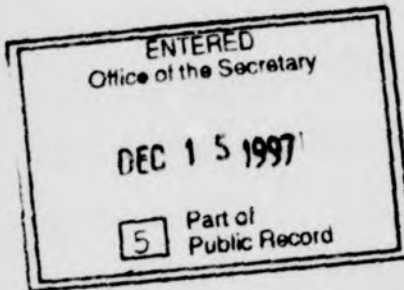


STB FD 33388 (Sub 63) 12-15-97 D 184832

ORIGINAL



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

R. J. CORMAN RAILROAD COMPANY/WESTERN OHIO LINE--
FINANCE DOCKET NO. 33388 (SUB-NO. 63); -184832

INDIANA & OHIO RAILWAY COMPANY
FINANCE DOCKET NO. 33388 (SUB-NO. 77); -184833

ANN ARBOR ACQUISITION CORPORATION, D/B/A
ANN ARBOR RAILROAD
FINANCE DOCKET NO. 33388 (SUB-NO. 78); -184834

WHEELING & LAKE ERIE RAILWAY COMPANY
FINANCE DOCKET NO. 33388 (SUB-NO. 80); -184837

OAG-8

COMMENTS OF THE OHIO ATTORNEY GENERAL,
OHIO RAIL DEVELOPMENT COMMISSION AND
PUBLIC UTILITIES COMMISSION OF OHIO
TO THE RESPONSIVE APPLICATIONS

Thomas M. O'Leary
Executive Director
Ohio Rail Development
Commission
50 W. Broad Street, 3rd Floor
Columbus, OH 43216

Alfred P. Agler
Director of Transportation
Division, Public Utilities
Commission of Ohio (PUCO)
Borden Building, 5th Floor
180 E. Broad Street
Columbus, OH 43215

ATTORNEYS FOR STATE OF OHIO
PARTIES OF RECORD
BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO

Doreen G. Johnson
Assistant Attorney General
Chief, Antitrust Section
Mitchell L. Gentile
Thomas G. Lindgren
Assistant Attorneys General
Antitrust Section
State Office Tower, 18th Floor
30 East Broad Street
Columbus, OH 43266-0410
(614) 466-4328

Keith G. O'Brien
John D. Heffner
Robert A. Wimbish
Rea, Cross & Auchincloss
1920 N Street, NW
Washington, DC 20036
(202) 785-3700

Alan Klodell
Assistant Attorney General for
Ohio Rail Development Commission
37 W. Broad Street
Columbus, OH 43216

DATED: DECEMBER 15, 1997

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388

CSX CORPORATION AND CSX TRANSPORTATION, INC.,
NORFOLK SOUTHERN CORPORATION AND
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OAG-8

COMMENTS OF THE OHIO ATTORNEY GENERAL,
OHIO RAIL DEVELOPMENT COMMISSION AND
PUBLIC UTILITIES COMMISSION OF OHIO
TO THE RESPONSIVE APPLICATIONS

In Decision No. 54 served November 20, 1997, the
Surface Transportation Board (Board) accepted for consideration
and consolidated for disposition with the primary application in
STB Docket No. 33388 (and embraced proceedings), responsive
applications filed by several parties including R.J. Corman
Railroad Company/Western Ohio Line (RJC) in STB Finance Docket

No. 33388 (Sub-No. 63); by Indiana & Ohio Railway Company (I&O) in STB Finance Docket No. 33388 (Sub-No. 77); Ann Arbor Acquisition Corporation d/b/a Ann Arbor Railroad (Ann Arbor) in STB Finance Docket No. 33388 (Sub-No. 78); and by Wheeling & Lake Erie Railway Company (W&LE) in STB Docket No. 33388 (Sub-No. 80).

The Board's November 20 decision provides that interested persons may participate by submitting written comments regarding any or all of the responsive filings accepted for consideration. The decision further provides that such comments must be submitted to the Board by December 15, 1997. In keeping with the Board's procedural schedule, the Ohio Attorney General (OAG), Ohio Rail Development Commission (ORDC) and the Public Utilities Commission of Ohio (PUCO)¹ hereby submit these comments (responses) specifically regarding the responsive applications filed by RJC, I&R, Ann Arbor and W&LE.

