

May 3, 2018

***Improving the Regulation: The
Successful Example of
Deregulation in the USA***

**Presentation on the American
Experience**

Raymond A. Atkins, Ph.D.
Partner, Sidley Austin LLP
Washington, D.C.

SIDLEY



Agenda

I. The United States Rail Industry

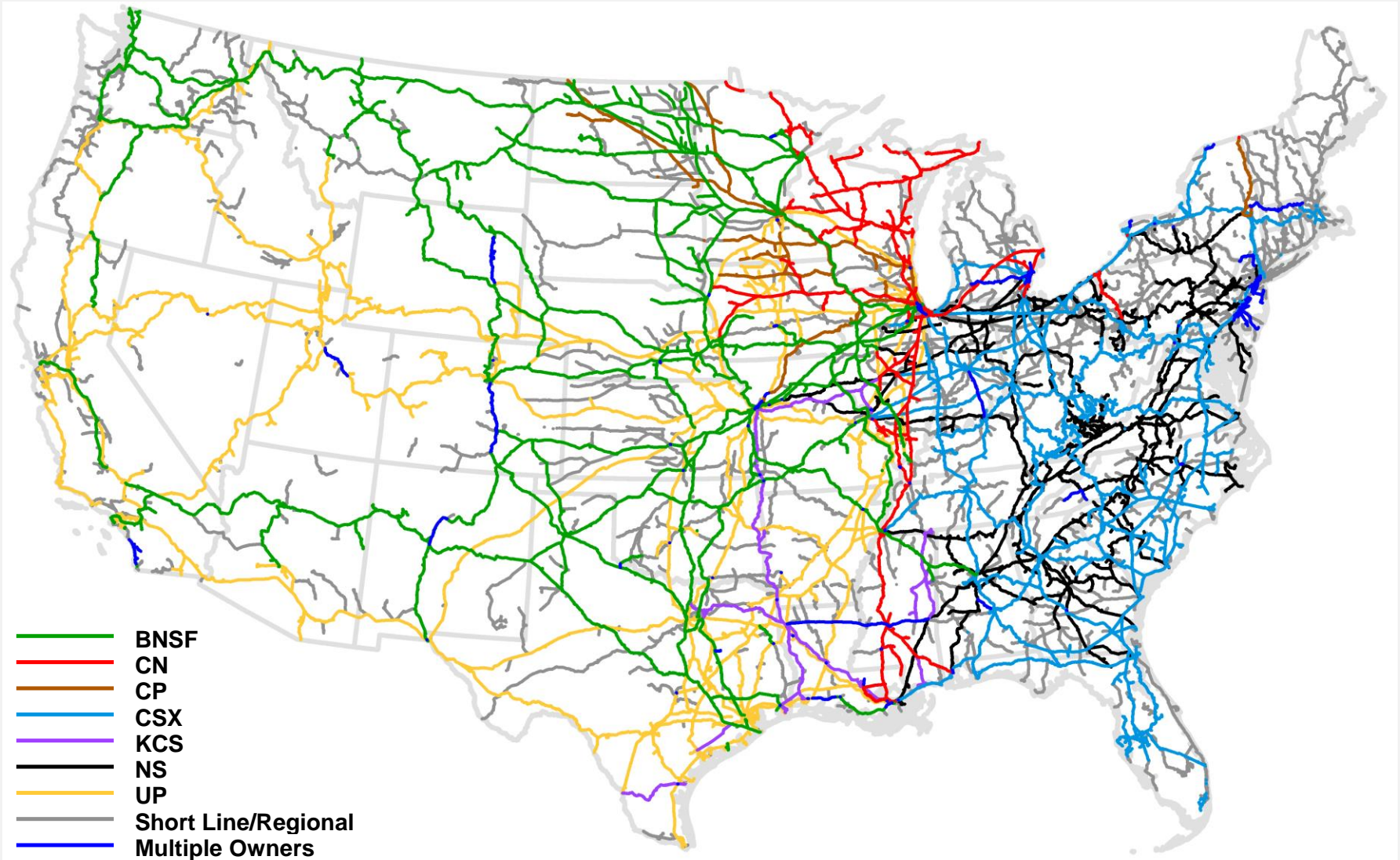
II. A Freight Rail Renaissance

III. Five Key Lessons

The United States Rail Industry

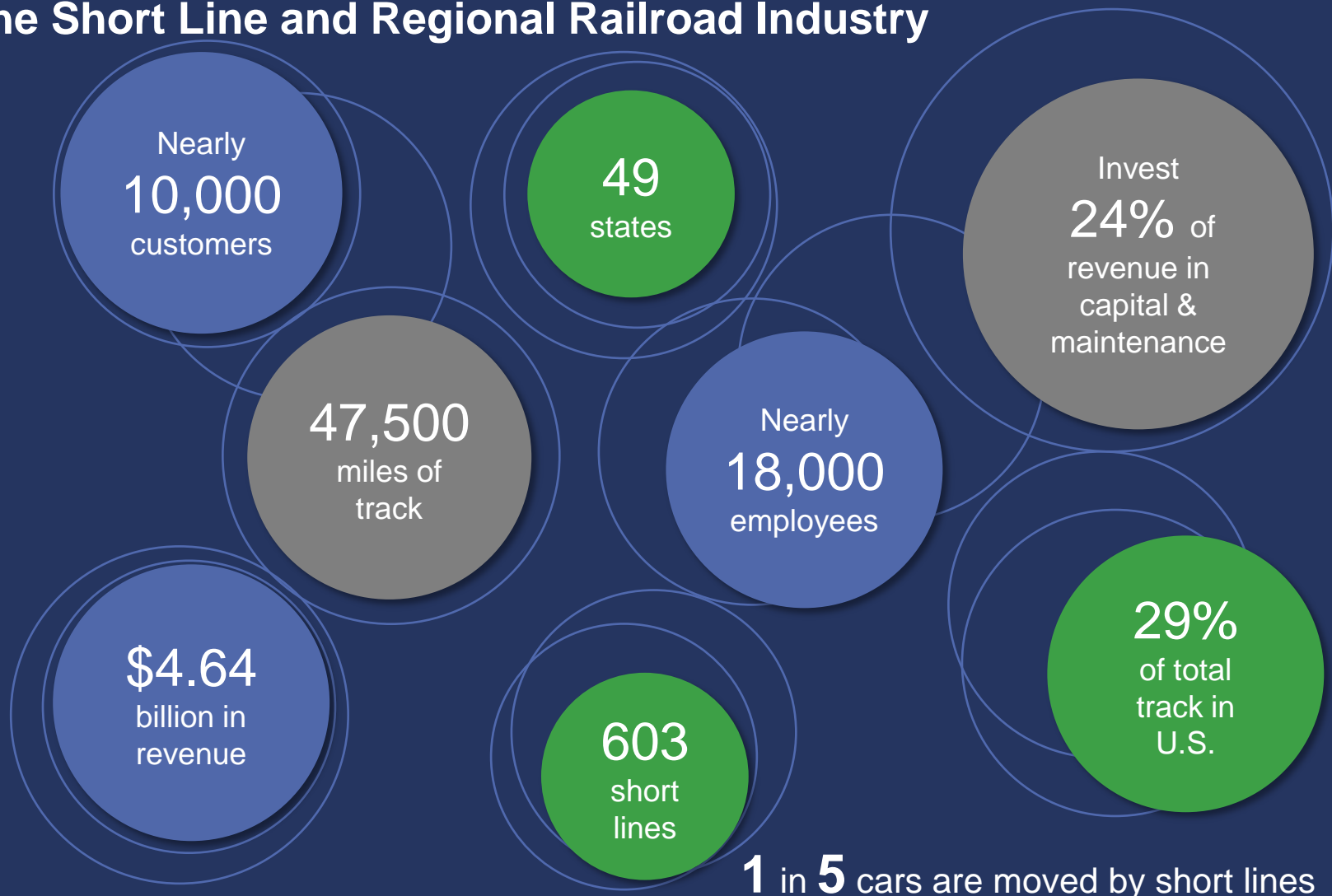


The Freight Rail Industry



Flourishing Short Line Railroads

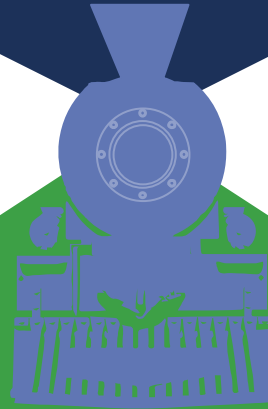
The Short Line and Regional Railroad Industry



Surface Transportation
Board
(economic regulation)



U.S. Department of
Transportation
(safety regulation)



Federal Regulators



Key Facts

- Seven major railroads
- Six hundred smaller railroads
- Invested over \$660 billion on networks between 1980 and 2017
- Hauls 35% of all U.S. exports
- Regulated at the federal level
- Privately owned network

