STB FD 33388 10-21-97 D 182843

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ROBERT A. WIMBISH

DONALD E. CROSS (1923-1983)

October 21, 1997

Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, D.C. 20423-0001

RE: Finance Docket No. 33388, CSX CORPORATION AND CSX TRANSPORTATION, INC., NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY -- CONTROL AND OPERATING LEASES/AGREEMENTS -- CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

WYANDOT-2: Notice of Appearance of Robert A. Wimbish for Wyandot Dolomite, Inc.

Dear Secretary Williams:

Pursuant to the Board's instructions set forth in Decision No. 21 of the above-captioned proceeding, I am writing on behalf of Wyandot Dolomite, Inc. ("Wyandot"), to inform you that the undersigned should be added to the service list in this proceeding as counsel for Wyandot. I am filing this notice of appearance at this late date because Wyandot just retained our firm to represent it in this matter. Accordingly, all Board decisions and all filings from all parties of record in this proceeding should be submitted to the undersigned as addressed below:

ENTERED
Office of the Secretary
OCT 21 1997
3 Part of Public Record

Robert A. Wimbish
REA, CROSS & AUCHINCLOSS
Suite 420
1920 "N" Street
Washington, D.C. 20036
(202) 785-3700

Counsel for Wyandot Dolomite, Inc.

In keeping with the nature of this request, I hereby certify that I have submitted a copy of this letter to the Primary Applicants, ALJ Jacob Leventhal, and to all parties of record via U.S. mail, first class postage prepaid, or more expeditious delivery.

Thank you for your attention.

Sincerely,

Robert A. Wimbish

Robert A. Wimbish

REA, CROSS & AUCHINCLOSS
1920 "N" Street, N.W.
Suite 420
Washington, D.C. 20036
(202) 7885-3700

Counsel for Wyandot Dolomite, Inc.

cc: All parties of record

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Counsel for Wyandot Dolomite, Inc.

cc: All parties of record

182843

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

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

WYANDOT-3

COMMENTS AND REQUEST FOR PROTECTIVE CONDITIONS
OF WYANDOT DOLOMITE, INC.

Robert A. Wimbish
REA, CROSS & AUCHINCLOSS
Suite 420
1920 "N" Street, N.W.
Washington, D.C. 20036
(202) 785-3700

Counsel for Wyandot Dolomite, Inc.

DATED: October 21, 1997

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

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

WYANDOT-3

COMMENTS AND REQUEST FOR PROTECTIVE CONDITIONS
OF WYANDOT DOLOMITE, INC.

I. INTRODUCTION

In a Decision served July 23, 1997, the Surface Transportation Board accepted for consideration the primary application (hereinafter, the "Application") and related filings submitted by Applicants CSX Corporation ("CSXC"), CSX Transportation, Inc. ("CSXT")[1], Norfolk Southern Corporation ("NSC"), Norfolk Southern Railway Company ("NSR")[2], Conrail Inc. ("CRR"), and Consolidated Rail Corporation ("CRC")[3][4] for Board

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[1] CSXC and CSXT, collectively, will be referred to hereinafter as "CSX."

[2] NSC and NSR, collectively, will be referred to hereinafter as "NS."

[3] CRR and CRC, collectively, will be referred to hereinafter as "CR."

[4] Hereinafter, CSX, CSXT, NSC, NS, CRR, and CR collectively and severally will be referred to as "Applicants."

approval and authorization under 49 U.S.C. §§11321-25 for, as is relevant here -- (1) the acquisition by CSX and NS of control of CR; and (2) the division of assets owned by CR by and between CSX and NS.[5]

In its July 23rd Decision, the Board confirmed the procedural schedule previously prescribed for this proceeding. As pertinent here, the Board has required that all parties wishing to offer comments, protests, and requests for protective conditions, and any other opposition evidence and argument must make such filing(s) by October 21, 1997. In keeping with the Board's procedural schedule, Wyandot Dolomite, Inc. ("Wyandot") hereby submits its comments and requests for protective conditions in response to Applicants' proposed Transaction.[6]

The Applicants tout this Transaction as beneficial because it will extend to many shippers expanded single-carrier service options where today two class 1 line-haul rail carriers must transport freight from origin to destination. Expanded single line service is undoubtedly of benefit where it becomes available. However, Applicants have thus far failed to address the other side of this coin. Specifically, because the Transaction will divide CR's system, there are CR lines and routes that will be "split," with portions destined to CSX and

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[5] Hereinafter, the series of transactions proposed in Applicants' primary application and related supplements shall be referred to as the "Transaction."

[6] Simultaneous with this filing, Wyandot is submitting as "Wyandot-2" a Notice of Appearance of Robert A. Wimbish.

others to NS. For many shippers who depend upon and receive the benefits of single-carrier service by CR, the Transaction will result in less efficient and less cost-effective two carrier (i.e., CSX and NS) service. Such an adverse consequence of the Transaction awaits Wyandot, unless either the Applicants or the Board step in to correct this problem. Thus far, Applicants have failed even to address the harms Wyandot will experience, and it is for this reason that Wyandot files with the Board this request for protective conditions.

Not only is Wyandot concerned about the potential loss of single carrier service for some of its traffic, but it is also gravely concerned about the future of Ohio's largest regional carrier and Wyandot's largest rail transportation partner -- the Wheeling & Lake Erie Railway Company ("W&LE"). Unless the Applicants can provide new markets to W&LE, or unless the Board prescribes suitable conditions to assure the future viability of the W&LE, Wyandot recognizes that the proposed Transaction will be adverse to its interests and to the interests of many other Ohio-based shippers. Thus, as a component of this filing, Wyandot requests appropriate relief for W&LE.

II. BACKGROUND

Wyandot is a rail-oriented shipper that ships aggregate and limestone from its quarry and processing site at Carey, Ohio. At Carey, Wyandot produces annually approximately 2 million tons of limestone aggregates for steel, construction, and ballast customers. Over 65% of this product is transported by rail, with the majority of that traffic handled by W&LE.[7] Today, Wyandot enjoys access to three rail carriers -- CSX, CR (via trackage rights over CSX from Upper Sandusky to Carey), and W&LE. See, map attached as Exhibit B.

Although W&LE handles the majority of Wyandot's rail-borne product, CR plays a very important role in handling Wyandot carloads from Carey to East Ohio Stone, Co., in Alliance, OH (a total rail distance of approximately 125 miles). The Carey to Alliance traffic amounts to approximately 150,000 to 225,000 tons annually, which represents between 15% to 20% of Wyandot's stone sales. See, Wolfe V.S. at 1. For this traffic, CR is the only carrier able to provide Wyandot with direct service to Alliance, and this is a critical factor in both the pricing and level of service Wyandot receives.[8] If the Application is approved without suitable conditions to address Wyandot's concerns, no one carrier will be able to provide direct service from Carey to Alliance. As the map attached as Exhibit C shows, the relevant CR route will be "split" between CSX and NS.

Neither CSX nor NS has endeavored to make any accommodation to Wyandot concerning the Carey to Alliance

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[7] See, Verified Statement of Timothy A. Wolfe on Behalf of Wyandot Dolomite, Inc., pages 1 and 3, attached hereto as Exhibit A. This document will hereinafter be referred to as the "Wolfe V.S."

[8] Presently, Wyandot calculates that CR's current charge for handling Carey to Alliance traffic is about $4.00 per ton. See, Wolfe V.S. at 1.

traffic, and it would be accurate to state that Wyandot's concerns as presented to both of these carriers have been met with resounding indifference. Neither NS nor CSX has offered any assurance that it will preserve the pricing and service levels currently provided to Wyandot by CR for the Carey to Alliance traffic. Without such assurances from NS and CSX -- and more importantly, a commitment for one or the other to provide single carrier service for this traffic -- Wyandot must conclude that, with two class 1 shippers in the move, Carey to Alliance pricing will be increased and service will decline post-Transaction. If these likely consequences of the Transaction take place, Wyandot is almost certain to lose East Ohio Stone's business, and, with it, Wyandot will be forced to eliminate from 5 to 10 of its employees.

III. SUMMARY OF PROTECTIVE CONDITION RELIEF

Applicants cannot have it both ways. They cannot preach the gospel of heightened efficiency and cost savings from expanded single line service on the one hand and then turn their backs entirely on "problematic" two-carrier situations on the other. As will be shown below, Wyandot is one such shipper to whom the Applicants have turned their backs. Thus, and for the reasons set forth more fully below, Wyandot requests the following relief:

1. That NS shall be obligated to assume trackage rights operations over lines to be operated by CSX post-Transaction between Wyandot's facilities at Carey, OH, and a connection with a line to be operated by NS at

Crestline, OH. (The condition shall be implemented to reflect the exact route by which CR today transports aggregate between Carey and Alliance.)

2. That the trackage rights to be granted to NS, as described in part one, shall be made mandatory, and that NS shall possess a common carrier obligation to serve Wyandot as a result of its access to Carey, OH.

3. That NS shall retain in effect for five years a rate (or rates) for the movement of aggregate traffic between Carey (Wyandot) and Alliance (East Ohio Stone Co.) that is no higher than that currently charged by CR.

4. Should NS prove unwilling or unable to provide service between Wyandot's Carey facility and East Ohio Stone Co. at Alliance upon a reasonable request for service, and pursuant to the conditions 1 through 3 set forth above, or if NS should abandon or otherwise relinquish its rights of access to or between Carey and Alliance, then the Board must, upon appropriate request from Wyandot, reopen this proceeding. Upon such reopening, the Board shall, at Wyandot's election direct another rail carrier of Wyandot's choosing to provide Carey to Alliance service.

5. That W&LE, by the most efficient routing possible, be granted trackage rights access to East Ohio Stone Co. at Alliance, OH.

IV. COMMENTS AND REQUESTS FOR PROTECTIVE CONDITIONS

A. NS Trackage Rights to Carey, Ohio

The best way for Wyandot to be assured that it will enjoy the same efficient routing and cost structure for Carey to Alliance traffic post-Transaction is for NS to provide such train service directly from Carey to Alliance. This would require NS to obtain, and be obligated to exercise, trackage rights over the future CSX line from Carey to Crestline, OH.[9] See, map attached as Exhibit D. Such trackage rights could be restricted to permit NS operations solely for the purpose of accessing Wyandot's facilities. Furthermore, the trackage rights fees NS would pay for such trackage rights must be structured in such a way as to ensure that Wyandot's shipping costs on this route are not higher than those currently charged by CR.[10] In order to assure that NS's rates are not in some fashion "punitive," Wyandot requests that the Board require, as part of the requested relief, that NS be bound for five years to the existing CR rates in effect for Carey to Alliance aggregate traffic.[11]

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[9] According to Wyandot's review of the "Transaction Agreement" contained in Volume 8B (pp. 407-416) of the Application, NS will obtain "overhead" trackage rights over CSX's future line from Crestline, OH, to Chicago, IL, via Upper Sandusky. As best Wyandot can discern, the subject trackage rights foreclose NS access to Carey, and restrict access to Upper Sandusky, OH, to CSX switching. Thus, as Wyandot can best determine, NS would require only trackage rights access over the short stretch of line from Carey to Upper Sandusky, in addition to the "overhead" trackage rights between Upper Sandusky and Crestline, to assure a direct and "all NS" haul from Carey to Alliance.

[10] Currently, CR charges approximately $4.00 per ton for aggregate traffic hauled between Carey and Alliance. This approximate rate includes a calculation based on the fact that East Ohio Stone Co. provides 23 of its privately-owned cars to the movement of this traffic. See, Wolfe V.S. at 1.

[11] Wyandot is very aware of the premium that NS and CSX have paid for CR. This premium should not be recouped through "surgical strikes" against what may be less profitable or shorter haul traffic. Obviously, if NS, upon accepting its trackage rights obligation, offers Wyandot rates superior to those currently offered by CR, then this would be in keeping with the relief Wyandot requests.

In order to assure that NS provides the service that Wyandot's trackage rights request would accommodate, Wyandot urges that the trackage rights between Carey and Crestline be made "mandatory." That is to say that NS must not only have the right to provide such service, it must have imposed upon it by the Board a common carrier obligation to serve Wyandot as NS would have to do on any other line over which it possesses a common carrier obligation.

