

222213

Kirkpatrick & Lockhart Preston Gates Ellis LLP
1601 K Street NW
Washington, DC 20006-1600
r 202 778 9000 www.klgates.com



Edward J. Fishman
202 778 9456
Fax 202 778 9100
ed.fishman@klgates.com

April 29, 2008

Via Hand Delivery

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

ENTERED
Office of Proceedings

APR 29 2008

Part of
Public Record

FEE RECEIVED

APR 29 2008

**SURFACE
TRANSPORTATION BOARD**

**RE: Finance Docket No. 35139
Genesee & Wyoming Inc. – Control Exemption – Columbus &
Greenville Railway Company, Chattooga & Chickamauga Railway
Company, and Luxapalila Valley Railroad, Inc.**

Dear Secretary Williams:

On behalf of Genesee & Wyoming Inc. ("GWI"), please find enclosed for filing in the above-referenced docket an original and ten copies of a **Notice of Exemption** filed by GWI under 49 C.F.R. § 1180.2(d)(2) to acquire indirect control of Columbus & Greenville Railway Company, Chattooga & Chickamauga Railway Company, and Luxapalila Valley Railroad, Inc. A check in the amount of \$1,100 to cover the applicable filing fee is enclosed. We also have enclosed, pursuant to 49 C.F.R. § 1180.6(a)(6), twenty (20) additional copies of the maps attached to the **Notice of Exemption**. A copy of the Merger Agreement referenced in the **Notice of Exemption** is being filed under seal in a separate envelope (marked "Highly Confidential-Filed Under Seal Subject to a Request for Protective Order") in conjunction with a Motion for Protective Order that is being filed contemporaneously herewith.

Please acknowledge receipt of this filing by file-stamping the attached extra copy of this letter and contact me if you have any questions. Thank you.

Respectfully submitted,

Edward J. Fishman
Attorney for Genesee & Wyoming Inc.

FILED

APR 29 2008

**SURFACE
TRANSPORTATION BOARD**

Enclosure

BEFORE THE
SURFACE TRANSPORTATION BOARD



FINANCE DOCKET NO. 35139

GENESEE & WYOMING INC.
-- CONTROL EXEMPTION --
COLUMBUS AND GREENVILLE RAILWAY COMPANY,
THE CHATTOOGA AND CHICKAMAUGA RAILWAY COMPANY, AND
LUXAPALILA VALLEY RAILROAD, INC.

VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1180.2(d)(2)

FILED
APR 29 2008
SURFACE
TRANSPORTATION BOARD

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APR 29 2008
SURFACE
TRANSPORTATION BOARD

ENTERED
Office of Proceedings

APR 29 2008

Part of
Public Record

Kevin M. Sheys
Edward J. Fishman
Kirkpatrick & Lockhart
Preston Gates Ellis LLP
1601 K Street NW
Washington, DC 20006
(202) 778-9000

ATTORNEYS FOR
GENESEE & WYOMING INC.

Dated: April 29, 2008



BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35139

GENESEE & WYOMING INC.
-- CONTROL EXEMPTION --
COLUMBUS AND GREENVILLE RAILWAY COMPANY,
THE CHATTOOGA AND CHICKAMAUGA RAILWAY COMPANY, AND
LUXAPALILA VALLEY RAILROAD, INC.

**VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 49 C.F.R. § 1180.2(d)(2)**

Genesee & Wyoming Inc. ("GWI") hereby files this Verified Notice of Exemption under 49 C.F.R. § 1180.2(d)(2) to acquire indirect control of Columbus and Greenville Railway Company, The Chattooga and Chickamauga Railway Company, and Luxapalila Valley Railroad, Inc. (collectively, the "CAGY Railroads") upon consummation of the Stock Purchase and Merger Agreement ("Stock Purchase Agreement") entered into by and between GWI, CAGY Acquisition Co. ("CAGY Acquisition"), CAGY Industries, Inc. ("CAGY Industries") and certain stockholders of CAGY Industries. GWI is a non-carrier holding company that directly or indirectly controls one Class II and numerous Class III railroads. CAGY Acquisition is a non-carrier, wholly-owned direct subsidiary of GWI. CAGY Industries is a non-carrier holding company that directly controls the three Class III CAGY Railroads. Pursuant to the Stock Purchase Agreement, CAGY Acquisition will obtain at least ninety percent (90%) of the outstanding capital stock of CAGY Industries and then merge with and into CAGY Industries whereupon the existence of CAGY Acquisition will cease and CAGY Industries will continue as

the surviving corporation whose sole shareholder will be GWI. Thus, upon consummation of the proposed stock purchase and merger transaction, GWI will acquire direct control of CAGY Industries and indirect control of the three CAGY Railroads.

Columbus and Greenville Railway Company ("C&G") is a Class III rail carrier that owns and operates lines of railroad located in Mississippi. Luxapalila Valley Railroad, Inc. ("LXVR") is a Class III rail carrier that owns and operates a line of railroad located in Mississippi and Alabama. The Chattooga and Chickamauga Railway Company ("CCRY") is a Class III rail carrier that leases and operates lines of railroad located in Tennessee and Georgia. The CAGY Railroads do not own or operate any lines of railroad which connect with the rail lines of any existing rail carrier controlled by GWI. This control transaction is not part of a series of anticipated transactions that would result in any connection between the CAGY Railroads and the rail lines of any existing rail carrier controlled by GWI. In addition, this control transaction does not involve a Class I carrier. Accordingly, the acquisition by GWI of direct control of CAGY Industries and indirect control of the CAGY Railroads qualifies for the class exemption under 49 C.F.R. § 1180.2(d)(2).

Pursuant to 49 C.F.R. § 1180.4(g), GWI submits the following information:

SECTION 1180.6(a)(1)(i)
DESCRIPTION OF THE PROPOSED TRANSACTION

GWI is a noncarrier holding company that directly or indirectly controls Buffalo & Pittsburgh Railroad, Inc., a Class II rail carrier operating in New York and Pennsylvania, and 25 Class III rail carriers.¹ GWI also controls additional rail carriers together with two of its wholly

¹ These carriers are: Arkansas, Louisiana & Mississippi Railroad Company, which operates in Arkansas and Louisiana; Chattahoochee Bay Railroad, Inc. which operates in Georgia and Alabama; Chattahoochee Industrial Railroad, which operates in Georgia; Commonwealth Railway, Inc., which operates in Virginia; Corpus Christi Terminal Railroad, Inc., which operates in Texas; Dansville and Mount Morris Railroad Company, which operates in New York; First Coast Railroad, Inc., which operates in Florida and

owned subsidiaries that are noncarrier holding companies: RP Acquisition Company One (RP1) and RP Acquisition Company Two (RP2). GWI and RP1 control Rail Partners, L.P.,² and eight Class III rail carriers formed as limited partnerships³ GWI and RP2 control Rail Partners, L.P.,⁴ KWT Railway Inc., a Class II rail carrier, and five Class III rail carriers organized as limited liability companies.⁵ The common control of all of these carriers together was authorized in Finance Docket No. 35098, Genesee & Wyoming Inc. – Control Exemption – Maryland Midland Railway, Inc., (STB served December 18, 2007). CAGY Acquisition is a non-carrier, wholly-owned direct subsidiary of GWI that was formed by GWI for the purpose of facilitating its

Georgia; Fordyce & Princeton Railroad Company, which operates in Arkansas; Genesee & Wyoming Railroad Company, Inc., which operates in New York; Golden Isles Terminal Railroad, Inc., which operates in Georgia; Illinois & Midland Railroad, Inc., which operates in Illinois, Louisiana & Delta Railroad, Inc., which operates in Louisiana; Maryland Midland Railway, Inc., which operates in Maryland; Portland & Western Railroad, Inc., which operates in Oregon; Rochester & Southern Railroad, Inc., which operates in New York, Salt Lake City Southern Railroad Company, which operates in Utah; Savannah Port Terminal Railroad Inc., which operates in Georgia; South Buffalo Railway Company, which operates in New York; St. Lawrence & Atlantic Railroad Company, which operates in Vermont, New Hampshire and Maine; St. Lawrence & Atlantic Railroad (Quebec), Inc., which operates in Vermont, Talleyrand Terminal Railroad, Inc., which operates in Florida, Tazewell & Peoria Railroad, Inc., which operates in Illinois, Utah Railway Company, which operates in Colorado and Utah; Willamette and Pacific Railroad, Inc., which operates in Oregon; and York Railway Company (York), which operates in Pennsylvania. In addition, GWI has control over Maryland and Pennsylvania, LLC and Yorkrail, LLC, non-operating Class III rail carriers that separately hold the rail assets over which York operates

² Rail Partners, L.P., is a noncarrier limited partnership that holds all non-managing membership interests or all limited partnership interests (as applicable) in each of the Class III rail carriers that GWI and RP1 and RP2 control together. RP1 acquired the entire general partnership interest of Rail Partners, L.P.

³ These carriers are: Atlantic & Western Railway, Limited Partnership; East Tennessee Railway, L.P.; Galveston Railroad, L.P.; Georgia Central Railway, L.P.; Little Rock & Western Railway, L.P.; Tomahawk Railway, Limited Partnership; Valdosta Railway, L.P.; and Wilmington Terminal Railroad, Limited Partnership

⁴ RP2 acquired the entire limited partnership interest of Rail Partners, L.P.

⁵ The carriers are: AN Railway, L.L.C., The Bay Line Railroad, L.L.C. (Bay Line); M&B Railroad, L.L.C., Riceboro Southern Railway, L.L.C., and Western Kentucky Railway, L.L.C.

acquisition of control of the CAGY Railroads. CAGY Acquisition does not own or control any rail carriers.

C&G is a Class III rail carrier that owns a line of railroad located generally between Greenville, MS and Columbus, MS, a distance of approximately 148 miles.⁶ LXVR owns and operates a line of railroad located generally between approximately NS milepost 919.1 near Columbus, MS and approximately NS milepost 884.9 near Belk, AL.⁷ CCKY (i) leases and operates an approximately 20-mile rail line from Norfolk Southern Railway Company ("NS") between Chattanooga, TN and Hedges, GA and (ii) operates an approximately 49-mile line owned by the State of Georgia located generally between Chattanooga, TN and Lyerly, GA.⁸ The CAGY Railroads do not own or operate any lines of railroad which connect with the rail lines of any existing rail carrier controlled by GWI. GWI plans to acquire direct control of CAGY Industries and indirect control of the CAGY Railroads upon the consummation of the transaction described in the Stock Purchase Agreement.

The full name and address of the applicant is as follows:

Gencsec & Wyoming Inc.
66 Field Point Road
Greenwich, CT 06830

⁶ The portion of the C&G line between Greenwood, MS and West Point, MS is out of service. See AB-297 (Sub-No 103x), Columbus and Greenville Railway Company – Discontinuance of Service Exemption – In Greenwood, MS (STB served July 3, 2007).

⁷ The LXVR line physically connects with the C&G line at Columbus, MS. CAGY Industries obtained authority from the STB to control these two connected carriers and CCKY in Finance Docket No. 32968 (Sub-No. 1), Cagy Industries, Inc. – Acquisition of Control Exemption – Luxapahula Valley Railroad, Inc. (STB served July 24, 1996).

⁸ See Finance Docket No. 33691, The Chattooga and Chickamauga Railway Company – Acquisition and Operation Exemption – Line of Central of Georgia Railroad Company (STB served January 6, 1999); Finance Docket No. 33690, State of Georgia, Department of Transportation – Acquisition Exemption – Line of Central of Georgia Railroad Company (STB served January 6, 1999).

Any questions concerning this Notice should be sent to the representative of GWI at the following address:

Kevin M. Sheys
Kirkpatrick & Lockhart Preston Gates Ellis LLP
1601 K Street NW
Washington, D.C. 20006
(202) 778-9000

SECTION 1180.6(a)(1)(ii)
PROPOSED TIME SCHEDULE FOR CONSUMMATION

GW I intends to consummate its acquisition of control of CAGY Industries and its indirect acquisition of control of the CAGY Railroads on or soon after the date that this Notice of Exemption becomes effective.

SECTION 1180.6(a)(1)(iii)
PURPOSE SOUGHT TO BE ACCOMPLISHED

The exemption sought herein will allow GW I to acquire direct control of CAGY Industries and acquire indirect control of the CAGY Railroads upon consummation of the transaction contemplated in the Stock Purchase Agreement. This will permit the efficient operation and management of the CAGY Railroads as part of the GW I system.

SECTION 1180.6(a)(5)
STATES IN WHICH PROPERTY OF APPLICANT IS LOCATED

The members of the GW I family of railroads own and/or operate rail property located in the states and/or commonwealths of Alabama, Arkansas, Colorado, Florida, Georgia, Illinois, Kentucky, Louisiana, Maine, Maryland, Mississippi, New Hampshire, New York, North Carolina, Oregon, Pennsylvania, Tennessee, Texas, Utah, Virginia, Vermont and Wisconsin.

The CAGY Railroads own or operate property located within the states of Mississippi, Alabama, Tennessee and Georgia.

SECTION 1180.6(a)(6)
MAP – EXHIBITS

Maps of the rail lines owned and/or operated by the CAGY Railroads are attached hereto as **Exhibit A**. Maps of the rail lines owned and/or operated by the existing members of the GWI family of railroads are attached hereto as **Exhibit B**.

SECTION 1180.6(a)(7)(ii)
AGREEMENT

In accordance with the Stock Purchase Agreement, GWI will acquire control of CAGY Industries and indirect control of the CAGY Railroads. On the closing date, GWI's wholly-owned subsidiary CAGY Acquisition will acquire control of at least 90% of the outstanding capital stock of CAGY Industries. CAGY Acquisition then will merge with and into CAGY Industries whereupon the existence of CAGY Acquisition will cease and CAGY Industries will continue as the surviving wholly-owned subsidiary of GWI.⁹ As a result of this reverse triangular merger, GWI will obtain direct control over CAGY Industries and indirect control over the CAGY Railroads. A copy of the Stock Purchase Agreement is being filed under seal in conjunction with a Motion for Protective Order being filed by GWI.

⁹ The stock acquisition and the subsequent merger are scheduled to occur on the same closing date, but technically there may be a brief period of time prior to the filing of the merger certificate when CAGY Acquisition will own at least 90% of the stock of CAGY Industries. This brief period will cease once the merger certificate is filed and CAGY Acquisition merges with and into CAGY Industries (which will remain as the surviving corporation with GWI as its sole shareholder). GWI does not believe this sequence of events in the merger transaction requires CAGY Acquisition to obtain control authority from the Board under 49 U.S.C. § 11323 since the stock acquisition by CAGY Acquisition is merely a transitory step to completing the merger transaction (and the filing of the merger certificate will occur immediately after the stock acquisition). Nonetheless, out of an abundance of caution, GWI also seeks through this notice an exemption from any necessary authority under § 11323 that CAGY Acquisition may need for its brief, temporary period of ownership of a majority of the stock of CAGY Industries.

SECTION 1180.4(g)(1)(i)
LABOR PROTECTIVE CONDITIONS

Pursuant to 49 U.S.C. §11326(b), the Surface Transportation Board is required to impose employee protective conditions on this control transaction as it involves the common control of one Class II carrier (Buffalo & Pittsburgh Railroad, Inc.) with a number of Class III carriers (including the CAGY Railroads).

SECTION 1180.4(g)(1)
ENVIRONMENTAL AND HISTORIC PRESERVATION MATTERS

Under 49 C.F.R. § 1105.6(c)(2)(i) and (ii), no environmental report is required for GWI's acquisition of direct control of CAGY Industries and indirect control of the CAGY Railroads. The transaction will not result in significant changes in carrier operations, i.e. changes which exceed the threshold established in 49 C.F.R. § 1105.7(e)(4) or (5). Under 49 C.F.R. § 1105.8(b)(3), no historic preservation report is required.

