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February 23, 1998

VIA FEDERAL EXPRESS

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

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

Finance Docket No. 33388 (Sub-No. 59)
Wisconsin Central Ltd. -- Purchase -- Line of
The Baltimore & Ohio Chicago Terminal Railroad Company

Dear Secretary Williams:

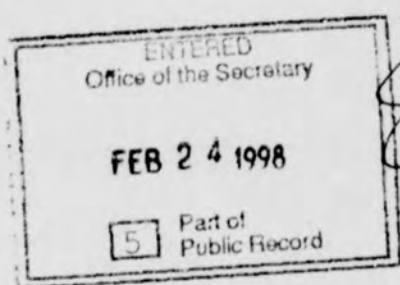
Wisconsin Central Ltd. today filed its Brief (WC-18) in the above-captioned proceedings. WC-18 was designated as highly confidential and thus was filed under seal.

I am now enclosing for placement in the public record an original and twenty-five copies of a redacted version of WC-18. Copies of this pleading have been served on all parties of record who do not appear on the highly confidential restricted service list.

Please feel free to contact me should any questions arise regarding this filing. Thank you for your assistance on this matter.

Respectfully submitted,

Thomas J. Litwiler
Attorney for Wisconsin Central Ltd.



TJL:tl

Enclosures

cc: "Public" Parties of Record

[PUBLIC]

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WC-18

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388

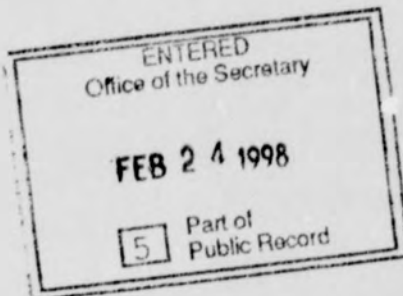
CSX CORPORATION AND CSX TRANSPORTATION, INC., NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY
-- CONTROL AND OPERATING LEASES/AGREEMENTS --
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION



FINANCE DOCKET NO. 33388 (SUB-NO. 59)

WISCONSIN CENTRAL LTD.
-- PURCHASE --
LINE OF THE BALTIMORE & OHIO
CHICAGO TERMINAL RAILROAD COMPANY

**BRIEF OF
WISCONSIN CENTRAL LTD.**



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Dated: February 23, 1998

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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
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FINANCE DOCKET NO. 33388 (SUB-NO. 59)

WISCONSIN CENTRAL LTD.
-- PURCHASE --
LINE OF THE BALTIMORE & OHIO
CHICAGO TERMINAL RAILROAD COMPANY

**BRIEF OF
WISCONSIN CENTRAL LTD.**

I. INTRODUCTION

Wisconsin Central Ltd. ("WCL") is submitting this brief in support of its Responsive Application (WC-9) in Finance Docket 33388 (Sub-No. 59) and requested conditions (WC-10) in this proceeding.

In the absence of the merger proposed by the Primary Applicants herein, WCL today has several options available to make connections with other rail carriers in the Chicago terminal. These options include using the services or facilities of the Indiana Harbor Belt Railroad Company ("IHB"), The Belt Railway Company of Chicago ("BRC") and The Baltimore & Ohio Chicago Terminal Railroad Company ("B&OCT"). These options represent competitive and service alternatives. The benefit of these alternatives is most directly felt by WCL shippers in Wisconsin and the Upper Peninsula of Michigan who rely upon efficient interchange through the Chicago terminal.

Applicants have proposed a merger which achieves substantial benefits to the shipping public in much of the eastern portion of the United States. And for that reason, WCL has previously stated its support for the merger.

However, at the same time, WCL has raised with Applicants and the Surface Transportation Board ("Board") grave concerns that merger benefits in the east will be the occasion of adverse service and competitive impacts in the Chicago terminal. Specifically, WCL has shown that after the merger, shippers located on WCL will lose existing alternatives for moving their traffic through Chicago and will be operationally and managerially subject to the control of a single carrier -- CSX Transportation, Inc. ("CSXT"). This unacceptable circumstance arises because post-merger, CSXT will: a) own B&OCT, as it does today; b) jointly with Norfolk Southern Railway Company ("NS") own the controlling 51% interest of IHB; and c) under the NS-CSXT Agreement governing their joint ownership and control of IHB (see Railroad Control Application, Exhibit FF, CSX/NS-25, Vol. 8C at 693), have exclusive authority over the management of IHB (particularly at IHB's Blue Island Yard) and over dispatching on all of IHB's lines in the Chicago terminal. WCL's routes to BRC, a potential service alternative for some movements, whether over B&OCT's Altenheim Subdivision or IHB, will be controlled by CSXT.

To resolve this adverse service and anticompetitive effect, and yet not deprive Applicants of benefits sought in the merger, WCL proposed to Applicants: a) that WCL be allowed to purchase portions of B&OCT's Altenheim Subdivision, currently

predominantly used by WCL, which would allow WCL (in conjunction with the following item) access to connections with BRC and other carriers (including NS) outside CSXT's control; b) that WCL be allowed to purchase a portion of Consolidated Rail Corporation ("Conrail") track, known as the Panhandle Line, which NS would obtain after the merger, again to allow independent connections with other carriers, including NS, without the control of CSXT; c) that an independent authority consisting of user carriers be established to dispatch IHB, preserving IHB's operational independence as an intermediate switching carrier; and d) that CSXT be available for direct interchange in Chicago without the imposition of B&OCT as an intermediate switching carrier.

Early in the proceedings, NS and WCL entered into an agreement which provides for WCL operation of the Panhandle Line after conclusion of the merger. WC-10 at 12. Despite efforts to do so, WCL reached no agreement with CSXT concerning Chicago operations or the Altenheim Subdivision. WC-16 at 18-20.

Accordingly, WCL submits that the Board must grant its Responsive Application in order to prevent serious service and competitive harm to WCL shippers. Additionally the Board should impose a neutral dispatching condition on IHB to prevent the loss of the independence of IHB and impose a condition that CSXT be deemed available for direct interchange in the Chicago terminal. It should be noted that none of these requested Board actions are intended to preserve WCL's traffic or revenues from post merger competition but are rather intended to preserve an efficient and competitive Chicago interchange.

