

STB FD 33388 (Sub 78) 10-31-97 A 183668

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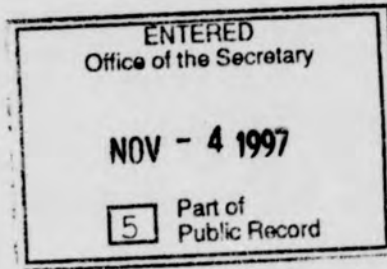
KARL MORELL

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October 31, 1997

**HAND DELIVERY**

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



183667

RE: STB 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

FD 33388-SUB 78- 183668

Dear Secretary Williams:

Enclosed for filing please find the original and 25 copies of the Responsive Application  
and Request for Conditions by Ann Arbor Acquisition Corporation d/b/a Ann Arbor Railroad.  
Also enclosed is check in the amount of \$4,700 to cover the applicable filing fee and a 3.5 inch  
diskette containing the filing in WordPerfect 5.2.

Please time and date stamp the extra copy of the filing and return it with our messenger.

If you have any questions, please contact me.

**FILED**

OCT 31 1997

SURFACE  
TRANSPORTATION BOARD

Respectfully,

*Karl Morell*

Karl Morell  
Attorney for:  
ANN ARBOR ACQUISITION CORPORATION  
d/b/a ANN ARBOR RAILROAD

**FEE RECEIVED**

OCT 31 1997

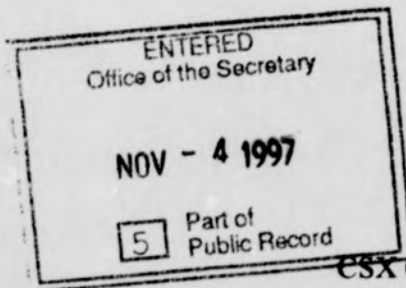
SURFACE  
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Enclosures

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ORIGINAL

AA-5



BEFORE THE  
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 33388-183667



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

STB FINANCE DOCKET NO. 33388 (SUB-NO. 78) -183668

ANN ARBOR ACQUISITION CORPORATION D/B/A ANN ARBOR RAILROAD  
--TRACKAGE RIGHTS--  
NORFOLK SOUTHERN RAILWAY COMPANY

RESPONSIVE APPLICATION AND  
REQUEST FOR CONDITIONS BY  
ANN ARBOR ACQUISITION CORPORATION D/B/A ANN ARBOR RAILROAD

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OCT 31 1997

SURFACE  
TRANSPORTATION BOARD

FILED

OCT 31 1997

SURFACE  
TRANSPORTATION BOARD

Dated: October 31, 1997

Karl Morell  
Of Counsel  
Ball Janik LLP  
Suite 225  
1455 F Street, N.W.  
Washington, D.C. 20005  
(202) 638-3307

Attorney for:  
ANN ARBOR ACQUISITION  
CORPORATION D/B/A ANN  
ARBOR RAILROAD

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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STB FINANCE DOCKET NO. 33388

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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

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STB FINANCE DOCKET NO. 33388 (SUB-NO. 78)

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ANN ARBOR ACQUISITION CORPORATION D/B/A ANN ARBOR RAILROAD  
--TRACKAGE RIGHTS--  
NORFOLK SOUTHERN RAILWAY COMPANY

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RESPONSIVE APPLICATION AND  
REQUEST FOR CONDITIONS BY  
ANN ARBOR ACQUISITION CORPORATION D/B/A ANN ARBOR RAILROAD

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Ann Arbor Acquisition Corporation, d/b/a Ann Arbor Railroad ("AA"), hereby submits its Responsive Application and Request For Conditions pursuant to Decision Nos. 12 and 50<sup>1</sup> in this proceeding, 49 U.S.C. §§ 11321-25, and the STB's Railroad Consolidation Procedures, 49 C.F.R. Part 1180. AA seeks the grant of conditions upon the transaction proposed by CSX Corporation ("CSXC"), CSX Transportation, Inc. ("CSXT"), Norfolk Southern Corporation ("NSC"), Norfolk Southern Railway Company ("NSR"), Conrail Inc. ("CRR"), and Consolidated Rail

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<sup>1</sup> In Decision No. 50, the Surface Transportation Board ("STB" or "Board") extended the deadline for the filing of AA's Responsive Application and Comments from October 21st to October 31, 1997.

Corporation ("CRC")<sup>2</sup> (collectively referred to as the "Primary Applicants").<sup>3</sup> The conditions AA seeks are intended to prevent the loss of essential rail services on the AA rail system and to ameliorate certain of the anticompetitive consequences of the Primary Transaction. In Decision No. 30, the Board found that AA's Responsive Application will be a "minor transaction."<sup>4</sup>

## INTRODUCTION

The AA originally provided rail service between Frankfort, Michigan and Toledo, Ohio. AA also operated car ferries between Frankfort and points in Wisconsin. The Detroit, Toledo, and Ironton Railroad Company purchased the entire AA, including car ferries, from the Wabash Railroad in 1963. In 1974, the AA entered into reorganization under the Bankruptcy Act and was one of the seven northeastern railroads covered by the Railroad Revitalization and Regulatory Reform Act of 1976. The portion of the AA between Ann Arbor, Michigan and Toledo was included in the Final System Plan that created CRC because of its importance to shippers. The State of Michigan, however, wanted to keep the entire AA system intact for the benefit of shippers and communities. As a result, the State of Michigan purchased the portion of the AA between Ann Arbor and Toledo in March 1976, and the remainder of the AA, including the car ferries, in 1980. CRC operated the entire line for the State of Michigan from April 1976 until

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<sup>2</sup> CSXC and CSXT are referred to collectively as CSX. NSC and NSR are referred to collectively as NS. CRR and CRC are referred to collectively as Conrail.

<sup>3</sup> In their Railroad Control Application filed on June 23, 1997, Primary Applicants seek Board approval for: (1) the acquisition by CSX and NS of control of Conrail; and (2) the division of the assets of Conrail by and between CSX and NS (hereinafter referred to as the "Primary Transaction").

<sup>4</sup> In its Description of Anticipated Responsive Applications (AA-2), AA notified the Board that AA anticipated seeking trackage rights over one of three alternate routes to Chicago. In response to a filing by the National Railroad Passenger Corporation ("Amtrak"), the Board, in Decision No. 30, ordered AA to produce operational data addressing the effect of AA's operations on Amtrak service in the event AA elected to seek trackage rights over the rail line between Ann Arbor and Chicago over which Amtrak operates or plans to operate high-speed rail passenger operations. AA has elected not to seek trackage rights over that rail line.

September 1977. On October 1, 1977, Michigan Interstate Railway Company ("Michigan Interstate") was designated the new operator of the line. The car ferry operation was discontinued in April 1982. In January 1983, Michigan Interstate filed for reorganization under the Bankruptcy Act. The Trustee for the estate purchased the portion of the AA between Ann Arbor and Toledo in September 1985. The AA, as now constituted, was sold to Ann Arbor Acquisition Corporation in October 1988.

Today, the AA is a Class III rail carrier providing rail service over approximately 46 miles of main line track between Ann Arbor and Toledo. AA is currently a highly efficient and profitable short line railroad. The reasons for AA's recent success are largely twofold. First, AA is a low cost railroad, providing its shippers highly efficient and economical rail service. Second, AA acts as a neutral switching carrier offering its shippers nondiscriminant access to four Class I railroads.

As is demonstrated in the attached Verified Statement of Mr. Erickson, AA stands to lose 47 percent of its revenues as a result of the Primary Transaction, which would have a devastating, if not fatal, impact on AA. If AA is unable to reach a satisfactory settlement with NSR and CSXT, and the Board fails to grant AA the requested conditions, AA ironically may come full circle from 1976 when CRC was created. The railroads comprising CRC were bankrupt in 1976, as was AA. As a result of the dismantling of CRC, AA may well end up back in bankruptcy again.

AA has attempted to negotiate a settlement with both NSR and CSXT. AA has had a number of meetings and telephone conversations with NSR in the past several months. Until very

recently, the negotiations with NSR were very cordial and, in AA's view, fruitful.<sup>5</sup> Shortly before the October 21st filing date, AA was of the opinion that a final resolution with NSR was imminent and that AA would not need to further participate in this proceeding. AA requested an extension of time to file its Responsive Application fairly confident that a settlement would be reached shortly. AA's expectations appear to have been overly optimistic. AA continues to be hopeful that it will be able to reach a settlement with NSR and CSXT. Because of the devastating effect the Primary Transaction would have on AA and its shippers, AA cannot afford to sit by idly and allow its time to request remedial conditions from the Board to pass in the hope that NSR and CSXT will continue to negotiate in good faith. Accordingly, AA is filing this Responsive Application and Request For Conditions as a precautionary measure in the event that AA is unsuccessful in reaching a voluntary solution with NSR and CSXT.

### **RESPONSIVE APPLICATION AND REQUEST FOR CONDITIONS**

In support of the Responsive Application and Request for Conditions, AA submits the following information as required by 49 C.F.R. § 1180.6:

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<sup>5</sup> In the joint response by NSR and CSXT to AA's request for an extension of time to file its Responsive Application, CSXT claimed that it has "had no substantive discussions or negotiations with AA about concessions in the context of the transaction." CSX/NS-117 at 1-2. CSXT's contention appears to be only partially correct. AA readily concedes that it has had many more contacts with NSR than with CSXT. The primary reason AA has negotiated more extensively with NSR is, quite frankly, that NSR has been a more willing and responsive negotiating party. As to CSXT's statement that they have had no "substantive" negotiations with AA, AA can only respond that, in AA's view, the discussions AA has had with CSXT were intended by AA to be substantive. CSXT apparently feels otherwise.

**SECTION 1180.6 (a)(1)(i)**  
**DESCRIPTION OF THE PROPOSED TRANSACTION**

AA requests that the Board condition the approval of Primary Applicants' proposed transaction by granting AA trackage rights between Toledo and Chicago as follows:

Limited trackage rights between Toledo, Ohio and Chicago, Illinois via Elkhart, Indiana over the CRC rail line to be acquired by NSR.

The term "limited" trackage rights, as used above, includes: (1) the right to operate trains over the line described; and (2) the right to interchange with all carriers (including shortlines) at all junctions on the line described.

The Board should retain jurisdiction to establish a reasonable trackage rights fee no higher than the fee CSXT and NSR would charge each other for trackage rights to be entered into pursuant to the Railroad Control Application. AA also requests that the Board retain jurisdiction to impose other terms in the event the parties are unable voluntarily to resolve these matters through negotiation.

AA also requests that the Board condition approval of the Primary Application by imposing a condition permitting AA to interchange traffic with CP Rail System ("CP") at Ann Arbor, Michigan.

**APPLICANT**

The name, address and telephone number of the Responsive Applicant are:

Ann Arbor Acquisition Corporation d/b/a  
Ann Arbor Railroad  
121 South Walnut Street  
Howell, Michigan 48844  
(517) 548-3930

The name, address and telephone number of counsel to whom questions should be addressed are:

Karl Morell  
Ball Janik LLP  
Suite 225  
1455 F Street, N.W.  
Washington, D.C. 20005  
(202) 638-3307

**SECTION 1180.6(a)(1)(ii)**  
**PROPOSED TIME SCHEDULE**

AA is prepared to commence operations pursuant to the proposed trackage rights immediately after the effective date of the Board's approval of AA's Responsive Application. In order to perform the proposed operations under the trackage rights, AA would initially need one crew consisting of two employees and two locomotives. The employees needed initially for this new service could be shifted from current operations on the AA, given the significant traffic diversions projected by AA. AA would, however, need to acquire or lease one locomotive initially and possibly two additional locomotives later if added traffic materializes. AA is confident that it can quickly acquire or lease suitable equipment in order expeditiously to institute the new operations.

**SECTION 1180.6(a)(1)(iii)**  
**PURPOSE**

The purpose of the requested trackage rights is twofold. First, to ameliorate the loss of essential rail service on the AA rail system. Second, to remedy certain anticompetitive effects of

the Primary Transaction on shippers in the area served by AA and in the Toledo to Chicago rail corridor.

AA estimates that it will lose approximately \$3,350,000 in revenues as a result of the Primary Transaction, as is demonstrated in the attached Verified Statement of Mr. Erickson. The loss of these revenues will have a devastating effect on AA and impair AA's ability to perform essential services on its rail line. The requested trackage rights would allow AA to reach connections with the western railroads in Chicago and thus enable AA to retain some of the traffic that would otherwise be diverted and to attract new traffic to offset the remaining losses. The revenues generated from the traffic AA could retain or attract, if the requested conditions are granted, would enable AA to continue providing essential services on its rail line.

The requested condition to interchange traffic with CP at Ann Arbor would allow AA to divert to rail, traffic that now moves by truck and, thus, enable AA to further recoup its projected revenue losses.

The Primary Transaction would result in the elimination of effective rail competition between the AA rail line and Chicago. As explained below, the requested trackage rights would enable AA to preserve intramodal competition in this market.

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

No new securities or other financial arrangements would be required for AA to consummate the proposed transaction and commence operations under the requested trackage rights. AA does not anticipate the need to acquire any additional facilities to commence

operations pursuant to the requested trackage rights. The one to three additional locomotives that would be needed could either be leased or purchased and funded with cash or through existing credit facilities.

**SECTION 1180.6(a)(2)**  
**PUBLIC INTEREST JUSTIFICATIONS**

The requested trackage rights are in the public interest because they would redress the harm that would result from the Primary Transaction to the essential services provided by AA to the customers it serves. Granting the requested conditions would enable AA to continue providing its shippers adequate rail service. The estimated revenue losses would force AA to cover its fixed costs from a declining traffic base thereby increasing its per unit cost which would have to be passed on to its remaining customers. These increased unit costs would have a downward spiraling trend. As the per unit cost for AA's service increases, some of AA's remaining customers would be forced to switch to other transportation modes which, in turn, would only further increase AA's per unit cost and drive away additional customers.

The requested condition to permit AA to interchange traffic with CP at Ann Arbor is also consistent with the public interest. If this condition is granted by the Board, AA would be able to divert automotive traffic that now moves about 50 miles by truck from Toledo to the Detroit-Windsor area with a subsequent rail movement to Canadian destinations. AA would be able to haul that traffic from Toledo to Ann Arbor for a direct interchange with CP to Canadian destinations.

Primary Applicants claim significant public benefits in the form of safer highways, reduced fuel consumption and reduced highway damage by diverting traffic from truck to rail. If AA is

forced to curtail or reduce rail service as a result of the significant revenue losses, AA's customers would have no option other than to divert their shipments to trucks. This result would be detrimental to the public interest for the very reasons explained in the Railroad Control Application. Conversely, AA's ability to divert truck traffic between Toledo and Detroit to rail would produce significant public benefits as is demonstrated by Primary Applicants, without any corresponding harm to NSR or CSXT.

The requested trackage rights would also ameliorate certain anticompetitive effects of the Primary Transaction. As explained below, AA would be able to preserve rail competition in the Toledo to Chicago rail corridor by offering a direct, efficient and competitive alternative to NSR.

The trackage rights sought by AA would not impose any unreasonable operating problems on the rail line between Toledo and Chicago or in the region generally. Similarly, the requested interchange with CP at Ann Arbor would not impair NSR's proposed operation over that line. The trackage rights and the CP interchange would also not detract in any material respect from the public benefits the Primary Applicants expect to achieve from the Primary Transaction. Primary Applicants claim public benefits of nearly \$1 billion per year. *See CSX/NS-18 at 2.* The trackage rights sought by AA would enable AA to retain some or all of the revenues that would otherwise be lost. The proposed CP interchange would divert traffic from trucks and not from either NSR or CSXT.

#### **SECTION 1180.6(a)(2)(i) EFFECT ON COMPETITION**

AA is a 46-mile Class III short line operating between Ann Arbor, Michigan and Toledo, Ohio. As such, AA is dependent on its Class I railroad connections for access to the national rail

system so that it can serve its shippers. Today, AA's main interchange partner is CRC. CRC has been flexible and offers AA, and AA's shippers, reasonable pricing and good service for traffic moving to and from the east and west. AA's traffic is price and service sensitive. The ability to have competitive rail connections has kept AA viable.

AA's traffic base consists of nearly 50 percent bulk commodities, ideally suited to rail transportation, and a little over 50 percent automobile and auto parts traffic. AA believes that there is no realistic intermodal competition for its bulk traffic, and that its automotive traffic will move by rail as long as there is reliable and efficient service, which can only be maintained by intra-rail competition.<sup>6</sup> The product market AA is addressing is rail transportation. The Primary Transaction spans the entire eastern United States. However, AA's area of geographic concern is much more limited. AA must interchange traffic in order for the traffic to move to and from the market. It is well recognized that one of the most, if not the most, important national interchange points is Chicago. Competitive access to Chicago is vitally critical to AA and certain shippers on its line. The geographic market that concerns AA in this proceeding is the communities on AA's line between Ann Arbor and Toledo, on the one hand, and Chicago, on the other. AA is, therefore, limiting its competitive analysis to rail transportation between points on AA's line and Chicago.

The acquisition of CRC by CSXT and NSR will significantly reduce AA's competitive options. By allowing AA to operate via trackage rights between Toledo and Chicago, the Board

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<sup>6</sup> Chrysler Corporation ("Chrysler") submitted a statement in support of Primary Applicants. CSX/NS-21 at 607-609. However, Chrysler's support was not without reservations. Chrysler seeks two railroad competitors for its facilities in Newark, Delaware and Twinsburg, Ohio. Chrysler also emphasized the importance of single-line service, such as AA proposes between its line and Chicago.

would maintain the competitive balance that exists today for AA that is so vital to certain shippers on AA's rail line.

Today, AA's only non-circuitous connections to and from Chicago are CRC and NSR. AA interchanges with CRC at Ann Arbor and Toledo. AA interchanges with NSR at Toledo, and Milan, Michigan. AA's other connections to Chicago either require further interchanges or are so circuitous that service is not competitive.

AA connects with the Tuscola & Saginaw Bay Railway Company, Inc. ("TSBY"), at Ann Arbor. TSBY operates from Ann Arbor north where TSBY connects with CSXT at Ann Pere, Michigan (about 27 miles north of Ann Arbor) and with CN at Durand, Michigan (about 51 miles north of Ann Arbor). These circuitous routes north and on to Chicago via either CSXT or CN would not be a competitive option for the AA. Moreover, such routings would add an additional carrier, creating at least one more interchange with its attendant delay and potential damage to the shipments. Consequently, routing traffic over TSBY for interchange to CN or CSXT is not a viable routing alternative to Chicago for AA.

AA directly interchanges with CN at Toledo. CN, however, does not have a direct route from Toledo to Chicago. To reach Chicago from Toledo, CN must haul traffic about 114 miles north to Port Huron, Michigan, through Detroit. CN would then need to handle the traffic over its line between Port Huron and Chicago, about 351 miles. The route to Chicago from Toledo over CN would be about 455 miles, or about 225 miles longer than the rail line over which AA is seeking trackage rights. Such a circuitous route through high density areas is clearly not competitive with the service that NSR would offer between Toledo and Chicago.