Respectfully submitted,

By:

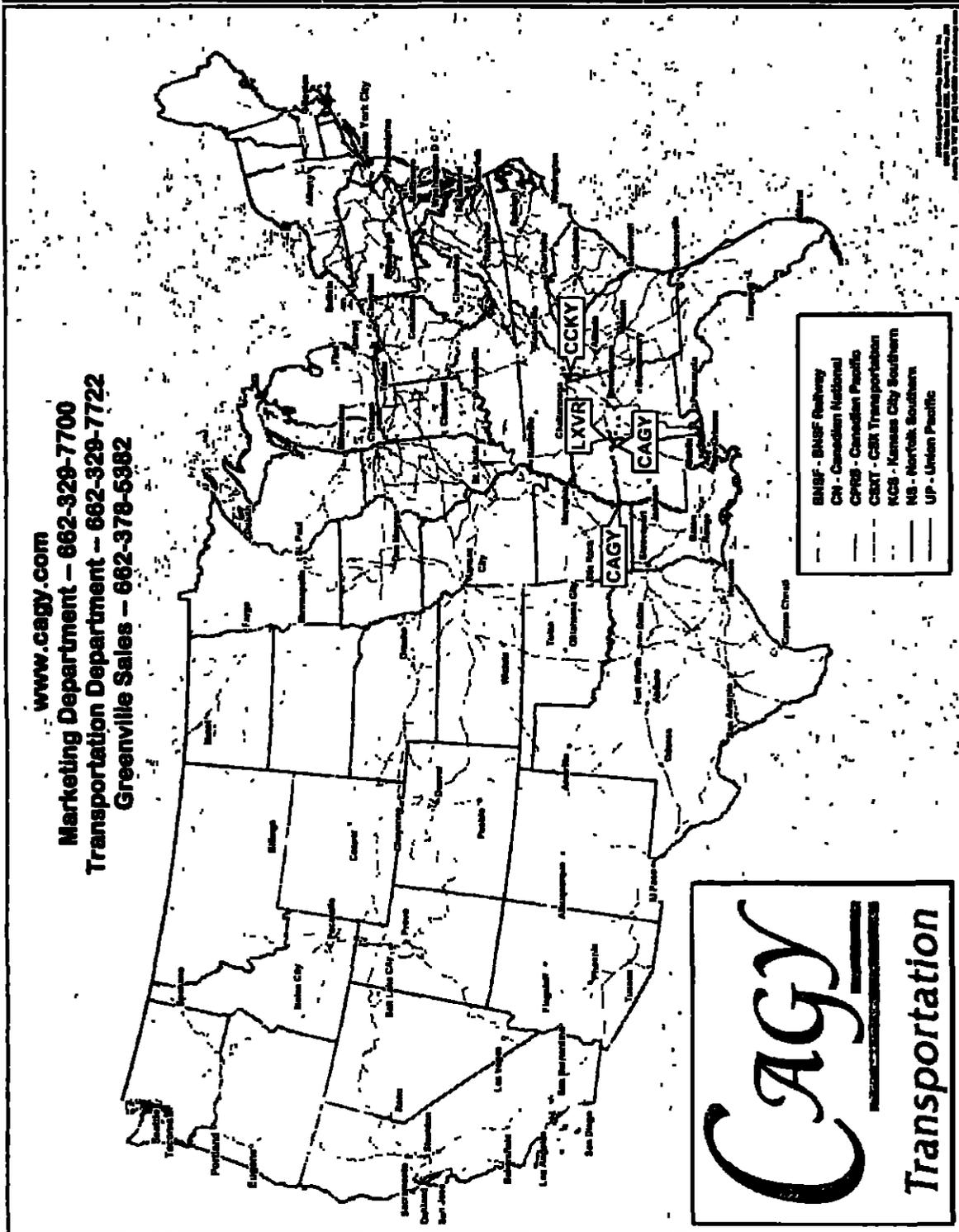
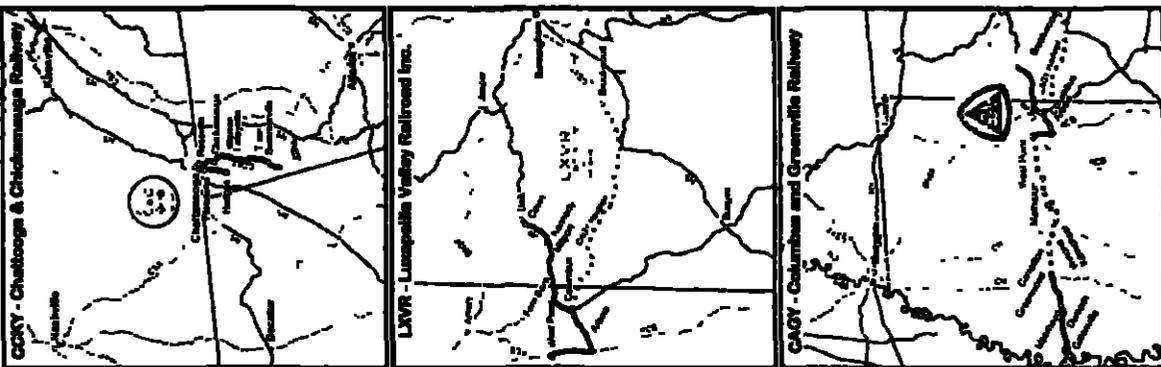


Kevin M. Sheys
Edward J. Fishman
Kirkpatrick & Lockhart
Preston Gates Ellis LLP
1601 K Street NW
Washington, D.C. 20006
(202) 778-9000

**ATTORNEYS FOR
GENESEE & WYOMING INC.**

Dated: April 29, 2008

EXHIBIT A
MAP OF CAGY RAILROADS



www.cagy.com
Marketing Department – 662-329-7700
Transportation Department – 662-329-7722
Greenville Sales – 662-378-6982

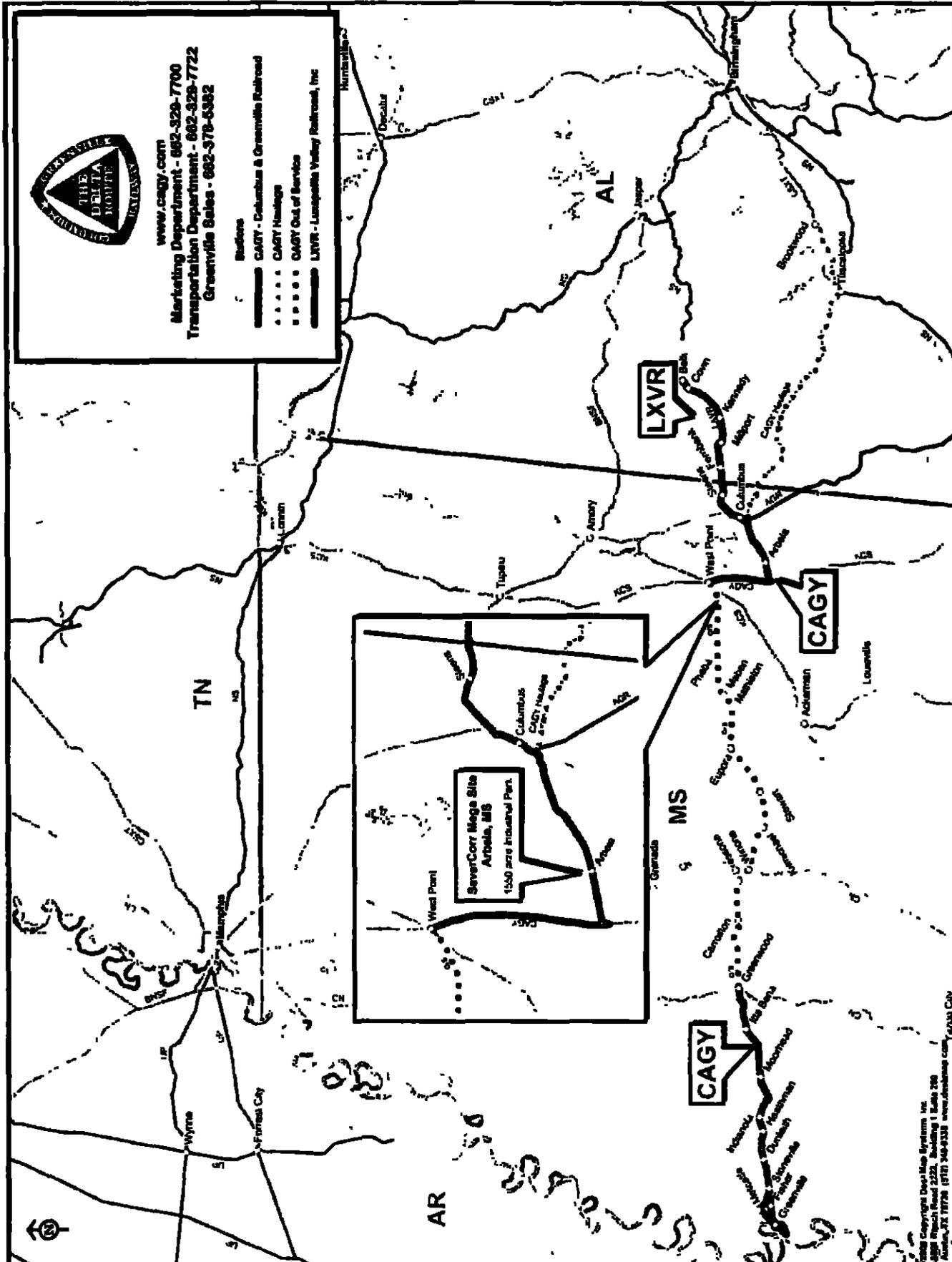
CAGY
Transportation

- BNSF - BNSF Railway
- CN - Canadian National
- CPNS - Canadian Pacific
- CSXT - CSX Transportation
- KCS - Kansas City Southern
- NS - Norfolk Southern
- UP - Union Pacific



www.cagy.com
 Marketing Department - 662-329-7700
 Transportation Department - 662-329-7722
 Greenville Sales - 662-378-6382

- Stations
- CAGY - Columbus & Greenville Railroad
 - CAGY Holdings
 - CAGY Out of Service
 - LXVR - Lumpkin Valley Railroad, Inc



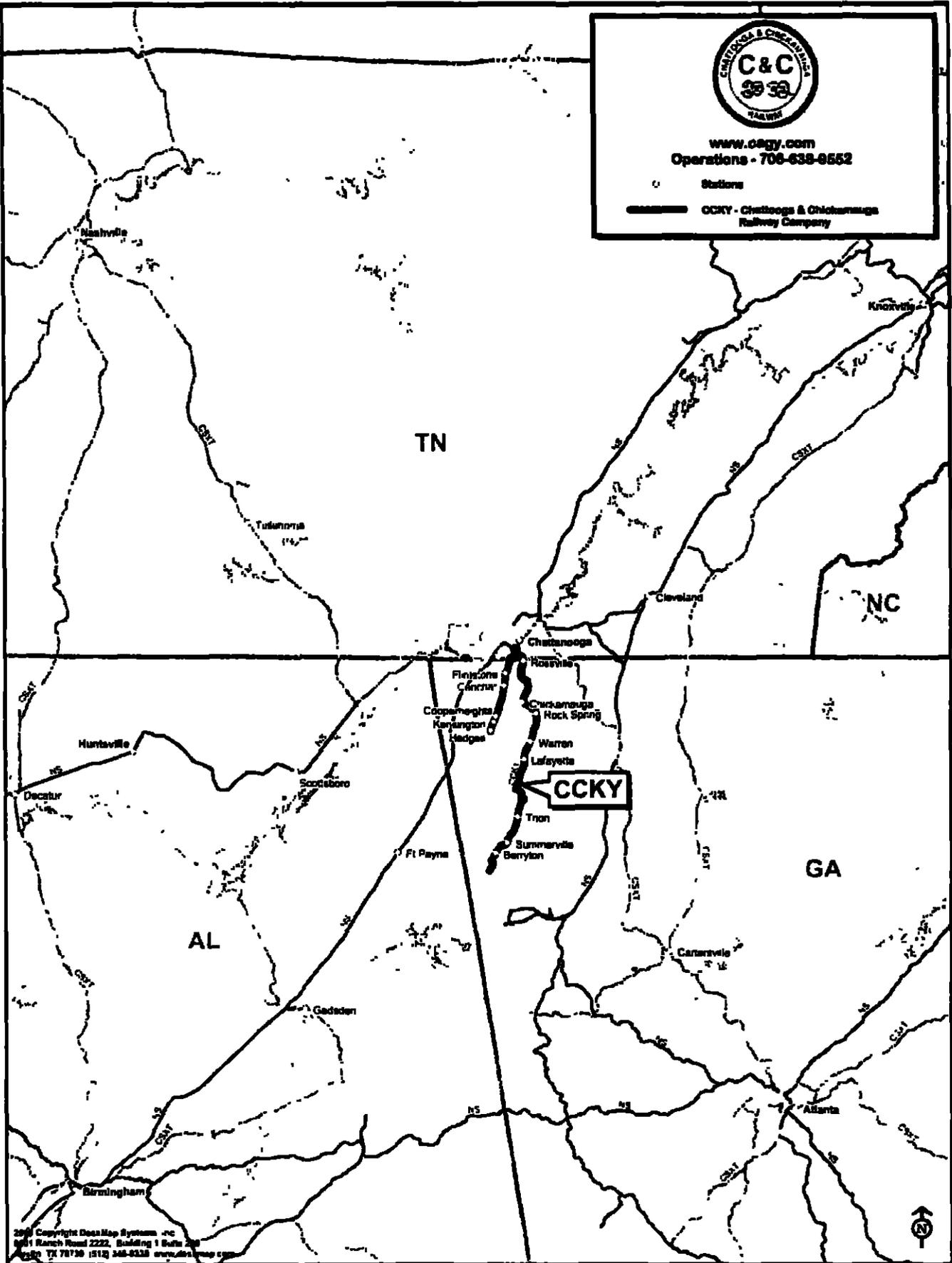
SeverCorr Mega Site
 Arbibela, MS
 1500 acre Industrial Port



www.cagy.com
Operations - 706-639-9552

○ Stations

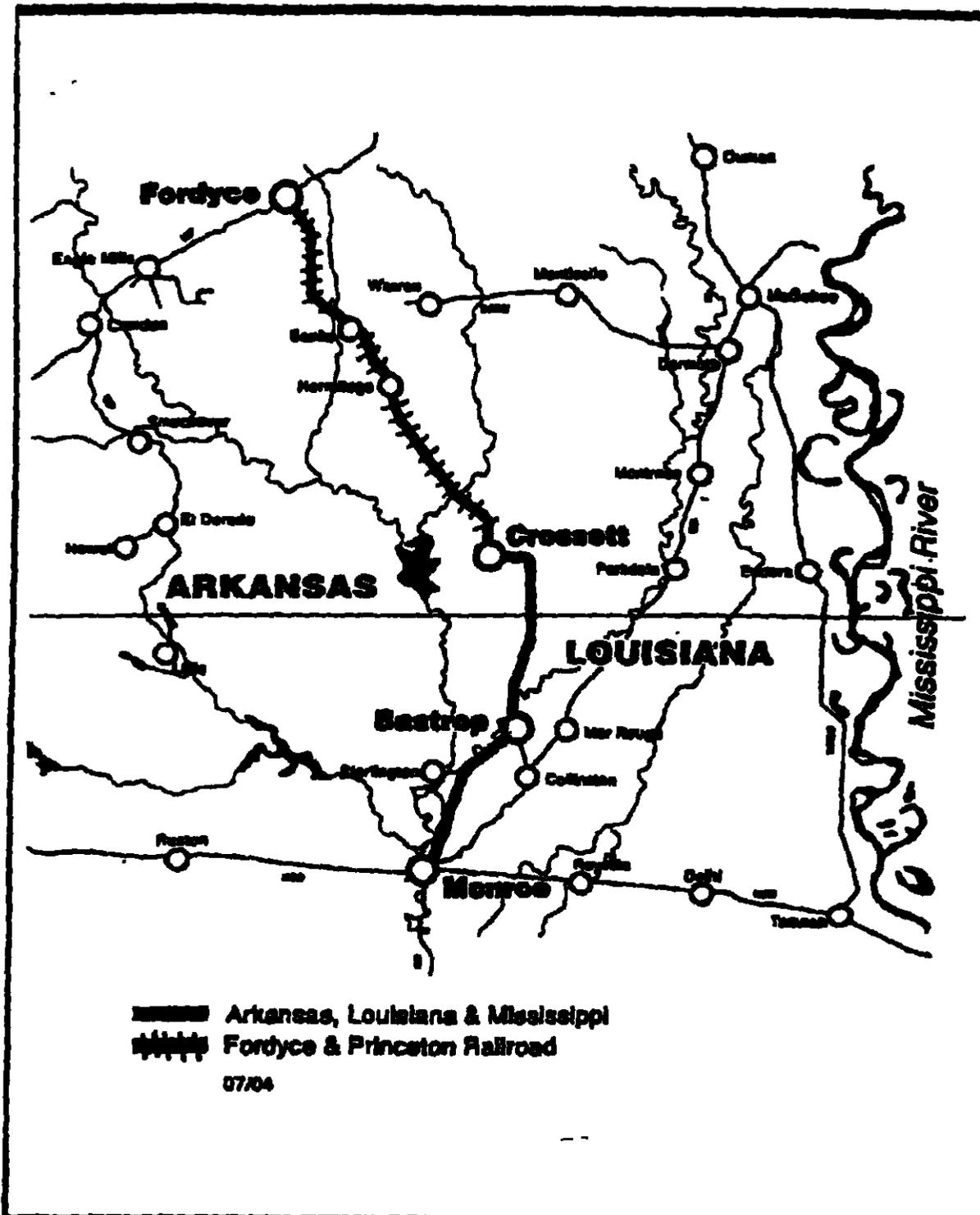
———— CCKY - Chickasaw & Chickamauga Railway Company