The Passenger Rail System: Four Passenger Services

Intercity

Light Rail

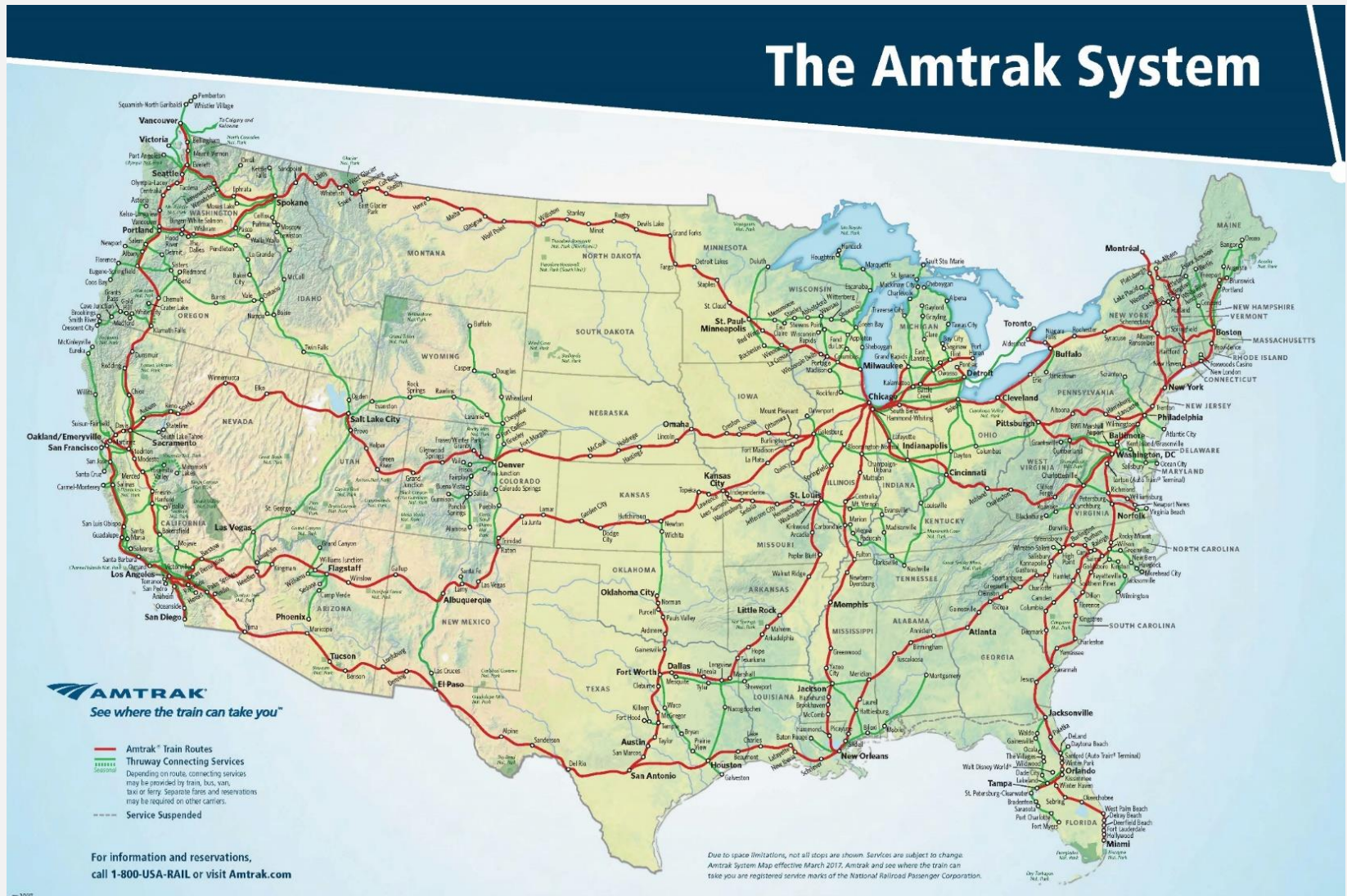
Mass Transit



Tourist

Intercity Passenger Rail

The Amtrak System



Key Facts

- Amtrak operates **over** the private freight rail networks, except between Boston and Washington
- Massive public subsidies
- Constant disputes between freight railroads and Amtrak
- Growing interest in dedicated, private high-speed projects between major U.S. cities
 - Dallas to Houston
 - Orlando to Miami
 - Los Angeles to Las Vegas