AA can also interchange with CSXT at Toledo. CSXT, however, will not be permitted to route traffic over the CRC line between Toledo and Chicago that NSR is to acquire. CSXT will not have the right to physically operate over that line. NSR will merely grant CSXT haulage rights between Berea, Ohio (just west of Cleveland) and Chicago (63rd Street) for overhead haulage limited to a maximum of six merchandise and/or intermodal trains per day each way to the Park Manor Yard at 63rd Street in Chicago until CRC's Fort Wayne Line (the Fort Wayne to Chicago portion is now owned by NSR) is upgraded, up to a maximum of three years. *See CSX/NS-25 at 116, Item 2, A., 1., of Schedule 4, Schedule of Trackage Rights, Haulage, Shared Asset and Other Operating Agreements.* Since CSXT will only receive overhead haulage rights between Berea and Chicago, CSXT cannot pick up AA's traffic at Toledo. Moreover, CSXT will not be operating the trains, NSR will be the operator. Finally, the haulage agreement lasts a maximum three years.

CSXT could also route traffic from Toledo south to one of two CSXT lines that move traffic east and west to and from Chicago. CSXT could route the AA traffic to Deschler, Galatea, or Fostoria, Ohio, 37, 35, and 35 miles from Toledo, respectively, and then route it over CSXT's main line to Chicago. CSXT could also take the AA traffic further south to Lima, Ohio, 71 miles from Toledo, and then route it over the line it will acquire from CRC to Chicago. The use of either of these CSXT routings would add additional circuitry to any AA traffic moving between Toledo and Chicago.

Today, AA can interchange traffic with NSR at Toledo and Milan and with CRC at Toledo and Ann Arbor. After the acquisition of CRC, NSR will own and operate the CRC lines between Detroit and Chicago and between Cleveland and Chicago. *See CSX/NS-25.* In other

words, AA's direct, non-circuitous interchanges to and from Chicago will be limited to NSR at Ann Arbor, Milan, and Toledo. Today, NSR is a competitive alternative to CRC for AA traffic moving between the AA rail line and Chicago. As a result of the Primary Transaction, NSR will become AA's only efficient interchange to and from Chicago. Where AA can today play off its ability to directly interchange with either CRC or NSR for Chicago traffic, that option will be foreclosed if the Primary Transaction is approved without appropriate conditions.

The corridor between AA's line and Chicago (the "Corridor") will become a "2-1 corridor" as defined by the Board in Finance Docket No. 32760, *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*, Decision No. 44, served August 12, 1996, at 122. Only NSR and CRC offer effective competitive alternatives today for traffic flows in the Corridor. NSR will become the exclusive operator of the CRC lines in the Corridor, and the exclusive interchange railroad with AA for traffic flowing in the Corridor.

To prevent the creation of a 2-1 corridor, AA has proposed limited overhead trackage rights on NSR between Toledo and Chicago. These trackage rights will continue the competition that AA and its shippers enjoy today without interfering with the public benefits of the transaction.

**SECTION 1180.6(a)(2)(ii)**  
**FINANCIAL CONSIDERATIONS**

AA estimates that it stands to lose \$3,350,000 in revenues annually if the Railroad Control Application is approved. The requested trackage rights and CP interchange would enable AA to retain some of the traffic that would otherwise be diverted and to attract new traffic to offset the remaining revenue losses.

**SECTION 1180.6(a)(2)(iii)**  
**EFFECT ON FIXED CHARGES**

AA does not expect any increase in fixed charges resulting from the operations proposed in this Responsive Application.

**SECTION 1180.6(a)(2)(iv)**  
**EFFECT ON ADEQUACY OF TRANSPORTATION**

Granting the conditions sought by AA would have a positive effect on the adequacy of transportation in the markets served by AA. The requested trackage rights are necessary to preserve essential services now performed by AA. AA provides vital and economic rail service to several industries located along its rail line. The revenue losses will force AA to dramatically reduce the level of its current service and stop service to some customers altogether.

Accordingly, if the requested trackage rights are not granted, shippers dependent on AA will lose essential rail service.

**SECTION 1180.6(a)(2)(v)**  
**EFFECT ON EMPLOYEES**

Granting the trackage rights sought by AA should have little, if any, impact on the employees of Primary Applicants. The trackage rights, however, should have a positive impact on AA employees by enabling AA to retain most and possibly all of its work force.

**SECTION 1180.6(a)(2)(vi)**  
**EFFECT OF INCLUSION OF OTHER RAILROADS**

Not applicable to this Responsive Application.

**SECTION 1180.6(a)(3)**  
**OTHER SUPPORTING STATEMENTS**

AA anticipates that its Responsive Application will be supported by other entities in separate filings with the Board.

**SECTION 1180.6(a)(4)**  
**OPINION OF COUNSEL**

The opinion of AA's counsel that the conditions requested in this Responsive Application satisfy the requirements of law and will be legally authorized and valid if approved by the Board appears at the end of the narrative of the Responsive Application.

**SECTION 1180.6(a)(5)**  
**LIST OF STATES**

AA currently operates only in the States of Ohio and Michigan and the rail line over which AA seeks trackage rights is located in the States of Ohio, Indiana and Illinois. The requested interchange with CP would occur in Michigan.

**SECTION 1180.6(a)(6)**  
**MAP**

Maps showing the rail line operated by AA and the line over which AA seeks trackage rights are attached as Exhibit 1.

**SECTION 1180.6(a)(7)(i)**  
**NATURE OF TRANSACTION**

The conditions AA seeks to have imposed on the Primary Application are a grant of trackage rights and an interchange with CP as described above under Sections 1180.6(a)(1)(i).

**SECTION 1180.6(a)(7)(ii)**  
**AGREEMENTS**

A draft agreement setting forth the significant terms proposed is attached as Exhibit 2.

**SECTION 1180.6(a)(7)(iii)**  
**CONSOLIDATED COMPANY INFORMATION**

Not applicable to this Responsive Application.

**SECTION 1180.6(a)(7)(iv)**  
**COURT ORDER**

Not applicable to this Responsive Application.

**SECTION 1180.6(a)(7)(v)**  
**PROPERTY INCLUDED IN THE PROPOSED TRANSACTION**

The trackage rights requested by AA are over a very limited portion of the rail lines sought to be acquired by NSR in the Primary Transaction. See "Description of Proposed Transaction" under Section 1180.6(a)(1) and the maps attached as Exhibit 1.

**SECTION 1180.6(a)(7)(vi)**  
**PRINCIPAL ROUTES**

AA is a Class III rail carrier providing rail service over approximately 46 miles of main line track and 31.44 miles of yard and side tracks between Ann Arbor, Michigan and Toledo, Ohio. AA currently connects with CRC, CSXT, NSR and CN at Toledo; with NSR at Milan, Michigan; and with CRC and the TSBY at Ann Arbor.

The trackage rights AA seeks are over a rail line approximately 230 miles in length. With a grant of the requested trackage rights, AA will be able to operate from Toledo to Delta, Ohio for a connection with the Grand Trunk Western Railroad, Inc. ("GTW"), to South Bend, Indiana for a connection with the GTW and on to Chicago for destination or connections with the western railroads, short lines, and the local terminal carriers in Chicago.

AA currently connects with CRC at Ann Arbor. Pursuant to the Primary Transaction, NSR would acquire the CRC line through Ann Arbor and it has been reported that CP, as a result of a settlement with NSR, would acquire rights over that line. AA has been informed, however, that the rights CP would acquire would not permit CP to interchange with AA at Ann Arbor. AA is seeking the imposition of a condition by the Board that would permit an AA-CP interchange at Ann Arbor.

**SECTION 1180.6(a)(7)(vii)**  
**GOVERNMENTAL FINANCIAL ASSISTANCE**

No governmental assistance will be sought to consummate the transaction sought in this Responsive Application.

**SECTION 1180.6(a)(8)**  
**ENVIRONMENTAL DATA**

AA has submitted an Environmental Verified Statement (AA-3) pursuant to Decision No. 38, stating that no environmental documentation is required for AA's Responsive Application pursuant to the provisions of 49 C.F.R. § 1105.6(c)(2). AA hereby reconfirms that no environmental documentation is required for the grant of this Responsive Application.

**SECTION 1180.8(b)**  
**OPERATING PLAN-MINOR**

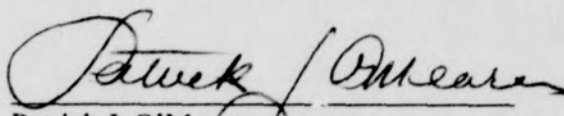
A copy of AA's operating plan is attached as Exhibit 15.

**CONCLUSION**

For the foregoing reasons, AA respectfully urges the Board to grant, as conditions to approving the Railroad Control Application, AA the trackage rights between Toledo and Chicago and the right to interchange with CP at Ann Arbor, as requested in this Responsive Application.

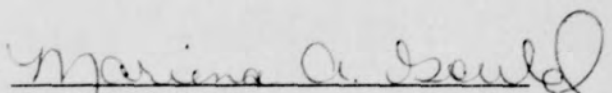
**SECTION 1180.4 (c)(2)(i)**  
**SIGNATURES, OATHS, AND CERTIFICATIONS**  
**OF APPLICANT'S EXECUTIVE OFFICERS**

I, Patrick J. O'Meara, declare under penalty of perjury that I am Chairman and President of the Ann Arbor Acquisition Corporation, owner and operator of Ann Arbor Railroad, responsive applicant herein, that I am one of the executive officers duly authorized to sign, to verify, and to file this Responsive Application on behalf of Ann Arbor Acquisition Corporation, that I have knowledge of the matters contained in this Responsive Application, and that the statements made in this Responsive Application are true and correct to the best of my knowledge and belief.

  
Patrick J. O'Meara

Executed on October 29, 1997

I, Mariena Gould, hereby certify that I am Corporate Secretary of Ann Arbor Acquisition Corporation, responsive applicant herein, and that Patrick J. O'Meara, is duly authorized to sign, to verify, and to file this Responsive Application on behalf of Ann Arbor Acquisition Corporation.

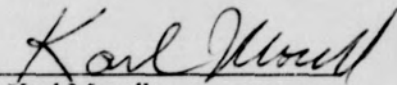
  
Corporate Secretary

Dated this 29th day of October 1997, at Howell, Michigan.

**SECTION 1180.6(a)(4)**  
**OPINION OF COUNSEL FOR**  
**ANN ARBOR RAILROAD**

As counsel for Ann Arbor Acquisition Corporation, owner and operator of Ann Arbor Railroad ("AA"), I am familiar with the transaction proposed in the Responsive Application of AA. It is my opinion that the transaction proposed in AA's Responsive Application meets all requirements of law, will be legally authorized and valid if approved by the Surface Transportation Board, is within the corporate power of AA, and will not result in any breach, violation or default of any provision of AA's Articles of Incorporation or Bylaws.

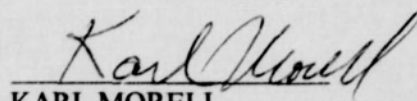
BALL JANIK LLP

By:   
Karl Morell  
Suite 225  
1455 F Street, N.W.  
Washington, D.C. 20005

Attorney for Ann Arbor Acquisition  
Corporation d/b/a Ann Arbor  
Railroad

Dated this 31 day of October, 1997.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Karl Morell", is written over a horizontal line.

KARL MORELL

Of Counsel

BALL JANIK LLP

1455 F Street, N.W.

Suite 225

Washington, D.C. 20005

(202) 638-3307

Attorney for:

ANN ARBOR ACQUISITION CORPORATION

D/B/A ANN ARBOR RAILROAD

Dated: October 31, 1997

## **CERTIFICATE OF SERVICE**

I hereby certify that on this 31st day of October, 1997, I caused a copy of the Responsive Application of Ann Arbor Acquisition Corporation d/b/a Ann Arbor Railroad (AA-5), to be served on counsel for Primary Applicants by Hand Delivery and on Administrative Law Judge Jacob Leventhal and all other Parties of Record by first class mail, postage prepaid.

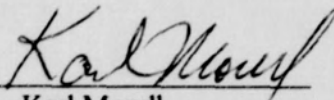
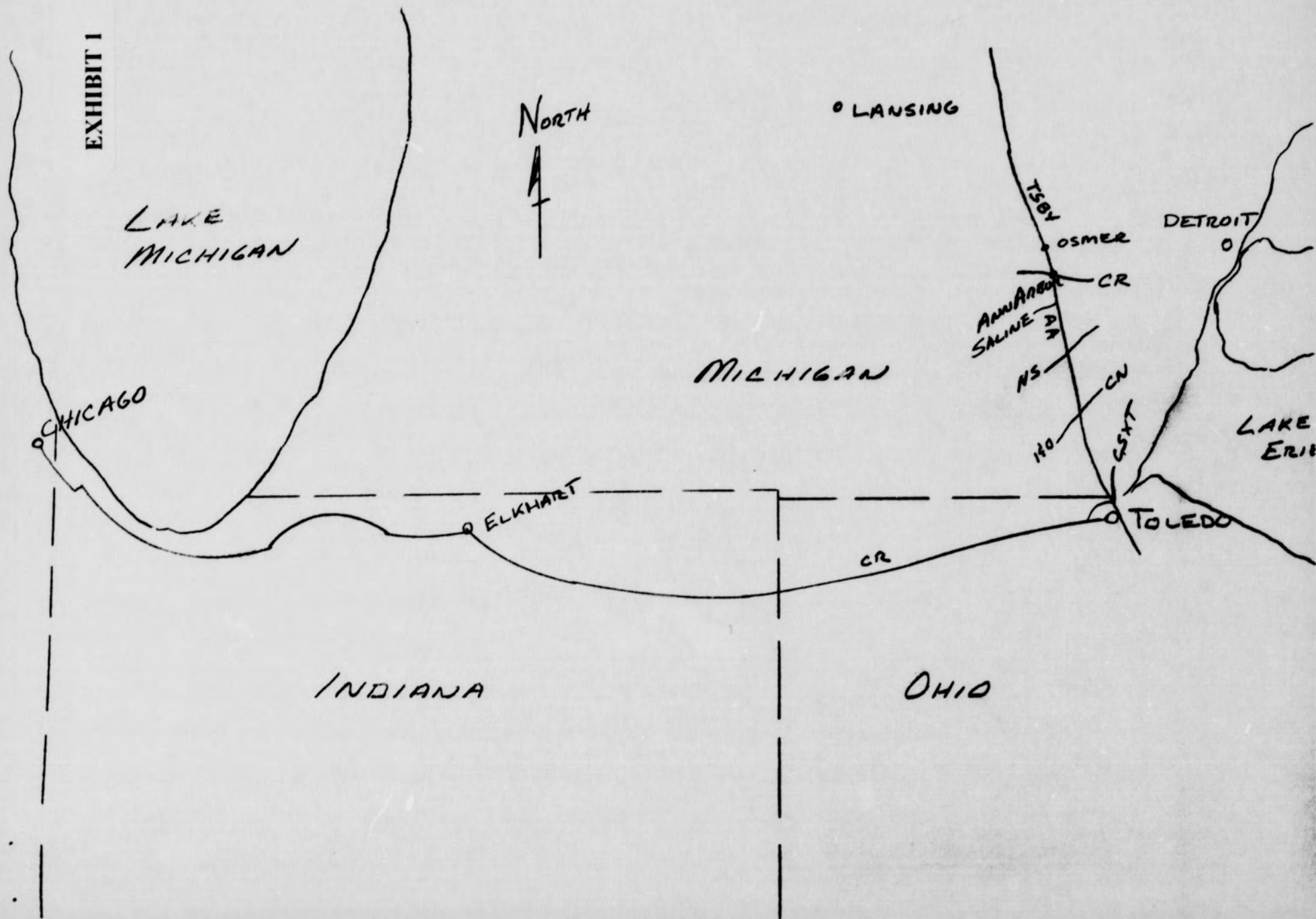