II. RELEVANT STANDARDS

The statutory provisions governing the Board's consideration of rail consolidations are set forth at 49 U.S.C. §§ 11321-27. The central focus in reviewing control applications under the statute is whether the proposed transaction is "consistent with the public interest." See 49 U.S.C. § 11324(c). The Board's authority to impose conditions within the public interest on rail consolidation transactions is broad.¹

Historically, beginning with the enactment of the Interstate Commerce Act, Congress emphasized the importance of maintaining a "national railroad network" while preventing monopoly abuses. H.R. Conf. Rep. No. 1430, 96th Cong., 2nd Sess. 1980 ("Conf. Rep."). This policy was primarily achieved through railroad consolidation and price controls. Starting in at least 1976, with the passage of The Railroad Revitalization and Regulatory Reform Act of 1976 ("4R Act"), Pub. L. 94-210, the regulatory regime began to emphasize "greater reliance" on the marketplace in order to maintain the national rail network. The

¹ See 49 U.S.C. § 11324(c); Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company -- Control and Merger -- Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp. and The Denver and Rio Grande Western Railroad Company, Finance Docket No. 32760 (STB served August 12, 1996) ("UP/SP") at 144; Burlington Northern, Inc. and Burlington Northern Railroad Company -- Control and Merger -- Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway Company, Finance Docket No. 32549 (ICC served August 23, 1995) ("BN/Santa Fe") at 55; and Union Pacific -- Control -- Missouri Pacific, Western Pacific, 366 I.C.C. 459, 562 (1982), aff'd sub nom. Southern Pacific Transp. Co. v. ICC, 736 F.2d 708 (D.C. Cir. 1984), cert. denied, 469 U.S. 1208 (1985) ("UP/MP/WP").

policy of promoting intramodal railroad competition was strengthened by Congress through the enactment of the Staggers Rail Act of 1980, Pub. L. 96-448, and most recently by the ICC Termination Act of 1995, Pub. L. 104-88, 109 Stat. 803.

Along with the rise of competition and marketplace restraint as a key element of regulatory policy, Congress also has consistently maintained that it is the goal of modern legislation to preserve a "safe, adequate, economical, efficient and financially stable system." Conf. Rep. at section 3. Consistent with this policy, the statute makes it clear that in all merger proceedings the Board "shall consider at least" the "effect of the proposed transaction on the adequacy of transportation to the public." 49 U.S.C. § 11324(b)(1) (emphasis added). Furthermore, it is the policy of the United States to "ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the public and the national defense." 49 U.S.C. § 10101(4). Thus, the preservation of competition and adequate rail service are the twin goals which Congress has directed the Board to implement in overseeing and approving rail mergers or consolidations under 49 U.S.C. § 11323.

Within this statutory and policy framework, the Board and its predecessor have developed specific criteria to govern the imposition of conditions. While historically these criteria have most often been applied to redress merger-related anticompetitive impacts, the criteria are clearly intended to

apply to all harms arising from a proposed control or merger transaction, not just competitive ones. The well-known criteria require that:

Absent a condition, the proposed railroad consolidation may produce effects harmful to the public interest (such as a reduction in competition or a adverse impact on the adequacy of transportation);

An appropriate condition will ameliorate (or eliminate) the harmful effects;

The condition is operationally feasible; and

The condition will yield public benefits outweighing any reduction in the benefits of the railroad consolidation.

See, e.g., UP/SP at 144. In considering the public interests and benefits, the Board also needs to consider such matters as the interchanges that will be available after a merger and whether such interchanges satisfy the requirements of 49 U.S.C. § 10742 for "reasonable, proper, and equal facilities that are within its [carriers] power to provide." The Conference Report accompanying the passage of the ICC Termination Act of 1995 noted with respect to § 10742 that "[t]his provision is the cornerstone of the integrity of the national rail system" H. R. Conf. Rep. No. 104-422, 104th Cong., 1st Sess. 1995, p. 177

While, as noted, the focus in prior merger cases often has been on competitive issues such as 3-to-2 or 2-to-1 reductions in the number of carriers serving a particular point, the adequacy of transportation service has remained an important statutory and practical consideration.² And the Board itself has

² See, e.g., Union Pacific Corp., et al. -- Control -- MO-KS-TX R. Co., et al., 4 I.C.C.2d 409, 428-29 (1988) ("In our

already noted the heightened and specific importance which service and transportation adequacy considerations will play in analyzing the Primary Applicants' unprecedented proposal to divide Conrail and integrate its parts into their respective rail systems:

We [the STB] are required, by statute, to consider, among other things, "the effect of the proposed transaction on the adequacy of transportation to the public." 49 U.S.C. 11324(b)(1). Arrangements such as those affecting the North Jersey Shared Assets Area can have a significant impact on the adequacy of transportation. [Therefore] we will require applicants to demonstrate, in advance, that . . . [the] operating arrangements that applicants have in mind will be feasible and will not unduly impact commuter and other rail operations. . . .

Decision No. 44 (STB served October 15, 1997) at 4.

In the nationally critical Chicago terminal, similar considerations will be essential in order to maintain the adequacy of rail transportation and competitive balance. The severe operational and service problems which have arisen in the Houston area in the wake of the UP/SP merger confirm the wisdom and necessity of addressing competitive and service issues in this proceeding with respect to the Chicago terminal. The following sets forth major areas of both service and competitive harms from the merger which need to be remedied and the narrowly drawn remedies for which WCL argues.

determination of whether a consolidation is consistent with the public interest, we examine its effect on the adequacy of transportation to the public.").

III. CURRENT AND PROPOSED CHICAGO OPERATIONS

A. Switching Services

As an initial matter, it is important to appreciate the extent to which the proposed merger will in fact change the operational control of switching in the Chicago Terminal. Today there are three carriers that hold themselves out as being in the business of providing intermediate switching services to line haul carriers in the Chicago terminal. These include BRC, B&OCT and IHB.

B&OCT is the 100% owned subsidiary of CSXT and, in fact, does not act as a true intermediate switching carrier. Over the last ten years,

(See Appendix A for detailed discussion.)

³ WC-16 at 41-

42.

In stark contrast, IHB is a true intermediate switching carrier competing for business through the means of market-based rates. Earlier in this proceeding, the Board found that IHB, although owned 51% by Conrail, is today in fact allowed by

³ This is a remarkable figure given that CSXT would have this Board believe that B&OCT is a true intermediate switching carrier. For example, John Booth's verified statements asserts that "The B&OCT performs switching services to and from local industries as well as intermediate switching between railroads." Booth V.S. at 3. Mr. Booth, however, omits the fact that

Conrail to function as an independent switching carrier, operating at arms' length and free from Conrail operational control:

IHB operates as a switching carrier for most major railroads operating from and to the Chicago area. The commercial relationships of Conrail and IHB as interconnecting railroads are governed by agreements negotiated at arms' length, as they are with other railroads with whom IHB connects. Conrail does not dictate to or unilaterally exercise dominion over IHB.

Decision No. 53 (STB served November 10, 1997) at 4.

Finally, there is BRC which, much like IHB, also operates as a true intermediate switching carrier. CSXT presently owns a 25% interest in BRC.

After the proposed Conrail merger, the face of Chicago switching will drastically change. As for B&OCT, CSXT will continue in absolute control. Amazingly, despite the importance to CSXT of B&OCT,⁴ CSXT has conducted no study of "what impact they contemplate subsequent to approval of the Application ... on the operations of B&OCT/and or the operation of CSXT over the tracks of B&OCT." Applicants' Responses to WCL's First Set of Discovery, WC-10 at 186-87. They never considered the number of cars which B&OCT will handle in switch movements, the charges to be levied for intermediate switch business, or even carriers with whom CSXT may conduct direct interchange in Chicago post-merger.

⁴ In one internal document produced in discovery,

As for matters of blocking expected from interlining carriers and CSXT's own operations over B&OCT post merger, CSXT refers only to provisions of its Operating Plan as providing details. WC-10 at 188-89.

