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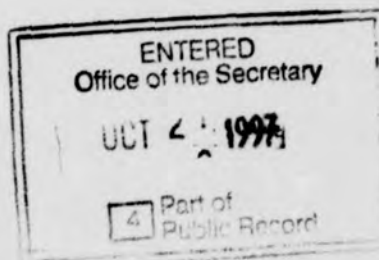
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October 21, 1997

BY HAND DELIVERY
SURFACE
TRANSPORTATION BOARD

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 700
Washington, D.C. 20423-0001



(Sub-No 39)
Re: Finance Docket No. 33388, CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company -- Control and Operating Leases/Agreements -- Conrail Inc. and Consolidated Rail Corporation -- Transfer of Railroad Line by Norfolk Southern Railway Company to CSX Transportation, Inc.

Dear Secretary Williams:

Enclosed you will find an original and 25 copies of the Responsive Application of Livoria, Avon & Lakeville Railroad Company For Trackage Rights Or Ownership (LAL-4), together with a 3.5 inch diskette containing the filing in WordPerfect 5.1. Also enclosed is a check to the Surface Transportation Board in the amount of \$4,700, which is applicable filing fee.

Please contact the undersigned if you have any questions regarding this matter.

Respectfully submitted,

Kevin M. Sheys

Enclosures

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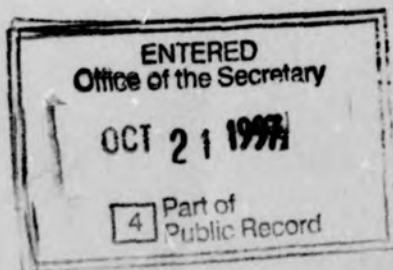
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BEFORE THE
SURFACE TRANSPORTATION BOARD



FINANCE DOCKET NO. 33388

CSX CORPORATION AND CSX TRANSPORTATION, INC., NORFOLK
SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY
CONTROL AND OPERATING LEASES/AGREEMENTS
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

FINANCE DOCKET NO. 33388 (SUB-NO. 39)

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LIVONIA, AVON & LAKEVILLE RAILROAD CORPORATION
--TRACKAGE RIGHTS OR OWNERSHIP--
LINES OF CONSOLIDATED RAIL CORPORATION

SURFACE
TRANSPORTATION BOARD

RESPONSIVE APPLICATION OF
LIVONIA, AVON & LAKEVILLE RAILROAD CORPORATION
FOR TRACKAGE RIGHTS OR OWNERSHIP

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Dated: October 21, 1997

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SURFACE
TRANSPORTATION BOARD

BEFORE THE
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Dated: October 21, 1997

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Attachments:

Verified Statement of William D. Burt

Exhibit 1 - Map

Exhibit 2-A - Trackage Rights Agreement

Exhibit 2-B - Asset Purchase Agreement

Exhibit 15 - Operating Plan - Minor

Exhibit 22 - Opinion of Counsel

Exhibit 23 - Support Letters from Shippers

Verified Statement of Carlton E. Myers

Verified Statement of George Bagley

Verified Statement of Les Cole

Exhibit 24 - Other Letters of Support

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388

CSX CORPORATION AND CSX TRANSPORTATION, INC., NORFOLK
SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY
CONTROL AND OPERATING LEASES/AGREEMENTS
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

FINANCE DOCKET NO. 33388 (SUB-NO. 39)

LIVONIA, AVON & LAKEVILLE RAILROAD CORPORATION
--TRACKAGE RIGHTS OR OWNERSHIP--
LINES OF CONSOLIDATED RAIL CORPORATION

RESPONSIVE APPLICATION OF
LIVONIA, AVON & LAKEVILLE RAILROAD CORPORATION
FOR TRACKAGE RIGHTS OR OWNERSHIP

Livonia, Avon & Lakeville Railroad Corporation ("LAL") hereby submits its Application, pursuant to 49 U.S.C. §§ 11323-11325 and the Railroad Consolidation Procedures, 49 C.F.R. Part 1180, Subpart A, for approval and authorization of LAL's acquisition of ownership or trackage rights on approximately one route mile of trackage constituting Conrail's Genesee Junction Yard in Chili, New York to directly interchange with all carriers with access to the Genesee Junction Yard, subject to terms and conditions to be negotiated by the parties or, failing a negotiated agreement, set by the Board. This Application is responsive to the Primary Application filed herein by CSX Corporation ("CSXC"), CSX Transportation, Inc. ("CSX"), Norfolk Southern Corporation ("NSC"), Norfolk Southern Railway Company ("NSR"), Conrail,

Inc. ("CRI") and Consolidated Rail Corporation ("CRC")¹ seeking authority for common control of Conrail by CSXC and NSC and the division of CRC's assets between CSX and NSR. LAL hereby requests that the rail line or trackage rights acquisition sought herein be imposed as a condition upon any approval of the Primary Application.

STATUTORY FRAMEWORK

The authority to condition the Primary Application (*e.g.*, by imposing the conditions to be sought by Applicants) is found in 49 U.S.C. § 11324(c). The statutory criteria for regulatory consideration of the proposed transaction are provided in 49 U.S.C. §§ 11323-11325. Section 11324(d) states:

(d) In a proceeding under this section which does not involve the merger or control of at least two Class I railroads, as defined by the Board, the Board shall approve such an application unless it finds that -

- (1) as a result of the transaction, there is likely to be substantial lessening of competition, creation of a monopoly or restraint of trade in freight surface transportation in any region of the United States; and
- (2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs.

In Decision No. 28, served September 10, 1997, page 3, the STB held that LAL's Responsive Application clearly "[is] not [a] major transaction because [it] does not involve the merger or control of two or more Class I railroads." *Id.* The STB further held that LAL's

¹ CSXC and CSXT are referred to collectively herein as "CSX." NSC and NSR are referred to collectively herein as "NS." CRI and CRC are referred to collectively herein as "Conrail." CSX, NS and Conrail are referred to collectively herein as the "Primary Applicants."

responsive application is a "minor transaction, rather than a significant transaction." *Id.*

Therefore, LAL is exempt from certain evidentiary submissions, including 49 CFR 1180.6(a)(8) (environmental consultation);² 1180.6(c) (ownership information, other relevant issues, a corporate chart, noncarrier information and certain other relationships); 1180.7 (market analyses); and 1180.8(a) (operational data). Despite the lessened evidentiary submissions, LAL must submit sufficient evidence to justify a grant of its Responsive Application. The Board interprets Section 11324(d) to require the imposition of conditions if the consolidation "may produce effects harmful to the public interest (such as a significant reduction of competition in an affected market), that the conditions to be imposed will ameliorate or eliminate the harmful effects, that the conditions will be operationally feasible, and that the conditions will produce public benefits (through reduction or elimination of possible harm) outweighing any reduction to the public benefits produced by the merger." *Id.*

SECTION 1180.6 (a)
IDENTIFICATION OF APPLICANT AND PERSONS
TO WHOM CORRESPONDENCE WITH RESPECT TO
THIS APPLICATION SHOULD BE ADDRESSED

Applicant LAL is a Class III railroad which owns and operates approximately 30 miles of line between Genesee Junction yard in Chili, New York, immediately south of Rochester, and Lakeville, New York. LAL also separately operates approximately 35 miles of trackage between Hammondsport, Bath and Wayland, New York owned by the Steuben County Industrial Development Authority.³

² Pursuant to Decision No. 28, LAL filed LAL-3, the Verified Statement of William D. Burt regarding environmental issues.

³ Pursuant to Decision No. 28, the STB waived the requirements of 49 C.F.R. 1180.3(b).

Applicant's name, business address and telephone number are as follows:

Livonia, Avon & Lakeville Railroad Corporation
5769 Sweeteners Boulevard
P.O. Box 190-B
Lakeville, NY 14480
Ph: (716) 346-2080
Fax: (716) 346-6454

Applicant's counsel to whom correspondence with respect to this Application should be addressed is as follows:

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

LAL believes that the proposed control of Conrail by CSX and NS and the division of Conrail's assets between CSX and NSR will adversely affect competitive rail service for the shippers and receivers on LAL's line. LAL accordingly opposes the proposed transaction in its present, unconditioned form. LAL hereby files its Responsive Application pursuant to 49 C.F.R. §1180.4(d)(4) asking that any Board approval of the Primary Application be conditioned upon LAL's acquisition of ownership of or trackage rights on approximately one route mile of trackage

constituting Conrail's Genesee Junction yard in Chili, New York (subject to terms and conditions to be negotiated by the parties or, failing a negotiated agreement, set by the Board).

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

LAL would consummate the proposed transaction promptly after (i) the effective date of any final order of the Board approving the Primary Application and (ii) Primary Applicants' consummation of the transactions proposed in the Primary Application.

SECTION 1180.6 (a) (1) (iii)
PURPOSE SOUGHT TO BE
ACCOMPLISHED BY THE PROPOSED TRANSACTION

The purposes for the conditions sought by LAL are to mitigate the adverse impact on food processing and agricultural businesses in New York. LAL seeks to maintain essential transportation services for its shippers; keep them competitive with other shippers in the region; remove CSX's control over the "firewall" at Genesee Junction Yard; and guarantee access to both Rochester and Southern Railroad ("R&S") and CSX for LAL's shippers.

LAL is the only shortline operator operating on the Lakeville-Genesee Junction line and provides the only rail service for the following rail customers on this rail line:

1. Sweeteners Plus Inc. in Lakeville, NY
2. ADM Corn Processing in Lakeville, NY
3. Ag Network Inc. near Lakeville, NY and in Avon, NY
4. Genesee Reserve Supply in Brighton, NY

5. J. MacKenzie Ltd. in Henrietta, NY
6. High Point Mills in Henrietta, NY
7. King Cole Bean in Avon, NY
8. Kraft General Foods in Avon, NY
9. Matthews and Fields Lumber in Henrietta, NY

LAL was organized in 1963 as a community effort to save branchline trackage proposed for abandonment by the Erie Lackawanna Railroad ("EL"). LAL is a Class III railroad which owns and operates 29.4 miles of line between Genesee Junction Yard in the Town of Chili, New York, immediately south of Rochester, and Lakeville, New York. This line is designated "Northern Division." LAL interchanges traffic with Conrail at Genesee Junction Yard. This interchange will be with CSX following the proposed division of Conrail between CSX and NSR. See William D. Burt Verified Statement ("Burt V.S.") at 2.

LAL's Northern Division handled 2,295 carloads in 1995, 56 percent more than five years before. Burt V.S. at 2. Steady growth has been due to the entrepreneurship of LAL's customers and vigorous marketing that led the Livingston County Chamber of Commerce to name LAL "Industry of the Year" for 1996 and *Railway Age* magazine to name LAL "Short Line Railroad of the Year" for 1997. *Id.* LAL service is essential to the survival and competitiveness of food processing and agricultural businesses in Livingston County, and LAL provides most of the accessible rail infrastructure in the Town of Henrietta, a prime warehousing and industrial area in the Rochester area. *Id.*

LAL's Northern Division serves nine on-line customers and operates a truck/rail bulk transfer facility serving off-line customers. Burt V.S. at 2. Commodities handled in 1995

included corn sweeteners, sugar, grain, fertilizer, and chemicals. *Id.* Recently, the list has expanded to include lumber, paper, and vegetable oil. *Id.* The company employs 17 full-time employees, and is owned by some 520 stockholders.

LAL originally operated between its namesake towns, interchanging cars with EL at Avon, New York. Burt V.S. at 2-3. At the time Conrail was created, LAL attempted to acquire EL's line from Avon westward to Caledonia, New York, where EL intersected branchlines of both Penn Central and Chessie System. *Id.* The Chessie System line has since been acquired by the R&S. The United States Railway Association ("USRA") proposed that Avon be served by Conrail from Rochester. *Id.*

This USRA arrangement effectively led to a Conrail traffic routing/rate "firewall" 2/10ths of a mile long between the LAL/EL connection (milepost 366.2) and the east end of EL's Avon-Caledonia line (MP 366.4). Burt V.S. at 3. Simultaneously, it rendered EL's Avon customers captive to Conrail. Although the Avon-Caledonia line was made available for purchase, it now reached neither LAL nor the Avon customers, and was quickly abandoned.

In 1995, Conrail approached LAL with a proposal to sell its Avon-Genesee Junction trackage to LAL. Burt V.S. at 4. Badly deteriorated after years of neglect, the line still functioned as the sole outlet for LAL traffic that in 1995 accounted for 84 percent of all cars handled thereon. *Id.* In the sale negotiations, Conrail made it clear that the firewall would simply be moved north. If LAL was unwilling to accept continued captivity, the line would be sold to another short line in the region. *Id.* Inasmuch as Conrail had experienced six service interruptions and one derailment on the line due to track conditions in 1995, the track required immediate repair by a committed, financially sound short line such as LAL. *Id.*

Genesee Junction Yard thus became the new firewall when LAL acquired Conrail's "Rochester South Cluster" in 1996. Livonia, Avon & Lakeville Railroad Corporation--Acquisition and Operation Exemption--Line of Consolidated Rail Corporation, Finance Docket No. 32754 (STB served March 11, 1996). Although LAL's acquisition of the line conveyed ownership of trackage reaching the east end of Genesee Junction Yard, Conrail retained the yard itself so as to block LAL from connecting with the R&S, a Class I₁ carrier that (as noted above) acquired Chessie System's line between Rochester and Silver Springs, New York in 1986. R&S connects to the west end of Genesee Junction Yard. At Silver Springs, 44 miles south of Genesee Junction Yard, R&S connects with Canadian Pacific and Conrail's "Southern Tier Line." The Southern Tier route will be allocated to Norfolk Southern as part of the proposed division of Conrail's assets.

As part of its acquisition of the "Rochester South Cluster," LAL was permitted to operate throughout Genesee Junction Yard for purposes of interchange with Conrail. Burt V.S. at 5. *Thus, while LAL and R&S can both operate in Genesee Junction Yard, Conrail prohibits LAL and R&S from interchanging cars with each other.* Genesee Junction Yard has three tracks and is approximately one mile long. *Id.* Landlocked, bounded by wetlands, situated beneath the runway approach to the Monroe County airport, and used solely for performing interchange between Conrail and LAL, the yard has no discernible alternative value to Conrail or to CSX. *Id.*

USRA's decision to have Conrail serve Avon from Rochester, as opposed to accepting LAL's offer to acquire the Avon-Caledonia lines, mistakenly elevated concern for Conrail's well-being over the service requirements of customers. Burt V.S. at 5-6. In this respect, USRA's handling of the Avon/LAL situation is part of a larger picture. In its statutory

review of the *Final System Plan*, the Interstate Commerce Commission ("ICC") concluded that Unified Conrail was not a satisfactory solution. "Unified Conrail," said the ICC, "fails to meet the [Regional Rail Reorganization Act of 1973's] goals of preserving and promoting competition (Section 206(a)(5)) and preserving existing patterns of service (Section 206(a)(4))." Interstate Commerce Commission, Evaluation of the U.S. Railway Association's Final System Plan, Washington, D.C. (1975), page 8. The Avon firewall, imposed by governmental action over the vigorous objections of LAL and local industries, is a case in point.

While the Primary Applicants also observe that the Congressionally mandated goal of competition was sacrificed in creating Conrail, and ask the Board's approval to rectify that mistake with "the most pro-competitive restructuring in railroad history" (McClellan V.S. at 5, 50 and 51), the transaction as proposed in its unconditioned form leaves LAL captive to Conrail's successor, CSX. For LAL's customers, two decades of subsidizing Conrail's success is enough. Granting the transaction in its unconditional form would mean handing the Conrail subsidy to CSX -- a subsidy that CSX does not need and is not entitled to, especially on the backs of LAL shippers.

From an operational standpoint, many LAL customers demand just-in-time service and expect LAL to operate special trains when even one "shutdown" car misses its expected delivery date. Burt V.S. at 9. LAL also performs on-demand switching, managed car storage, transload services, product inventory management, temperature checks, car heating, and other ancillary services. LAL operates generally on the basis of "interline" rather than "switch" settlement. Under interline settlement, the short line railroad participates in the rate-making process and division of revenue. Under switch settlement, the short line railroad accepts a

previously negotiated flat fee from the Class I connection for moving the car to or from the short line's stations, which are listed as stations of the Class I connection for rate-making purposes. Use of interline settlement affords LAL staff the opportunity to shield our customers from errors in Class I railroad rating and billing, forestalling the disputes that are an unacceptably common feature of doing business with Class I railroads.

One of the largest threats from the proposed transaction is to LAL's service. The ICC's evaluation of the *Final System Plan* summarizes tendencies that will be exacerbated by the current proposal to divide Conrail:

While we do not believe that rail competition is something that must be preserved at any cost, we do believe that the needs of the shipping public are best served by having competitive rail service in every major market...Such competition encourages more efficient and cost effective service. Where each railroad is interested in obtaining a larger share of the market, there is an economizing tendency toward providing service at the lowest possible cost or special services designed to fulfill the requirements of an individual shipper.

On the other hand, a railroad which has a monopolistic control of a particular market has only limited incentive to provide efficient service for those captive markets. In fact, such a carrier has an incentive to allocate its available resources away from captive markets to improve service for those areas where quality of service is a more significant factor in obtaining a larger share of the revenue in markets where competition exists.

This allocation process, if unchecked or undetected, may go so far that rail-bound shippers at captive markets bear the burden of inequitable rates and a deterioration of existing rail service, and in some cases may be subsidizing shippers in a position to select alternative transportation. Interstate Commerce Commission, Evaluation of the U.S. Railway Association's *Final System Plan*, pages 8-9.

As the ICC predicted, Conrail competes where (and to the extent that) it must. The same will be true of CSX and NS. The danger for captive short lines and their customers lies in the fact that CSX and NS will be much larger and more remote, thus even more inclined than Conrail to neglect the needs of captive businesses while holding rates high. At the same time, CSX and NS will be more competitive than Conrail ever was in certain high-profile corridors, particularly in key intermodal lanes. Thus, the disparity between captive and competitive customers will grow with the proposed division of Conrail.

While CSX's personnel may have nothing but good intentions, much as Union Pacific people did in their recent merger with Southern Pacific, LAL and its customers remain concerned that highly competitive markets such as northern New Jersey and Detroit will have first claim on CSX's capital, management personnel, locomotives, track gangs, and other scarce resources, which will be allocated away from captive markets. The notion that CSX will commit "whatever it takes," notwithstanding its corporate interest in maximizing return on investment from captive markets, is simply naive.

For example, grain shipments to Conrail points on the DELMARVA Peninsula and in Pennsylvania will now require duplicative costs and multiple interchanges attendant upon CSX/NS interline service. This will effectively kill LAL-originated shipments of grain, depriving Western New York farmers of an outlet for their product and poultry producers of a competitive source of feed.

Traffic that currently moves via NS and Conrail will also be disrupted. While Conrail has long held itself out to be the "neutral" terminating carrier for the Northeast, it will now be necessary to interline between two archrivals, CSX and NS for traffic being shipped to or

from LAL's line. CSX and NS agree that they will be fiercely competitive with each other following the division of Conrail. The notion that CSX/NS interline routings will be transparently equivalent to single-line service therefore possesses no credibility, and finds no support in experience (e.g., the Conrail/Delaware and Hudson "gateways" that died out soon after Conrail was created). *Moreover, it is at complete variance with the merger proponents' insistence that they need to acquire and divide Conrail because the short hauls, excessive costs, and lack of operational control inherent in interline arrangements frustrate truck-competitive rail service.* The Applicants should not be permitted to impose the same impediments to commerce on the LAL and its customers. It is critical to minimize the anti-competitive effects that this merger will have on LAL and its customers by increasing LAL's access to competitive carriers and prevent CSX from creating a firewall at the Genesee Junction Yard. Without a competitive check in the form of access to R&S, CSX will be free to raise its line-haul rates, diminish the level and frequency of interchange with LAL, or both.

Furthermore, Conrail's retention of Genesee Junction Yard poses daily hazards to LAL employees and the shipping public. *Burt V.S. at 21.* Yard trackage has remained Excepted Track since before 1995, is in deplorable condition, and receives minimal maintenance. *Id.* A late 1996 derailment of a Conrail train due to a broken rail in the yard interrupted service to LAL customers for six days. *Id.* Because the yard is being held solely as a firewall, Conrail exhibits little interest in properly maintaining it and has not responded to LAL requests to make necessary repairs. *Id.* Sale of the yard to LAL will permit LAL to rehabilitate yard trackage to a FRA Class 1 condition. *Id.* LAL's analysis indicates that the deferred maintenance liability exceeds the net liquidation value of the yard. *Id.*

LAL's solution is operationally feasible, with the east end of the yard continuing to be used for interchange between LAL and Conrail/CSX and the west end used for interchange between LAL and R&S. This approach would have the advantage of allowing ownership to go to the party who has the strongest interest in maintaining the yard, LAL. Continued ownership by Conrail/CSX is feasible only if CSX commits itself to upgrade and maintain yard trackage to a FRA Class 1 condition. The best solution is very narrowly drawn on only one mile of track. LAL will be able to ensure access to both CSX and R&S, prevent the further decay of the Genesee Junction yard, allow LAL to bring the yard up to FRA Class 1 condition, and prevent CSX from maintaining an anti-competitive firewall.

SECTION 1180.6 (a) (1) (iv)
THE NATURE AND AMOUNT OF NEW
SECURITIES AND OTHER FINANCIAL ARRANGEMENTS

The line acquisition or trackage rights sought in this transaction would not involve the issuance of any new securities by LAL. LAL is willing and able to negotiate and to take whatever steps are appropriate to establish reasonable compensation and other terms to Conrail for the purchase or to CSX for acquisition of the trackage rights sought.

SECTION 1180.6 (a) (2)
PUBLIC INTEREST JUSTIFICATIONS

(i) Effect of the Proposed Transaction on Competition.

The proposed transaction is pro-competitive and clearly in the public interest. It will mitigate the adverse impact that the transactions contemplated by the Primary Application will have on competition for food processing and agricultural traffic in New York. As discussed

in the attached Verified Statements and shipper/public support letters, the proposed transaction will prevent the further decay of the Genesee Junction yard and ensure open and competitive access for LAL's shippers over both R&S and CSX routes and prevent CSX from controlling a small segment of line as a "firewall."

Finally, the proposed conditions will not result in harm to the essential services of any carrier and will not result in a reduction in competition at any point.

(ii) Financial Considerations.

The financial consideration for the purchase or trackage rights involves payment of a purchase price or trackage rights use charge (as negotiated between LAL and CSX or, if necessary, as determined by the Board). In addition, the proposed purchase or trackage rights will confer financial benefits on shippers resulting from the rate and service competition that R&S and CSX will provide. R&S will realize financial benefits from increased traffic and earnings. LAL will realize financial benefits from increased traffic and earnings.

(iii) Effect of Increase in Total Fixed Charges Resulting from the Transaction.

LAL's acquisition of the line or trackage rights is not expected to result in any increase in fixed charges on LAL. The additional net income which LAL expects to earn from operation of the proposed trackage rights will enhance LAL's ability to meet its existing fixed charge obligations.

(iv) Effect of Transaction Upon the Adequacy of Transportation Service to the Public.

The primary public benefits of the proposed trackage rights are the preservation of competitive rail service options for shippers to or from the Lakeville-Genesee Junction line and the preservation of LAL as a provider of essential services on the line.

(v) Effect of Transaction on Employees.

There are no anticipated effects upon personnel. Current LAL operations would only extend over the same trackage currently used.

(vi) Inclusion of Other Railroads in the Territory.

Inclusion is not a relevant consideration in this Application since the proposed transaction, which consists of the acquisition of rail line or trackage rights, does not involve the merger or control of at least two Class I railroads. See 49 U.S.C. § 11324(b)(2) and (d). Nonetheless, the proposed transaction will not result in harm to the essential services provided by any carrier and, therefore, there is no basis for ordering the inclusion of any carrier in the transaction.

SECTION 1180.6 (a) (3)
OTHER SUPPORTING INFORMATION

The Verified Statement of William D. Burt is submitted with this Application. The Verified Statements from Sweeteners Plus Inc., ADM Corn Processing, and Ag Network, Inc. supporting LAL's Application are also submitted with this Application (Exhibit 23). Letters supporting this Application from the six additional shippers on the Lakeville-Genesee Junction

line -- Genesee Reserve Supply, J. MacKenzie, High Point Mills, King Cole Bean, Kraft General Foods, Hillside Crop Service and Matthews and Fields Lumber -- and from the Livingston County Board of Supervisors, the Livingston County Development Agency and the Genesee Transportation Council are also submitted with this Application. LAL also is submitting a letter from several members of the New York Congressional Delegation relevant to the firewall. (See Exhibit 24).

SECTION 1180.6 (a) (4)
OPINION OF COUNSEL

An opinion of counsel is attached to this Application. (Exhibit 22).

SECTION 1180.6 (a) (5)
STATES WHERE APPLICANT OWNS PROPERTY

LAL owns and/or operates railroad property in the state of New York.

SECTION 1180.6 (a) (6)
MAP - EXHIBIT 1

A map depicting LAL's lines is submitted as Exhibit 1 to this Application.