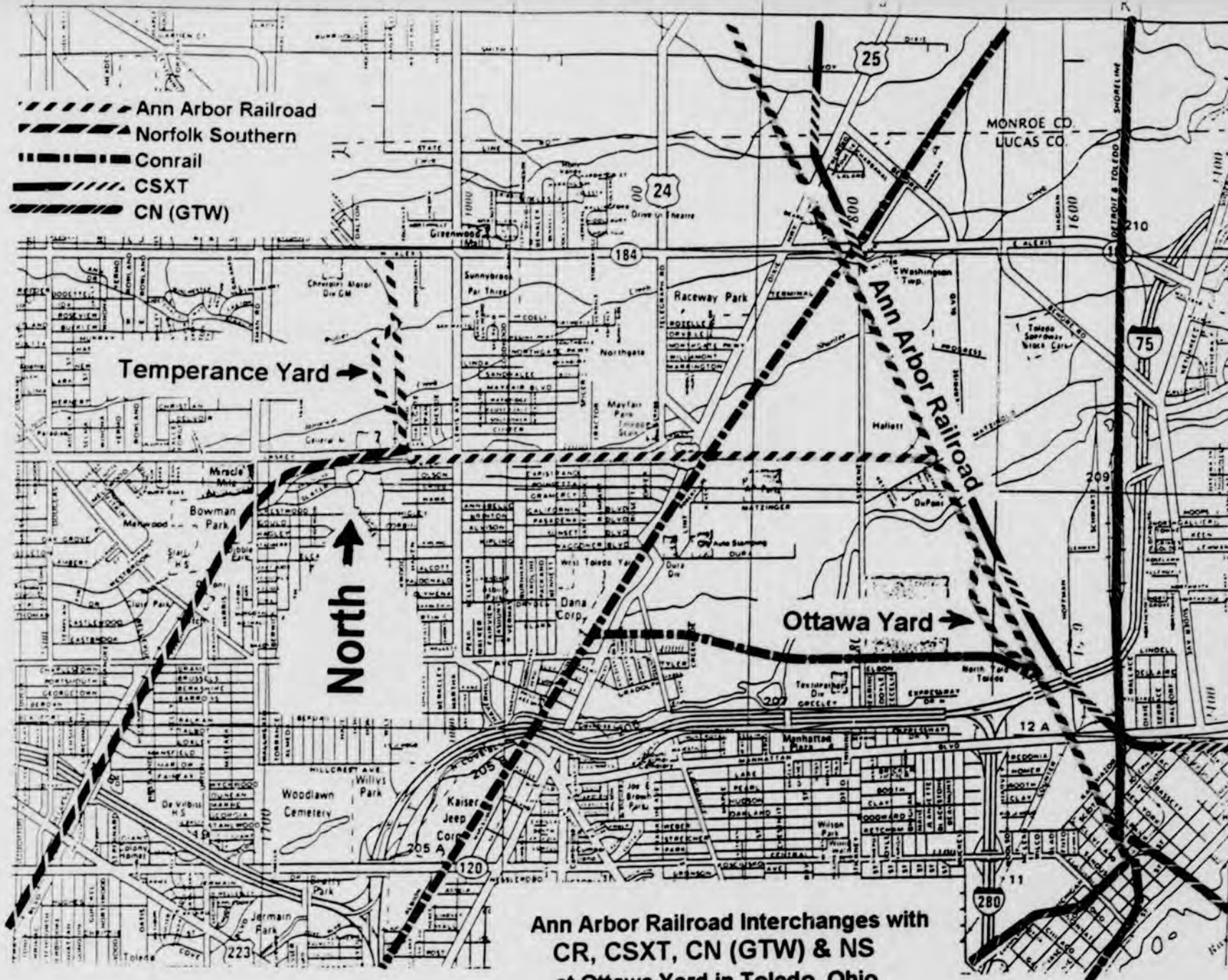
  
Karl Morell

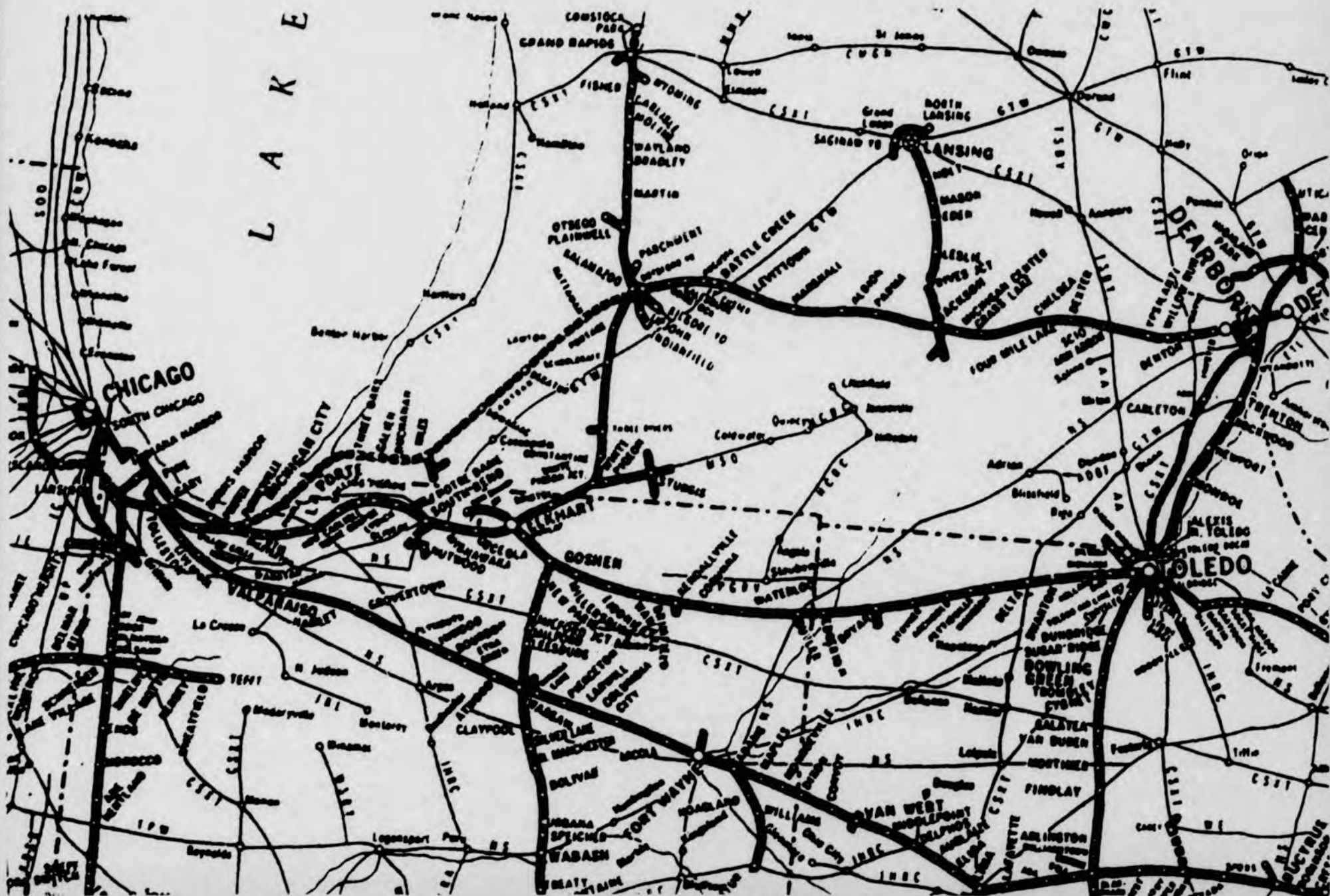
EXHIBIT I

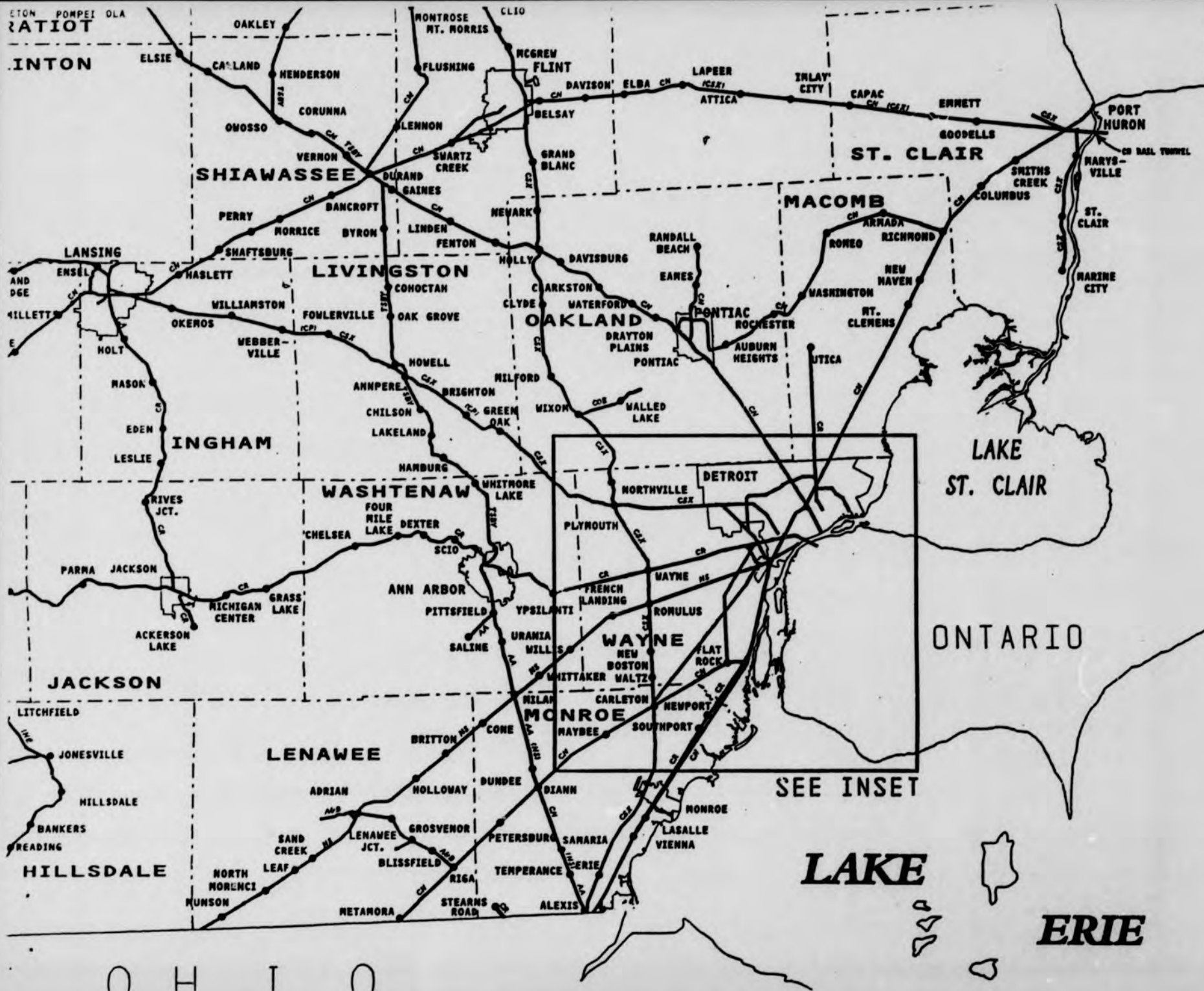


-  Ann Arbor Railroad
-  Norfolk Southern
-  Conrail
-  CSXT
-  CN (GTW)



**Ann Arbor Railroad Interchanges with  
CR, CSXT, CN (GTW) & NS  
at Ottawa Yard in Toledo, Ohio**





TSBY  
OSMER

CR (SOON NS)

ANN ARBOR

BURT FOREST  
FINGERLE

CROSSBT 84 LUM

SALINE BR LINE

FORD

NS

MILAN

HOLNAM

CN

DIANN

140

SAMARIA  
CROP PROD. SVC.

CR (SOON NS)

ALEXIS

GM  
POWERTRAIN 84 LUM.

GEN MILLS

TYC

VIKING

HALLETT

CSXT

OTTAWA YARD

TOLEDO

CHRYSLER

WHEELING YARD

INTERCHANGE WITH  
CR, NS, CSXT, CN  
AT TOLEDO

mfm

MANHATTAN JCT.

NS

OHIO BLENDERS

TO CR

TO NS

**EXHIBIT 2**

**TRACKAGE RIGHTS AGREEMENT**

**between**

**NORFOLK SOUTHERN RAILWAY COMPANY**

**and**

**ANN ARBOR RAILROAD**

## AGREEMENT

THIS AGREEMENT, entered into as of this \_\_\_\_ day of \_\_\_\_, 199\_, by and between NORFOLK SOUTHERN RAILWAY COMPANY, (hereinafter referred to as "NSR" or "OWNER") and ANN ARBOR RAILROAD (hereinafter referred to as "AA" or "USER"),

WHEREAS, the Surface Transportation Board, in its decision in 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, served \_\_\_\_\_, (1) approved the acquisition by CSX Corporation and CSX Transportation, Inc., and Norfolk Southern Corporation, and Norfolk Southern Railway Company of control of Conrail, Inc., and Consolidated Rail Corporation; and (2) the division of the assets of Conrail, Inc., and Consolidated Rail Corporation ("CRC") by and between CSX Corporation and CSX Transportation Inc., and Norfolk Southern Corporation and Norfolk Southern Railway Company; and

WHEREAS, the Surface Transportation Board conditioned the control of Conrail, Inc., and Consolidated Rail Corporation on, among other things, the grant of trackage rights as set forth further in the Responsive Application of AA, dated October 31, 1997; and

WHEREAS, NSR desires to provide AA with the rights requested in said Responsive Application; and

WHEREAS, AA is agreeable to receiving said rights and desires to conduct operations over said rights under the terms and conditions herein and hereafter set forth,

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

### **SECTION 1. GRANT OF TRACKAGE RIGHTS**

(a) Subject to the terms and conditions herein provided, Owner hereby grants to User the right to operate in limited trackage rights, its trains, locomotives, cars, and equipment with its own crews (hereinafter referred to as the "Trackage Rights") over the following segments of Owner's railroad (hereinafter referred to as the "Subject Trackage"):

Between Toledo, Ohio and Chicago, Illinois via Elkhart, Indiana over the rail line formerly owned by CRC and acquired and operated by NSR.

The term "limited" trackage rights, as used above, includes: (1) the right to operate trains over the lines described; and (2) the right to interchange with all carriers (including shortlines) at all junctions on the lines.

## **SECTION 2. USE OF SUBJECT TRACKAGE**

(a) User's use of the Subject Trackage shall be in common with Owner and any other user of the Subject Trackage, and Owner's right to use the Subject Trackage shall not be diminished by this Agreement. Owner shall retain the right to grant to other persons rights of any nature in the Subject Trackage.

(b) Owner shall have exclusive control of the management and operation of the Subject Trackage.

(c) User shall have the right to operate in either direction over the Subject Trackage.

## **SECTION 3. COMPENSATION**

(a) The compensation for operations under this Agreement shall be set at the levels as follows:

## **SECTION 4. PAYMENT OF BILLS**

(a) All payments called for under this Agreement shall be made by User within thirty (30) days after receipt of bills therefor. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the parties hereto shall be adjusted in the accounts of a subsequent month.

(b) Bills rendered pursuant to the provisions of this Agreement shall include direct labor and material costs, together with the surcharges, overhead, percentages, and equipment rentals in effect at the time any work is performed by Owner.

## **SECTION 5. MAINTENANCE OF SUBJECT TRACKAGE**

(a) Owner shall maintain, repair, and renew the Subject Trackage at its own expense and with its own supervision and labor. Owner shall keep and maintain the Subject Trackage in reasonably good condition for the use herein contemplated, but Owner does not guarantee the condition of the Subject Trackage or that operations thereover will not be interrupted. Furthermore, except as may be otherwise provided in Section 11 hereof, User shall not by reason of failure or neglect on the part of Owner to maintain, repair, or renew the Subject Trackage, have or make any claim or demand against Owner or its directors, officers, agents, or employees for any injury to or death of any person or persons whomsoever, or for any damage to or loss or destruction of any property whatsoever, or for any damages of any nature suffered by User resulting from any such failure or neglect.

(b) Owner shall also perform, at the expense of User, such additional maintenance as User may request.

## **SECTION 6. CONSTRUCTION AND MAINTENANCE OF CONNECTIONS**

(a) Existing connections or facilities which are jointly used by the parties hereto under existing agreements or practices shall continue to be maintained, repaired, and renewed by and at the expense of the party or parties responsible for such maintenance, repair, and renewal under such agreements or practices.

(b) Any additional connections to the Subject Trackage which may be required shall be constructed, maintained, repaired, and renewed as follows:

(i) User shall furnish all labor and material and shall construct, maintain, repair, and renew at its sole cost, liability and expense such portions of the tracks located on the right-of-way of User which connect the respective lines of the parties hereto; and

(ii) Owner shall furnish all labor and material and shall construct, maintain, repair, and renew at the sole cost, liability and expense of User such portions of the tracks located on the right-of-way of Owner which connect the respective lines of the parties hereto.

## **SECTION 7. ADDITIONS, RETIREMENTS, AND ALTERATIONS**

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

(b) If User requests Owner to make changes in or additions and betterments to the Subject Trackage, including without limitation changes in communications or signal facilities, for purposes beyond that required for Owner's operation, Owner shall have the option:

(i) to make such changes in or additions and betterments to the Subject Trackage and User shall pay to Owner the cost thereof, including the annual expense of maintaining, repairing, and renewing such additional or altered facilities; or,

(ii) to deny such request.

## **SECTION 8. MANAGEMENT AND OPERATIONS**

(a) User shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Acts, as amended, and all other federal and state laws, regulations, and rules respecting the operation, condition, inspection, and safety of its trains, locomotives, cars, and equipment while such trains, locomotives, cars, and equipment are being operated over the Subject Trackage. User shall indemnify, protect, defend, and save harmless Owner and its directors, officers, agents, and employees from and against all fines, penalties, and

liabilities imposed upon Owner or its directors, officers, agents, or employees under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable to the failure of User to comply with its obligations in this regard.

(b) User, in its use of the Subject Trackage, will comply in all respects with the operating rules and regulations of Owner, and the movement of User's trains, locomotive, cars, and equipment over the Subject Trackage shall at all times be subject to the orders of the transportation officers of Owner. User's trains shall not include locomotives, cars, or equipment which exceed the width, height, weight, or other restrictions or capacities of the Subject Trackage as published in Railway Line Clearances, and no train shall contain locomotives, cars, or equipment which require speed restrictions or other movement restrictions below the authorized freight speeds as provided by Owner's operating rules and regulations without the prior consent of Owner, which consent will not be unreasonably withheld. User shall indemnify, protect, defend, and save harmless Owner and its directors, officers, agents, and employees from and against all liabilities when attributable to the failure of User to comply with the provisions of this subsection.

(c) The trains, locomotives, cars, and equipment of User, Owner, or any other present or future user of the Subject Trackage or any portion thereof shall be operated without prejudice or partiality and in such manner as will afford the most economical and efficient manner of movement of all traffic.

(d) If by reason of any mechanical failure or for any other cause not resulting from an accident or derailment, a train or locomotive of User becomes stalled or unable to proceed under its own power, or fails to maintain the speed required by Owner on the Subject Trackage, or if in emergencies crippled or otherwise defective cars are set out of User's trains on the Subject Trackage, Owner shall have the option to furnish motive power or such other assistance as may be necessary to haul, help, or push such trains, locomotives, or cars, or to properly move the disabled equipment off the Subject Trackage, and User shall reimburse Owner for the cost of rendering any such assistance.

(e) If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Subject Trackage, such work shall be done by Owner, and User shall reimburse Owner for the cost thereof.

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

## **SECTION 9. MILEAGE AND CAR HIRE**

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

## **SECTION 10. CLEARING OF WRECKS**

Whenever User's use of the Subject Trackage requires rerailing, wrecking service, or wrecking train service, Owner shall perform such service, including the repair and restoration of road bed, track, and structures. The cost and expense thereof, including, without limitation, loss of, damage to, and destruction of any property whatsoever and injury to or death of any person or persons whomsoever resulting therefrom, shall be apportioned in accordance with the provisions of Section 11 hereof. All locomotives, cars, and equipment and salvage from the same so picked up and removed which are owned by or under the management and control of or used by User at the time of such wreck shall be promptly delivered to User.

## **SECTION 11. LIABILITY**

The responsibility of the parties hereto as between themselves for loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, resulting from, arising out of, incidental to, or occurring in connection with the Trackage Rights granted in this Agreement, shall be determined as follows:

(a) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, or any damage to or destruction of the environment whatsoever, including, without limitation, land, air, water, wildlife, and vegetation, occurs with the trains, locomotives, cars, or equipment of, or in the account of, User being involved, without the trains, locomotives, cars, or equipment of, or in the account of, Owner being involved, User shall assume all liability therefor and bear all cost and expense in connection therewith, including without limitation all cost and expense referred to in Section 10 hereof, and shall forever protect, defend, indemnify, and save harmless Owner and its directors, officers, agents, and employees from and against any such liability, cost, and expense, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of Owner or its directors, officers, agents, or employees.

(b) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, or any damage to or destruction of the environment whatsoever, including, without limitation, land, air, water, wildlife, and vegetation, occurs with the trains, locomotives, cars, or equipment of, or in the account of Owner being involved, without the trains, locomotives, cars, or equipment of, or in the account of User being involved, Owner shall assume all liability therefor, and bear all cost and expense in connection therewith, including without limitation all cost and expense referred to in Section 10 hereof, and shall forever protect, defend, indemnify, and save harmless User and its director, officers, agents, and employees from and against any such liability, cost, and expense, regardless of whether

caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of User or its directors, officers, agents, or employees.

(c) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, or any damage to or destruction of the environment whatsoever, including, without limitation, land, air, water, wildlife, and vegetation, occurs with the trains, locomotives, cars, or equipment of, or in the account of both Owner and User being involved, Owner and User shall separately assume and bear all liability, cost, and expense for loss of and damage to said trains, locomotives, cars (including, without limitation, lading), and equipment operated by each of them and for injury to and death of each of their directors, officers, agents, and employees, and persons in each of their care and custody. All liability, cost, and expense for injury to and death of any other person or persons whomsoever, for loss of, damage to, or destruction of all other property (including, without limitation, the Subject Trackage) and for any damage to or destruction of the environment whatsoever, including without limitation, land, air, water, wildlife, and vegetation, so occurring shall be borne equally by Owner and User, including, without limitation, all cost and expense referred to in Section 10 hereof. Whenever any liability, cost, or expense is assumed by or apportioned to a party hereto under the foregoing provisions, that party shall forever protect, defend, indemnify, and save harmless the other party to this Agreement and its directors, officers, agents, and employees from and against that liability, cost, and expense assumed by that party or apportioned to it, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of the indemnitee or its directors, officers, agents, or employees.

(d) Notwithstanding the foregoing provisions, whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, or any damage to or destruction of the environment whatsoever, including, without limitation, land, air, water, wildlife, and vegetation, occurs with the trains, locomotives, cars, or equipment of, or in the account of, both parties to this Agreement being so involved, and such loss, damage, destruction, injury, or death is attributable to the sole negligence of the employee(s) on the train(s), locomotive(s), car(s), or caboose(s) of, or in the account of, only one of the parties to this Agreement where such sole negligence is the active or proximate cause of such loss, damage, destruction, injury, or death, the party hereto whose employee(s) was (were) solely negligent shall assume and bear all liability, cost, and expense in connection with the loss, damage, destruction, injury, and death so occurring, including without limitation all cost and expense referred to in Section 10 hereof, and said party shall forever protect, defend, indemnify, and save harmless the other party to this Agreement and its directors, officers, agents, and employees from and against any such liability, cost, and expense.

