scheduled to take effect in 30 days (by day 140).

We propose to have no appeal of right to the Board's decision on the merits, but instead to permit only petitions to reopen, in accordance with the procedures set out in the proposed rules. Changes to the rules regarding processing of offers of financial assistance have also been proposed to reflect the changes made in new section 10904.

We anticipate that the Board often would not need all of the time set out in the proposed schedule for issuance of a final decision on the merits, especially in those instances where there is little opposition to the application. Therefore, we want to make clear that, should final decisions be served before day 110, offers of financial assistance would be due 10 days after the service date of that decision rather than on day 120. We see the 4-month statutory deadline as an outer limit, which does not require us to delay resolution of proceedings where the entire time is not needed.

We anticipate that the application (which would include the applicant's case in chief), the opposition case in chief, and a reply would constitute a sufficient record for a decision on the application in almost all instances. In some cases, however, it could be appropriate also to hold an oral hearing. To help us identify such cases as early as possible, we propose that any request for oral hearing be due to be filed no later than 10 days after the application is filed. (Given the proposed requirement that a notice of intent to file an application continue to be filed between 15 and 30 days before the application, this means that a person that would potentially seek an oral hearing would have notice of the application at least 25 days before the oral hearing request would be due.) We also propose that the Board would promptly decide by day 15 after the filing of the application whether to schedule an oral hearing so that a final decision by the Board on the merits of the application could be reached by day 110.

Accordingly, we are proposing the following schedule for Board consideration and decisions in abandonment and discontinuance application proceedings from the time the application is filed until the time of the Board's decision on the merits:

Day 0—Application filed, including applicant's case in chief.

Day 10—Due date for oral hearing requests.

Day 15—Due date for Board decision on oral hearing requests.

Day 20—Due date for Notice of Application to be published in the Federal Register.

Day 45—Due date for protests and comments, including opposition case in chief, and for public use and trail use requests.

Day 60—Due date for applicant's reply to opposition case and for applicant's response to trail use requests.

Day 110—Due date for service of decision on the merits.

Day 120—Due date for offers of financial assistance, except that if an application has been granted by decision issued sooner than Day 110, the offer of financial assistance shall be due 10 days after service of the decision granting the application.

2. Federal Register Publication

Former section 10905 required that grants of abandonment applications be published in the Federal Register to provide notice to persons who might wish to make offers of financial assistance, with the due date triggered by the Federal Register publication itself. The current rules at part 1152 reflect this requirement and embrace a process through which a grant of an abandonment application or a petition for exemption for abandonment is announced to the public through Federal Register publication at the time of the grant. We propose instead to publish notice of an abandonment application or a petition for an individual exemption for abandonment

[1] Someone interested in trail use could become a party in the abandonment proceeding by filing written comments or a protest. 49 CFR 1152.25(a). Every document filed with us must be served on all parties to the abandonment proceeding. 49 CFR 1104.12(a).

[2] The earlier distribution would expedite the environmental review process (by giving participating agencies additional lead time to conduct their analysis and review) without being unduly burdensome on the railroads (which would be filing the same reports that are now required, only sooner). Also, because consulting agencies should be able to complete their review in a more timely manner, this timing change could reduce the number of environmental and historic conditions imposed in abandonment decisions.

20 days after the application or petition is filed. The notice would describe the abandonment proposal and advise the public that offers of financial assistance would be due 10 days after the application or petition is granted or 120 days after the application or petition is filed, whichever occurs sooner. And, the notice would advise that requests for public use and trail use conditions would be due 45 days after the application is filed, or 40 days after the petition is filed, as the case may be. We also propose that abandonment applicants and petitioners be required to file draft Federal Register notices that the Board might use to announce the filing. Under our proposal, there would be no further Federal Register publication if and when the application or petition is granted.

We propose no change for the publication of Federal Register notices for the procedural timing of abandonments covered by the class exemption embraced in subpart F. We are, however, exploring the possibility of proposing a new class exemption, or broadening the existing class exemption, and would welcome either general or specific public suggestions on whether and how to do so. Comments on this issue may be filed in this proceeding or by a separate request for new rules relating to the class exemption. We anticipate that any suggested changes to the class exemption proposed by participants in this proceeding would be the subject of further public comment before the adoption of any final substantive changes to the class exemption.