The post-merger situation with respect to IHB is quite different. The Primary Application technically proposes that IHB will remain part of Conrail, but only under special governance arrangements whereby CSXT will control IHB's dispatching. IHB's General Manager will be appointed by CSXT. See "Agreement Relating to the Contractual Rights and Ownership Interest of Consolidated Rail Corporation with Respect to the Indiana Harbor Belt Railroad Company," CSX/NS-25, Vol. 8C at 693 (hereinafter, the "IHB Agreement"), ¶¶ 2(b)(1), 2(d)(2).⁵ Effective day-to-day control of IHB's Chicago Terminal operations thus will be in CSXT's hands. Disputes that CSXT and NS may have with respect to IHB governance and operation are resolvable through arbitration with no express decisional criteria. The degree of CSXT control is evident from its Operating Plan for Chicago, which in no uncertain terms sets forth what it intends to accomplish,

⁵ The IHB Agreement was executed by the respective corporate parents of CSXT and NS. Conrail, Canadian Pacific ("CP/Soo") (IHB's 49% owner) and IHB are not parties to the Agreement. Section 2(b)(1) of the IHB Agreement provides that CSXT will select the IHB's General Manager, subject to the limited concurrence of NS. Section 2(d)(2) provides that dispatching on IHB will be controlled by CSXT, again subject to limited concurrence and arbitration rights held by NS. Another provision of the IHB Agreement allocates IHB's Blue Island Yard to CSXT, subject only to a condition that NS "be permitted to use the Blue Island Yard solely for purposes of moving, switching or handling traffic which is to and/or from IHB switched industries." IHB Agreement, ¶ 2(e)(1).

including shifting traffic from Blue Island Yard to Barr Yard to better suit CSXT's operations. See generally Application, CSX Statements, Vol. 2A at 454-460; CSX Operating Plan, Vol. 3A, pp. at 18-20, 180-88.

Mr. Orrison states that "[u]se of IHB's routes and yard facilities will form an essential part of CSX' service to and through Chicago, and CSX has planned major capital improvements in IHB's facilities which will redound to its benefit and to ... other rail carriers" Orrison, V.S., Application Vol. 2A at 455. As an example, CSXT will use IHB's Blue Island Yard for staging its own through trains and will move local IHB traffic presently using Blue Island Yard to B&OCT's Barr Yard:

IHB's Blue Island Yard, a major facility within the Chicago area, will be rehabilitated at CSX's expense to become a regional hump yard. Its primary mission will be to support gateway traffic flows. To the extent practicable, local switch service will be focused in the BOCT's Barr Yard.

Orrison V.S., CSX/NS-20, Vol. 3A at 18-19.⁶ CSXT elsewhere explains that approximately 60% of the cars currently handled at Blue Island Yard are such local industry cars. CSXT Operating Plan, CSX/NS-20 at 184.

⁶ See, for example, a CSXT workpaper discussing

CSXT additionally intends to

WC-10 at 108. In short,
post-merger, CSXT will control and operate IHB.⁷

Finally, post-transaction, CSXT will continue its 25% ownership of BRC. With NS, CSXT will be the largest shareholder of BRC. With respect to BRC, CSXT

(Id. at 111).

The net result is that post merger, CSXT will continue to own and control B&OCT, become a significant beneficial owner

⁷ In fact, the degree of control is so significant, the Board may want to consider whether CSXT should not also be required to separately seek control authority for its intended operation of IHB separate and apart from the authority it will obtain to control Conrail which will own 51% of IHB stock. Since CSXT will appoint the operations manager, control dispatching on IHB's lines and control the Blue Island Yard, and at the same time have a substantial equitable stock ownership position, CSXT may well be in fact controlling IHB through the IHB Agreement without the benefit of obtaining required STB approval. See Union Pacific Corp., et al., -Control- CNW, 9 I.C.C.2d 939 (1993):

In determining whether one person controls another, the Commission has rejected any arbitrary formula based upon percentage of stock ownership, and instead, looked to a number of factors, including distribution of the remaining stock, the ability to elect directors and otherwise control or influence decision making machinery, and the existence of management, marketing, operating and financial ties.

Id. at 947.

of IHB and pursuant to contractual arrangements with NS, control IHB operations in Chicago, and continue as the largest owner (along with NS) of BRC. CSXT will become the dominant and controlling carrier with respect to all day-to-day Chicago terminal intermediate switching operations.

B. Impact on CSXT, NS and Conrail Traffic

In 1996, WCL interchanged over 200,000 carloads in the Chicago terminal. Of this volume, WCL traffic to/from NS was approximately 24,800 cars; traffic to/from CSXT was approximately 41,800 cars; and traffic to/from Conrail was approximately 24,700 cars. Verified Statement of William R. Schauer ("Schauer V.S."), WC-10 at 44. As Applicants essentially propose splitting the Conrail assets between them. Traffic formerly interchanged with Conrail will now be interchanged with either CSXT or NS.

Under operations proposed in the Primary Application, virtually all WCL traffic interchanged with either NS or CSXT at Chicago (including former Conrail traffic) will be subject to CSXT control in Chicago. That is not the case today. Today, WCL interchanges cars directly with NS at Calumet Yard, principally via trackage rights over IHB. CSXT has no present control or influence over IHB, and thus no control over WCL's NS interchange traffic. Post-transaction, however, NS intends to conduct interchange with WCL at what is now Conrail's Ashland Avenue Yard. WCL's new route to NS at Ashland Avenue will be via the Altenheim Subdivision now owned and controlled by B&OCT, a 100% CSXT subsidiary. Even if WCL were to continue to interchange with NS at Calumet, that route too would become subject to CSXT's

expansive post-merger dispatching and operational control over IHB. In essence, there is a two-to-one diminishment of competition. Where shippers have enjoyed the benefits of two carriers vying for the most efficient delivery, there will be only one option after the merger -- a CSXT controlled option.

Mr. Schauer's verified statement provided three examples of traffic competitive between CSXT and NS which, after the merger, will be under CSXT control. Approximately 15,000 carloads of paper products and kaolin clay moved into the WCL service territory from NS or CSX. (Schauer V.S., WC-10 at 44). NS developed a unit train movement to Chicago delivered to WCL at NS' Calumet Yard which WCL reached using IHB trackage rights. The unit train operation with NS provided a service advantage benefiting large paper producers in Wisconsin.⁸ Another example was coal delivered into Green Bay where unit train service with direct interchange from NS to WCL (reaching NS over IHB trackage rights) was critical to NS capturing the movement in competition with CSXT. (Id. at 45). Finally, woodpulp moving into WCL's service territory from NS and CSXT origins is an important input for paper manufacturers, who have benefited from competition between NS and CSXT supported by two independent interchange connections with WCL in Chicago. Id. at 46.

⁸ The fact that such service advantages may be lost with IHB and NS routings falling under CSXT control has not been lost on such shippers. Many of the major paper producers in Wisconsin and Michigan filed letters with the Board expressing their concern over CSXT's anticompetitive stranglehold in Chicago. See WC-10 at 63, 65, 68, 82, 85, 90, 99; WC-15.