INTERESTS OF THE OHIO AGENCY PARTIES

As previously stated, the Ohio Attorney General is charged with the duty of enforcing state and federal antitrust laws and through active participation in these proceedings, seeks to maintain and foster rail competition in Ohio and to preserve rail access for shippers and customers utilizing Ohio's rail transportation system. ORDC is participating by reason of its public interest responsibilities in the area of economic

¹ OAG, ORDC and PUCO previously entered an appearance and jointly filed opposition comments and request for protective conditions in response to the Primary Applicants' proposed Transaction. For convenience, the state agencies will hereafter be referred to as Ohio or State of Ohio.

development; branch line preservation; highway/rail safety and engineering projects; and, passenger and commuter rail line planning and development. PUCO is directly concerned because of its responsibility for ensuring that citizens of Ohio have access to safe and adequate rail service. Each of these agencies has responsibility to protect and foster the public interests of Ohio.

Through OAG, ORDC and PUCO, Ohio has previously stated its opposition to the proposed operation and control of Conrail (CR) lines by the Primary Applicants (CSX and NS) unless the Board adopts protective conditions and other measures to avoid results which would otherwise adversely impact upon Ohio shippers, its rail carriers and on its communities.² Ohio now focuses its attention on responsive applications that have been filed by Ohio rail carriers.

STATEMENT

In a proceeding involving a proposed consolidation, merger or acquisition of control of two or more Class I railroads, the Board has broad authority to impose conditions governing the transaction including requiring the granting of trackage rights and access to other facilities. 49 U.S.C. § 11324(a) and 49 C.F.R. § 1180.1(c). Such conditions may be proposed to protect the interests of a competing carrier from the impacts of a transaction or to protect the public from anti-

² Opposition Comments and Request for Protective Conditions, OAG-4 and 5 filed October 21, 1997.

competitive consequences. In both instances the key concern is whether the transaction will result in a lessening of the adequacy of transportation to the public. CSX Corp.---Control---Chessie and Seaboard CII, 303 I.C.C. 521, 577 (1980). Ohio remains convinced that the transaction proposed by the Primary Applicants will have anti-competitive ramifications and will result in serious disruption in the adequacy of transportation within the State of Ohio unless adequate remedial measures, including appropriate grants of responsive applications, are included in any grant of authority sought by the Primary Applicants.

Based on its evaluation of the ramifications of the primary application and information available at the time of its October 21 filing, Ohio stated that it will support the Wheeling & Lake Erie Company fully to the extent that the relief it requests is designed to ensure an independent and viable W&LE after consummation of the primary transaction. In regard to short line railroads serving Ohio shippers, Ohio stated that it supports appropriate remedial measures to cushion the Indiana & Ohio Railroad from diversion of traffic which would otherwise adversely impact upon its viability and its continued ability to provide responsive rail service to Ohio shippers. Ohio also declared its support for appropriate remedial measures to assure that R.J. Corman Railroad will continue to have competitive connections with Class I railroads. With acceptance of the responsive application by the Board on November 20, Ohio is now

in a position to reaffirm and refine its previously stated support for W&LE, I&O and RJC. In addition, following review of the responsive application filed by Ann Arbor, Ohio now supports its request for remedial relief.

BACKGROUND

Acting on behalf of all of its constituents, Ohio has endeavored to evaluate the full range of ramifications of the transaction proposed by the Primary Applicants, both positive and negative. In so doing, Ohio has found that it faces numerous serious regional problems that will adversely affect essential transportation services in every corner of the state as demonstrated in the Responsive Applications filed by W&LE, I&O, RJC and Ann Arbor. Thus, Ohio must maintain its opposition to the transaction proposed by the Primary Applicants as previously stated in the October 21 filings (OAG-4 and 5).

