



## The McMillan Rail Shippers' Guide

### Accessing a Second Carrier (Regulated, Extended, and Long-Haul Interswitching)

A shipper may choose the routing of its traffic. Sometimes you may want your freight to use rail lines operated by two different railway companies. In these instances, you have a right to require the railway companies to transfer your freight from one rail line to another at an interchange (the point where the two lines meet). Where that transfer meets certain criteria set out in the Act, it is known as “interswitching”.

#### Interswitching

There are two primary types of interswitching:

- **Regulated Interswitching** is available when your origin or destination is within a radius of 30 km of an interchange, in which case you can require the railway that serves your origin or destination (the “local carrier”) to transport your freight to and from the interchange at rates the Agency sets annually. These rates are binding for all local federal rail carriers in Canada. Regulated interswitching is available without any application or regulatory proceeding, although if a railway company refuses to interswitch traffic at the prescribed rate, you or the connecting railway can apply to the Agency for an order requiring it to comply.

In June 2023 the federal Government passed the *Budget Implementation Act* (Bill C-47) that introduced a temporary extension to the regulated interswitching limit within the prairie provinces. Beginning in September of 2023 this 18-month pilot program will extend the availability of regulated interswitching to shipments within 160 km of an interchange where the origin or destination is in Manitoba, Saskatchewan, or Alberta.

- **Extended Interswitching** is available when the Agency considers your origin or destination to be “reasonably close” to an interchange. In other words, the interchange is more than 30 km away, but factors such as physical proximity, competitive considerations and service issues render the interchange ‘close enough’. To use this option, you must apply to the Agency for an extended interswitching order. If the Agency grants the order, regulated interswitching rates will apply.

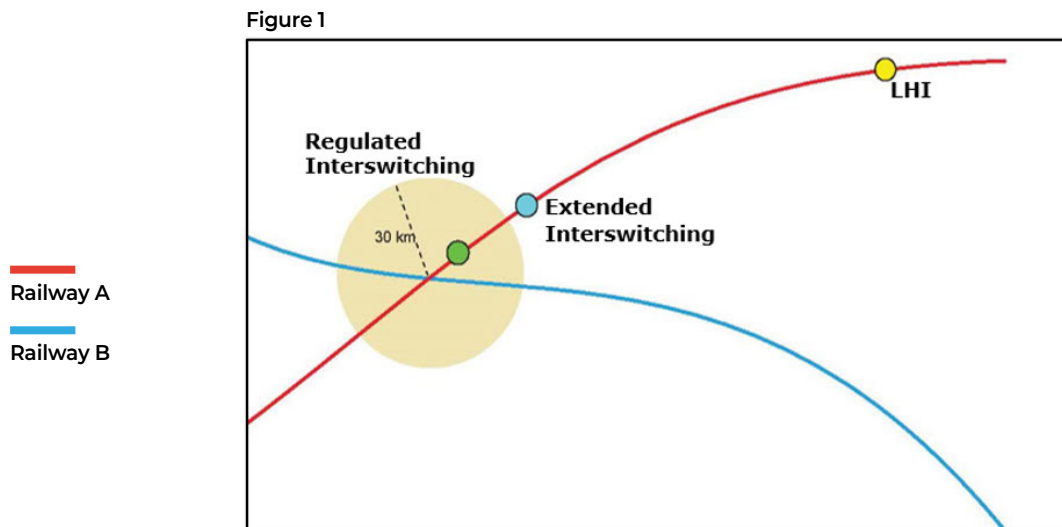
#### Long-Haul Interswitching

Long-Haul interswitching (“LHI”) is another remedy intended to provide a shipper with access to a second railway company that does not serve its facility by regulating the rate that the local carrier can charge that specific shipper to reach an interchange with the second railway company. LHI may be available when you have access to only one railway company from your origin or destination, and the distance between

your origin or destination and the nearest interchange is less than 1200 km, or that distance is less than 50% of the total kilometers your freight will travel by rail in Canada, whichever distance is longer.

To apply for LHI, you must first have unsuccessfully attempted to reach an agreement with the local carrier on the matters referred to in the LHI application. The LHI remedy has never been used and suffers from significant shortcomings, including that the LHI rate set by the Agency cannot be less than the average of the revenue per tonne kilometer for the movement by the local carrier of comparable traffic. In addition, some types of freight and certain routings are ineligible for LHI.

Figure 1 below approximates the distances at which regulated interswitching (outside the prairie provinces), extended interswitching and long-haul interswitching may be available:



To discuss the regulated interswitching, extended interswitching, or long-haul interswitching remedies, send an email or telephone a member of McMillan's Rail Transportation Group at the contacts below.

**Ryan Gallagher** | Partner, Transportation | Competition, Antitrust & Foreign Investment

604-691-6865

[ryan.gallagher@mcmillan.ca](mailto:ryan.gallagher@mcmillan.ca)

**Lucia Stuhldreier** | Partner, Transportation

604-691-7431

[lucia.stuhldreier@mcmillan.ca](mailto:lucia.stuhldreier@mcmillan.ca)

**François Tougas** | Partner, Transportation | Competition, Antitrust & Foreign Investment

604-691-7425

[francois.tougas@mcmillan.ca](mailto:francois.tougas@mcmillan.ca)