Additionally, today WCL enjoys a route over IHB to reach BRC, free of CSXT control. WCL has another route to BRC using the Altenheim Subdivision. After the merger, of course, CSXT will be dispatching and controlling WCL's operation over IHB to reach BRC.

WCL does not contend that a controlling parent company can should not exercise control over the subsidiary for its own purposes. However, the problem is that CSXT, already controlling one set of WCL routing options, will now have control over the other set of routing options to interchange both former Conrail and NS traffic. This impermissible control cannot be tolerated.

The Board may wonder why, if the accumulation of switching power in one carrier in Chicago is so detrimental, only a handful of smaller carriers press the issue. The answer in part is that it is those carriers and their shippers who most rely upon having an independent and neutral IHB. However, the concern over the issue is not isolated.⁹

⁹ During his deposition given on September 12, 1997, Mr. Orrison

However, the concerns raised by WCL are also shared by the State of Illinois and the State of Wisconsin Departments of Transportation and numerous shippers. WC-16 at 38-39; IDOT-2,

It is obvious that CSXT does not want this Board to be aware of the full extent of concerns raised by other carriers and the means chosen by CSXT to resolve those concerns. This Board, however, should be very concerned about what private deals CSXT is cutting in the Chicago terminal and the impact such concealed arrangements may have upon post-merger operations.

WC-10, App. A, WC-15. The Chicago terminal is simply too important to have it fettered by the concentration of so much operational control in the hands of a single carrier.

C. Operational Problems and the Altenheim Subdivision

WCL already experiences difficulty in operating over the Altenheim Subdivision as a consequence of indifferent and inefficient operation of that line and poor dispatching by CSXT/B&OCT. (See Verified Statement J. F. Scott, WCL Schiller Park Terminal Superintendent, WC-10 at 51-58.) However, today WCL has the alternative of IHB, independent of CSXT, as a vehicle to reach NS. However, even IHB currently presents problems with congestion. (Scott V.S. at 52; Booth V.S. at 5). Under the merger, that independent (if imperfect) alternative vanishes.

CSXT presently maintains the Altenheim Subdivision to only FRA Class 2 standards, with frequent 10 mph slow orders. In short, it is functionally a Class 1 track. Verified Statement of J. Reilly McCarren ("McCarren V.S."), WC-10 at 24. Under the CSXT Operating Plan, CSXT makes no provision for improved maintenance of the Altenheim Subdivision or for any expenditure of funds to improve the line. See Orrison, V.S., Applicants Rebuttal, maps, p. 503, 639 showing locations of Chicago improvements. CSXT never even considered what impact the merger might have upon the Altenheim Subdivision. (See Answer to Interrogatory 4, WC-10 at 186-87). Indeed,

WC-16 at 55. During the course of discovery,

even after realizing the serious problem that it had in Chicago, CSX presented no plan or proposal to address the shoddy condition of this important piece of track. Yet, the Altenheim Subdivision is and will continue to be a critical piece of track for shippers into and from WCL's service territory. Not only will existing CSXT traffic flow over it, but so will all existing CR and NS traffic -- over 90,000 carloads annually. Schauer V.S., WC-10 at 44.

The portion of the Altenheim Subdivision to be acquired by WCL also includes a small yard known as 48th Avenue Yard. Much of this yard's capacity is underutilized and the condition of the tracks reflects significant deferred maintenance. As part of its Responsive Application, WCL intends to invest in the yard, upgrading its condition and placing it in expanded service as a facility that could accommodate traffic to/from Wisconsin, relieve congestion and improve the efficiency of operations through the Chicago Terminal District. WC-9 at 7-8; McCarren V.S., WC-10 at 24, 29; WC-16 at 8-9. CSXT's Operating Plan identified the 48th Avenue Yard as "a flat switching yard consisting of 6 tracks used to support BOCT-served industries in North Chicago," the operation of which was not expected to "materially change after the Acquisition." Application, Vol. 3A, CSX/NS -20 at 185, 187.

CSXT insisted in later verified statements and deposition testimony that the 48th Avenue Yard which WCL proposes to acquire was absolutely needed for B&OCT's operations (currently constituting once a day local service to 11 shippers

located on branches off the Altenheim Subdivision) and could not possibly be sold to WCL or used by WCL for its trains. Orrison R.V.S., CSX/NS-177, Vol. 2A at 544; deposition, WC-16 at 49, 51-53.

Unfortunately for CSXT, at the very time it was making these dubious representations to the STB, its local personnel were in the process of ripping up a substantial portion of the 48th Avenue Yard. McCarren R.V.S., WC 16 at 15-17. During deposition testimony on January 9, 1998, Mr. Orrison confirmed his understanding that:

The purpose of that yard is not to hold trains, but its a yard that supposed to be used to support these local customers. And if the WCL follows through with that desire of holding trains in the yard, it would have impact on supporting storage and the handling of cars to and from local customers at the yard that the B&OCT currently uses that yard for today. ... The 48th Street Yard -- my knowledge of the Forty-Eighth Street Yard is to provide support for service to and from those customers.

WC-16, Orrison Deposition at 51. Subsequently, Mr. Orrison testified, consistent with the Operating Plan in the Application, that he knew of no current plan by either B&OCT or CSXT to rehabilitate the 48th Avenue Yard or of any significant overhaul of the yard or its track structure. Id. Mr. Orrison was then confronted with photographic evidence of current, ongoing salvage operations in the 48th Avenue Yard and could only confess ignorance. WC-16, Orrison Deposition at 49-50. The evidence of substantial salvage operation at the 48th Avenue Yard is graphically displayed in photographs taken on January 3, 1998, which show about 2/3rds of the Yard's capacity being salvaged.

McCarren V.S., WC-16 at 9, photographs, pp. 21-26. It is incredible that CSXT can maintain that WCL's acquisition of the 48th Avenue Yard and proposed use for holding WCL's trains during periods of congestion on B&OCT would interfere with B&OCT's one a day local switch operations to 11 shippers and at the same time proceed to rip out 2/3rds of the yard without so much as even advising Mr. Orrison!

This Board is entitled to greater candor. The merger process requires greater adherence to a presentation of argument and facts that corresponds to real and intended railroad operations. The great liberties with the truth CSXT has taken in fighting this one small aspect of WCL's Responsive Application with respect to the use of the 48th Avenue Yard should cause the Board to give greater scrutiny to CSXT's other protestations.

IV. WCL'S CAREFULLY CRAFTED REMEDIES

In response to this record, WCL has proffered three narrowly crafted remedies. The first addresses WCL's peculiar situation -- purchase of the Altenheim Subdivision. The second two address the greater common problem that every user of Chicago will face if the merger proceeds as now proposed -- anticompetitive control of the Chicago Gateway by CSXT.