OHIO'S INTEREST

For the years 1994-1996 Ohio has led the nation in the number of business expansions and new business locations State.³ Those accomplishments have been achieved on the basis of Ohio's existing transportation system. Thus, Ohio is very much concerned with any change that could adversely effect the fabric of that transportation system and its ability to competitively respond to the needs of Ohio's economy.

Conrail operates about 1,700 of Ohio's 5,800 rail route miles and is Ohio's largest railroad. CSX operates about 1,460

³ Site Selection Magazine, Feb.-Mar. 1997, p. 76.

rail miles in Ohio and NS operates about 960 rail miles in Ohio. Based upon Ohio's economic performance over the most recent 3 year period, it is clear that the State is doing well with the existing rail system.

However, the Responsive Applications supported here by the State of Ohio show that the proposed Primary Transaction would have serious adverse effects on Ohio's economy. W&LE, with 450 route miles in Ohio, faces bankruptcy.⁴ Should that occur, major Ohio rail users including steel, stone, plastic and coal companies would be confronted with disruptive uncertainties while their rail service languishes in the bankruptcy courts.

The I&O faces serious repercussions from the proposed Primary Transaction on its newly acquired Diann (Detroit) to Cincinnati rail lines, about 210 miles of which is in Ohio. The result of an I&O failure on this line could well mean that Ohio would be faced with over 120 miles of abandonments as well as diminished rail competition in the Detroit-Cincinnati corridor. In addition, a 30 mile long RJC branch line and the Ohio customers it serves face serious ramifications from the proposed Primary Transaction and possible future abandonment due to prospective loss of its existing access to competing Class I railroads.

As outlined in the responsive applications supported herein, the proposed Transaction threatens about 700 route miles or about 12 percent of Ohio's rail system with the prospect of

⁴ OAG-4, V.S. George Stern at 17.

bankruptcy, loss of rail service or abandonments. Ohio is not seeking to harm CSX or NS by taking lucrative rail traffic away from them or by unfairly favoring the responsive applicants. Rather, Ohio views these responsive applicants as essential facilities which are necessary to maintain a network of competitive, efficient and integrated rail carriers throughout Ohio.

In order to remain a viable regional rail carrier, W&LE seeks access into Chicago so that it can effectively serve customers at its state-of-the-art Neomodal intermodal facility located at Navarre, Ohio. Since CSX and NS appear to not be interested in utilizing this Neomodal facility,⁵ we do not propose taking containers or trailers off of CSX or NS ramps in Cleveland or Columbus. Instead, an increase in traffic through this Neomodal facility could be accomplished by taking trucks off of the already congested Ohio highways and then shipping the freight to destinations, such as Chicago, who desire to obtain this rail freight. Further, access to Chicago that is access to the Wisconsin Central, Illinois Central, BNSF, and UPSP, is more likely to help W&LE develop new business not now being handled by rail rather than eliminate any significant bridge traffic which CSX or NS is now handling. Only about 10 to 15 percent of W&LE's current traffic base now originates or terminates on railroads other than Conrail, NS, or CSX.⁶

⁵ OAG-4; Voinovich letter, Ex. 4.

⁶ OAG-4; V.S. George Stern, pp. 5, 16.

Similarly, granting I&O access to Washington Court House is a means to allow I&O to preserve traffic it now carries by providing it a route less impacted by delays and congestion caused by Class I carriers, especially in the Cincinnati area. As a final example, the RJC line from Lima to Glenmore is a struggling, stub end branchline which can generate only about 1,200 to 1,500 carloads of grain and fertilizer a year.⁷ Depriving this line of the existing access it has to NS will certainly provide no appreciable gain for CSX; but it could make a marginal line an abandonment candidate.