To accommodate more efficient operations in connection with NS post-transaction, Wyandot is willing to re-arrange its current shipping structure, if this will help to reduce costs. Specifically, Wyandot currently delivers Alliance-bound carloads to CR at Carey in 35-car blocks on a thrice weekly basis. Wyandot is willing to explore with NS the possibility of dispatching loaded cars less frequently (ex. one or two times weekly) in larger blocks of 50 to 70 cars.

Although Wyandot fully expects that NS will be a cooperative participant in the movement of traffic between Carey and Alliance, there is the possibility that NS will ultimately prove unable to provide the service Wyandot needs. Therefore, in the event that NS proves unable to provide service to Wyandot, or should NS at some future date seek to abandon its rights to and from Wyandot, then Wyandot requests that the Board permit the re-opening of this proceeding. If circumstances arise warranting such re-opening, the Board should take action authorizing another carrier of Wyandot's choosing (and consistent with the selected carrier's approval) to assume trackage rights operations between Wyandot's Carey facility and East Ohio Stone Co. at Alliance.

B. W&LE Trackage Rights Access to East Ohio Stone Co. at Alliance, Ohio

As indicated above, W&LE is Wyandot's principal rail connection, providing the majority of Wyandot's rail service needs. W&LE is critically important to Wyandot because of its routes to eastern the Ohio aggregate markets in which Wyandot competes. Recently, Wyandot has been made aware of the financial circumstances W&LE is likely to face if the Transaction goes forward without suitable protection for W&LE. The failure of W&LE is simply not an option, and the Board must act responsibly to ensure that W&LE will continue to be a viable operator in Ohio.

Wyandot is interested in making additional traffic available to W&LE if this will contribute to W&LE's future survival. In addition to the NS trackage rights requested in Part IV-A, above, Wyandot requests that the Board grant W&LE trackage rights access to East Ohio Stone Co.'s facility at Alliance. Wyandot has reviewed W&LE's system map, and has determined that W&LE could serve as an alternative route for Carey to Alliance traffic if W&LE were to obtain trackage rights over a future NS line (currently CR) from a point in or near Canton, OH to Alliance. Wyandot anticipates that both the State of Ohio and the W&LE intend to request W&LE access to East Ohio Stone Co., and, of course, Wyandot supports such proposals.[12]

Wyandot wishes to make clear that its request for direct service by W&LE between Carey and Alliance should not be viewed by the Board as alternative relief to the protective conditions Wyandot requests in Part IV-A. NS direct service between Carey and Alliance is essential to Wyandot's ability to retain its East Ohio Stone Co. business.

V. CONCLUSION

Wyandot is aware that it is not the only aggregate shipper participating in this proceeding. It recognizes that there are a handful of other shippers with exactly the same concerns who will suffer the same sort of harms that Wyandot will if the Board fails to take appropriate action. It seems, then, that aggregate shippers such as Wyandot have become the unwanted stepchildren of this Transaction. Not once have either NS or CSX refuted the proposition that two carrier (NS-CSX) service for relatively short haul moves such as Wyandot's would be as efficient as the "all CR" single-carrier service that the Transaction would eliminate. Similarly, neither NS nor CSX have anywhere claimed, much less guaranteed, that they would handle

[12] During the course of this proceeding, Wyandot has frequently conferred with representatives of the State of Ohio, including individuals from the State Attorney General's office and the Ohio Rail Development Commission. Wyandot supports the objectives of these Ohio parties and support the filings they plan to submit on October 21st.

traffic such as Wyandot's Carey to Alliance aggregate business as cheaply or as quickly as CR does today. Why should Wyandot, and shippers just like it, suffer the avoidable consequences of a Transaction which promises so many others improved and lower cost rail service?

Wyandot believes that this Transaction poses a critical issue to the Board, and one that the Board must carefully assess. Will the Board let the Applicants get away with a Transaction that so much as acknowledges that certain viable "single carrier" rail corridors and routes that are available today -- routes for which there is admittedly no alternative -- will be altogether eliminated tomorrow? The Board is entrusted with upholding the public interest, and the Wyandot, the State of Ohio, and a number of shippers like Wyandot have established an injury to the public interest if the Transaction is approved as is.

To correct the injury it would otherwise incur, and for the reasons set forth above, Wyandot prays that the Board provide the following relief as conditions to approval of the Application:

1. That NS shall be obligated to assume trackage rights operations over lines to be operated by CSX post-Transaction between Wyandot's facilities at Carey, OH, and a connection with a line to be operated by NS at Crestline, OH. (The condition shall be implemented to reflect the exact route by which CR today transports aggregate between Carey and Alliance.)

2. That the trackage rights to be granted to NS, as described in part one, shall be made mandatory, and that NS shall possess a common carrier obligation to serve Wyandot as a result of its access to Carey, OH.

3. That NS shall retain in effect for five years a rate (or rates) for the movement of aggregate traffic between Carey (Wyandot) and Alliance (East Ohio Stone Co.) that is no higher than that currently charged by CR.

4. Should NS prove unwilling or unable to provide service between Wyandot's Carey facility and East Ohio Stone Co. at Alliance upon a reasonable request for service, and pursuant to the conditions 1 through 3 set forth above, or if NS should abandon or otherwise relinquish its rights of access to or between Carey and Alliance, then the Board must, upon appropriate request from Wyandot, reopen this proceeding. Upon such reopening, the Board shall, at Wyandot's election, direct another rail carrier of Wyandot's choosing to provide Carey to Alliance service.

5. That W&LE, by the most efficient routing possible, be granted trackage rights access to East Ohio Stone Co. at Alliance, OH.

The requested relief is reasonably designed to address those harms that Wyandot has been able to establish it will clearly suffer if the Application is approved without conditions. Furthermore, the requested relief will not pose any significant threat to implementation of the Transaction. Since the Applicants appear intent to turn their backs on this business, without appropriate accommodation, they do both the shippers and Ohio taxpayers a serious disservice. Wyandot therefore looks to the Board to take effective action.

Respectfully submitted,

Robert A. Wimbish

Robert A. Wimbish
REA, CROSS & AUCHINCLOSS
1920 "N" Street, N.W.
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(202) 785-3700
Counsel for Wyandot Dolomite, Inc.

DATED: October 21, 1997

Wyandot Dolomite, Inc.

GENERAL OFFICE AND PLANT
P.O. Box 99, Carey, OH 43316-0099
Tel: 419/396-7641
Fax: 419/396-6094

EXHIBIT
A

SUBSIDIARY
HANCOCK ASPHALT & PAVING, INC.
FINDLAY & CAREY, OH

VERIFIED STATEMENT OF TIMOTHY A. WOLFE
ON BEHALF OF
WYANDOT DOLOMITE, INC.

My name is Timothy A. Wolfe, Executive Vice President of Wyandot Dolomite, Inc., P. O. Box 99, 1794 County Road 99, Carey, OH, 43316.

My duties include the negotiating of contracts for my Company and helping my customers negotiate as well. Also, marketing our product by rail to areas that can be competitively served by rail with our products.

Wyandot Dolomite, Inc. ("Wyandot") is a family business founded in 1949, with approximately 70 employees. We have been in the stone (aggregate) business for 49 years in this same location. We produce limestone aggregates for the steel, construction and ballast business. Wyandot's Carey, Ohio, based quarry was established to take advantage of the rail lines that link us with the industrial centers of northeast Ohio, which now account for 70 percent of our stone business annually.

Wyandot ships approximately 12,000 open top hoppers or 1,200,000 tons annually. We expect to increase this business by 10 to 15 percent per year for the foreseeable future, if the rail merger does not interrupt our being served by two Class I railroads, CSX and Norfolk Southern.

Our customers will generally receive between 100,000 and 400,000 tons a year. We also move a substantial amount of railroad ballast into the midwest states and rail stone via a distribution yard for use in Warren Consolidated Company's steel making process. Wyandot ships approximately 150,000 to 225,000 tons annually on Conrail to our customers, East Ohio Stone Co., in Alliance, OH (approximately 125 rail miles from Carey). This business represents approximately 15 percent to 20 percent of our rail stone sales. And over $600,000/year in revenue which is 12 percent of our total stone revenue.

On this Carey to Alliance traffic handling by Conrail, Conrail provides three times weekly service both to and from Carey. Alliance-bound traffic from Carey moves on Conrail in 35-car blocks. I understand that this traffic is not handled in any sort of "unit train" service, but rather is consolidated with other trains in route to Alliance. (I have discussed with Conrail the possibility of moving this traffic in larger blocks of 50 to 70 cars, with less frequent service. My intent was to find a way to obtain lower rates. I am still interested in such an arrangement if it will help to keep rail costs down.) The rail rate that my Alliance customer is paying Conrail today averages $4.00/ton. This Conrail rate is averaged due to the fact that East Ohio Stone Co. provides 23 of its own rail cars, which accounts for a portion of the cars needed for the movement of this traffic. Unless NS, CSX or the Surface Transportation Board take appropriate action, this business will be lost, post merger, along with 5 to 10 jobs at Wyandot.

Carey, OH, is the largest originating shipping point of intrastate stone movements in Ohio, with over 30,000 railcars loaded annually from this vicinity. If rail service is disrupted, Wyandot's business of moving 12,000 rail cars a year could not be handled by trucks as the quantities and distances are too great and the costs prohibitive. The stone business would be picked up by the producers off of Lake Erie. Michigan and Canada would benefit bringing more stone in on the docks at the flats in Cleveland which in turn would increase prices to the outlying areas and would increase truck traffic out of downtown Cleveland, greatly increasing pollution and causing traffic problems.

The particular harm that Wyandot will experience if the Surface Transportation Board rules in favor of the Conrail acquisition between CSX and NS as it is currently proposed involves the loss of direct, single line rail service that Conrail presently provides. Subsequent to the acquisition of Conrail, shipments originating from Carey, OH, to Alliance, OH, will be relegated to two-line service with the origin being CSX and the destination being NS. Experience dictates that dual line service provided by two Class I railroads will result in higher freight rates logistical problems that will make these hauls inefficient. With these factors, shipments to such eastern points as Alliance would be impossible to maintain, and the result would be a substantial loss of business for Wyandot and reduced employment of Ohio workers. The effects of this stone not reaching market in train load quantities will have a tremendous impact on all construction, ODOT projects, commercial building and residential housing and development. The effect will hurt the people in these industries, but most importantly, it will hit the taxpayers of Ohio in their pocketbooks because they will be paying more for less.

The Board may recall that Wyandot originally offered a qualified letter in support of the Application. I understand, to my regret, that this letter was added with others as a portion of the Application NS, CSX and Conrail have filed. Back in May of this year, I was approached by NS representatives who solicited from me a letter of support. We had several discussions concerning my worries about the Carey to Alliance traffic, and NS ultimately assured me that NS would provide single carrier service between these points exactly as Conrail was doing today. (This, of course, suggests that NS was willing to assume this traffic at or below the rates Conrail is currently charging). In the letter I wrote, I conditioned Wyandot's support for NS and CSX as follows: "If the merger takes place and we are served by both CSX and NS in a competitive and service-oriented manner then we will see great benefits to our business and to the taxpayers of Ohio."

Wyandot has since come to find that we will not receive that which NS had promised in May -- namely single carrier service by NS between Carey and Alliance. I am disappointed by this development, and I feel as if I have received the typical "campaign promise". Naturally, I cannot now support the merger as constructed, and I withdraw my earlier letter of support.

Despite our disappointment at learning that NS would not provide direct rail service between Carey and Alliance, I have had several meetings since with both CSX and NS Representatives. Of particular note was my meeting with Gary Windof, Director - Aggregates for NS on or about August 1, 1997. Although Mr. Windof seemed to appreciate my concerns on the Carey-Alliance business, he would not or could not commit NS to the single carrier service we sought.