A. Purchase of the Altenheim Subdivision

WCL's line from the north terminates in Forest Park, Illinois at a point where it connects with B&OCT Altenheim Subdivision property. WCL uses the Altenheim Subdivision to reach BRC. WCL can access IHB through a connection in Franklin

Park independently of B&OCT. The importance of the Altenheim Subdivision to WCL was also summarized by Mr. Booth:

Without trackage rights over the Altenheim Subdivision, WC would have had only two bona fide alternatives to deliver traffic to carriers at Chicago and neither would have been nearly as attractive. It could have used B&OCT as an intermediate switch carrier to deliver WC traffic to carriers such as IC, Conrail, CN/GTW and others. Or it could have sought trackage rights over the [IHB] "McCook Line" between Franklin Park and points as far south as Blue Island. . . . [n]either B&OCT nor WC would have favored that route over the one we agreed to. The McCook Line is very congested -- and has been for as long as I can remember, the number of trains that WC proposed to bring from its nearly two thousand mile network to Chicago could not have been readily accommodated on the McCook line.

Booth R.V.S. at 4-5. Mr. Booth also notes that WCL later did in fact acquire rights over the McCook line. For WCL, as Booth noted, this was the only practical alternative to the otherwise exclusive power of the CSXT-controlled B&OCT.

Today, WCL uses the McCook line to reach NS' Calumet Yard to interchange approximately 25,000 carloads annually (WC-10, Schauer V.S. at 45-46) and for unit train deliveries to GTW at Blue Island (WC-9, Ex. IC). The existence of IHB as an independent carrier provides a level of competitive discipline on CSXT with respect to traffic capable of moving to NS.

Post-merger, without relief, that competitive discipline disappears. NS has indicated that interchange will occur at Conrail's Ashland Avenue Yard, which WCL reaches only using B&OCT's Altenheim Subdivision. Thus not only with the 25,000 loads annually to NS become CSXT captive but so also will

those Conrail moves for which NS is to compete. However, if WCL is allowed to acquire the Altenheim Subdivision as set forth in its Responsive Application, WCL will have the ability to avoid CSXT's deadlock over its traffic. Coupled with the agreed-upon acquisition of the Panhandle line from NS,¹¹ WCL would have the following operational ability independent of CSXT interference:

- a) control of dispatching onto and off Altenheim Subdivision and Panhandle Line to reach NS at Ashland Ave Yard for direct interchange; planned investment in the Altenheim Subdivision will upgrade it to FRA Class III standards;
- b) control of dispatching and use of the 48th Avenue Yard for train staging and holding (avoiding parking trains on the mainline when B&OCT route down line is congested); further investment in the 48th Avenue yard would increase capacity and efficiency of Chicago Terminal;
- c) control dispatching onto and off the Altenheim Subdivision to reach interchange with UP at Rockwell Street;
- d) control dispatching onto and off the Altenheim Subdivision to reach an interchange connection with BRC;
- e) control dispatching onto and off Altenheim Subdivision and Panhandle Line potentially to reach Railport for direct interchange to CN and GTW;
- f) using Panhandle Line, create a B&OCT bypass route from Ogden Avenue to Brighton Park where reconnection with B&OCT could occur, avoiding congestion on B&OCT main line containing junctions with CR, UP, IC and BNSF; and

¹¹ The Board should note that in reaching agreement with WCL, NS expressly allowed that WCL could pursue its efforts to preserve the independent routing to NS as well as other efforts to resolve "interchange and operational issues." WC-10 at 14. Obviously, the NS sees the substantial benefit of placing its competitor, CSXT, on a level playing field in Chicago.

- g) addition of a siding track along Panhandle line increasing capacity.

WC-10, McCarren V.S. at 11-18; WC-9 at 7-8, 41-43. The net impact of allowing WCL's Responsive Application, coupled with WCL's agreement with NS, is that post-merger, WCL will be able to interchange directly with NS without any potential operational interference from CSXT. Additionally, traffic moving to/from WCL in Chicago using the Altenheim Subdivision will have an improved route with greater capacity. Moreover, contrary to unfounded speculation by CSXT, none of this would interfere with B&OCT's limited service to 11 shippers off the Altenheim Subdivision. McCarren, R.V.S., WC-16 at 12-13.

The benefits include not only the continuation of competitive alternatives, but a WCL intention to invest in and upgrade the Altenheim Subdivision and the Panhandle Line. These investments will generate badly needed terminal capacity. This WCL commitment¹² is in stark contrast to CSXT's record of allowing the deterioration of the Altenheim Subdivision and then blatantly dismantling a substantial portion of the associated 48th Avenue Yard, even while telling the Board that the yard was critical to CSXT's operations.

The detriment to CSXT or any of its planned merger benefits is nil. CSXT has not studied the merger impact on the

¹² CSXT suggested that somehow, because WCL's Board of Directors had not expressly approved capital budgets for such work or for the Responsive Application, that WCL was not serious. Mr. McCarren firmly answered this in his rebuttal. WCL has all the authority it presently requires and will have all the authority necessary to complete the transaction when required. McCarren, R.V.S., WC-16 at 17.

Altenheim Subdivision (WC-10 at 186) and has provided for no capital expenditure or improvement on the Altenheim subdivision. It simply was not relevant to CSXT's merger planning. WCL proposes to allow B&OCT to maintain its present rights to operate over the Altenheim track to serve local industries and will allow the continuation of CSXT overhead trackage rights. WC-9 at 41-42; WC-10 at 31. As Mr. McCarren pointed out, WCL's operations will not interfere with B&OCT's limited operations. McCarren, R.V.S., WC-16 at 12-13. Moreover, Mr. Orrison, CSXT's witness on Chicago operations, essentially admitted that WCL ownership would not interfere with B&OCT's own limited use of the line and yard. WC-16 at 46, 48.

CSXT may want it all. CSXT may want all the legitimate advantages to its multi-billion dollar Conrail merger. CSXT may also want all the anticompetitive advantage and leverage it can accumulate in Chicago as well. But there must come a point where the public interest intervenes and the Board says "enough is enough." The Altenheim Subdivision is one such point.

The WCL solution is limited. It is calculated to address only adverse effects of the merger. The public interest requires approval of WCL's Responsive Application.

B. Independent Dispatching

Even with the transfer of the Altenheim Subdivision to WCL, there remains a broader problem in the Chicago terminal. CSXT will have operational control and dispatching control over both B&OCT and IHB. It is not in the public interest to have such a concentration of control in the hands of one carrier --

especially one which has shown in the past the conscious and ruthless manipulation of B&OCT for its own narrow commercial interests. (See Appendix A for detailed discussion.)

Indeed, CSXT has argued that WCL's concerns over CSXT's ability to move traffic from yard to yard are misplaced. John Booth, in his verified statement, would have the Board believe that forces other than CSXT's desires will determine where traffic will be interchanged in Chicago. But the Board is being invited by Mr. Booth to be naive. In fact, CSXT's own Chicago Operating Plan clearly indicates that it will determine where traffic will be received. Some traffic will be diverted to the flat Barr Yard for classification and switching while other traffic will be accorded treatment in Blue Island hump Yard with the \$10 million of improvements CSXT intends to make for its own benefit. The determination is clearly intended to be a CSXT determination.