(e) In every case of death or injury suffered by an employee of either User or Owner, when compensation to such employee or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employer's liability, or other law, and either of said parties under the provisions of this Agreement is required to pay said compensation, if such compensation is required to be paid in installments over a period of time, such party shall not be released from paying any such future installments by reason of the expiration or other

termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.

(f) Notwithstanding the provisions of Section 15(f) of this Agreement, for the purposes of this Section 11 the word "equipment" shall mean and be confined to (i) cabooses, (ii) vehicles and machinery which are capable of being operated on railroad tracks that, at the time of an occurrence, are being operated on the Subject Trackage, and (iii) vehicles and machinery that, at the time of an occurrence, are on the Subject Trackage or its right-of-way for the purpose of the maintenance or repair thereof or the clearing of wrecks thereon.

## **SECTION 12. INVESTIGATION**

(a) Except as provided in Subsection (b) hereof, all claims, injuries, deaths, property damages, and losses arising out of or connected with this Agreement shall be investigated, adjusted, and defended by the party bearing the liability, cost, and expense therefor under the provisions of this Agreement.

(b) Each party will investigate, adjust, and defend all freight loss and damage claims filed with it in accordance with 49 U.S.C. Section 11706 and 49 C.F.R. Section 1005 (or any revised or substitute regulations adopted to modify, supplement or supersede the regulations herein provided), or in accordance with any applicable transportation contract entered into pursuant to 49 U.S.C. Section 10709.

(c) In the event a claim or suit is asserted against Owner or User which is the other's duty hereunder to investigate, adjust, or defend, then, unless otherwise agreed, such other party shall, upon request, take over the investigation, adjustment, and defense of such claim or suit.

(d) All costs and expenses in connection with the investigation, adjustment, and defense of any claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions set forth in this Agreement, except that salaries or wages of full-time employees, including claim agents, attorneys, and other employees of either party engaged directly or indirectly in such work shall be borne by such party.

(e) Excluding freight loss and damage claims filed in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005 or similar regulation, neither party shall settle or compromise any claim, demand, suit, or cause of action for which the other party has any liability under this Agreement without the concurrence of such other party if the consideration for such settlement or compromise exceeds Twenty Five Thousand Dollars (\$25,000).

(f) Nothing in this section shall modify or supersede the provisions of Section 11 hereof.

### **SECTION 13. ARBITRATION**

Except for matters concerning loss or destruction of, or damage to freight, or injury or death of persons, any irreconcilable dispute arising between the parties with respect to this Agreement shall be settled through final and binding arbitration. The parties shall jointly submit the matter to final and binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator(s) shall be final and conclusive upon the parties hereto. Each party to the arbitration shall pay the compensation, costs, fees, and expenses of its own witnesses, experts, and counsel. The compensation, costs, and expense of the arbitrator(s), if any, shall be borne equally by the parties hereto.

### **SECTION 14. ABANDONMENT OF SUBJECT TRACKAGE**

Notwithstanding the provisions of Section 18 of this Agreement, Owner may abandon the Subject Trackage during the term of this Agreement, or any renewals hereof, upon giving User not less than one hundred twenty (120) days' written notice of Owner's intent to abandon. In the event regulatory authority is required to effect such abandonment, User will not interfere with Owner's actions to seek and to exercise such authority. In the event regulatory authority is required for User to discontinue its own operations over the Subject Trackage, User will seek and diligently pursue such regulatory authority at the same time that Owner seeks regulatory authority to abandon the Subject Trackage, or as soon thereafter as User may do so in accordance with applicable statutes and regulations, unless User intends to acquire the Subject Trackage from Owner pursuant to 49 U.S.C. Section 10904 or other similar provision. User hereby expressly reserves the right pursuant to 49 U.S.C. Section 10904 or any similar provision which may be in effect to subsidize operations on or to acquire the Subject Trackage. Unless User or another party acquires the Subject Trackage for continued rail use or subsidizes Owner's operations thereon, User shall exercise its authority to discontinue its operations pursuant to this Agreement upon the date established by Owner for abandonment of the Subject Trackage by its aforesaid notice to User, or upon the earliest authorized date of exercise of the regulatory authority to discontinue operations, whichever is later. If regulatory authority for discontinuance of User's operations is not required, User shall discontinue its operations hereunder on the date that Owner is authorized to abandon the Subject Trackage. Upon discontinuance of User's operations, this Agreement shall terminate and be of no further force and effect, except that termination of this Agreement shall not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or be incurred prior to said termination. As used herein, Subject Trackage means the entire Subject Trackage or any portion or portions thereof.

### **SECTION 15. GENERAL PROVISIONS**

(a) This Agreement and each and every provision hereof are for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right in any third party to recover by way of damages or otherwise against either of the parties hereto.

(b) All Section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

(c) This Agreement and the attachments annexed hereto and integrated herewith contain the entire agreement of the parties hereto and supersede any and all oral understandings between the parties.

(d) No term or provision of this Agreement may be changed, waived, discharged, or terminated except by an instrument in writing signed by both parties to this Agreement.

(e) As used in this Agreement, whenever reference is made to the trains, locomotives, cars, or equipment of, or in the account of, one of the parties hereto such expression means the trains, locomotives, cars, or equipment in the possession of or operated by one of the parties and includes such trains, locomotives, cars, or equipment which are owned by, leased to, or in the account of such party. Whenever such locomotives, cars, or equipment are owned or leased by one party to this Agreement and are in the possession or account of the other party to this Agreement, such locomotives, cars, and equipment shall be considered those of the other party under this Agreement.

(f) All words, terms, and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms, and phrases in the railroad industry.

#### **SECTION 16. SUCCESSORS AND ASSIGNS**

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto; provided, however, that User shall not transfer or assign this Agreement, or any of its rights, interests, or obligations hereunder to any person, firm, or corporation without obtaining the prior written consent of the Owner, which consent will not be unreasonably withheld, except that the rights granted by this Agreement shall pass to the successor of substantially all of the property of User.

#### **SECTION 17. NOTICE**

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

[\_\_\_\_\_]

[\_\_\_\_\_]

**SECTION 18. COMMENCEMENT, TERM, AND TERMINATION**

(a) This Agreement shall take effect on \_\_\_\_\_, 1998  
("Commencement Date"), and shall continue in full force and effect for a period of 99 years  
from said Commencement Date.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly  
executed as of the date first above written

WITNESS:

NORFOLK SOUTHERN RAILWAY COMPANY

\_\_\_\_\_

\_\_\_\_\_

WITNESS

ANN ARBOR RAILROAD

\_\_\_\_\_

\_\_\_\_\_

## **EXHIBIT 15**

### **OPERATING PLAN - MINOR**

If the Primary Application is approved without the conditions AA requests, AA would be forced to make major operational changes on its current rail line. Given the significant revenue losses projected by AA, some existing services will have to be reduced and others eliminated. Employees would need to be laid off and equipment ultimately sold or leased to other carriers. If the requested trackage rights are granted, AA would be able to reassign some employees and at least one locomotive to perform the proposed services between Toledo and Chicago.

AA proposes to offer customers on its current line up to seven-day-a-week service between Toledo and Chicago. Initially, AA proposes to start service on an as-needed basis. The number of trains operated would depend on the service needs of the rail shippers served by AA. As AA is able to attract traffic moving between its line and Chicago, AA would institute regularly scheduled service commensurate with the need of the shippers. AA anticipates handling no more than two trains on any given day, one each way.

In order initially to perform the trackage rights operations between Toledo and Chicago, AA anticipates utilizing one train crew, consisting of two individuals, and two GP-38 locomotives. The train crew performing the trackage rights operations would start its work assignment out of AA's Ottawa Yard in Toledo and would get their rest in Chicago and return to Toledo the next day. If service needs should warrant AA operating two trains a day (one each way), a second crew and two additional locomotives would need to be assigned to the Toledo-Chicago operation. This second crew would also be based at the Ottawa Yard. Because of AA's

flexible work rules, the crew or crews assigned to the Toledo-Chicago operation could also perform operations on AA's existing line.

AA does not anticipate the need for any discontinuances or abandonments as a result of the proposed transaction in this Responsive Application. Interstate passenger and commuter operations will not be impacted by AA's proposed limited trackage rights operations.

BEFORE THE  
SURFACE TRANSPORTATION BOARD

---

STB 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

---

STB FINANCE DOCKET NO. 33388 (SUB-NO. 78)

---

ANN ARBOR ACQUISITION CORPORATION D/B/A ANN ARBOR RAILROAD  
--TRACKAGE RIGHTS--  
NORFOLK SOUTHERN RAILWAY COMPANY

---

RESPONSIVE APPLICATION AND  
REQUEST FOR CONDITIONS BY  
ANN ARBOR ACQUISITION CORPORATION D/B/A ANN ARBOR RAILROAD

---

**VERIFIED STATEMENT  
OF  
EVERT O. ERICKSON**

My name is Evert O. Erickson. I am President of Ann Arbor Railroad. I am submitting this statement in support of the Responsive Application and Request for Conditions being filed by Ann Arbor Railroad in Finance Docket No. 33388, seeking trackage rights between Toledo, Ohio and Chicago, Illinois and the right to interchange traffic with the CP Rail System (CP) at Ann Arbor, Michigan.

I have worked in the railroad industry since 1965 after attending Ferris State College. During my career, I have worked in various positions of increasing responsibility. My career

began as Yard Clerk and I moved on to Chief Clerk and Yardmaster. From 1979 until 1986, I held the positions of Transportation Supervisor, Marine Superintendent, and Superintendent of Rail Operations. In 1986, I was promoted to the position of Vice President of Operations with all responsibilities for the company's rail operations, including Transportation, Maintenance of Way, and Maintenance of Equipment Departments.

The Ann Arbor Railroad is owned and operated by the Ann Arbor Acquisition Corporation, a company incorporated under the laws of the State of Michigan. Ann Arbor Acquisition Corporation purchased the assets, including all trade marks, service marks, and all rights to the name of "Ann Arbor Railroad" in October 1988. Ann Arbor Railroad (AA) consists of 45.75 miles of main line track and another 31.44 miles of yard tracks and sidings of the former Ann Arbor Railroad Company's rail line between Toledo, Ohio and Ann Arbor, Michigan. AA has 40 full time employees and has an administrative office in Howell, Michigan. AA's Railroad Operation Center is located in Toledo, Ohio, along with AA's car and locomotive repair and service facilities and its main yard, the Ottawa Yard.

AA currently has rail connections and interchanges traffic with four Class I carriers at Toledo: Canadian National Railway Company (CN), Consolidated Rail Corporation (CRC), CSX Transportation, Inc. (CSXT), and Norfolk Southern Railway Company (NSR). In addition, AA has interchange connections with NSR at Milan, Michigan and with CRC and the Tuscola & Saginaw Bay Railway Company Inc. (TSBY), at Ann Arbor.

Ann Arbor Acquisition Corporation also owns and operates the Temperance Yard Corporation, a subsidiary switching company organized under the laws of the State of Ohio. Ann Arbor Acquisition Corporation purchased the former Grand Trunk Western Railroad, Inc.

(GTW), Temperance Yard facilities and currently performs contract switching services in that yard for GTW (CN).

The AA uses two-man switch crews for its assignments. The flexible work rules allow crews to work both Temperance Yard and AA property. AA makes two time sensitive switches per day at the Ford Motor Plant at Saline, Michigan at 3:00 p.m. and 11:00 p.m. A locomotive is left at the plant for the 3:00 p.m. switch, and the Ann Arbor crew drives themselves from Toledo to Saline to complete the switch and then drives back by auto to Toledo to complete their assignment.

There are currently 10 active rail shippers located on the AA rail system that are served on-line. AA currently operates 2 trains daily and we handle approximately 17,500 carloads per year. AA's gross revenues for 1997 are estimated at approximately \$7.2 million. Approximately 20 percent of our business is bridge traffic handled between the other rail carriers that connect with AA.

All of AA's traffic is either overhead or interlined with other carriers. AA has no traffic that both originates on and is destined to a location on the AA railroad. Accordingly, AA's financial survival is highly dependent on providing efficient and economical switching services for other carriers. Currently, about 50 to 60 percent of AA's traffic base consists of automobiles and auto parts. The remaining commodities handled include cement, grain products, paper, potatoes, lumber, sugar, oats and flour.

Measured by carloads and revenues, CRC is currently AA's largest interline partner, NSR is our second largest connection, and CSXT and CN are respectively a distant third and fourth.

In their Application to acquire CRC, NSR and CSXT make no mention of traffic diversions from, or revenue losses of, the AA. Based on our most recent analysis, AA stands to lose annual revenues of \$3,350,000 from the acquisition of CRC by NSR and CSXT. AA is continuing to review its current operations to determine whether additional traffic may be diverted by NSR or CSXT. AA's projected losses consist of trackage rights fees AA currently earns from NSR and CN, and revenues derived from traffic currently handled by AA that will likely be diverted to either NSR or CSXT.

NSR currently has trackage rights over the AA between Milan and Toledo which NSR uses to haul traffic between Detroit and Toledo. Based on NSR's current usage of this track, AA is deriving approximately \$800,000 annually in fees. With the CRC acquisition, NSR will acquire the direct CRC route between Detroit and Toledo and will no longer need the AA route. In the Railroad Control Application, NSR states that it intends to retain the AA trackage rights, but that the usage levels will drop. AA anticipates that the usage levels will drop significantly and possibly be eliminated altogether. AA has recently spent \$412,000 upgrading the line over which NSR operates to accommodate the additional NSR traffic. AA, therefore, stands to lose not only the trackage rights fees, but also will be unable to recoup the investment it made solely to accommodate the NSR operations.

CN currently has trackage rights over the AA between Diann, Michigan and Toledo, which CN uses for traffic moving between Flat Rock, Michigan and Toledo. Based on CN's current usage of these trackage rights, AA is deriving approximately \$300,000 annually in fees. CN has recently announced that it has reached a settlement with CSXT. While the details of the settlement are still unknown, CN was pursuing trackage rights over a current CRC line between

Toledo and Detroit. If CN is awarded trackage rights between Detroit and Toledo as part of the settlement, it would no longer need to use the AA line and AA would lose the \$300,000 annual fee.

AA also estimates revenue losses of approximately \$2,250,000 from traffic that will be diverted by NSR and CSXT. AA currently participates in a three-carrier move of sand originating at Yuma, Michigan and destined to Cleveland, Ohio. The traffic now moves TSBY to Ann Arbor, AA to Toledo, and CRC to destination. AA generates approximately \$500,000 in annual revenues from its participation in this traffic. As a result of the CRC acquisition, CSXT will gain direct access to the shipper at Cleveland. Consequently, after the transaction, the traffic may move TSBY to Ann Pere, Michigan, and CSXT to Cleveland. Since CSXT will be able to handle this traffic in a two-line move as opposed to the current three-line move, AA stands to lose all of its revenues from this traffic.

AA currently generates approximately \$1,750,000 in revenues annually from automotive traffic that will likely be diverted as a result of the acquisition of CRC. A substantial portion of this traffic is switched by AA to CRC in Toledo and CRC linehauls the traffic to Chicago for interchange with western railroads. AA also switches traffic to NSR for linehaul movements to Winston Salem, North Carolina and Atlanta, Georgia. NSR currently has no automotive loading facility in the Toledo area. As a result of the CRC transaction, NSR is to acquire CRC's Toledo Automotive Terminal (Airline Yard). Once NSR acquires the Automotive Terminal, NSR will have no need for AA's switching service on traffic currently line-hauled by NSR. In addition, NSR will acquire the CRC route from Toledo to Chicago and, therefore, will also be able to divert the automotive traffic AA currently switches to CRC for movement to or over Chicago.

Most, if not all, of this traffic switched by AA in Toledo could easily be diverted by NSR once it owns the CRC Automotive Terminal in Toledo and the rail line to Chicago.

AA also participates in automotive traffic originated by NSR in Milan, Michigan. Some of this traffic is currently switched by NSR to AA for movement to Toledo. At Toledo, AA interchanges the traffic with either CSXT for movement to Louisville, Kentucky or CRC for movement to Chicago, where it is interchanged for destination to St. Paul, Minnesota. With the acquisition of the CRC line between Toledo and Chicago and given NSR's current route west from Milan, there will be no further need for AA's switching operation. After the CRC acquisition, NSR will also have a single line route to Louisville. Although the NSR route will be more circuitous than the AA-CSXT joint-line route, NSR will undoubtedly favor its own route and be unwilling to forward traffic to its arch competitor.

As a result of these traffic diversions and trackage rights fee losses, AA stands to lose approximately \$3,350,000 annually, or 47 percent of AA's revenues. The magnitude of these revenue losses will have a devastating effect on AA's ability to provide essential service to its remaining customers. AA would have to reduce some services drastically and eliminate other services altogether.

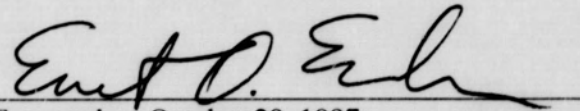
AA operates a lean organization with few opportunities to cut significant expenses. Within a broad range of traffic, AA's fixed costs remain constant, given the capital intensive nature of the business. AA would not be able to sell any of its three locomotives or any other large assets in an attempt to scale down to the lower revenue level. If AA attempted to do so, it would lose its remaining customers and quickly go out of business. Consequently, AA's per carload costs would increase dramatically. To cover these costs, freight rates for the remaining

customers would have to be increased, precipitating a downward spiral of service cuts as even more customers stopped using AA's service because of increased rates.

The on-line customers that would be adversely impacted by the reduction or elimination of rail service are: Ford Motor at Saline, Michigan, which ships about 2,000 carloads per year; Holnam, Inc., at Dundee, Michigan, which ships about 1,100 carloads of cement per year; General Mills at Toledo, which receives about 1,000 carloads of sugar, oats and flour per year; Viking Paper at Toledo, which receives about 200 carloads of paper per year; Ohio Blenders at Toledo, which ships and receives about 100 carloads of grain products per year; Fingerle Lumber at Ann Arbor, which receives about 36 carloads of lumber per year; 84 Lumber at Toledo, which receives about 30 carloads of lumber per year; and Crosset at Saline, which receives about 30 carloads of potatoes per year. None of these customers has direct access to another railroad. They are all located on the AA rail line and receive direct service from AA.

# VERIFICATION

I, Evert O. Erickson, verify under penalty of perjury that the foregoing Verified Statement is true and correct to the best of my knowledge and belief.

A handwritten signature in cursive script, appearing to read "Evert O. Erickson", written over a horizontal line.