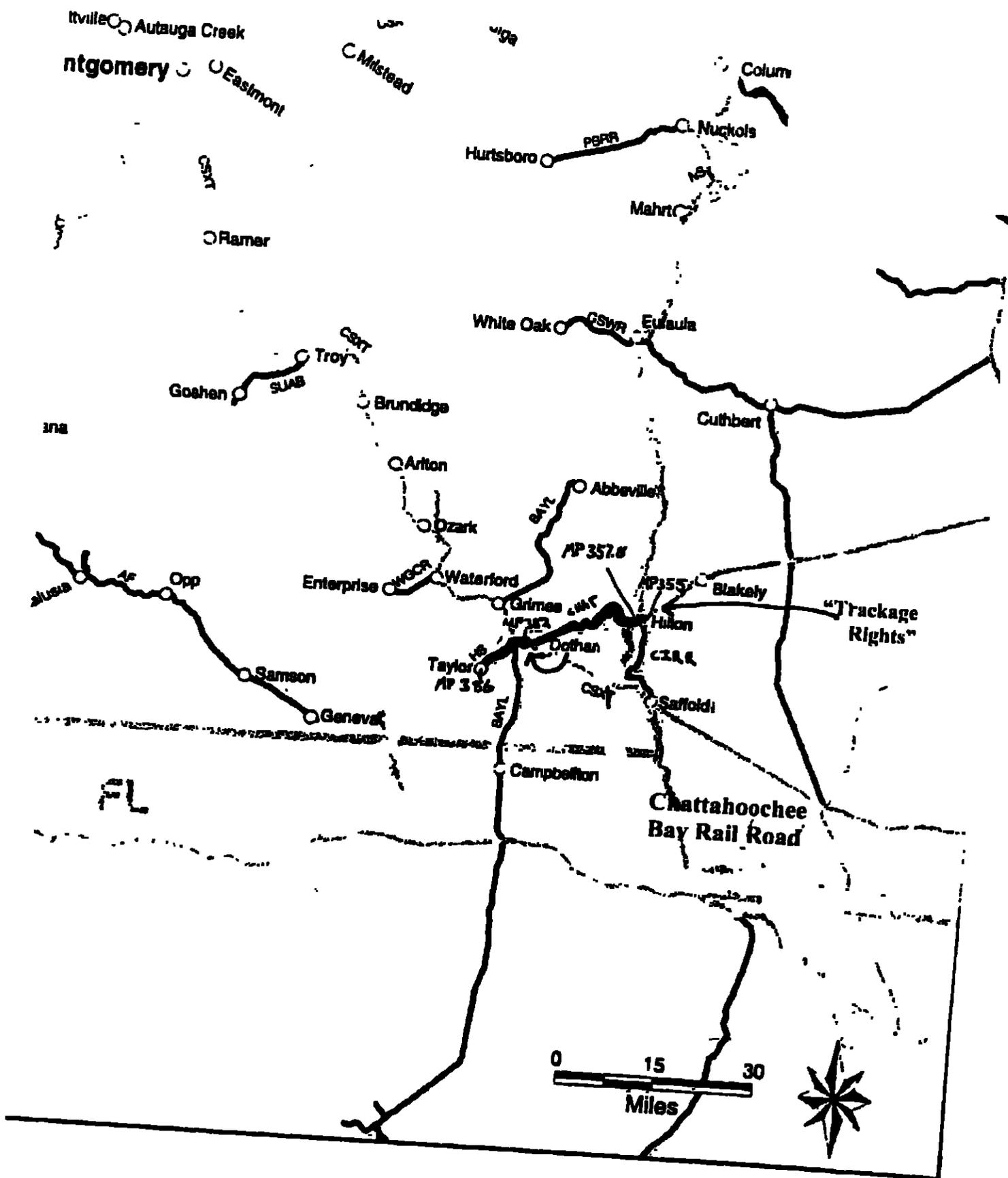


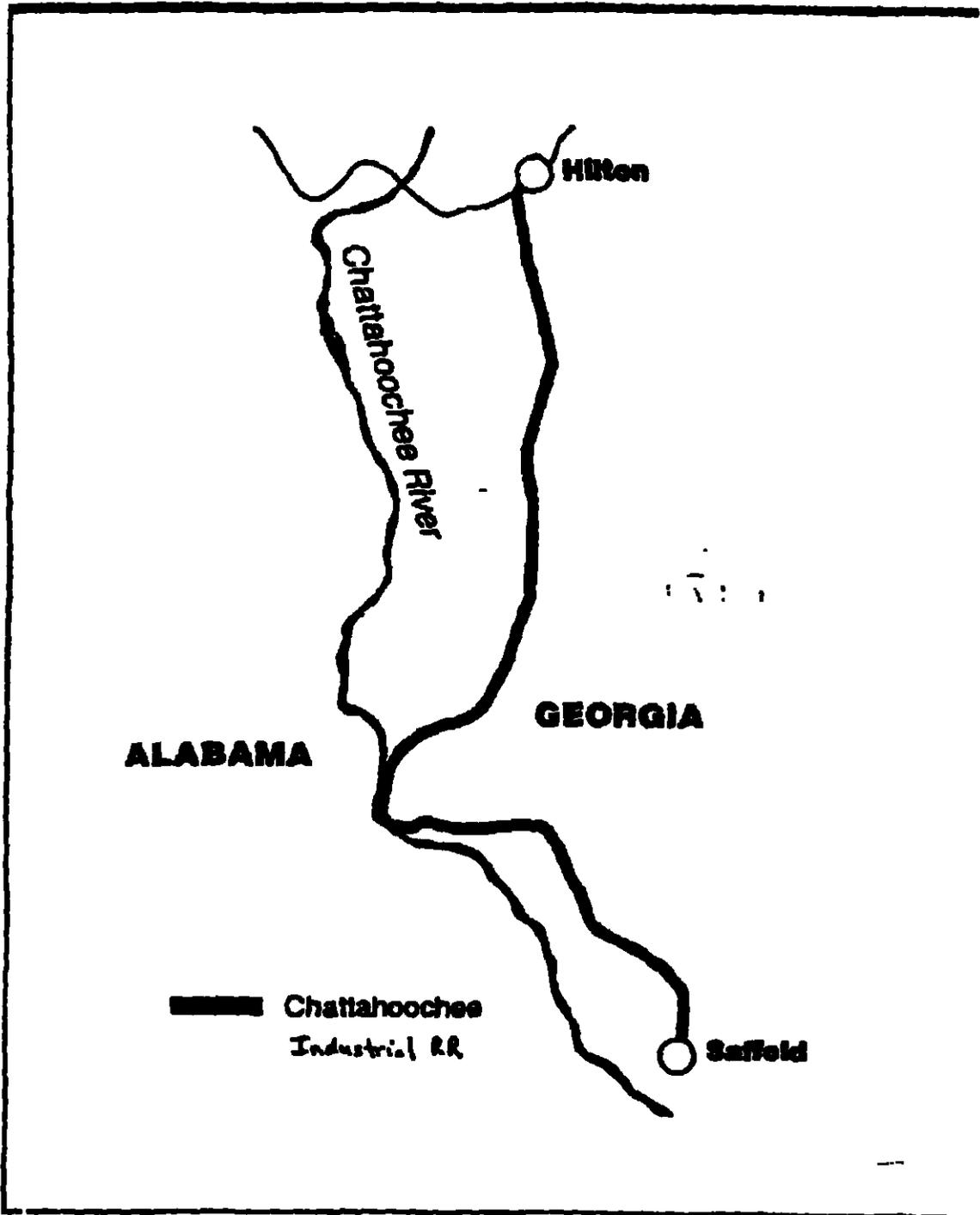
2001 Copyright DataMap Systems, Inc.
4001 Ranch Road 2222, Building 1 Suite 200
Dallas, TX 75136 (512) 348-9338 www.datamap.com

EXHIBIT B

MAPS OF THE RAILROADS OWNED AND/OR OPERATED BY GWI







Hilton

Chattahoochee River

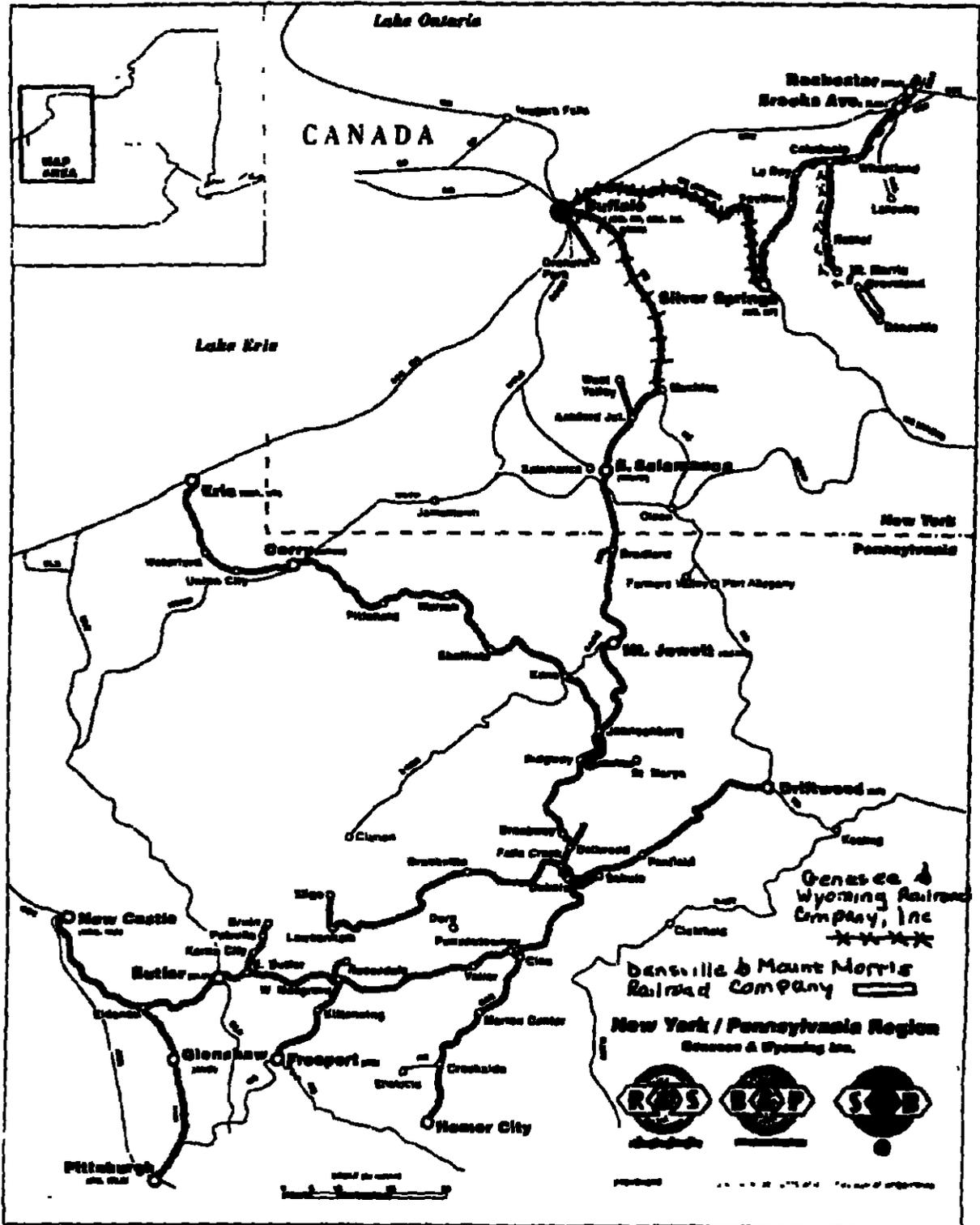
ALABAMA

GEORGIA

Chattahoochee Industrial RR

Saffold

New York/Pennsylvania Region - Route Map



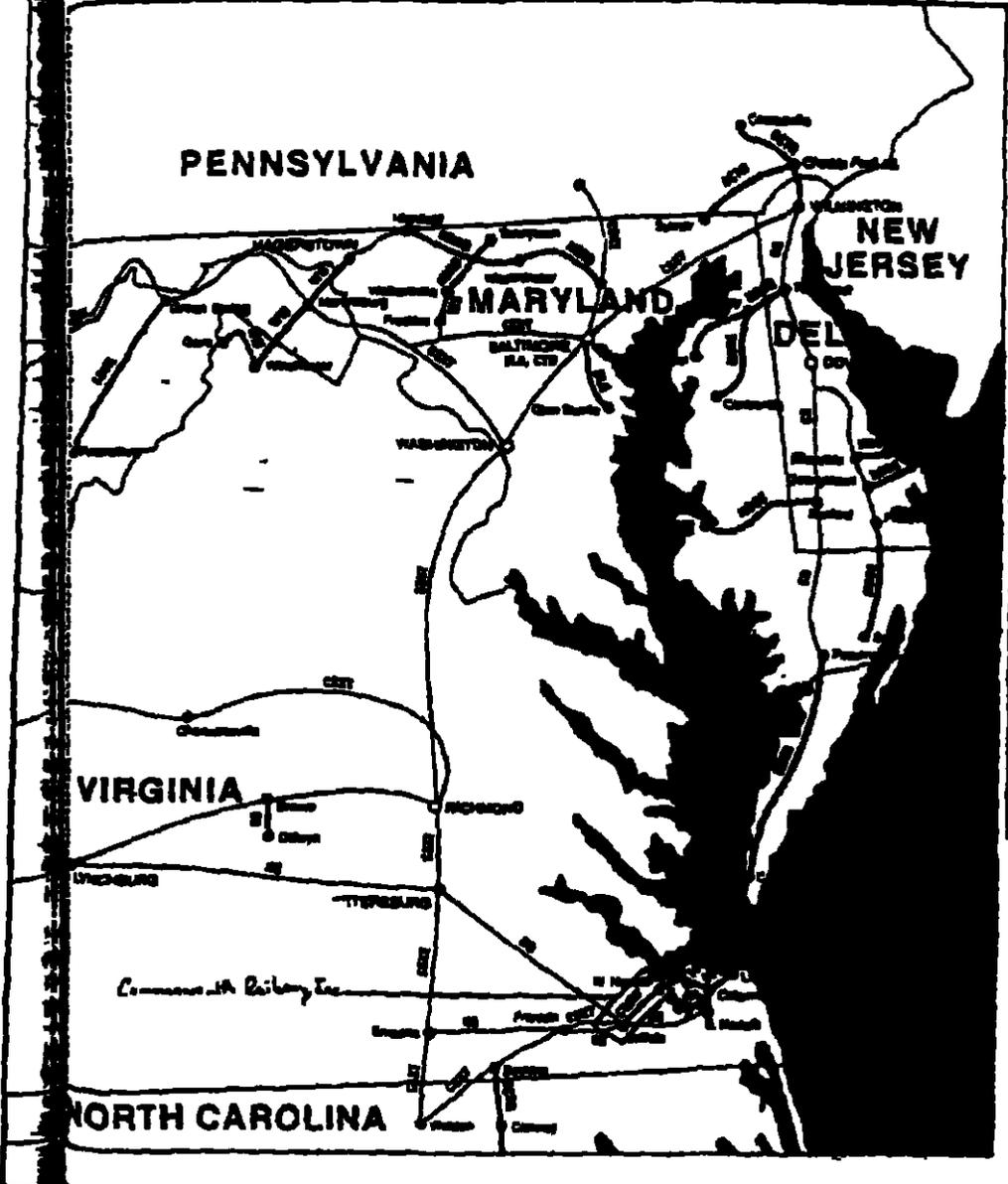
Buffalo & Pittsburgh Railroad, Inc.
 Rochester & Southern Railroad, Inc.
 South Buffalo Railway Co.