The responsive applications filed by Ohio regional and shortline rail carriers highlight the competitive problems created by the proposed Primary Transaction and underscore the importance of granting of trackage rights to remedy the detrimental impacts on essential transportation services and consequently to Ohio's economy that will otherwise result. The continued economic viability of these carriers, not unlike that of southeastern Ohio coal regions, is of vital importance to maintaining the relative competitive position of Ohio business, including Centerior Energy, one of Ohio's largest electric utilities serving nearly one million customers in northern Ohio. The grant of trackage rights relief to these regional and short line railroads should ensure continued competitive rail access at reasonable rates for Ohio shippers and customers. So too will the Board's grant of responsive application trackage rights

⁷ OAG-4, p. 33.

maintain the current competitive situation for Centerior Energy and Ohio coals in the marketplace. Just as the Primary Applicants should not be permitted to choke off the essential service and competitive alternatives presently provided, so too should the Board refuse to allow CSX and NS to essentially eliminate Ohio Class II and Class III railroads' and Centerior's access to its historical coal suppliers for its Cleveland, Ohio, area plants in favor of longer haul, higher revenue generating coal supplies from CSX-only served mines.⁸

The continued availability of W&LE, RJC, I&O and Ann Arbor as viable regional and short line rail carriers maintains essential, competitive alternative service to Ohio bulk commodity shippers and receivers. To the extent delineated herein, and, as previously discussed in its earlier-filed comments, Ohio supports the Board's grant of trackage rights to ameliorate the adverse impact this Primary Transaction will otherwise have on a substantial number of Ohio shippers, customers and communities.

OHIO SUPPORT FOR W&LE

Ohio encourages the Board to mandate that NS and CSX provide concessions to the W&LE sufficient to keep the W&LE a viable operation. The W&LE Responsive Application demonstrates that NS and CSX have not fully comprehended or calculated the damage the proposed transaction will do to the W&LE. Similarly, the STB must recognize that the damage a W&LE bankruptcy would do to the economy of Ohio is real and significant.

⁸ OAG-4, p. 25.

Should W&LE enter bankruptcy, it is possible that another regional railroad might acquire the entire operation. However, Ohio believes that the particular circumstances and economics of the W&LE operation make it much more likely that the W&LE would be divided up in a piecemeal fashion. In that regard, it is plausible that various Class II and III rail carriers would pay a premium to serve large W&LE rail users in the Canton/Massillon area such as Timken, Republic Engineered Steel, and Ashland Petroleum but would not be at all interested in serving the W&LE's aggregate or agricultural shippers in western Ohio, or in preserving the W&LE line in Pennsylvania. A prudent bankruptcy trustee would certainly have good reason to seriously consider the piecemeal option.

A piecemeal breakup of the W&LE would mean the loss of the rail synergies which W&LE now provides. About 70 percent of the 9 million tons of materials W&LE now handles both originate and terminate on the W&LE. See, OAG-4 (Verified Statement of George L. Stern, at 5). Take the eastern part of the W&LE (i.e., the Pittsburgh & West Virginia (P&WV)) away either through a separate sale, or more likely through an abandonment and scrapping, and much of the agricultural and aggregate traffic W&LE now handles will either disappear or be handled by trucks or less cost-effective rail. Take away the Huron Docks, or any line connecting the Docks with the W&LE Ohio River lines, and Wheeling-Pittsburgh Steel loses its alternative service for iron ore. Take away the W&LE line into Cleveland through a separate

sale or through the abandonment and track salvage and Reserve Iron loses its preferred option for recyclable scrap and LTV Steel loses a competitive option for receiving coke.

The Board's decisions concerning the W&LE Responsive Application will have a tremendous impact on Ohio. Ohio urges the Board to mandate the actions needed to keep W&LE viable.

OHIO SUPPORT FOR THE INDIANA & OHIO

Ohio continues to support I&O efforts to effectively compete with both NS and CSX to retain traffic I&O currently carries, especially auto related traffic between Flat Rock, Michigan and Cincinnati.