SECTION 1180.6 (a) (7) (i)
DESCRIPTION OF THE TRANSACTION

LAL's acquisition of ownership or of trackage rights on approximately one route mile of trackage constituting Conrail's Genesee Junction yard in Chili, New York, subject to terms and conditions to be negotiated by the parties or, failing a negotiated agreement, set by the Board.

SECTION 1180.6 (a) (7) (ii)
AGREEMENT - EXHIBIT 2-A and 2-B

A proposed Trackage Rights Agreement and a proposed Purchase and Sale Agreement, each containing the significant terms of the proposed transaction alternatives, are submitted with this Application as Exhibits 2-A and 2-B, respectively.

SECTION 1180.6 (a) (7) (iii)
INFORMATION REGARDING THE CONSOLIDATED ENTITY

This criterion is not applicable to this Application because neither a consolidation nor a merger is proposed.

SECTION 1180.6 (2) (7) (iv)
COURT ORDER

This subsection is not applicable to this Application, because neither a trustee, receiver, assignee, nor personal representative of LAL is an Applicant herein.

SECTION 1180.6 (2) (7) (v)
PROPERTY INVOLVED IN THE PROPOSED TRANSACTION

LAL seeks to acquire ownership of or trackage rights on approximately one route mile of trackage constituting Conrail's Genesee Junction yard in Chili, New York, subject to terms and conditions to be negotiated by the parties or, failing a negotiated agreement, set by the Board. The proposed transaction does not involve any property of LAL. The properties involved in the proposed transaction do not include all of the property of Conrail.

SECTION 1180.6 (a) (7) (vi)
PRINCIPAL ROUTES, TERMINI, POINTS OF
INTERCHANGE AND MILEAGE OF THE INVOLVED LINES

For a description of the Lakeville Genesee Junction line and the Genesee Junction
Yard see pages 4, 9, *supra*.

SECTION 1180.6 (a) (7) (vii)
GOVERNMENT FINANCIAL ASSISTANCE

No governmental financial assistance is involved in the proposed transaction.

SECTION 1180.6 (a) (8)
ENVIRONMENTAL DATA

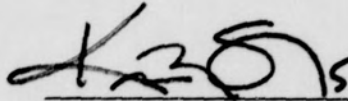
The proposed transaction will not result in changes in carrier operations that
exceed the thresholds established in 49 C.F.R. § 1105.7 (e) (4) or (5). Therefore, no energy or
environmental documentation need be prepared with regard to this Application. Under 49 C.F.R.
§ 1105.8 (b)(1) and (3), the proposed transaction also is exempt from historic preservation
reporting requirements. Accordingly, no Environmental or Historic Report accompanies this
Application.

SECTION 1180.8(b)
OPERATING PLAN/MINOR - EXHIBIT 15

Operational data, prepared in accordance with 49 C.F.R. § 1180.8(b), is attached
hereto as Exhibit 15.

WHEREFORE, Applicant respectfully requests that the Board accept this
Application for consideration and authorize the transaction proposed herein.

Respectfully submitted,



Sergeant W. Wise
Livonia, Avon & Lakeville Railroad Corporation
5769 Sweeteners Boulevard
P.O. Box 190-B
Lakeville, NY 14480
(716) 346-2090

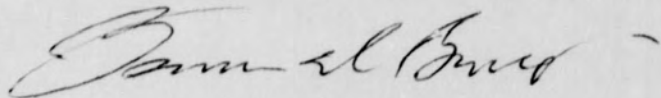
Kevin M. Sheys
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Oppenheimer Wolff & Donnelly
1020 Nineteenth Street, N.W.
Suite 400
Washington, DC 20036-6105
(202) 496-4906

**ATTORNEYS FOR LIVONIA, AVON &
LAKEVILLE RAILROAD CORPORATION**

Dated: October 21, 1997

VERIFICATION

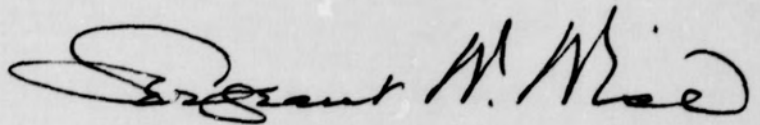
William D. Burt, under oath, says that he is Vice President of Livonia, Avon & Lakeville Railroad Corporation, applicant herein; that he has been duly authorized and designated by Livonia, Avon & Lakeville Railroad Corporation to sign, verify and file the foregoing application with the Surface Transportation Board; that he has examined all of the statements contained in said application; that he has knowledge of the matters set forth therein insofar as those matters relate to Livonia, Avon & Lakeville Railroad Corporation; and that all such statements made and matters set forth therein with respect to Livonia, Avon & Lakeville Railroad Corporation are true and correct to the best of his knowledge, information and belief.



William D. Burt

CERTIFICATION

I, Sergeant W. Wise, am Secretary of Livonia, Avon & Lakeville Railroad Corporation, and I hereby certify that William D. Burt is Vice President of Livonia, Avon & Lakeville Railroad Corporation and is duly authorized and designated to sign, verify and file the foregoing Application on behalf of Livonia, Avon & Lakeville Railroad Corporation.

A handwritten signature in dark ink, appearing to read "Sergeant W. Wise", written in a cursive style.

Sergeant W. Wise

**VERIFIED STATEMENT
OF
WILLIAM D. BURT**

I. Introduction and Qualifications

My name is William D. Burt. I am Vice President and General Manager of the Livonia, Avon & Lakeville Railroad Corporation ("LAL"), and am responsible as chief operating officer for our railroad's operations and business development.

I am a graduate of the State University of New York at Geneseo with a bachelor's degree in political science. I also earned graduate degrees in transportation engineering and management from the Polytechnic Institute of New York at Brooklyn. My association with the railroad industry spans 22 years and includes working on the creation of Conrail in 1975 as a Congressional staff person, working for RoadRailer/Bi-Modal Corporation as the manager of a project that launched the first regular RoadRailer service on Conrail in 1982, and working as a consultant assisting intermodal customers and short line railroads in negotiations with Class I railroads. I joined LAL in 1995.

Organized in 1963 as a community effort to save branchline trackage proposed for abandonment by the Erie Lackawanna Railroad ("EL"), LAL is a Class III railroad which owns and operates 29.4 miles of line between Genesee Junction Yard in the Town of Chili, New York, immediately south of Rochester, and Lakeville, New York (see Map 1). LAL

interchanges traffic with Conrail at Genesee Junction Yard. This interchange will be with CSX Transportation following the proposed division of Conrail between CSX and NS.

LAL's Northern Division handled 2,295 carloads in 1995, 56 percent more than five years before. Steady growth has been due to the entrepreneurship of our customers and vigorous marketing that led the Livingston County Chamber of Commerce to name LAL "Industry of the Year" for 1996 and *Railway Age* magazine to name LAL "Short Line Railroad of the Year" for 1997. LAL service is essential to the survival and competitiveness of food processing and agricultural businesses in Livingston County, and LAL provides most of the accessible rail infrastructure in the Town of Henrietta, a prime warehousing and industrial area in the Rochester region.

LAL's Northern Division serves nine on-line customers and operates a truck/rail bulk transfer facility serving off-line customers. Commodities handled in 1995 included corn sweeteners, sugar, grain, fertilizer, and chemicals. The list has since expanded to include feed, lumber, paper, and vegetable oil. The company employs 17 full-time employees, and is owned by some 520 stockholders.

II. The Conrail Firewall

LAL originally operated between its namesake towns, interchanging cars with EL at Avon, New York. At the time Conrail was being created, LAL made a *bona fide* offer to acquire EL's line from Avon westward to Caledonia, New York, where EL intersected

branchlines of both Penn Central and Chessie System. The Chessie System line has since been acquired by the Rochester & Southern Railroad ("RSR"). Although the United States Railway Association ("USRA") acknowledged LAL's offer in its *Preliminary System Plan* and *Final System Plan* for Conrail, the *Final System Plan* proposed having Chessie System acquire the Avon-Caledonia line along with most other EL lines. When Chessie failed to do so, and USRA's "Unified ConRail" fallback plan sprang to life, USRA proposed that Avon be served by Conrail from Rochester.

This USRA arrangement effectively inserted a Conrail traffic routing/rate "firewall" 2/10ths of a mile long between the LAL/EL connection (milepost 366.2) and the east end of EL's Avon-Caledonia line (MP 366.4). Simultaneously, it rendered EL's Avon customers captive to Conrail. Although the Avon-Caledonia line was made available for purchase, it now reached neither LAL nor the Avon customers, and was quickly abandoned (see Map 2).

As LAL and customer representatives contended in testimony before the Interstate Commerce Commission in 1975, USRA's decision was a mistake that harmed LAL and Conrail's customers at Avon. The Kraft General Foods plant at Avon, then shipping about 1,000 cars annually, required twice-daily switching that had prompted EL to maintain a yard engine and crew at Avon five days per week. This underutilized crew could have easily been replaced by switching services provided by LAL. Instead, Conrail's immediate withdrawal of daily switching contributed to a steep decline in the Kraft General Foods

plant's rail volume. Conrail's Avon-Rochester line was also in poorer physical condition than the Avon-Caledonia line. These factors adversely affected the regularity of service to LAL, which was struggling to reach profitability by providing daily switching services to a sweeteners plant that had recently located on its line at Lakeville.

III. Moving the Firewall Northward

In 1995, Conrail approached LAL with a proposal to sell its Avon-Genesee Junction trackage to LAL. Badly deteriorated after years of neglect, the line still functioned as the sole outlet for LAL traffic that in 1995 accounted for 84 percent of all cars handled thereon. Throughout the negotiations (in which I participated as a consultant to LAL), Conrail representatives made it clear that the firewall would simply be moved north. If LAL was unwilling to accept continued captivity, the line would be sold to another short line in the region. Inasmuch as Conrail had experienced six service interruptions and one derailment on the line due to track conditions in 1995, the track required immediate repair by a committed, financially sound short line such as LAL.

Genesee Junction Yard thus became the new firewall when LAL acquired Conrail's "Rochester South Cluster" in 1996. Livonia, Avon & Lakeville Railroad Corporation--Acquisition and Operation Exemption--Line of Consolidated Rail Corporation, Finance Docket No. 32754 (STB served March 11, 1996). (See Map 3). Although LAL's acquisition of the line conveyed ownership of trackage reaching the east end of Genesee

Junction Yard, Conrail retained the yard itself so as to block LAL from connecting with the RSR, a Class III carrier that (as noted above) acquired Chessie System's line between Rochester and Silver Springs, New York in 1986. RSR connects to the west end of Genesee Junction Yard, and it is my understanding that RSR holds rights to operate in Genesee Junction Yard. At Silver Springs, 44 miles south of Genesee Junction Yard, RSR connects with Canadian Pacific and Conrail's "Southern Tier Line." The Southern Tier route will be allocated to Norfolk Southern as part of the proposed division of Conrail's assets.

As part of its acquisition of the "Rochester South Cluster," LAL was permitted to operate throughout Genesee Junction Yard for purposes of interchange with Conrail. *Thus, while LAL and RSR can both operate in Genesee Junction Yard, Conrail prohibits LAL and RSR from interchanging cars with each other.* Genesee Junction Yard has three tracks and is approximately one mile long. Landlocked, bounded by wetlands, situated beneath the runway approach to the Monroe County airport, and used solely for performing interchange between Conrail and LAL, the yard has no discernible alternative value to Conrail or to CSX.

IV. Eliminating the Firewall Corrects USRA's Mistake

USRA's decision to have Conrail serve Avon from Rochester, as opposed to accepting LAL's offer to acquire the Avon-Caledonia line, mistakenly elevated concern for

Conrail's well-being over the service requirements of customers. In this respect, USRA's handling of the Avon/LAL situation is part of a larger picture. In its statutory review of the *Final System Plan*, the Interstate Commerce Commission concluded that Unified ConRail was not a satisfactory solution. "Unified ConRail," said the ICC, "fails to meet the [Regional Rail Reorganization Act of 1973's] goals of preserving and promoting competition (Section 206(a)(5)) and preserving existing patterns of service (Section 206(a)(4))." Interstate Commerce Commission, Evaluation of the U.S. Railway Association's Final System Plan, Washington, D.C. (1975), page 8. The Avon firewall, imposed by governmental action over the vigorous objections of LAL and local industries, is a case in point.

While the Primary Applicants now concede that the Congressionally mandated goal of competition was sacrificed in creating Conrail, and ask the Board's approval to rectify that mistake with "the most pro-competitive restructuring in railroad history" (McClellan VS. at 5, 50 and 51), the transaction as proposed in its unconditioned form leaves LAL captive to Conrail's successor, CSX. I believe that the public interest requires the Board to avail itself of this last opportunity to remedy USRA's mistake. For LAL's customers, two decades of subsidizing Conrail's success ought to be enough.

V. LAL Provides Essential Transportation Services

LAL service is essential to the survival and competitiveness of food processing and agricultural businesses in Livingston County.

Sweeteners Plus Inc. operates a large sweeteners processing plant at Lakeville that receives cars of corn syrup and sugar by rail. After processing, sweeteners are trucked over the highway to receivers located throughout the Northeastern United States. The president of Sweeteners Plus states that the business could not exist at Lakeville without access to rail transportation due to the comparatively high cost of truck transportation on inbound corn syrup and sugar. He further emphasizes that it is LAL's "on-demand" switching and related services that make it possible for Sweeteners Plus to respond in a timely way to the demands of its customers. Sweeteners Plus recently expanded its Lakeville sweeteners plant and is diversifying its operations by building another new facility to handle an innovative road de-icing product known as "Ice-Ban." See Verified Statement of Carlton E. Myers.

ADM Corn Processing operates a sweeteners processing facility at Lakeville that receives cars of corn syrup by rail and ships the processed product over the highway. The manager of ADM's Lakeville plant states that access to LAL is essential for the survival and competitiveness of the Lakeville facility, due to the cost advantages of rail on inbound

materials and the importance of LAL's high service levels. See Verified Statement of George Bagley.

Ag Network Incorporated operates a grain (corn and wheat) processing and transshipment facility that was constructed in 1994 near Lakeville. Construction of this facility required LAL to rehabilitate and restore to service about a mile of disused, overgrown track. This facility is the reason why LAL is, to the best of my knowledge, the only short line railroad in New York State generating outbound wheat. Due to the commodity nature of its business, Ag Network cannot operate without access to competitively priced rail service. Ag Network is planning further expansion and the Town of Livonia has received a \$20,000 federal grant to study construction of a public highway that would enhance industrial development in the area between Ag Network's facility and LAL's Lakeville yard. Ag Network also operates a separate facility that receives feed via LAL at Avon. See Verified Statement of Les Cole.

Rail service is essential to the survival of the General Foods plant at Avon, which is the sole facility producing Cool Whip™ and has recently added production of the Oscar Mayer Lunchables™ product line. General Foods receives carloads of vegetable oil and is working with LAL to reconfigure the facility and track structure to handle additional business via rail.

Genesee Reserve Supply in Brighton (immediately south of Rochester) is a large distributor of forest products to lumber yards around the region. It receives inbound

shipments of lumber and other forest products by rail and ships to its customers by local truck. Due to the high cost of trucking from the West Coast and other forest products origins, high quality, competitively priced rail service is essential to Genesee Reserve Supply's survival.

LAL's newest customer is J. MacKenzie, Ltd. of Henrietta, which cuts rolls of printing paper into sheets and performs distribution throughout the region. J. MacKenzie, Ltd. relocated to a Henrietta industrial park specifically to gain access to LAL. This move, which will permit an affiliated printing company to expand into vacated space at the former location, required LAL to reconstruct and rehabilitate a half-mile of disused and heavily overgrown sidetrack in less than 45 days, something that the customer had been advised only we could do.

J. MacKenzie's relocation to LAL illustrates the fact that LAL provides most of the accessible rail infrastructure in the Town of Henrietta, a prime warehousing and industrial area surrounding the junction of Interstate 390 (the outer "beltway" around Rochester) and the New York State Thruway. In recent years, the Town of Henrietta has emphasized appropriate industrial development as a means of building its tax base to pay the costs of extensive suburban residential development in the Town.

VI. LAL's Survival Depends on Maintaining High Service Levels

LAL operates an unusually service-sensitive short line recently recognized

by *Railway Age Magazine* as 1997 "Short Line Railroad of the Year." LAL Northern Division carloadings have grown 56 percent in five years (1995 over 1991) and traffic growth is accelerating.

Many LAL customers demand just-in-time service and expect LAL to operate special trains when even one "shutdown" car misses its expected delivery date. We try to keep our commitments in this regard, although doing so became more expensive when we acquired the line to Henrietta; i.e., where we formerly ran 8 miles to Avon, we now run 24 miles to Genesee Junction. LAL also adds value by performing on-demand switching, managed car storage, transload services, product inventory management, temperature checks, car heating, and other ancillary services.

Customers also derive value from the fact that LAL operates generally on the basis of "interline" rather than "switch" settlement. Under interline settlement, the short line railroad participates in the rate-making process and division of revenue. Under switch settlement, the short line railroad accepts a previously negotiated flat fee from the Class I connection for moving the car to or from the short line's stations, which are listed as stations of the Class I connection for rate-making purposes. Use of interline settlement affords LAL staff the opportunity to shield our customers from errors in Class I railroad rating and billing, forestalling the disputes that are an unacceptably common feature of doing business with Class I railroads.

VII. The Threat to LAL Service Is Fundamental

I would like to quote from the ICC's evaluation of the *Final System Plan* a few sentences that summarize tendencies that will be exacerbated by the current proposal to divide Conrail:

While we do not believe that rail competition is something that must be preserved at any cost, we do believe that the needs of the shipping public are best served by having competitive rail service in every major market...Such competition encourages more efficient and cost effective service. Where each railroad is interested in obtaining a larger share of the market, there is an economizing tendency toward providing service at the lowest possible cost or special services designed to fulfill the requirements of an individual shipper.

On the other hand, a railroad which has a monopolistic control of a particular market has only limited incentive to provide efficient service for those captive markets. In fact, such a carrier has an incentive to allocate its available resources away from captive markets to improve service for those areas where quality of service is a more significant factor in obtaining a larger share of the revenue in markets where competition exists.

This allocation process, if unchecked or undetected, may go so far that rail-bound shippers at captive markets bear the burden of inequitable rates and a deterioration of existing rail service, and in some cases may be subsidizing shippers in a position to select alternative transportation. Interstate Commerce Commission, Evaluation of the U.S. Railway Association's Final System Plan, pages 8-9.

As the ICC predicted, Conrail competes where (and to the extent that) that it must. The same will be true of CSX and NS. The danger for captive short lines and their customers lies in the fact that CSX and NS will be much larger and more remote, thus even more inclined than Conrail to neglect the needs of captive business while holding rates high. At

the same time, CSX and NS will be more competitive than Conrail ever was in certain high-profile corridors, particularly in key intermodal lanes. Thus the disparity between captive and competitive customers will grow with the proposed division of Conrail.

For LAL and our customers, the issue will be whether LAL itself can continue to offer and deliver reliable, high-quality service:

A. Service quality and reliability

Our concern is that, to the extent that financial benefits to the Primary Applicants are to be derived from integration of Conrail operations into CSX and NS, the savings will be extracted in part from service to captive customers and short lines.

The changes that most directly impact LAL have to do with the Conrail trains that deliver and pick up cars to/from LAL. Since 1995, LAL has endured four iterations of Conrail's local operating plan, each one worse than the last in terms of reliability and/or transit time. LAL suggestions to consider alternatives were rebuffed with the reply that Conrail was minimizing Conrail's expenses. Due to this deterioration in service, Sweeteners Plus experienced difficulty in obtaining cars and was forced to bring in some corn syrup by truck. See Verified Statement of Carlton E. Myers.

The fourth operating plan was adopted in the spring of 1997 after Conrail had rebuffed LAL's suggestions to improve service. Like the previous three plans, it was adopted without prior consultation with LAL. It entailed hauling cars from the West all the

way past Rochester to Dewitt Yard in Syracuse, re-classifying them into a *westbound* road train, and setting them out at Lyons (a small yard between Syracuse and Rochester). The following day, a local train would originate at Lyons that would haul the cars further west to Genesee Junction on Rochester's south side for delivery to LAL. Part of an overall plan to eliminate train BUSY (Buffalo to Syracuse) and significantly reduce the classification work performed at Buffalo's Frontier Yard, this move added two days transit time to the trip for LAL cars -- bad enough in itself. In reality, the time spent at Dewitt alone varied from 18 hours to three days as Dewitt became congested with the additional work. After a few weeks of this, Conrail reverted to Plan #3.

I am sure that CSX personnel have nothing but good intentions, much as Union Pacific people did in their recent merger with Southern Pacific. LAL and its customers remain concerned that, even more than with Conrail, highly competitive markets such as northern New Jersey and Detroit will have first claim on CSX's capital, management personnel, locomotives, track gangs, and other scarce resources, which will be allocated away from captive markets. The notion that CSX will commit "whatever it takes," notwithstanding its corporate interest in maximizing return on investment from captive markets, is simply naive.

B. Marketing resources

The marketing of rail service to LAL customers has had to overcome difficulties created by Conrail's layoffs and buyouts in the National Customer Service Center and marketing management area. Conrail marketing officials have not had the staff resources to develop rate quotations for, and otherwise service, new carload traffic involving less than 500 cars per year. For those short line connections settling on an interline basis, the Interline Settlement System (ISS) was imposed in October 1996 with what appears to us to have been inadequate clerical support by Conrail, creating major administrative burdens for LAL due to lack of timeliness and poor quality of data input by Conrail.

During most of 1996, Conrail let stand an erroneous grain tariff despite the vigorous and repeated objections of LAL and Ag Network. Conrail's failure to correct it over ten months, coupled with conflicting explanations offered by various marketing managers involved, left us to wonder whether the 26 percent increases were intentional after all.

As with operating resources, I believe that competitive markets--newly expanded by the division of Conrail in places like northern New Jersey -- will have first claim on CSX's limited marketing resources, to the detriment of captive customers. To the extent that this may be compounded by high rates to our captive customers, the disparity between captive and competitive customers will be compounded.

C. Terms of doing business

LAL and other Western New York short lines received a presentation regarding the "Conrail Express" program in March 1996. As presented, Conrail Express involved a mandatory surrender of short line involvement in marketing and pricing back to Conrail. Notwithstanding superficial assurances offered by Conrail, for most short lines, this was not a voluntary program.

Conrail Senior Director -- Short Line Network, Wayne Michel, presented the program in the following terms:

1. Conrail had decided that it must grow its revenue.
2. It had been true for some time that due to transaction costs Conrail was unable to justify committing marketing and accounting staff resources to customers offering less than 500 cars per year. Conrail looked to short lines as part of the solution to addressing this segment of the market.
3. Merely putting the short line in the middle did nothing to spread the transaction costs of each rate quotation request or billing activity over a larger number of carloads, and Conrail was no more prepared to commit staff resources to small-lot movements *proposed by short lines* than they were for the customers themselves.

4. Instead, Conrail had decided after extensive internal review that they would unilaterally rewrite the terms of doing business with short lines. We were told that the issue had been decided and there was no room for debate. Over a period of one to two years, staff resources would be withdrawn from interline rate quotations and accounting. Except for the very smallest railroads, who were deemed not worth pursuing, all Conrail short lines would be strongly encouraged to shift from interline settlement to switch settlement (which Conrail referred to as its feeder line program) or the more expansive "Conrail Express" program in which short lines would also be asked to subsume their identity within Conrail's, including painting their locomotives blue and adopting a modified Conrail logo. The only role these short lines would have in "marketing" would be to handle day-to-day customer service problems at the local level, and even here they would largely lack authority to resolve rate or billing disputes.
5. In addition to withdrawing staff support for interline settlement, Conrail's "encouragement" to shift to switch settlement included a warning that the benefits formerly offered to all Conrail short line "partners" would henceforth be restricted to those who joined either the feeder line program or Conrail Express. These included the right to bid on used Conrail freight

cars and maintenance equipment, the right to contract with Conrail shop facilities for equipment rebuilds, and other benefits.

6. We were also told that by the end of the two year phase-in period, Conrail would have two classes of short line connections. The so-called "Class A" connections -- those who had joined the feeder line program or Conrail Express -- would be regarded as "partners" and receive substantially the same staff support and benefits that had been formerly offered to all short line connections. "Class B" connections would be dealt with only as necessary. Presentation by Conrail Senior Director -- Short Line Network, Wayne Michel, at Batavia, New York, March 13, 1996.

Given the importance LAL customers place upon having *LAL* take a proactive role in pricing, billing, and related marketing issues, Conrail's proposal to force LAL into switch settlement posed a fundamental threat to our ability to continue to grow the traffic of our service-sensitive customers, and called into question the continued existence of the type of service we offer.

Conrail's attempt to impose this program upon us, in disregard of the interests of the LAL and its customers, illustrates the monopoly in action at the moment of its greatest hubris, just months before Conrail became the subject of acquisition offers by CSX and NS.

Subsequently, the same Conrail representatives, now assigned to solicit letters of support from short lines for Conrail's proposed merger with CSX, returned to Western New York and apologized for the way Conrail Express had been presented earlier in the year.

Likewise, CSX assures us all that it has no intention of forcing such a program upon short lines.