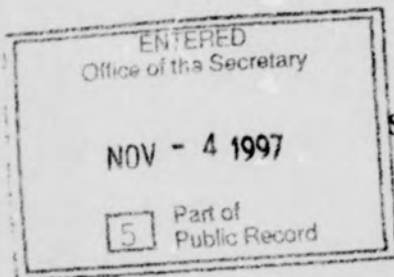
Executed on October 29, 1997

STB

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33388

(Sub 78) 10-31-97 A 183668



AA-5

BEFORE THE  
SURFACE TRANSPORTATION BOARD

STB 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

STB FINANCE DOCKET NO. 33388 (SUB-NO. 78)

ANN ARBOR ACQUISITION CORPORATION D/B/A ANN ARBOR RAILROAD  
--TRACKAGE RIGHTS--  
NORFOLK SOUTHERN RAILWAY COMPANY

RESPONSIVE APPLICATION AND  
REQUEST FOR CONDITIONS BY  
ANN ARBOR ACQUISITION CORPORATION D/B/A ANN ARBOR RAILROAD

FEE RECEIVED

OCT 31 1997

SURFACE  
TRANSPORTATION BOARD

**FILED**

OCT 31 1997

SURFACE  
TRANSPORTATION BOARD

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Attorney for:  
ANN ARBOR ACQUISITION  
CORPORATION D/B/A ANN  
ARBOR RAILROAD

Dated: October 31, 1997

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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STB FINANCE DOCKET NO. 33388

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CSX CORPORATION AND CSX TRANSPORTATION, INC.  
NORFOLK SOUTHERN CORPORATION AND  
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--CONTROL AND OPERATING LEASES/AGREEMENTS--  
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STB FINANCE DOCKET NO. 33388 (SUB-NO. 78)

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ANN ARBOR ACQUISITION CORPORATION D/B/A ANN ARBOR RAILROAD  
--TRACKAGE RIGHTS--  
NORFOLK SOUTHERN RAILWAY COMPANY

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RESPONSIVE APPLICATION AND  
REQUEST FOR CONDITIONS BY  
ANN ARBOR ACQUISITION CORPORATION D/B/A ANN ARBOR RAILROAD

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Ann Arbor Acquisition Corporation, d/b/a Ann Arbor Railroad ("AA"), hereby submits its Responsive Application and Request For Conditions pursuant to Decision Nos. 12 and 50<sup>1</sup> in this proceeding, 49 U.S.C. §§ 11321-25, and the STB's Railroad Consolidation Procedures, 49 C.F.R. Part 1180. AA seeks the grant of conditions upon the transaction proposed by CSX Corporation ("CSXC"), CSX Transportation, Inc. ("CSXT"), Norfolk Southern Corporation ("NSC"), Norfolk Southern Railway Company ("NSR"), Conrail Inc. ("CRR"), and Consolidated Rail

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<sup>1</sup> In Decision No. 50, the Surface Transportation Board ("STB" or "Board") extended the deadline for the filing of AA's Responsive Application and Comments from October 21st to October 31, 1997.

Corporation ("CRC")<sup>2</sup> (collectively referred to as the "Primary Applicants").<sup>3</sup> The conditions AA seeks are intended to prevent the loss of essential rail services on the AA rail system and to ameliorate certain of the anticompetitive consequences of the Primary Transaction. In Decision No. 30, the Board found that AA's Responsive Application will be a "minor transaction."<sup>4</sup>

## INTRODUCTION

The AA originally provided rail service between Frankfort, Michigan and Toledo, Ohio. AA also operated car ferries between Frankfort and points in Wisconsin. The Detroit, Toledo, and Ironton Railroad Company purchased the entire AA, including car ferries, from the Wabash Railroad in 1963. In 1974, the AA entered into reorganization under the Bankruptcy Act and was one of the seven northeastern railroads covered by the Railroad Revitalization and Regulatory Reform Act of 1976. The portion of the AA between Ann Arbor, Michigan and Toledo was included in the Final System Plan that created CRC because of its importance to shippers. The State of Michigan, however, wanted to keep the entire AA system intact for the benefit of shippers and communities. As a result, the State of Michigan purchased the portion of the AA between Ann Arbor and Toledo in March 1976, and the remainder of the AA, including the car ferries, in 1980. CRC operated the entire line for the State of Michigan from April 1976 until

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<sup>2</sup> CSXC and CSXT are referred to collectively as CSX. NSC and NSR are referred to collectively as NS. CRR and CRC are referred to collectively as Conrail.

<sup>3</sup> In their Railroad Control Application filed on June 23, 1997, Primary Applicants seek Board approval for: (1) the acquisition by CSX and NS of control of Conrail; and (2) the division of the assets of Conrail by and between CSX and NS (hereinafter referred to as the "Primary Transaction").

<sup>4</sup> In its Description of Anticipated Responsive Applications (AA-2), AA notified the Board that AA anticipated seeking trackage rights over one of three alternate routes to Chicago. In response to a filing by the National Railroad Passenger Corporation ("Amtrak"), the Board, in Decision No. 30, ordered AA to produce operational data addressing the effect of AA's operations on Amtrak service in the event AA elected to seek trackage rights over the rail line between Ann Arbor and Chicago over which Amtrak operates or plans to operate high-speed rail passenger operations. AA has elected not to seek trackage rights over that rail line.

September 1977. On October 1, 1977, Michigan Interstate Railway Company ("Michigan Interstate") was designated the new operator of the line. The car ferry operation was discontinued in April 1982. In January 1983, Michigan Interstate filed for reorganization under the Bankruptcy Act. The Trustee for the estate purchased the portion of the AA between Ann Arbor and Toledo in September 1985. The AA, as now constituted, was sold to Ann Arbor Acquisition Corporation in October 1988.

Today, the AA is a Class III rail carrier providing rail service over approximately 46 miles of main line track between Ann Arbor and Toledo. AA is currently a highly efficient and profitable short line railroad. The reasons for AA's recent success are largely twofold. First, AA is a low cost railroad, providing its shippers highly efficient and economical rail service. Second, AA acts as a neutral switching carrier offering its shippers nondiscriminant access to four Class I railroads.

As is demonstrated in the attached Verified Statement of Mr. Erickson, AA stands to lose 47 percent of its revenues as a result of the Primary Transaction, which would have a devastating, if not fatal, impact on AA. If AA is unable to reach a satisfactory settlement with NSR and CSXT, and the Board fails to grant AA the requested conditions, AA ironically may come full circle from 1976 when CRC was created. The railroads comprising CRC were bankrupt in 1976, as was AA. As a result of the dismantling of CRC, AA may well end up back in bankruptcy again.

AA has attempted to negotiate a settlement with both NSR and CSXT. AA has had a number of meetings and telephone conversations with NSR in the past several months. Until very

recently, the negotiations with NSR were very cordial and, in AA's view, fruitful.<sup>5</sup> Shortly before the October 21st filing date, AA was of the opinion that a final resolution with NSR was imminent and that AA would not need to further participate in this proceeding. AA requested an extension of time to file its Responsive Application fairly confident that a settlement would be reached shortly. AA's expectations appear to have been overly optimistic. AA continues to be hopeful that it will be able to reach a settlement with NSR and CSXT. Because of the devastating effect the Primary Transaction would have on AA and its shippers, AA cannot afford to sit by idly and allow its time to request remedial conditions from the Board to pass in the hope that NSR and CSXT will continue to negotiate in good faith. Accordingly, AA is filing this Responsive Application and Request For Conditions as a precautionary measure in the event that AA is unsuccessful in reaching a voluntary solution with NSR and CSXT.

### **RESPONSIVE APPLICATION AND REQUEST FOR CONDITIONS**

In support of the Responsive Application and Request for Conditions, AA submits the following information as required by 49 C.F.R. § 1180.6:

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<sup>5</sup> In the joint response by NSR and CSXT to AA's request for an extension of time to file its Responsive Application, CSXT claimed that it has "had no substantive discussions or negotiations with AA about concessions in the context of the transaction." CSX/NS-117 at 1-2. CSXT's contention appears to be only partially correct. AA readily concedes that it has had many more contacts with NSR than with CSXT. The primary reason AA has negotiated more extensively with NSR is, quite frankly, that NSR has been a more willing and responsive negotiating party. As to CSXT's statement that they have had no "substantive" negotiations with AA, AA can only respond that, in AA's view, the discussions AA has had with CSXT were intended by AA to be substantive. CSXT apparently feels otherwise.

**SECTION 1180.6 (a)(1)(i)**  
**DESCRIPTION OF THE PROPOSED TRANSACTION**

AA requests that the Board condition the approval of Primary Applicants' proposed transaction by granting AA trackage rights between Toledo and Chicago as follows:

Limited trackage rights between Toledo, Ohio and Chicago, Illinois via Elkhart, Indiana over the CRC rail line to be acquired by NSR.

The term "limited" trackage rights, as used above, includes: (1) the right to operate trains over the line described; and (2) the right to interchange with all carriers (including shortlines) at all junctions on the line described.

The Board should retain jurisdiction to establish a reasonable trackage rights fee no higher than the fee CSXT and NSR would charge each other for trackage rights to be entered into pursuant to the Railroad Control Application. AA also requests that the Board retain jurisdiction to impose other terms in the event the parties are unable voluntarily to resolve these matters through negotiation.

AA also requests that the Board condition approval of the Primary Application by imposing a condition permitting AA to interchange traffic with CP Rail System ("CP") at Ann Arbor, Michigan.

**APPLICANT**

The name, address and telephone number of the Responsive Applicant are:

Ann Arbor Acquisition Corporation d/b/a  
Ann Arbor Railroad  
121 South Walnut Street  
Howell, Michigan 48844  
(517) 548-3930

The name, address and telephone number of counsel to whom questions should be addressed are:

Karl Morell  
Ball Janik LLP  
Suite 225  
1455 F Street, N.W.  
Washington, D.C. 20005  
(202) 638-3307

**SECTION 1180.6(a)(1)(ii)  
PROPOSED TIME SCHEDULE**

AA is prepared to commence operations pursuant to the proposed trackage rights immediately after the effective date of the Board's approval of AA's Responsive Application. In order to perform the proposed operations under the trackage rights, AA would initially need one crew consisting of two employees and two locomotives. The employees needed initially for this new service could be shifted from current operations on the AA, given the significant traffic diversions projected by AA. AA would, however, need to acquire or lease one locomotive initially and possibly two additional locomotives later if added traffic materializes. AA is confident that it can quickly acquire or lease suitable equipment in order expeditiously to institute the new operations.

**SECTION 1180.6(a)(1)(iii)  
PURPOSE**

The purpose of the requested trackage rights is twofold. First, to ameliorate the loss of essential rail service on the AA rail system. Second, to remedy certain anticompetitive effects of

the Primary Transaction on shippers in the area served by AA and in the Toledo to Chicago rail corridor.

AA estimates that it will lose approximately \$3,350,000 in revenues as a result of the Primary Transaction, as is demonstrated in the attached Verified Statement of Mr. Erickson. The loss of these revenues will have a devastating effect on AA and impair AA's ability to perform essential services on its rail line. The requested trackage rights would allow AA to reach connections with the western railroads in Chicago and thus enable AA to retain some of the traffic that would otherwise be diverted and to attract new traffic to offset the remaining losses. The revenues generated from the traffic AA could retain or attract, if the requested conditions are granted, would enable AA to continue providing essential services on its rail line.

The requested condition to interchange traffic with CP at Ann Arbor would allow AA to divert to rail, traffic that now moves by truck and, thus, enable AA to further recoup its projected revenue losses.

The Primary Transaction would result in the elimination of effective rail competition between the AA rail line and Chicago. As explained below, the requested trackage rights would enable AA to preserve intramodal competition in this market.

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

No new securities or other financial arrangements would be required for AA to consummate the proposed transaction and commence operations under the requested trackage rights. AA does not anticipate the need to acquire any additional facilities to commence

operations pursuant to the requested trackage rights. The one to three additional locomotives that would be needed could either be leased or purchased and funded with cash or through existing credit facilities.

**SECTION 1180.6(a)(2)**  
**PUBLIC INTEREST JUSTIFICATIONS**

The requested trackage rights are in the public interest because they would redress the harm that would result from the Primary Transaction to the essential services provided by AA to the customers it serves. Granting the requested conditions would enable AA to continue providing its shippers adequate rail service. The estimated revenue losses would force AA to cover its fixed costs from a declining traffic base thereby increasing its per unit cost which would have to be passed on to its remaining customers. These increased unit costs would have a downward spiraling trend. As the per unit cost for AA's service increases, some of AA's remaining customers would be forced to switch to other transportation modes which, in turn, would only further increase AA's per unit cost and drive away additional customers.

The requested condition to permit AA to interchange traffic with CP at Ann Arbor is also consistent with the public interest. If this condition is granted by the Board, AA would be able to divert automotive traffic that now moves about 50 miles by truck from Toledo to the Detroit-Windsor area with a subsequent rail movement to Canadian destinations. AA would be able to haul that traffic from Toledo to Ann Arbor for a direct interchange with CP to Canadian destinations.

Primary Applicants claim significant public benefits in the form of safer highways, reduced fuel consumption and reduced highway damage by diverting traffic from truck to rail. If AA is

forced to curtail or reduce rail service as a result of the significant revenue losses, AA's customers would have no option other than to divert their shipments to trucks. This result would be detrimental to the public interest for the very reasons explained in the Railroad Control Application. Conversely, AA's ability to divert truck traffic between Toledo and Detroit to rail would produce significant public benefits as is demonstrated by Primary Applicants, without any corresponding harm to NSR or CSXT.

The requested trackage rights would also ameliorate certain anticompetitive effects of the Primary Transaction. As explained below, AA would be able to preserve rail competition in the Toledo to Chicago rail corridor by offering a direct, efficient and competitive alternative to NSR.

The trackage rights sought by AA would not impose any unreasonable operating problems on the rail line between Toledo and Chicago or in the region generally. Similarly, the requested interchange with CP at Ann Arbor would not impair NSR's proposed operation over that line. The trackage rights and the CP interchange would also not detract in any material respect from the public benefits the Primary Applicants expect to achieve from the Primary Transaction. Primary Applicants claim public benefits of nearly \$1 billion per year. *See CSX/NS-18 at 2.* The trackage rights sought by AA would enable AA to retain some or all of the revenues that would otherwise be lost. The proposed CP interchange would divert traffic from trucks and not from either NSR or CSXT.

#### **SECTION 1180.6(a)(2)(i) EFFECT ON COMPETITION**

AA is a 46-mile Class III short line operating between Ann Arbor, Michigan and Toledo, Ohio. As such, AA is dependent on its Class I railroad connections for access to the national rail

system so that it can serve its shippers. Today, AA's main interchange partner is CRC. CRC has been flexible and offers AA, and AA's shippers, reasonable pricing and good service for traffic moving to and from the east and west. AA's traffic is price and service sensitive. The ability to have competitive rail connections has kept AA viable.

AA's traffic base consists of nearly 50 percent bulk commodities, ideally suited to rail transportation, and a little over 50 percent automobile and auto parts traffic. AA believes that there is no realistic intermodal competition for its bulk traffic, and that its automotive traffic will move by rail as long as there is reliable and efficient service, which can only be maintained by intra-rail competition.<sup>6</sup> The product market AA is addressing is rail transportation. The Primary Transaction spans the entire eastern United States. However, AA's area of geographic concern is much more limited. AA must interchange traffic in order for the traffic to move to and from the market. It is well recognized that one of the most, if not the most, important national interchange points is Chicago. Competitive access to Chicago is vitally critical to AA and certain shippers on its line. The geographic market that concerns AA in this proceeding is the communities on AA's line between Ann Arbor and Toledo, on the one hand, and Chicago, on the other. AA is, therefore, limiting its competitive analysis to rail transportation between points on AA's line and Chicago.

The acquisition of CRC by CSXT and NSR will significantly reduce AA's competitive options. By allowing AA to operate via trackage rights between Toledo and Chicago, the Board

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<sup>6</sup> Chrysler Corporation ("Chrysler") submitted a statement in support of Primary Applicants. CSX/NS-21 at 607-609. However, Chrysler's support was not without reservations. Chrysler seeks two railroad competitors for its facilities in Newark, Delaware and Twinsburg, Ohio. Chrysler also emphasized the importance of single-line service, such as AA proposes between its line and Chicago.

would maintain the competitive balance that exists today for AA that is so vital to certain shippers on AA's rail line.

Today, AA's only non-circuitous connections to and from Chicago are CRC and NSR. AA interchanges with CRC at Ann Arbor and Toledo. AA interchanges with NSR at Toledo, and Milan, Michigan. AA's other connections to Chicago either require further interchanges or are so circuitous that service is not competitive.

AA connects with the Tuscola & Saginaw Bay Railway Company, Inc. ("TSBY"), at Ann Arbor. TSBY operates from Ann Arbor north where TSBY connects with CSXT at Ann Pere, Michigan (about 27 miles north of Ann Arbor) and with CN at Durand, Michigan (about 51 miles north of Ann Arbor). These circuitous routes north and on to Chicago via either CSXT or CN would not be a competitive option for the AA. Moreover, such routings would add an additional carrier, creating at least one more interchange with its attendant delay and potential damage to the shipments. Consequently, routing traffic over TSBY for interchange to CN or CSXT is not a viable routing alternative to Chicago for AA.

AA directly interchanges with CN at Toledo. CN, however, does not have a direct route from Toledo to Chicago. To reach Chicago from Toledo, CN must haul traffic about 114 miles north to Port Huron, Michigan, through Detroit. CN would then need to handle the traffic over its line between Port Huron and Chicago, about 351 miles. The route to Chicago from Toledo over CN would be about 455 miles, or about 225 miles longer than the rail line over which AA is seeking trackage rights. Such a circuitous route through high density areas is clearly not competitive with the service that NSR would offer between Toledo and Chicago.

AA can also interchange with CSXT at Toledo. CSXT, however, will not be permitted to route traffic over the CRC line between Toledo and Chicago that NSR is to acquire. CSXT will not have the right to physically operate over that line. NSR will merely grant CSXT haulage rights between Berea, Ohio (just west of Cleveland) and Chicago (63rd Street) for overhead haulage limited to a maximum of six merchandise and/or intermodal trains per day each way to the Park Manor Yard at 63rd Street in Chicago until CRC's Fort Wayne Line (the Fort Wayne to Chicago portion is now owned by NSR) is upgraded, up to a maximum of three years. *See CSX/NS-25 at 116, Item 2, A., 1., of Schedule 4, Schedule of Trackage Rights, Haulage, Shared Asset and Other Operating Agreements.* Since CSXT will only receive overhead haulage rights between Berea and Chicago, CSXT cannot pick up AA's traffic at Toledo. Moreover, CSXT will not be operating the trains, NSR will be the operator. Finally, the haulage agreement lasts a maximum three years.

CSXT could also route traffic from Toledo south to one of two CSXT lines that move traffic east and west to and from Chicago. CSXT could route the AA traffic to Deschler, Galatea, or Fostoria, Ohio, 37, 35, and 35 miles from Toledo, respectively, and then route it over CSXT's main line to Chicago. CSXT could also take the AA traffic further south to Lima, Ohio, 71 miles from Toledo, and then route it over the line it will acquire from CRC to Chicago. The use of either of these CSXT routings would add additional circuitry to any AA traffic moving between Toledo and Chicago.

Today, AA can interchange traffic with NSR at Toledo and Milan and with CRC at Toledo and Ann Arbor. After the acquisition of CRC, NSR will own and operate the CRC lines between Detroit and Chicago and between Cleveland and Chicago. *See CSX/NS-25.* In other

words, AA's direct, non-circuitous interchanges to and from Chicago will be limited to NSR at Ann Arbor, Milan, and Toledo. Today, NSR is a competitive alternative to CRC for AA traffic moving between the AA rail line and Chicago. As a result of the Primary Transaction, NSR will become AA's only efficient interchange to and from Chicago. Where AA can today play off its ability to directly interchange with either CRC or NSR for Chicago traffic, that option will be foreclosed if the Primary Transaction is approved without appropriate conditions.