1200-C Scottsville Road, Suite 200
 Rochester, NY 14624

Customer Service/Operations
 Phone 800-603-3385
 Fax 800-477-4947

CSS

REGION 7
DC/DE/MD/VA/WV



REGION 7 DC/DE/MD/VA/WV

PENNSYLVANIA

NEW JERSEY

MARYLAND

DELAWARE

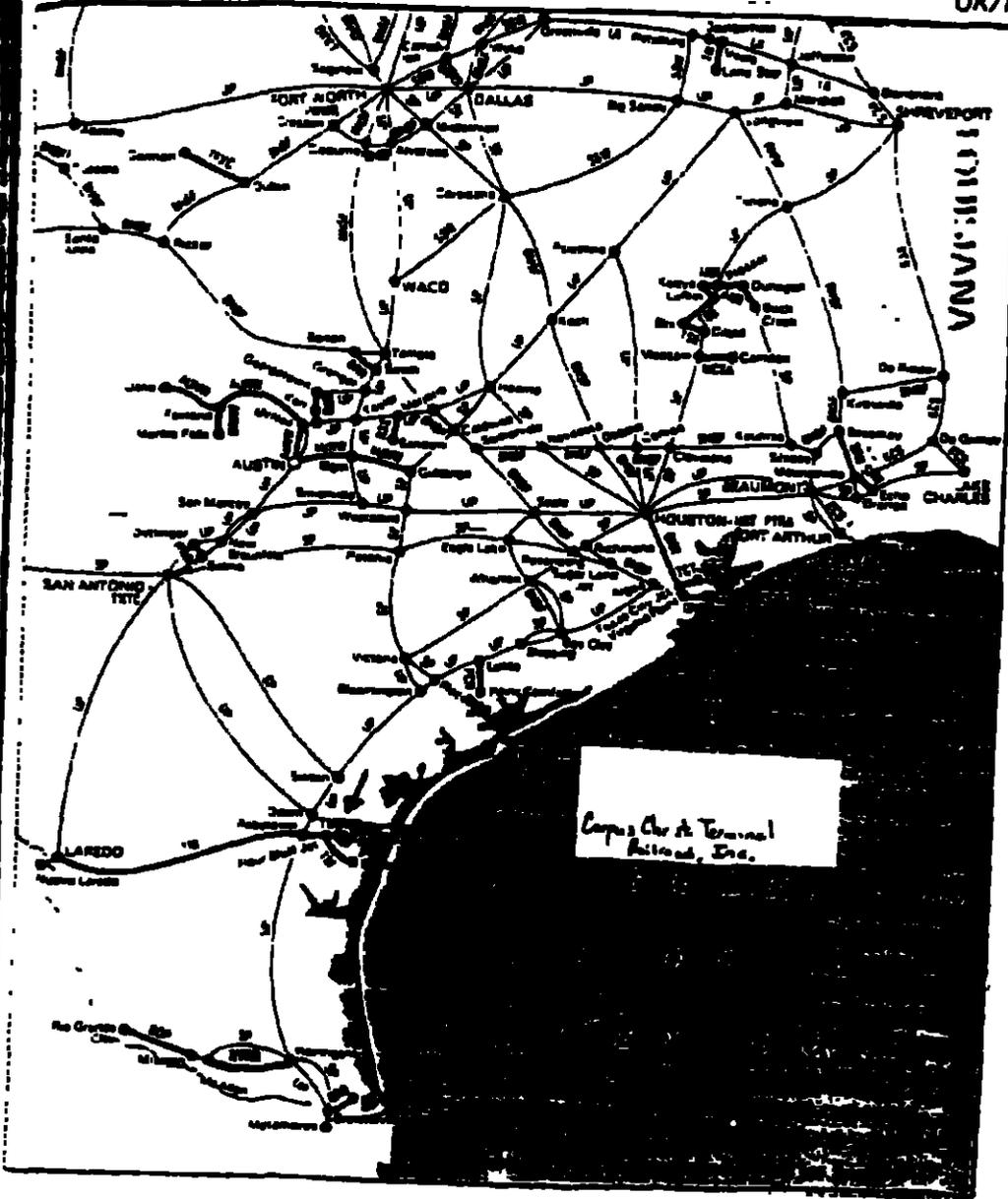
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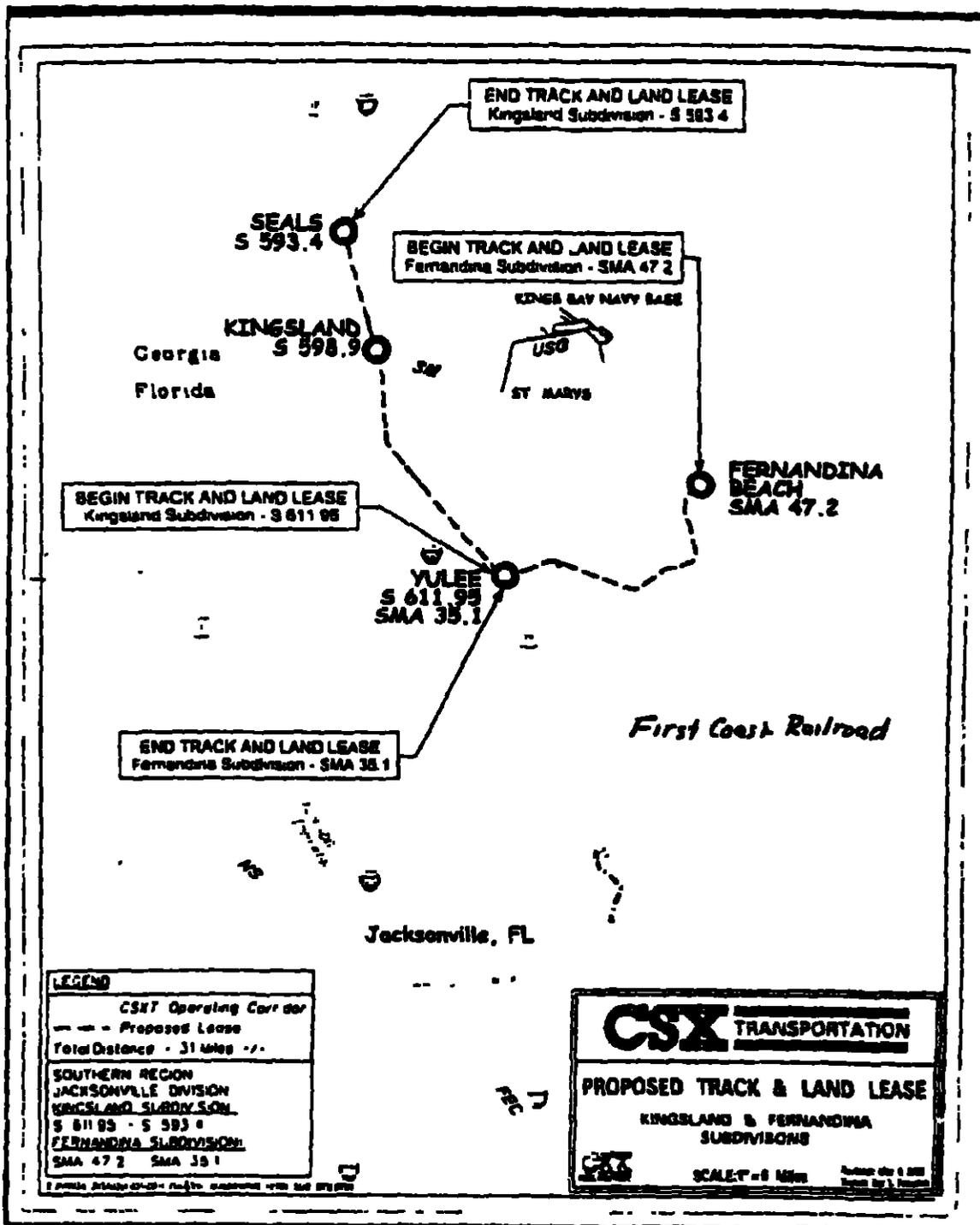
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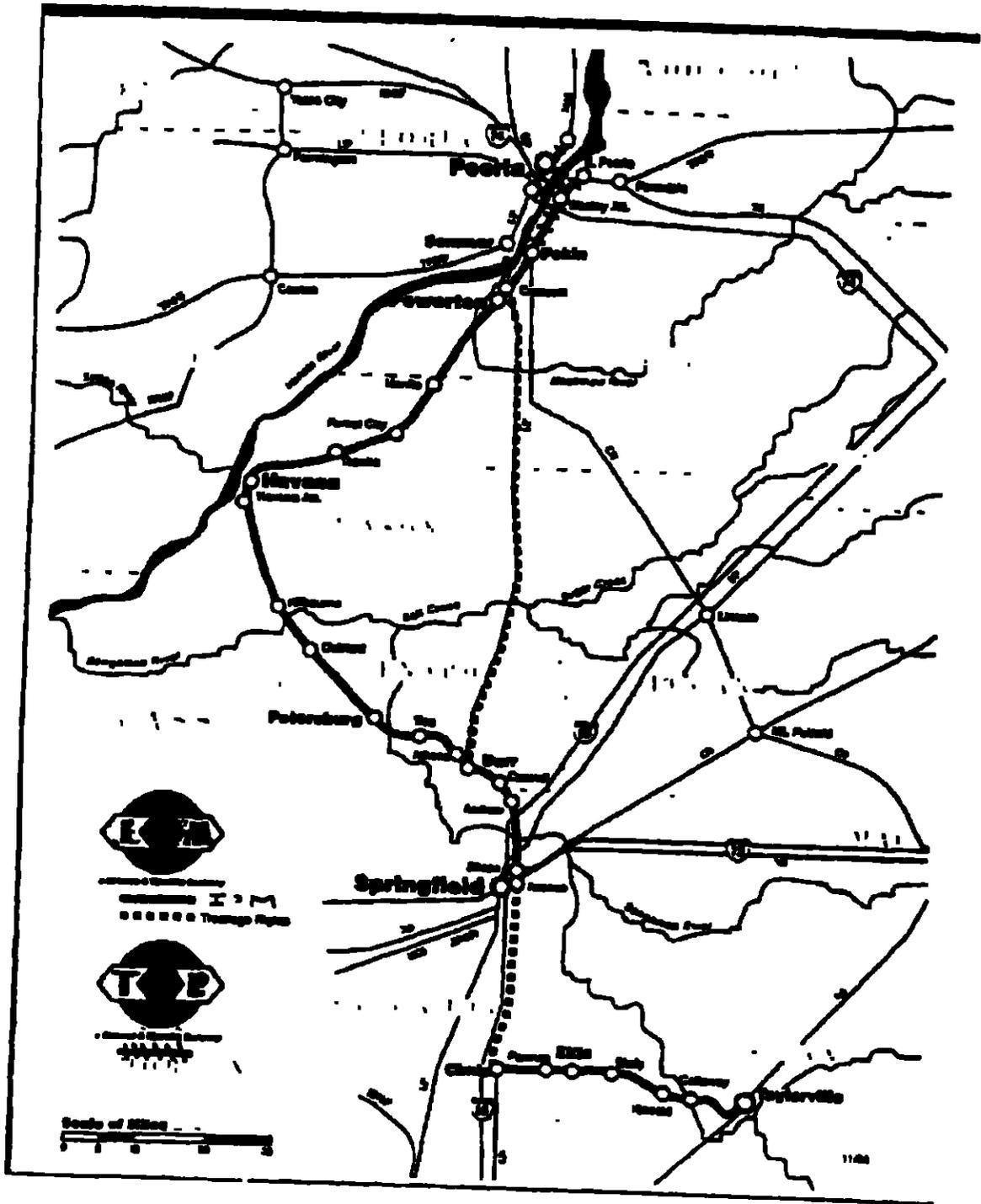
CT87