3. System Diagram Maps

The new law retains the requirement that rail carriers prepare, file, and amend, as appropriate, system diagram maps that identify lines that are, or soon will be, the subject of an abandonment application. We are proposing several changes to part 1152 regarding the system diagram maps intended to eliminate unnecessary regulatory and paperwork burdens. First, because of the potential burden on small carriers related to preparing and filing these maps, we propose to require only Class I and Class II railroads to prepare and file them. Second, in lieu of the annual filing of these maps, which is now required, we are proposing a one-time filing of a complete and current set of maps within 60 days of the effective date of these regulations. While the railroad would continue to have to revise its maps when changing the category of its lines, we propose generally to leave it to the carrier to determine when changes have been extensive enough to warrant the filing of a new, completely updated system diagram map. We would, however, retain the discretion to require a carrier to file an updated system diagram map if that became necessary (i.e., because of a need to have a clear, usable map available for public planning purposes). Third, we propose to require only three (instead of six) copies whenever a system diagram map or an update is filed.

We also propose to reject an abandonment application of a Class I or Class II railroad for a line that has not been identified on a system diagram map in category 1 (all lines or portions of lines which the carrier anticipates will be the subject of an abandonment or discontinuance application to be filed within the 3-year period following the date upon which the diagram, or any amended diagram, is filed with the Board) for at least 30 days. New section 10903 no longer prohibits the grant of an abandonment application for a line that has not been identified in category 1 for at least 4 months and where the abandonment faces significant opposition, but we believe that Congressional retention of the system diagram map requirement indicates a desire on the part of the Congress to provide some time for advance planning by shippers and state and local governments in the face of impending abandonments. We believe that a period of 30 days for identification on a system diagram map in category 1 would be adequate to meet planning needs.

4. Summary Application

Because we are proposing one uniform, streamlined process for all applications, we propose to delete the ''Summary Application'' provisions.

5. Abandonment Procedures for Bankrupt Railroads

Because our proposed streamlined process and regulations would pare back the filing requirements for all applications, we see no need for the separate procedures in subpart E for bankrupt railroads. Therefore, we propose to delete subpart E. We do propose, however, to include as special provisions for bankrupt railroads in the general abandonment procedures the requirements that abandonment applications filed by bankrupt railroads, and protests or other public responses to the applications, be filed with the bankruptcy court; that Board decisions or reports on abandonment applications by bankrupt railroads be filed with the bankruptcy court; and that special processing schedules would be established to meet court deadlines, so long as a reasonable period of time is allowed to obtain public responses and build a record in an abandonment application by a bankrupt railroad.

6. Due Dates for Filing Public Use Requests and Trail Use Requests

Our proposals for filing of public use and trail use requests reflect our interest in compiling a full record for disposition as early as possible. In abandonment applications, we are proposing that trail use requests and public use requests be filed at the same time as protests and other written comments (within 45 days after the application is filed). A railroad applicant would then be required to respond regarding willingness to negotiate for trail use within 15 days (or within 60 days after the application is filed). For abandonments covered by the class exemption for out-of-service lines, we propose to continue to require trail use/rail banking requests to be filed within 10 days after Federal Register publication of the exemption and public use requests to be filed within 20 days after Federal Register publication. For petitions for individual exemption, we propose to require that trail use/rail banking requests and public use requests be filed within 20 days after Federal Register publication of the notice of the filing of the petition (40 days from the filing for the petition). For both class exemptions and petitions for exemptions, we propose to require the rail carrier to respond to trail use/rail banking requests within 10 days after the request is filed.

7. Notice of Consummation

Although the practice was never codified, until 1984 the ICC required a railroad to send the agency a letter confirming that it had consummated, or fully exercised, an abandonment within 1 year after the abandonment was authorized.[3] Since then, some carriers have continued to send in these letters. Moreover, the courts have considered these letters in determining whether a line is still part of the interstate rail network, and thus available for trail use under 16 U.S.C. 1247(d), or public use under former 49 U.S.C. 10906 (now 49 U.S.C. 10905).

In recent years, an increasing amount of ICC staff resources have been devoted to determining whether or not a

[3] An ICC (and now Board) decision authorizing abandonment is not a compulsory order, but rather permissive authority that the railroad may or may not decide to exercise. The railroad may, in fact, resume operations on a line that has been authorized for abandonment, and thereby retain that line in common carrier service without further approval from us.

railroad's actions demonstrated an intent to consummate an abandonment. There also have been a significant number of court challenges involving this issue, particularly by landowners alleging that the ICC had lost jurisdiction over the property by the time a trail condition was imposed.

To help clarify the consummation issue, conserve the Board's limited resources, and be fair to landowners, trail groups, the railroads, and the public, we propose to include in our new rules a requirement that carriers file with the Board a notice of consummation, once they intend to fully abandon the line (i.e., to discontinue operations, salvage the track, and intend that the property be removed from the interstate rail network). We have not proposed a deadline for filing, however, because carriers may want to hold open the possibility that new shippers will seek rail service or that the right-of-way could be used as a trail, subject to rail banking. Nor have we proposed a penalty for not filing notices of consummation. But under our proposal, notices that are filed would be deemed conclusive on the point of consummation if there are no legal or regulatory barriers to consummation (i.e., outstanding conditions). If no notice of consummation of abandonment has been filed, we would continue to look at the other facts and circumstances to determine if consummation of the abandonment had occurred.

