



## D.C. Circuit Upholds STB's Decision to Purchase Railroad Line

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On March 29, 2011, the U.S. Court of Appeals for the District of Columbia Circuit issued its opinion in *Brotherhood of Railroad Signalmen v. STB*, D.C. Cir. Case No. 10-1138, and upheld a decision of the Surface Transportation Board (STB) authorizing the Massachusetts Department of Transportation to purchase the real property interests in a line of railroad while permitting the seller, CSX Transportation, to retain the common carrier obligation for the line. For twenty years, commuter rail agencies have been able to acquire the real property assets associated with an active railroad right-of-way without taking on the common carrier obligation for the line through transactions structured according to the precepts established in *Maine Department of Transportation – Acquisition and Operation Exemption – Maine Central R.R. Co.*, 8 I.C.C. 2d 835 (1991) (State of Maine). Since the common carrier freight obligation in a State of Maine transaction remains with an entity other than the agency purchasing the right-of-way, the STB treats the transfer of the physical assets associated with the line as one that does not involve a “rail carrier providing transportation subject to the jurisdiction” of the STB. The D.C. Circuit’s affirmation of the State of Maine transaction structure permits freight railroads and passenger operators to continue to avail themselves of a now-familiar mechanism for establishing or expanding passenger commuter service while maintaining freight operations.