The corridor between AA's line and Chicago (the "Corridor") will become a "2-1 corridor" as defined by the Board in Finance Docket No. 32760, *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*, Decision No. 44, served August 12, 1996, at 122. Only NSR and CRC offer effective competitive alternatives today for traffic flows in the Corridor. NSR will become the exclusive operator of the CRC lines in the Corridor, and the exclusive interchange railroad with AA for traffic flowing in the Corridor.

To prevent the creation of a 2-1 corridor, AA has proposed limited overhead trackage rights on NSR between Toledo and Chicago. These trackage rights will continue the competition that AA and its shippers enjoy today without interfering with the public benefits of the transaction.

**SECTION 1180.6(a)(2)(ii)**  
**FINANCIAL CONSIDERATIONS**

AA estimates that it stands to lose \$3,350,000 in revenues annually if the Railroad Control Application is approved. The requested trackage rights and CP interchange would enable AA to retain some of the traffic that would otherwise be diverted and to attract new traffic to offset the remaining revenue losses.

**SECTION 1180.6(a)(2)(iii)**  
**EFFECT ON FIXED CHARGES**

AA does not expect any increase in fixed charges resulting from the operations proposed in this Responsive Application.

**SECTION 1180.6(a)(2)(iv)**  
**EFFECT ON ADEQUACY OF TRANSPORTATION**

Granting the conditions sought by AA would have a positive effect on the adequacy of transportation in the markets served by AA. The requested trackage rights are necessary to preserve essential services now performed by AA. AA provides vital and economic rail service to several industries located along its rail line. The revenue losses will force AA to dramatically reduce the level of its current service and stop service to some customers altogether.

Accordingly, if the requested trackage rights are not granted, shippers dependent on AA will lose essential rail service.

**SECTION 1180.6(a)(2)(v)  
EFFECT ON EMPLOYEES**

Granting the trackage rights sought by AA should have little, if any, impact on the employees of Primary Applicants. The trackage rights, however, should have a positive impact on AA employees by enabling AA to retain most and possibly all of its work force.

**SECTION 1180.6(a)(2)(vi)  
EFFECT OF INCLUSION OF OTHER RAILROADS**

Not applicable to this Responsive Application.

**SECTION 1180.6(a)(3)  
OTHER SUPPORTING STATEMENTS**

AA anticipates that its Responsive Application will be supported by other entities in separate filings with the Board.

**SECTION 1180.6(a)(4)  
OPINION OF COUNSEL**

The opinion of AA's counsel that the conditions requested in this Responsive Application satisfy the requirements of law and will be legally authorized and valid if approved by the Board appears at the end of the narrative of the Responsive Application.

**SECTION 1180.6(a)(5)  
LIST OF STATES**

AA currently operates only in the States of Ohio and Michigan and the rail line over which AA seeks trackage rights is located in the States of Ohio, Indiana and Illinois. The requested interchange with CP would occur in Michigan.

**SECTION 1180.6(a)(6)  
MAP**

Maps showing the rail line operated by AA and the line over which AA seeks trackage rights are attached as Exhibit 1.

**SECTION 1180.6(a)(7)(i)  
NATURE OF TRANSACTION**

The conditions AA seeks to have imposed on the Primary Application are a grant of trackage rights and an interchange with CP as described above under Sections 1180.6(a)(1)(i).

**SECTION 1180.6(a)(7)(ii)  
AGREEMENTS**

A draft agreement setting forth the significant terms proposed is attached as Exhibit 2.

**SECTION 1180.6(a)(7)(iii)  
CONSOLIDATED COMPANY INFORMATION**

Not applicable to this Responsive Application.

**SECTION 1180.6(a)(7)(iv)  
COURT ORDER**

Not applicable to this Responsive Application.

**SECTION 1180.6(a)(7)(v)**  
**PROPERTY INCLUDED IN THE PROPOSED TRANSACTION**

The trackage rights requested by AA are over a very limited portion of the rail lines sought to be acquired by NSR in the Primary Transaction. See "Description of Proposed Transaction" under Section 1180.6(a)(1) and the maps attached as Exhibit 1.

**SECTION 1180.6(a)(7)(vi)**  
**PRINCIPAL ROUTES**

AA is a Class III rail carrier providing rail service over approximately 46 miles of main line track and 31.44 miles of yard and side tracks between Ann Arbor, Michigan and Toledo, Ohio. AA currently connects with CRC, CSXT, NSR and CN at Toledo; with NSR at Milan, Michigan; and with CRC and the TSBY at Ann Arbor.

The trackage rights AA seeks are over a rail line approximately 230 miles in length. With a grant of the requested trackage rights, AA will be able to operate from Toledo to Delta, Ohio for a connection with the Grand Trunk Western Railroad, Inc. ("GTW"), to South Bend, Indiana for a connection with the GTW and on to Chicago for destination or connections with the western railroads, short lines, and the local terminal carriers in Chicago.

AA currently connects with CRC at Ann Arbor. Pursuant to the Primary Transaction, NSR would acquire the CRC line through Ann Arbor and it has been reported that CP, as a result of a settlement with NSR, would acquire rights over that line. AA has been informed, however, that the rights CP would acquire would not permit CP to interchange with AA at Ann Arbor. AA is seeking the imposition of a condition by the Board that would permit an AA-CP interchange at Ann Arbor.

**SECTION 1180.6(a)(7)(vii)**  
**GOVERNMENTAL FINANCIAL ASSISTANCE**

No governmental assistance will be sought to consummate the transaction sought in this Responsive Application.

**SECTION 1180.6(a)(8)**  
**ENVIRONMENTAL DATA**

AA has submitted an Environmental Verified Statement (AA-3) pursuant to Decision No. 38, stating that no environmental documentation is required for AA's Responsive Application pursuant to the provisions of 49 C.F.R. § 1105.6(c)(2). AA hereby reconfirms that no environmental documentation is required for the grant of this Responsive Application.

**SECTION 1180.8(b)**  
**OPERATING PLAN-MINOR**

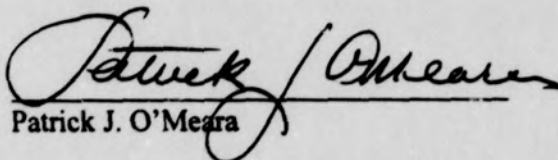
A copy of AA's operating plan is attached as Exhibit 15.

**CONCLUSION**

For the foregoing reasons, AA respectfully urges the Board to grant, as conditions to approving the Railroad Control Application, AA the trackage rights between Toledo and Chicago and the right to interchange with CP at Ann Arbor, as requested in this Responsive Application.

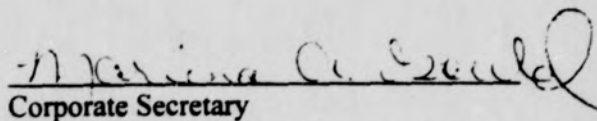
**SECTION 1180.4 (c)(2)(i)**  
**SIGNATURES, OATHS, AND CERTIFICATIONS**  
**OF APPLICANT'S EXECUTIVE OFFICERS**

I, Patrick J. O'Meara, declare under penalty of perjury that I am Chairman and President of the Ann Arbor Acquisition Corporation, owner and operator of Ann Arbor Railroad, responsive applicant herein, that I am one of the executive officers duly authorized to sign, to verify, and to file this Responsive Application on behalf of Ann Arbor Acquisition Corporation, that I have knowledge of the matters contained in this Responsive Application, and that the statements made in this Responsive Application are true and correct to the best of my knowledge and belief.

  
Patrick J. O'Meara

Executed on October 29, 1997

I, Mariena Gould, hereby certify that I am Corporate Secretary of Ann Arbor Acquisition Corporation, responsive applicant herein, and that Patrick J. O'Meara, is duly authorized to sign, to verify, and to file this Responsive Application on behalf of Ann Arbor Acquisition Corporation.

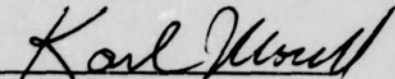
  
Corporate Secretary

Dated this 29th day of October 1997, at Howell, Michigan.

**SECTION 1180.6(a)(4)**  
**OPINION OF COUNSEL FOR**  
**ANN ARBOR RAILROAD**

As counsel for Ann Arbor Acquisition Corporation, owner and operator of Ann Arbor Railroad ("AA"), I am familiar with the transaction proposed in the Responsive Application of AA. It is my opinion that the transaction proposed in AA's Responsive Application meets all requirements of law, will be legally authorized and valid if approved by the Surface Transportation Board, is within the corporate power of AA, and will not result in any breach, violation or default of any provision of AA's Articles of Incorporation or Bylaws.

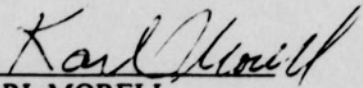
BALL JANIK LLP

By:   
Karl Morell  
Suite 225  
1455 F Street, N.W.  
Washington, D.C. 20005

Attorney for Ann Arbor Acquisition  
Corporation d/b/a Ann Arbor  
Railroad

Dated this 31 day of October, 1997.

Respectfully submitted,



KARL MORELL  
Of Counsel  
BALL JANIK LLP  
1455 F Street, N.W.  
Suite 225  
Washington, D.C. 20005  
(202) 638-3307

Attorney for:  
ANN ARBOR ACQUISITION CORPORATION  
D/B/A ANN ARBOR RAILROAD

Dated: October 31, 1997

## CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of October, 1997, I caused a copy of the Responsive Application of Ann Arbor Acquisition Corporation d/b/a Ann Arbor Railroad (AA-5), to be served on counsel for Primary Applicants by Hand Delivery and on Administrative Law Judge Jacob Leventhal and all other Parties of Record by first class mail, postage prepaid.

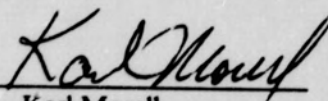
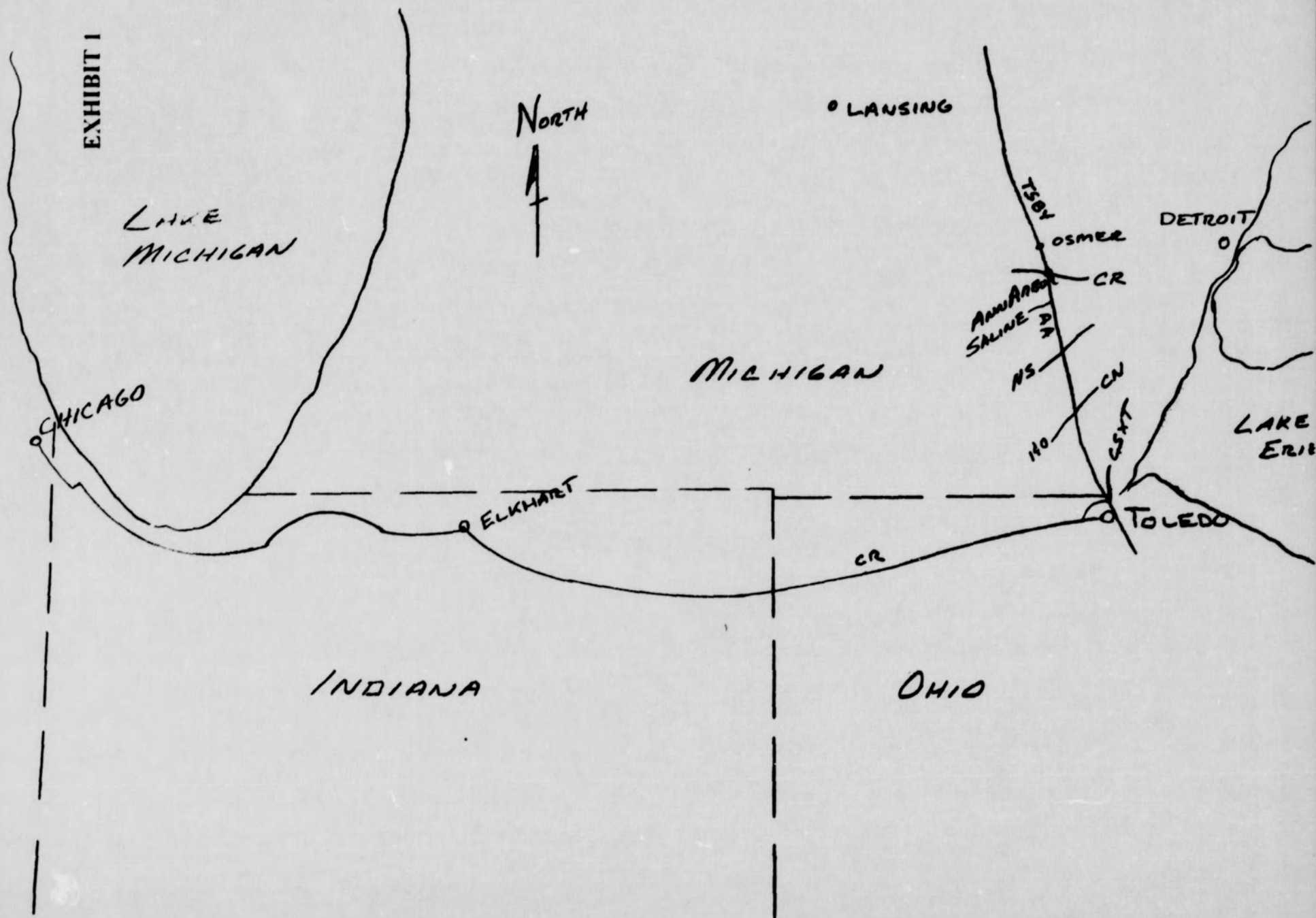
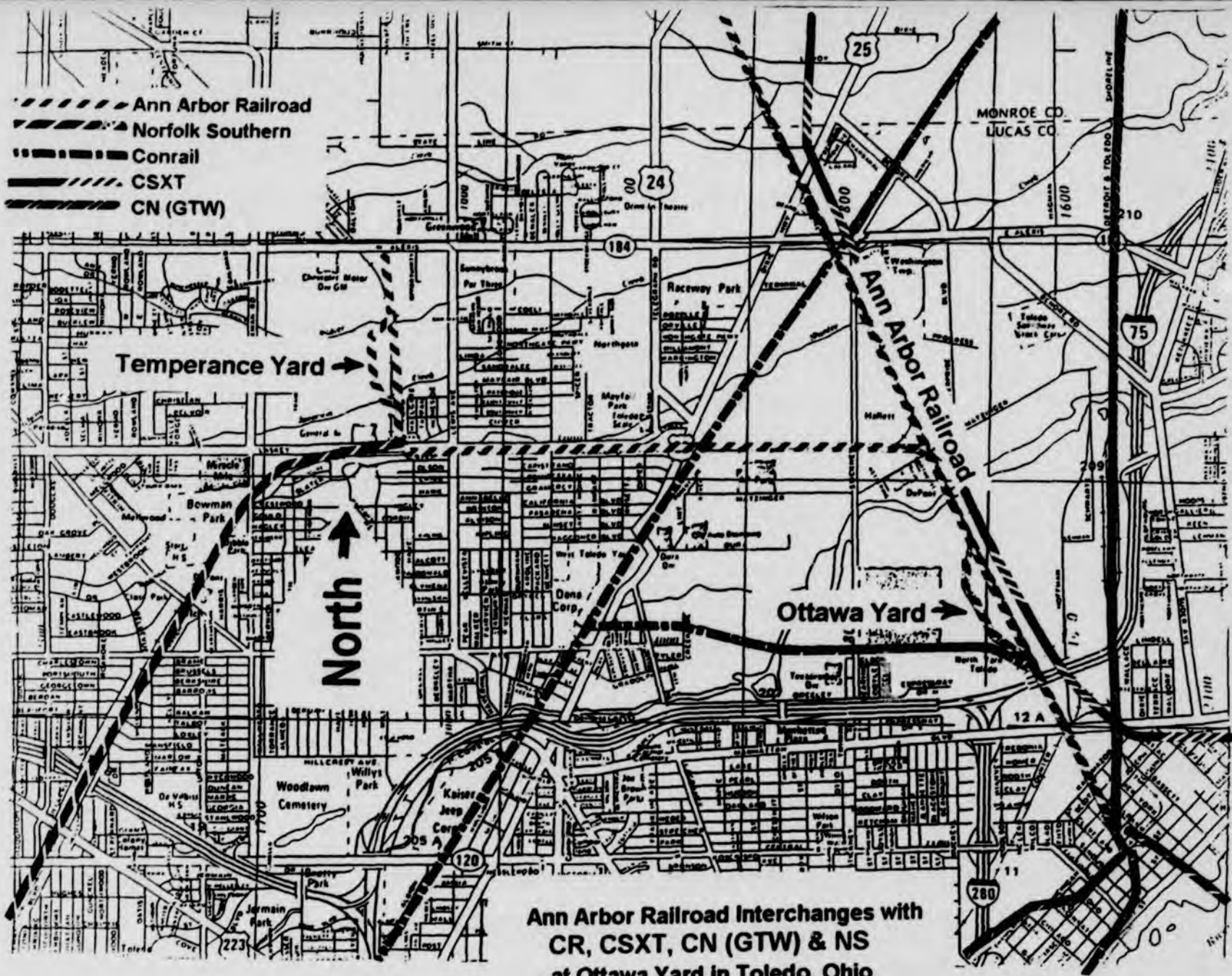
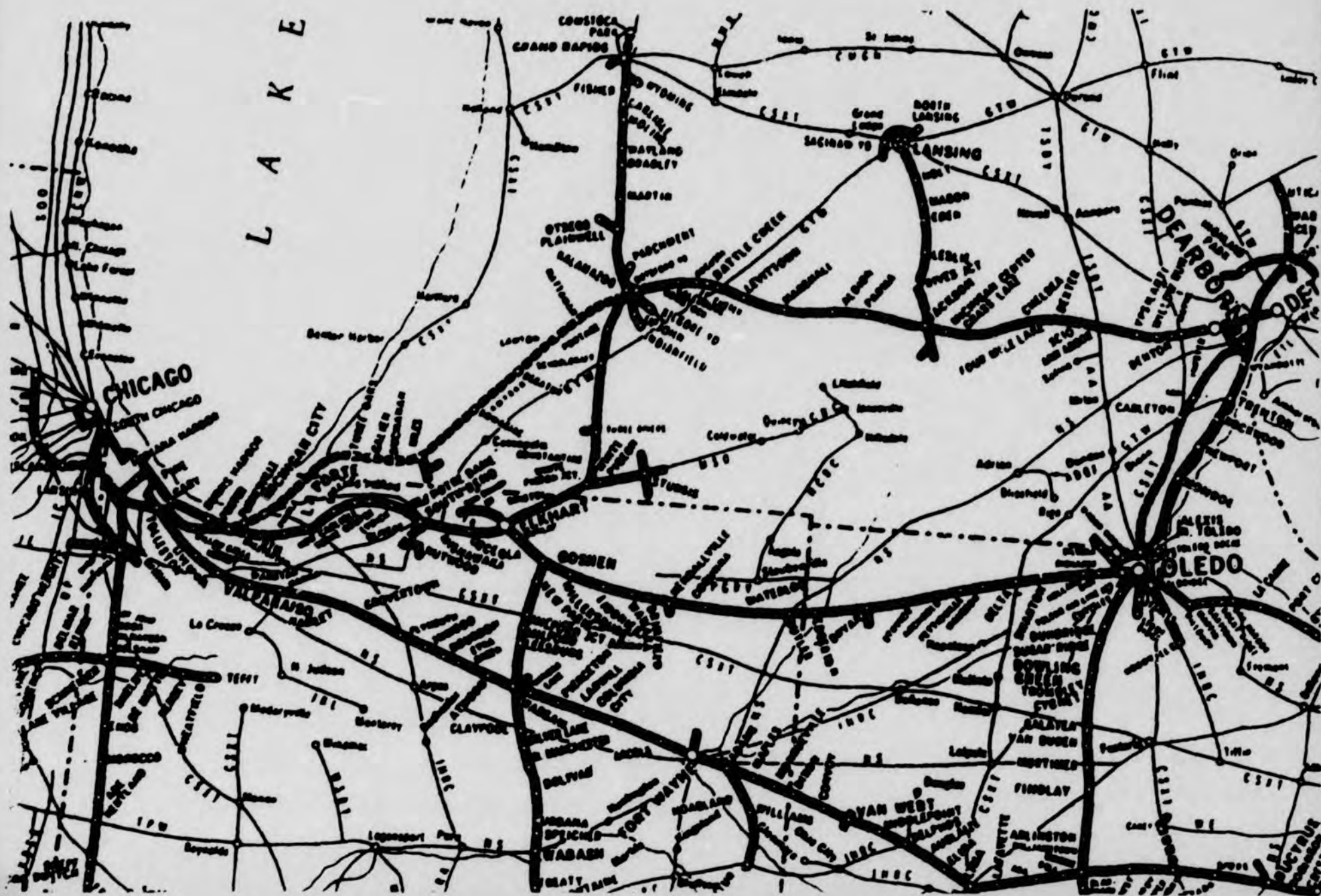
  
