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February 23, 1998

VIA HAND DELIVERY

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

SUB G3

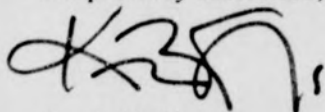
**Re: Finance Docket No. 33388, CSX Corporation and CSX Transportation, Inc.,
Norfolk Southern Corporation and Norfolk Southern Railway Company --
Control and Operating Leases/Agreements -- Conrail Inc. and Consolidated
Rail Corporation -- Transfer of Railroad Line by Norfolk Southern Railway
Company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

Dear Secretary Williams:

Enclosed you will find an original and 25 copies of the Brief of R.J. Corman Railroad Company/Western Ohio Line (RJC-7). Also enclosed is a 3.5 inch diskette containing the filing in WordPerfect 5.1.

Please stamp the extra copy of the foregoing and return it with our messenger.

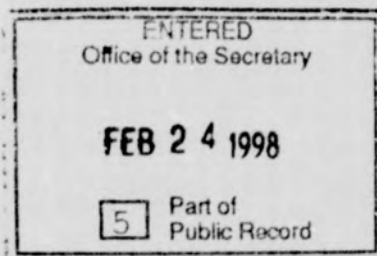
Respectfully submitted,



Kevin M. Sheys
OPPENHEIMER WOLFF & DONNELLY LLP

Enclosures

cc: All Parties Referenced in Certificate of Service



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BEFORE THE
SURFACE TRANSPORTATION BOARD

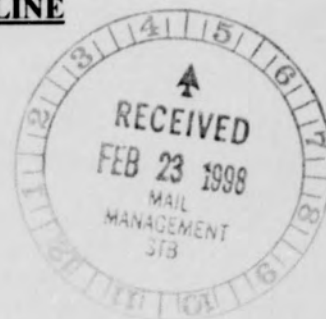
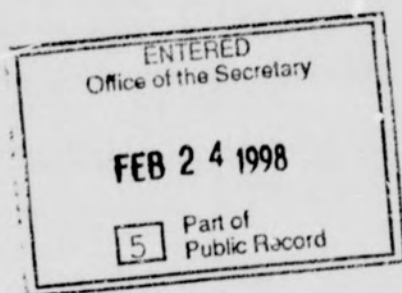
FINANCE DOCKET NO. 33388

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

FINANCE DOCKET NO. 33388 (Sub-No. 63)

R.J. CORMAN RAILROAD COMPANY/WESTERN OHIO LINE
--TRACKAGE RIGHTS--
LINES OF CONSOLIDATED RAIL CORPORATION

BRIEF OF R.J. CORMAN
RAILROAD COMPANY/WESTERN OHIO LINE



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LINE

Dated: February 23, 1998

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION AND SUMMARY	1
STATEMENT OF FACTS	2
ARGUMENT	3
A. Applicable Standard For Imposition Of Conditions	3
B. The Conrail Takeover Will Harm RJCW	4
C. RJCW's Proposed Condition Will Ameliorate The Demonstrated Harms	6
D. RJCW's Proposed Condition Is Narrowly Tailored To Remedy RJCW's Demonstrated Harms	6
E. RJCW's Proposed Condition Is Operationally Feasible	6
F. RJCW's Proposed Condition Will Not Diminish The Benefits Of The Conrail Takeover	7
CONCLUSION	8

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**BRIEF OF R.J. CORMAN
RAILROAD COMPANY/WESTERN OHIO LINE**

INTRODUCTION AND SUMMARY

R.J. Corman Railroad Company/Western Ohio Line ("RJCW") believes that the proposed control of Conrail by CSX and NS and the division of Conrail's assets between CSX and NS will adversely affect competitive rail service for the shippers and receivers on RJCW's line of railroad between Lima and Glenmore, Ohio. If the Board approves the Conrail takeover, RJCW seeks a Board condition permitting RJCW to acquire ownership of or trackage rights on Conrail's line of railroad between approximately milepost 54.4 and approximately milepost 52.1 in Lima, Ohio.

The proposed condition would mitigate the adverse impact of the Conrail takeover on existing competition for (i) grain traffic moving from western Ohio to grain markets in the south and (ii) fertilizer traffic moving from the south to western Ohio. RJCW seeks to keep its shippers

competitive with other grain and fertilizer shippers in the region, diminish CSX's control over the chokepoint of the Lima-Glenmore line, located at Lima, Ohio; and guarantee access to both NS and CSX for RJCW's shippers. The proposed condition is operationally feasible and would not reduce the benefits of the proposed Conrail takeover.