REGION 21
OK/TX

REGION 21 OK/TX



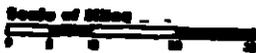




Expressway
 2-7 PM
 Through Rpts

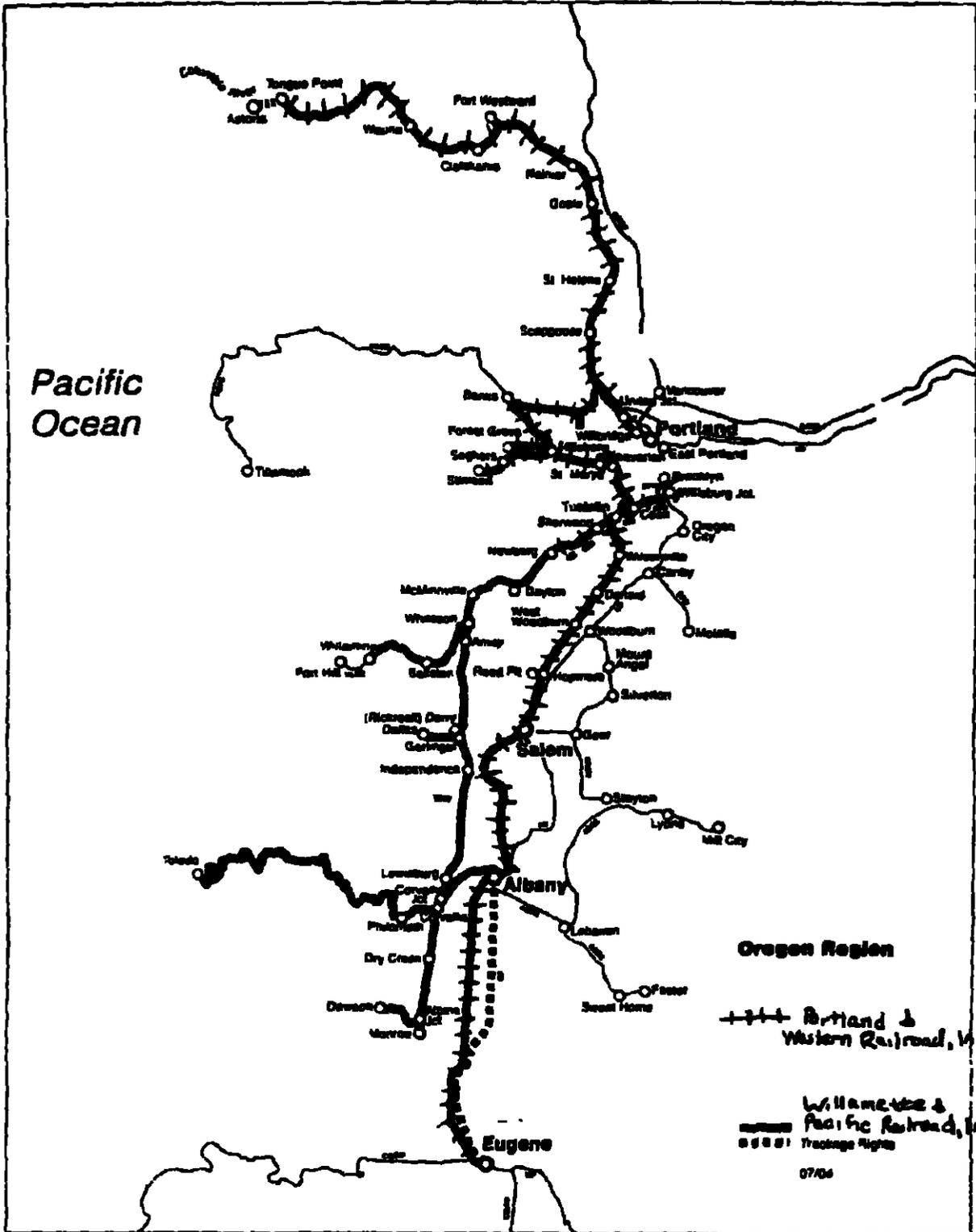


Expressway
 Through Rpts



1100

Oregon Region - Route Map

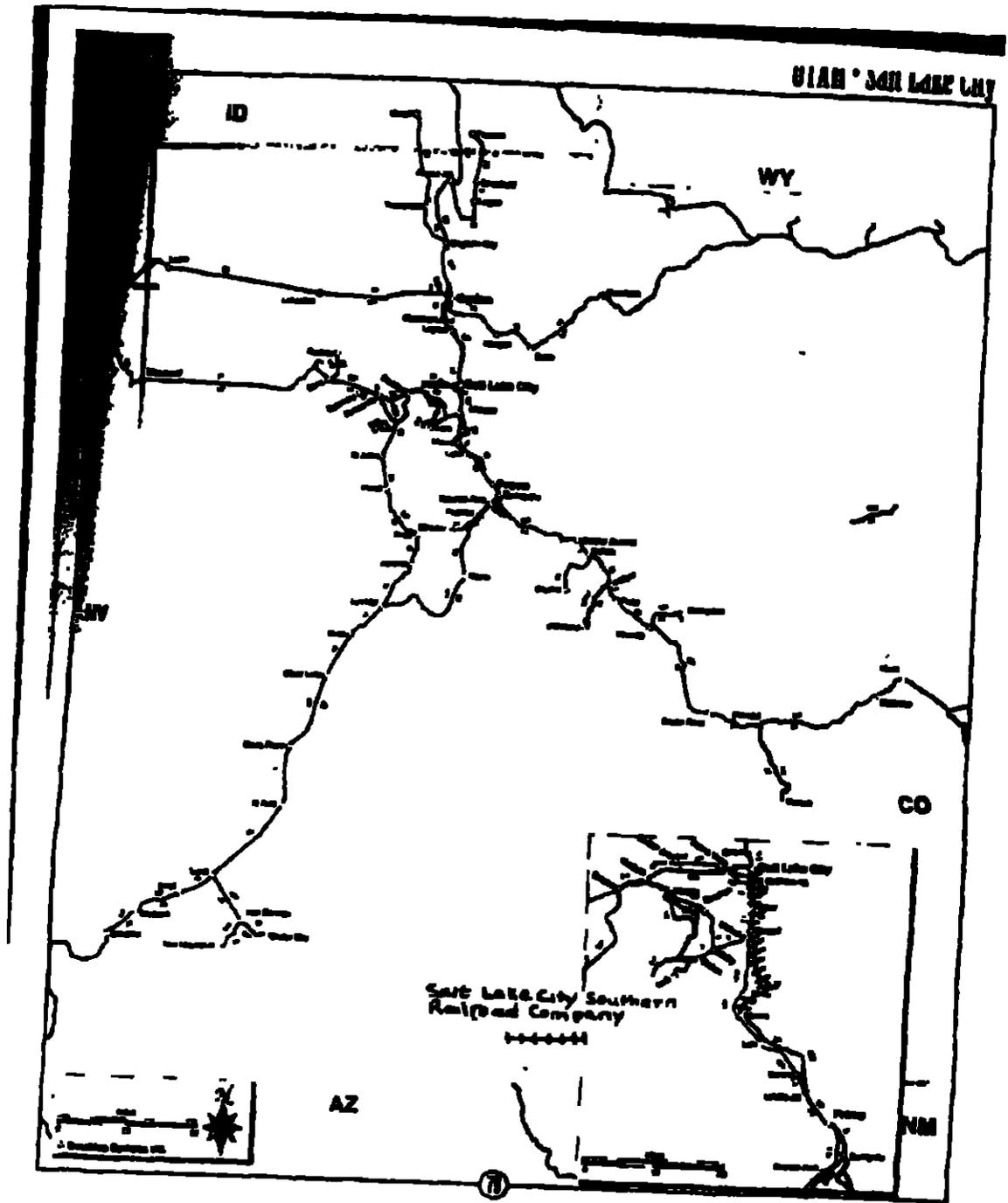


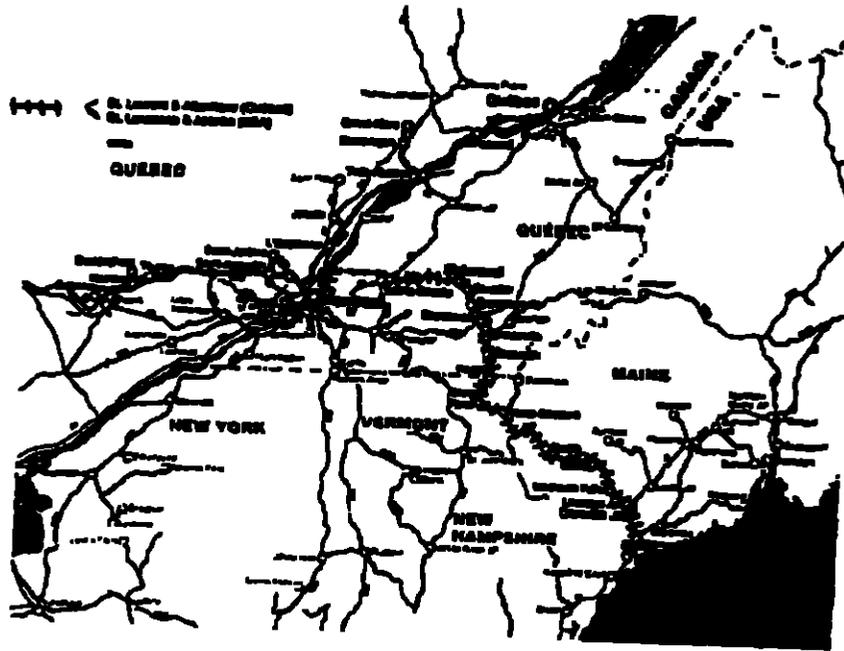
Portland & Western Railroad, Inc.
 Willamette & Pacific Railroad, Inc.

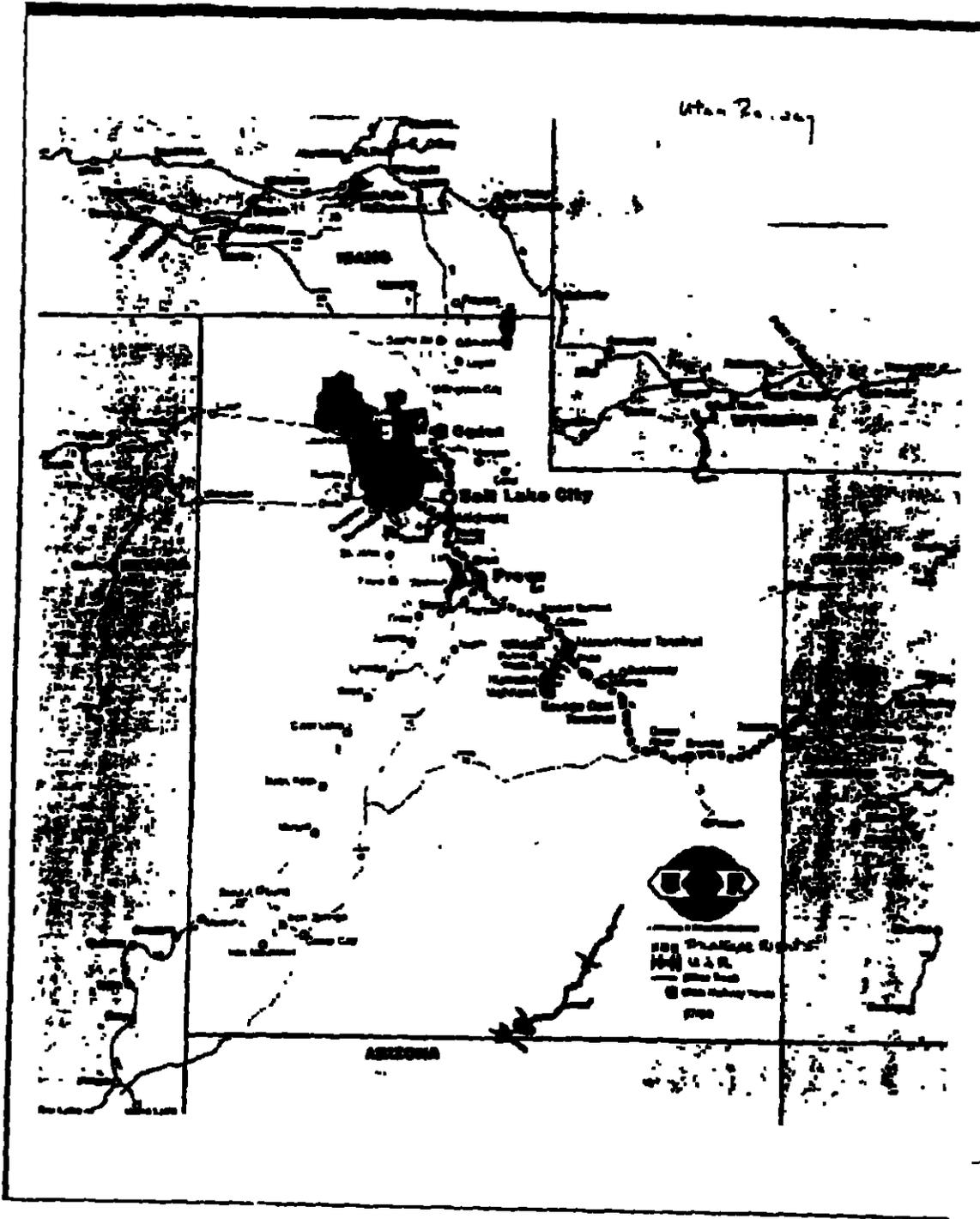
650 Hawthorne Ave. SE . Suite 220
 Salem, OR 97301

