

ITEL

9829 F

RECORDATION NO. _____ Filed 1425

JAN 4 1982 - 10 40 AM

Rail Division

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

November 16, 1981
INTERSTATE COMMERCE COMMISSION

2-004A045

No. _____

Date **JAN 4 1982**

Fee \$ **10.00**

ICC Washington, D. C.

Ms. Agatha Mergenovich, Secretary
Interstate Commerce Commission
Washington, D.C. 20423

Dear Ms. Mergenovich:

Pursuant to 49 U.S.C. Section 11303(a) and the Interstate Commerce Commission's rules and regulations thereunder, I enclose herewith on behalf of Itel Corporation, for filing and recordation under the Lease Agreement dated as of March 20, 1978 between Itel Corporation, Rail Division ("Itel") and Bath and Hammondsport Railroad Company which was filed on November 9, 1978 at 5:30 P.M. and given recordation no. 9829, four counterparts of the following document:

Amendment No. 2 (the "Amendment") dated as of October 8, 1981 between Itel and Transkentucky Transportation Railroad, Inc.

The names and addresses of the parties to the aforementioned Amendment are:

1. Transkentucky Transportation Railroad, Inc.
201 West Vine
Lexington, Kentucky 40502
2. Itel Corporation, Rail Division
Two Embarcadero Center
San Francisco, California 94111

The equipment covered by the Amendment is fifty (50) 70 ton boxcars (A.A.R. mechanical designation XM, 50'6" in length), bearing the reporting marks TTIS 25101 through and including TTIS 25150.

Also enclosed is a check in the amount of \$10.00 for the required recording fee.

PSP/BK/25

*This is
9829-
Bath and Hammondsport
RR Co.
Itel*

Robert W. Nichols

[Signature]

JAN 4 1982

Ms. Agatha Mergenovich
November 16, 1981
Page Two

Please stamp all counterparts of the enclosed document with your official recording stamp. You will wish to retain one (1) counterpart of the document for your files; it is requested that the remaining three (3) counterparts be delivered to the bearer of this letter.

Sincerely,


Patricia Salas Pineda
Counsel

PSP:sc
Enclosures

cc: Michael Walsh, Esq.
Weil, Gotshal & Manges
767 Fifth Avenue
New York, New York 10020

Robert S. Clark, Esq.
First Security Bank of Utah, N.A.
79 South Main Street
Salt Lake City, Utah 84111

Doug Drummond
Itel Corporation

Cammie Marsden
Itel Corporation

PSP/BK/17

Interstate Commerce Commission
Washington, D.C. 20423

1/4/82

OFFICE OF THE SECRETARY

Patricia Salas Pineda
Itel Rail Division
Two Embarcadero Center
Sanfrancisco, Calif. 94111

Dear

Ms. Salas Pineda:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on **1/4/82** at **10:40am**, and assigned re-
recording number(s). **9829-F**

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

L-0223
10/8/81

RECORDATION NO. 9829-15
FILE 1425

JAN 4 1982 - 10 40 AM

AMENDMENT NO. 2

INTERSTATE COMMERCE COMMISSION

This **AMENDMENT NO. 2** (the "Amendment") to that certain Lease Agreement (the "Lease") dated as of March 20, 1978 between Itel Corporation, Rail Division and Bath and Hammondsport Railroad Company is made as of this 8th day of October, 1981, by and between **ITEL CORPORATION, RAIL DIVISION**, a Delaware corporation ("Itel Rail"), as lessor and **TRANSKENTUCKY TRANSPORTATION RAILROAD, INC.**, a Kentucky corporation ("Lessee"), as assignee and lessee.

W I T N E S S E T H :

WHEREAS, Itel Rail and Bath and Hammondsport Railroad Company ("BHRC") are named parties to the Lease pursuant to which fifty (50) general purpose boxcars (the "Cars") have been leased and delivered by Itel Rail to BHRC;

WHEREAS, by an Agreement and Assignment made as of December 7, 1979, BHRC assigned to Lessee, with the consent of Itel Rail, all of its right, title and interest in and to the Lease, and effective on a boxcar-by-boxcar basis upon the remarking of each Car by Lessee, the Cars subject to the Lease; and

WHEREAS, Itel Rail and Lessee desire to amend the Lease with respect to the Cars.