CSX's expressed intention to be different than Conrail is not as important as the fact that, with respect to captive customers and short lines, it will have the same incentives as Conrail. As the ICC observed in 1975, the incentives that arise from monopoly power tend to corrupt the fundamentals of high quality service, whatever their effect on rates. As such, they are incompatible with the expectations of the LAL's service-sensitive customers. Given the fact that the proposed division of Conrail will enhance rail/rail competition in other areas, the disparity puts LAL customers at a disadvantage. LAL does not seek protection from competition. Rather, we seek the opportunity to compete, through the removal of an artificial restriction.

VIII. **Eliminating the Firewall Is Necessary to Avoid Adverse Impacts Upon LAL and its Customers and to Maximize the Efficiency of the National Transportation System**

A significant portion of the traffic handled by LAL moves on routings that will be disrupted by the proposed division of Conrail:

A. *Traffic that currently moves between LAL and Conrail points where Norfolk Southern will replace Conrail.* Where this traffic currently moves single-line Conrail to or from the LAL, it will be necessary to interline between CSX and NS in the future. Movements include grain shipments to Conrail points on the DELMARVA Peninsula and in Pennsylvania that will become Norfolk Southern points, as follows:

1995	234 cars
1996	131 cars

The duplicative costs and multiple interchanges attendant upon CSX/NS service will effectively kill LAL-originated shipments of grain to the DELMARVA and Pennsylvania, depriving Western New York farmers of an outlet for their product and poultry producers of a competitive source of feed.

B. *Traffic that currently moves via Norfolk Southern and Conrail to or from the LAL.* Whereas Conrail has long held itself out to be the "neutral" terminating carrier for the Northeast, it will be necessary to interline between two archrivals, CSX and NS. Movements include corn syrup shipments from plants solely served by NS at Lafayette, Indiana and Decatur, Alabama, as follows:

1995	124 cars
1996	113 cars

In addition, LAL is concerned about the future of service between the Archer-Daniels-Midland facility at Decatur, Illinois and ADM's Lakeville facility. Currently, this traffic is handled by Illinois Central from Decatur to Effingham, Illinois, where it is interchanged to Conrail. As Norfolk Southern's 1996 annual report notes, ADM has "selected NS to expand service to its grain processing plant in Decatur, Ill." The deal "means the addition of numerous lanes for NS...[including] sweeteners." Norfolk Southern Annual Report for 1996, page 8. CSX reaches Decatur on its own line but does not access ADM's plant directly. CSX may continue the routing over Effingham or attempt to gain a longer haul by negotiating a switching fee arrangement with IC or NS. Neither one of these options is consistent with ADM's choice of Norfolk Southern as principal carrier at this location, and it is unlikely that any CSX/NS routing will survive. The number of cars originating at Decatur varies each year but is significant.

With respect to the foregoing traffic, making LAL dependent upon interline moves requiring the cooperation of two rival carriers injures the competitiveness of LAL and customer facilities located on our railroad. CSX and NS agree that they will be fiercely competitive with each other following the division of Conrail. The notion that CSX/NS interline routings will be transparently equivalent to single-line service therefore possesses no credibility, and finds no support in experience (e.g., the Conrail/Delaware and Hudson "gateways" that died out soon after Conrail was created). Moreover, *it is at complete variance with the merger proponents' insistence that they need to acquire and divide*

Conrail because the short hauls, excessive costs, and lack of operational control inherent in interline arrangements frustrate truck-competitive rail service. If this is true, how can they justify imposing the same impediments to commerce on the LAL and its customers?

IX. Eliminating the Firewall Is Necessary to Provide Safe Operations

Conrail's retention of Genesee Junction Yard poses daily hazards to LAL employees and the shipping public. Yard trackage has remained Excepted Track since before 1995, is in deplorable condition, and receives minimal maintenance. A late 1996 derailment of a Conrail train due to a broken rail in the yard interrupted service to LAL customers for six days. Because the yard is being held solely as a firewall, Conrail exhibits little interest in properly maintaining it and has not responded to LAL requests to make necessary repairs. Sale of the yard to LAL (should the Board choose to order a sale) will permit LAL to rehabilitate yard trackage to a FRA Class 1 condition. LAL's analysis indicates that the deferred maintenance liability exceeds the net liquidation value of the yard.

X. Eliminating the Firewall is Operationally Feasible

LAL asks that approval of the proposed merger and division of Conrail be conditioned upon elimination of the restriction contained in the interchange agreement between Conrail and LAL that prohibits LAL from utilizing Genesee Junction Yard to interchange traffic with carriers other than Conrail or its successor.

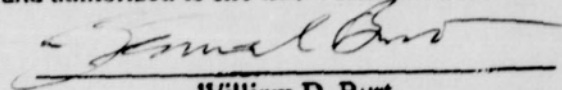
This request is operationally feasible. While the east end of the yard can continue to be used for interchange between LAL and Conrail/CSX, the west end can be used for interchange between LAL and Rochester & Southern. LAL is prepared to pay the cost of installing a pair of crossovers to facilitate this plan.

Continued ownership by Conrail/CSX is feasible only if CSX commits itself to upgrade and maintain yard trackage to a FRA Class 1 condition.

As an alternative, LAL stands prepared to acquire Genesee Junction Yard at a price to be negotiated by CSX and LAL (or, failing a negotiated agreement, to be set by the Board), such conveyance to occur concurrently with the division of Conrail between CSX and NS. This approach would have the advantage that LAL, which has the strongest interest in maintaining the yard, would have responsibility therefor.

Verification

I, William D. Burt, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

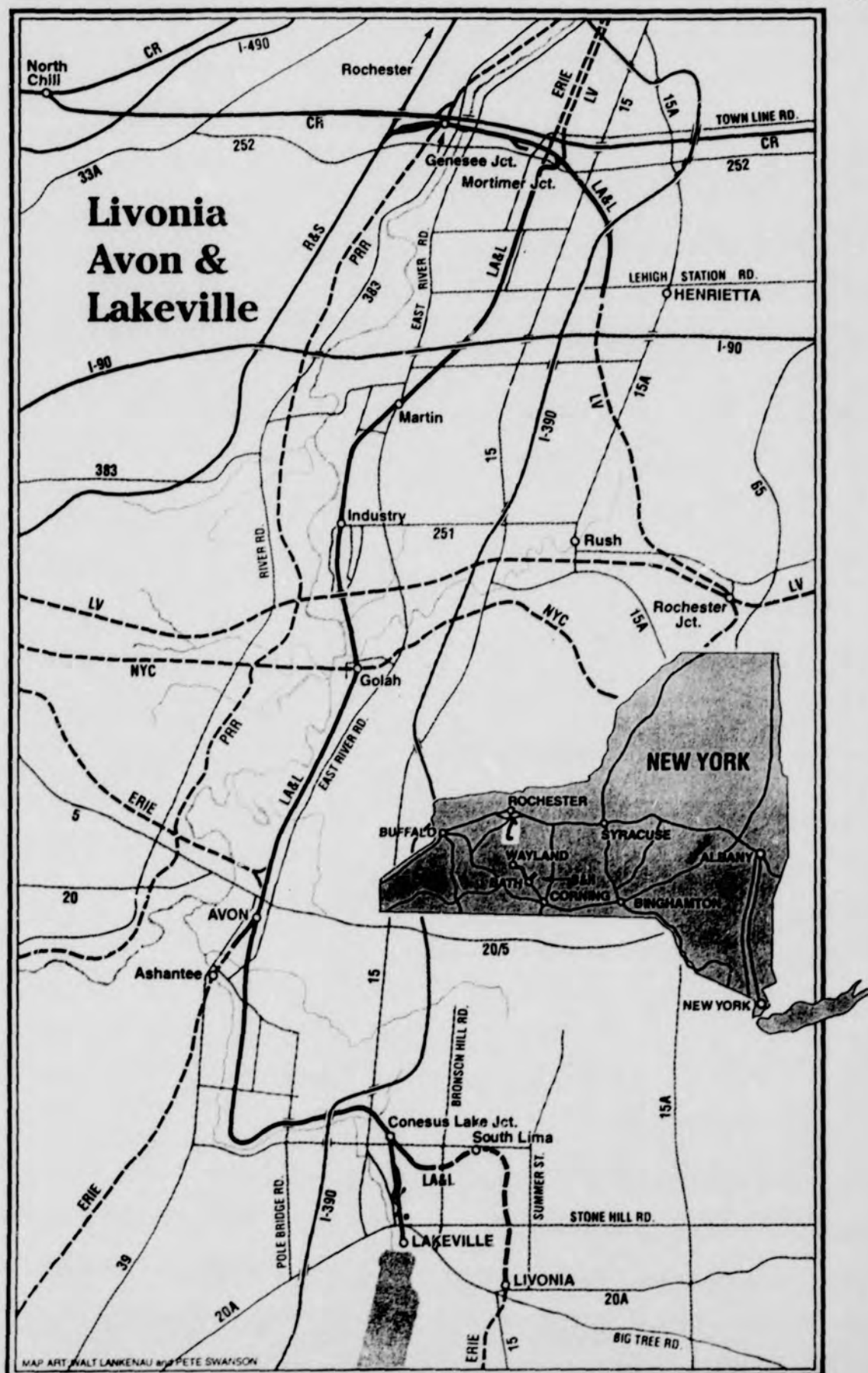
A handwritten signature in cursive script, appearing to read "William D. Burt", is written over a horizontal line.

William D. Burt
Vice President and General Manager

Executed on: October 17, 1997.

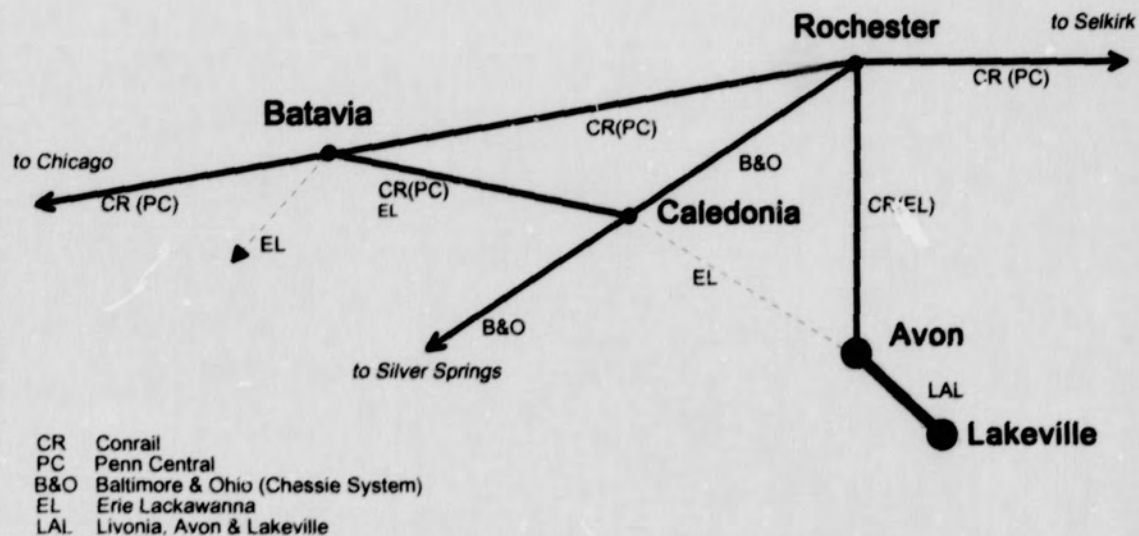
Attachments

1. **Map of LAL Northern Division**
2. **Map of Avon firewall**
3. **Map of Genesee Junction firewall**

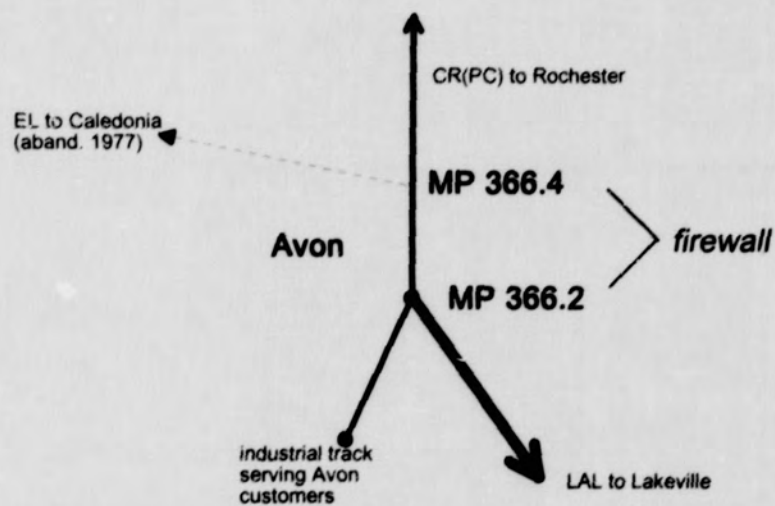


Rochester Area - 1976

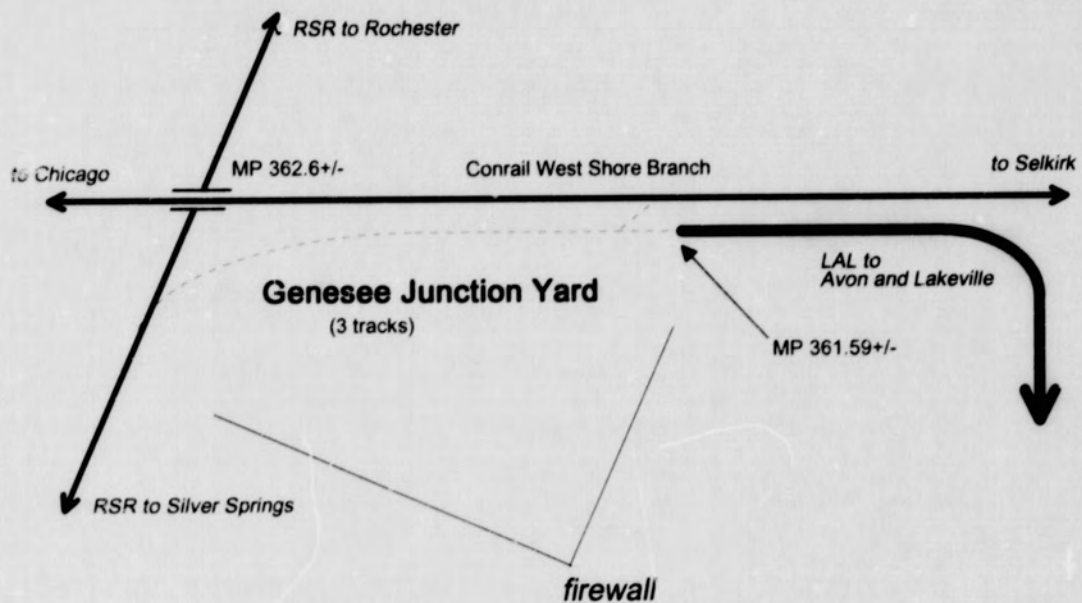
Not all lines are shown



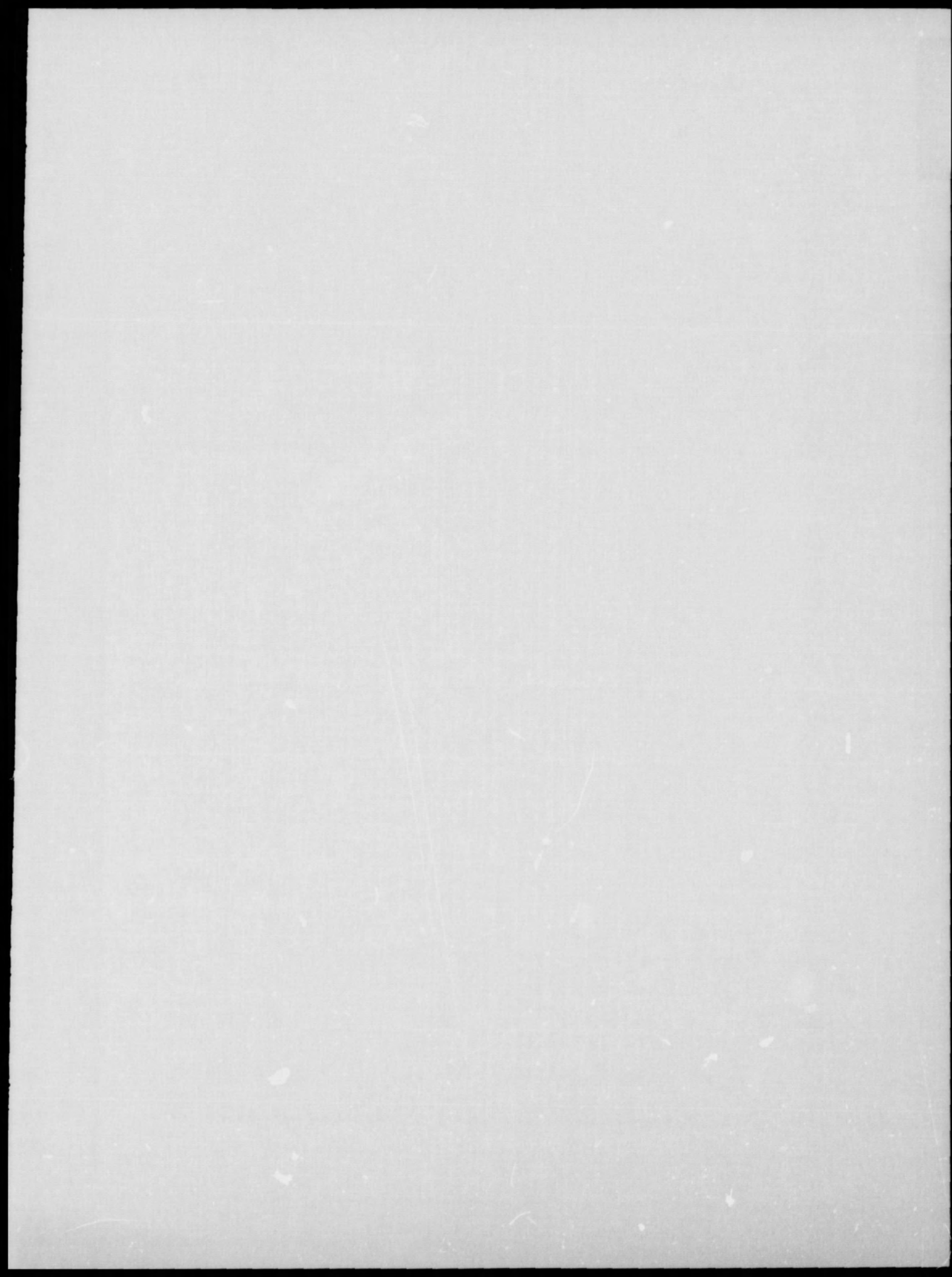
The Avon Firewall

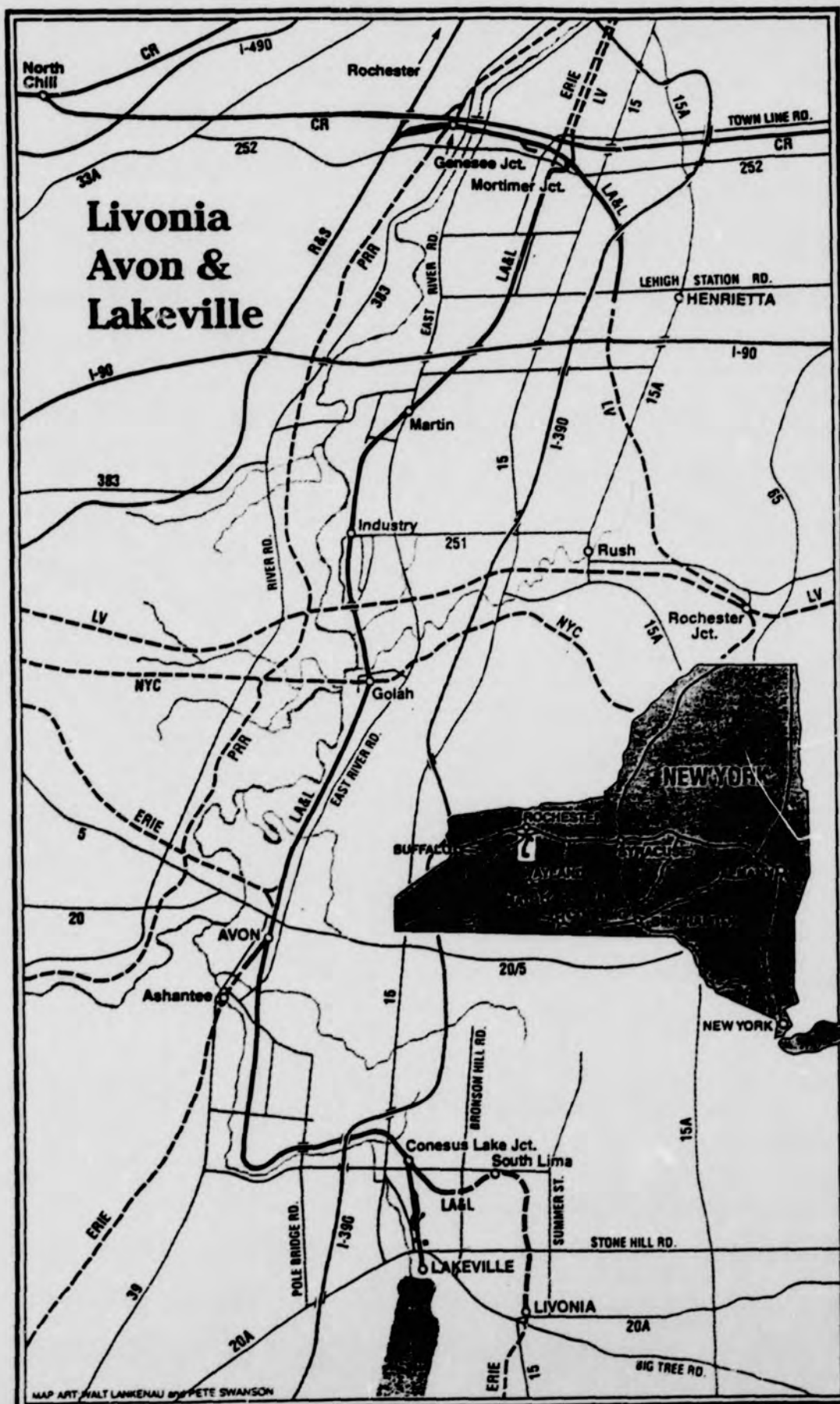


The Genesee Junction Firewall

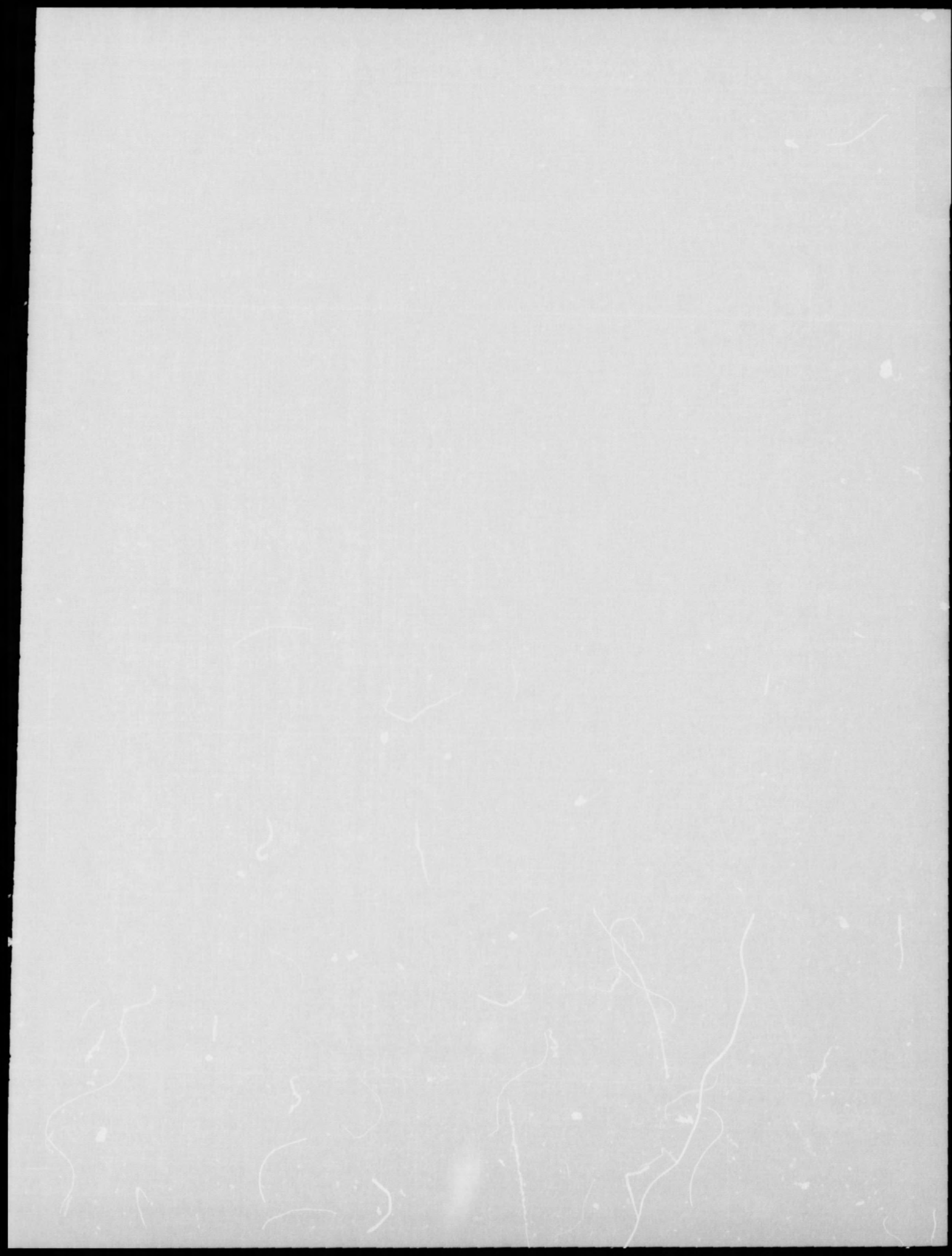


LAL Livonia, Avon & Lakeville Railroad
 RSR Rochester & Southern Railroad





Map courtesy Carstens Publications.