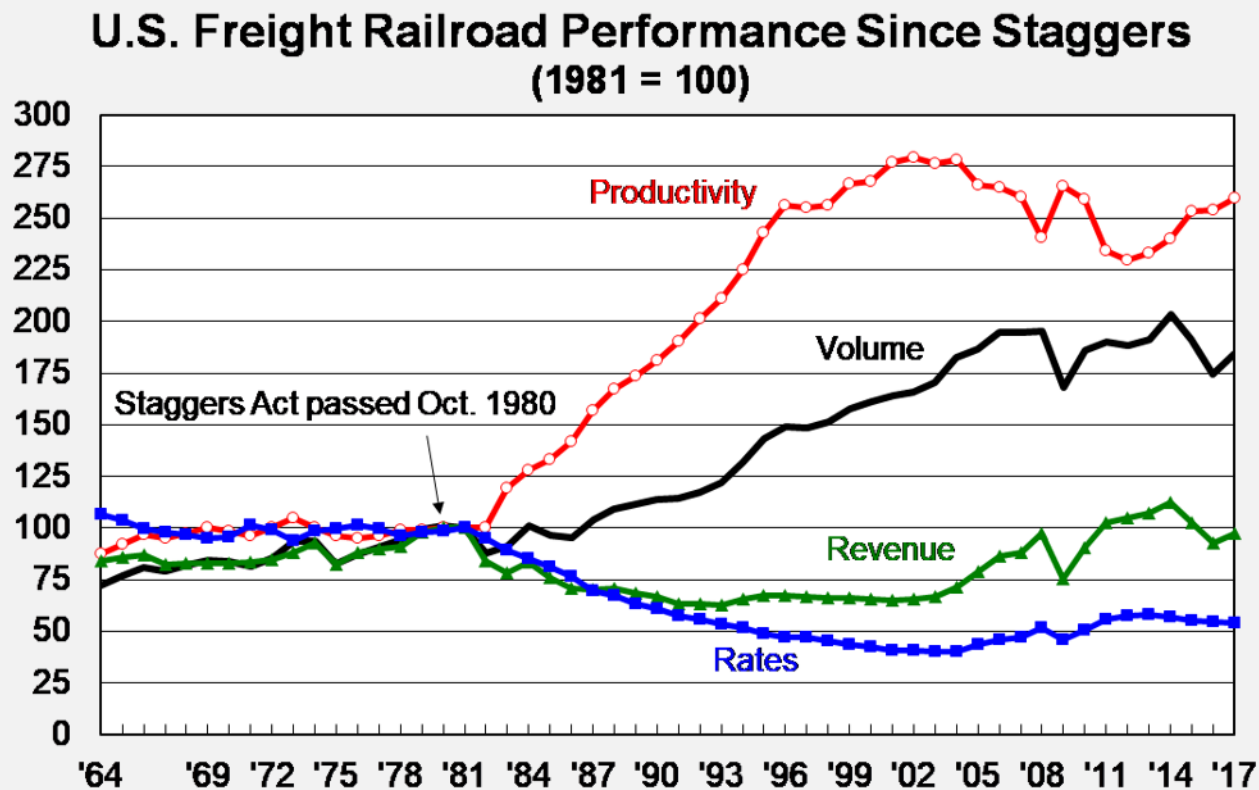
Why Look to the United States?

- In 1970s, the freight rail system was on the verge of financial ruin.
- In desperation, the U.S. government relaxed its hold on the industry.
- The results transformed the industry into one of the most efficient modes of transportation in the world.