He did, it seems, recognize the economic impact that joint line service might have on this route, and he offered what amounted to a one-year rate "freeze" (at existing Conrail rates) on this traffic after the merger took place. This was, to me, at least a recognition that a joint CSX-NS move of Carey to Alliance traffic would be more costly, but Mr. Windof's offer was merely a one-year "stay of execution," and therefore, unacceptable.

In a similar manner, I traveled to Jacksonville, FL, on August 28, 1997, to meet with various CSX personnel, including Derek Smith who is Assistant Vice President - Minerals. While attentive to my concerns, this meeting proved wholly unproductive. The end result of my meetings with NS and CSX is that Wyandot is no closer to preserving the single carrier Carey to Alliance service that it receives today.

The Wheeling & Lake Erie Railway Company ("W&LE") is very important to us because they transport most of the stone we ship by rail. As a result, we very much need W&LE to survive. I have been contacted by representatives from the State of Ohio to discuss the future of the W&LE. Wyandot would like to seek new business opportunities in connection with W&LE. The State of Ohio and Wyandot have agreed to a common course of action, and we are supporting the State of Ohio's October 21st filing, and we understand that the State of Ohio now supports us in our October 21st filing.

We ask the STB to please consider the relief spelled out below for the preservation of 10 miles of Conrail trackage rights from Carey, OH, to Upper Sandusky, Ohio, and single line service to Alliance, OH, that have been ignored by NS and CSX. The preferred solution would be for NS to be obligated to exercise trackage rights over future CSX line between Carey, OH, and Crestline, OH, (where there will be a connection to a NS line to Alliance, OH). Or for someone totally independent of NS/CSX to be designated by us to preserve no less than the trackage rights now held by Conrail, from Carey, OH, to Upper Sandusky, OH, and on CSX trackage from Upper Sandusky, OH, to Crestline, OH.

We cannot afford to lose a Class I carrier at Carey, OH, nor single line access with competitive rates and service to our customers. We also cannot afford to lose the services of the W&LE.

VERIFICATION

COUNTY OF WYANDOT)
) ss:
STATE OF OHIO)

Timothy A. Wolfe, being duly sworn, deposes and states that he has read the foregoing statement, knows the facts asserted therein, and that the same are true as stated.

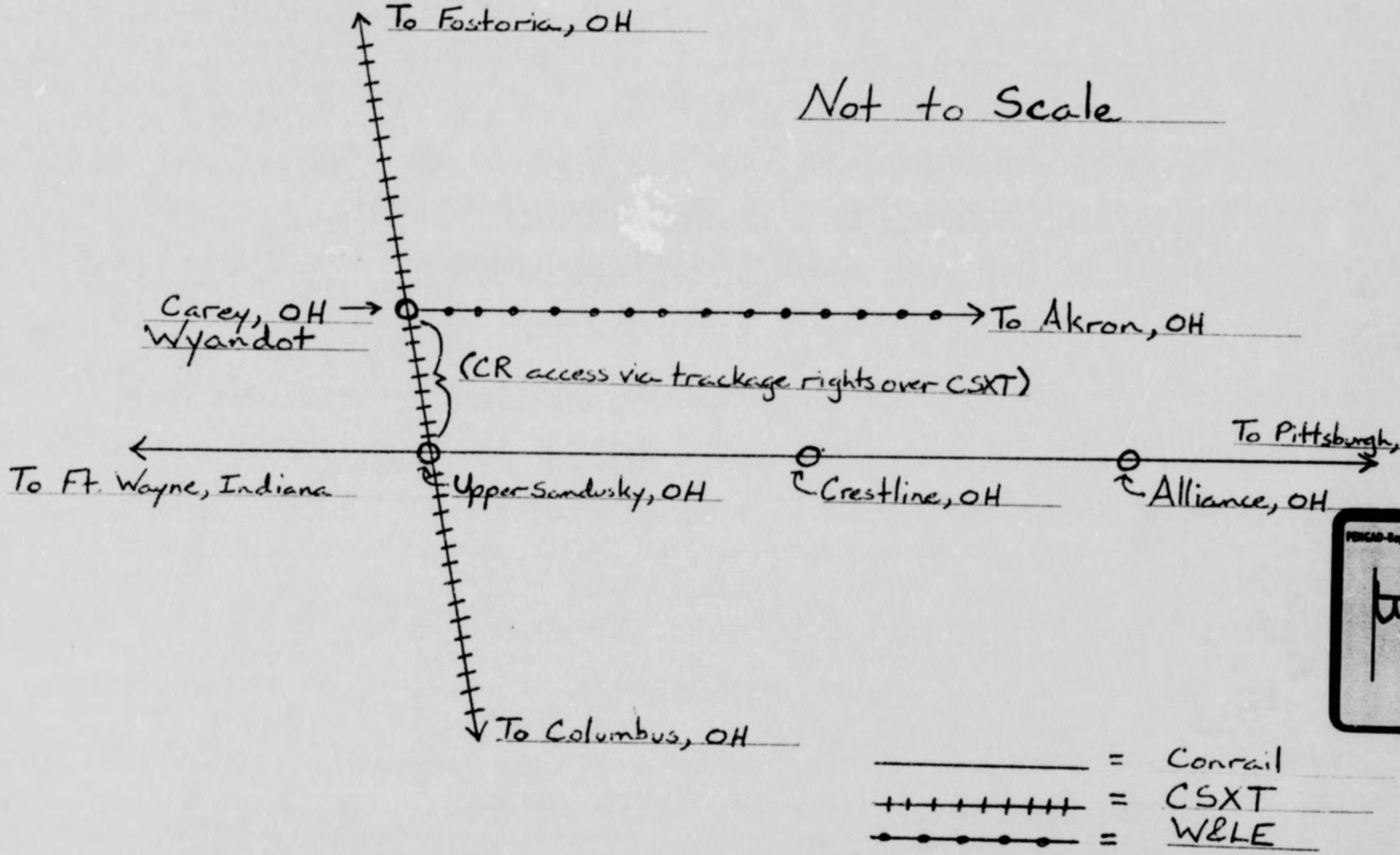
Timothy A. Wolfe
Executive Vice President
Wyandot Dolomite, Inc.

Subscribed and sworn to before me on this 17th day of October, 1997.

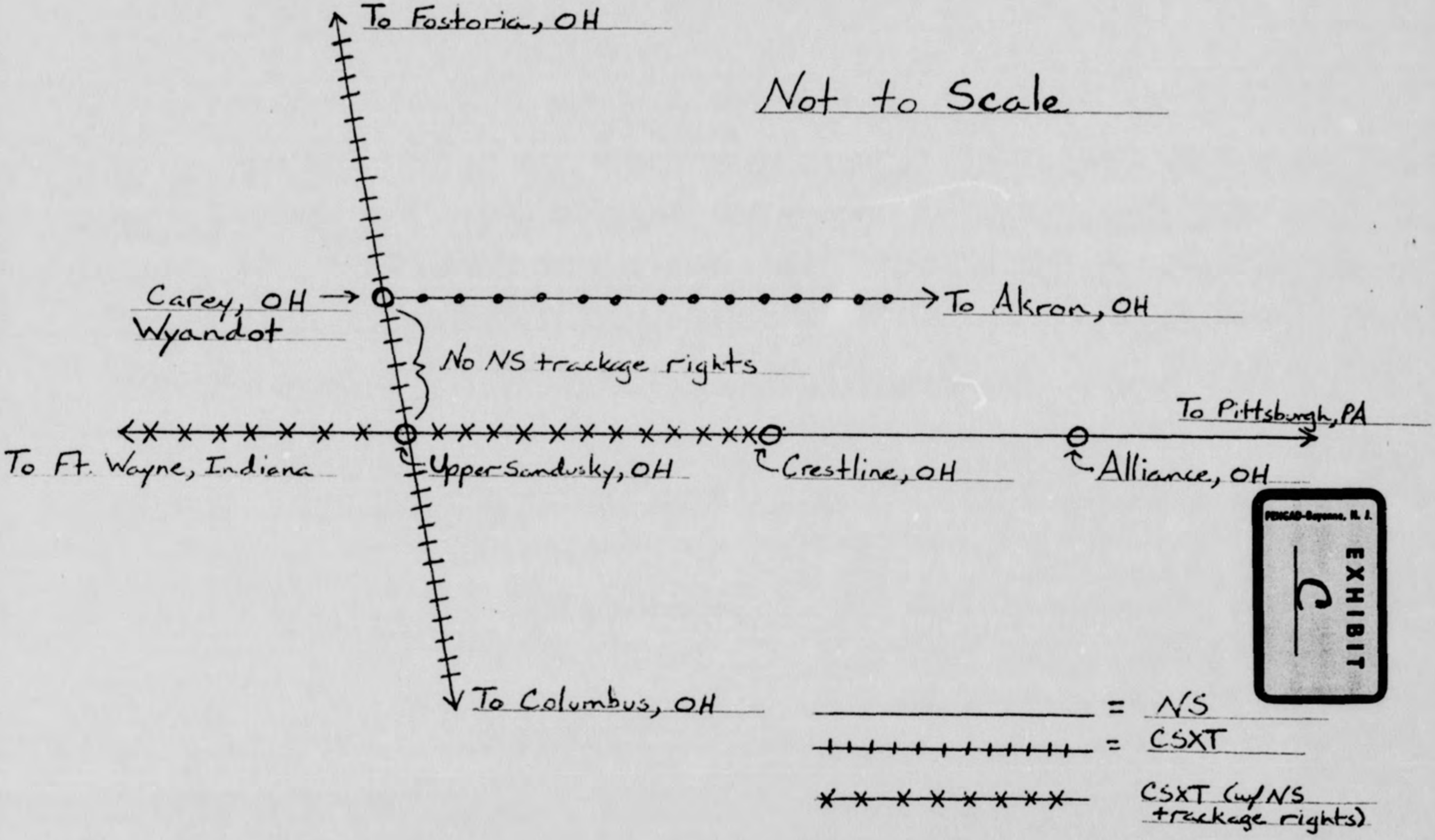
Joyce A. Wyatt
Joyce A. Wyatt, Notary Public