TRACKAGE RIGHTS AGREEMENT

THIS AGREEMENT, entered into as of this ____ day of _____ 19__, by and among Livonia, Avon & Lakeville Railroad Corporation and CSX Transportation, Inc.;

WITNESSETH:

WHEREAS, CSX Transportation, Inc. ("CSXT") and Livonia, Avon & Lakeville Railroad Corporation ("LAL"); and

WHEREAS, pursuant to the Order of the Surface Transportation Board, Decision Number __, dated ____, 199__, and under the terms and conditions of the Order, CSXT has agreed to grant to LAL certain trackage rights; and

NOW, THEREFORE, the parties hereto, intending to be legally bound, agree as follows:

SECTION 1. DESCRIPTION:

CSXT, as owner, and CSXT, as operator, hereby grant to LAL, subject to the terms and conditions referenced in this agreement, and as further governed herein below, the right to operate its trains, locomotives, cars and equipment with its own crews (hereinafter referred to as "Trackage Rights") over the following segment of railroad owned by CSXT, and operated by CSXT (hereinafter referred to as "Subject Trackage"):

All tracks within the Genesee Junction Yard, Chili, New York (approximately one mile) sufficient to directly interchange with any and all carriers with access to the Genesee Junction Yard, including Rochester and Southern Railroad, Inc. ("R&S").

SECTION 2. RESTRICTION ON USE:

The Trackage Rights herein granted are granted for the sole purpose of LAL using same for bridge traffic and interchange only between the limits of Subject Trackage and LAL shall not perform any local freight service whatsoever at any point located on Subject Trackage.

SECTION 3. COMPENSATION:

(a) The factor to be used in calculating payments to be made by LAL for the Trackage Rights shall be 29 cents (\$0.29) per car mile (hereinafter referred to as the "Current Charge").

(b) LAL will pay CSXT a sum computed by multiplying (i) the Current Charge, as may be revised in Section 4 of this Agreement by (ii) the number of cars (loaded and empty), locomotive and caboose units moved by LAL with its own crews and power over the

Subject Trackage by (iii) the miles of Subject Trackage used. Each locomotive unit and caboose, for the purpose of this Agreement, shall be counted as one (1) car. With respect to articulated units, the number of cars shall be determined by the AAR Car Type code as defined in the UMLER Specification Manual. The second numeric in the Car Type Code field covering codes "Q" and "S" will be the factor in determining the car count for an articulated unit. For example, AAR Car Type code "S566" would equate to a five (5) car count as these type cars have five (5) wells capable of handling forty-foot (40') to fifty-foot (50') containers in each well. A single unit of RoadRailer® equipment (or comparable bimodal freight hauling equipment in either LAL's or CSXT's account) shall count as one-half ($\frac{1}{2}$) of a Railcar.

(c) LAL shall compute and pay its trackage rights obligation in accordance with the terms and conditions of this Agreement.

SECTION 4. REVISION OF CURRENT CHARGE:

(a) The Current Charge shall be subject to change to reflect any increases or decreases in labor, material and other costs as hereinafter provided.

(b) The Current Charge shall be revised upward or downward each year, beginning with the bill rendered for the month of July first following the "Effective Date" of this Agreement, to compensate for the increase or decrease in the cost of labor and material, excluding fuel, as reflected in the annual Indexes of Charge-Out Prices and Wage Rates (1977=100), included in "AAR Railroad Cost Indexes" and supplements thereto, issued by the Association of American Railroads ("AAR"). In making such determination, the Final "Material prices, wage rates and supplements combined (excluding fuel)" indexes for the East District shall be used. The Current Charge shall be revised by calculating the percent of increase or decrease in the index for the latest calendar year as related to the index for the previous calendar year and applying that percentage to the Current Charge.

(c) In the event the base for the Annual Indexes of Charge-Out Prices and Wage Rates issued by the AAR shall be changed from the year 1977 appropriate revision shall be made. If the AAR or any successor organization discontinues publication of the Annual Indexes of Charge-Out Prices and Wage Rates, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto. In the absence of agreement, the parties shall submit the matter to binding arbitration under terms of Exhibit A.

SECTION 5. TERM AND TERMINATION:

(a) This Agreement shall become effective the latter of the date first above written, or when regulatory approval is received

and shall remain in effect until the 25th anniversary of such date, and shall continue in effect thereafter unless and until terminated by either party upon six (6) months written notice.

Section 6. GENERAL CONDITIONS:

Exhibit A attached hereto is hereby made part of this Agreement. All capitalized terms used and not otherwise defined in this Agreement shall have the meaning ascribed to them in the General Conditions. If any conflict between the General Conditions and the Agreement shall arise, the portions of this Agreement shall prevail.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement between the parties dated _____, 19 ____ to be duly executed as of the date first above written.

WITNESS:

Livonia, Avon & Lakeville
Railroad Corporation

By: _____
(Title)

WITNESS:

CSX Transportation, Inc.

By: _____
(Title)

EXHIBIT A
GENERAL AGREEMENT

ARTICLE 1. USE OF SUBJECT TRACKAGE

- (a) LAL's use of the Subject Trackage shall be in common with CSXT and any other user of the Subject Trackage, and CSXT's right to use the Subject Trackage shall not be diminished by this Agreement (all references to "Agreement" include Exhibit A unless otherwise indicated). CSXT shall retain the exclusive right to grant to other persons rights of any nature in the Subject Trackage.
- (b) Except as may otherwise be provided by this Agreement LAL shall not use any part of the Subject Trackage for the purpose of storage or servicing of cars or equipment, or the making or breaking up of trains, or service to an industry, except that nothing contained herein shall, upon prior approval of CSXT, preclude the emergency use by LAL of such auxiliary tracks as may be designated by CSXT for such purposes.
- (c) Except as may otherwise be provided in this Agreement LAL shall have the right to enter on and exit from the Subject Trackage only at (i) the endpoints of the Subject Trackage, or (ii) points other than the endpoints where LAL may make a connection with an existing railroad line.
- (d) CSXT shall have exclusive control of the management and operation of the Subject Trackage. LAL shall not have any claim against CSXT for liability on account of loss or damage of any kind in the event the use of the Subject Trackage by LAL is interrupted or delayed at any time from any cause.

ARTICLE 2. MISCELLANEOUS SPECIAL PROVISIONS

- (a) When operating over the Subject Trackage, LAL's locomotives and crews will be equipped to communicate with CSXT on radio frequencies normally used by CSXT in directing train movements on the Subject Trackage.
- (b) Procedures for qualification and occupancy of the Subject Trackage will be arranged by the local supervision of each carrier. All control and usage will be subject to the approval of CSXT's representative or its designee.
- (c) LAL operation on subject trackage will be in accordance with CSXT's operating rules for operation within yard limits.

ARTICLE 3. PAYMENT OF BILLS

- (a) All payments called for under this Agreement shall be made by LAL within thirty (30) days after the date of the bills therefor. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the parties hereto shall be adjusted in the accounts of a subsequent month. The records of each party hereto, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other party for a period of three (3) years from the date of billing.
- (b) Bills rendered pursuant to the provisions of this Agreement shall include direct labor and material costs, together with the surcharges, overhead percentages and equipment rentals as specified by CSXT at the time any work is performed by CSXT for LAL or shall include actual costs and expense, upon mutual agreement of the parties.

ARTICLE 4. MAINTENANCE OF SUBJECT TRACKAGE

- (a) CSXT shall maintain, repair and renew the Subject Trackage with its own supervision and labor. CSXT shall keep and maintain the Subject Trackage in compliance with FRA Class 1 or higher standards, but CSXT does not guarantee the condition of the Subject Trackage or that operations thereover will not be interrupted. CSXT shall take all reasonable steps to ensure that any interruptions will be kept to a minimum. Furthermore, except as may be otherwise provided in Article 10, LAL shall not by reason of failure or neglect on the part of CSXT to maintain, repair or renew the Subject Trackage, have or make any claim or demand against CSXT or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents or employees for any injury to or death of any person or persons whomsoever, or for any damage to or loss or destruction of any property whatsoever, or for any damages of any nature suffered by LAL resulting from any such failure or neglect.
- (b) CSXT shall perform, at the expense of LAL, such additional maintenance as LAL may reasonably require or request.

ARTICLE 5. CONSTRUCTION AND MAINTENANCE OF CONNECTIONS

- (a) Existing connections or facilities which are jointly used by the parties hereto under existing agreements shall continue to be maintained, repaired and renewed by and at the expense of the party or parties responsible for such maintenance, repair and renewal under such agreements.
- (b) If, in the opinion of LAL, a new or upgraded connection is required at a "Permitted Point of Entry or Exit" other than the endpoints, or, if in the opinion of LAL, other upgrading, including but not limited to switches, power switches, signals, communications, etc. is required for operational efficiency, then CSXT will, subject to its own operational needs, cooperate and LAL will be responsible for funding that construction/upgrading at actual cost or a cost mutually agreed to by LAL and CSXT. Such construction/upgrading shall be progressed as follows:
 - (i) LAL or others shall furnish all labor and material and shall construct such portions of the tracks located on the right-of-way of LAL or others which connect the respective lines of the parties hereto.
 - (ii) CSXT shall furnish all labor and material and shall construct such portions of the tracks located on the right-of-way operated by CSXT which connect the respective lines of the parties hereto. Upon termination of this Agreement CSXT may at its option remove any portion of trackage and appurtenances located on right-of-way operated by CSXT, constructed as a result of this Article, at the sole cost and expense of LAL. The salvage material removed shall be released to LAL or, as otherwise agreed upon, CSXT will credit LAL the current fair market value for said salvage.
 - (iii) CSXT will maintain, repair and renew the constructed/upgraded portions of the tracks located on the right of way operated by CSXT which connect the respective lines of the parties hereto at the sole cost and expense of LAL.

ARTICLE 6. ADDITIONS, RETIREMENTS AND ALTERATIONS

- (a) CSXT, from time to time and at its sole cost and expense, may make changes in, additions and betterments to or retirements from the Subject Trackage as shall, in its judgment, be necessary or desirable for the economical or safe operation thereof or as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental body having jurisdiction. Such additions and betterments shall become a part of the Subject Trackage and

such retirements shall be excluded from the Subject Trackage.

- (b) If the parties agree that changes in or additions and betterments to the Subject Trackage, including changes in communication or signal facilities, are required to accommodate LAL's operations beyond that required by CSXT to accommodate its operations CSXT shall construct the additional or altered facilities and LAL shall pay to CSXT the cost thereof, including the annual expense of maintaining, repairing and renewing such additional or altered facilities.

ARTICLE 7. MANAGEMENT AND OPERATIONS

- (a) LAL shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Act, as amended, and any other federal and state and local laws, regulations and rules respecting the operation, condition, inspection and safety of its trains, locomotives, cars and equipment while such trains, locomotives, cars, and equipment are being operated over the Subject Trackage. LAL shall indemnify, protect, defend, and save harmless CSXT and their respective parent corporations, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against all fines, penalties and liabilities imposed upon CSXT or their respective parent corporations, subsidiaries or affiliates, or their respective directors, officers, agents and employees under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable solely to the failure of LAL to comply with its obligations in this regard.
- (b) LAL in its use of the Subject Trackage shall comply in all respects with the safety rules, operating rules and other regulations of CSXT, and the movement of LAL's trains, locomotives, cars, and equipment over the Subject Trackage shall at all times be subject to the orders of the transportation officers of CSXT. LAL's trains shall not include locomotives, cars or equipment which exceed the width, height, weight or other restrictions or capacities of the Subject Trackage as published in Railway Line Clearances, and no train shall contain locomotives, cars or equipment which require speed restrictions or other movement restrictions below the maximum authorized freight speeds as provided by CSXT's operating rules and regulations without the prior consent of CSXT.
- (c) LAL shall make such arrangements with CSXT as may be required to have all of its employees who shall operate its trains, locomotives, cars and equipment over the Subject Trackage qualified for operation thereover, and LAL shall pay to CSXT, upon receipt of bills therefor, any cost

incurred by CSXT in connection with the qualification of such employees of LAL, as well as the cost of pilots furnished by CSXT, until such time as such employees are deemed by the appropriate examining officer of CSXT to be properly qualified for operation as herein contemplated.

- (d) In the event of any investigation or hearing concerning the violation of any operating rule or practice by LAL's employees while on the Subject Trackage, LAL shall be notified in advance of any such investigation or hearing, and such investigation or hearing may be attended by any official designated by LAL, and any such investigation or hearing shall be conducted in accordance with the collective bargaining agreements, if any, that pertain to LAL's employee or employees required to attend such hearings.
- (e) CSXT shall have the right to exclude from the Subject Trackage any employee of LAL determined by the above, to be in violation of CSXT's rules, regulations, orders, practices, or instructions issued by CSXT's Timetable or otherwise. LAL shall release, indemnify, defend, and save harmless CSXT, its respective parent corporations, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against any and all claims and expenses resulting from such exclusion.
- (f) The trains, locomotives, cars and equipment of CSXT, LAL, and any other present or future user of the Subject Trackage or any portion thereof, shall be operated without prejudice or partiality to either party and in such manner as will afford the most economical and efficient movement of all traffic.
- (g) In the event that a train of LAL shall be forced to stop on the Subject Trackage, due to mechanical failure of LAL's equipment, or any other cause not resulting from an accident or derailment, and such train is unable to proceed, or if a train of LAL fails to maintain the speed required by CSXT on the Subject Trackage, or if in emergencies, crippled or otherwise defective cars are set out of LAL's trains on the Subject Trackage, CSXT shall have the option to furnish motive power or such other assistance as may be necessary to haul, help or push such trains, locomotives or cars, or to properly move the disabled equipment off the Subject Trackage, and LAL shall reimburse CSXT for the cost of rendering any such assistance.
- (h) If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Subject Trackage, such work shall be done by CSXT, and LAL shall reimburse CSXT for the cost thereof. Notwithstanding the foregoing, LAL employees may

make light repairs to cars for the purpose of accepting such cars in interchange.

- (i) In the event LAL and CSXT agree that CSXT should retain employees or provide additional employees for the sole benefit of LAL, the parties hereto shall enter into a separate agreement under which LAL shall bear all cost and expense for any such retained or additional employees provided, including without limitation all cost and expense associated with labor protective payments which are made by CSXT and which would not have been incurred had the retained or additional employees not been provided.

ARTICLE 8. MILEAGE AND CAR HIRE

All mileage and car hire charges accruing on cars in LAL's trains on the Subject Trackage shall be assumed by LAL and reported and paid by it directly to the owner of such cars.

ARTICLE 9. CLEARING OF WRECKS

Whenever LAL's use of the Subject Trackage requires rerailing, wrecking service or wrecking train service, CSXT shall perform or provide such service, including the repair and restoration of roadbed, track and structures. The cost, liability and expense of the foregoing, including without limitation loss of, damage to, or destruction of any property whatsoever and injury to and death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, resulting therefrom, shall be apportioned in accordance with the provisions of Article 10 hereof. All locomotives, Railcars, and equipment and salvage from the same so picked up and removed which is owned by or under the management and control of or used by LAL at the time of such wreck, shall be promptly delivered to LAL.

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ARTICLE 10. LIABILITY

For the purpose of this Article 10, the term "Damage" means all assessments, losses, damages, liabilities, costs and expenses, including without limitation interest, penalties and attorneys' and consultants fees. For the purpose of this Article 10, the term "Railroad Consequential Damages" means consequential, indirect, incidental or other similar damage, injury or loss to either CSXT or LAL. The responsibility between and among LAL and CSXT for all Damage arising out of, incidental to or occurring in connection with this Agreement shall be apportioned without consideration of fault or negligence of any kind or degree as follows:

- (a) Sole Responsibility. Subject to Article 10(e), each party shall assume and bear all responsibility for Damage to or resulting from its own trains, locomotives and equipment, including but not limited to, Railcars and lading in its possession or being handled for its account, and for the death of or injury to its own employees.
- (b) CSXT and LAL Responsibility. Subject to Article 11(e), the parties shall jointly and equally (50% CSXT and 50% LAL) assume and bear all responsibility for all Damage, other than Damage which is subject to Article 10(a).
- (c) Process. Each party shall be responsible for the payment, handling, administration and disposition of all Damage for which it bears exclusive responsibility under Article 10(a), and both parties shall have joint responsibility for the payment, handling, administration and disposition of all Damage for which they are jointly responsible under Article 10(b). In assigning joint responsibility to both parties, it is not the intent of this Agreement that the parties will actually act jointly, but rather that the parties will agree between themselves on the most practical and efficient arrangements for handling, administering, and disposing of Damage for which they bear joint responsibility, with the objective of eliminating unnecessary duplication of effort and minimizing overall costs.
- (d) Indemnification. Each party to this Agreement covenants and agrees to (i) fully indemnify and save harmless the other parties to this Agreement from and against any payments which are the responsibility of such party under this Agreement, and all expenses, including attorney's fees and expenses and other expenses of any court or regulatory proceeding, incurred by such other parties in defending any claim for which they are liable for such payments, and (ii) defend such other parties against such claims with

counsel selected by such party and reasonably acceptable to such other parties.

- (e) Limitation. Article 10(a) and (b) shall apply only to the amount of Loss resulting from a single incident which is \$25 million or less. Responsibility for Damages resulting from a single incident which exceed \$25 million shall be allocated to the extent of such excess to LAL and CSXT in proportion to their respective fault or negligence in causing such Damage, subject to the following rules: (1) the total amount of Damage for which each party would otherwise be responsible under Article 10 (a) and (b) shall be determined, on a comparative percentage basis; (2) for each party, multiply \$25 million by the comparative percentage determined for that party in Article 10(e)(1); (3) the Damage for which each party is responsible in excess of the amount determined in Article 10(e)(2) shall be allocated between or among LAL and CSXT in proportion to their respective fault or negligence in causing the Damage. As used in this Article 10(e) only, the term "Damage" shall exclude Railroad Consequential Damages (which are always borne by the railroad which sustained them) and claims for exemplary and punitive Damages by any party hereto on its own behalf against another party hereto. By way of example, if Damage from a single incident were \$100 million, of which LAL would be responsible for \$80 million under Article 10(a) and (b) and CSXT would be responsible for \$20 million under Article 10(a) and (b), LAL would be responsible for \$20 million and CSXT would be responsible for \$5 million of such Damage under Article 10(e)(1), and the remaining \$75 million of Damage would be apportioned between or among LAL and CSXT in proportion to their respective fault or negligence in causing the Damage. Any dispute between or among the parties hereto in computing the comparative percentage, in determining their respective fault or negligence in causing the Damage or otherwise relating to their respective responsibilities for Damage arising out of, incidental to or occurring in connection with any such incident, including any Damage exceeding \$25 million, shall be submitted for resolution by binding arbitration pursuant to Article 15. The \$25 million amount referred to in this Article 10(e) may be adjusted every five years following the date of this Agreement with the prior approval of all parties, which approval may be given or refused in sole discretion of each party.
- (f) Exceptions. Each party shall assume and bear all responsibility for Damage caused by acts or omissions of any its employees while under the influence of drugs or alcohol or by the intentional criminal misconduct of

any such employee, and Article 10(b) and (e) shall not apply to any such Damage.

ARTICLE 11. CLAIMS

- (a) The parties shall agree between themselves on the most fair, practical and efficient arrangements for handling and administering freight loss and damage claims with the intent that (i) each party shall be responsible for losses occurring to lading in its possession for the account of such party and (ii) the parties shall follow relevant AAR rules and formulas in providing for the allocation of losses which are either of undetermined origin or in Railcars handled in interline service by or for the account of both parties.
- (b) Each party shall indemnify and hold harmless the other party against any and all costs and payments, including benefits, allowances, and arbitration, administrative, and litigation expenses, arising out of claims or grievances made by or on behalf of or lawsuits brought by or on behalf of its own employees or their collective bargaining representatives, either pursuant to employee protective conditions imposed by a governmental agency upon the agency's approval or exemption of this Agreement and operations hereunder or pursuant to a collective bargaining agreement. It is the parties' intention that each party shall bear the full costs of protection of its own employees under employee protective conditions that may be imposed, and of grievances filed by its own employees arising under its collective bargaining agreements with its employees.

ARTICLE 12. DEFAULT AND TERMINATION

(a) In the event of any substantial failure on the part of LAL to perform its obligations provided under the terms of this Agreement and its continuance in such default for a period of sixty (60) days after written notice thereof by certified mail from CSXT, CSXT shall have the right at its option, after first giving thirty (30) days written notice thereof by certified mail, and notwithstanding any waiver by CSXT of any prior breach thereof, to terminate the Trackage Rights and LAL's use of the Subject Trackage as granted by this Agreement. The exercise of such right by CSXT shall not impair its rights under this Agreement or any cause or causes of action it may have against LAL for the recovery of damages.

(b) The rights, benefits, duties and obligations running from or to LAL under this Agreement shall in all events expire (except liabilities incurred prior to termination) upon the termination of this Agreement.

ARTICLE 13. REGULATORY APPROVAL

Both parties agree that this Agreement will be jointly submitted to the Surface Transportation Board (STB) for approval.

ARTICLE 14. ABANDONMENT OF SUBJECT TRACKAGE

- (a) Notwithstanding the provisions of Section 5 of this Agreement, CSXT shall have the right, subject to securing any necessary regulatory approval and subject to the PRR Operating Agreement, to abandon the Subject Trackage or any portion thereof. Before filing an application for regulatory approval of such abandonment, CSXT shall give LAL ninety (90) days' advance notice in writing of its intention to do so in order that LAL may determine whether it desires to purchase the Subject Trackage (or portion thereof) or to discontinue its use thereof.
- (b) If LAL desires to purchase the Subject Trackage, it shall submit an offer of financial assistance under 49 U.S.C. Section 10904. In the event CSXT receives more than one such offer, CSXT will exercise its statutory right to negotiate with LAL rather than with the other offeror(s). Thereafter, the rights and obligations of the parties in respect to LAL's acquisition of the Subject Trackage shall be governed by applicable provisions of the law.
- (c) If any one of the circumstances listed below occurs, LAL shall be deemed to have determined that it does not desire to purchase the Subject Trackage and that it desires to discontinue its use thereof:
 - (i) LAL fails to submit an offer of financial assistance to purchase the Subject Trackage within the time prescribed by statute and applicable regulations, or
 - (ii) LAL, having made an offer of financial assistance to purchase the Subject Trackage, but being unable to reach agreement with CSXT as to the sale price, fails within the statutory period to request the proper regulatory authority to establish the terms and conditions of the sale, or
 - (iii) LAL, having requested the proper regulatory authority to establish the terms and conditions of sale, withdraws its offer of financial assistance, or
 - (iv) LAL, having requested the proper regulatory authority to establish the terms of the sale, rejects the authority's order establishing said terms or fails to accept said terms within the time prescribed by said order.

In such event LAL shall promptly file an application with the proper regulatory authority seeking approval of the discontinuance of its operations over the Subject Trackage.

If LAL does not file an application seeking approval of the discontinuance of LAL's operations over the Subject Trackage within ninety (90) days, CSXT shall be deemed to have been given LAL's power of attorney to take such action on LAL's behalf.

- (d) In the event any application filed by CSXT is granted but an application filed by LAL under Subarticle (c) above is denied by the proper regulatory authority, the parties shall cooperate in taking such action as is reasonably necessary to effect a sale of the Subject Trackage to LAL (including securing any necessary regulatory authority) for a price consistent with the principles of 49 U.S.C. Section 10904.
- (e) In the event CSXT abandons the Subject Trackage (or portion thereof) under circumstances which (because of changes in the law or otherwise) are not susceptible of handling under the procedures outlined above, the parties shall cooperate and take such action as is necessary to assure that LAL either promptly terminates its operations over the segment to be abandoned or purchases said segment at a price consistent with the principles of 49 U.S.C. Section 10904 as interpreted on the date of this Agreement.
- (f) In the event CSXT's application for authority to abandon is denied, LAL will withdraw any application it has filed under Subarticle (c) above.
- (g) Except as otherwise expressly agreed in writing, in the event any actions taken by the parties under this Article 14 result in an obligation imposed by any competent authority on either or both parties hereto to protect the interests of affected employees, the responsibility for bearing the cost thereof shall be borne by the party which is the employer of the affected employee or employees, notwithstanding the manner in which said cost may be apportioned in any order or decision imposing the protection.