Moreover, a review of the CSXT record from 1988 to 1994 demonstrates without a doubt that CSXT has in the past

It would be fantasy to believe that CSXT, with the ability to control both Barr Yard and Blue Island Yard, will not continue to

This power is an especially troubling power because if CSXT is allowed to continue to interpose B&OCT between it and traffic interchanged to it in Chicago, CSXT will have the ability, controlling both IHB and B&OCT, to direct traffic into

its B&OCT facilities for receipt and thereby be able to threaten a B&OCT intermediate switch charge.

The dispatching problems suffered by carriers using B&OCT are manifest and clear. WCL has documented these problems (Scott V.S., WC-10 at 51-57; McCarren, R.V.S., WC-16 at 14) and

(WC-16 at 64-65). Even Mr. Orrison, CSXT's sponsoring witness for its Operating Plan acknowledged that

WC-10 at 104. The Board would have to ignore reality for it not to share this concern about dispatching in Chicago. The experience of the recent UP/SP merger only underscores the problem. This time, the Board should intervene now for the public interest. Requiring the establishment of an independent dispatching authority, accountable to a committee of using carriers, would eliminate all concerns over discrimination and maximize the possibility of the highest professionalism in the performance of this critical function.¹³

In fact, the recently announced accommodation between the BNSF and the UP in respect of terminal operations in Houston anticipate such a structure. Moreover, there is a long standing body of ICC precedent which acknowledged the importance of preserving neutral intermediate switching operations in

¹³ The Board should note that the NS-WC agreement expressly allowed WCL to pursue neutral dispatching. WC-10 at 14. Obviously, NS understands the public benefits neutral dispatching would preserve.

terminals, including Chicago. See Chicago Junction Case, 71 I.C.C. 631 (1922); Fort Worth Belt Railway Company Control, 187 I.C.C. 88, 95 (1932) (public interest condition imposed requiring that "[t]he present neutrality of handling inbound, outbound and switching by the Fort Worth Belt Railway Company shall be continued" to preserve equal opportunity for service and to avoid discrimination in movement of traffic); Niag Junction Ry. Co. Control, 267 I.C.C. 649 (1947); Belt Railway Company of Chicago et al. -- Operation, 324 I.C.C. 597, 605, 609 (1965) (public interest included maintenance of Belt as a "neutral switching carrier" and that "the Belt Railway continue to perform all its operations, other than owner-to-owner movements, for owners and non-owners alike as a neutral switching carrier for a tariff charge or division"); St. Louis Southwestern Railway Company, et al. -- Purchase -- Alton & Southern Railroad, 331 I.C.C. 515 (1968). In the Niagara case, the ICC said that the public interest required that control of an intermediate switching carrier "be vested so as to insure continued neutrality of its operation and service, and equality of opportunity to all connections to solicit and obtain business, and full exercise of the shippers' right to route free from all interference of any considerations foreign to efficient and economical transportation." Id. at 663.

This is precisely what WCL seeks to preserve by seeking as a condition to the merger that IHB be dispatched by neutral dispatching authority. Chicago is too important a gateway to allow it to fall under the domination of just one carrier,

especially one with the record set forth in Appendix A. The importance of the principle of neutrality has been long recognized and should not now be sacrificed in Chicago in a merger that goes to great lengths to establish a comparable parity in the newly formed eastern Shared Asset territory.

C. CSXT Direct Interchange

1. Existing Law and Operation

In the watershed case of Burlington Northern, Inc. v. Baltimore and Ohio Railroad Company, et al., Docket No. 37515 (ICC served November 12, 1981 and July 12, 1982), aff'd sub nom. Burlington Northern R. Co. v. U.S., 731 F.2d 33 (D.C. Cir. 1984) ("BN"), the ICC and the Court of Appeals determined that CSXT's predecessor Baltimore and Ohio Railway Company ("B&O") could not be required to interchange with any carrier in Chicago other than through the means of an intermediate switching carrier. B&O conducted no operations, let alone interchange, in Chicago. Much has changed since then in CSXT's operations and even greater changes are anticipated with this merger. CSXT's Chicago operations require that CSXT make itself available for interchange in Chicago without the agency of B&OCT.¹⁴

¹⁴ In its "Description of Anticipated Responsive Application," WC-2 at 4, WCL indicated that among the relief it intended to seek was a condition requiring CSXT to merge B&OCT into CSXT. This filing was based on the premise that B&OCT had long ago ceased to perform any legitimate role separate from CSXT and, in fact, was CSXT carrying on its own operations in Chicago. While WCL believes that the record before the Board still justifies such a requirement, the condition WCL seeks is narrower and crafted to preserve B&OCT's role as an intermediate switch carrier while at the same time recognizing that CSXT's post-merger plans call for substantial CSXT operations, including direct interchange, in Chicago.

The record of CSXT's use of B&OCT as an intermediate switch carrier since the BN decision is laden with abuse:

15 ,

(See Appendix A setting for the details.) The record proves that CSXT has already relegated B&OCT to little more than an ephemeral alter ego. CSXT's post-BN case activity alone distinguishes the BN case and justifies imposing the condition that CSXT must be present and available for direct interchange in Chicago in accordance with the law. 49 U.S.C. § 10742. Applicants' Rebuttal, Vol. 1, CSX/NS-176 at 334, states that "whatever dissatisfaction with that situation may exist [sic], it is full in accord with long established precedent." Citation is then

¹⁵ In the BN case, the ICC found that:
CRT [B&OCT] performs intermediate switching services between railroads, terminal switching service at industries, and public delivery tracks to and from linehaul railroads, and inter and intra-plant switching and terminal switching for industries.

BN, ICC decision, June 22, 1982, p. 4. (emphasis added). The record in this case demonstrates that

Thus CSXT should no longer be able to avail itself of the logic of the BN decision as it relates to B&OCT's operations in Chicago.

made to Grand Trunk Western Railroad v. Pere Marquette Railway, 174 I.C.C. 427 (1931) as support for CSXT's view that its B&OCT arrangements are unassailable. However, a reading of the Grand Trunk case suggests otherwise. For example, the challenged switching carrier, the Flint Belt Railway, a wholly owned subsidiary of the Pere Marquette, had a financial statement that indicated it was being operated as a legitimate switch railroad with operating revenues of \$88,623 and operating expenses of \$57,474, with a resulting operating ratio of approximately 65%, similar to today's efficient railroads. Id. at 429. By contrast, B&OCT's operating ratio of % suggests that it is something other than a legitimate operation. Additionally, there was no evidence that the Belt switch charges were unreasonable. Id. at 430. Here evidence of record shows that CSXT

WCL-16 at

166, 181. Further, Grand Trunk was a 2-1 decision of the Commission with a strong dissent from Commissioner Lee who wrote:

For all practical purposes, the Belt is as much a part of the road of the Pere Marquette as any other portion of its line. By paying the Belt for intermediate switching, the Pere Marquette is in effect taking money out of one of its pockets and putting it in another. ...[T]he sole fact that the Belt is a separate legal entity should not be permitted to outweigh the circumstance that it is completely owned, controlled and dominated by the Pere Marquette.

Id. at 431. Lee then cited the U.S. Supreme Court's decision in Chicago, Mil. & St. Paul Ry. v. Minn. Civ. Ass'n, 247 U.S. 490 (1918):

[T]he Courts will not permit themselves to be blinded or deceived by mere forms or law, but regardless of fictions, will deal with the substance of then transaction involved as if the corporate agency did not exist and as the justice of the case requires.