My Commission Expires: May 22, 1999

Rail Carriers Serving Wyandot as of 10/21/97

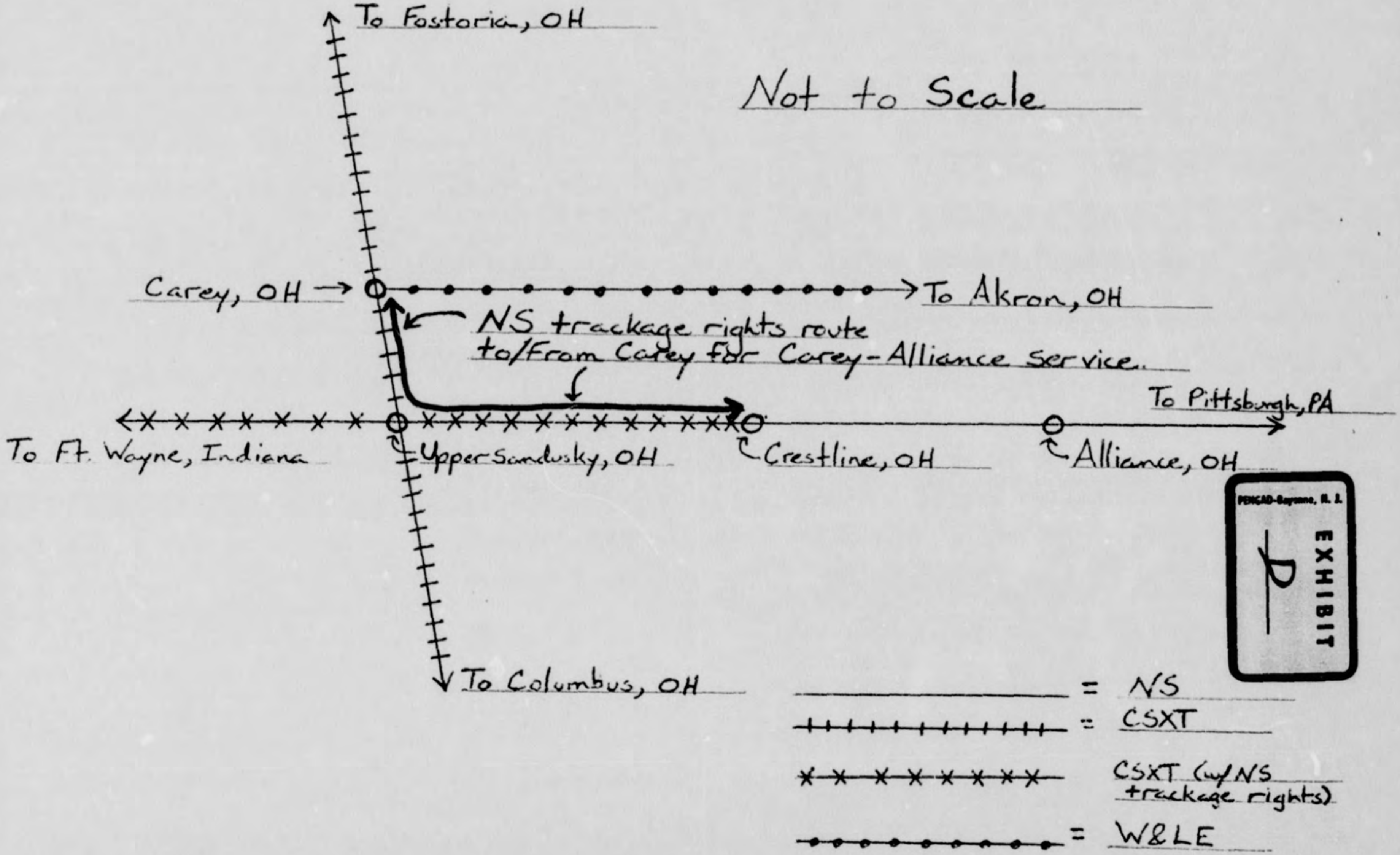


Rail Carriers Serving Wyandot
Post-Transaction



Requested Trackage Rights to NS

Not to Scale



CERTIFICATE OF SERVICE

I hereby certify that I have this 21st day of October, 1997, served copies of the foregoing document upon the Primary Applicants, ALJ Jacob Leventhal, and all parties of record by means of U.S. mail, first class postage prepaid, or by means of more expeditious delivery.

Robert A. Wimbish

Robert A. Wimbish

STB FD 33388 10-21-97 D 182838

182832

THE AMERICAN SHORT LINE RAILROAD ASSOCIATION

1120 G Street, N.W., Suite 520
Washington, D.C. 20005-3889
(202) 628-4500
Fax: (202) 628-6430

Alice C. Saylor
Vice President & General Counsel

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STB

October 21, 1997
Via Messenger

D

Office of the Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423

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

COMMENTS OF THE AMERICAN SHORT LINE RAILROAD ASSOCIATION AND REGIONAL RAILROADS OF AMERICA

Dear Sir:

In response to the Procedural Schedule which has been established by the Surface Transportation Board in the above-described proceeding, attached are the original and 25 copies of the Comments of the American Short Line Railroad Association and Regional Railroads of America. In addition, an electronic copy on a diskette formatted for WordPerfect 7.0 is enclosed.

Please date-stamp the attached copy of this transmittal letter to indicate receipt, and return it to the messenger. Thank you.

ENTERED
Office of the Secretary
OCT 21 1997
3 Part of Public Record

Sincerely,

Alice C. Saylor

Alice C. Saylor

182838

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OCT 21 1997
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MANAGEMENT
STB

Before the
Surface Transportation Board

Washington, D.C.

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

COMMENTS OF THE AMERICAN SHORT LINE RAILROAD ASSOCIATION AND REGIONAL RAILROADS OF AMERICA

ENTERED
Office of the Secretary
OCT 21 1997
3 Part of Public Record

William E. Loftus, President
American Short Line Railroad Assn.
1120 G. Street, N.W.; Suite 520
Washington, D.C. 20005
(202) 628-4500; Fax (202) 628-6430

Peter A. Gilbertson, Chairman
Regional Railroads of America
122 C. Street, N.W.; Suite 850
Washington, D.C. 20001
(202) 638-7790; Fax (202) 638-1045

Date: October 21, 1997

Before the
Surface Transportation Board

Washington, D.C.

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

COMMENTS OF THE AMERICAN SHORT LINE RAILROAD ASSOCIATION AND REGIONAL RAILROADS OF AMERICA

In response to the Procedural Schedule which has been established by the Surface Transportation Board in the above-described proceeding, the American Short Line Railroad Association (ASLRA) and Regional Railroads of America (RRA) hereby file these joint Comments with the Surface Transportation Board (STB, or Board) in regard to the proposed acquisition of control of Conrail Inc. and Consolidated Rail Corporation (Conrail) by CSX Corporation and CSX Transportation, Inc. (CSX) and Norfolk Southern Corporation and Norfolk Southern Railway Company (NS) (proposed transaction).

ASLRA and RRA are associations which represent the interests of more than 550 short line and regional railroads in legislative and regulatory matters and industry affairs. Short line and regional railroads are an important and growing component of the railroad industry. Today, they operate and maintain 27 percent of the American railroad industry's route mileage, and account for 9 percent of the rail industry's freight revenue and 11 percent of railroad employment.

These joint Comments of RRA and ASLRA focus on the impacts of the proposed transaction on short line and regional railroads, and the shippers and communities they serve. These Comments address only effects and impacts that will be generalized and widespread and affect a substantial number of small railroads. There are some ASLRA and RRA-member short line and regional railroads that have specific issues or unique situations which are being addressed in negotiations with the applicants, and/or individual filings with the Board in this proceeding. These joint Comments are intended to raise general issues of interest to small railroads as a group, and are in no way intended to limit or alter the individual filings of any short line or regional railroad.

The impacts of the proposed transaction on small railroads will be substantial, and are cause for considerable concern, because of the large extent to which small railroads depend on an effective partnership relationship with their Class I connections. At the same time, small railroads are in a unique position to be able to address some of the concerns being raised by shippers and communities in connection with the proposed transaction. The service capabilities and competitive alternatives which small railroads offer can be part of the solution. ASLRA and RRA urge the Board to include certain requirements, outlined below, as conditions to its approval of the proposed transactions. With these or substantially similar conditions imposed, ASLRA and RRA support the proposed transaction.

Small railroads and their large Class I connections, working in partnership, make up this country's national rail transportation network. It is an essential part of the Nation's transportation infrastructure. The widespread availability of efficient, cost-effective rail service supports local and regional economies, and contributes to the competitiveness of American industries in the global marketplace. The relationship between small railroads and large railroads is one of mutual dependence. The short line and regional railroads depend on their Class I connections in order to reach all of the origins and destinations their customers require. Class I's depend upon their short line and regional connections to feed them traffic, supply some cars, maintain light density branch lines, and provide service-oriented pick-up and delivery functions to meet the needs of shippers and receivers located in their service area.

Short line and regional railroads require mandatory interchange, good service, reasonable routes and rates, appropriate gateways and effective terminal access from their Class I railroad partners in order to serve their shippers well, and succeed in business. In some ways, small railroads are akin to small shippers: We depend on Class I railroads in order to be able to provide competitive service, but at the same time represent a significant traffic and revenue base for each of the carriers in this proposed transaction.

The proposed transaction will cause significant changes in the operational patterns and competitive balance in the railroad industry in the East. Conrail will cease to exist and its system will be split in two, while both CSX and Norfolk Southern will be transformed by the substantial additions to their systems. More than 270 short line and regional railroads have direct connections to Conrail, CSX or Norfolk Southern today. This large number of small railroads - - more than half the total national number - - will be impacted directly by the proposed transaction.

The concerns which small railroads have with regard to the proposed transaction fall broadly into two general categories:

(1) **Immediate effects**, based on the redrawing of the railroad map in the East, and resulting shifts in operational patterns, gateways and competitive routings and options, which will occur as soon as the proposed transaction is implemented; and

(2) **Downstream effects**, which are more difficult to define with specificity but which are based on concerns that the enlarged CSX and NS systems, post-transaction, could use their increased market power to the detriment of some of the smaller railroads. Areas of possible concern include inter-carrier relationships such as service, revenue divisions, marketing, car supply, car hire, industrial development, siting of new industries, etc.

To address both the immediate effects and the possibility of downstream effects, ASLRA and RRA urge the Board to condition its approval of the proposed transaction as follows:

- CSX and NS should be required to adopt existing inter-carrier agreements between Conrail and its connecting short line and regional rail carriers, and to apply those agreements, without modification except by mutual agreement of the parties.

- Existing gateways and rate relationships between Conrail, CSX and NS, and connecting short line and regional railroads, should be required to be maintained until changed by mutual consent.

- Where competitive or operational problems in the proposed operating plans are identified during its review of the proposed transaction, the Board should consider requiring expanded short line and regional connections and access as part of the solution; and if granted to specific small carriers, should be made broadly available as appropriate.

- As a matter of policy, the Board should clarify that the rail system should be truly inter-active. At junctions and terminal areas served by both NS and CSX, small railroads should have rights to interchange with both carriers as well as each other. Artificial "paper" barriers which arbitrarily restrict full interchange rights should expressly be discouraged.

- The Board should expressly retain jurisdiction over inter-carrier relationships between CSX and NS and connecting short line and regional rail carriers after the effective date of the transaction, to ensure that CSX and NS do not use their market power to disadvantage small railroads, or shippers or receivers located on small railroads.

- The Board should provide for continuing oversight for a period of five years after the effective date of the transaction to provide a forum for investigation and resolution of any competitive or service-related complaints by small railroads, or shippers or receivers located on small railroads. In connection with this continuing oversight requirement, periodic reporting of operational and service data by CSX and NS should be required.

- At the conclusion of the five-year oversight period, the Board should include specific data and actions in its post-transaction study of the impact of the transaction on small railroads in the affected service area.

The applicants, CSX and NS, point to many substantial benefits that they expect from their plan to jointly acquire the Conrail system and divide it between themselves. Certain parts of Conrail's present service area will receive an injection of rail competition where there has been none in recent years. The applicants expect the rail industry's ability to compete with trucks to be enhanced. Some important origin-destination pairs that receive joint line service today will enjoy single line service after the proposed transaction (although for other O-D pairs, the opposite will be true).

All of these expected benefits are significant and will be positive for the future of the railroad industry as a whole. ASLRA and RRA, on behalf of their affected short line and regional railroad members, support approval by the Board of the proposed transaction, with conditions as outlined above to ensure a level playing field for small railroads, and preservation of competitive options.

Respectfully Submitted,

William E. Loftus

William E. Loftus, President
American Short Line Railroad Assn.
1120 G. Street, N.W.; Suite 520
Washington, D.C. 20005

Peter A. Gilbertson, Chairman
Regional Railroads of America
122 C. Street, N.W.; Suite 850
Washington, D.C. 20001

Date: October 21, 1997

Certificate of Service

I hereby certify that I have today served a copy of these Comments of the American Short Line Railroad Association and Regional Railroads of America upon all Parties of Record on the service list in this proceeding by first class U.S. mail, postage prepaid.

Alice C. Saylor

Alice C. Saylor

Date: October 21, 1997

STB FD 33388 10-21-97 D 182832

18-2832
VA-01

COMMONWEALTH of VIRGINIA

Office of the Governor

George Allen
Governor

Robert E. Martinez
Secretary of Transportation

October 21, 1997

VA-01

Honorable Vernon A. Williams, Secretary
Surface Transportation Board
STB Finance Docket No. 33388
1925 K Street, N.W., Room 700
Washington, D.C. 20423-0001

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

Dear Secretary Williams:

The Commonwealth of Virginia continues to support the proposed acquisition of Conrail, *et. al.* by CSX and Norfolk Southern. It is believed that the benefits of the acquisition, as proposed, should outweigh any negative aspects. Competition will be enhanced, service will be improved and new markets will be created. The transaction will clearly benefit shippers and the general public. Extensive review by the Commonwealth of the railroads' joint application regarding the purchase of Conrail has been conducted. There have also been numerous meetings and discussions with both railroads. In September, the Commonwealth addressed specific concerns with both Norfolk Southern and CSX (copies attached). Recently, the Commonwealth received written responses from the railroads (copies attached) and the Commonwealth would request that this correspondence be considered by the STB as it evaluates the joint application.