ARTICLE 15. ARBITRATION

Any dispute, controversy or claim (or any failure by the parties to agree on a matter as to which this Agreement expressly or implicitly contemplates subsequent agreement by the parties, except for matters left to the sole discretion of a party) arising out of or relating to this Agreement, or the breach, termination or validity hereof, shall be finally settled through binding arbitration by a sole, disinterested arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitrator shall be jointly selected by the parties but, if the parties do not agree on an arbitrator within 30 days after demand for arbitration is made by a party, they shall request that the arbitrator be designated by the American Arbitration Association. The award of the arbitrator shall be final and conclusive upon the parties. Each

party to the arbitration shall pay the compensation, costs, fees and expenses of its own witnesses, experts and counsel. The compensation and any costs and expenses of the arbitrator shall be borne equally by the parties. The arbitrator shall have the power to require the performance of acts found to be required by this Agreement, and to require the cessation or nonperformance of acts found to be prohibited by this Agreement. The arbitrator shall not have the power to award consequential or punitive damages. The arbitrator's award shall be binding and conclusive upon the parties to the fullest extent permitted by law. Judgment upon the award rendered may be entered in any court having jurisdiction thereof, which court may award appropriate relief at law or in equity. All proceedings relating to any such arbitration, and all testimony, written submissions and award, of the arbitrator therein, shall be private and confidential as among the parties, and shall not be disclosed to any other Person, except as required by law and except as reasonably necessary to prosecute or defend any judicial action to enforce, vacate or modify such arbitration award.

ARTICLE 16. SUCCESSORS AND ASSIGNS

- (a) Except as provided herein, neither this Agreement (including the documents and instruments referred to herein) nor any of the rights, interests or obligations hereunder, shall be assigned by any party, including by operation of law, without the prior written consent of the other parties, except to a controlled subsidiary.
- (b) Any party without the consent of the other party may assign all of its rights and obligations under this Agreement only to any successor in the event of a merger, consolidation, sale of all or substantially all its assets, if such assignee executes and delivers to the other party hereto an agreement reasonably satisfactory in form and substance to such other party under which such assignee, which is reasonably satisfactory to the other party, assumes and agrees to perform and discharge all the obligations and liabilities of the assigning party; provided that any such assignment shall not relieve the assigning party from the performance and discharge of such obligations and liabilities.

ARTICLE 17. NOTICE

Any notice required or permitted to be given by one party to the other under this Agreement shall be deemed given on the date sent by certified mail, or by such other means as the parties may agree, and shall be addressed as follows:

If to LAL: (To be provided)

If to CSXT: (To be provided)

Either party may provide changes in the above addresses to the other party by personal service or U.S. mail.

ARTICLE 18. GENERAL PROVISIONS

- (a) This Agreement and each and every provision hereof is for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right of any third party to recover by way of damages or otherwise against any of the parties hereto.
- (b) This Agreement contains the entire understanding of the parties hereto and supersedes any and all oral understandings between the parties.
- (c) No term or provision of this Agreement may be changed, waived, discharged or terminated except by an instrument in writing and signed by all parties to this Agreement.
- (d) All words, terms and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms and phrases in the railroad industry.
- (e) All Article headings are inserted for convenience only and shall not affect any interpretation of this Agreement.
- (f) As used in this Agreement, whenever reference is made to the trains, locomotives, cars or equipment of, or in the account of, one of the parties hereto, such expression means the trains, locomotives, cars and equipment in the possession of or operated by one of the parties and includes such trains, locomotives, cars and equipment which are owned by, leased to, or in the account of such party. Whenever such locomotives, cars or equipment are owned or leased by one party to this Agreement and are in the possession or account of the other party to this Agreement, such locomotives, cars and equipment shall be considered those of the other party under this Agreement.
- (g) This Agreement is the result of mutual negotiations of the parties hereto, neither of whom shall be considered the drafter for purposes of contract construction.
- (h) Neither party hereto may disclose the provisions of this Agreement to a third party, excluding a parent, subsidiary or affiliate company, without the written consent of the other party, except as otherwise required by law, regulation or ruling.

ARTICLE 19. INDEMNITY COVERAGE

As part of the consideration hereof, each party hereby agrees that each and all of its indemnity commitments in this Agreement in favor of the other party shall also extend to and indemnify the parent corporation, its subsidiaries and affiliates of such other party, and all of their respective directors, officers, agents and employees.

ASSET PURCHASE AGREEMENT

Between

Livonia, Avon & Lakeville Railroad Corporation

and

Consolidated Rail Corporation

Dated

_____, 1997

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Appendix A—Description of Assets

Appendix B—Assigned Contracts

Appendix C—Allocation of Purchase Price

Exhibit 1—Disclosure Schedule

ASSET PURCHASE AGREEMENT

Livonia, Avon & Lakeville Railroad Corporation ("Purchaser") and Consolidated Rail Corporation ("Seller") agree as follows:

1. DEFINITIONS

1.1. The following terms when used with initial capitalization in this Agreement, whether in the singular or the plural, have the meanings ascribed to them below:

"Agreement" means this Asset Purchase Agreement, including its Appendices and Exhibits.

"Assets" means the assets of Seller identified in Appendix A to this Agreement.

"Cash" has the meaning given to it in Section 4.1 of this Agreement.

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §9601 et seq.

"Closing" has the meaning given to it in Section 9.1 of this Agreement.

"Closing Date" has the meaning given to it in Section 9.2 of this Agreement.

"Contracts" means contracts, leases, commitments, agreements and arrangements.

"Board" means the Surface Transportation Board established under 49 U.S.C. §10101 et seq. or any successor agency.

"Environmental Law" means any law, judgment, decree, order, license, rule or regulation pertaining to environmental matters, including without limitation, those arising under the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. §6901 et seq.), CERCLA, the Superfund Amendments and Reauthorization Act of 1986, as amended (Pub. L. 99-499, Pub. L. 99-563, Pub. L. 100-202 and Pub. L. 101-144), the Clean Water Act, as amended (33 U.S.C. §1251 et seq.), the Clean Air Act, as amended (42 U.S.C. §7401 et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. §2601 et seq.), the Safe Drinking Water Act, as amended (42 U.S.C. §300f et seq.), the Emergency Planning and Community Right-to-Know Act of 1986, as amended (42 U.S.C. §11001 et seq.) and any other federal, state or local statute, regulation, ordinance, order or decree pertaining to the environment.

"Hazardous Substances" means any "hazardous waste" as defined by 42 U.S.C. §6903(5), any "medical waste" as defined by 42 U.S.C. §6903(40), any "hazardous substance" as defined by 42 U.S.C. §9601(14), any "pollutant or contaminant" as defined by 42 U.S.C. §9601(33), any "hazardous chemical" pursuant to 29 CFR §1910.1200(c), any substance designated pursuant to 40 CFR Part 302, any "extremely hazardous substance" pursuant to 40 CFR 355, any "toxic chemical" pursuant to 40 CFR Part 372, and any toxic substance, oil, petroleum, hazardous material or other chemical or substance deemed hazardous by an Environmental Law.

"Inventory" means inventory, fuel, supplies and other materials relating to or acquired or used for locomotive or car repair, trackage, signal, structure and building maintenance, or otherwise in connection with the operation, use or enjoyment of the Rail Lines or the other Assets.

"Inventory Accounts" means the accounts on Seller's balance sheets where Inventory is carried, which accounts shall be kept in accordance with generally accepted accounting principles.

"Knowledge", when used in this Agreement to modify a representation, warranty or other statement of a party, means that the facts or situations described in the representation, warranty or other statement as being to the knowledge of such party are believed to be true and correct by the president, each vice president (including senior vice presidents, executive vice presidents, and vice presidents with other similar designations), and each officer who is principally responsible for the subject matter involved, after suitable investigation.

"Permitted Encumbrances" means any

- 1.2. liens for taxes, assessments, levies, fees and other government charges not yet due or payable or which, if due and unpaid, are being contested in good faith and by appropriate proceedings,
- 1.3. mechanics' and materialmen's liens and similar charges incurred in the ordinary course of Seller's business which individually or in the aggregate do not materially interfere with railroad operations on the Rail Lines,
 - (a) utility easements, licenses or permits located on or crossing any portion of the Assets that do not materially interfere with railroad operations on the Rail Lines,
 - (b) road crossing agreements with governmental authorities or private parties that do not materially interfere with railroad operations on the Rail Lines,
 - (c) leases, easements, trackage rights agreements and tenancy agreements existing as of the date of this Agreement which are assumed by Purchaser in accordance with this Agreement,
 - (d) rights of reverter which have not been violated and will not be violated as long as the affected real property is used for railroad purposes,
 - (e) encumbrances specifically agreed to by Purchaser in a separate writing delivered to the Seller,
 - (f) matters customarily excepted by title companies in their commitments for title insurance or title policies as "standard exceptions,"
 - (g) rights reserved to or vested in any governmental authority with respect to the Assets or their regulation, and
 - (h) acts done by, through or under Purchaser, its employees, agents and contractors.

"Purchase Price" has the meaning given to it in Section 4.1 of this Agreement.

"Purchaser" means Livonia, Avon & Lakeville Railroad Corporation.

"Rail Lines" means the lines of railroad included in the Assets which are owned or operated by Seller.

"Seller" means Consolidated Rail Corporation.

2. PURCHASE AND SALE OF ASSETS; ASSIGNMENT OF CONTRACTS

2.1. **General.** Under the terms and subject to the conditions contained in this Agreement, Seller agrees to sell and transfer to Purchaser, and Purchaser agrees to purchase, on the Closing Date, all of the Assets.

2.2. **Assignment of Contracts.** Contemporaneous with the transfer of the Assets to Purchaser, each Seller agrees to assign and set-over to Purchaser all of such Seller's rights and interests under the Contracts listed on Appendix B hereto.

3. EXCLUSION OF ASSETS

3.1. **Contracts.** The Assets do not include any rights under Contracts not specifically assumed by Purchaser under Section 2.2 of this Agreement and all records of Seller relating to such Contracts.

3.2. **Current Assets.** The Assets do not include any accounts receivable, cash on hand or deposit and cash equivalents, and other current assets of the Seller, except for the Inventory, Contracts and intangible assets specifically identified in Appendix A.

3.3. **Corporate Records.** The Assets do not include general ledgers, minute books, tax returns and similar records required for the Seller's corporate, partnership and tax purposes.

3.4. **Claims and Litigation.** The Assets do not include rights under claims and litigation or settlements of such claims and litigation by or against Seller.

4. PURCHASE PRICE

4.1. **Amount of Purchase Price.** The purchase price ("Purchase Price") for the Assets is \$_____, to be paid as follows: _____ (\$_____) to be paid to Seller in cash (the "Cash").

4.2. **Adjustment of Purchase Price.** The Purchase Price is subject to adjustment in accordance with Section 5 below. Any such adjustment made to the Purchase Price shall be deducted from the Cash.

4.3. **Payment of Purchase Price.** The Cash, as adjusted, shall be paid at the Closing by wire transfer of immediately available funds to one or more bank accounts designated by Seller prior to the Closing or, at the Seller's sole election, by one or more cashier's checks.

(a) **Allocation of Purchase Price.** The Purchase Price shall be allocated to the Assets as set forth on Appendix C. The Purchase Price shall be paid to the Seller in accordance with instructions given to Purchaser by the Seller. Purchaser shall

have no responsibility to the Seller for the application of the Purchase Price paid pursuant to instructions given pursuant to this Section.

5. TAX ALLOCATION, LEASE INCOME

- 5.1. Proration of Taxes.** The Cash Purchase Price shall be adjusted for current real and personal property taxes affecting the Assets and due and payable in calendar year 1997, which shall be prorated over the calendar year by Seller and Purchaser. If the tax bill for the 1997 calendar year or any prior year has not been received at the Closing Date and the tax amount cannot otherwise be definitely ascertained, allocations shall be made on the basis of the prior year's taxes. Any refund of such taxes applicable to the period prior to Closing shall be the property of and sent to Seller, and any refunds applicable to the period after Closing shall be the property of and sent to Purchaser.
- 5.2. Lease Rentals and License Income.** Lease rentals and license income (which is not already by its terms calculated on a per diem basis) shall be prorated to the Closing Date and the amount due Purchaser, if any, paid within 30 days after Closing.

6. ASSUMPTION OF LIABILITIES AND OBLIGATIONS

- 6.1. Liabilities to be Assumed.** As of the Closing, Purchaser agrees to assume, discharge and pay in accordance with their respective terms and to become responsible for the liabilities and obligations of the Seller under all Contracts set forth on Appendix B, to the extent those liabilities and obligations accrue after the Closing.
- 6.2. Liabilities Not to be Assumed.** Except as expressly provided elsewhere in this Agreement, Purchaser shall not be obligated to assume any liability or obligation whatsoever, including but not limited to, the following:
- (a) any litigation, arbitration, claim or similar liability of any type with respect to the Assets or Seller's ownership thereof, which is based on or arises out of an event or circumstance occurring prior to the Closing;
 - (b) obligations under any plan to which the Seller contributes pursuant to the applicable provisions of the Employee Retirement Income Security Act of 1974, as amended, or under any other employee benefit plan, pension plan or similar plan; and
 - (c) all claims against or obligations of Seller arising out of or in connection with any labor agreement or arrangement.
- 6.3. Insurance.** The provisions of this Section 6 shall not be construed to constitute the assumption of any liabilities or obligations in a manner which would avoid the applicability of any insurance policy with respect to any event or circumstance arising prior to the Closing.
- 6.4. No Third Party Rights.** This Section 6 is not intended to create any rights in favor of any person other than Purchaser and Seller.

7. REPRESENTATIONS AND WARRANTIES

7.1. Representations and Warranties of Seller. To the best of each Seller's knowledge, information and belief, Seller represents and warrants to Purchaser as follows:

- (a) Seller is a validly organized and existing corporation, in good standing under the laws of the state of its incorporation. Seller has the necessary authority to own property and conduct its business as now conducted in [STATE] and in such other states where it conducts business.
- (b) All necessary corporate action of Seller required in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement has been taken. Subject to the effectiveness of the exemption or approval by the Board, (i) Seller has obtained all necessary governmental authorizations and approvals (or exemptions from or waivers of such authorizations or approvals) required in connection with this Agreement, and (ii) this Agreement constitutes the valid and binding obligation of Seller enforceable against Seller in accordance with its terms, except as such enforcement may be limited by applicable bankruptcy, insolvency, moratorium or similar laws affecting rights of creditors generally and general principles of equity.
- (c) Except as set forth on Exhibit 1, the sale of the Assets and the consummation of the other transactions contemplated by this Agreement will not result in any breach of or default under, violate the conditions of, or accelerate any obligation under, Seller's articles of incorporation or bylaws or any material agreement, mortgage, lease, deed, order, law, judgment or rule to which Seller is a party or by which it is bound.
- (d) Seller owns the Assets described in Appendix A free and clear of all liens, claims or encumbrances (other than Permitted Encumbrances), and Appendix A is a full and complete listing of all assets used by Seller in the operation of the Rail Lines. The Assets are in good working order and are sufficient to permit the Purchaser to operate the Rail Lines from and after the Closing Date in the same manner operated by Seller prior to the Closing Date.
- (e) Seller has sufficient interest in the Assets to permit the operation of the Rail Lines as presently conducted, and there are no claims which would affect its interest in the Assets so as to affect Purchaser's ability to conduct operations with the Assets following the Closing as currently conducted.
- (f) Each Contract listed on Appendix B is in full force and effect and no default has occurred under any such Contract which would permit the other party to such Contract to terminate the Contract or otherwise refuse to perform its obligations thereunder, or which would otherwise have an adverse effect on the Assets or Purchaser's ability to operate the Rail Lines as currently operated. Seller has not waived or assigned to any other person any of its rights under any of the Contracts on Appendix B, and each of those Contracts may be assigned to Purchaser without impairment of any rights under the Contract.

- (g) Seller is not a party to any indenture, security, contract or other agreement or subject to any judgment, order, writ or decree which would (A) impose any adverse condition upon Purchaser, the Assets or the operation of the Rail Lines or result in the loss of any material rights currently possessed or used by Seller or otherwise adversely affect or materially restrict the Assets or the operation of the Rail Lines as a result of the sale of the Assets to Purchaser as contemplated by this Agreement or (B) adversely affect Purchaser's ability to conduct the operations of the Rail Lines following Closing as currently conducted.
- (h) Seller is in material compliance with all applicable Environmental Laws with respect to the Assets and the operation of the Rail Lines.
- (i) Seller has received no written notice from any governmental agency having authority (including, without limitation, any federal, state or local governmental agency) (A) that it has been identified by the United States Environmental Protection Agency as a potentially responsible party under CERCLA with respect to a site included within the Assets listed on the National Priorities List (40 CFR Part 300 Appendix B (1990)), (B) that any Hazardous Substance has been discovered on a site included within the Assets; or (C) that any site included within the Assets is the subject of any ongoing or ordered remedial investigation, removal or other response action pursuant to any Environmental Law.
- (j) Except with respect to matters which would not adversely affect the assets, or adversely affect Purchaser's ability to operate the Assets as currently operated or impose any cost upon Purchaser following the Closing, (A) no portion of the Assets has been used for the handling, storage, disposal or processing of Hazardous Substances except in material compliance with applicable Environmental Laws, (B) no underground storage tanks for Hazardous Substances are located in, on or about the Assets, (C) the Assets do not contain asbestos, urea formaldehyde foam insulation or transformers or other equipment containing polychlorinated biphenyls, and (D) there have been no releases of Hazardous Substances in, on, under or from the Assets except in material compliance with Environmental Laws.

7.2. Representations and Warranties by Purchaser. To the best of its knowledge, information and belief, Purchaser represents and warrants to Seller as follows:

- (a) Purchaser is a validly organized and existing [STATE] corporation, in good standing. Purchaser has full corporate power and authority to conduct its business as such business is now being conducted and to own and operate its properties.
- (b) All necessary corporate action of Purchaser required in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement has been authorized and obtained. Subject to the effectiveness of the exemption or approval by the Board, (i) Purchaser has obtained all necessary governmental authorizations and approvals (or waivers of such authorizations or approvals) required in connection with this Agreement, and (ii) this Agreement constitutes the valid and binding obligation of Purchaser enforceable against Purchaser in accordance with its

terms, except as enforcement may be limited by applicable bankruptcy, insolvency, moratorium or similar laws affecting rights of creditors generally and general principles of equity.

- (c) The purchase of the Assets and the consummation of the transactions contemplated by this Agreement will not result in any breach of or default under, violate the conditions of or accelerate any obligation under Purchaser's certificate of incorporation, bylaws or any material agreement, mortgage, lease, deed, order, law, judgment or rule to which Purchaser is a party or by which it is bound.
- (d) There are no actions, suits or proceedings pending or, to the Knowledge of Purchaser, threatened against Purchaser in any court or before any federal, state, local or other governmental agency which, if decided adversely to the Purchaser, would prohibit the execution, delivery and performance of this Agreement by Purchaser.

7.3. **Survival.** The representations and warranties contained in this Agreement shall survive the Closing and any termination of this Agreement and shall remain in full force and effect for five (5) years after the Closing.

8. CONDITIONS TO THE CLOSING

8.1. **Obligation of Purchaser to Close.** The obligation of Purchaser to effect the closing of the transactions contemplated by this Agreement is subject to the satisfaction at or prior to the Closing of the following conditions:

- (a) The representations and warranties of Seller contained in Section 7 of this Agreement shall have been true in all material respects when made and at the time of Closing as if those representations and warranties had been made at that time.
- (b) Seller shall have performed and complied in all material respects with all agreements and conditions required by this Agreement to be performed or complied with by Seller prior to or at the Closing.
- (c) Seller shall have removed prior to Closing all liens, security interests or other encumbrances, except for Permitted Encumbrances, if placed or caused to be placed on the Assets.
- (d) The Board shall have approved the transactions contemplated by this Agreement under the ICC Termination Act of 1995 or exempted the transactions contemplated by this Agreement from the provisions of the ICC Termination Act of 1995 requiring Board approval, and that approval or exemption shall have become final or effective (as the case may be).
- (e) No condition shall have been imposed by the Board in connection with the transactions contemplated by this Agreement which has a material and significant adverse effect on the cost of the transaction or value of the transaction to Purchaser or on Purchaser's ability to own, use or operate the Assets taken as a whole in substantially the same manner as Seller owned, used or operated the Assets.

- (f) Purchaser shall have received an executed copy of each document, agreement and instrument referred to in this Agreement required to be executed and delivered by Seller prior to or at the Closing.
- (g) The transactions contemplated by this Agreement to whatever extent necessary shall have been performed pursuant to proper and requisite action taken by Seller under applicable law.
- (h) There shall not have been instituted or threatened on or before Closing, any action or proceeding before any court or governmental agency or body or by a public authority to restrict or prohibit the acquisition by Seller of the Assets.

The satisfaction of any of the conditions set forth in this subsection may be waived by Purchaser in writing delivered at or prior to the Closing.

8.2. Obligation of Seller to Close. The obligation of Seller to effect the transactions contemplated by this Agreement is subject to the satisfaction prior to or at the Closing of the following conditions:

- (a) The representations and warranties of Purchaser set forth in Section 7 of this Agreement shall have been true in all material respects when made and at the time of the Closing as if those representations and warranties had been made at that time.
- (b) Purchaser shall have performed and complied in all material respects with all agreements and conditions required by this Agreement to be performed or complied with by Purchaser prior to or at the Closing.
- (c) The Board shall have approved the transactions contemplated by this Agreement under the ICC Termination Act of 1995 or exempted the transactions contemplated by this Agreement from the provisions of the ICC Termination Act of 1995 requiring Board approval, and that approval or exemption shall have become final or effective (as the case may be).
- (d) Seller shall have received an executed copy of each document, agreement and instrument referred to in this Agreement required to be executed and delivered by Purchaser prior to or at the Closing.
- (e) The transactions contemplated by this Agreement to whatever extent necessary shall have been performed pursuant to proper and requisite action taken by Purchaser under applicable law.
- (f) There shall not have been instituted or threatened on or before Closing, any action proceeding before any court or governmental agency or body or by a public authority to restrict or prohibit the acquisition by Purchaser of the Assets.

The satisfaction of any condition set forth in this subsection may be waived by Seller in writing delivered at or prior to the Closing.

9. CLOSING

- 9.1. **Place of Closing.** The closing of the transactions contemplated by this Agreement ("Closing") shall take place at _____.
- 9.2. **Date and Time of Closing.** The Closing shall take place at 10:00 a.m. Eastern Standard Time not later than the 10th business day following the date on which an order by the Board approving the acquisition of the Assets by Purchaser has become final or the date on which an exemption from approval by the Board becomes effective. The date on which the Closing occurs is referred to in this Agreement as the "Closing Date."
- 9.3. **Deliveries by Purchaser at Closing; Post-Closing Deliveries.** At the Closing, Purchaser shall:
- (a) Pay to Seller the Purchase Price as adjusted (subject to any withholding that Purchaser is required to make under Section 1445 of the Internal Revenue Code of 1986, as amended).
 - (b) Deliver to Seller its undertakings to assume, perform and discharge the liabilities and obligations of Seller to the extent assumed by Purchaser under this Agreement, and deliver such other documents or instruments as are required of Purchaser in order to effect or evidence the consummation of the transactions contemplated by this Agreement.
 - (c) Purchaser shall take all other reasonable steps that Seller reasonably requests in order to effectuate the transactions contemplated by this Agreement.
- 9.4. **Deliveries by Seller at Closing.** At the Closing, Seller shall:
- (a) Effect the transfer of the Assets to Purchaser by such quit claim deeds in recordable form (as permitted for filing by a railroad or transmitting utility where allowed), bills of sale, assignments, releases, satisfactions and other documents of transfer or release reasonably required to transfer the interests of Seller in the Assets to Purchaser free and clear of all liens (except Permitted Liens) consistent with the terms of this Agreement (which deeds, bills of sale, assignments and other documents may reflect payment of such specific portions of the Purchase Price as requested by Purchaser, provided that such allocations and direction will not be inconsistent with Appendix C or the provisions of Section 1060 of the Internal Revenue Code of 1986, as amended).
 - (b) Furnish to Purchaser any consents to assignments necessary to transfer to Purchaser all of Seller's rights under the Contracts listed on Appendix B.
 - (c) Furnish to Purchaser an affidavit as to Seller of the type referred to in Section 1445(b)(2) of the Internal Revenue Code of 1986, as amended, if Seller wishes to avoid the withholding of taxes as provided in Section 1445.
 - (d) Take all other reasonable steps that Purchaser reasonably requests in order to effectuate the transactions contemplated by this Agreement, including the

assignment of all Contracts that Purchaser is to assume pursuant to this Agreement.