In its responsive application, the I&O makes compelling arguments as to the adverse impacts it will experience in the Springfield to Cincinnati Corridor if the proposed acquisition of Conrail is approved. I&O currently uses trackage rights over Conrail to get from Springfield to Cincinnati. Conrail has never been a strong competitor for north-south traffic such as the Flat Rock to Cincinnati move represents. Further, the I&O trackage rights payments for the use of Conrail's Springfield to Cincinnati line for six trains per day arguably helps Conrail pay for the fixed costs of operating a mainline which Conrail itself only uses for 12 trains per day. See, I&O Resp. App. at 5. Thus, a reasonably "friendly" relationship now exists for I&O's movement over the Conrail line.

If NS takes control over the Conrail Springfield to Cincinnati line as proposed, the situation will change. NS is a

strong north-south railroad. Further, NS plans to improve clearances on the line for the movement of double-stack containers. Given recent history in double-stack growth, NS estimates to increase its usage of the Springfield to Cincinnati line from 4 trains per day to 11 trains per day may well be very conservative. (NS operates 4 trains per day on the line because it now has overhead trackage rights on the line for intermodal movements, another example that Conrail views other carriers' use of the line in a positive light.) Thus, for the approximately 70 mile Springfield to Cincinnati move, the I&O could be forced to rely upon a line a competitor will likely be using much more heavily in the future, possibly to an extent that strains capacity.

Given the proposed increase in traffic between Springfield and Cincinnati, the I&O's request to have an alternative route, i.e., Washington Court House to Cincinnati via CSX, is very reasonable and fair. It in no way negatively impacts the NS route; in fact, it would relieve congestion on it.

Neither will the I&O request to use the CSX Cincinnati to Washington Court House line adversely impact CSX. CSX will only run about 3 trains per day on the Washington Court House line. (CSX/NS - 20 at 435). Thus, there is ample room on the line for the additional I&O trains.

Further, the trains which the I&O would transfer to the Washington Court House line currently traverse a congested CSX line, the Mill Creek line in Cincinnati. The Conrail Springfield

to Cincinnati line over which the I&O has trackage rights terminates at a junction with the CSX Mill Creek line in Cincinnati. From this point, both Conrail and I&O trains must run over the CSX Mill Creek line to reach interchange points in the CSX Queensgate and NS Guest Street Yards. Thus, the I&O usage of the Washington Court House line frees up capacity on the congested Mill Creek line. See, I&O Resp. Appl. V.S. Michael Burkart at 6.

The I&O also makes compelling arguments for obtaining trackage rights between Monroe and Middletown. Any additional delay in getting rail traffic to and from the I&O Railway's Mason to Monroe line could mean the ultimate abandonment of that marginal branchline. Ohio has spent over one-half million dollars on various improvement projects throughout the last decade on the Mason to Monroe line.

Ohio also supports the I&O trackage rights request between Sidney and Quincy. In regard to the other I&O trackage rights requests, Ohio supports them as they relate to assuring adequate competition and responsive rail service in Ohio.

OHIO SUPPORT FOR R. J. CORMAN RAILROAD

Ohio continues to support RJC's efforts to obtain trackage rights over, or to acquire, the 2.3 miles of track in Lima which will be needed for the RJC Lima to Glenmore operation to connect to NS as well as CSX if the CSX/NS split up of Conrail is approved. Conrail currently owns this track but CSX is slated to acquire it. RJC currently has three viable Class I carrier

connections in Lima for the Glenmore line. RJC connects directly with Conrail and indirectly with both CSX and NS through a very inexpensive haulage agreement. Through arrangement with Conrail, RJC itself currently shuttles Glenmore line traffic to either NS or CSX for only \$60 per car fee to cross the Conrail track.⁹

If CSX takes over the 2.3 miles of track in question as proposed, it would be in its own self interest to do whatever it could to keep NS from getting any of the Glenmore line traffic. Certainly the switching charges would be much higher than \$60 per car. (Conrail lacks a significant economic interest in the Glenmore traffic as the traffic is primarily fertilizer moving in from the south or grain moving to the southeast, areas that are outside the Conrail service area. See, Id.) Thus, in effect, the Glenmore line would not have the same connectivity after the proposed split up as it has today. As a practical matter, it would go from good connection with three Class Is to a single connection (a 3 to 1 situation).