STATEMENT OF FACTS

RJCW is a Class III railroad operating approximately 51.5 miles of line between Lima, Ohio and the Indiana/Ohio border. RJCW also operates a line of railroad between Lima and Glenmore, Ohio, pursuant to a modified certificate of public convenience and necessity. Responsive Application of R.J. Corman Railroad Company/Western Ohio Line for Trackage Rights or Ownership ("RJCW Resp. App.") at 3. The Lima-Glenmore line is owned by the Van Wert County Port Authority and the Port Authority of Allen County. RJCW is the only shortline operator operating on the Lima-Glenmore line and provides the only rail service for Country Mark Cooperative and Mercer-Landmark, Inc. on this rail line. RJCW Resp. App. at 5.

Due to the relatively lower costs of rail transportation, both RJCW-served shippers on the Glenmore-Lima line have begun to substantially increase their use of rail transportation. For example, Mercer Landmark, a farmer's cooperative, has invested \$750,000 to expand its rail transfer facilities at Elgin, Ohio, and concentrated all of its transportation needs into and out of the region at that facility on the Lima-Glenmore line. Verified Statement of M.W. Grubb ("Grubb VS") at 2.

RJCW currently interchanges with Conrail at Lima, on Conrail's property just east of the Lima-Glenmore line. Traffic to or from points served by CSX or NS are switched by RJCW for Conrail to CSX and NS through a British Petroleum yard located in Lima. To make this "paper"

intermediate switch, RJCW traverses its line from MP 54.4 to MP 52.1, in Lima. RJCW has no other means of interchanging directly with NS or CSX. *Id.*

ARGUMENT

The condition requested by RJCW fits squarely within the Board's criteria for imposition of conditions in railroad mergers.

A. Applicable Standard For Imposition Of Conditions

The Board's authority to impose conditions on rail consolidation transactions is broad. 49 U.S.C. § 11324(c); *Union Pacific Corp., Union Pacific R.R. Co., and Missouri Pacific R.R. Co. -- Control and Merger -- Southern Pacific Rail Corp., Southern Pacific Transp. Co., St. Louis Southwestern Ry. Co., SPCSL Corp., and The Denver and Rio Grande Western R.R. Co.*, Finance Docket No. 32760 (STB served August 12, 1996) ("UP/SP") at 144; *Burlington Northern, Inc. -- Control and Merger -- Santa Fe Pacific Corp.*, Finance Docket No. 32549 (ICC served August 23, 1995) ("BN/SF") at 55; *Union Pacific -- Control -- Missouri Pacific; Western Pacific*, 366 ICC 459, 562 (ICC 1982), *aff'd sub. nom. Southern Pacific Transp. Co. v. I.C.C.*, 736 F.2d 708 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 1208 (1985) ("UP/MP/WP"). The Board prescribes conditions only upon finding that:

- Absent a condition, the proposed railroad consolidation may produce effects harmful to the public interest;
- An appropriate condition will ameliorate (or eliminate) the harmful effects;
- The condition is operationally feasible; and
- The conditions will yield public benefits outweighing any reduction in the benefits of the railroad consolidation.

As is explained in the sections below, RJCW's requested condition meets each of these criteria and therefore should be granted.

B. The Conrail Takeover Will Harm RJCW

The Applicants' proposed transactions would transfer ownership of this two mile segment of line from Conrail to CSX. After consummation of the transactions contemplated by the Primary Application, NS and CSX will become intensely competitive and will do everything possible to preserve revenues on line-haul movements. What will be in the economic interest of NS or CSX will not be in the interest of RJCW's customers on the Glenmore-Lima line. Conrail's intermediate switch for movement of RJCW traffic to or from the Glenmore-Lima line is \$60.00 per carload. Conrail is willing to move the traffic to NS and CSX at this rate, because Conrail is not competitive with respect to the origins/destinations on the NS/RJCW or CSX/RJCW traffic. Grubb VS at 3. After consummation of the transactions contemplated by the Primary Application, CSX will not have the same economic indifference that Conrail has today and consequently will not offer a comparable intermediate switch charge for RJCW's customers to reach NS. Furthermore, once CSX's sole control over the interchange and traffic is established, there will be no competitive pressure from NS to promptly service the interchange, thereby impeding or blocking the flow of our traffic and causing undue delays. *Id.*

There is strong shipper support for the condition sought by RJCW. *See Verified Statement of Michael M. Fry ("Fry VS")*. Mercer Landmark's main facility in Elgin, Ohio has grain storage capacity of 1.5 million bushels of grain, wholesale and retail fertilizer operations, and a 15,000-ton liquid fertilizer tank farm. Mercer Landmark is vastly expanding its Elgin facilities and hence is in the process of spending approximately \$750,000 to develop Elgin's rail

transfer capabilities. Given the relatively higher cost of truck transportation, Mercer Landmark recently began to consolidate its grain and retail fertilizer operations from its Ohio City and Rockford facilities to its Elgin facility. In turn, Mercer Landmark is greatly expanding the Elgin facilities and anticipates, in the near future, shipping 600 to 700 cars a year of grain, eventually growing to 1,000 cars a year by the end of the century. Fry VS at 2. Mercer Landmark also anticipates receiving 300 to 400 fertilizer cars, both liquid and dry, inbound a year. Fry VS at 3.

