

RECORDATION NO. *9829-C* Filed 1425

JAN 31 1980 - 2 45 PM

INTERSTATE COMMERCE COMMISSION

# ITEL

## Rail Division

Two Embarcadero Center  
San Francisco, California 94111  
(415) 955-9090  
Telex 34234

RECORDATION NO. *9829-D* Filed 1425

JAN 31 1980 - 2 45 PM

INTERSTATE COMMERCE COMMISSION

January 30, 1979

Honorable A.L. Mergenovich, Secretary  
Interstate Commerce Commission  
Washington, D.C. 20432

No. *0-031A064*

Date *JAN 31 1980*

Fee \$ *20.00*

ICC Washington, D. C.

Dear Madam:

Enclosed for filing and recording by the Interstate Commerce Commission is the original, three counterparts, and two photocopies of the following documents:

Assignment dated December 7, 1979 among Bath & Hammondsport Railroad Company, Water Street, Hammondsport, New York 14840, Transkentucky Transportation Railroad, Inc., Kicaid Tower, Lexington, Kentucky, 40507, and Itel Corporation, Rail Division, Two Embarcadero Center, San Francisco, California, 94111;

Amendment No. 1 dated December 7, 1979 between Itel Corporation, Rail Division and Transkentucky Transportation Railroad, Inc. to that certain Lease Agreement dated March 20, 1978 between Itel Corporation, Rail Division and Bath & Hammondsport Railroad Company.

The foregoing Lease Agreement was filed with the Interstate Commerce Commission on November 9, 1978 at 3:30 P.M. and was assigned recordation number 9829.

Also enclosed are two checks in the amount of \$10.00 each, payable to the Interstate Commerce Commission, being the prescribed fee for filing and recording the foregoing documents.

Please return all copies of the enclosed that are not required by the Interstate Commerce Commission to David Schwartz, Esq., of Sullivan and Worcester who will be delivering this letter on our behalf.

Sincerely,

*Dave Biesemeyer*

Dave Biesemeyer  
Senior Counsel

FEE OPERATION BR.  
I.C.C.

JAN 31 2 46 PM '80

RECEIVED

Enclosures  
DB/jsf

*Michael Propell*

**Interstate Commerce Commission**  
**Washington, D.C. 20423**

**OFFICE OF THE SECRETARY**

**David Schwartz, Esq.**  
**Sullivan & Worcester**

Dear **Sir**:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on **1/31/80** at **2:45PM**, and assigned re-  
recording number(s). **9829-C, & 9829-D**

Sincerely yours,

*Agatha L. Mergenovich*  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

SE-30  
(7/79)

ASSIGNMENT

RECORDED 100 9829-C

JAN 31 1980 - 10 42 PM

INTERSTATE COMMERCE COMMISSION

ASSIGNMENT ("this Assignment") made as of this seventh day of December, 1979, among Bath and Hammondsport Railroad Company (hereinafter called "Assignor"), Transkentucky Transportation Railroad, Inc., a Kentucky corporation (hereinafter called "Assignee") and Itel Corporation, Rail Division, a Delaware corporation ("Itel Rail").

WITNESSETH:

*CWT W42* WHEREAS, Assignor and Itel Rail heretofore entered into a Lease Agreement made as of March 20, 1978 (hereinafter called "the Agreement"), providing for the leasing by Itel Rail to Assignor of fifty (50) 50'6", 70-ton capacity, general purpose Boxcars, all of which boxcars numbered BH 25101-25150, inclusive, have been delivered by Itel Rail and accepted by Assignor (such boxcars are hereinafter called individually "a Boxcar", and collectively "the Boxcars");

WHEREAS, due to a severe car shortage of the Assignee, the Assignee desires to obtain the use of the Boxcars and the Assignor is willing to assign the Agreement to the Assignee;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and of the covenants herein set forth, the parties agree as follows:

I. Effective upon the date of execution of this Assignment by both parties thereto, Assignor hereby assigns, transfers and sets over to Assignee, its successors and assigns, the following:

- (a) All the right, title and interest of Assignor in and to the Agreement, and, effective on a boxcar-by-boxcar basis upon the remarking of each Boxcar by Assignee, the Boxcars subject to the Agreement, all rents, issues, profits and proceeds thereof including, without limitation, (i) all monies to become due to Assignor under or in connection with the Agreement, whether as rent, indemnities, claims for damages or otherwise, and (ii) all rights and powers of Assignor under the Agreement to exercise any option, to consent or make any waiver or agreement or to take any other action. Assignor shall retain all rights, interest and obligations stipulated by the Agreement as such pertain to individual Boxcars until the remarking of each such Boxcar is completed.
- (b) All rights, title, interest, powers, privileges and remedies of Assignor in, to and under the Agreement, including all amounts which may be or be come due or owing under the Agreement effective as provided in Section I(a) above; without any recourse, however, against Assignor for or on account of the failure of Itel Rail to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Agreement. In furtherance of the foregoing assignment and transfer, Assignor hereby authorizes and empowers Assignee in the Assignee's own name, or in the name of and as attorney for Assignor, to ask, demand, sue for, collect, receive and enforce any and all sums to which Assignee is or may be entitled under this Assignment and compliance by Itel Rail with the terms and agreements on its part to be performed under the Agreement, but at the expense and liability and for the sole benefit of Assignee.