Based on the current low haulage charge, and Conrail's verbal commitment to sell to RJC the 2.3 miles of Conrail track which RJC needs to connect directly with both NS and CSX, the State of Ohio and RJC recently agreed to embark on a \$1.5 million rehabilitation project for the Glenmore line based on its access to 3 Class I railroads. See, OAG-4, at 33. State assistance is needed for this 30 mile long, publicly owned line because it is only marginally viable, generating less than 1,500 carloads a

⁹ RJC Resp. App. V.S. of M.W. Grubb, Jr., p. 3.

year. Preserving the status quo (i.e., multiple access to Class I railroads) is critical to the long term survival of the Glenmore line.

OHIO SUPPORT FOR THE ANN ARBOR RAILROAD

In our October 21, 1997, filing, Ohio did not address the Ann Arbor situation because we had understood that it would be resolved without STB intervention. Now that Ann Arbor has reluctantly filed a responsive application, the State of Ohio offers its support for Ann Arbor's requests for trackage rights to Chicago to connect with various railroads and for Ann Arbor to connect with the Canadian Pacific at Ann Arbor, MI.

Ohio finds Ann Arbor's description of its projected losses both reasonable and compelling. It is hard to imagine that no mention of Ann Arbor's potential revenue loss of over \$3 million annually was included in the NS or CSX filings.

Although Ann Arbor has only a handful of miles of track in Ohio, it is a very important Ohio railroad and it is vital that it be kept economically viable. Ohio and the City of Toledo recently committed to invest many millions of dollars in various infrastructure improvements to convince Jeep to build its new plant in Toledo right next to its current plant.¹⁰ Ann Arbor is a vital part of the entire incentives package to keep Jeep in Toledo. If it is still a viable rail operation after the split

¹⁰ Gov. Voinovich Release dated July 28, 1997 (attached as Ex. 1).

up of Conrail, Ann Arbor is slated to play a major role in providing switching services to the new plant.

Ohio urges the STB to mandate Ann Arbor's requested trackage rights. As with other Ohio railroads, all Ann Arbor seeks is a chance to compete with NS and CSX so that Ann Arbor can remain viable.

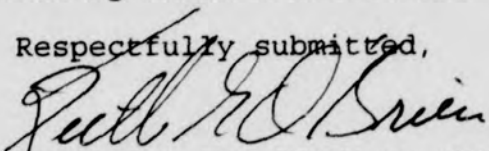
CONCLUSION

Ohio recognizes there are potential benefits for many Ohio rail users which may result from the proposed division of Conrail. However, absent appropriate protective conditions, those benefits would come at a very high cost to Ohio shippers and communities that are depending upon continued accessibility to service currently provided by the regional and short line responsive applicants.

The continued viability of the four responding railroads is essential for the preservation of service and healthy competition in Ohio's rail transportation system. As noted in our Comments filed on October 21, Ohio's largest railroad is being acquired by its second and third largest railroads. The proposed purchase threatens the very existence of the W&LE, Ohio's fourth largest railroad. If the proposed transaction is approved, Ohio's shippers will be faced with a significant decrease in their transportation options due to the loss of Conrail. Additionally, if any of Ohio's regional or short line railroads are forced to cease or to curtail their

operations as a result of this acquisition, Ohio's shippers would be severely harmed. Ohio therefore strongly urges the Board to preserve essential rail service and competition in Ohio by granting the conditions requested in the responsive applications as supported herein. These conditions are reasonable and will enable the four responding railroads to continue providing responsive service to Ohio shippers and communities and to compete effectively with the remaining Class I railroads.