Karl Morell

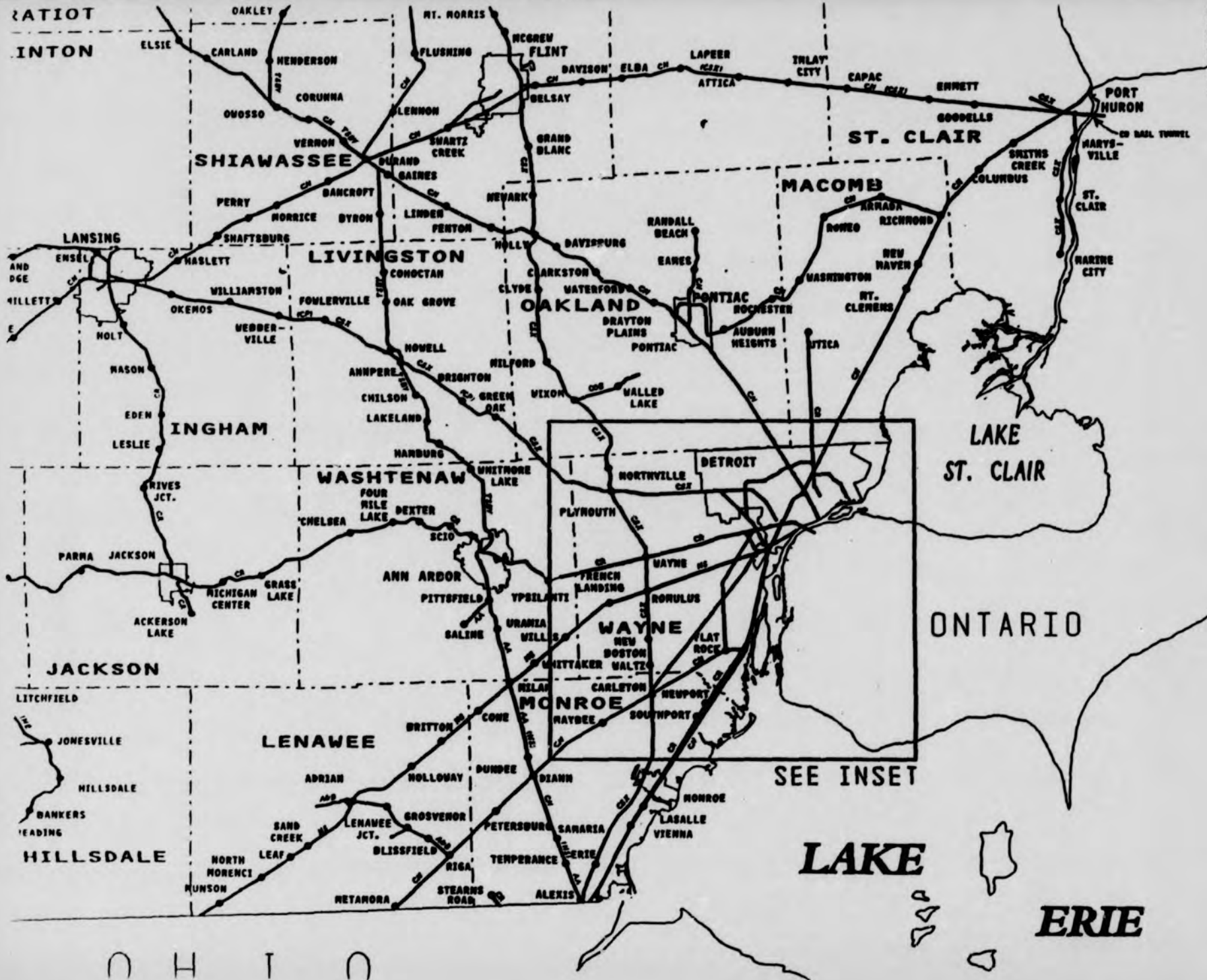
EXHIBIT I

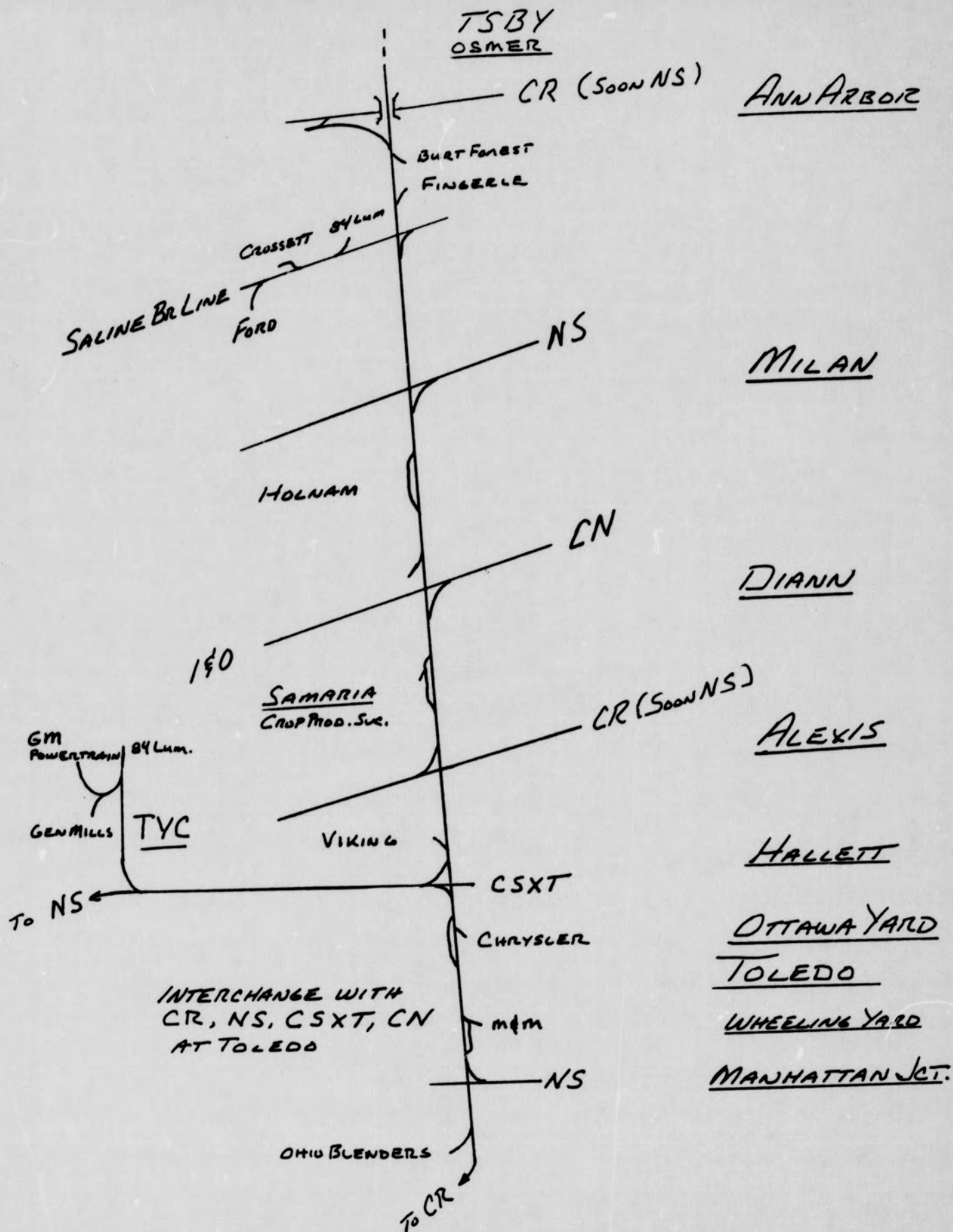




Ann Arbor Railroad Interchanges with  
CR, CSXT, CN (GTW) & NS  
at Ottawa Yard in Toledo, Ohio







**EXHIBIT 2**

**TRACKAGE RIGHTS AGREEMENT**

**between**

**NORFOLK SOUTHERN RAILWAY COMPANY**

**and**

**ANN ARBOR RAILROAD**

## AGREEMENT

THIS AGREEMENT, entered into as of this \_\_\_\_ day of \_\_\_\_, 199\_, by and between NORFOLK SOUTHERN RAILWAY COMPANY, (hereinafter referred to as "NSR" or "OWNER") and ANN ARBOR RAILROAD (hereinafter referred to as "AA" or "USER"),

WHEREAS, the Surface Transportation Board, in its decision in 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, served \_\_\_\_\_, (1) approved the acquisition by CSX Corporation and CSX Transportation, Inc., and Norfolk Southern Corporation, and Norfolk Southern Railway Company of control of Conrail, Inc., and Consolidated Rail Corporation; and (2) the division of the assets of Conrail, Inc., and Consolidated Rail Corporation ("CRC") by and between CSX Corporation and CSX Transportation Inc., and Norfolk Southern Corporation and Norfolk Southern Railway Company; and

WHEREAS, the Surface Transportation Board conditioned the control of Conrail, Inc., and Consolidated Rail Corporation on, among other things, the grant of trackage rights as set forth further in the Responsive Application of AA, dated October 31, 1997; and

WHEREAS, NSR desires to provide AA with the rights requested in said Responsive Application; and

WHEREAS, AA is agreeable to receiving said rights and desires to conduct operations over said rights under the terms and conditions herein and hereafter set forth,

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

### SECTION 1. GRANT OF TRACAGE RIGHTS

(a) Subject to the terms and conditions herein provided, Owner hereby grants to User the right to operate in limited trackage rights, its trains, locomotives, cars, and equipment with its own crews (hereinafter referred to as the "Trackage Rights") over the following segments of Owner's railroad (hereinafter referred to as the "Subject Trackage"):

Between Toledo, Ohio and Chicago, Illinois via Elkhart, Indiana over the rail line formerly owned by CRC and acquired and operated by NSR.

The term "limited" trackage rights, as used above, includes: (1) the right to operate trains over the lines described; and (2) the right to interchange with all carriers (including shortlines) at all junctions on the lines.

## **SECTION 2. USE OF SUBJECT TRACKAGE**

(a) User's use of the Subject Trackage shall be in common with Owner and any other user of the Subject Trackage, and Owner's right to use the Subject Trackage shall not be diminished by this Agreement. Owner shall retain the right to grant to other persons rights of any nature in the Subject Trackage.

(b) Owner shall have exclusive control of the management and operation of the Subject Trackage.

(c) User shall have the right to operate in either direction over the Subject Trackage.

## **SECTION 3. COMPENSATION**

(a) The compensation for operations under this Agreement shall be set at the levels as follows:

## **SECTION 4. PAYMENT OF BILLS**

(a) All payments called for under this Agreement shall be made by User within thirty (30) days after receipt of bills therefor. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the parties hereto shall be adjusted in the accounts of a subsequent month.

(b) Bills rendered pursuant to the provisions of this Agreement shall include direct labor and material costs, together with the surcharges, overhead, percentages, and equipment rentals in effect at the time any work is performed by Owner.

## **SECTION 5. MAINTENANCE OF SUBJECT TRACKAGE**

(a) Owner shall maintain, repair, and renew the Subject Trackage at its own expense and with its own supervision and labor. Owner shall keep and maintain the Subject Trackage in reasonably good condition for the use herein contemplated, but Owner does not guarantee the condition of the Subject Trackage or that operations thereover will not be interrupted. Furthermore, except as may be otherwise provided in Section 11 hereof, User shall not by reason of failure or neglect on the part of Owner to maintain, repair, or renew the Subject Trackage, have or make any claim or demand against Owner or its directors, officers, agents, or employees for any injury to or death of any person or persons whomsoever, or for any damage to or loss or destruction of any property whatsoever, or for any damages of any nature suffered by User resulting from any such failure or neglect.

(b) Owner shall also perform, at the expense of User, such additional maintenance as User may request.

## **SECTION 6. CONSTRUCTION AND MAINTENANCE OF CONNECTIONS**

(a) Existing connections or facilities which are jointly used by the parties hereto under existing agreements or practices shall continue to be maintained, repaired, and renewed by and at the expense of the party or parties responsible for such maintenance, repair, and renewal under such agreements or practices.

(b) Any additional connections to the Subject Trackage which may be required shall be constructed, maintained, repaired, and renewed as follows:

(i) User shall furnish all labor and material and shall construct, maintain, repair, and renew at its sole cost, liability and expense such portions of the tracks located on the right-of-way of User which connect the respective lines of the parties hereto; and

(ii) Owner shall furnish all labor and material and shall construct, maintain, repair, and renew at the sole cost, liability and expense of User such portions of the tracks located on the right-of-way of Owner which connect the respective lines of the parties hereto.

## **SECTION 7. ADDITIONS, RETIREMENTS, AND ALTERATIONS**

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

(b) If User requests Owner to make changes in or additions and betterments to the Subject Trackage, including without limitation changes in communications or signal facilities, for purposes beyond that required for Owner's operation, Owner shall have the option:

(i) to make such changes in or additions and betterments to the Subject Trackage and User shall pay to Owner the cost thereof, including the annual expense of maintaining, repairing, and renewing such additional or altered facilities; or,

(ii) to deny such request.

## **SECTION 8. MANAGEMENT AND OPERATIONS**

(a) User shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Acts, as amended, and all other federal and state laws, regulations, and rules respecting the operation, condition, inspection, and safety of its trains, locomotives, cars, and equipment while such trains, locomotives, cars, and equipment are being operated over the Subject Trackage. User shall indemnify, protect, defend, and save harmless Owner and its directors, officers, agents, and employees from and against all fines, penalties, and

liabilities imposed upon Owner or its directors, officers, agents, or employees under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable to the failure of User to comply with its obligations in this regard.

(b) User, in its use of the Subject Trackage, will comply in all respects with the operating rules and regulations of Owner, and the movement of User's trains, locomotive, cars, and equipment over the Subject Trackage shall at all times be subject to the orders of the transportation officers of Owner. User's trains shall not include locomotives, cars, or equipment which exceed the width, height, weight, or other restrictions or capacities of the Subject Trackage as published in Railway Line Clearances, and no train shall contain locomotives, cars, or equipment which require speed restrictions or other movement restrictions below the authorized freight speeds as provided by Owner's operating rules and regulations without the prior consent of Owner, which consent will not be unreasonably withheld. User shall indemnify, protect, defend, and save harmless Owner and its directors, officers, agents, and employees from and against all liabilities when attributable to the failure of User to comply with the provisions of this subsection.

(c) The trains, locomotives, cars, and equipment of User, Owner, or any other present or future user of the Subject Trackage or any portion thereof shall be operated without prejudice or partiality and in such manner as will afford the most economical and efficient manner of movement of all traffic.

(d) If by reason of any mechanical failure or for any other cause not resulting from an accident or derailment, a train or locomotive of User becomes stalled or unable to proceed under its own power, or fails to maintain the speed required by Owner on the Subject Trackage, or if in emergencies crippled or otherwise defective cars are set out of User's trains on the Subject Trackage, Owner shall have the option to furnish motive power or such other assistance as may be necessary to haul, help, or push such trains, locomotives, or cars, or to properly move the disabled equipment off the Subject Trackage, and User shall reimburse Owner for the cost of rendering any such assistance.

(e) If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Subject Trackage, such work shall be done by Owner, and User shall reimburse Owner for the cost thereof.

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

## **SECTION 9. MILEAGE AND CAR HIRE**

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

## **SECTION 10. CLEARING OF WRECKS**

Whenever User's use of the Subject Trackage requires rerailing, wrecking service, or wrecking train service, Owner shall perform such service, including the repair and restoration of road bed, track, and structures. The cost and expense thereof, including, without limitation, loss of, damage to, and destruction of any property whatsoever and injury to or death of any person or persons whomsoever resulting therefrom, shall be apportioned in accordance with the provisions of Section 11 hereof. All locomotives, cars, and equipment and salvage from the same so picked up and removed which are owned by or under the management and control of or used by User at the time of such wreck shall be promptly delivered to User.

## **SECTION 11. LIABILITY**

The responsibility of the parties hereto as between themselves for loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, resulting from, arising out of, incidental to, or occurring in connection with the Trackage Rights granted in this Agreement, shall be determined as follows:

(a) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, or any damage to or destruction of the environment whatsoever, including, without limitation, land, air, water, wildlife, and vegetation, occurs with the trains, locomotives, cars, or equipment of, or in the account of, User being involved, without the trains, locomotives, cars, or equipment of, or in the account of, Owner being involved, User shall assume all liability therefor and bear all cost and expense in connection therewith, including without limitation all cost and expense referred to in Section 10 hereof, and shall forever protect, defend, indemnify, and save harmless Owner and its directors, officers, agents, and employees from and against any such liability, cost, and expense, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of Owner or its directors, officers, agents, or employees.

(b) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, or any damage to or destruction of the environment whatsoever, including, without limitation, land, air, water, wildlife, and vegetation, occurs with the trains, locomotives, cars, or equipment of, or in the account of Owner being involved, without the trains, locomotives, cars, or equipment of, or in the account of User being involved, Owner shall assume all liability therefor, and bear all cost and expense in connection therewith, including without limitation all cost and expense referred to in Section 10 hereof, and shall forever protect, defend, indemnify, and save harmless User and its director, officers, agents, and employees from and against any such liability, cost, and expense, regardless of whether

caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of User or its directors, officers, agents, or employees.

(c) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, or any damage to or destruction of the environment whatsoever, including, without limitation, land, air, water, wildlife, and vegetation, occurs with the trains, locomotives, cars, or equipment of, or in the account of both Owner and User being involved, Owner and User shall separately assume and bear all liability, cost, and expense for loss of and damage to said trains, locomotives, cars (including, without limitation, lading), and equipment operated by each of them and for injury to and death of each of their directors, officers, agents, and employees, and persons in each of their care and custody. All liability, cost, and expense for injury to and death of any other person or persons whomsoever, for loss of, damage to, or destruction of all other property (including, without limitation, the Subject Trackage) and for any damage to or destruction of the environment whatsoever, including without limitation, land, air, water, wildlife, and vegetation, so occurring shall be borne equally by Owner and User, including, without limitation, all cost and expense referred to in Section 10 hereof. Whenever any liability, cost, or expense is assumed by or apportioned to a party hereto under the foregoing provisions, that party shall forever protect, defend, indemnify, and save harmless the other party to this Agreement and its directors, officers, agents, and employees from and against that liability, cost, and expense assumed by that party or apportioned to it, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of the indemnitee or its directors, officers, agents, or employees.