Phone: 503-365-7717
 Fax: 503-365-7757

UTAH * SALT LAKE CITY







Utah 20. 1967

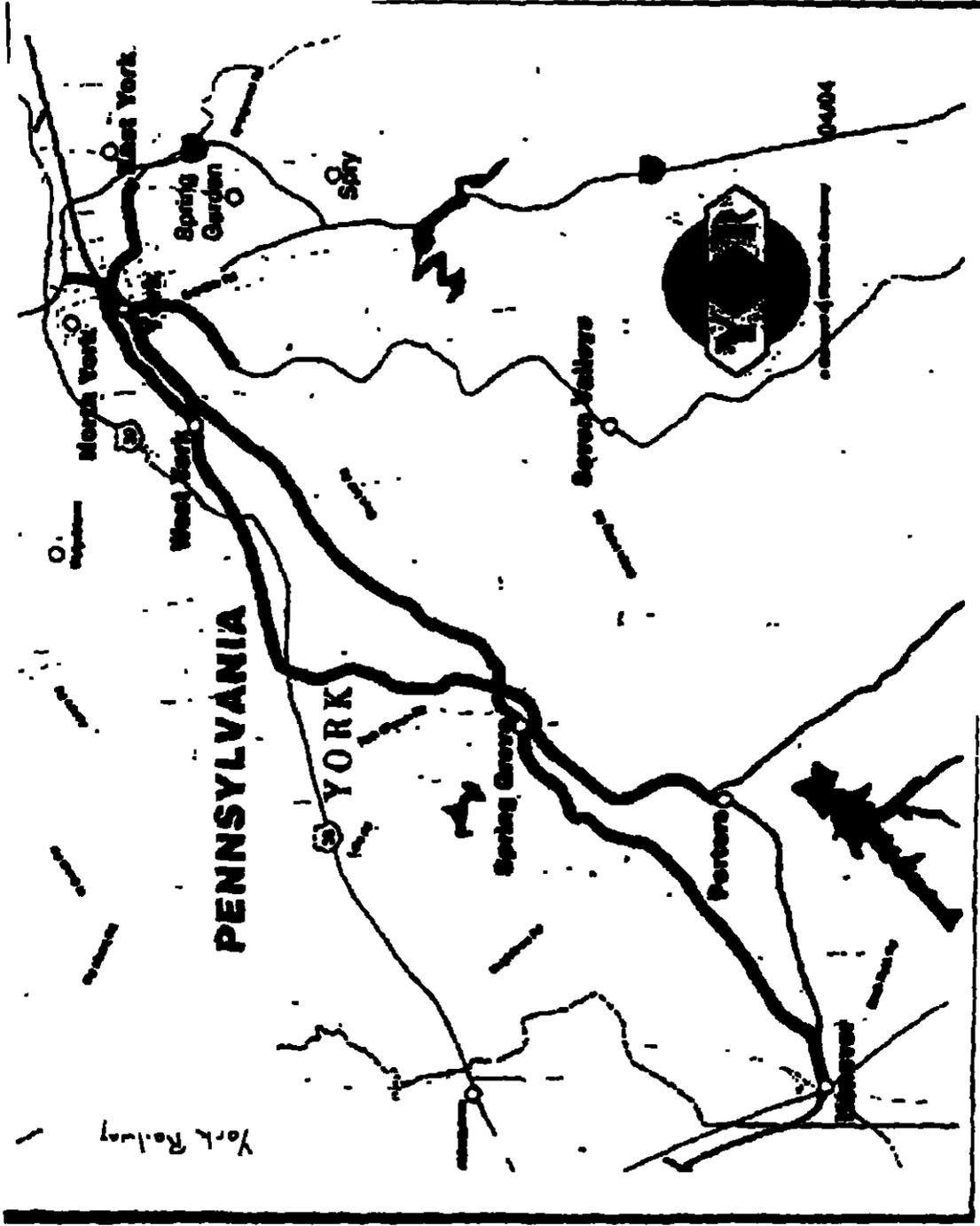
UTAH

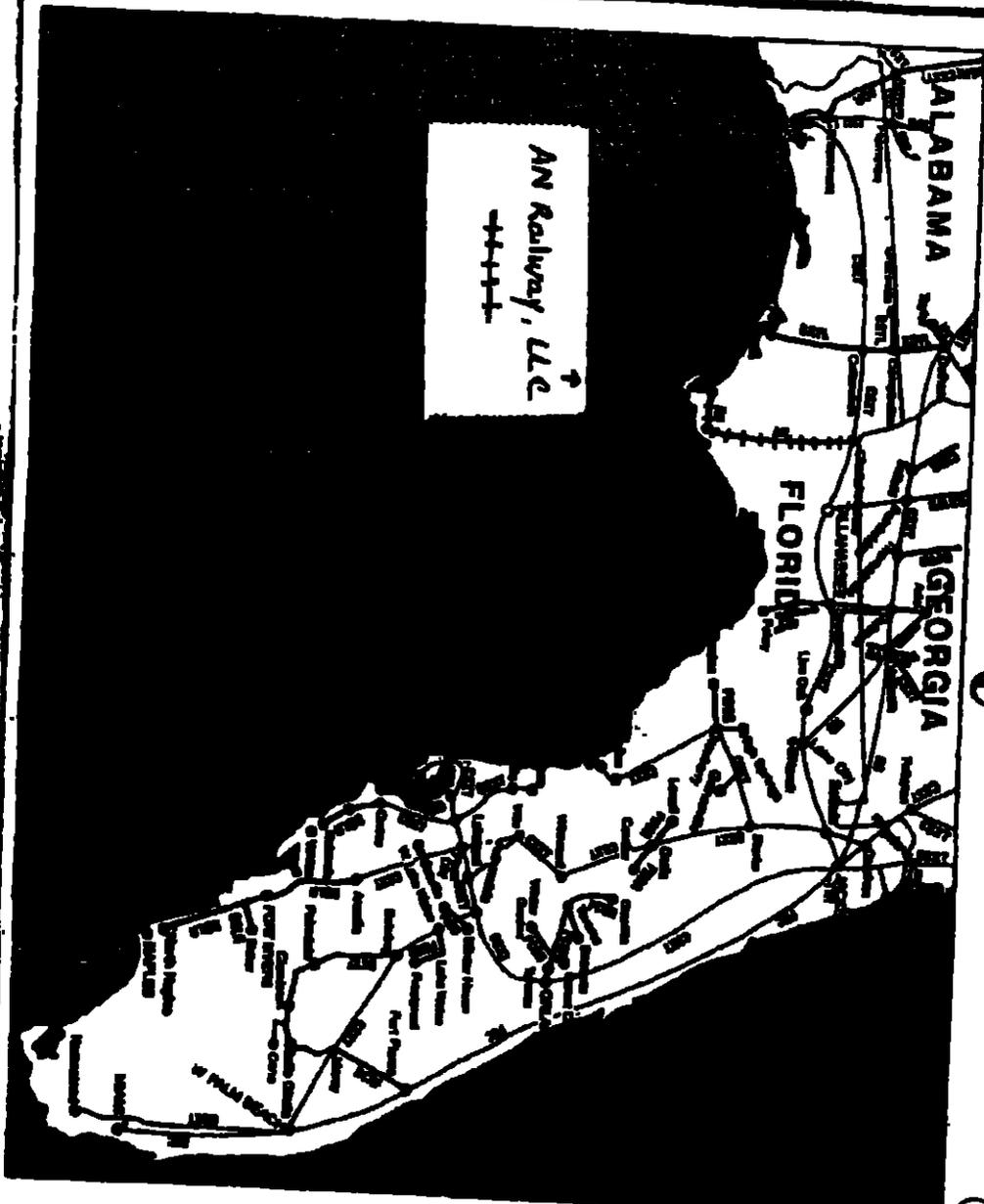
Salt Lake City

ARIZONA

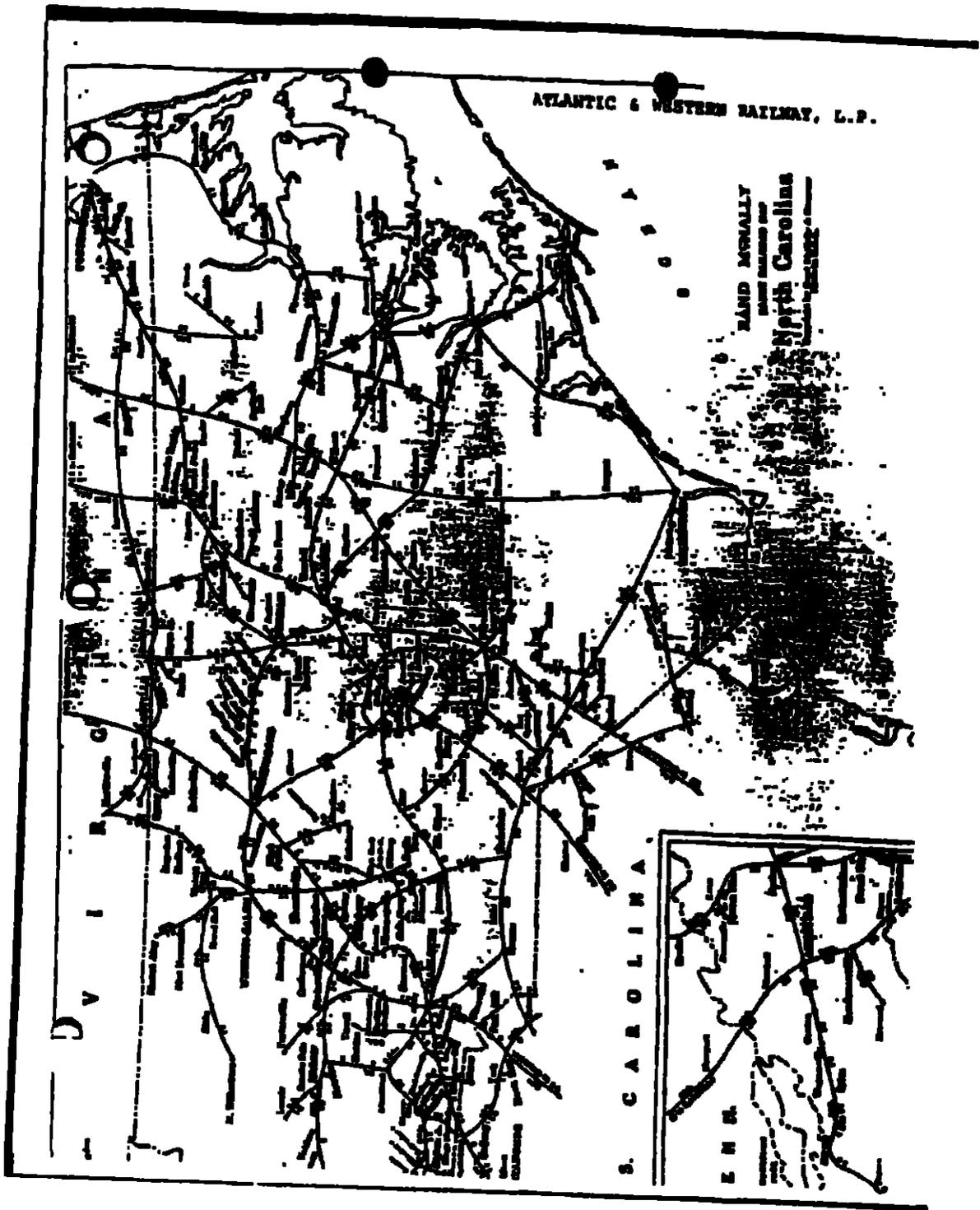


KPR
1967
U.S.A.
1000 Miles
© 1967 KPR
1000





REGION 10



ATLANTIC & WESTERN RAILWAY, L.P.

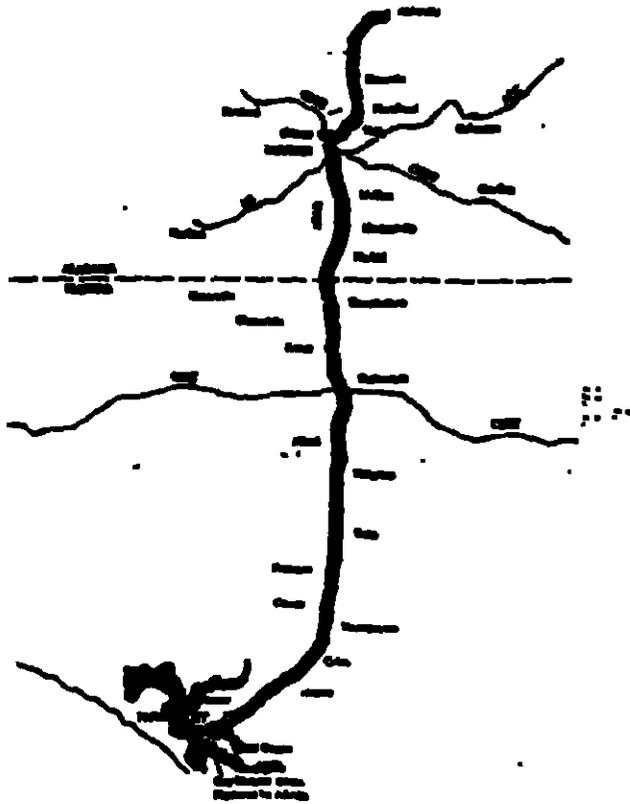
HAND MANUALLY
DRAWN MAP OF
North Carolina
ATLANTIC & WESTERN RAILWAY, L.P.

S. CAROLINA



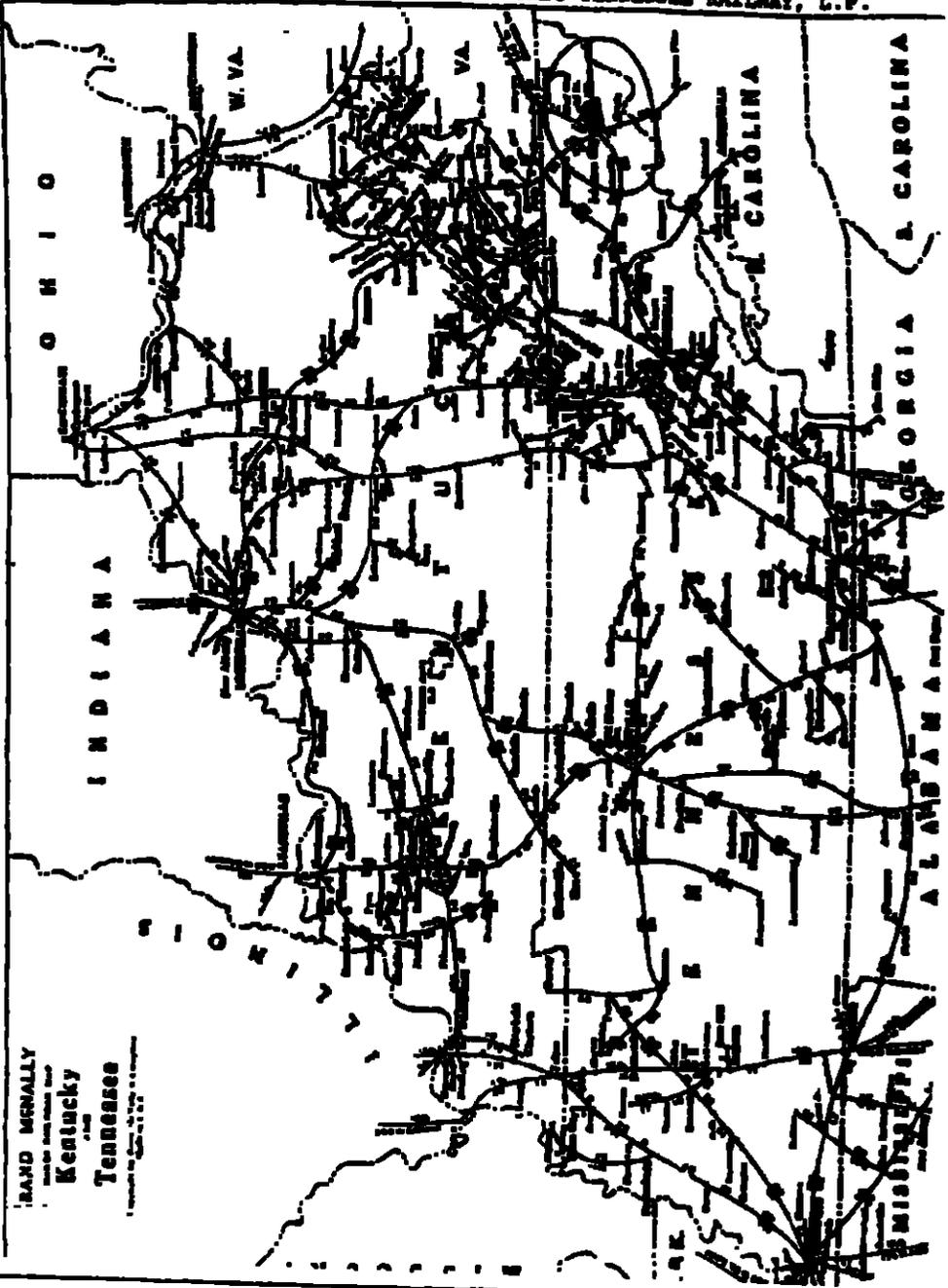
E. N. C.

THE BAY LINE RAILROAD, L.L.C.
SYSTEM MAP
1997



U
P
O
D

EAST TENNESSEE RAILWAY, L.P.