10. OPERATIONS PRIOR TO CLOSING

10.1. Operations Prior to Closing. Seller agrees that, except with the written consent of Purchaser, from the date of this Agreement to the Closing:

- (a) Seller will not grant (or make any material amendment to) any trackage rights, operating rights, licenses, permits, easements or encumbrances affecting the Assets;
- (b) Seller will not sell, lease, assign, mortgage, hypothecate or otherwise transfer or dispose of any of the Assets (other than Inventory used in the ordinary course of business);
- (c) Seller shall maintain, repair and renew the Assets in the ordinary course, consistent with past practices (and in any event to a condition equal to their condition on the date of this Agreement, ordinary wear and tear excepted);
- (d) Seller shall maintain in full force and effect all Contracts, licenses, authorizations and approvals necessary for or related to the operation and use of the Assets as currently operated and used; provided, however, that Seller may amend, extend or terminate Contracts, licenses, authorizations and approvals in the ordinary course of business following written notice to Purchaser and written approval of such action from Purchaser; and

11. CONSENTS AND APPROVALS

11.1. Consents and Approvals. Purchaser and Seller each will cooperate and use their best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations to prepare all necessary documentation, to effect promptly all necessary filings and to satisfy all other conditions and obtain all necessary permits, consents, approvals, orders and authorizations of or any exemption by, all third parties and all governmental entities necessary to consummate the transactions contemplated by this Agreement. Purchaser shall be solely responsible for filings or proceedings before the Board with respect to the approval of the acquisition of the Assets or securing an exemption from that approval. Seller will, without cost to Purchaser, cooperate in the filings and proceedings before the Board and provide any reasonably necessary data in connection with securing approval or exemption. Prior to filing any application for approval or exemption with the Board, Purchaser will deliver a copy to Seller with sufficient time for Seller to comment upon the application. Any costs, including filing fees, associated with any filing before the Board shall be paid by Purchaser.

12. INDEMNIFICATION

12.1. Purchaser's Indemnification. Purchaser shall defend, indemnify and hold harmless the Seller from and against all claims, losses, costs and expenses (including attorneys' fees and expenses) which arise out of or are based on (i) the ownership or operation of the Assets

after the Closing, (ii) any material misrepresentation or material breach of warranty by Purchaser and (iii) all liabilities of Seller assumed by Purchaser pursuant to this Agreement, and (iv) any breach of an Environmental Law or the placement of any Hazardous Substance in, on, about or under the Assets at any time after the Closing.

- 12.2. **Seller's Indemnification.** Seller shall defend, indemnify and hold harmless Purchaser from and against all claims, losses, costs and expenses (including attorneys' fees and expenses) which arise out of or are based on (i) the ownership or operation of the Assets by Seller prior to the Closing; (ii) any material misrepresentation or material breach of warranty by Seller; (iii) all liabilities of Seller that are not assumed by Purchaser pursuant to this Agreement and (iv) any breach of an Environmental Law or the existence of any Hazardous Substance in, on, about or under the Assets at any time prior to the Closing.

All claims, losses, costs, and expenses giving rise to any indemnification hereunder, the underlying facts of which have arisen in part prior to the Closing and in part on or after the Closing, shall be reasonably apportioned between Seller and Purchaser.

12.3. **Indemnification Procedures.**

- (a) The party seeking indemnification pursuant to Sections 12.1 or 12.2 above (the "Indemnified Party") shall give the party obligated to indemnify (the "Indemnifying Party") notice of any claim or assertion of liability by a third party with respect to which the Indemnified Party is seeking indemnification (a "Claim").
- (b) The Indemnifying Party shall have the right to undertake the defense of such Claim (by counsel or other representatives of its own choosing and reasonably acceptable to the Indemnified Party) at the Indemnifying Party's sole risk and cost. Notwithstanding the fact that the Indemnifying Party undertakes the defense of a Claim, if there is a reasonable probability that the Claim may materially and adversely affect the Indemnified Party, the Indemnified Party (by counsel or through other representatives of its own choosing) shall have the right, at its expense, to participate in the defense, compromise or settlement of the Claim.
- (c) If the Indemnifying Party undertakes the defense of a Claim, (i) the Indemnifying Party shall keep the Indemnified Party informed of the status of the defense and furnish the Indemnified Party with copies of all documents, instruments and information reasonably requested by the Indemnified Party in connection with the Claim; (ii) the Indemnified Party (by counsel or other representatives of its own choosing and at its own expense) shall have the right to consult with the Indemnifying Party (and its counsel and representatives) concerning the Claim, and the Indemnifying Party and the Indemnified Party (and their respective counsel and representatives) shall cooperate with respect to the Claim; and (iii) the Indemnifying Party shall not, without the written consent of the Indemnified Party, settle or compromise a Claim or consent to the entry of a judgment without obtaining from the claimant or plaintiff an unconditional release of all liability of the Indemnified Party in respect of such Claim in a form satisfactory to the Indemnified Party and under circumstances which do not require the Indemnified

Party to pay any money or consent to the taking or withholding of any action affecting it or any of its properties, assets or businesses.

- (a) If the Indemnifying Party does not elect to undertake the defense of a Claim or fails to defend the Claim within a reasonable time after notice of the Claim, the Indemnified Party shall have the right to undertake the defense, compromise or settlement of the Claim (by counsel or other representatives of the Indemnified Party's own choosing) on behalf of, for the account of and at the risk and cost of the Indemnifying Party. In such event, the Indemnifying Party shall pay (in addition to any other sums required to be paid under the terms of this Agreement) the costs and expenses incurred by the Indemnified Party in connection with the defense, settlement or compromise of the Claim as and when those costs are incurred.

13. TERMINATION

13.1. Grounds for Termination. This Agreement and the consummation of the transactions contemplated by this Agreement may be terminated prior to the Closing:

- (a) By the agreement in writing of Seller and Purchaser at any time,
- (b) By Purchaser, by written notice to Seller, if Seller has made a material misrepresentation in, or if Seller is guilty of a material breach of the representations and warranties of seller contained in, this Agreement, or if there has been a failure by Seller to comply with any of its material obligations under this Agreement (including without limitation the failure by Seller to timely satisfy the conditions to Closing set forth in Section 8.1), and such material misrepresentation or breach of warranty or material failure has not been cured after 30 days' notice,
- (c) By Seller, by written notice to Purchaser, if Purchaser has made a material misrepresentation in, or if Purchaser is guilty of a material breach of the representations and warranties of Purchaser contained in, this Agreement, or if there has been a failure by Purchaser to comply with any of its material obligations under this Agreement (including without limitation the failure by Purchaser to timely satisfy the conditions to Closing set forth in Section 8.2), and such material misrepresentation or breach of warranty or material failure has not been cured after 30 days' notice, or
- (d) By either Purchaser or Seller if the Board shall have disapproved the transactions contemplated by this Agreement and such disapproval shall have become final and not subject to further proceedings or appeal, whether by lapse of time or otherwise.

Termination by Purchaser or Seller pursuant to paragraphs (c) or (d) above shall not relieve the non-terminating party of any liability for misrepresentation or breach.

14. MISCELLANEOUS

- 14.1. **Title and Other Descriptions.** Prior to the Closing, the description of the Assets may be changed by mutual agreement of Purchaser and Seller to add or delete items of tangible property or Contracts. From time to time after the Closing, at Purchaser's request and without further consideration, Seller will execute and deliver other instruments of conveyance and transfer and take other actions as Purchaser reasonably requires to convey, transfer to and vest in Purchaser whatever title Seller may have in and to the Assets, and to put Purchaser in possession of the Assets. In the case of Contracts and rights, if any, that cannot be transferred effectively without the consent of third parties, Seller will request these consents promptly and will make all reasonable efforts to obtain the consents. From time to time after the Closing, at Seller's request and without further consideration, Purchaser will execute and deliver other instruments of conveyance, transfer and assumption and take other actions as Seller reasonably requires to assume the liabilities and obligations of Seller to be assumed by Purchaser pursuant to this Agreement.
- 14.2. **Waiver.** Purchaser may in writing extend the time for or waive performance of any of the obligations, representations or warranties of Seller under this Agreement. Seller may in writing take similar action with respect to the obligations, representations or warranties of Purchaser under this Agreement.
- 14.3. **Expenses.** Purchaser shall be responsible for and shall pay all expenses, including attorney's fees, incurred by Purchaser in connection with this Agreement and the consummation of the transactions contemplated by this Agreement, and Seller shall be responsible for and shall pay all expenses, including attorney's fees, incurred by Seller in connection with this Agreement and the consummation of the transactions contemplated by this Agreement, except that sales, use, gross receipts, excise or similar taxes or governmental charges arising or levied with respect to the sale and transfer of the Assets, whether assessed against the Assets, Seller or Purchaser, shall be shared equally between Seller and Purchaser.
- 14.4. **Transitional Matters.** Prior to the Closing, Purchaser and Seller may agree on different or additional procedures to implement their respective rights and obligations, including procedures which are required to minimize or avoid any disruption of the settlement of interline accounts by draft in the normal course of business.
- 14.5. **Information Releases.** No press release, information release or other public or private announcement of the existence of this Agreement or of the pendency of the transactions contemplated by this Agreement shall be made by any party without the prior approval of the other party, except as may be required by law.
- 14.6. **Entire Agreement.** This Agreement, including the Appendices and Exhibits attached to this Agreement, constitutes the entire agreement and understanding between Seller and Purchaser with respect to the sale and purchase of the Assets and the other transactions contemplated by this Agreement. All prior representations, understandings and agreements between the parties with respect to the purchase and sale of the Assets and the other transactions contemplated by this Agreement are superseded by the terms of this Agreement.

- 14.7. **Choice of Law.** The provisions of this Agreement shall be construed and interpreted in accordance with the laws of the [STATE], including for the purposes of choice of law, as though all acts and omissions related to this Agreement occurred in [STATE].
- 14.8. **Severability.** The provisions of this Agreement shall, where possible, be interpreted in a manner necessary to sustain their legality and enforceability; the unenforceability of any provision of this Agreement in a specific situation shall not affect the enforceability of that provision in other situations or of other provisions of this Agreement.
- 14.9. **Counterparts.** This Agreement may be executed in two or more original counterparts, each of which shall for all purposes be considered an original of this Agreement.
- 14.10. **Headings.** Section and subsection headings contained in this Agreement are inserted for convenience of reference only, shall not be deemed to be a part of this Agreement for any purpose, and shall not in any way define or affect the meaning, construction or scope of any of the provisions of this Agreement.
- 14.11. **Successors and Assigns.** This Agreement shall be binding upon, and inure to the benefit of the respective successors and assigns of the parties. Purchaser may assign its rights under this Agreement, in whole or in part, to the Parent or to another a wholly-owned subsidiary of Parent.
- 14.12. **Notices.** All notices given pursuant to this Agreement shall be delivered by hand, sent by United States registered or certified mail, postage prepaid, delivered by recognized express mail or overnight courier service, or delivered by electronic facsimile with a confirmation copy delivered by any of the preceding methods, addressed as follows (or to another address or person as a party may specify on notice to the other):

(a) If to Seller (which shall constitute notice to all Sellers):

with copies to:

(b) If to Purchaser:

IN WITNESS WHEREOF, the parties hereto have executed this Purchase Agreement as of the date first written above.

[Name]

[Company]

By: _____

Name: _____

Title: _____

[Name]

[Company]

By: _____

Name: _____

Title: _____

APPENDIX A

DESCRIPTION OF ASSETS

The Assets consist of the real and personal property, rights, intangibles and interests described in Section A below, but exclude the assets described in Section B below. Section A contains a general description of the Assets. If there is any conflict or contradiction between Sections A and B, Section B shall in all cases supersede Section A.

A. GENERAL DESCRIPTION

The Assets consist of Seller's estate, right, title and interest in the following:

- (1) The Rail Lines, which consist of the following:

[INSERT DESCRIPTION OF RAIL LINES]

- (2) All connecting branch lines and spurs, and all rail lines, associated rights-of-way, real and personal property or other interests in, related to or used in connection with the foregoing, including, without limitation, all abandoned rail lines, spurs and rights-of-way and all properties contiguous to any of the foregoing (whether carried on Seller's books as operating or non-operating property);

- (3) All of Seller's [LIST] listed on Attachment 1 to this Appendix A;

- (4) All written interchange agreements, all joint facility agreements, all trackage agreements, all paired track agreements and all trackage and operating rights granted to or otherwise owned, used, held for use or otherwise held by Seller which relate to the Rail Lines;

- (5) All interests in and agreements relating to industry and side tracks and facilities which form a part of or relate to the Rail Lines;

- (6) All operating rail property, including without limitation, the roadbed, rail, track (including the main track, side tracks, spur tracks, drill tracks, connecting tracks, yard tracks, industry tracks and team tracks), connections, ties, bridges, stations, culverts, structures, communications and signal facilities, parking and storage areas, depots, yards, shops, communication, signaling and related equipment, buildings (and their contents), and all other fixtures and appurtenances owned, used, held for use or otherwise held by Seller in connection with or that relate to the operation, use or enjoyment of the Rail Lines, wherever located;

(7) All rights, benefits and privileges of Seller in its capacity as grantor, licensor, lessor or franchisor, or in any similar capacity, arising out of or under any Contract, easement, franchise, right-of-way, license or lease relating to the Rail Lines or other Assets;

(8) All of Seller's rights relating to the ownership or operation of the Rail Lines under Contracts (including, without limitation, any Contracts, environmental indemnifications, trackage rights, joint facility or similar agreements with other railroads, any transportation contracts with shippers and any other indemnification and similar agreements relating to environmental matters);

(9) All of Seller's materials and supplies, including rail, ties, ballast, other track material, equipment parts and supplies, and inventory;

(10) All available records pertaining primarily to the Rail Lines or the other Assets, wherever located.

B. EXCLUDED ASSETS

The Assets do not include the following assets:

- (1) Any labor or employment agreement;
- (2) Any lease of office space or other Contract with affiliates of Seller providing for shared overhead expense, tax sharing or similar inter-corporate matters;
- (3) The Contracts listed on attached Schedule I;
- (4) Corporate record books of Seller.

APPENDIX B
ASSIGNED CONTRACTS

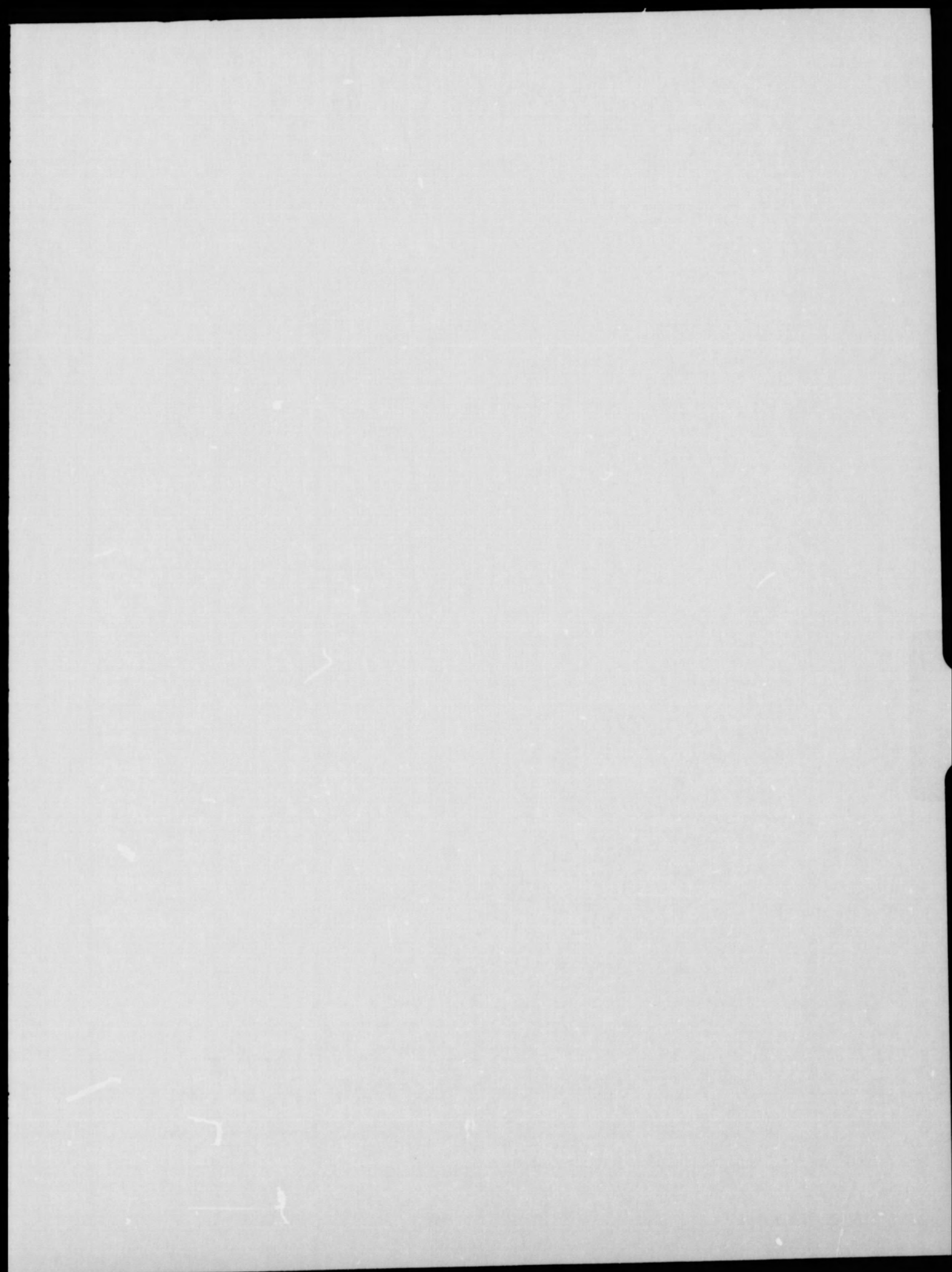
APPENDIX C

ALLOCATION OF PURCHASE PRICE

<u>Asset Type</u>	<u>Purchase Price Allocation</u>
Real Estate	\$ _____
Track, Structures & Signals	\$ _____
Equipment and Machinery	\$ _____

EXHIBIT 1

Disclosure Schedule



OPERATING PLAN - MINOR

Under 49 C.F.R. Section 1180.8(b), Applicant must discuss any significant changes in patterns or types of service expected to result from this proposed transaction. Consistent with the minor nature of this transaction as described in the Responsive Application, Applicant anticipates only very minor changes in operations if ownership or trackage rights occur over the subject trackage. LAL is a Class III railroad which, as relevant here, owns and operates 29.4 miles of line between Genesee Junction Yard in the Town of Chili, New York, immediately south of Rochester, and Lakeville, New York.

As is more fully described in the Responsive Application, LAL is seeking ownership or trackage rights in order to directly interchange with Rochester & Southern Railroad ("R&S") in the Genesee Junction Yard, Chili, New York. LAL handled 2,295 carloads in 1995 on its track and anticipates steady growth of traffic in the years to come. LAL currently operates in the Genesee Junction Yard, but is prevented from interchanging with R&S in the yard. Therefore, LAL will not operate over additional track as a result of the proposed transaction, but will simply be allowed to interchange at least some of its existing traffic directly with R&S instead of 100 percent interchange with Conrail/CSXT. If ownership of the Genesee Junction Yard is granted, LAL anticipates bringing the yard up to FRA Class I status.

As a result of the proposed transaction, Applicant does not anticipate any change in traffic density as a result of the proposed transaction on the subject trackage that it already operates on. Furthermore, LAL does not anticipate that any commuter or passenger service will be effected by the proposed transaction as no commuter or passenger services operate on the

subject trackage. LAL does not anticipate any change in operating economies (excepting the competitive and operational benefits identified in the Responsive Application). LAL does not anticipate any discontinuances or abandonments of the subject trackage.

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OPPENHEIMER WOLFF & DONNELLY

1020 Nineteenth Street N.W.
Suite 400
Washington, D.C. 20036-6105

(202) 293-6300
FAX (202) 293-6200

EXHIBIT 22

Brussels
Chicago
Detroit
Geneva
Irvine
Los Angeles
Minneapolis
New York
Paris
Saint Paul
San Jose
Washington, D.C.

SECTION 1180.6(a)(4)

OPINION OF COUNSEL

October 21, 1997

Surface Transportation Board
12th and Constitution Avenue, N.W.
Washington, D.C. 20423

Re: ***Finance Docket No. 33388***
CSX Corporation and CSX Transportation, Inc.,
Norfolk Southern Corporation and Norfolk Southern
Railway Company – Control and Operating
Leases/Agreements – Conrail Inc. and Consolidated
Rail Corporation

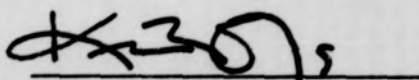
Ladies and Gentlemen:

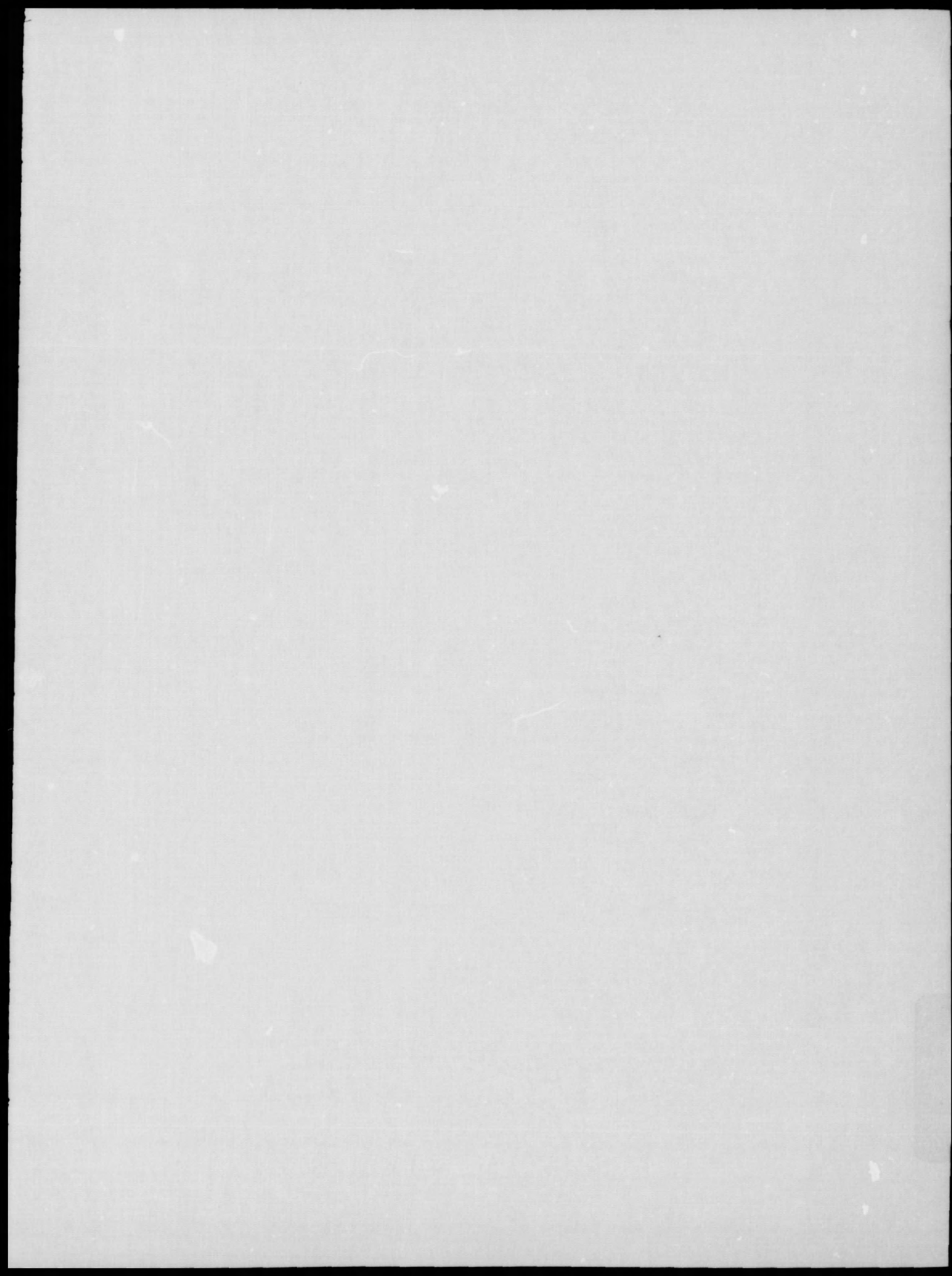
As counsel for Responsive Applicant Livonia, Avon & Lakeville Railroad Corporation, I have examined the accompanying Responsive Application for authority under 49 U.S.C. § 11323, et seq.

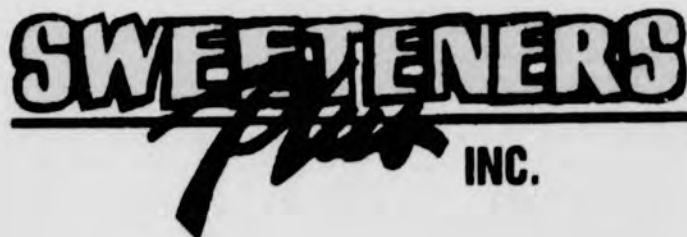
I am of the opinion that the transaction described in the Responsive Application meets the requirements of the law, is within the corporate powers of the above-referenced Responsive Applicant, and will be legally authorized and valid if approved by the Surface Transportation Board.