(d) Notwithstanding the foregoing provisions, whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, or any damage to or destruction of the environment whatsoever, including, without limitation, land, air, water, wildlife, and vegetation, occurs with the trains, locomotives, cars, or equipment of, or in the account of, both parties to this Agreement being so involved, and such loss, damage, destruction, injury, or death is attributable to the sole negligence of the employee(s) on the train(s), locomotive(s), car(s), or caboose(s) of, or in the account of, only one of the parties to this Agreement where such sole negligence is the active or proximate cause of such loss, damage, destruction, injury, or death, the party hereto whose employee(s) was (were) solely negligent shall assume and bear all liability, cost, and expense in connection with the loss, damage, destruction, injury, and death so occurring, including without limitation all cost and expense referred to in Section 10 hereof, and said party shall forever protect, defend, indemnify, and save harmless the other party to this Agreement and its directors, officers, agents, and employees from and against any such liability, cost, and expense.

(e) In every case of death or injury suffered by an employee of either User or Owner, when compensation to such employee or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employer's liability, or other law, and either of said parties under the provisions of this Agreement is required to pay said compensation, if such compensation is required to be paid in installments over a period of time, such party shall not be released from paying any such future installments by reason of the expiration or other

termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.

(f) Notwithstanding the provisions of Section 15(f) of this Agreement, for the purposes of this Section 11 the word "equipment" shall mean and be confined to (i) cabooses; (ii) vehicles and machinery which are capable of being operated on railroad tracks that, at the time of an occurrence, are being operated on the Subject Trackage, and (iii) vehicles and machinery that, at the time of an occurrence, are on the Subject Trackage or its right-of-way for the purpose of the maintenance or repair thereof or the clearing of wrecks thereon.

## **SECTION 12. INVESTIGATION**

(a) Except as provided in Subsection (b) hereof, all claims, injuries, deaths, property damages, and losses arising out of or connected with this Agreement shall be investigated, adjusted, and defended by the party bearing the liability, cost, and expense therefor under the provisions of this Agreement.

(b) Each party will investigate, adjust, and defend all freight loss and damage claims filed with it in accordance with 49 U.S.C. Section 11706 and 49 C.F.R. Section 1005 (or any revised or substitute regulations adopted to modify, supplement or supersede the regulations herein provided), or in accordance with any applicable transportation contract entered into pursuant to 49 U.S.C. Section 10709.

(c) In the event a claim or suit is asserted against Owner or User which is the other's duty hereunder to investigate, adjust, or defend, then, unless otherwise agreed, such other party shall, upon request, take over the investigation, adjustment, and defense of such claim or suit.

(d) All costs and expenses in connection with the investigation, adjustment, and defense of any claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions set forth in this Agreement, except that salaries or wages of full-time employees, including claim agents, attorneys, and other employees of either party engaged directly or indirectly in such work shall be borne by such party.

(e) Excluding freight loss and damage claims filed in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005 or similar regulation, neither party shall settle or compromise any claim, demand, suit, or cause of action for which the other party has any liability under this Agreement without the concurrence of such other party if the consideration for such settlement or compromise exceeds Twenty Five Thousand Dollars (\$25,000).

(f) Nothing in this section shall modify or supersede the provisions of Section 11 hereof.

### **SECTION 13. ARBITRATION**

Except for matters concerning loss or destruction of, or damage to freight, or injury or death of persons, any irreconcilable dispute arising between the parties with respect to this Agreement shall be settled through final and binding arbitration. The parties shall jointly submit the matter to final and binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator(s) shall be final and conclusive upon the parties hereto. Each party to the arbitration shall pay the compensation, costs, fees, and expenses of its own witnesses, experts, and counsel. The compensation, costs, and expense of the arbitrator(s), if any, shall be borne equally by the parties hereto.

### **SECTION 14. ABANDONMENT OF SUBJECT TRACKAGE**

Notwithstanding the provisions of Section 18 of this Agreement, Owner may abandon the Subject Trackage during the term of this Agreement, or any renewals hereof, upon giving User not less than one hundred twenty (120) days' written notice of Owner's intent to abandon. In the event regulatory authority is required to effect such abandonment, User will not interfere with Owner's actions to seek and to exercise such authority. In the event regulatory authority is required for User to discontinue its own operations over the Subject Trackage, User will seek and diligently pursue such regulatory authority at the same time that Owner seeks regulatory authority to abandon the Subject Trackage, or as soon thereafter as User may do so in accordance with applicable statutes and regulations, unless User intends to acquire the Subject Trackage from Owner pursuant to 49 U.S.C. Section 10904 or other similar provision. User hereby expressly reserves the right pursuant to 49 U.S.C. Section 10904 or any similar provision which may be in effect to subsidize operations on or to acquire the Subject Trackage. Unless User or another party acquires the Subject Trackage for continued rail use or subsidizes Owner's operations thereon, User shall exercise its authority to discontinue its operations pursuant to this Agreement upon the date established by Owner for abandonment of the Subject Trackage by its aforesaid notice to User, or upon the earliest authorized date of exercise of the regulatory authority to discontinue operations, whichever is later. If regulatory authority for discontinuance of User's operations is not required, User shall discontinue its operations hereunder on the date that Owner is authorized to abandon the Subject Trackage. Upon discontinuance of User's operations, this Agreement shall terminate and be of no further force and effect, except that termination of this Agreement shall not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or be incurred prior to said termination. As used herein, Subject Trackage means the entire Subject Trackage or any portion or portions thereof.

### **SECTION 15. GENERAL PROVISIONS**

(a) This Agreement and each and every provision hereof are for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right in any third party to recover by way of damages or otherwise against either of the parties hereto.

(b) All Section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

(c) This Agreement and the attachments annexed hereto and integrated herewith contain the entire agreement of the parties hereto and supersede any and all oral understandings between the parties.

(d) No term or provision of this Agreement may be changed, waived, discharged, or terminated except by an instrument in writing signed by both parties to this Agreement.

(e) As used in this Agreement, whenever reference is made to the trains, locomotives, cars, or equipment of, or in the account of, one of the parties hereto such expression means the trains, locomotives, cars, or equipment in the possession of or operated by one of the parties and includes such trains, locomotives, cars, or equipment which are owned by, leased to, or in the account of such party. Whenever such locomotives, cars, or equipment are owned or leased by one party to this Agreement and are in the possession or account of the other party to this Agreement, such locomotives, cars, and equipment shall be considered those of the other party under this Agreement.

(f) All words, terms, and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms, and phrases in the railroad industry.

#### **SECTION 16. SUCCESSORS AND ASSIGNS**

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto; provided, however, that User shall not transfer or assign this Agreement, or any of its rights, interests, or obligations hereunder to any person, firm, or corporation without obtaining the prior written consent of the Owner, which consent will not be unreasonably withheld, except that the rights granted by this Agreement shall pass to the successor of substantially all of the property of User.

#### **SECTION 17. NOTICE**

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

[\_\_\_\_\_]

[\_\_\_\_\_]

**SECTION 18. COMMENCEMENT, TERM, AND TERMINATION**

(a) This Agreement shall take effect on \_\_\_\_\_, 1998  
("Commencement Date"), and shall continue in full force and effect for a period of 99 years  
from said Commencement Date.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly  
executed as of the date first above written

**WITNESS:**

**NORFOLK SOUTHERN RAILWAY COMPANY**

\_\_\_\_\_

\_\_\_\_\_

**WITNESS**

**ANN ARBOR RAILROAD**

\_\_\_\_\_

\_\_\_\_\_

## **EXHIBIT 15**

### **OPERATING PLAN - MINOR**

If the Primary Application is approved without the conditions AA requests, AA would be forced to make major operational changes on its current rail line. Given the significant revenue losses projected by AA, some existing services will have to be reduced and others eliminated. Employees would need to be laid off and equipment ultimately sold or leased to other carriers. If the requested trackage rights are granted, AA would be able to reassign some employees and at least one locomotive to perform the proposed services between Toledo and Chicago.

AA proposes to offer customers on its current line up to seven-day-a-week service between Toledo and Chicago. Initially, AA proposes to start service on an as-needed basis. The number of trains operated would depend on the service needs of the rail shippers served by AA. As AA is able to attract traffic moving between its line and Chicago, AA would institute regularly scheduled service commensurate with the need of the shippers. AA anticipates handling no more than two trains on any given day, one each way.

In order initially to perform the trackage rights operations between Toledo and Chicago, AA anticipates utilizing one train crew, consisting of two individuals, and two GP-38 locomotives. The train crew performing the trackage rights operations would start its work assignment out of AA's Ottawa Yard in Toledo and would get their rest in Chicago and return to Toledo the next day. If service needs should warrant AA operating two trains a day (one each way), a second crew and two additional locomotives would need to be assigned to the Toledo-Chicago operation. This second crew would also be based at the Ottawa Yard. Because of AA's

flexible work rules, the crew or crews assigned to the Toledo-Chicago operation could also perform operations on AA's existing line.

AA does not anticipate the need for any discontinuances or abandonments as a result of the proposed transaction in this Responsive Application. Interstate passenger and commuter operations will not be impacted by AA's proposed limited trackage rights operations.

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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STB FINANCE DOCKET NO. 33388

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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

---

STB FINANCE DOCKET NO. 33388 (SUB-NO. 78)

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ANN ARBOR ACQUISITION CORPORATION D/B/A ANN ARBOR RAILROAD  
--TRACKAGE RIGHTS--  
NORFOLK SOUTHERN RAILWAY COMPANY

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RESPONSIVE APPLICATION AND  
REQUEST FOR CONDITIONS BY  
ANN ARBOR ACQUISITION CORPORATION D/E/A ANN ARBOR RAILROAD

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**VERIFIED STATEMENT  
OF  
EVERT O. ERICKSON**

My name is Evert O. Erickson. I am President of Ann Arbor Railroad. I am submitting this statement in support of the Responsive Application and Request for Conditions being filed by Ann Arbor Railroad in Finance Docket No. 33388, seeking trackage rights between Toledo, Ohio and Chicago, Illinois and the right to interchange traffic with the CP Rail System (CP) at Ann Arbor, Michigan.

I have worked in the railroad industry since 1965 after attending Ferris State College. During my career, I have worked in various positions of increasing responsibility. My career

began as Yard Clerk and I moved on to Chief Clerk and Yardmaster. From 1979 until 1986, I held the positions of Transportation Supervisor, Marine Superintendent, and Superintendent of Rail Operations. In 1986, I was promoted to the position of Vice President of Operations with all responsibilities for the company's rail operations, including Transportation, Maintenance of Way, and Maintenance of Equipment Departments.

The Ann Arbor Railroad is owned and operated by the Ann Arbor Acquisition Corporation, a company incorporated under the laws of the State of Michigan. Ann Arbor Acquisition Corporation purchased the assets, including all trade marks, service marks, and all rights to the name of "Ann Arbor Railroad" in October 1988. Ann Arbor Railroad (AA) consists of 45.75 miles of main line track and another 31.44 miles of yard tracks and sidings of the former Ann Arbor Railroad Company's rail line between Toledo, Ohio and Ann Arbor, Michigan. AA has 40 full time employees and has an administrative office in Howell, Michigan. AA's Railroad Operation Center is located in Toledo, Ohio, along with AA's car and locomotive repair and service facilities and its main yard, the Ottawa Yard.

AA currently has rail connections and interchanges traffic with four Class I carriers at Toledo: Canadian National Railway Company (CN), Consolidated Rail Corporation (CRC), CSX Transportation, Inc. (CSXT), and Norfolk Southern Railway Company (NSR). In addition, AA has interchange connections with NSR at Milan, Michigan and with CRC and the Tuscola & Saginaw Bay Railway Company Inc. (TSBY), at Ann Arbor.

Ann Arbor Acquisition Corporation also owns and operates the Temperance Yard Corporation, a subsidiary switching company organized under the laws of the State of Ohio. Ann Arbor Acquisition Corporation purchased the former Grand Trunk Western Railroad, Inc.

(GTW), Temperance Yard facilities and currently performs contract switching services in that yard for GTW (CN).

The AA uses two-man switch crews for its assignments. The flexible work rules allow crews to work both Temperance Yard and AA property. AA makes two time sensitive switches per day at the Ford Motor Plant at Saline, Michigan at 3:00 p.m. and 11:00 p.m. A locomotive is left at the plant for the 3:00 p.m. switch, and the Ann Arbor crew drives themselves from Toledo to Saline to complete the switch and then drives back by auto to Toledo to complete their assignment.

There are currently 10 active rail shippers located on the AA rail system that are served on-line. AA currently operates 2 trains daily and we handle approximately 17,500 carloads per year. AA's gross revenues for 1997 are estimated at approximately \$7.2 million. Approximately 20 percent of our business is bridge traffic handled between the other rail carriers that connect with AA.

All of AA's traffic is either overhead or interlined with other carriers. AA has no traffic that both originates on and is destined to a location on the AA railroad. Accordingly, AA's financial survival is highly dependent on providing efficient and economical switching services for other carriers. Currently, about 50 to 60 percent of AA's traffic base consists of automobiles and auto parts. The remaining commodities handled include cement, grain products, paper, potatoes, lumber, sugar, oats and flour.

Measured by carloads and revenues, CRC is currently AA's largest interline partner, NSR is our second largest connection, and CSXT and CN are respectively a distant third and fourth.

In their Application to acquire CRC, NSR and CSXT make no mention of traffic diversions from, or revenue losses of, the AA. Based on our most recent analysis, AA stands to lose annual revenues of \$3,350,000 from the acquisition of CRC by NSR and CSXT. AA is continuing to review its current operations to determine whether additional traffic may be diverted by NSR or CSXT. AA's projected losses consist of trackage rights fees AA currently earns from NSR and CN, and revenues derived from traffic currently handled by AA that will likely be diverted to either NSR or CSXT.

NSR currently has trackage rights over the AA between Milan and Toledo which NSR uses to haul traffic between Detroit and Toledo. Based on NSR's current usage of this track, AA is deriving approximately \$800,000 annually in fees. With the CRC acquisition, NSR will acquire the direct CRC route between Detroit and Toledo and will no longer need the AA route. In the Railroad Control Application, NSR states that it intends to retain the AA trackage rights, but that the usage levels will drop. AA anticipates that the usage levels will drop significantly and possibly be eliminated altogether. AA has recently spent \$412,000 upgrading the line over which NSR operates to accommodate the additional NSR traffic. AA, therefore, stands to lose not only the trackage rights fees, but also will be unable to recoup the investment made solely to accommodate the NSR operations.

CN currently has trackage rights over the AA between Diann, Michigan and Toledo, which CN uses for traffic moving between Flat Rock, Michigan and Toledo. Based on CN's current usage of these trackage rights, AA is deriving approximately \$300,000 annually in fees. CN has recently announced that it has reached a settlement with CSXT. While the details of the settlement are still unknown, CN was pursuing trackage rights over a current CRC line between

Toledo and Detroit. If CN is awarded trackage rights between Detroit and Toledo as part of the settlement, it would no longer need to use the AA line and AA would lose the \$300,000 annual fee.

AA also estimates revenue losses of approximately \$2,250,000 from traffic that will be diverted by NSR and CSXT. AA currently participates in a three-carrier move of sand originating at Yuma, Michigan and destined to Cleveland, Ohio. The traffic now moves TSBY to Ann Arbor, AA to Toledo, and CRC to destination. AA generates approximately \$500,000 in annual revenues from its participation in this traffic. As a result of the CRC acquisition, CSXT will gain direct access to the shipper at Cleveland. Consequently, after the transaction, the traffic may move TSBY to Ann Pere, Michigan, and CSXT to Cleveland. Since CSXT will be able to handle this traffic in a two-line move as opposed to the current three-line move, AA stands to lose all of its revenues from this traffic.

AA currently generates approximately \$1,750,000 in revenues annually from automotive traffic that will likely be diverted as a result of the acquisition of CRC. A substantial portion of this traffic is switched by AA to CRC in Toledo and CRC linehauls the traffic to Chicago for interchange with western railroads. AA also switches traffic to NSR for linehaul movements to Winston Salem, North Carolina and Atlanta, Georgia. NSR currently has no automotive loading facility in the Toledo area. As a result of the CRC transaction, NSR is to acquire CRC's Toledo Automotive Terminal (Airline Yard). Once NSR acquires the Automotive Terminal, NSR will have no need for AA's switching service on traffic currently line-hauled by NSR. In addition, NSR will acquire the CRC route from Toledo to Chicago and, therefore, will also be able to divert the automotive traffic AA currently switches to CRC for movement to or over Chicago.

Most, if not all, of this traffic switched by AA in Toledo could easily be diverted by NSR once it owns the CRC Automotive Terminal in Toledo and the rail line to Chicago.

AA also participates in automotive traffic originated by NSR in Milan, Michigan. Some of this traffic is currently switched by NSR to AA for movement to Toledo. At Toledo, AA interchanges the traffic with either CSXT for movement to Louisville, Kentucky or CRC for movement to Chicago, where it is interchanged for destination to St. Paul, Minnesota. With the acquisition of the CRC line between Toledo and Chicago and given NSR's current route west from Milan, there will be no further need for AA's switching operation. After the CRC acquisition, NSR will also have a single line route to Louisville. Although the NSR route will be more circuitous than the AA-CSXT joint-line route, NSR will undoubtedly favor its own route and be unwilling to forward traffic to its arch competitor.

As a result of these traffic diversions and trackage rights fee losses, AA stands to lose approximately \$3,350,000 annually, or 47 percent of AA's revenues. The magnitude of these revenue losses will have a devastating effect on AA's ability to provide essential service to its remaining customers. AA would have to reduce some services drastically and eliminate other services altogether.

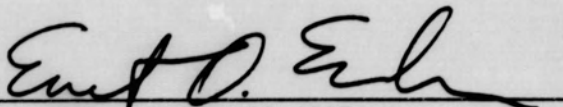
AA operates a lean organization with few opportunities to cut significant expenses. Within a broad range of traffic, AA's fixed costs remain constant, given the capital intensive nature of the business. AA would not be able to sell any of its three locomotives or any other large assets in an attempt to scale down to the lower revenue level. If AA attempted to do so, it would lose its remaining customers and quickly go out of business. Consequently, AA's per carload costs would increase dramatically. To cover these costs, freight rates for the remaining

customers would have to be increased, precipitating a downward spiral of service cuts as even more customers stopped using AA's service because of increased rates.

The on-line customers that would be adversely impacted by the reduction or elimination of rail service are: Ford Motor at Saline, Michigan, which ships about 2,000 carloads per year; Holnam, Inc., at Dunder, Michigan, which ships about 1,100 carloads of cement per year; General Mills at Toledo, which receives about 1,000 carloads of sugar, oats and flour per year; Viking Paper at Toledo, which receives about 200 carloads of paper per year; Ohio Blenders at Toledo, which ships and receives about 100 carloads of grain products per year; Fingerle Lumber at Ann Arbor, which receives about 36 carloads of lumber per year; 84 Lumber at Toledo, which receives about 30 carloads of lumber per year; and Crosset at Saline, which receives about 30 carloads of potatoes per year. None of these customers has direct access to another railroad. They are all located on the AA rail line and receive direct service from AA.

# VERIFICATION

I, Evert O. Erickson, verify under penalty of perjury that the foregoing Verified Statement is true and correct to the best of my knowledge and belief.

  
Executed on October 29, 1997