IRVING MENALLY
 Author of the
Kentucky
 and
Tennessee
 Railway Guide

D

D

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O H I O

I N D I A N A

K E N T U C K Y

W. VA.

V A

N O R T H C A R O L I N A

S O U T H C A R O L I N A

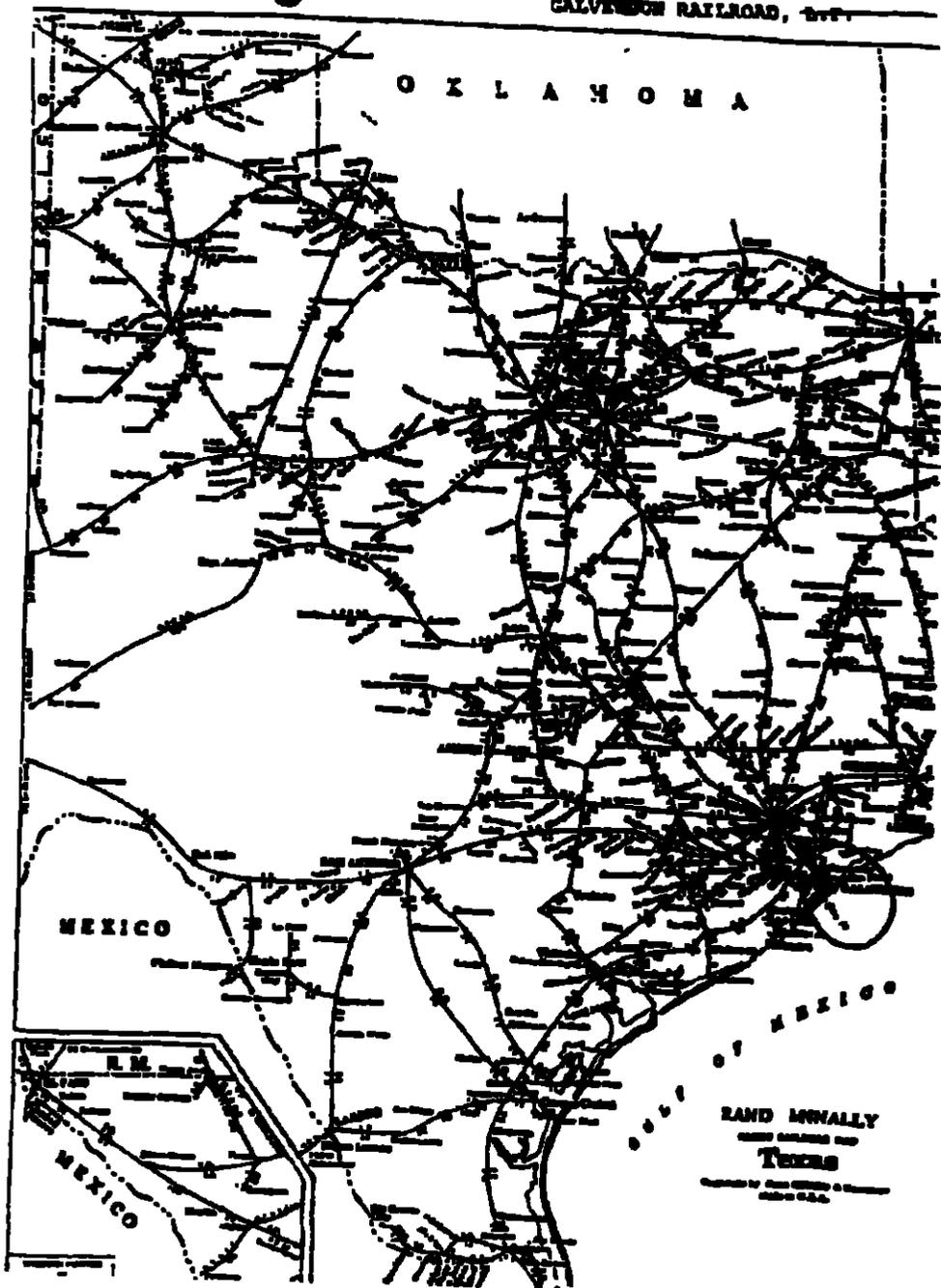
G E O R G I A

A L A B A M A

M I S S I S S I P P I

CALVEYSON RAILROAD, 1877

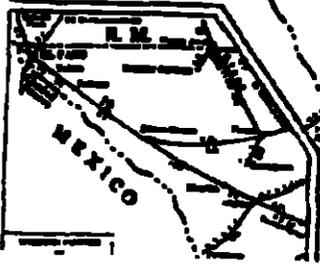
O K L A H O M A

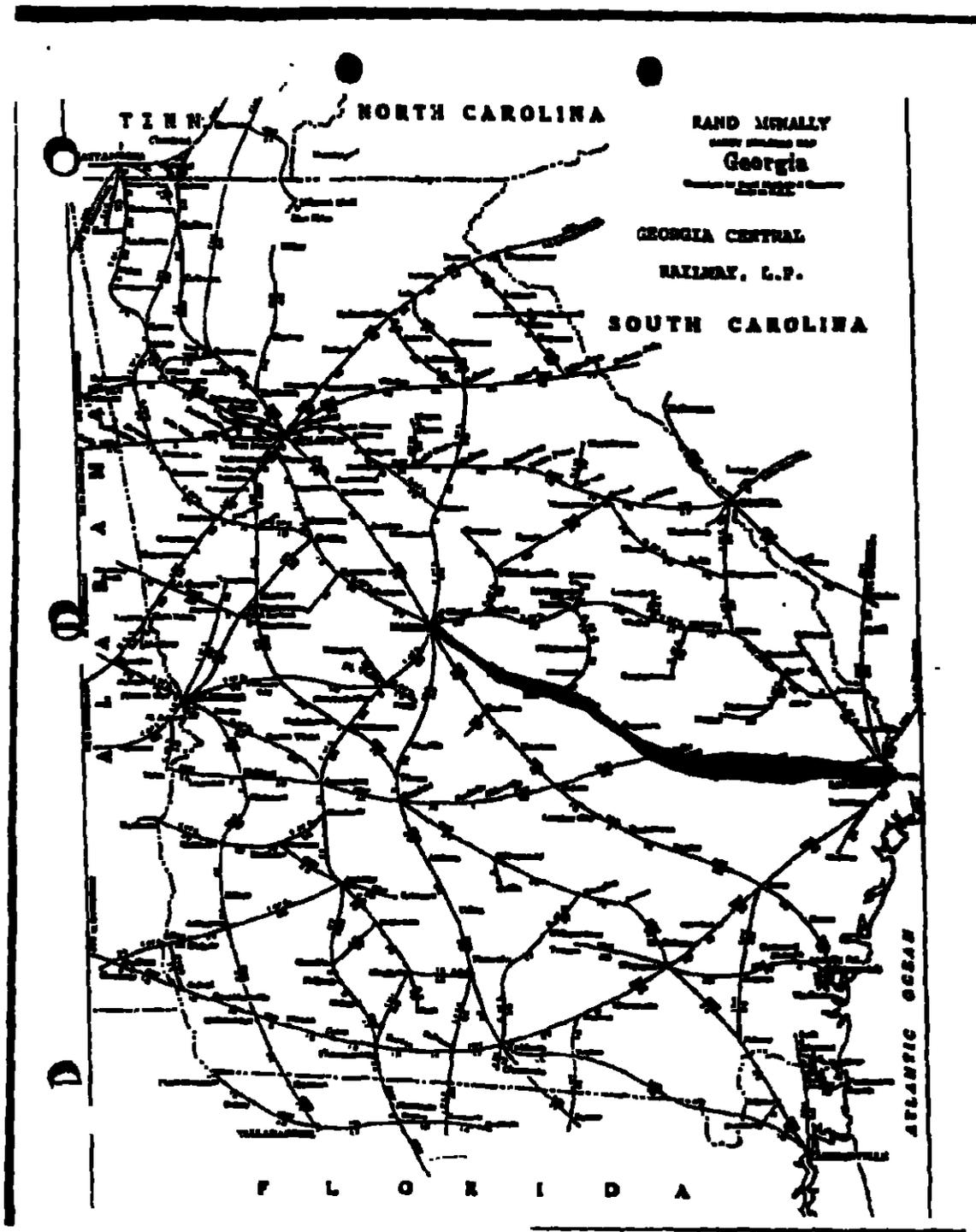


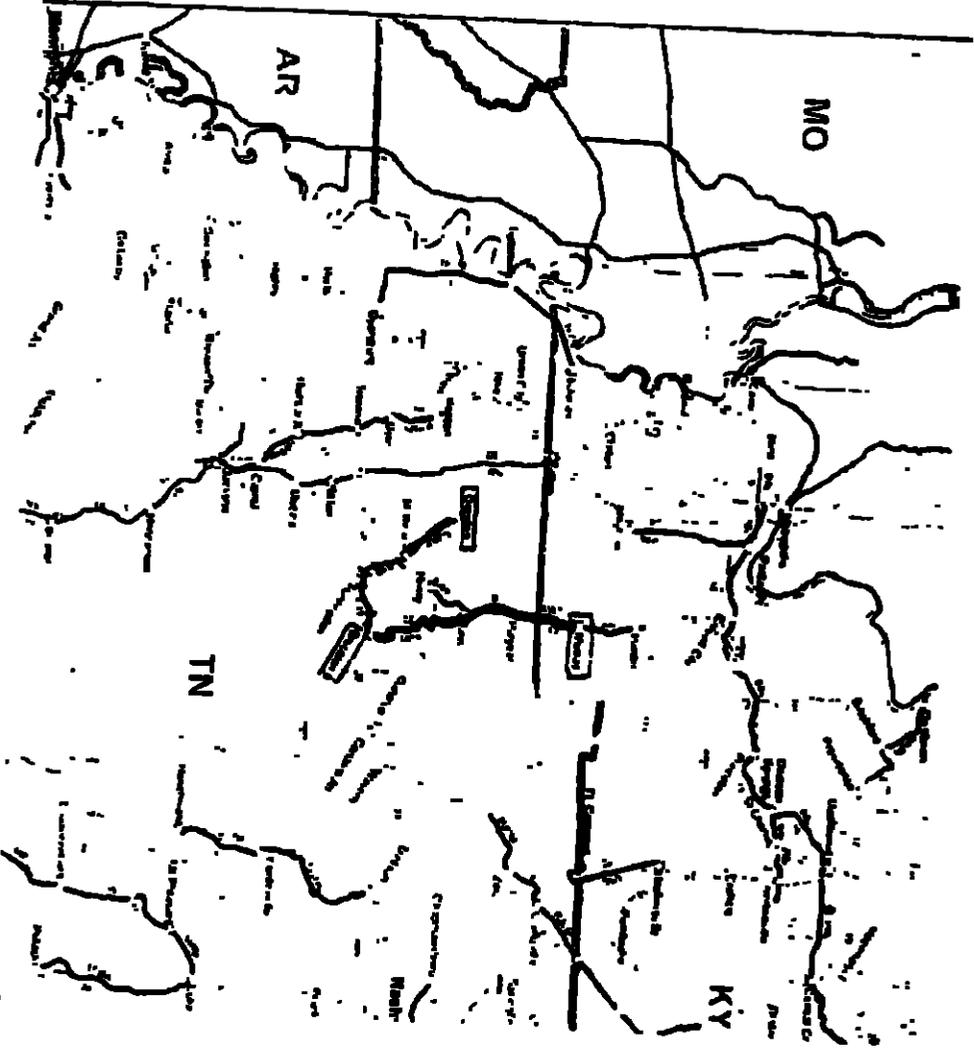
MEXICO

BOUNDARY OF MEXICO

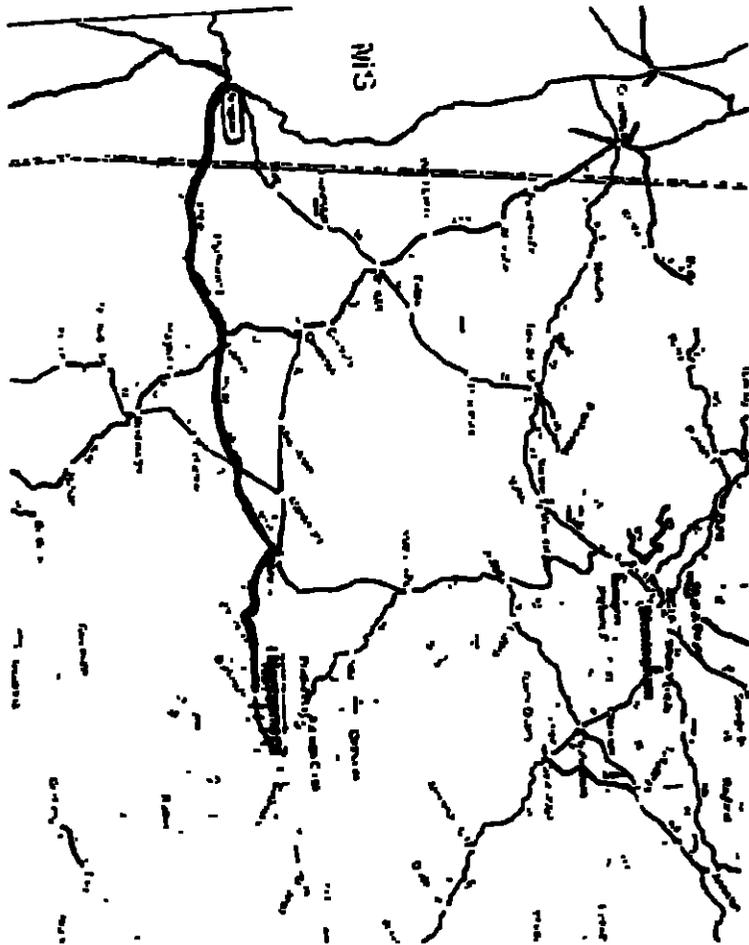
RAND McNALLY
LAND SURVEYOR AND
TEXAS
GENERAL AND PARTICULAR SURVEYOR
1877







——— KWT Railway, Inc.
 - - - - - Trackage Rights



— NIS Railroad LLC
 - - - - - Trackage Rights

RICEBORO SOUTHERN RAILWAY, L.L.C.

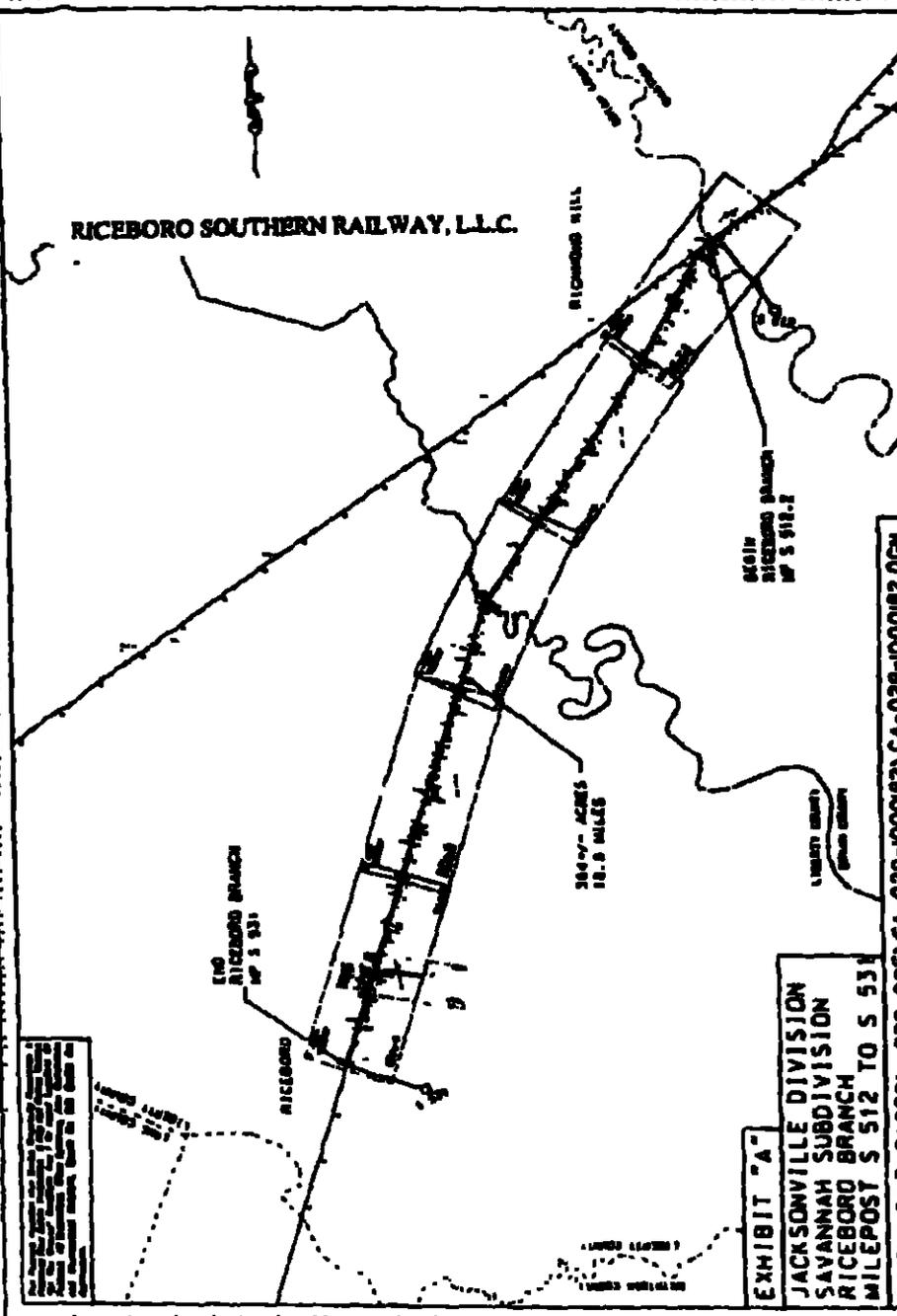


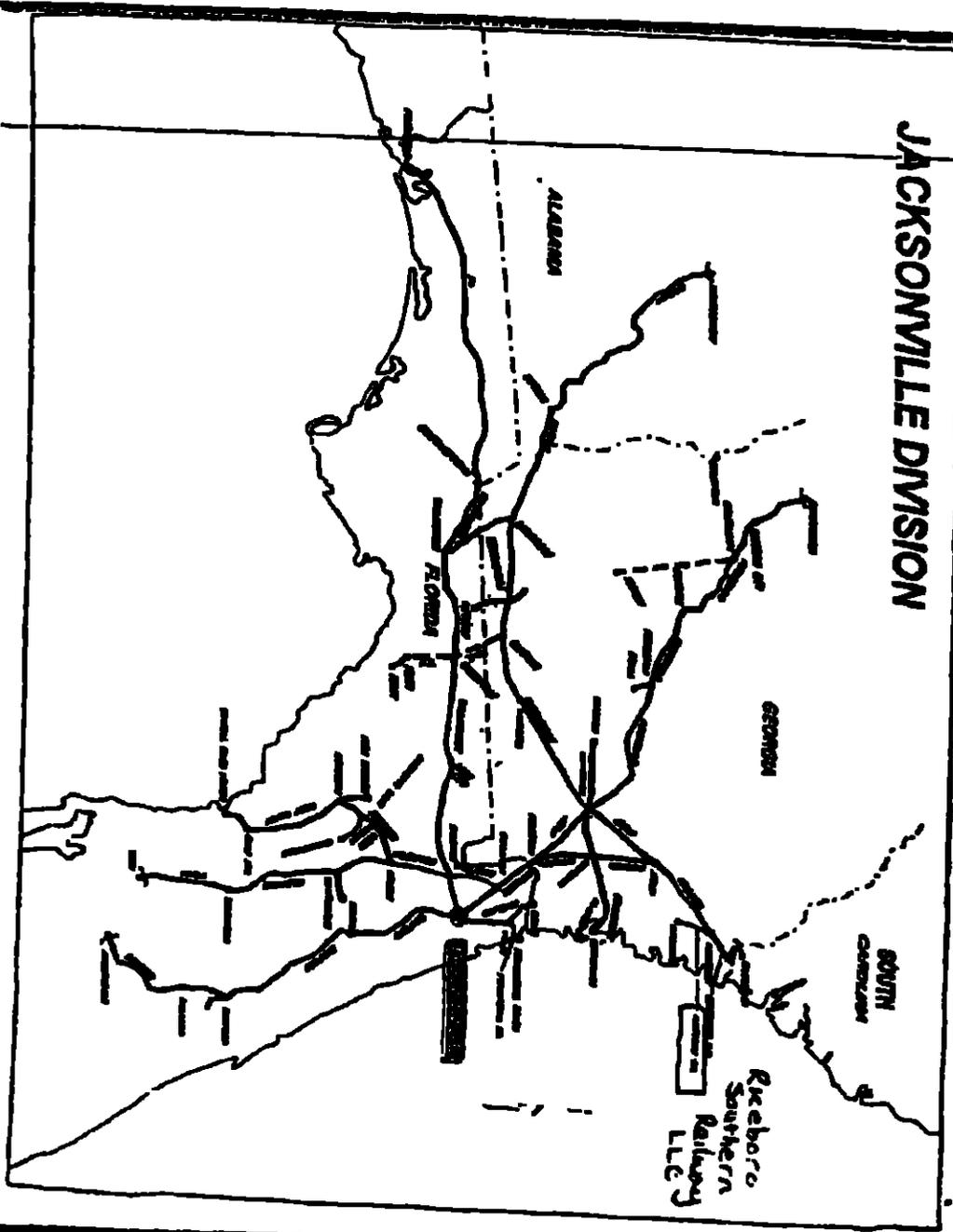
EXHIBIT "A"