Many of the issues raised during the discussions have already been resolved or can easily be resolved, while some of the remaining issues are subject to further negotiation and a cooperative effort between the Commonwealth and the two railroads. The Commonwealth is pleased that the joint application reveals that the railroads will work with the shortlines in the Commonwealth including extending their feasible service areas (Vol. 2B, p. 203) and that the railroads honor their rail passenger agreements (Vol. 3B pp. 289, 306; Vol 3A pp. 269, 275). In addition, Norfolk Southern's Operating Plan states that the establishment of service or rates or special conditions that would artificially divert freight among ports, including the ports in the Commonwealth of Virginia, will not be undertaken (Vol. 2B, p. 251). As the Operating Plan correctly emphasizes, each port has its own inherent strengths and weaknesses and by working together, the maximum potential of both the railroad and the port can be reached. The Commonwealth also trusts that CSX will take no action or grant any special condition or rate which would unfairly benefit other ports to the detriment of the ports in the Commonwealth and the Commonwealth's continued support of this joint application is made with the understanding that CSX will not undertake any such action

The Commonwealth of Virginia also supports the central terms being proposed for the Operating Access Agreements between the railroads and the Northern Virginia Transportation District Commission and Potomac and Rappahannock Transportation District Commission, the owners of Virginia Railway Express, a commuter rail passenger operation. It is the Commonwealth's understanding that these Commissions will be filing revised agreements which incorporate these central terms. The Commonwealth supports the Commissions' request and requests a continued commitment by the railroads to the continuation of a viable, competitive commuter rail service in the Commonwealth.

The Commonwealth understands that the application process is a fluid process and that issues may arise which may not have been addressed by the railroads and the Commonwealth of Virginia; however, based on a long-standing excellent working relationship between the railroads and the Commonwealth, there can be no doubt that the railroads will make the maximum effort and commitment to resolve any further issues which may arise during the STB process and beyond.

Finally, as stated previously, in response to the discussions held with the railroads and specifically in response to the letters sent to the railroads in September, written responses from the railroads were recently received; however, the Commonwealth has not had sufficient time to evaluate the responses. Moreover, as stated previously, additional issues or questions may arise during the course of the proceedings before the STB. As such, the Commonwealth will continue to remain a participant in the process before the STB and reserves the right to file additional comments as its interest may require.

Based on the Commonwealth's discussions with the railroads and the verbal and written commitments and assurances given by the railroads, the Commonwealth requests that the STB approve the joint application.

Sincerely,

Shirley J. Ybarra

Shirley J. Ybarra
Deputy Secretary of Transportation

Enclosures

182832

VA-01

RECEIVED
OCT 21 1997
MAIL MANAGEMENT
STB

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB 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

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of October 1997 the Honorable Jacob Leventhal, the Applicants and each Party of Record in this proceeding has been served with copies of the attached Comments submitted by the Commonwealth of Virginia, by first-class mail, postage prepaid.

ENTERED
Office of the Secretary
OCT 21 1997
3 Part of Public Record

Respectfully submitted,

Richard L. Walton, Jr.
Senior Assistant Attorney General
Office of the Attorney General
900 East Main Street
Richmond, Virginia 23219
(804) 786-1582

October 21, 1997

182832

VA-01

COMMONWEALTH *of* VIRGINIA

Office of the Attorney General

Richmond 23219

Richard Cullen
Attorney General

900 East Main Street
Richmond, Virginia 23219
804 - 786 - 2071
804 - 371 - 8946 TDD

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OCT 2 1 1997
MAIL MANAGEMENT
STB

October 21, 1997

VIA HAND DELIVERY

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

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

Dear Secretary Williams:

Please find enclosed for filing in the above-referenced proceeding an original and 25 copies of the Comments of the Commonwealth of Virginia. Also enclosed is a 3.5 inch disk containing the text of the Comments in Word Perfect 6.1 format.

Office of the Secretary
OCT 2 1 1997
3 Part of Public Record

Please stamp the extra copy of the foregoing and return.

Respectfully submitted,

Richard L. Walton, Jr.
Senior Assistant Attorney General

H:\govern\rlw\csx-1
Enclosures

COMMONWEALTH of VIRGINIA

LEO J. BEVON
DIRECTOR

DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION
1401 EAST BROAD STREET
RICHMOND 23219-1939

(804) 786-4410
FAX (804) 786-7286
VIRGINIA RELAY CENTER
1-800-828-1120 (TDD)

September 8, 1997

Rob Shinn
Vice President - State Relations
CSX Corporation
One James Center
P. O. Box C-32222
Richmond, Virginia 23219

Dear Rob:

As discussed with you, representatives of the Commonwealth would like to meet with representatives of CSX to discuss the Conrail purchase and its effects on Virginia. As suggested by you, the meeting will be held on September 19, 1997, in CSX offices in Richmond. The time has been set for 10:00 a.m. We understand that a video conference may be used.

The Commonwealth supports the efforts of NS and CSX to purchase Conrail. It is felt that the acquisition can generate many benefits for the citizens and businesses of Virginia.

Our review of the application has developed some questions and comments which we would like to address during the meeting. Attached is a copy of the questions and comments for CSX's review.

It is realized that some of the issues can be resolved, while others cannot. For those that cannot be resolved, CSX will have the benefit of knowing the concerns and the Commonwealth can proceed to either minimize the effect or make plans for future actions.

Thank you for your assistance in this matter.

Sincerely,

George R. Conner

George R. Conner
Rail Administrator

GRC:sba
Attachment
cc: Robert E. Martínez
Shirley Ybarra
Leo J. Bevon
J. Robert Bray
Robert R. Merhige, III
Richard Walton
James Hayes
Don McPherson
Kevin Page

COMMONWEALTH OF VIRGINIA
NS/CSX PURCHASE OF CONRAIL
ISSUES
SEPTEMBER 8, 1997

1. Ports - The application reveals that many improvements will be made at ports to the north of Virginia. Single line service, the elimination of drayage and construction of new or expanded facilities will enhance the marketability of those facilities. The tables and charts also show that the Virginia ports will not receive a major increase or decrease in shipments. None of the figure or charts showing volume flows illustrate a change in traffic to Newport News. A reference is made in Volumes 2A and 3A that additional coal could be shipped through this Port. (Volume 3, Page 55)

   The Commonwealth would like to continue working with CSX to use Virginia's operational and physical advantages to increase the use of Virginia facilities.

2. Safety - Nationally railroads provide one of the safest means of transportation. This requires a commitment to operations and maintenance. It is assumed that CSX will continue to increase its focus on these areas.

   The Commonwealth stands ready to assist where it can. One area is grade crossings. The increase in the number of trains will affect the state's grade crossings. It is proposed that CSX provide information as soon as possible so that an analysis can be undertaken to identify those locations which can be considered in revising the state's project priorities. Presently the state provides 90 percent of the funding. In order that the critical needs be addressed, would CSX consider providing the 10 percent match?

3. Grade Separations - Volume 3A states that there are clearance problems on certain routes. At this time the Commonwealth is aware of some structures which could be affected by the number and types of trains contemplated. Please advise if CSX has a list. Generally in the past the railroads have paid a major portion of the cost of projects which provides double stack clearances.

4. Trains - The Commonwealth does not have any comments on the trains shown in the application, other than the schedules which are assumed to be available later. Although not shown in the application, we are interested in knowing the volumes associated with the moves through Richmond. These volumes will affect the passenger service being studied.

5. Shortlines - Virginia feels that shortline railroads provide a valuable service. Treated properly they can create traffic for CSX and reduce congestion and damage on local roads. It would be detrimental if transloading facilities were to be established at the throat of the shortlines to serve customers located on the shortlines by truck.

   Other specific shortline concerns are:

   a. CSX predicts a diversion of traffic from the Eastern Shore Railroad on Page 176 of Volume 2A. Some of this diversion may have already occurred.

      The Commonwealth has worked with Maryland and Delaware to retain this line. It serves as another connection to Virginia Ports and provides an outlet for overflow traffic and service to the Delmarva Peninsula.

   b. In addition to continued cooperation with shortlines regarding regular transactions, some have indicated the need to have a competitive access over their connecting carrier to connect with another carrier. For example, the Buckingham Branch Railroad would need connections with NS at Lynchburg to serve shippers who will now be located on Conrail lines which will be acquired by NS.

      Shortlines have stated that they could also perform some local functions at their points of interchange. One such function could be switching cars at Virginia Power's Bremo facility.

      It is realized that these proposals involve business decisions. Considerations of the proposals may benefit both parties.

6. Passenger Service - Throughout the documents CSX states that there will be no adverse impacts on passenger service. Our review of the types of train movements has not been of sufficient detail to identify any conflicts other than those outlined in our passenger studies. The known conflicts generally arise in maintenance operations and dispatching. The establishment of dispatching for the Washington area for all railroads and the continuation of the capacity studies along with the implementation of certain projects would be helpful.

The Commonwealth is concerned about the VRE Commuter Rail operation. Schedule stability is needed to attract riders. We are aware that CSX is meeting with VRE concerning their issues. Improvements in the service and facilities will alleviate some of the state's congestion problems. Many of the facility improvements have been identified in the needs study for the General Assembly. CSX's assistance will be needed to make the improvements a reality. CSX's attention in this joint effort would be appreciated.

Various passenger service studies are underway including the corridors to North Carolina and Newport News. The new traffic changes will affect rail services. CSX's continued assistance in these studies would be very helpful.

7. Intermodal Terminals - The establishment of intermodal terminals are driven by market demand. The Commonwealth has lost several terminals in the past. The terminal at Richmond was abandoned several years ago. At that time a large volume of trucks were loaded at Acca. Now these trucks travel I-95. Could this terminal reopen? Also, the state is interested in working with CSX in identifying potential new terminals. Access to these terminals is being considered under the Federal Transportation Reauthorization discussions.

8. Signals - Improvements in the signal system between Richmond and Washington, D.C. will improve capacity and safety. This section of track presently has 60 MHz. Generally, railroad systems operate on 100 MHz. In our discussions with Conrail, Amtrak and others, they have stated that a changeover would be beneficial. Does CSX plan any changes in this area?

   The Commonwealth is proposing to undertake a study on the signals from Maryland to North Carolina. CSX representatives have been invited to serve on the technical/advisory group for this study. It is intended that the study will provide a guide for our investments and be complete in 1998.

RICHMOND INTERMODAL TERMINAL

On September 5, 1997, the Port of Richmond's Executive Director called a meeting of local and regional planning officials along with private industry and shippers to establish a "think tank" for developing an intermodal freight terminal in the Richmond/Petersburg region. As a result of this meeting, the Richmond MPO is formulating an opinion for consideration at its October 9, 1997 meeting. If passed, the resolution will be forwarded to DRPT along with a letter of request to include the Richmond region's interest in the development of a Regional Rail Intermodal Cargo Facility in Virginia's Conrail acquisition comments to the STB.

182832
VA-01

COMMONWEALTH of VIRGINIA

Office of the Governor

George Allen
Governor

Robert E. Martinez
Secretary of Transportation

October 21, 1997

VA-01

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Office of the Secretary
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MAIL MANAGEMENT
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Honorable Vernon A. Williams, Secretary
Surface Transportation Board
STB Finance Docket No. 33388
1925 K Street, N.W., Room 700
Washington, D.C. 20423-0001

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The Commonwealth understands that the application process is a fluid process and that issues may arise which may not have been addressed by the railroads and the Commonwealth of Virginia; however, based on a long-standing excellent working relationship between the railroads and the Commonwealth, there can be no doubt that the railroads will make the maximum effort and commitment to resolve any further issues which may arise during the STB process and beyond.