The record in this merger shows that B&OCT is not only owned, controlled and dominated by CSXT, but that its legitimate role as an intermediate switching carrier has been deliberately undermined by CSXT to meet CSXT purposes as a line haul carrier operating in Chicago. While Grand Trunk may be a precedent for preservation of the separation between a line haul carrier and its switching carrier under certain circumstances, it certainly is not a precedent applicable to the present circumstance.

A determinative fact militating against direct interchange in the BN case was that CSXT's predecessor B&O was not present in Chicago and conducted no interchange in Chicago.

Certain basic facts essential to an understanding of this complaint action are not in dispute. For example, B&O, with certain minor exceptions, owns no tracks, yards or other facilities within the Chicago terminal area. B&O interchanges linehaul traffic with at least fourteen railroads at Chicago, the point of interchange in all instances being Pine Junction, IN, a point located on the eastern periphery of the Chicago terminal area. . . . B&O makes no "direct interchange" at Chicago with other carriers, but in all instances uses the intermediate switching services of CTR [B&OCT] to make deliveries of interchange traffic to such carrier.

BN, Nov. 12 1981, ALJ decision, p. 3 (emphasis added). Under those circumstances, B&O could not be required to exercise its trackage rights over B&OCT to initiate direct interchanges not previously existing. Today, however, CSXT in fact already is

conducting a direct interchange, at Barr Yard, with the WCL on certain unit trains. McCarren V.S., WC-10 at 23, 35. On these interchanges, B&OCT is not interposed as an intermediate switching road nor is any switch charge incurred.

As a legal and logical proposition, it would seem impossible for CSXT to simultaneously be present in Chicago at Barr Yard for direct interchange and not be present in Chicago at Barr Yard for direct interchange. Neither 49 U.S.C. § 10742 nor the BN decision contemplates such chicanery.

2. Proposed Post-Merger Operation

CSXT's merger operating plan for Chicago makes it quite clear that CSXT, in its own name, with its own trains, using its own crews, will be active and present in Chicago Terminal conducting common carrier business, including direct interchange.

Initially, it should be emphasized that WCL currently has a direct interchange with CR at Ashland Avenue for traffic moving to and from CR points. WCL reaches this interchange using its trackage rights over the Altenheim Subdivision. Certainly that traffic, which is approximately 25,000 carloads annually, should not, as a consequence of this merger, suddenly be deemed unavailable for direct interchange. CSXT cannot be allowed to claim that WCL's right to interchange that traffic without the unwanted imposition of a B&OCT switch charge will be lost.

More generally, however, Mr. Orrison, who developed CSXT's operating plan, emphasized that a key strategy of the plan was "the elimination of interchanges, which will give CSX better control over both operation and availability of equipment and

crews, thus enabling CSX to provide faster, more reliable service. ..." Orrison, V.S., Application, Vol. 3A at 74. As part of that strategy, CSXT intends to build trains in the east for movement to Chicago and direct interchange with western carriers and hopes to obtain similarly blocked trains from western carriers, avoiding intermediate switching in Chicago.

The expansion and use of the Willard Yard as a westbound classification yard will enable CSX to build blocks of cars and trains that will "overhead" Chicago, i.e., move directly to destinations or interchange with western carriers at points beyond Chicago. In addition, the large volume of traffic over these service routes will enable CSX to block trains at Albany and Buffalo for movement to western destinations with no intermediate classification. Likewise, eastbound traffic from western carriers can be blocked for Albany and Buffalo to overhead Chicago, with no classification between Chicago and those yards.... Again, increased volumes will allow CSX to make blocks to overhead Chicago, moving directly to interchanges with western carriers or directly to the appropriate yard within the Chicago area for delivery to local industry.

Id. at 42-43. Further elaborating on the Chicago strategy, the Operating Plan provides:

With the addition of the existing Conrail traffic to that of CSX, traffic volumes will be sufficient to allow pre-blocking of trains for western carriers' major classification yards, bypassing yards in Chicago. ... Traffic will be pre-blocked for interchange carriers in Chicago and train service designed to expedite connections through Chicago. CSX would expect to secure reciprocal blocking from the major western carriers to eastern points, allowing significant eastbound traffic volume to pass through the Chicago terminal with minimal handling. ... It is anticipated that after Acquisition, CSX will effect further improvements in Chicago interchange, including providing greater providing

opportunities for pre-blocking to avoid
intermediate switching in Chicago.

Id. at 186-88 (emphasis added). CSXT plans to use either Barr Yard or IHB's Blue Island Yard, according to its own determinations, for delivering and receiving traffic and making up its trains. McCarren V.S., WC-10 at 34-35. As a matter of good railroad operating practice, CSXT may have developed the most workable scheme for its road haul activities. It is clear that a key to CSXT's post-merger operations will be running its own trains into Chicago and interchanging those trains directly with connecting carriers in Chicago (without the need for any intermediate switching or classification work). In other words, massive CSXT direct interchange in Chicago is central to its post-merger operations.

CSXT can no longer rely upon its predecessor's 1980 absence of operations and/or interchanges in the Chicago terminal to shield it from the requirements of 49 U.S.C. § 10742. The BN case requires that CSXT be available for direct interchange.¹⁶

The public benefits of requiring that CSXT accept direct interchange in Chicago are substantial. No longer will traffic moving over the gateway be subjected to fictitious

¹⁶ In the decision of the Administrative Law Judge in the BN case, it was stated:

There appears to be substantial agreement among the operating officials of BN and B&O as to what constitutes "direct interchange," namely, the interchange of traffic from one carrier to a second carrier without the intervention of a third carrier.

BN, ALJ Decision, Nov. 3, 1981 at 5. It is obvious that at the heart of CSXT operating plan for Chicago is just that type of interchange -- moving its trains from the east directly to western carriers in Chicago without using any third party intermediary.

switching charges that can be applied to discriminate against routes competing with CSXT. Carriers dealing with CSXT will deal on an equal footing. CSXT itself will deal with all other connections on an equal footing. The costs of the Chicago Terminal will be allocated fairly among connecting carriers.¹⁷

CSXT will

However, nothing will prevent it from negotiating reciprocal blocking agreements, as its operating plan contemplates, for direct interchange in Chicago -- including at Blue Island Yard and Barr Yard which are prominently featured in CSXT Chicago operating plan.

The requested condition will not deprive CSXT of any benefit of the merger and, in fact, appears to correspond precisely to the character of operations it intends to conduct in Chicago. The BN case is precedent for a set of facts that WCL believes no longer prevail and will disappear post-merger.

Public interest requires post-merger establishment of direct interchanges in Chicago by CSXT with all other carriers serving Chicago.

¹⁷ Requiring CSXT to interchange directly with interlining carriers in Chicago will not deprive B&OCT of its legitimate role as an intermediate switching carrier. Where B&OCT handles traffic originating or terminating on its lines, it will be entitled to its normal switch charge. In those instances when B&OCT acts as an intermediate switching carrier between other railroads, it will be entitled to its normal switch charge. What B&OCT will no longer be able to charge and collect is a switch charge for traffic being interchanged directly to CSXT for CSXT linehaul movement.