Mercer Landmark owns and operates the grain facility and retail fertilizer facility at Elgin. CountryMark Cooperative owns the 15,000 ton tank farm at Elgin, which Mercer Landmark operates for CountryMark Cooperative under contract. Mercer Landmark, a locally owned cooperative, is a member of CountryMark Cooperative, a regional cooperative serving 140 cooperatives in Ohio, Indiana, and Michigan. *Id.*

Mercer Landmark anticipates that inbound fertilizer cars will originate in part on CSX's lines out of Florida for phosphates and over NS' lines in Louisiana for nitrates. Mercer Landmark anticipates that most of its outbound grain shipments will be corn to the southeastern United States for the poultry and swine markets via both NS and CSX. *Id.*

With the substantial capital investment being put into Mercer Landmark rail facilities and its concentration of a significant portion of its grain and fertilizer transportation in Elgin, it is critical that Mercer Landmark continue to have competitive and efficient rail service. The whole purpose for Mercer Landmark's substantial capital investment and concentration in Elgin is to greatly expand its use of rail services given the lower transportation costs that it anticipates receiving from rail transportation. Mercer's plan requires access to competitive rail service. Its

member owners, approximately 1,500 farmers, have invested \$6 million in the cooperative.

Mercer is risking almost a sixth of that money on expanding rail service. Fry VS at 3-4.

C. RJCW's Proposed Condition Will Ameliorate The Demonstrated Harms

The proposed condition would preserve RJCW's access to NS, and therefore allow it to keep the multiple Class I connections it has today through Conrail. It is critical to the short and long term viability of RJCW's customers that they preserve access to both NS and CSX. With access to both railroads, RJCW-served shippers on the Glenmore-Lima line will be able to continue to take advantage of the comparatively lower costs of rail transportation versus motor carrier transportation. Fry VS at 3-5. The proposed condition would prevent CSX from establishing a "chokepoint" in Lima, thus mitigating the adverse impact that the transactions contemplated by the Application will have on competition for grain and fertilizer traffic in Ohio. Fry VS at 4.

D. RJCW's Proposed Condition Is Narrowly Tailored To Remedy RJCW's Demonstrated Harms

RJCW's proposed condition, purchase of the Conrail segment of line between approximately MP 54.4 and approximately 52.1 or trackage rights on that segment, is a narrowly tailored condition intended to remedy the harms demonstrated by RJCW. It does not put RJCW in a better position than it was in prior to the Conrail takeover.

E. RJCW's Proposed Condition Is Operationally Feasible

The proposed condition is operationally feasible. Conrail does not use the subject trackage for anything and the only use of the line is RJCW switching cars between the Glenmore-Lima line and the British Petroleum Yard. Grubb VS at 3. Thus, if the Board ordered Applicants to sell the Subject Line to RJCW, such a sale would have no adverse impact on the operations of

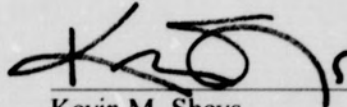
any of the Applicants. Alternatively, if the Board required the Applicants to grant RJCW trackage rights, RJCW's operations under those trackage rights would be identical to its current operations and would not interfere with any future operations of CSX on the Subject Line. *Id.*

F. RJCW's Proposed Condition Will Not Diminish The Benefits Of The Conrail Takeover

For all of the reasons set forth above, RJCW's proposed condition will not diminish the benefits of the Conrail takeover. Conrail has no operations on the Subject Line, other than the intermediate switching of RJCW cars from the Glenmore-Lima line to the British Petroleum Yard. CSX has not identified any use of the Subject Line. None of the benefits touted by the Applicants as a justification for the Conrail takeover would be diminished by the condition sought by RJCW.

CONCLUSION

WHEREFORE, RJCW respectfully requests that the Board condition the Applicants' proposed merger upon RJCW's acquisition of ownership of or trackage rights on Conrail's line of railroad between approximately milepost 54.4 and approximately milepost 52.1 in Lima, Ohio, subject to terms and conditions to be negotiated by the parties or, failing a negotiated agreement, set by the Board.



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**ATTORNEYS FOR R.J. CORMAN
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LINE**

Dated: February 23, 1998

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of February, 1998, a copy of the foregoing **Brief of R.J. Corman Railroad Company/Western Ohio Line (RJC-7)** was served by first class mail, postage prepaid, upon the entities listed in 49 C.F.R. § 1105.7(b), Administrative Law Judge Jacob J. Venthal and all Parties of Record on the Service List.



Kevin M. Sheys