8. Certificates of Abandonment

The new law does not appear to require that ''certificates'' be issued when abandonment applications are granted. As a result, we propose to dispense with the issuance of certificates and will instead simply issue ''decisions granting'' an application. Our proposed rules, however, continue to refer to ''Certificates of Interim Trail Use or Abandonment'' in the trail use context in part to distinguish an application proceeding from an exemption proceeding. Public comments are welcome on whether we can or should similarly dispense with use of the ''certificate'' label in that context.

9. Contents of the Application

As previously noted, we propose to require applicants to submit their entire case as part of the application. Applicants would have to include all relevant workpapers and supporting documents with each application. We are, however, also proposing significant reforms regarding application data requirements, as explained below.

a. Service Data

We are proposing to streamline the requirements for abandonment applications by excluding all branch line (line proposed for abandonment) service data for time periods prior to the Base Year period, with the exception of data on changes in train service. The current regulations require data for the 2 preceding calendar years and that portion of the current calendar year for which data are available. This change had been proposed by the ICC in a notice of proposed rulemaking in *Abandonment Proceedings: Elimination of the Revenue and Cost Data for All Years Prior to the Base Year Period*, Ex Parte No. 274 (Sub-No. 26) (ICC served Nov. 9, 1992), to reduce the reporting burden on the carriers. Favorable comments were received but a final rule was never issued. We propose to incorporate this change here for inclusion in final Board regulations. The revised regulations, if adopted, would not include any data for periods prior to the Base Year, except as noted above.

We are also proposing changes to the service data required to be provided in three specific areas. First, the carload data on the line would have to show only the total carloads for each commodity group. Second, data pertaining to overhead or bridge traffic would have to be included only if the serving carrier will *not* retain this traffic after approval of the abandonment. Finally, only changes in train service in the last 2 years (instead of the last 5 years) would need to be discussed.

b. Financial Data

We also propose to exclude computations for the revenue and cost data developed for the branch line for the prior 2 calendar years and any portion of the current year. Revenue and cost data would be computed only for the Base Year, Forecast Year, and Subsidy Year. These changes also had been proposed in the ICC's rulemaking in Ex Parte No. 274 (Sub-No. 26).

We also propose to delete the requirements that the impact of the abandonment on the carrier's net railway operating income (NROI) for the past 2 calendar years be developed, and that the impact on the NROI of other carriers operated under common control of the abandoning railroad be submitted. In addition, we propose to delete the requirement that the railroad's balance sheet and income statements be filed.

c. Other Application Changes

We propose to delete the requirements that the carrier identify in detail the sources of alternate transportation available and describe its efforts to solicit traffic on the line. Instead, we would require only a general description of alternative transportation sources. We do not believe that it is the responsibility of the carrier to identify all of the options available to the shippers on the line. Most, if not all, of these are already known and/or used by the shippers. Moreover, the carrier would no longer be required to describe its efforts to solicit traffic on the branch line in every case. Rather the carrier could provide a description of its efforts if it believes that the information would aid its case regarding potential increases in traffic claimed by protestants or regarding claims of deliberate downgrading.

10. Offers of Financial Assistance

In addition to the time limits previously discussed, new section 10904 contains other changes for handling offers of financial assistance. To begin the negotiation process now, we need only find that the offeror is a financially responsible person, and we propose to revise our rules accordingly. Under new section 10904, the Board has 30 days, rather than 60 days as before, from the date requested to issue a decision establishing the conditions and amount of compensation for the purchase or subsidy of the line. To meet the new deadline, we propose to require the requesting party to submit its case in chief at the time it makes its request and to serve the other party(ies) with a copy by overnight mail. The other party(ies) would have 5 days from the date of filing to file a reply. As before, our rules would automatically stay the effective date (or revoke as necessary for a class exemption) of the underlying abandonment decision. The rules would also continue to provide that, if a request to set terms and conditions is not made to the Board, a decision making the underlying abandonment approval (or exemption) effective would be served within 10 days of the due date for making the request.

New section 10904 also contains an important limit on the Board's involvement with financial assistance in the form of an operating subsidy. The statute now places a 1-year limit on subsidies imposed by the Board, unless otherwise mutually agreed by the parties. As a result, under our proposed rules, subsidy agreements imposed by the Board would end after 1 year. Beyond this period any subsidy would

be strictly a contractual agreement between the carrier and the subsidizer without the involvement of the Board.