CONCLUSION

WCL has supported Applicants' proposed Conrail Merger because there are substantial public benefits to be obtained in the East. However, WCL's Responsive Application and request for conditions are required to preserve similar public interests benefits in the Chicago Terminal. WCL reached an agreement with NS with respect to certain important portions of preserving such public interest benefits in adequate rail service, facilities and competition. However, that Agreement recognized that WCL would be required to seek agreement from CSXT or relief from this Board with respect to acquiring the Altenheim Subdivision and establishing neutral dispatching of IHB and achieving direct interchange with CSXT in Chicago.

The limited relief WCL seeks is warranted by the record, constitutes a de minimus impact on the proposed merger, but will preserve substantial public interests. Accordingly, WCL requests that its Responsive Application be approved and the requested conditions be imposed.

Respectfully submitted,

By: 

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**ATTORNEYS FOR
WISCONSIN CENTRAL LTD.**

Dated: February 23, 1998

APPENDIX A

CSXT Poor Record in Chicago Terminal

[Appendix A consists primarily of highly confidential material and has been redacted in its entirety.]

CERTIFICATE OF SERVICE

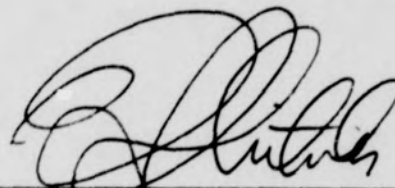
I hereby certify that on this 23rd day of February, 1998, a copy of the foregoing **Brief of Wisconsin Central Ltd.** (WC-18) was served by overnight delivery upon the Primary Applicants herein, as follows:

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by first class mail, postage prepaid, upon all parties appearing on the highly confidential restricted service list in this proceeding and, in redacted form, upon all remaining designated parties of record appearing on the official service list in this proceeding, served August 19, 1997 and revised on October 7, 1997 and December 5, 1997.



Thomas J. Litwiler

STB FD

33388 (Sub 59)

2-23-98

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185915

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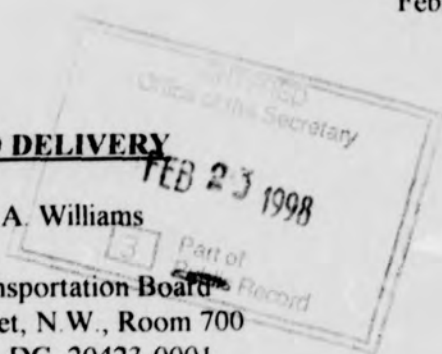
Saint Paul*

San Jose*

Washington, D.C.*

VIA HAND DELIVERY

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



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

Finance Docket No. 33388 (Sub-No. 59) *
Wisconsin Central Ltd. -- Purchase -- Line of
The Baltimore & Ohio Chicago Terminal Railroad Company

Dear Secretary Williams:

Enclosed for filing with the Board in the above-captioned proceedings are an original and twenty-five copies of the **Brief of Wisconsin Central Ltd. (WC-18)**, dated February 23, 1998. A computer diskette containing the text of WC-18 in WordPerfect 5.1 format also is enclosed.

Please note that WCL-18 has been designated as highly confidential and is being filed under seal. It has been served on the Primary Applicants and all parties appearing on the highly confidential restricted service list in this proceeding. A redacted version of WC-18 will be filed tomorrow and served on all remaining designated parties of record in this proceeding.

I have also enclosed herewith an extra copy of WC-18 and this transmittal letter. I would request that you date-stamp those copies to show receipt of this filing and return them to me in the provided envelope.

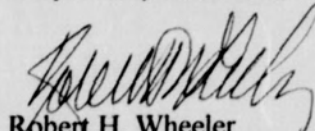
Mr. Vernon A. Williams

February 23, 1998

Page 2

Please feel free to contact me should any questions arise regarding this filing.
Thank you for your assistance on this matter.

Respectfully submitted,



Robert H. Wheeler
Attorney for
Wisconsin Central Ltd.

RHW:tjl

Enclosures

cc: Counsel for Primary Applicants
Parties on Highly Confidential Restricted Service List

STB FD 33388 (SUB 59) 2-23-98 E 185844

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

ENTERED
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Public Record

BRIEF

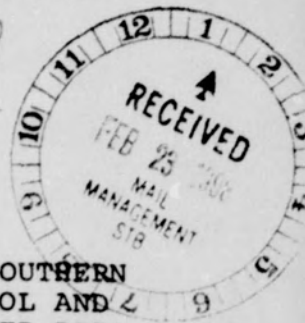
GORDON P. MacDOUGALL
1025 Connecticut Ave., N.W.
Washington DC 20036

Due Date: February 23, 1998

Attorney for Joseph C. Szabo

* / Embraces also Sub-Nos. 2 thru 7, and Sub-Nos. 36, 59, 80. 185841 185842 185843 185844 185846

185844
UTU/IL-3



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

BRIEF

Comes now Joseph C. Szabo,^{1/} for and on behalf of United Transportation-Illinois Legislative Board (UTU-IL), and submits this brief in opposition to approval of the above-referenced transactions.

Protestant on August 7, 1997, filed a notice of intent to participate; on August 22, 1997 he filed comments with respect to Sub-Nos. 2 thru 7 (JCS-1); on October 21, 1997, comments were filed on behalf of UTU-IL, by the Assistant Director for UTU-IL, John H. Burner, with respect to the basic transaction in F.D. No. 33388 (UTU/IL-1); on December 15, 1997, he filed comments with respect to Sub-Nos. 36, 59, and 80 (UTU/IL-2).^{2/}

It is clear from the record which has been compiled thus far that the CSX and NS proposal to divide Conrail would be contrary to the public interest, and harmful to railroad employees. The proposed transactions would be particularly adverse to the Chicago area, and

^{*/} Embraces also Sub-Nos. 2 thru 7, and Sub-Nos. 35, 59, 80.

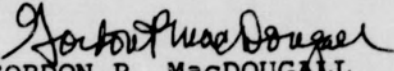
^{1/} Illinois Legislative Director for United Transportation Union, with offices at 8 So. Michigan Ave., Chicago, IL 60603.

^{2/} Another verified statement, also labeled JCS-1 (incorrectly) and filed October 21, 1997, is not part of the UTU/IL submission.

best interests and commerce of the state of Illinois.

The Board is required to consider the interests of all rail employees, not merely those of applicant carriers, in determining the public interest. Such a consideration, along with other factors, requires denial of the application, and the various related Sub-numbered proceedings.

Respectfully submitted,


GORDON P. MacDOUGALL
1025 Connecticut Ave., N.W.
Washington DC 20036

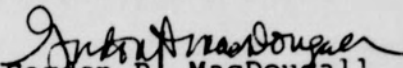
February 23, 1998

Attorney for Joseph C. Szabo

Certificate of Service

I hereby certify I have served a copy of the foregoing upon all parties of record by first class mail postage-prepaid.

Washington DC


Gordon P. MacDougall