Finally, as stated previously, in response to the discussions held with the railroads and specifically in response to the letters sent to the railroads in September, written responses from the railroads were recently received; however, the Commonwealth has not had sufficient time to evaluate the responses. Moreover, as stated previously, additional issues or questions may arise during the course of the proceedings before the STB. As such, the Commonwealth will continue to remain a participant in the process before the STB and reserves the right to file additional comments as its interest may require.

Based on the Commonwealth's discussions with the railroads and the verbal and written commitments and assurances given by the railroads, the Commonwealth requests that the STB approve the joint application.

Sincerely,

Shirley J. Ybarra

Shirley J. Ybarra
Deputy Secretary of Transportation

Enclosures

COMMONWEALTH of VIRGINIA

LEO J. BEVON
DIRECTOR

DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION
1401 EAST BROAD STREET
RICHMOND 23219-1939

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September 8, 1997

Rob Shinn
Vice President - State Relations
CSX Corporation
One James Center
P. O. Box C-32222
Richmond, Virginia 23219

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Thank you for your assistance in this matter.

Sincerely,

George R. Conner

George R. Conner
Rail Administrator

GRC:sba
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cc: Robert E. Martínez
Shirley Ybarra
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J. Robert Bray
Robert R. Merhige, III
Richard Walton
James Hayes
Don McPherson
Kevin Page

COMMONWEALTH OF VIRGINIA
NS/CSX PURCHASE OF CONRAIL
ISSUES
SEPTEMBER 8, 1997

1. Ports - The application reveals that many improvements will be made at ports to the north of Virginia. Single line service, the elimination of drayage and construction of new or expanded facilities will enhance the marketability of those facilities. The tables and charts also show that the Virginia ports will not receive a major increase or decrease in shipments. None of the figure or charts showing volume flows illustrate a change in traffic to Newport News. A reference is made in Volumes 2A and 3A that additional coal could be shipped through this Port. (Volume 3, Page 55)

   The Commonwealth would like to continue working with CSX to use Virginia's operational and physical advantages to increase the use of Virginia facilities.

2. Safety - Nationally railroads provide one of the safest means of transportation. This requires a commitment to operations and maintenance. It is assumed that CSX will continue to increase its focus on these areas.

   The Commonwealth stands ready to assist where it can. One area is grade crossings. The increase in the number of trains will affect the state's grade crossings. It is proposed that CSX provide information as soon as possible so that an analysis can be undertaken to identify those locations which can be considered in revising the state's project priorities. Presently the state provides 90 percent of the funding. In order that the critical needs be addressed, would CSX consider providing the 10 percent match?

3. Grade Separations - Volume 3A states that there are clearance problems on certain routes. At this time the Commonwealth is aware of some structures which could be affected by the number and types of trains contemplated. Please advise if CSX has a list. Generally in the past the railroads have paid a major portion of the cost of projects which provides double stack clearances.

4. Trains - The Commonwealth does not have any comments on the trains shown in the application, other than the schedules which are assumed to be available later. Although not shown in the application, we are interested in knowing the volumes associated with the moves through Richmond. These volumes will affect the passenger service being studied.

5. Shortlines - Virginia feels that shortline railroads provide a valuable service. Treated properly they can create traffic for CSX and reduce congestion and damage on local roads. It would be detrimental if transloading facilities were to be established at the throat of the shortlines to serve customers located on the shortlines by truck.

   Other specific shortline concerns are:

   a. CSX predicts a diversion of traffic from the Eastern Shore Railroad on Page 176 of Volume 2A. Some of this diversion may have already occurred.

      The Commonwealth has worked with Maryland and Delaware to retain this line. It serves as another connection to Virginia Ports and provides an outlet for overflow traffic and service to the Delmarva Peninsula.

   b. In addition to continued cooperation with shortlines regarding regular transactions, some have indicated the need to have a competitive access over their connecting carrier to connect with another carrier. For example, the Buckingham Branch Railroad would need connections with NS at Lynchburg to serve shippers who will now be located on Conrail lines which will be acquired by NS.

      Shortlines have stated that they could also perform some local functions at their points of interchange. One such function could be switching cars at Virginia Power's Bremo facility.

      It is realized that these proposals involve business decisions. Considerations of the proposals may benefit both parties.

6. Passenger Service - Throughout the documents CSX states that there will be no adverse impacts on passenger service. Our review of the types of train movements has not been of sufficient detail to identify any conflicts other than those outlined in our passenger studies. The known conflicts generally arise in maintenance operations and dispatching. The establishment of dispatching for the Washington area for all railroads and the continuation of the capacity studies along with the implementation of certain projects would be helpful.

The Commonwealth is concerned about the VRE Commuter Rail operation. Schedule stability is needed to attract riders. We are aware that CSX is meeting with VRE concerning their issues. Improvements in the service and facilities will alleviate some of the state's congestion problems. Many of the facility improvements have been identified in the needs study for the General Assembly. CSX's assistance will be needed to make the improvements a reality. CSX's attention in this joint effort would be appreciated.

Various passenger service studies are underway including the corridors to North Carolina and Newport News. The new traffic changes will affect rail services. CSX's continued assistance in these studies would be very helpful.

7. Intermodal Terminals - The establishment of intermodal terminals are driven by market demand. The Commonwealth has lost several terminals in the past. The terminal at Richmond was abandoned several years ago. At that time a large volume of trucks were loaded at Acca. Now these trucks travel I-95. Could this terminal reopen? Also, the state is interested in working with CSX in identifying potential new terminals. Access to these terminals is being considered under the Federal Transportation Reauthorization discussions.

8. Signals - Improvements in the signal system between Richmond and Washington, D.C. will improve capacity and safety. This section of track presently has 60 MHz. Generally, railroad systems operate on 100 MHz. In our discussions with Conrail, Amtrak and others, they have stated that a changeover would be beneficial. Does CSX plan any changes in this area?

   The Commonwealth is proposing to undertake a study on the signals from Maryland to North Carolina. CSX representatives have been invited to serve on the technical/advisory group for this study. It is intended that the study will provide a guide for our investments and be complete in 1998.

RICHMOND INTERMODAL TERMINAL

On September 5, 1997, the Port of Richmond's Executive Director called a meeting of local and regional planning officials along with private industry and shippers to establish a "think tank" for developing an intermodal freight terminal in the Richmond/Petersburg region. As a result of this meeting, the Richmond MPO is formulating an opinion for consideration at its October 9, 1997 meeting. If passed, the resolution will be forwarded to DRPT along with a letter of request to include the Richmond region's interest in the development of a Regional Rail Intermodal Cargo Facility in Virginia's Conrail acquisition comments to the STB.

CSX CORPORATION

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(804) 782-6737

Robert W. Shinn
Resident Vice President
State Relations

October 20, 1997

Mr. George R. Conner
Rail Administrator
Department of Rail and Public Transportation
1401 E. Broad Street
Richmond, Virginia 23219

Dear George:

Thank you for your letter regarding the CSX/Norfolk Southern joint acquisition of Conrail. CSX is extremely appreciative that the Commonwealth supports the merger. Virginia will clearly be a winner from the transaction, and a number of important entities will gain specific benefits.

In your letter of September 8, you outline a number of issues that you would like addressed prior to the STB date for responsive applications. Discussed below is our answer that correspond to the numerical issues raised in your letter.

1. Ports: Our best current estimates is that the Port of Newport News will receive slightly increased coal shipments because of the merger. This results from access to new coal companies that are currently served by Conrail. CSX does not anticipate any negative consequences of the merger on the Port.

2. Safety: Safety is our first priority at CSX. We stand ready to work with the Commonwealth on various projects that will enhance safety. Regarding the specific request for CSX to pay the 10% local match for grade crossing warning device projects, we will evaluate each request on a project by project basis. In some instances, this approach would appear to be mutually beneficial.

3. Grade Separations: Double stack clearance projects along the CSX north-south corridor will be a major priority in the coming years. We will provide you a list of the structures that need additional clearance and discuss ways to make this happen in the coming months. This is clearly a win-win opportunity for both CSX and the Commonwealth.

4. Trains: CSX will continue to cooperate with the Commonwealth of Virginia and other interested parties regarding train movements. Regarding the issue of trains passing by Main Street Station, the expected increase is expected to result primarily from the recent construction of the Bone Dry Connection,

and is not related to the merger, except for those increases outlined in our operating plan. However, as further data becomes available regarding the specific numbers of potential trains, we will continue to work with the Department of Rail to provide you with this information.

5. Shortlines: The issue raised in your letter involves a potentially small diversion on the Eastern Shore Railroad. We have had several conversations with representatives of the Eastern Shore Railroad. We are looking into the specifics of the diversion study information and we will get back with you when we obtain those results.

6. Passenger Service: CSX will be forming a high-level joint task force with representatives from VRE and the Commonwealth to discuss long-term capital issues. We expect this process to culminate in a plan for funding and implementing a third main line from Long Bridge to Fredericksburg and what benefits VRE can expect in return. CSX will continue to cooperate with the "CSX Corridor Study" and the "I-64" studies currently under way.

7. Intermodal Terminal: The proposed intermodal terminal in Richmond will be driven by market economics. We are currently in discussions with a number of officials on this matter and will work with the Commonwealth and others to see if the project is feasible.

8. Signals: We appreciate the issue of the 60 MHz vs. MHz on the RF & P Subdivision. CSX will work with the Commonwealth on this issue and determine the operational issues associated with switching over to a new system. We will communicate and coordinate with the Department of Rail on these issues.

If you have any additional questions or comments, please be sure to call me right away.

With best regards,

Sincerely,

Robert W. Shinn

cc: Jim Derwin

COMMONWEALTH *of* VIRGINIA

LEO J. BEVON
DIRECTOR

DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION
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VIRGINIA RELAY CENTER
1-800-828-1120 (TDD)

September 5, 1997

Bill Schafer, Director
Strategic Planning Department
Norfolk Southern Corporation
Three Commercial Place
Norfolk, Virginia 23510-2191

Dear Mr. Schafer:

The Commonwealth of Virginia supports the efforts of NS and CSX to purchase Conrail. It is felt that the acquisition can generate many benefits for the citizens and businesses.

As discussed with you, our review has developed some questions and comments which we would like to discuss with the appropriate NS representatives. While realizing that some of the issues cannot be resolved, others can be addressed. For those that cannot be resolved, NS will have the benefit of knowing the concerns and the Commonwealth can proceed to either minimize the effect or make plans for future actions.

Attached is a list of the questions and comments for your review. We would like to receive NS's responses on each item.

A meeting in Norfolk with NS has been scheduled for September 16, 1997, at 10:00 a.m. at the Virginia Port Authority offices.

Thank you for your attention to this matter.

Sincerely,

George R Conner

George R. Conner

cc: Robert E. Martínez
Shirley Ybarra
Leo J. Bevon
J. Robert Bray
Richard Walton
James Hayes
Don McPherson
Kevin Page

COMMONWEALTH OF VIRGINIA
NS/CSX PURCHASE OF CONRAIL
ISSUES
SEPTEMBER 5, 1997

1. Ports - The application reveals that many improvements will be made at ports to the north of Virginia. Single line service, the elimination of drayage and construction of new or expanded facilities will enhance the marketability of those facilities. The tables and charts also show that the Virginia ports will not receive a major increase or decrease in shipments, except for one area. That is the intermodal ramp. This is shown on Page 456 of Volume 3B. It was understood that this may be an error. A correction has not been provided.

   NS has stated that they will not artificially divert freight among ports.

   The advantages gained from the Detroit Route on Page 248 of Volume 3B are not readily apparent.

   The Commonwealth would like to continue working with NS to use its operational and physical advantages to increase the use of Virginia facilities.

2. Inland Port - The premise of the purchase of Conrail is that the parties will divert truck loads to longer rail hauls. This will, in effect, eliminate many of the potential shipments which are handled by Virginia's Inland Port. Figure C.3-4 on Page 450 of Volume 3B identifies two trains operating at this location. NS's future assistance in identifying potential users of this facility is needed.

3. Crossings - The increase in the number of trains will affect the state's grade crossings. It is proposed that NS provide information as soon as possible so that an analysis can be undertaken to identify those locations which can be considered in revising the state's project priorities. Presently the state provides 90 percent of the funding. In order that the critical needs be addressed, would NS consider providing the 10 percent match?