NOW, THEREFORE, in consideration of the premises and mutual agreements herein contained, the parties hereto agree to amend the Lease as follows:

1. All terms defined in the Lease shall have their defined meanings when used in the Amendment.
2. Effective January 30, 1980, Section 3.A. is hereby deleted in its entirety and replaced by the following:

"3.A. Lessee hereby approves the specifications for the Cars to be delivered to it by Itel Rail. Itel Rail shall, at Lessee's expense, remark the Cars with the railroad markings of Lessee in compliance with all applicable regulations. The Cars shall be deemed delivered and subject to the terms and provisions of this Lease at 12:00 P.M. on the date each Car is released from the shop upon remarking. The Cars shall be moved to Lessee's railroad line at no cost to Lessee as soon after remarking as is consistent with mutual convenience and economy. Due to the nature of railroad operations in the United States, Itel Rail can neither control nor determine when the Cars leased hereunder will actually be available to Lessee for its use on its railroad tracks. Notwithstanding that Lessee may not have immediate physical possession of the Cars leased hereunder, Lessee agrees to pay Itel Rail the rent set forth in this Lease. To move the Cars to Lessee's railroad line and to ensure optimal use of the Cars after the Initial Loading, as hereinafter defined, Itel Rail agrees to assist Lessee in monitoring Car movements and, when deemed necessary by Lessee and Itel Rail, to issue movement orders, with respect to such Cars to other railroad lines in accordance with Interstate Commerce Commission

("ICC") and Association of American Railroads ("AAR") Interchange Rules. For the purposes hereof, the term "Initial Loading", with respect to each Car, shall be defined as the earlier to occur of either the first loading of freight for such Car on Lessee's railroad line or the thirty-first (31st) day after such Car is delivered pursuant to this Section."

3. Effective August 15, 1981, Section 3.B. is hereby amended by the addition of the following paragraph:

"If Lessee acquires or leases additional equipment bearing the reporting marks of Lessee from a party other than Itel Rail ("Other Equipment"), Itel Rail shall perform car hire accounting for the Other Equipment. Itel Rail and Lessee shall enter into a car hire service agreement ("Agreement") associated with Itel Rail's performance of car hire accounting for the Other Equipment. Under such Agreement, Itel Rail shall receive car hire rental and other payments relating to the use and handling of the Other Equipment by other railroads ("Funds") and deposit the Funds into an Agency Bank Account for the purpose of segregating the Funds from the funds relating to the Cars so as to insure that the interests of both Itel Rail and Lessee are protected. Additionally, under such Agreement, Lessee shall agree to pay to Itel Rail, on a monthly basis, a fee in an amount equal to Itel Rail's car hire accounting department's then current direct operating expenses, associated, on a pro rata basis, with Itel Rail's performance of car hire accounting for the Other Equipment. Any such Fee shall not exceed \$2.50 per month for each item of Other Equipment during 1981 ("Initial Calendar Year"). For each calendar year following the Initial Calendar Year, any such monthly Fee for each item of Other Equipment shall not exceed an amount which is equal to \$2.50 multiplied by the index (hereinafter "Index") in effect at the beginning of such calendar year divided by the Index in effect as of August 15, 1981. Such Index shall be the "United States Material prices, wages and supplements (excluding fuel)" Index listed within the Quarterly Indexes of Railroad Charge-out Prices and Wage Rates as published by the Economics and Finance Department of the Association of American Railroads. Under such Agreement, the Funds collected during any calendar month with respect to the Other Equipment shall be disbursed to Lessee from the Agency Bank Account on a monthly basis."

4. Effective August 15, 1981, Section 4.D. is hereby amended by the addition of the following paragraph:

"Itel Rail shall provide Lessee, within sixty (60) days after the end of each Service Month (as hereinafter defined), copies of the report which describes car hire reported by foreign railroad companies with respect to the Cars, with such Cars split by ownership. For the purposes hereof, Service Month shall be defined as the calendar month in which the Cars earn revenue under the terms of the Lease."