Respectfully submitted,

Oppenheimer Wolff & Donnelly


Kevin M. Sheys





3239 Rochester Rd, P.O. Box 520
Lakeville, NY 14480

Phone: (716) 346-2318 Fax: (716) 346-2310

VERIFIED STATEMENT OF CARLTON E. MYERS

My name is Carlton E. Myers and I am the president of Sweeteners Plus Inc. The purpose of my verified statement is to explain how the proposed acquisition of Consolidated Rail corporation ("Conrail") by CSX Transportation ("CSXT") and Norfolk Southern ("NS") and the division of Conrail's assets between CSXT and NS would have a significant adverse impact on Sweeteners Plus, absent the imposition of a condition which would permit the Livonia, Avon & Lakeville Railroad ("LAL") to effect interchange with the Rochester & Southern Railroad ("RSR") in Genesee Junction Yard.

Sweeteners Plus is in the business of supplying sweeteners to the food industry and others that need competitive pricing and quality sweeteners.

Sweeteners Plus operates a large sweeteners processing plant in Lakeville, New York that receives cars of corn syrup and sugar by rail. After processing, sweeteners are trucked to receivers located throughout the Northeastern United States. Sweeteners Plus employs 75 people at our Lakeville plant including truck drivers who operate our fleet of over 30 trucks. Deliveries are made which include Bottler's, Wineries, Breweries, Bakeries, the Ice Cream Industry, Candy Makers, Dairies, and even the Pharmaceutical Industry.

In 1995, Sweeteners Plus received 1,492 inbound carloads of corn syrup and sugar. The most important origins and rail routings for this traffic are shown in Exhibit 1. While traffic has grown somewhat since 1995, the same origins and routings were generally found in 1996 and 1997 to date. In 1995, we also handled distribution of 15 carloads of telephone books for Rochester Telephone. This traffic continued in 1996 and 1997 as well.

Our Lakeville facility could not exist without access to efficient, highly responsive, and low cost rail transportation. Truck transportation of inbound corn syrup and sugar is comparatively costly due to the superior weight-carrying capacity of rail cars. If Sweeteners Plus did not have efficient rail service to its Lakeville facility, rates for truck transportation of corn syrup and sugar would drive up the costs of our Sweeteners Plus is not in a position to absorb increased transportation costs while attempting to continue to compete with sweeteners products produced by other companies.

I want to emphasize that our ability to respond on short notice to the demands of our customers requires an equally responsive service from our short line carrier. LAL provides on-demand switching and other customized services that are not available from Conrail, and we count on LAL to monitor all aspects of the movement and billing of our rail shipments for us.

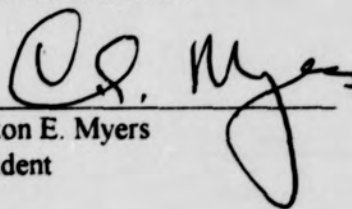
Unfortunately, we have found that LAL cannot anticipate unannounced changes in Contrail's operations, and this caused us problems in the movement of our inbound traffic during 1996 and 1997 that forced Sweeteners Plus to bring in a significant amount of product by truck.

During 1997, Sweeteners Plus expanded our Lakeville facility by adding a sugar bagging plant. This 24,000 square foot addition to our facility will employ an additional 5 people and generate approximately 100 cars of additional rail traffic each year.

Recently, Sweeteners Plus embarked on an exciting new product which will allow us to diversify our business. Sweeteners Plus is constructing a new storage and processing facility with one million gallons plus capacity to blend and ship a road-de-icing product known as "Magic". Magic is a 50% blend of Ice Ban and a 50% blend of Mag Chloride. The components of "Ice Ban" are to be received by rail from points in the Midwest and Southeast US, and should add approximately 300 cars per year to our rail traffic at Lakeville.

For The foregoing reasons, Sweeteners Plus strongly supports the conditions sought by the Livonia, Avon & Lakeville Railroad.

I, Carlton E. Myers, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.



Carlton E. Myers
President

Executed on : October 15, 1997

EXHIBIT 1

Principal origins and Routings - Traffic Inbound to Sweeteners Plus Inc., Lakeville, NY

<u>SUPPLIER</u>	<u>ORIGIN</u>	<u>ROUTING</u>
Refined Sugars	Yonkers, NY	CR - LAL
A.E. Staley	Decatur, IL Lafayette, IN	IC - Effingham - CR - LAL NS switch - CR - LAL
Domino Sugar	Baltimore, MD	CSXT switch - CR - LAL
Imperial Holly	Chicago, IL	CR - LAL
United Sugar	Chicago, IL	CR - LAL
Cerestar USA	Decatur, AL Chicago, IL	NS - CR - LAL CR - LAL
Cargill Incorporated	Dayton, OH Chicago, IL	CR - LAL

Principal Origins and Routings - Traffic Outbound from Sweeteners Plus Inc., Lakeville, NY

Miscellaneous rejected cars only



ADM
Corn Processing

3401 ROCHESTER ROAD LAKEVILLE, NY 14480 TEL: 716/346-2311

To: Surface Transportation Board

My name is George Bagley, Operations Manager of the ADM Corn Processing facility in Lakeville NY.

The purpose of this Verified Statement is to explain how the proposed acquisition of control of ConRail by CSX Transportation and Norfolk Southern and the division of ConRails' assets between them would have a significant adverse impact on our facility unless the Livonia Avon and Lakeville Railroad can effectively interchange with the Rochester and Southern Railroad in Genesee Junction Yard, Rochester NY.

We operate a sweetener distribution terminal in Lakeville NY that receives all incoming product of corn syrup and sugar by rail from the Livonia Avon and Lakeville Railroad. After processing, we truck to end users (Food Processors) located throughout Upstate New York. We employ 11 people and have a fleet of 7 tractor trailers. In 1995, we received 424 inbound tank cars with current traffic numbers the same. Our origin and routings for the traffic are shown in Exhibit 1.

Our Lakeville facility could not exist without access to efficient, highly responsive and low cost rail transportation. Inbound truck transportation would be impossible and noncompetitive because of the weight carrying capacity of the rail cars and the long distance from our parent company refineries. Liquid Sweeteners are sold in a highly competitive environment and ADM Corn Processing is not in a position to absorb increased transportation costs while attempting to continue to compete with products produced by other companies.

We are located here because of our ability to respond to short notice demands by our customers and we firmly believe our products must move by rail for the long haul and truck only for the final destination.

Our short line carrier, Livonia Avon and Lakeville Railroad provides on-demand switching with daily service which is not available from ConRail. We could not survive if ConRail was our delivering road.

With other areas in the Northeast getting more competitive from the proposed division of ConRail, we could be adversely impacted. Therefore, we strongly support the conditions sought by the Livonia Avon and Lakeville Railroad for our survival and theirs.

I declare the foregoing true and correct. I certify that I am qualified and authorized to file this Verified Statement.

George Bagley
Operations Manager

Executed on:
October 15, 1997

EXHIBIT 1

Principal Origins and Routings--Traffic Inbound to ADM Corn Processing, Lakeville NY

<u>Origin</u>	<u>Routing</u>
Cedar Rapids IA	CIC - Chicago - CR - LAL UP - Chicago - CR - LAL
Clinton IA	IMRL - Chicago - CR - LAL UP - Chicago - CR - LAL
Decatur IL	IC - Effingham - CR - LAL

Principal Origins and Routings--Traffic Outbound from ADM Corn Processing, Lakeville NY

Miscellaneous rejected cars only



AG NETWORK INCORPORATED

VERIFIED STATEMENT OF **LES COLE**

My name is Les Cole and I am the President of Ag Network Incorporated. The purpose of my verified statement is to explain how the proposed acquisition of control of Consolidated Rail Corporation ("Conrail") by CSX Transportation ("CSXT") and Norfolk Southern ("NS") and the division of Conrail's assets between CSXT and NS would have a significant adverse impact on Ag Network, absent the imposition of a condition which would permit the Livonia, Avon & Lakeville Railroad ("LAL") to effect interchange with the Rochester & Southern Railroad ("RSR") in Genesee Junction Yard.

Ag Network operates a grain processing and transshipment facility at Lakeville, New York that originates cars of locally grown corn and wheat for shipment by rail to receivers located throughout the Northeast, Southeast, and Midwest United States. Ag Network also operates a feed service at Avon, New York that receives inbound cars of feed. Ag Network employs 25 people at our Lakeville and Avon facilities, and leases a fleet of 35 rail cars to protect our equipment needs.

In 1995, Ag Network originated 212 cars of grain and received 36 inbound carloads of fertilizer. The most important origins and rail routings for this traffic are shown in Exhibit 1. Traffic has been generally stable since 1995 (although the mix continues to shift from year to year), with much the same origins and routings.

Our Lakeville and Avon facilities cannot not exist without access to efficient, highly responsive, and low cost rail transportation. Corn and wheat are commodities, on which profit margins are thin and transportation costs comprise a significant share of total costs. Truck transportation of grain is comparatively costly

"A Network of People and Services"

7591 Selden Road
P.O. Box 96
LeRoy, New York 14482-0096
(716) 768-8210 Fax (716) 768-4677

due to the superior weight-carrying capacity of rail cars. If Ag Network did not have efficient rail service to its Lakeville and Avon facilities, trucking costs would drive up the costs of our grain (and inbound fertilizer) to the point where our customers would search for alternative sources of product. Ag Network is not in a position to absorb increased transportation costs while attempting to continue to compete with grain processed by other companies.

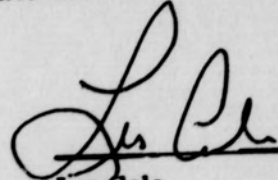
I want to emphasize that our ability to respond to the demands of customers requires good service from our short line carrier. LAL provides on-demand switching and other customized services that are not available from Conrail, and we count on LAL to monitor all aspects of the movement and billing of our rail shipments for us. Unfortunately, our experience demonstrates that Conrail does not pay the same attention to customer concerns when it considers the traffic "captive." Give the fact that other areas of the Northeast will see increased competition from the proposed division of Conrail, we feel that operating and marketing efforts will be even further diverted away from captive traffic and toward competitive lanes, adversely impacting the long term competitiveness of our Lakeville facility.

Ag Network is planning further expansion of its Lakeville facility, and the Town of Livonia has received a \$20,000 federal grant to study construction of a public highway that would enhance industrial development in the area between Ag Network's facility and Route 15, including LAL's Lakeville Yard. For investments of this type to be implemented, LAL must remain competitive with other locations around the Northeast.

For the foregoing reasons, Ag Network Incorporated strongly supports the conditions sought by the Livonia, Avon & Lakeville Railroad.

Verification

I, Les Cole, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.



Les Cole
President

Executed on: October 17, 1997

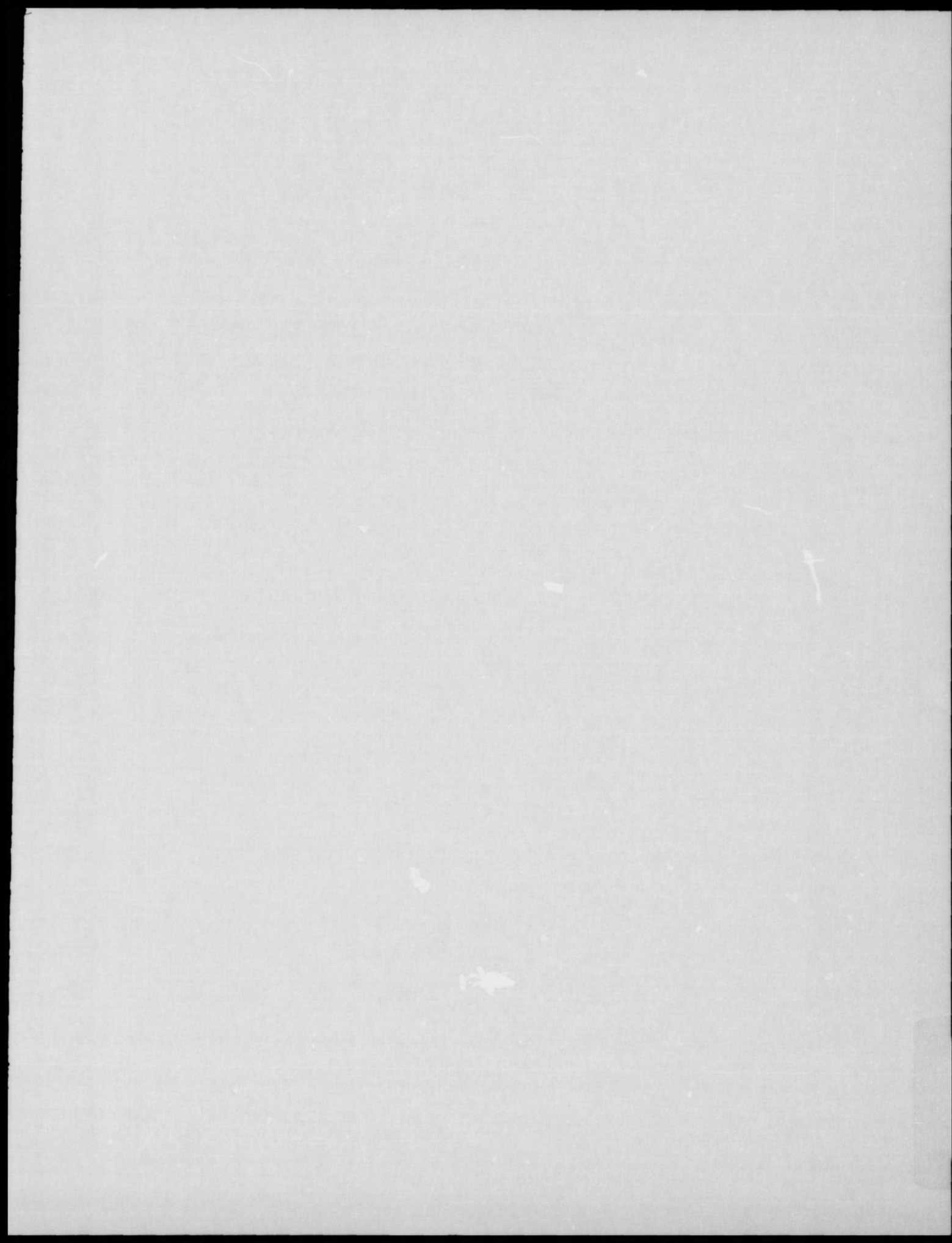
EXHIBIT 1

Principal Origins and Routings--Traffic Inbound to Ag Network Incorporated, Lakeville and Avon NY

<u>Origin</u>	<u>Routing</u>
Danville IL	NS switch - CR - LAL
Frankfort IN	NS switch - CR - LAL

Principal Origins and Routings--Traffic Outbound from Ag Network Incorporated, Lakeville and Avon NY

<u>Origin</u>	<u>Routing</u>
Various points in PA and MD, all future NS	LAL - CR



Congress of the United States

Washington, DC 20515

June 6, 1997

Mr. John Snow
Chairman & CEO
CSX Corporation
One James Center
Richmond, VA 23219

Mr. David Goode
Chairman & CEO
Norfolk Southern Corporation
Norfolk, VA 23510-2191

Dear Messrs. Snow and Goode:

You have both stated the restructuring of Conrail would increase rail competition in New York and northeastern transportation markets and we believe that increased rail competition will benefit the New York State economy. While we understand you will jointly file your restructuring application with the Surface Transportation Board in June, we remain concerned about the economic impact of your proposal on individuals and businesses in our state.

Not only have we been contacted by local elected officials concerned about the proposed restructuring, but Governor George Pataki recently issued specific objectives dealing with the restructuring of Conrail and its impact on New York. We concur with Governor Pataki's statement and want to highlight five objectives which we believe should be addressed in Conrail's restructuring. The objectives are to:

*Establish competitive rail access by linking all Canadian carriers to the Ports of New York and New Jersey and the cities of Buffalo, Rochester, Albany, Syracuse, Binghamton, and Utica, thereby enhancing economic opportunities under the North American Free Trade Agreement.

*Increase employment, as a result of increased freight movement and reduced prices, for New York workers and businesses.

X *Ensure the viability of New York State's regional and shortline railroads by elimination of competitive firewalls.

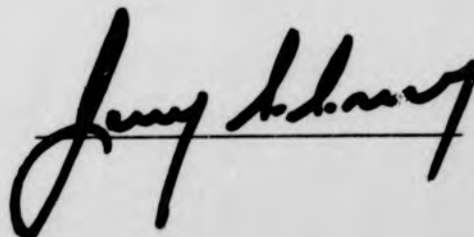
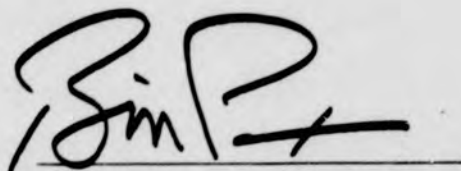
*Preserve the Southern Tier Extension as a vital and viable rail route.

*Facilitate competitive access to New York City and Long Island from Albany along the East Side of the Hudson River and continue international service to Montreal over the Montreal Secondary Line.

As representatives of the workers and businesses that are affected by this proposed restructuring, we stand ready to work with you to successfully accomplish our mutual goals.

Thank you for your consideration of this matter.

Sincerely,



John J. Ladd
John Quinn
James T. Walsh

Michael R. McIntyre
Arno Houghton

cc: Linda Morgan, Surface Transportation Board



**Genesee
Reserve
Supply, Inc.**

200 Jefferson Road, P.O. Box 20619
Rochester, NY 14602-0619

Area Code 716 • 292-7040
800 • 724-1000
FAX # 716 • 292-7046

October 16, 1997

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

RE: Finance Docket No. 33388

Dear Secretary Williams,

My name is Richard Buck and I am the Chief Operating Officer of Genesee Reserve Supply, Inc. I am writing this letter because I am concerned that the proposed division of Conrail's assets between CSA and NS will have an adverse impact on Genesee Reserve Supply. I would also like to express my support for the conditions sought by the Livonia, Avon & Lakeville Railroad, because I believe that the conditions sought by LAL will alleviate the adverse impact of the Conrail transaction on us.

Genesee Reserve Supply is in the business of distributing lumber and building supply products. Genesee Reserve supply has had a facility in Rochester since 1955. Presently, we have 22 employees working at this facility.

In 1995 Genesee Reserve Supply terminated 111 carloads at our Rochester facility.

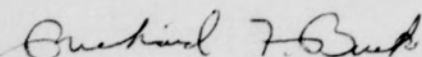
In the same year, the most important origins for our inbound traffic were primarily from the west coast. All of this traffic was interchanged to LAL by Conrail.

With the elimination of Conrail, I expect that NS and CSX will become intensely competitive with each other and do everything possible to preserve revenues on long-haul movements. NS and CSX have admitted as much. However, what might be in the interest of NS or CSX might not be in our best interest. In particular, I am very concerned that after the merger our incoming freight will experience unacceptable transit times or unreliable service, or not move at all, because of non-competitive NS/CSX joint line service or rates. The idea that NS/CSX service will be equivalent to single-line service available to other regions is not credible. Thus Genesee Reserve Supply will no longer have rail service on this move as an effective transportation option.

Our concerns could be alleviated if the Board removed the restriction that currently prevents LAL from interchanging traffic with the Rochester & Southern Railroad at Genesee Junction Yard. Rochester & Southern's connection with NS at Silver Springs will give Genesee Reserve Supply the benefit of an indirect short line connection to NS, which, together with LAL/CSX routings, would allow Genesee Reserve Supply its business without fear of losing rail service options. This would prevent the takeover of Conrail from having an adverse impact on us.

For the foregoing reasons, Genesee Reserve Supply strongly supports the requested conditions sought by LAL.

Respectfully submitted,



Richard F. Buck
Chief Operating Officer



4235 LAKEVILLE ROAD
BUILDING 2, SUITE A
GENESEO, NY 14454
(716) 243-4160 FAX 243-4824

**RESOLUTION : IMPACT OF CONRAIL MERGER ON
LIVINGSTON COUNTY RAILROADS**

WHEREAS, Norfolk Southern Corporation and CSX Corporation will shortly apply to the federal Surface Transportation Board (STB) for approval to jointly acquire and then divide between them the assets of Conrail, and the STB may require merger proponents to divest properties or otherwise grant relief to affected railroads, customers, and communities; and

WHEREAS, the Livonia, Avon, & Lakeville Railroad (LAL) and Rochester & Southern Railroad (R & S) are important components of Livingston County's economic development infrastructure; and

WHEREAS, the LAL is currently allowed to interchange freight traffic only with Conrail at Genesee Junction yard in the Town of Chili, notwithstanding the fact that R&S tracks lead into said yard; and

WHEREAS, Genesee Junction Yard is to be transferred to CSX, leaving intact the "firewall" that prevents LAL from interchanging traffic with R&S, and

WHEREAS, the LAL proposed to acquire Genesee Junction Yard for the purpose of connecting to the R & S (and vis R & S, to other carriers including the Norfolk Southern), and such a connection will benefit and strengthen LAL and R & S and increase shipping options for Livingston County industries and agriculture; and

WHEREAS, the LAL is captive to Conrail today because the federal agency that created Conrail in 1975 refused to let LAL acquire the Avon-Caledonia line of the Erie Lackawanna Railway.

THEREFORE, BE IT HEREBY RESOLVED that the Livingston County Chamber of Commerce supports the proposal of the Livonia, Avon & Lakeville Railroad to acquire Genesee Junction Yard for the purpose of interchanging freight traffic with the Rochester & Southern Railroad, and urges the Surface Transportation Board to condition its approval of a Conrail merger application upon acquisition of Genesee Junction yard by LAL.



LIVINGSTON COUNTY
INDUSTRIAL DEVELOPMENT AGENCY

LIVINGSTON COUNTY GOVERNMENT CENTER
6 COURT STREET, ROOM 306
GENESEO, NEW YORK 14454-1043



GEORGE TRABER III
CHAIRMAN

PHONE: 716-243-7124
FAX: 716-243-7126

RAYMOND SCIARRINO
COUNSEL

PATRICK ROUNTREE
DIRECTOR

June 10, 1997

Mr. William Burt
Livonia, Avon & Lakeville Railroad
3637 Rochester Road
Lakeville, NY 14480

Dear Mr. Burt:

Enclosed please find the resolution adopted by the Livingston County Industrial Development Agency at their meeting on Thursday, June 5, 1997.

Please feel free to call me if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Darlene Essler".

Darlene Essler
Administrative Assistant

Enclosure

g\ida\0087

**RESOLUTION REGARDING IMPACT OF CONRAIL MERGER
ON LIVINGSTON COUNTY RAILROADS**

WHEREAS, Norfolk Southern Corporation and CSX Corporation will shortly apply to the federal Surface Transportation Board (STB) for approval to jointly acquire and then divide between them the assets of Conrail, and the STB may require merger proponents to divest properties or otherwise grant relief to affected railroads, customers, and communities; and

WHEREAS, the Livonia, Avon & Lakeville Railroad (LAL) and Rochester & Southern Railroad (R&S) are important components of Livingston County's economic development infrastructure; and

WHEREAS, The LAL is currently allowed to interchange freight traffic only with Conrail at Genesee Junction Yard in the Town of Chili, notwithstanding the fact that R&S tracks lead into said yard; and

WHEREAS, Genesee Junction Yard is to be transferred to CSX, leaving intact the "firewall" that prevents LAL from interchanging traffic with R&S; and

WHEREAS, the LAL proposes to acquire Genesee Junction Yard for the purpose of connecting to the R&S (and via R&S, to other carriers including the Norfolk Southern), and such a connection will benefit and strengthen LAL and R&S and increase shipping options for Livingston County industries and agriculture; and

WHEREAS, the LAL is captive to Conrail today because the federal agency that created Conrail in 1975 refused to let LAL acquire the Avon-Caledonia line of the Erie Lackawanna Railway,

THEREFORE, BE IT HEREBY RESOLVED that the Livingston County Industrial Development Agency supports the proposal of the Livonia, Avon & Lakeville Railroad to acquire Genesee Junction Yard for the purpose of interchanging freight traffic with the Rochester & Southern Railroad, and urges the Surface Transportation Board to condition its approval of a Conrail merger application upon acquisition of Genesee Junction Yard by LAL.

Dated at Geneseo, New York
June 5, 1997



Progressive Turfgrass Products Through Research

High Point Mills - 1225 Lehigh Station Rd. - Box 400 Henrietta N.Y. 14467 (716) 334-4574 - Fax (716) 334-0847

October 15, 1997

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

re: Finance Docket No. 33388

Dear Secretary Williams:

My name is Ronald Vergilia and I am the President of High Point Mills. I am writing this letter because I am concerned that the proposed division of Conrail's assets between CSX and NS will have an adverse impact on High Point Mills. I would also like to express my support for the conditions sought by Livonia, Avon & Lakeville Railroad, because I believe that the conditions sought by LAL will alleviate the adverse impact of the Conrail transaction on us.

High Point Mills is in the business of blending and packaging fertilizer. High Point Mills has had a facility in Henrietta since 1946. Presently, we have seven employees working at this facility.