Respectfully submitted,



ATTORNEYS FOR STATE OF OHIO
PARTIES OF RECORD
BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO

Thomas M. O'Leary
Executive Director
Ohio Rail Development
Commission
50 W. Broad Street, 3rd Floor
Columbus, OH 43216

Alfred P. Agler
Director of Transportation
Division, Public Utilities
Commission of Ohio (PUCO)
Borden Building, 5th Floor
180 E. Broad Street
Columbus, OH 43215

Keith G. O'Brien
John D. Heffner
Robert A. Wimbish
Rea, Cross & Auchincloss
1920 N Street, NW
Washington, DC 20036
(202) 785-3700

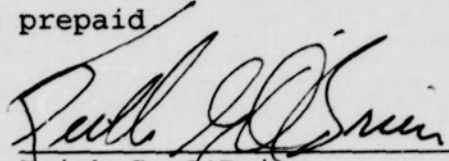
Doreen G. Johnson
Assistant Attorney General
Chief, Antitrust Section
Mitchell L. Gentile
Thomas G. Lindgren
Assistant Attorneys General
Antitrust Section
State Office Tower, 18th Floor
30 East Broad Street
Columbus, OH 43266-0410
(614) 466-4328

Alan Klodell
Assistant Attorney General for
Ohio Rail Development Commission
37 W. Broad Street
Columbus, OH 43216

DATED: DECEMBER 15, 1997

CERTIFICATE OF SERVICE

I hereby certify that I have this 15th day of December 1997, served the foregoing document upon all parties of record in this proceeding by mailing a copy thereof first class mail, properly addressed with postage prepaid



Keith G. O'Brien

EXHIBIT 1

OFFICE OF THE GOVERNOR
GEORGE V. VOINOVICH
COMMUNICATIONS OFFICE

FOR IMMEDIATE RELEASE
July 28, 1997

CHRYSLER TO BUILD NEW \$1.2 BILLION ASSEMBLY PLANT IN TOLEDO

COLUMBUS — Governor George V. Voinovich today expressed his extreme gratitude for Chrysler Corporation's decision to locate its new Jeep assembly plant in Toledo. The \$1.2 billion project is expected to retain 4,900 jobs at the company's current manufacturing facility in Toledo.

"Today's announcement not only signifies Chrysler's intent to renew its commitment to Ohio, it also validates the company's faith in Ohio's business leadership and the highly skilled workforce at its Toledo facility," Governor Voinovich said. "Chrysler's decision to build this facility in Toledo is a direct result of state and local officials rallying their efforts to maintain Chrysler's presence in Ohio, and more importantly, the city of Toledo. I want to commend Mayor Finkbeiner and Don Jakeway, Ohio Director of Development, for pulling their teams together to develop a comprehensive assistance package that met Chrysler's needs to move this project forward in Ohio."

This announcement came as a result of Chrysler's decision to replace its current antiquated facilities in Toledo which began operations at the turn of the century. Chrysler will build its new Jeep manufacturing facility at the Stickney Avenue site in the city of Toledo and will retain its 4,900 employees at both of its facilities once the new plant is completed. The company had considered several other states, including Michigan for this project.

The State of Ohio has offered Chrysler \$6 million over a three year period from the Ohio Industrial Training Program, an Investment Tax Credit valued at \$96.6 million based on Chrysler's projected investment in machinery and equipment and a Brownfield Site Clean-up Tax Credit valued at \$1.5 million. The state has also offered the City of Toledo the following to assist with this project: a \$10 million low-interest loan at an interest rate of 4% for 20 years to offset the cost of eligible infrastructure; a \$4.5 million grant from the Road Work Development Account to assist with eligible public road improvements; a \$4.5 million grant from the Business Development Account to assist with eligible on or off-site infrastructure costs associated with the project; and a \$1 million grant from the Urban and Rural Initiative Program to assist with acquiring, preparing and clean-up of the site for economic development.

In addition, the Ohio Department of Transportation will provide \$2 million and the Ohio Rail Development Commission will provide \$750,000 for the project.

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For more information, contact Kathie Fleck at (614) 644-0957 or Gail Crawley at (614) 466-2609.