Also regarding subsidies, we propose that the rules continue to provide for interim financial status reports, as presently included in the abandonment regulations. However, with certain exceptions, the subsidizer's final responsibility would be limited to a maximum of 15% over the agreed-to amount of the operating subsidy. The exceptions would be: (1) If the subsidizer is notified of a higher amount within the first 10 months of the agreement; or (2) the increase results from an expense that has been preapproved by the subsidizer. We believe that limiting potential liability in this fashion would provide needed certainty for a party that wishes to subsidize operation of a line approved for abandonment.

11. Return on Investment

Past experience with the rules for establishing return on investment has resulted in the identification of several problem areas. To address these problems, we are proposing changes regarding the determination of the net liquidation value (NLV) of road properties on the branch line, a component used in calculating return on investment. These changes involve the inclusion of assets with negative net salvage values, adjustments to right-of-way land values, and the bases used to value right-of-way land.

a. Negative Salvage Values

There are instances where the cost to remove and dismantle a particular asset on the branch line is higher than its resale value. This occurs most frequently with bridges where the cost of removal exceeds the market value of the salvaged materials. The Board proposes that these assets be included if the asset would actually be removed for whatever reason. For example, as a result of an abandonment approval, municipal zoning requirements or the land use regulations of a state or other governmental agency may require that a structure be removed or torn down. This is the type of situation where the inclusion of a negative net salvage value is proper. Another instance where inclusion might be appropriate would be when the carrier decides on its own to dismantle the structure even though it is not required to do so.

b. Adjustments to Land Values

In abandonment proceedings, land values are often reduced below their fair market value. This reduction results from imputed real estate commissions, selling expenses, or discounting the present value of the land due to a projected sell-off period of 1 or more years. In past ICC cases, there has oftentimes been a lack of support for these types of reductions to the land value. Accordingly, our proposed regulations emphasize the need for parties adequately to support and explain any adjustments. Without the necessary support and explanation, we will reject these adjustments.

c. Bases for Valuing Land

There are several methodologies acceptable for appraising right-of-way land acreage. The methodology most frequently used is the ''across-the-fence'' (ATF) method. This procedure estimates the values of the surrounding land parcels using recent comparable sales, and then adjusts them to reflect the physical and economic characteristics of the specific parcels appraised.

In the past, parties have sometimes failed to support the application of unadjusted ATF values to value railroad rights-of-way. Differing physical characteristics such as elevation, grading and drainage would warrant some adjustment to the ATF value. Therefore, we propose, at a minimum, that some explanation be given as to why no adjustment is necessary. Conversely, some parties have made adjustments to the ATF value to arrive at right-of-way values without explaining the nature of the adjustments. We propose to require justification for the use of either unadjusted or adjusted ATF values for land acreage on the railroad right-of-way.

12. Holding Gains and Losses

Holding gains and losses are computed for freight cars, locomotives, and road property accounts. Currently, parties may determine the holding gain or loss for the particular type of asset or parties may use the Gross National Product (GNP) Implicit Price Deflator rate. The GNP deflator is published by the U.S. Department of Commerce, Bureau of Economic Analysis (Commerce).

In 1991, Commerce introduced a comprehensive revision of the national income and product accounts, including a shift to the use of the Gross Domestic Product (GDP), rather than the GNP, as the primary measure of production. The GDP is similar to the GNP, but covers only goods and services produced in the United States. The GDP is generally regarded as a better indicator of the performance of this country's economy.

We propose to include the GDP deflator as the alternate basis of estimating the holding gain or loss in rail abandonment and subsidy proceedings in our new rules. This would bring our rules in line with the current measures used at Commerce, which has concluded that the GDP is ''the appropriate measure'' for most short-term monitoring of the U.S. economy.

13. Appendix Listing of Carriers and AB Numbers

We propose to delete the Appendix to part 1152 that lists carriers and their assigned AB numbers. We preliminarily conclude that the list serves no useful purpose. Interested persons could instead contact the Board's Office of the Secretary if they have a need to ascertain a particular carrier's assigned AB number.

Small Entities

The Board certifies that these regulations, if adopted, would not have a significant economic effect on a substantial number of small entities. The Board seeks comment on whether there would be effects on small entities that should be considered. If comments provide information that there would be significant effects on small entities, the Board will prepare a regulatory flexibility analysis before adopting final regulations.

Environmental Finding

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects

49 CFR Part 1105

Environmental impact statements, Reporting and recordkeeping requirements.

49 CFR Part 1152

Administrative practice and procedure, Conservation, Environmental protection, National forests, National parks, National trails system, Public lands-grants, Public lands-rights-of-way, Railroads, Recreation and recreation areas, Reporting and recordkeeping requirements.

Decided: March 13, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen. Vice Chairman Simmons commented with a separate expression.

Vernon A. Williams,

Secretary

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