In 1996, High Point Mills terminated 9 carloads at our Henrietta facility.

In 1996, the most important origins for our inbound traffic were Central Florida, Saskatchewan Canada and Maumee, Ohio. All of this traffic was interchanged to LAL by Conrail via CSXT, CR, LAL - CN, CR, LAL - CR, LAL respectively. In the same year, we did not generate any outbound traffic.

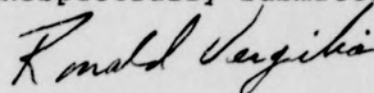
With the elimination of Conrail, I expect that NS and CSX will become intensely competitive with each other and do everything possible to preserve revenues on long-haul movements. NS and CSX have admitted as much. However, what might be in the interest of NS or CSX might not be in our best interest.

The idea that NS/CSX service will be equivalent to single-line service available to other regions is not credible. Thus High Point Mills will no longer have rail service on this move as an effective transportation option.

Our concerns could be alleviated if the Board removed the restriction that currently prevents LAL from interchanging traffic with the Rochester & Southern Railroad at Genesee Junction Yard. Rochester & Southern's connection with NS at Silver Springs will give High Point Mills the benefit of an indirect short line connection to NS, which, together with LAL/CSX routings, would allow High Point Mills to continue its business without fear of losing rail service options. This would prevent the takeover of Conrail from having an adverse impact on us.

For the foregoing reasons, High Point Mills strongly supports the requested conditions sought by LAL.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Ronald Vergilia".

Ronald Vergilia
President

KING COLE BEAN COMPANY

INCORPORATED

DRIED BEANS and GRAIN

99 WEST MAIN ST., AVON, NEW YORK 14414

October 17, 1997

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

Re: Finance Docket No. 33388

Dear Secretary Williams:

My name is Harold E. Cole III and I am the Treasure of King Cole Bean Inc.. I am writing this letter because I am concerned that the proposed division of Conrail's assets between CSX and NS will have an adverse impact on King Cole Bean Inc. I would also like to express my support for the conditions sought by the Livonia, Avon & Lakeville Railroad, because I believe that the conditions sought by LAL will alleviate the adverse impact of the Conrail transaction on us.

King Cole Bean Inc. is in the business of cleaning dry edible beans for processors and for export. Dry beans account for approximately 70 % of our total business. Rail is extremely important to us in the fact of receiving product from out west and shipping to various points where trucking is not feasible.

King Cole Bean Inc. has had a facility in Avon, NY since 1946 and in York, NY since 1979. Presently, we have 13 employees working at our facilities.

In 1995, King Cole Bean Inc. originated 15 - 20 carloads at our Avon plant.

In 1995, the most important destinations for our outbound traffic were many directions in the eastern part of the United States. Most of this traffic was interchanged by LAL to Conrail. Our traffic is then routed as follows to destinations: Pa, Fl TX, Northern NY, and the New England States.

In the same year, the most important origins for our inbound traffic were from Ohio and a few west states that have dry beans. All of this traffic was interchanged to LAL by Conrail.

With the elimination of Conrail, I expect that NS and CSX will become intensely competitive with each other and do everything possible to preserve revenues on long-haul movements. NS and CSX have admitted as much. However, what might be in the interest of NS or CSX might not be in our interest. In particular, I am very concerned that after the merger our direct route into the Pa markets will change dramatically in the pricing structure. We will also experience unacceptable transit times or unreliable service, or not move at all, because of non-competitive NS/CSX joint line service or rates. The idea that NS/CSX service will be equivalent to single-line service now

KING COLE BEAN COMPANY

INCORPORATED

DRIED BEANS and GRAIN

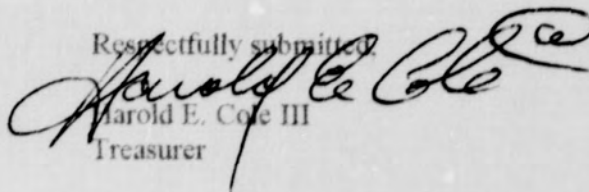
99 WEST MAIN ST., AVON, NEW YORK 14414

available to other regions is not credible. Thus King Cole Bean Inc. will no longer have rail service on this move as an effective transportation option.

Our concerns could be alleviated if the Board removed the restriction that currently prevents LAL from interchanging traffic with the Rochester & Southern Railroad at Genesee Junction Yard. Rochester & Southern's connection with NS at Silver Springs will give King Cole Bean Inc. the benefit of an indirect short line connection to NS, which, together with LAL/CSX routings, would allow King Cole Bean Inc. to continue its business without fear of losing rail service options. This would prevent the takeover of Conrail from having an adverse impact on us.

For the foregoing reasons, King Cole Bean Inc. strongly supports the requested conditions sought by LAL.

Respectfully submitted,



Harold E. Cole III
Treasurer

County of Livingston
Geneseo, New York 14454
Board of Supervisors



RESOLUTION NO. 97 - 168 SUPPORTING LIVONIA, AVON & LAKEVILLE RAILROAD (LAL) TO
ACQUIRE GENESEE JUNCTION YARD FOR THE PURPOSE OF
CONNECTING TO THE ROCHESTER & SOUTHERN RAILROAD (R&S)

WHEREAS, Norfolk Southern Corporation and CSX Corporation will shortly apply to the federal Surface Transportation Board (STB) for approval to jointly acquire and then divide between them the assets of Conrail, and the STB may require merger proponents to divest properties or otherwise grant relief to affected railroads, customers, and communities, and

WHEREAS, the Livonia, Avon & Lakeville Railroad (LAL) and Rochester & Southern Railroad (R&S) are important components of Livingston County's economic development infrastructure; and

WHEREAS, the LAL is currently allowed to interchange freight traffic only with Conrail at Genesee Junction Yard in the Town of Chili, notwithstanding the fact that R&S tracks lead into said yard; and

WHEREAS, Genesee Junction Yard is to be transferred to CSX, leaving intact the "firewall" that prevents LAL from interchanging traffic with R&S, and

WHEREAS, the LAL proposes to acquire Genesee Junction Yard for the purpose of connecting to the R&S (and via R&S, to other carriers including the Norfolk Southern), and such a connection will benefit and strengthen LAL and R&S and increase shipping options for Livingston County industries and agriculture, and

WHEREAS, the LAL is captive to Conrail today because the federal agency that created Conrail in 1975 refused to let LAL acquire the Avon-Caledonia line of the Erie Lackawanna Railway, now, therefore, be it

RESOLVED, that the Livingston County Board of Supervisors supports the proposal of the Livonia, Avon & Lakeville Railroad to acquire Genesee Junction Yard for the purpose of interchanging freight traffic with the Rochester & Southern Railroad, and urges the Surface Transportation Board to condition its approval of a Conrail merger application upon acquisition of Genesee Junction Yard by LAL, and be it further

RESOLVED, that copies of this resolution be sent to Congressmen L. William Paxon, and John LaFalce and Senators Daniel P. Moynihan and Alfonse D'Amato and the New York State Commissioner of Transportation.

Dated at Geneseo, New York
May 28, 1997

Richard J. Essler
RICHARD J. ESSLER, CHAIRMAN

Emery Jaeger
EMERY JAEGER

James E. Layland
JAMES E. LAYLAND

LIVINGSTON COUNTY
Board of Supervisors
GENESEO, NEW YORK

This is to Certify that I, the undersigned, Clerk of the Board of Supervisors of the County of Livingston, have compared the foregoing copy of resolution with the original resolution now on file in this office and which was duly adopted by the Board of Supervisors of said County on the 28th day of May, 1997 and that the same is a true and correct transcript of said resolution and of the whole thereof

In Witness Whereof I have hereunto set my hand and the official seal of the Board of Supervisors of the County of Livingston, this 29th day of May, 1997.

Virginia O'Brien
Clerk of the Board

MATTHEWS & FIELDS LUMBER OF HENRIETTA, INC.

RETAIL LUMBER MERCHANTS

1230 LEHIGH STATION ROAD P. O. BOX 247 PHONE: (716) 334-5500 HENRIETTA, NEW YORK 14467

OCTOBER 15, 1997

THE HONORABLE VERNON A. WILLIAMS
SECRETARY
SURFACE TRANSPORTATION BOARD
1925 K STREET, N.W.
WASHINGTON, DC 20423-0001

RE: FINANCE DCKET NO. 33388

DEAR SECRETARY WILLIAMS:

MY NAME IS SCOTT FIELDS AND I AM THE VICE PRESIDENT OF MATTHEWS & FIELDS LUMBER COMPANY. I AM WRITING THIS LETTER BECAUSE I AM CONCERNED THAT THE PROPOSED DIVISION OF CONRAIL'S ASSETS BETWEEN CSX AND NS WILL HAVE AN ADVERSE IMPACT ON MATTHEWS & FIELDS LUMBER. I WOULD ALSO LIKE TO EXPRESS MY SUPPORT FOR THE CONDITIONS SOUGHT BY THE LIVONIA, AVON & LAKEVILLE RAILROAD, BECAUSE I BELIEVE THAT THE CONDITIONS SOUGHT BY LAL WILL ALLEVIATE THE ADVERSE IMPACT OF THE CONRAIL TRANSACTION ON US.

MATTHEWS & FIELDS IS IN THE BUSINESS OF RETAIL LUMBER AND PLYWOOD SALES FOR NEW HOME CONSTRUCTION. MATTHEWS & FIELDS HAS HAD A FACILITY IN HENRIETTA SINCE 1958. PRESENTLY, WE HAVE 42 EMPLOYEES WORKING AT THIS FACILITY.

IN 1996, MATTHEWS & FIELDS ORIGINATED 45 CARLOADS AND TERMINATED 45 CARLOADS AT OUR HENRIETTA FACILITY.

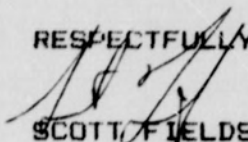
WITH THE ELIMINATION OF CONRAIL, I EXPECT THAT NS AND CSX WILL BECOME INTENSELY COMPETITIVE WITH EACH OTHER AND DO EVERYTHING POSSIBLE TO PRESERVE REVENUES ON LONG-HAUL MOVEMENTS. NS AND CSX HAVE ADMITTED AS MUCH. HOWEVER, WHAT MIGHT BE IN THE INTEREST OF NS AND CSX MIGHT NOT BE IN OUR INTEREST. IN PARTICULAR, I AM VERY CONCERNED THAT AFTER THE MERGER OUR SHIPMENTS TO HENRIETTA WILL EXPERIENCE UNACCEPTABLE TRANSIT TIMES OR UNRELIABLE SERVICE, OR NOT MOVE AT ALL, BECAUSE OF NON-COMPETITIVE NS/CSX JOINT LINE SERVICE OR RATES. THE IDEA THAT NS/CSX SERVICE WILL BE EQUIVALENT TO SINGLE-LINE SERVICE AVAILABLE TO OTHER REGIONS IS NOT CREDIBLE. THUS MATTHEWS & FIELDS WILL NO LONGER HAVE RAIL SERVICE ON THIS MOVE AS AN EFFECTIVE TRANSPORTATION OPTION.

OUR CONCERNS COULD BE ALLEVIATED IF THE BOARD REMOVED THE RESTRICTION THAT CURRENTLY PREVENTS LAL FROM INTERCHANGING TRAFFIC WITH THE ROCHESTER & SOUTHERN RAILROAD AT GENESEE JUNCTION YARD. ROCHESTER & SOUTHERN'S CONNECTION WITH NS AT SILVER SPRINGS WILL GIVE MATTHEWS & FIELDS THE BENEFIT OF AN INDIRECT SHORT LINE CONNECTION TO NS, WHICH,

TOGETHER WITH LAL/CSX ROUTINGS, WOULD ALLOW MATTHEWS & FIELDS TO CONTINUE ITS BUSINESS WITHOUT FEAR OF LOSING RAIL SERVICE OPTIONS. THIS WOULD PREVENT THE TAKEOVER OF CONRAIL FROM HAVING AN ADVERSE IMPACT ON US.

FOR THE FOREGOING REASONS, MATTHEWS & FIELDS STRONGLY SUPPORTS THE REQUESTED CONDITIONS SOUGHT BY LAL.

RESPECTFULLY SUBMITTED,


SCOTT FIELDS
VICE PRESIDENT

Hillside Crop Service

2305 Lakeville Road • Avon, New York 14414

Tel: 716-226-2700 Fax: 716-226-9293

October 15, 1997

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

Re: Finance Docket No. 33388

Dear Secretary Williams:

My name is Rodney Lown and I am the plant manager of Hillside Crop Service. I am writing this letter because I am concerned that the proposed division of Conrail's assets between CSX and NS will have an adverse impact on Hillside. I would also like to express my support for the conditions sought by the Livonia, Avon & Lakeville Railroad, because I believe that the conditions sought by LAL will alleviate the adverse impact of the Conrail transaction on us.

Hillside is in the business of dry and liquid fertilizers with our main facility located in Avon since 1987. Presently, we have 15 employees working at this plant.

In 1995 Hillside Crop Service had 27 inbound cars with the majority originating from Florida. The last two years we have had a substantial increase of inbound railcars. All of this traffic was interchanged to LAL by Conrail.

With the elimination of Conrail, I expect the NS and CSX will become intensely competitive with each other and do everything possible to preserve revenues on long-haul movements. NS and CSX have admitted as much. However, what might be of interest of NS or CSX might not be in our interest. In particular, I am very concerned that after the merger our inbound cars from Florida will experience unacceptable transit times or unreliable service, or not move at all, because of non-competitive NS/CSX joint line service or rates. The idea that NS/CSX service will be equivalent to single-line service available to other regions is not credible. Thus, Hillside Crop will no longer have rail service on this move as an effective transportation option.

Our concerns could be alleviated if the Board removed the restriction that currently prevents LAL from interchanging traffic with the Rochester & Southern Railroad at Genesee Junction Yard. Rochester & Southern's connection with NS at Silver Springs will give us the benefit of indirect short line connection to NS, which, together with LAL/CSX routings, would allow us to continue its business without fear of losing rail service options. This would prevent the takeover of Conrail from having an adverse impact on us.

For the foregoing reasons, Hillside strongly supports the requested conditions sought by LAL.

Sincerely,
Rodney Lown
Rodney Lown
Plant Manager

STB FD 33388 (Sub 39) 10-21-97 A 182865 3/3



J. MacKenzie LTD.
Precision Paper & Board Sheeting

October 16, 1997

The Hon. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

Re: Finance Docket No. 33388

Dear Secretary Williams:

My name is Steven L. Ray and I am the General Manager/Team Leader for J. MacKenzie Ltd. I am writing this letter because I am concerned that the proposed division of Conrail's assets have an adverse impact on the rail shipping options available to our company. I would also like to support the conditions sought by the Livonia, Avon & Lakeville Railroad, which will alleviate the adverse impact of the Conrail transaction.

J. MacKenzie Ltd. is in the business of converting rolls of printing paper into sheets and then distributing product throughout a 100-mile radius of Rochester. We also generate outbound scrap paper movements and inbound wood for skids. Our business is extremely service sensitive, and requires us to be prepared to deliver specific types of paper to customers in as little as four hours.

We are currently in the process of relocating our operations to a larger facility located on Commerce Drive in Henrietta, New York. An important factor that led us to choose this site was the availability of rail service by the LAL, coupled with their willingness to reconstruct and rehabilitate approximately one half mile of disused and buried sidetrack in less than two months. Our first carload of paper is expected next week, and annual volumes should be quite substantial.

Our paper is sourced from multiple origins, including points served by Conrail, CSX, NS and other railroads. Given the very great service sensitivity of our business, it is unlikely that any movement that requires the cooperation of two competitors--CSX and NS--is going to remain competitive in the long run. It is therefore important for J. MacKenzie Ltd. to have access to both CSX and NS.

Our concerns can be alleviated if the Board removes the restriction that currently prevents LAL from interchanging traffic with the Rochester & Southern Railroad at Genesee Junction Yard. Rochester & Southern's connection with NS at Silver Springs will give J. MacKenzie Ltd. the access to both CSXT and NS that will preserve all of our transportation options and alleviate the adverse impact of the proposed division of Conrail.

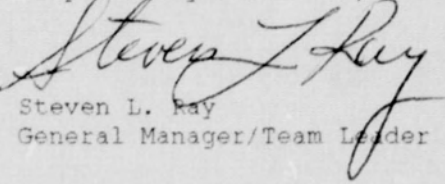
2180 Brighton-Henrietta Town Line Road • Rochester, New York 14623

Phone: 716-424-1210 • FAX: 716-424-3186

October 16, 1997
Page 2

For the foregoing reasons, J. MacKenzie Ltd. strongly supports the requested conditions sought by LAL.

Respectfully submitted,



Steven L. Ray
General Manager/Team Leader



Kraft Foods

James R. Hurckes
Director of Transportation
Operations/Pricing
(608) 285-6750

October 17, 1997

The Honorable Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington DC 20423-0001

Dear Secretary Williams:

As the Director of Transportation Operations/Pricing for Kraft Foods, Inc. I am writing this letter because I am concerned that the proposed division of Conrail's assets between CSX and NS will have an adverse impact on Kraft Foods, Inc. by placing hardships on our Avon, NY plant. I would also like to express my support for the conditions sought by the Livonia, Avon & Lakeville Railroad because I believe these conditions will alleviate the adverse impact of the Conrail transaction with regard to rail service at our Avon, NY plant.

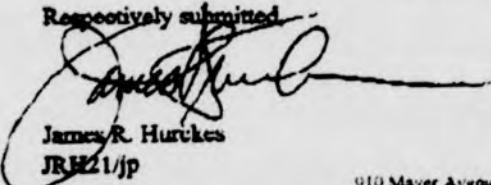
Kraft Foods, Inc. is in the business of producing and marketing food products throughout the United States. In particular to this letter, our Avon, NY plant (served by the LAL since 1995) produces *Oscar Mayer* branded *Lunchables* product and *Cool Whip* branded dessert topping products. The facility is the only production point for *Cool Whip* in the United States, and raw material service to the plant is a primary concern of Kraft. Furthermore there are potential outbound movements being investigated.

In the first 9 months of 1996, Kraft terminated 96 carloads at Avon. All of this traffic was interchanged to LAL by Conrail. The most important origins for this traffic were Dayton, OH and additional points in Iowa. With the success of our business we expect this traffic to increase significantly in 1998.

As we have experienced with past rail mergers, I expect that NS and CSX will become intensely competitive with each other and do everything possible to preserve revenues on long-haul movements. NS and CSX have admitted as much. However, what might be best in the interests of NS or CSX might not be best for our operations or the economy in whole. In particular, I am concerned that after the merger our movements from the Chicago gateway or potential Indiana and Ohio points (not on CSX) will experience unacceptable transit times or unreliable service, or not move at all due to non-competitive NS/CSX joint line service or rates. The idea that NS/CSX service will be equivalent to single line service to other regions is not credible. Thus Kraft Foods, Inc. will no longer have direct rail service to our plant, and will have to rely on less economical modes of transportation.

Our concerns could be alleviated if the Board removed the restriction that currently blocks LAL from interchanging traffic with the Rochester & Southern Railroad at Genesee Junction Yard. Rochester & Southern's connection with NS at Silver Springs will give Kraft Foods, Inc. the benefit of an indirect short line connection to NS, which together with LAL/CSX routings, would allow Kraft Foods, Inc. to continue its business without fear of losing rail service options.

Respectfully submitted,



James R. Hurckes
JRH21/jp

910 Mayer Avenue Madison, WI 53704 (608) 241 3311

Hillside Crop Service

2305 Lakeville Road • Avon, New York 14414

Tel: 716-226-2700 Fax: 716-226-9293

October 15, 1997

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

Re: Finance Docket No. 33388

Dear Secretary Williams:

My name is Rodney Lown and I am the plant manager of Hillside Crop Service. I am writing this letter because I am concerned that the proposed division of Conrail's assets between CSX and NS will have an adverse impact on Hillside. I would also like to express my support for the conditions sought by the Livonia, Avon & Lakeville Railroad, because I believe that the conditions sought by LAL will alleviate the adverse impact of the Conrail transaction on us.

Hillside is in the business of dry and liquid fertilizers with our main facility located in Avon since 1987. Presently, we have 15 employees working at this plant.

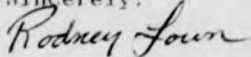
In 1995 Hillside Crop Service had 27 inbound cars with the majority originating from Florida. The last two years we have had a substantial increase of inbound railcars. All of this traffic was interchanged to LAL by Conrail.

With the elimination of Conrail, I expect the NS and CSX will become intensely competitive with each other and do everything possible to preserve revenues on long-haul movements. NS and CSX have admitted as much. However, what might be of interest of NS or CSX might not be in our interest. In particular, I am very concerned that after the merger our inbound cars from Florida will experience unacceptable transit times or unreliable service, or not move at all, because of non-competitive NS/CSX joint line service or rates. The ideas that NS/CSX service will be equivalent to single-line service available to other regions is not credible. Thus, Hillside Crop will no longer have rail service on this move as an effective transportation option.

Our concerns could be alleviated if the Board removed the restriction that currently prevents LAL from interchanging traffic with the Rochester & Southern Railroad at Genesee Junction Yard. Rochester & Southern's connection with NS at Silver Springs will give us the benefit of indirect short line connection to NS, which, together with LAL/CSX routings, would allow us to continue its business without fear of losing rail service options. This would prevent the takeover of Conrail from having an adverse impact on us.

For the foregoing reasons Hillside strongly supports the requested conditions sought by LAL.

Sincerely,



Rodney Lown
Plant Manager

County of Livingston
Geneseo, New York 14454
Board of Supervisors



RESOLUTION NO. 97 - 168 SUPPORTING LIVONIA, AVON & LAKEVILLE RAILROAD (LAL) TO
ACQUIRE GENESEE JUNCTION YARD FOR THE PURPOSE OF
CONNECTING TO THE ROCHESTER & SOUTHERN RAILROAD (R&S)

WHEREAS, Norfolk Southern Corporation and CSX Corporation will shortly apply to the federal Surface Transportation Board (STB) for approval to jointly acquire and then divide between them the assets of Conrail, and the STB may require merger proponents to divest properties or otherwise grant relief to affected railroads, customers, and communities; and

WHEREAS, the Livonia, Avon & Lakeville Railroad (LAL) and Rochester & Southern Railroad (R&S) are important components of Livingston County's economic development infrastructure; and

WHEREAS, the LAL is currently allowed to interchange freight traffic only with Conrail at Genesee Junction Yard in the Town of Chili, notwithstanding the fact that R&S tracks lead into said yard; and

WHEREAS, Genesee Junction Yard is to be transferred to CSX, leaving intact the "firewall" that prevents LAL from interchanging traffic with R&S; and

WHEREAS, the LAL proposes to acquire Genesee Junction Yard for the purpose of connecting to the R&S (and via R&S, to other carriers including the Norfolk Southern), and such a connection will benefit and strengthen LAL and R&S and increase shipping options for Livingston County industries and agriculture; and

WHEREAS, the LAL is captive to Conrail today because the federal agency that created Conrail in 1975 refused to let LAL acquire the Avon-Caledonia line of the Erie Lackawanna Railway, now, therefore, be it

RESOLVED, that the Livingston County Board of Supervisors supports the proposal of the Livonia, Avon & Lakeville Railroad to acquire Genesee Junction Yard for the purpose of interchanging freight traffic with the Rochester & Southern Railroad, and urges the Surface Transportation Board to condition its approval of a Conrail merger application upon acquisition of Genesee Junction Yard by LAL, and be it further

RESOLVED, that copies of this resolution be sent to Congressmen L. William Paxon, and John LaFalce and Senators Daniel P. Moynihan and Alfonse D'Amato and the New York State Commissioner of Transportation.

Dated at Geneseo, New York
May 28, 1997

Richard J. Essler
RICHARD J. ESSLER, CHAIRMAN

Emery Jaeger
EMERY JAEGER

James E. Layland
JAMES E. LAYLAND

LIVINGSTON COUNTY
Board of Supervisors
GENESEO, NEW YORK

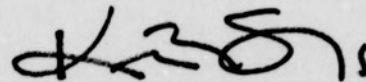
This is to Certify that I, the undersigned, Clerk of the Board of Supervisors of the County of Livingston, have compared the foregoing copy of resolution with the original resolution now on file in this office and which was duly adopted by the Board of Supervisors of said County on the 28th day of May, 1997 and that the same is a true and correct transcript of said resolution and of the whole thereof.

In Witness Whereof I have hereunto set my hand and the official seal of the Board of Supervisors of the County of Livingston, this 29th day of May, 1997.

Virginia Olmsted
Clerk of the Board

CERTIFICATE OF SERVICE

I certify that I have served a conformed copy of the foregoing responsive application in Finance Docket No. 33388, and a conformed copy of the verified statements, appendices and exhibits in support of the responsive application, by first class mail properly addressed, with postage pre-paid or by more expeditious manner of delivery upon (i) all persons required to be served as set forth in 49 C.F.R. § 1180.4(c)(5), (ii) Administrative Law Judge Jacob Leventhal and (iii) all Parties of Record on the Service List.

A handwritten signature in black ink, appearing to read 'K. M. Sheys', is written over a horizontal line.

Kevin M. Sheys

Dated: October 21, 1997