2. Assignor hereby represents and warrants to Assignee that (i) the Agreement is in full force and effect and enforceable in accordance with its terms, and neither Assignor nor Itel Rail is in default thereunder; and (ii) Assignor has not heretofore assigned or otherwise disposed of or encumbered any of its right, title or interest in, to or under the Agreement or any monies due or to become due thereunder or by reason thereof, and Assignor has full right, power and authority subject to the consent of Itel Rail, to transfer to Assignee absolute title to Assignor's right, title and interest in, to and under the Agreement and Boxcars and in and to all such monies.

3. Assignor hereby represents and warrants to Assignee that the Agreement was duly authorized and lawfully executed and delivered by it and insofar as Assignor is concerned is a legal, valid and existing agreement binding upon Assignor in accordance with its terms and is now in full force without further amendment or modification thereto.

4. Assignor agrees to indemnify and hold Assignee harmless from any and all liability, loss or damage it may suffer as a result of claims, demands, costs and judgments against it, which arise or occur as a result of the actions or failure to act under the Agreement of Assignor prior to December 7, 1979.

5. The Assignee does hereby assume the performance of and does hereby agree to perform, observe and be subject to, all the terms, provisions, covenants and conditions contained in the Agreement which were or are to be performed or observed by the lessee thereunder, as though the Assignee were the original signatory to the Agreement. The execution of this instrument by Itel Rail does not constitute a representation by it that the Assignor has performed or fulfilled every obligation required by the Agreement; and as to such matters the Assignee agrees to rely solely upon the representations of the Assignor.

6. Assignor and Assignee hereby agree that they will from time to time at the request of Itel Rail or Assignee, as the case may be, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate to give effect to the provisions set forth herein and more perfectly confirm the right, title and interest hereby assigned and transferred to assignee or intended so to be.

7. Itel Rail covenants that as soon as practicable it shall, at Assignee's expense, in accordance with all applicable requirements of the Interstate Commerce Commission and the Association of American Railroads, cause the reporting marks of the Boxcars to be changed. Itel Rail will execute and file such documents as may be necessary in connection therewith.

8. The Boxcars are to be redesignated with the identifying symbol TTIS to replace BH. To allow for such redesignation, each of the parties hereto agrees that Equipment Schedule No. 2 attached to the Agreement are hereafter deemed, amended, effective on a boxcar-by-boxcar basis upon the remarking of each Boxcar by Assignee, to reflect the above redesignated symbol but in all other respects shall remain unchanged.

9. Itel Rail hereby consents to this Assignment and agrees that it shall hold Assignee solely responsible for fulfillment of the terms and conditions of the Agreement without any recourse to Assignor. Itel Rail hereby acknowledges that, with respect to rental payments under Section 6 of the Agreement, Assignee's only obligation is to pay Itel Rail all monies collected, subject to the right of Assignee to retain monies as calculated in Section 6.

10. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of California, provided, however, that the parties shall be entitled to all the rights conferred by Section 20c of the Interstate Commerce Act.

11. This Assignment may be executed in any number of counterparts, but the counterpart delivered to Assignee shall be deemed to be the original counterpart.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this Assignment to be executed in their respective corporate names by their duly authorized officers, and their respective corporate seals to be hereunto affixed and attested, all as of the date first above written.



ATTEST:  
Robert D. Cole  
Its ATTORNEY  
(CORPORATE SEAL)

BATH AND HAMMONDSPORT  
RAILROAD COMPANY

By WIL William H. Stubbs  
Its PRESIDENT

TRANSKENTUCKY TRANSPORTATION  
RAILROAD, INC.

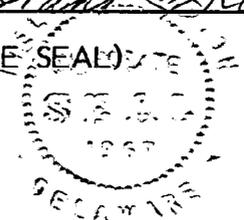
By [Signature]  
Its President and General Manager

ATTEST:  
Charles R. Zane  
Its Assistant Secretary  
(CORPORATE SEAL)

ITEL CORPORATION  
RAIL DIVISION

By Carl M. Taylor  
Its President

ATTEST:  
Susan R. Moore  
Its Assistant Secretary  
(CORPORATE SEAL)



STATE OF California )  
COUNTY OF San Francisco )

On this 30<sup>th</sup> day of January, 1980, before me personally appeared Carl H. Jaffe, to me personally known, who being by me duly sworn says that such person is President of ITEL Corporation, Rail Division, that the foregoing Assignment was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Randi C. Smith  
Notary Public

STATE OF NEW YORK )  
COUNTY OF STEBEN )

On this 10<sup>th</sup> day of DECEMBER, 1979, before me personally appeared WILLIAM H. STUBBS, to me personally known, who being by me duly sworn says that such person is PRESIDENT of ASSIGNOR, that the foregoing ASSIGNMENT was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Robert H. Cole  
Notary Public

ROBERT H. COLE  
Notary Public, State of New York  
No. 51-0701350, REG. in Steuben County  
My Commission Expires March 30, 1981

STATE OF KENTUCKY )  
COUNTY OF BOYD )

On this 28th day of DECEMBER, 1979, before me personally appeared WILLIAM F. HUGHES, to me personally known, who being by me duly sworn says that such person is PRESIDENT & GEN. MGR. of TRANS-KENTUCKY TRANSPORTATION RAILROAD, INC., that the foregoing ASSIGNMENT was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Jette Bureger  
Notary Public

My Commission Expires December 29, 1981