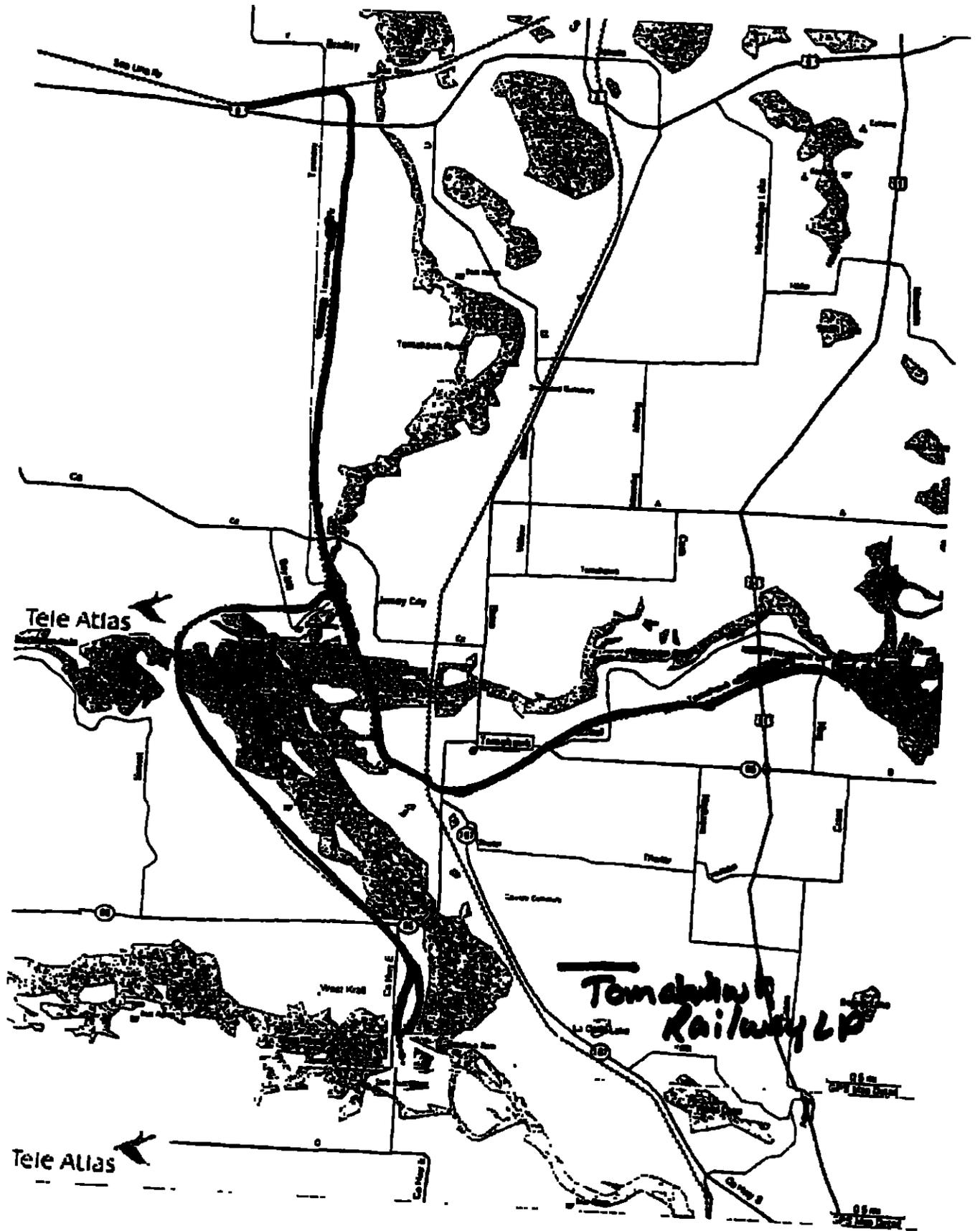
JACKSONVILLE DIVISION
 SAVANNAH SUBDIVISION
 RICEBORO BRANCH
 MILEPOST S 512 TO S 531

S:\PN\GA13\GA029\029-005\GA-029-1000192\GA-029-1000192.DGN

DATE: 08-10-04		CITY: JACKSONVILLE, GA		VAL. SECT. 1615		FIN. NUMBERS:	
SCALE: 1"=400'		STATE: GA		MP: 5.918.2		1117-000 1123-000	
BRANCH: RICEBORO		STATION: 512		MP: 5.918.2		1119-000 1125-000	
DRAWN BY: CLP		FIP: 11250		MP: 5.918.2		1127-000 1133-000	
REVISION:		REV: 01-04-04		MP: 5.918.2		1135-000 1141-000	
SITE TO: GA-029-1000192		REV: 01-04-04		MP: 5.918.2		1143-000 1149-000	
NETWORK RATIONALIZATION		REV: 01-04-04		MP: 5.918.2		1151-000 1157-000	

JACKSONVILLE DIVISION





Tele Atlas

Tomahawk
Railway LP

Tele Atlas

West Hill

Cave Canyon

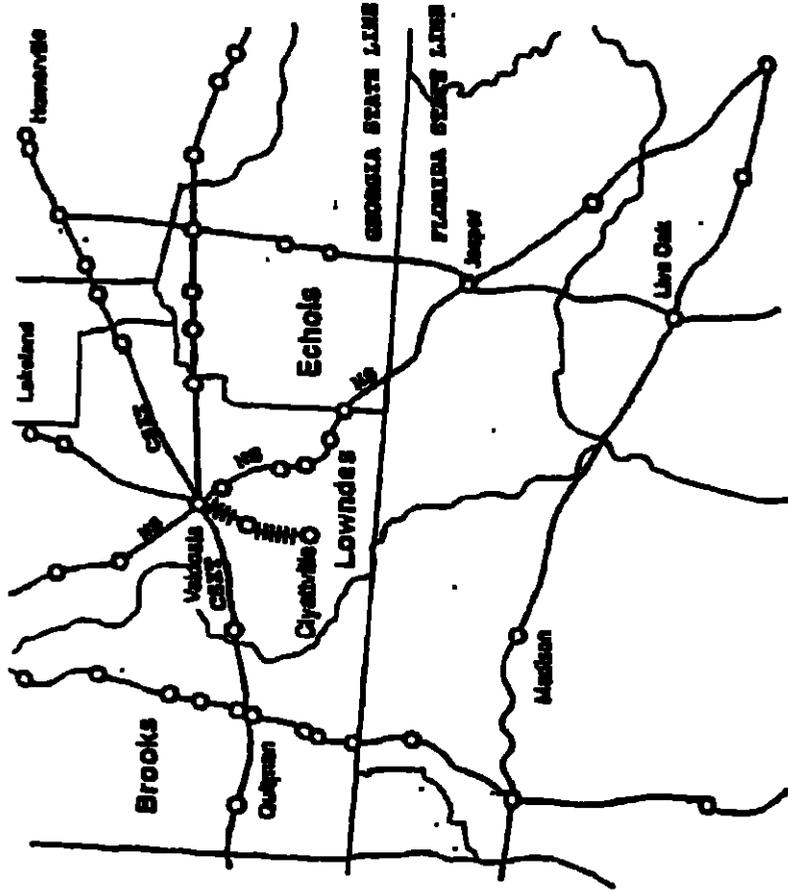
May City

Phoebe

1/4 mi

VALDOSIA RAILWAY, L.P.

Valdosta, GA

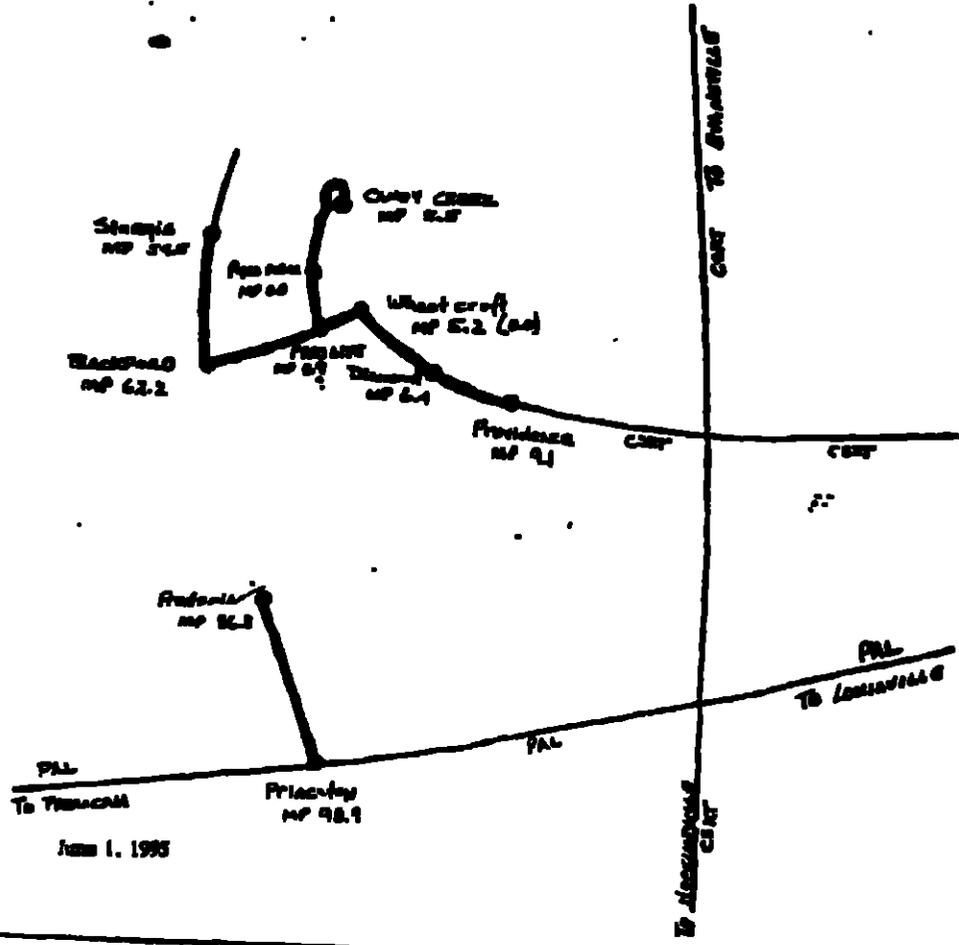


D

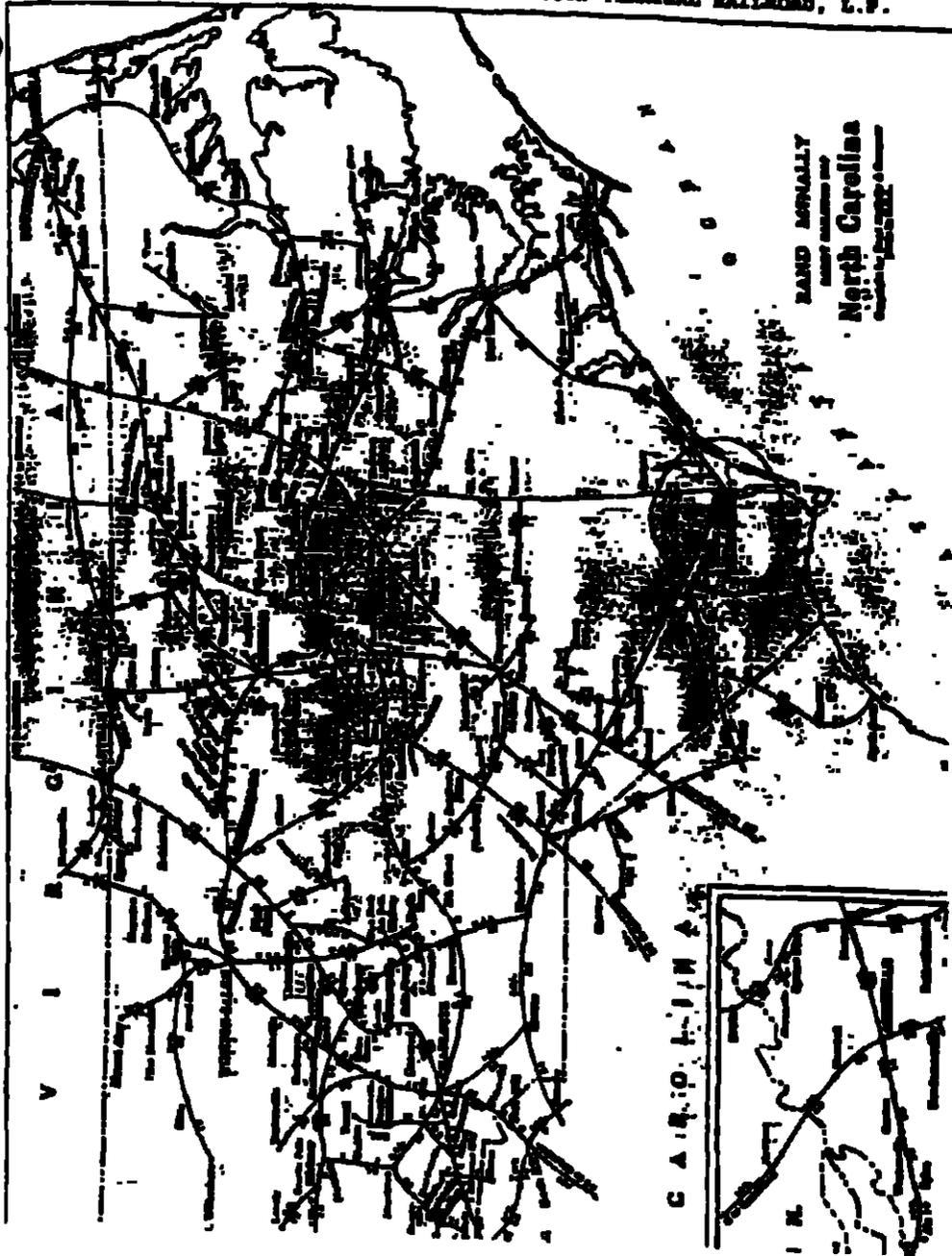
1

Western Kentucky Railway, L.L.C.
Surgis, Kentucky

Map Of Railroad



WILMINGTON TERMINAL RAILROAD, L.P.

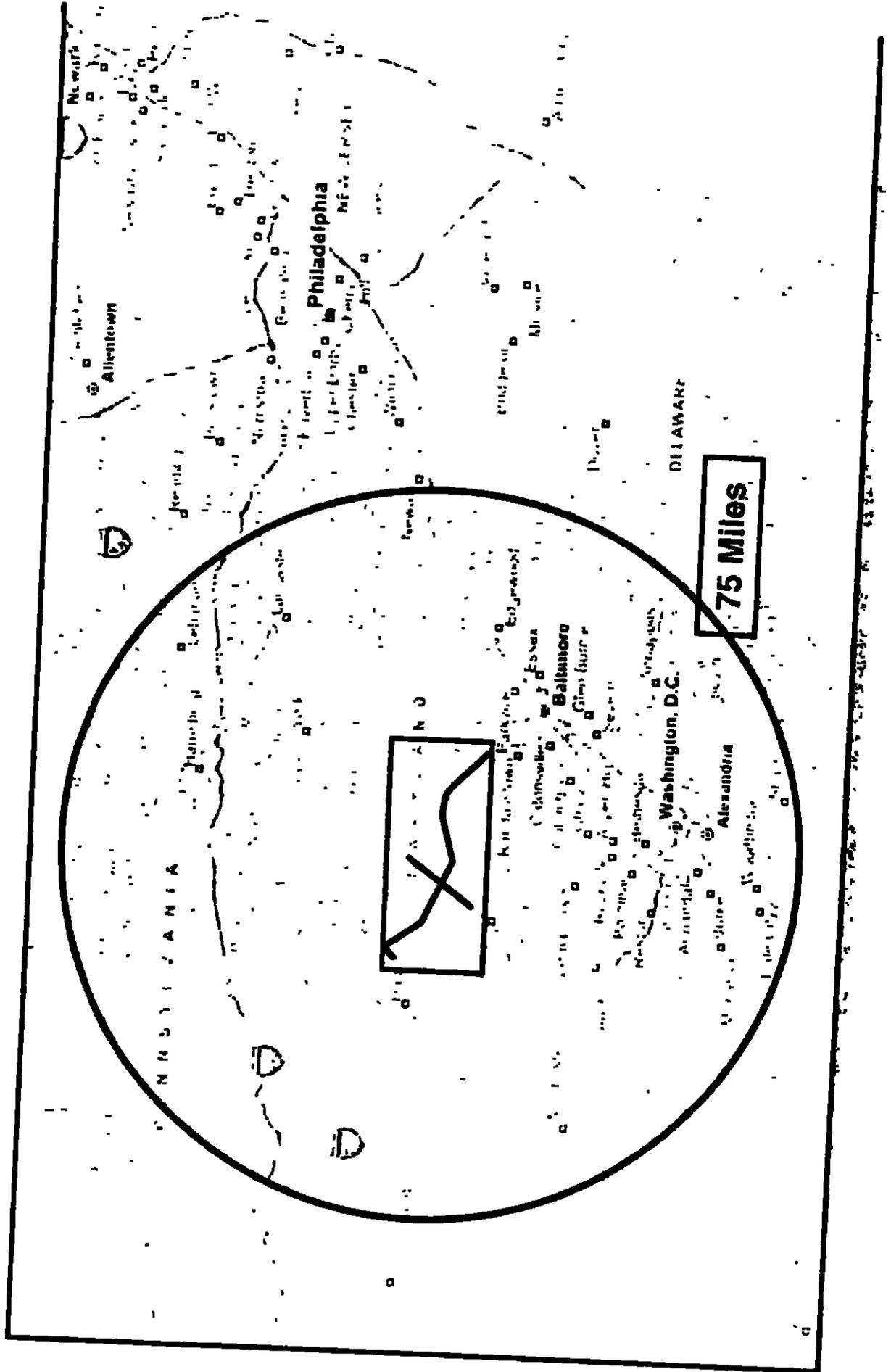


MADE SPECIALLY
FOR THE
North Carolina
RAILROADS

CAROLINA



Maryland Midland Overview



Maryland Midland Network Map