4. Grade Separations - At this time the Commonwealth is aware of only one structure on the Valley Route which could be affected by the number and types of trains contemplated. Please advise if there are others. Generally in the past NS has paid a major portion of the cost of projects which provides double stack clearances.

5. Trains - The number of trains on the Walton to Bull Gap section on Page 466 of Volume 3B shows an increase of 1.6 trains while it is stated that the tonnage will increase by 83 percent. Will the increase be 2 or 4 trains?

6. Shortlines - NS states that they want the shortlines to be profitable. Virginia feels that they provide a valuable service. Treated properly they can create traffic for NS and reduce congestion and damage on local roads. It would be detrimental if transloading facilities were to be established at the throat of the shortlines to serve customers located on the shortlines by truck.

   Other specific shortline concerns are:

   a. NS predicts a diversion of traffic from the Eastern Shore Railroad on Page 88 of Volume 2B. On Page 460 of Volume 3B it is noted that a small increase in trains is shown.

      The Commonwealth has worked with Maryland and Delaware to retain this line. Contacts were made with Conrail in attempts to regain certain traffic on the Peninsula and to other Conrail locations. Conrail was not interested in the traffic, most of which would be short haul for them.

      We are aware of NS's efforts to assist the Eastern Shore Railroad over the long term. Efforts are also needed in the short term by all parties.

   b. Other shortlines are interested in having access to NS for potential customers in the Northeast on Conrail lines which will be purchased by NS. They need to discuss rates, interchanges, etc., with NS. Some will have to work with CSX in order to reach an interchange with NS. One such shortline is the Buckingham Branch Railroad which will have potential customers located on the new NS.

7. Passenger Service - Throughout the documents NS states that there will be no adverse impacts on passenger service. From a review of the types of train movements, no evidence was found of potential conflicts. The conflicts generally arise in maintenance operations and dispatching. The establishment of dispatching for the Washington area for all railroads would be helpful.

The Commonwealth is concerned about the VRE Commuter Rail operation. VRE presently pays a premium to retain the second line for capacity reasons. Schedule stability is needed to attract riders. We are aware that NS is meeting with VRE concerning their issues. Improvements in the service will alleviate some of the state's congestion problems. NS's attention to these matters would be appreciated.

The issues around Manassas need to be resolved. The Commonwealth intends to continue working on these matters.

Also the Commonwealth is studying the feasibility of passenger service to Bristol. The sidings identified as needed in the application are the same ones that have been identified in the Bristol study. Higher speed turnouts would be needed for the passenger service. NS's commitment to identifying the issues, meeting with the Commonwealth, and assisting in the early resolution of the study would be appreciated.

Safety - The Commonwealth appreciates NS's dedication to maintenance and safety. State representatives have made positive comments concerning NS's efforts. It is hoped that NS's commitment will continue.

Intermodal Terminals - The establishment of intermodal terminals are driven by market demand. The Commonwealth has lost several terminals in the past. The state is interested in working with NS in identifying potential new terminals. Access to these terminals is being considered under the Federal Transportation Reauthorization discussions.

RICHMOND INTERMODAL TERMINAL

On September 5, 1997, the Port of Richmond's Executive Director called a meeting of local and regional planning officials along with private industry and shippers to establish a "think tank" for developing an intermodal freight terminal in the Richmond/Petersburg region. As a result of this meeting, the Richmond MPO is formulating an opinion for consideration at its October 9, 1997 meeting. If passed, the resolution will be forwarded to DRPT along with a letter of request to include the Richmond region's interest in the development of a Regional Rail Intermodal Cargo Facility in Virginia's Conrail acquisition comments to the STB.

NORFOLK SOUTHERN

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757 629-2887

Bill Schafer
Director

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(757) 533-4884 FAX

October 20, 1997

Mr. George R. Conner
Department of Rail and Public Transportation
1401 East Broad Street
Richmond, VA 23219-1939

Dear George:

This responds to your letter of September 5, 1997, and its attachment, which asked a number of questions concerning NS and CSX's proposal to acquire Conrail. We answered most, if not all, of these questions in our meeting in Norfolk on September 16; this is a written version of what we talked about.

The numbers of the responses correspond to the numbers in the attachment to your September 5 letter:

1. Ports

The "decrease" referred to is not an error, but neither does it reflect an actual decrease at Norfolk's Portlock intermodal ramp. The change in the number of units reflects a change in the way we propose to block containers coming into the Norfolk area. Today, many blocks are routed to Portlock, although their ultimate destination is NIT. At Portlock, these units are reblocked for NIT, and the units are included in the count for both Portlock and NIT. In the future, more blocks will go directly to NIT without the reblock at Portlock. In other words, many units are double counted today, and less will be double counted tomorrow.

The new route between Norfolk and Detroit, as shown on page 248 of Volume 3B of the application, is shorter and faster than the present route.

2. Inland Port

We see an expanded role for the Inland Port as a domestic intermodal terminal. Advantages include: its proximity to the Washington metropolitan area, the greater number of trains NS will operate through Front Royal as a result of the Conrail acquisition, and the facility's location on what will be a short, fast, single-line rail route between the Shenandoah Valley and the Midwest via Harrisburg and Pittsburgh.

3. Crossings

At present, the best information we have on the changes in the number of trains on NS routes in the Commonwealth is in the Application.

4. Grade Separations

This section really appears to ask about clearances on the Shenandoah Valley Route. NS is planning to make the clearance improvements necessary, as described in the Application, as part of the many capital improvements needed to implement the Conrail acquisition.

5. Trains

The increase will be approximately two trains, five or six days per week.

6. Shortlines

Norfolk Southern has established strong partnerships with its shortlines. It is not our policy to establish transloading facilities for the purpose of attracting traffic that otherwise originates or terminates on shortline railroads.

As we discussed in our meeting in Norfolk on October 7, the traffic diversions from the Eastern Shore Railroad (ESHR) shown in Volume 2B of the Application are probably overstated. Most of the traffic identified for diversion originated or terminated in the Norfolk area, and it would make sense for this traffic to continue to be routed via the ESHR. NS will continue to work with ESHR to identify business opportunities that will benefit us both.

Norfolk Southern's shortline marketing group in Roanoke has been working regularly with shortlines in Conrail territory on rate, interchange and service issues. This group will also assist Virginia shortlines with similar issues.

7. Passenger Service

We have discussed with VRE its concerns regarding train dispatching in the Washington area. CSXT will dispatch Conrail's trackage in the District of Columbia (assuming STB approval), which will simplify VRE's operations into and out of Washington.

NS will continue to meet with and discuss issues concerning the proposed passenger service to Bristol.

8. Intermodal Terminals

NS's acquisition of some Conrail lines will have little effect on intermodal traffic in Virginia, and NS has no present plans to establish additional intermodal terminals in the Commonwealth.

Norfolk Southern has, in the past, established a good rapport with the Virginia Department of Rail and Public Transportation. Norfolk Southern commits to continuing this working relationship in the future to resolve issues of importance to us both. We believe that there are many benefits to Virginia with the sale of Conrail to Norfolk Southern and CSX, and will be grateful for the Commonwealth's support for the Transaction at the Surface Transportation Board.

Sincerely,

Bill Schafer

Bill Schafer

copy:

Walt Trollinger
Bruce Wingo
Steve Eisenach

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB 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

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of October 1997 the Honorable Jacob Leventhal, the Applicants and each Party of Record in this proceeding has been served with copies of the attached Comments submitted by the Commonwealth of Virginia, by first-class mail, postage prepaid.

Respectfully submitted,

Richard L. Walton, Jr.
Senior Assistant Attorney General
Office of the Attorney General
900 East Main Street
Richmond, Virginia 23219
(804) 786-1582

October 21, 1997

STB FD 33388 10-21-97 D 182831

182831

VTR-3

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October 21, 1997

BY HAND DELIVERY

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

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

Dear Secretary Williams:

Enclosed you will find an original and 25 copies of Comments and Requests for Conditions of Vermont Railway, Inc., (VTR-3), together with a 3.5 inch diskette containing the filing.

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

Respectfully submitted,

Paul Laurenza

Paul M. Laurenza

Enclosures

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Office of the Secretary
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3 Part of Public Record

182831
VTR-3

VTR-3

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BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

CSX CORPORATION AND CSX TRANSPORTATION, INC., NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY -- CONTROL AND OPERATING LEASES/AGREEMENTS -- CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION -- TRANSFER OF RAILROAD LINE BY NORFOLK SOUTHERN RAILWAY COMPANY TO CSX TRANSPORTATION, INC.

COMMENTS AND REQUESTS FOR CONDITIONS OF VERMONT RAILWAY, INC.

Paul M. Laurenza
Edward J. Fishman
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Counsel for Vermont Railway, Inc.

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Dated: October 21, 1997

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VTR-3

VTR-3

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

CSX CORPORATION AND CSX TRANSPORTATION, INC., NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY -- CONTROL AND OPERATING LEASES/AGREEMENTS -- CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION -- TRANSFER OF RAILROAD LINE BY NORFOLK SOUTHERN RAILWAY COMPANY TO CSX TRANSPORTATION, INC.

COMMENTS AND REQUESTS FOR CONDITIONS OF VERMONT RAILWAY, INC.

On October 1, 1997, Vermont Railway, Inc. "(VTR") filed a motion for leave to file a notice of intent to participate and a notice of intent to participate in this proceeding. In Decision No. 43, served October 7, 1997, the Board granted VTR's motion. VTR hereby submits its Comments and Requests for Conditions regarding the proposed control of Conrail by CSX and NS and the division of Conrail's assets between CSX and NS.

I. Statement of Facts

VTR is a short-line railroad that began operations on January 7, 1964. Pursuant to ICC Finance Docket 22830, dated December 20, 1963, VTR began piggyback trailer operations in 1964. VTR leased its first trailers in 1967 on account of its inability to secure any useable trailers from other carriers. Verified Statement of Don Saylor ("Saylor VS") (Exhibit A), at 1.

VTR supplies piggyback trailers to various Class I rail carriers, including CSX Transportation, Inc. ("CSXT") (one of the Primary Applicants herein), pursuant to trailer interchange agreements. VTR's trailers are "railroad" marked, using the "VTRZ" mark assigned by AAR, and are operated in the neutral trailer pool in the free running rail system. VTR operates terminals in St. Louis, Missouri and Chicago, Illinois, where VTR trailers can be returned empty by the interchange carriers. CSXT also is a supplier of piggyback trailers in competition with VTR and various other trailer suppliers. Saylor VS at 1.

VTR's current interchange arrangement with CSXT dates back to 1987. Saylor VS at 1. In late April 1997, VTR learned that representatives of CSX Intermodal, Inc. ("CSXI") reportedly had individually approached representatives of various large trailer suppliers at a national trade show in an apparent effort to interest them in a "new" CSXI trailer use program. Saylor VS at 1. VTR also learned that in these discussions CSXI reportedly informed the large trailer suppliers that although they would have to make some concessions to CSXI under the new program, the longer-term benefit to the suppliers would be the elimination of smaller trailer-supplier competitors. VTR, a smaller trailer supplier, was not a party to any of these reported discussions. Saylor VS at 1-2.

VTR is also aware that CSXT, through its trucking operations, has been aggressively soliciting intermodal customers in New England, including VTR's customers in Vermont. Saylor VS at 2.

By letter dated May 15, 1997, CSXI notified VTR that CSXI would be implementing its new trailer program on August 1, 1998. Any trailer equipment owner which did not sign up for the new program would not be offered an interchange agreement. Non-interchange trailer suppliers would remain free to continue to move their equipment on CSXI's network, but would not be compensated for any such movement. Saylor VS Attachment 1.

By letter dated June 3, 1997, CSXI sent VTR another notification letter, substantially similar to the May 15 letter, except for the conspicuous difference that the June 3 letter advanced the effective date of the program one year, from August 1, 1998 to August 1, 1997. Saylor VS Attachment 2. No explanation was provided for this change. Saylor VS at 2.

