

BELLY OF THE BEAST

BUREAUCRATS MAKING MONOPOLIES

by Frank N. Wilner

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Only government protection permits monopolies to persist. How ironic that the Interstate Commerce Commission and its successor, the Surface Transportation Board—created by Congress specifically to oppose the accumulation of market power—created a monopoly and aggressively protected it from competition. The monopoly exists in the publishing and dissemination of the agency's regulatory decisions, and in some of the pleadings presented to it. The aforementioned are matters of public record paid with taxpayer dollars. The monopolist with exclusive distribution rights is D.C. News and Data.

D.C. News and Data was established by a private businessman some three years ago for the sole purpose of distributing STB decisions and information for profit. It rents space in the same government buildings as the STB. Its exclusive commercial access is no small prize, as the STB often issues dozens of regulatory decisions in a single week. Some are hundreds of pages long.

As the taxpayer seeking information will discover, the STB's secretary, the official keeper of agency documents, is too busy to trifle with such indignities as sharing the public's business with the public. Of course a snooping citizen is welcome to use the agency's public reading room—assuming he surrenders his valid driver's license to a security guard until he leaves the building. But relatively few of the taxpayers directly affected by STB decisions live or work in the neighborhood.

Snooping citizens telephoning the secretary's office for information are told politely that if they call another number—"Sorry, we can't transfer your call"—the friendly and enterprising people at D.C. News & Data Inc., will eagerly share STB decisions for a fee. The STB even includes D.C. News & Data's telephone number in the agency phone directory. For just twenty-six cents per page, plus postage and handling, D.C. News & Data sells copies of ICC/STB decisions. D.C. News & Data also offers disks.

How convenient that when CSX Transportation and Norfolk Southern filed a fourteen thousand page application to acquire Conrail, the STB demanded the application in both paper and computer disk format and immediately provided D.C. News & Data with the twenty-nine disks comprising the application. For just \$25 per disk—\$725 plus postage and handling—the nosy public could have a copy.

When *Traffic World* magazine—which for generations has covered arcane details of the agency—sought its own set of disks, its request was refused. Not until weeks after D.C. News & Data received its disks and sold copies to interested people nationwide—and only following heated telephone calls between the magazine's editor, Bob Rast, and STB Chairman Linda Morgan's office—was the *Traffic World* request honored.

D.C. News & Data may have seen *Traffic World* as a competitor. *Traffic World* has a Web site and intended to make the Conrail application and all agency decisions available for downloading, at no

additional charge to its subscribers. It was only after *Traffic World* began posting STB decisions—effectively breaking D.C. News & Data's STB-protected monopoly—that STB launched its own Web site that includes access to the Conrail application and all STB decisions. In fact, until November 1997 the STB was the sole agency within the Department of Transportation—perhaps in all of government—not to have its own Web page.

Eighteen months earlier, Vice Chairman Gus Owen had written a detailed memo to Chairman Morgan encouraging her to authorize a home page. Owen simultaneously created his own cyber team and encouraged creative agency employees to design the page. It was ready to be launched more than a year ago, but Morgan would not approve it.

Owen even visited the Library of Congress to learn the manner and cost of optically scanning material so that a pleading made to the STB could be posted on the Web site within a day of its filing, allowing the public to follow the proceedings from the first pitch. Owen determined that the STB could save money by scanning material for internal use rather than relying on copy machines and messengers.

Although agency decisions now may be downloaded from the STB's Web site at zero cost, most pleadings made to the agency still are not available through the STB's home page. Who knows what the ostrich sees in the sand? Who knows why STB continues to resist making its public business public?