5. Effective August 15, 1981, Sections 5.A. and 5.B. are hereby deleted in their entirety and replaced by the following:

"5.A. Except as otherwise provided herein, Itel Rail shall, at its expense, perform or have performed all maintenance and repairs to and servicing of the Cars as shall be necessary to maintain the Cars in good operating condition as specified in the AAR Interchange Rules, unless such repair,

maintenance or servicing was occasioned by the fault of Lessee, or arises in those instances in which the AAR Interchange Rules would assign responsibility to Lessee for the loss, damage, destruction or liability requiring such repair, maintenance or servicing. Lessee shall inspect all Cars interchanged to it to insure that such Cars are in good working order and condition and Lessee shall be liable to reimburse Itel Rail for any repairs required for damage not noted at the time of interchange.

B. (i) Upon request of Itel Rail, Lessee shall, at Itel Rail's expense, perform any necessary maintenance, service or repairs to Cars on Lessee's railroad tracks. Itel Rail shall make, at its expense, all alterations, modifications or replacements of parts as shall be necessary to maintain the Cars in good operating condition. Lessee may make running repairs to facilitate continued immediate use of a Car, but shall not otherwise make any repairs, alterations, improvements or additions to the Cars without Itel Rail's prior written consent. If Lessee makes an alteration, improvement or addition to any Car without Itel Rail's prior written consent, Lessee shall be liable to Itel Rail for any revenues lost due to such alteration. Title to any such alteration, improvement or addition shall be with and remain with Itel Rail.

(ii) Itel Rail agrees to maintain complete records with respect to maintenance, service or repairs for each Car. Lessee agrees to provide Itel Rail with all records of such maintenance, service or repairs performed by Lessee."

6. Effective August 15, 1981, for the purposes of determining the rent for the Cars under the Lease, the words "80 percent" in Section 6.A.(i) are hereby deleted each time they appear and replaced by the words "85 percent".

7. Effective August 15, 1981, Section 6.A.(ii) is hereby deleted in its entirety and replaced by the following:

"6.A.(ii) In the event utilization exceeds 85 percent in any calendar year, Itel Rail shall receive an amount equal to the Itel Rail Base Rental plus an amount equal to 30 percent of the Payments earned in excess of the Itel Rail Base Rental. For the purposes hereof, Itel Rail Base Rental shall be an amount equal to the total payments for the calendar year multiplied by a fraction, the numerator of which is 85 percent and the denominator of which is the utilization for such calendar year. (In the event utilization is greater than 85 percent in any calendar year, the above determination of Itel Rail Base Rental will insure that Lessee will receive 70 percent of all payments made by other railroads for use or handling of the Cars in excess of Itel Rail Base Rental)."

8. Nothing set forth in this Amendment with respect to the Lease represent a waiver by the parties hereto of any rights under the Lease or the Bankruptcy Code and is not an assumption of the Lease under the Bankruptcy Code, and in the event of the rejection of the Agreement by order of the Bankruptcy Court under the Bankruptcy Code, Lessee may claim pre-petition damages, if any with respect to such rejection of the Lease.

9. Except as expressly modified by this Amendment, all terms and provisions of the Lease shall remain in full force and effect.

10. This Amendment may be executed by the parties hereto in any number of counterparts and all said counterparts taken together shall be deemed to constitute one and the same instrument.

ITEL CORPORATION,
RAIL DIVISION

By: *Edward M. Deas*

Title: *President*

Date: *11/6/81*

TRANSKENTUCKY TRANSPORTATION
RAILROAD, INC.

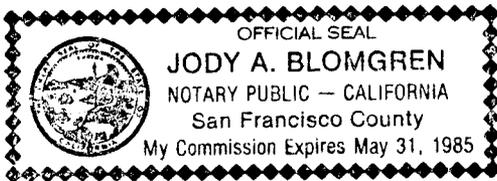
By: *C. J. Powell*

Title: *President*

Date: *Oct. 30, 1981*

STATE OF CALIFORNIA)
)
COUNTY OF SAN FRANCISCO) ss:

On this 6th day of November, 1981, before me personally appeared Edward M. O'Dea, to me personally known, who being by me duly sworn says that such person is President of ITEL Corporation, Rail Division, that the foregoing Amendment No. 2 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.



Jody A. Blomgren
Notary Public

STATE OF Kentucky)
)
COUNTY OF Gayette) ss:

On this 5th day of October, 1981, before me personally appeared Chester F. Powell, to me personally known, who being by me duly sworn says that such person is President of Transkentucky Transportation Railroad, Inc., that the foregoing Amendment No. 2 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.

Lenny Beth Amos
Notary Public

My Commission Expires Oct. 5, 1984