A Freight Rail Renaissance

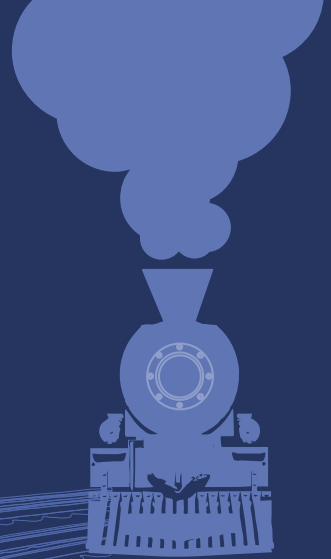


A Freight Rail Renaissance



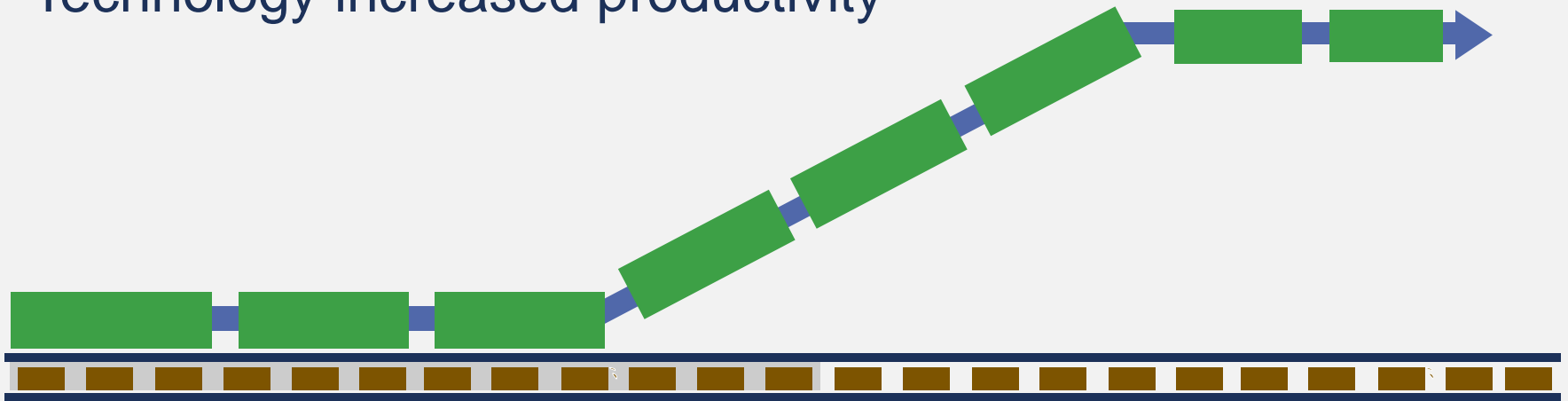
"Rates" is inflation-adjusted revenue per ton-mile. "Volume" is ton-miles. "Productivity" is revenue ton-miles per constant dollar operating expense. "Revenue" is operating revenue in 2017 \$. Source: AAR

Five Key Lessons



Lesson 1: Rationalization of the Network Drove Productivity, Safety and Resiliency

- Line sales created a robust network of more than 600 efficient short line railroads to serve the last mile
- A wave of major mergers increased economies of density and provided efficient single-line services
- Abandonments shed unprofitable lines
- Technology increased productivity



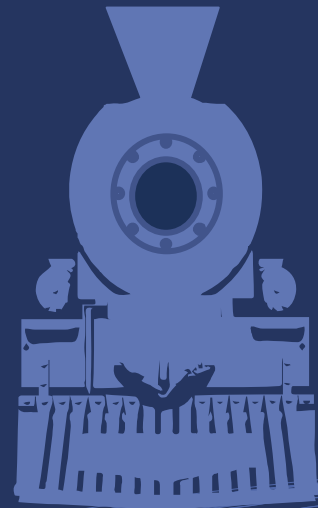
Lesson 2: The Railroads Were Granted Pricing Flexibility to Charge Different Rates to Different Customers

- Private contracts were lawful and encouraged
- Differential pricing was permitted
- Keeping competitive traffic on the network with lower prices benefited all shippers, including those with fewer transportation alternatives
- Federal regulation of rates only where market failure occurred
- Hard lesson for shippers and regulators to accept



Lesson 3: The United States Found Innovative Ways to Handle Unprofitable Light-Density Lines

- Transferred failing lines to smaller short line railroads, with interchange agreements with the larger railroads
- Permitted state and local authorities to buy failing lines without becoming a regulated common carrier
- Created “Rail-to-Trails” program to protect valuable rail corridors for future use
- Encouraged “Offers of Financial Assistance” to keep low-profit lines in the network
- Tax incentives to spur short line investments





Lesson 4: Federal Regulators Set Uniform Rules to Avoid a Patchwork of State and Local Regulations

- Economic regulation exclusively at the federal level
- Only federal approval is needed to build a new railroad
- Federal laws protect railroads from discriminatory taxes
- Safety regulations permitted at the local level, until the federal government occupies the field

To compete with air travel, intercity passenger operations require government subsidies, except between major metropolitan regions.



Freight and passenger operations do not mix well in the United States, particularly over the core network.

Lesson 5: Public Passenger Operations Should Be on Dedicated Networks

Sidley Austin LLP

*Latin America
Practice*

We assist clients in key countries including:

- Argentina
- Brazil
- Chile
- Colombia
- Costa Rica
- Dominican Republic
- Mexico
- Paraguay
- Peru
- Uruguay

Sidley has maintained a valued presence in Latin America for more than five decades. Our lawyers have advised clients on some of their most high-profile matters and transactions throughout the region. In the course of this work, we have developed strong working relationships with local counsel in all major jurisdictions. Our global team, which features lawyers who are fluent in Portuguese and Spanish, possesses an in-depth understanding of local requirements and a perspective that spans borders.