After numerous unsuccessful efforts by VTR to resolve this matter, CSXI notified VTR by letter dated September 3, 1997 that CSXI would terminate the VTR-CSXT Interchange Agreement on October 1, 1997. Saylor VS Attachment 3. However, VTR learned from various shippers that CSXI had notified them that the new program would not take effect until December 1, 1997, and that various provisions of the program differed from those contained in the notice to VTR. Saylor VS at 2. After VTR counsel wrote to CSXI requesting clarification of the termination notice, CSXI counsel on September 26, 1997 informed VTR counsel that the termination would now take effect at the "end of November." Saylor VS Attachment 4.

VTR has been and continues to be engaged in negotiations with CSXI pertaining to the continuation of the interchange agreement between VTR and CSXT, but does not know at this point what the outcome of these negotiations will be. Saylor VS at 3.

II. Comments on Impact of Transactions Contemplated by Primary Application

The pending termination, if not resolved by negotiation with CSXI,[1] means far more than the loss of substantial per diem revenue to VTR. The termination will not only eliminate VTR from the trailer equipment supply business, but will permanently preclude VTR from expanding its TOFC business or entering the COFC business. Given operational realities, the interlinkage of CSXT's rail

[1] CSXT is the legally responsible party for the actions taken and threatened against VTR. The Interchange Agreement is between VTR and CSXT (Saylor VS at 1), and the official notice of termination to VTR was signed by an official of CSXI, "as agent for CSX Transportation, Inc." Saylor VS Attachment 3.

lines with other carriers' lines means that any equipment supplier which does not have an interchange agreement with all the major rail carriers, including CSXT, cannot remain in the trailer equipment supply or TOFC business or enter the COFC business. Major carriers often will require blocks of trailers for various shippers. If a VTR trailer is included in that block (as is often the case) and the VTR trailer ends up on a CSXT line, without an interchange agreement with CSXT the rail carrier delivering the trailer to CSXT would be responsible for the per diem compensation and damage or loss due to collision or theft until the trailer is returned to a subscribing carrier that has an interchange agreement with VTR. Faced with this unacceptable prospect, carriers will simply refuse to accept VTR trailers unless VTR has an interchange agreement with CSXT. Indeed, VTR has already been contacted by various carriers expressing concern over the possibility that VTR will not have an interchange agreement with CSXT. Saylor VS at 3. The merger will even more surely guarantee this inevitable result as CSXT's control of rail lines will expand as a result of its acquisition of its share of the Conrail lines and related assets. Also, as a practical matter, CSXT will not report interchange receipt or delivery of VTR trailers on its lines. VTR thus will be unable to effectively manage its units in other parts of the country. Saylor VS at 3.

CSXT has attempted to avoid criticism regarding the anticompetitive nature of its intended action by allowing a terminated trailer supplier to continue to use CSXT's lines but at no per diem cost to CSXT. This transparent attempt to circumvent "essential facilities" proscriptions is of little consequence legally and of no meaningful help to VTR. Access to CSXT's lines and the larger rail network must mean <u>effective</u> access and, for the reasons discussed above, effective access in this context requires the existence of an interchange agreement with CSXT. Absent such an agreement, VTR simply cannot survive as a trailer equipment supplier.

CSXT clearly envisioned the anticompetitive effect of its scheme as it prepared to announce its new program. CSXT solicited the support of the largest trailer equipment suppliers by advising them that while some short-term sacrifice would be required to meet CSXT's program conditions, in the longer run the program would benefit the larger suppliers (including CSXT itself) by eliminating their smaller competitors. Given its undeniably critical position as a major link in the rail system, CSXT's attempt to enlist the support of other large trailer equipment suppliers, which are both suppliers to and competitors of CSXT, in a plan to eliminate smaller competitors smacks of a classic per se antitrust conspiracy. This is not a case where a firm simply refuses to deal with a new supplier or customer. Here, a firm with critical gatekeeper control over access to an essential facility has decided, in consort with others, to deny effective access to a smaller competitor which has had a long-standing and clearly dependent reliance on its arrangement with that gatekeeper.

The implications of CSXT's anticompetitive actions are highly relevant in the context of this merger evaluation. First, as noted above, CSX's acquisition of Conrail assets gives CSX even greater power to exclude smaller suppliers and competitors such as VTR from the rail network to which competitive access is essential. Second, CSX and NS have urged that the Board approve this merger because it will substantially enhance intermodal competition, in particular by shifting more truck traffic to rail carriage. CSXT's new program and its resulting termination of smaller competitors such as VTR threatens exactly the opposite result as the elimination of VTR will force its existing TOFC traffic to highway alternatives.

This result is neither unforeseen nor unintended by CSXT. As indicated in the Saylor Verified Statement, CSXT's representatives have been vigorously seeking rail business from VTR customers in Vermont. If the loss of VTR's trailer equipment business weakens or eliminates VTR as a rail carrier in New England -- a market CSXT has targeted -- the resulting shift of rail to truck traffic would further benefit CSXT. This point is especially relevant since the state of Vermont has been investing in and otherwise promoting efforts to increase both passenger and freight rail traffic in the state in order to alleviate growing highway congestion and resulting adverse environmental consequences. As a major rail carrier in Vermont, VTR is well-positioned to play an important role in this effort, including making potential investments in additional trailer facilities in Vermont, but obviously will be precluded from doing so if it is driven from the trailer business by CSXT's tactics. Saylor VS at 4. Given that truck-to-rail diversion has been proffered by CSX as a major benefit to and rationale for the proposed merger, the Board should look carefully at CSXT's new program and its likely consequences for intermodal competition, in the context of the proposed merger, and should impose the conditions requested below to insure that CSXT's program does not operate anticompetitively or otherwise to the detriment of the public.

III. Request for Conditions

The Board interprets Section 11324(d) to require the imposition of conditions if the consolidation may produce effects harmful to the public interest (such as a significant reduction of competition in an affected market), the conditions to be imposed will ameliorate or eliminate the harmful effects, the conditions will be operationally feasible, and the conditions will produce public benefits (through reduction or elimination of possible harm) outweighing any reduction to the public benefits produced by the merger.

In order to ameliorate the harms to VTR, explained above, VTR requests that the Board condition the consummation of the transactions contemplated by the Primary Application by requiring CSXT to arbitrate trailer per diem rates and other terms and conditions for use of the VTR trailers in accordance with the Trailer Arbitration Procedure attached hereto, or with a similar arbitration or dispute resolution procedure established by the Board.

To the limited extent necessary to grant this condition, VTR also requests that the Board partially revoke the TOFC/COFC exemption in order to require (i) mandatory interchange of VTR trailers and (ii) imposition of the Trailer Arbitration Procedure attached hereto. See 49 C.F.R. §1090; Rail Exemption Misc. Agricultural Commodities, 8 I.C.C.2d 674 (1992), aff'd sub nom. Mr. Sprout, Inc. v. United States, 8 F.3d 118 (2d Cir. 1993), cert. denied, 512 U.S. ___, 114 S. Ct. 2675 (1994). The partial revocation of the TOFC/COFC exemption is clearly justified. CSXT's anticompetitive actions demonstrate that regulation of its trailer per diem practices with respect to VTR is necessary to carry out the transportation policy and protect shippers from abuse of market power. 49 U.S.C. §10502. Moreover, the Board (then the Commission) has expressly recognized that class I carriers cannot make "imprudent unilateral decisions regarding the interchange of equipment with class III carriers. The Commission has an affirmative duty to help keep the playing field level between class I and class III carriers, and we will take action, when appropriate, to fulfill that obligation." Decision No. 40774, American Rail Heritage, LTD. D/B/A Crab Orchard & Egyptian RR, served June 16, 1995, at 5.

VTR's proposed Trailer Arbitration Procedure is modeled after the AAR Arbitration Rule on Railroad Car Hire Compensation, as approved under 49 U.S.C. § 10706.

The proposed arbitration rule would require CSXT and VTR to negotiate in good faith to establish the terms and conditions of a Trailer Interchange Agreement covering the VTR trailers. If after ninety (90) days, the parties were unable to reach a satisfactory agreement covering the VTR cars, either party would have the right to submit the terms and conditions to the American

Arbitration Association ("AAA") for arbitration. The proposed arbitration rule would require the arbitration process to be concluded and a decision to be rendered within ninety (90) days after the receipt by the AAA of the demand for arbitration or sixty (60) days after the appointment of an arbitrator, whichever is later.

VTR is proposing a simple and expeditious process for insuring that CSXT pays a market rate for the use of VTR trailers. The proposed condition would not require CSXT to pay an artificially high trailer rate to VTR or give VTR terms more favorable than those given to other suppliers of trailers. Because the proposed condition would result in expeditious resolution of any dispute between CSXT and VTR and because it would be based upon the market value of VTR's trailers, VTR submits that the proposed condition is narrowly tailored to alleviate the identified harm and will not interfere with the public benefits of the merger.

Respectfully submitted,

Paul M. Laurenza

Paul M. Laurenza
Edward J. Fishman
Oppenheimer Wolff & Donnelly
1020 Nineteenth Street, N.W.
Suite 400
Washington, D.C. 20036
Tele: (202) 293-6300
Fax: (202) 293-6200

Counsel for Vermont Railway, Inc.

Dated: October 21, 1997

CSXT/VTR ARBITRATION PROCEDURES COVERING
USE OF VTR'S TOFC TRAILERS

I. Definitions. As used in these procedures, the following terms shall have the following meanings:

A. Arbitration award: The decision of an arbitrator as to the Trailer per diem rate determined pursuant to arbitration under section II herein.

B. Arbitrator: An arbitrator selected pursuant to section II.A.2 herein.

C. Trailer: A VTR-owned or controlled vehicle used in trailer on freight car service constructed for the transport of commodities from point to point by highway, equipped with suitable permanently affixed undercarriage and wheels and with a device for coupling to a self-powered tractor for movement.

D. CSXT: CSX Transportation, Inc. and its agents for all purposes related to the use of Trailers owned by other rail carriers.

E. VTR: Vermont Railway, Inc. and its agents for all purposes related to the use of Trailers owned by other rail carriers.

II. Negotiation and Arbitration Process.

A. Whenever CSXT proposes to change a rate, term or condition regarding use of Trailers, it shall attempt to negotiate an agreement with VTR. If after good faith negotiations for a period of 90 days, CSXT and VTR are unable to reach agreement on a rate, term or condition regarding use of Trailers, either party may submit the issues in dispute to arbitration in accordance with the following procedure:

1. A party initiating arbitration shall submit Demand for Arbitration using AAR Trailer Hire Arbitration Form 1, to the American Arbitration Association and shall deliver a copy of such Demand for Arbitration by certified mail, return receipt requested, to the other party. The Demand for Arbitration shall include a precise description of the Trailers at issue.

2. All disputes shall be heard and determined by one arbitrator who shall have experience in arbitrating complex matters of a magnitude similar to the matter in dispute. The American Arbitration Association shall appoint an arbitrator within 30 days of its receipt of the Demand for Arbitration submitted pursuant to section II.A.1 herein.

3. Within 30 days after the receipt by the other party of the Demand for Arbitration each party shall send a confidential statement, including any supporting materials, to the arbitrator setting forth any evidence and argument in support of its position. A copy of such statement shall be delivered to the other party by certified mail, return receipt requested. Each party shall be

given 30 additional days in which to submit a reply statement to the arbitrator. A copy of the reply statement, if any, shall be delivered to the other party by certified mail, return receipt requested.

4. The arbitrator shall select the best and final offer that is closer to the fair market rental value of the Trailers at issue as determined on the basis of evidence of comparable arm's-length transactions involving any combination of railroads, shippers or other parties. The term "fair market rental value" shall not be interpreted to favor the economic interests of either CSXT or VTR and is intended to reflect value to both CSXT and VTR.

5. The arbitrator shall consider any relevant evidence. The arbitration award shall be final and binding on the parties and shall be delivered to each party within 5 days of the decision of the arbitrator. The arbitrator shall not render an opinion, comment, or any other statement concerning the award.

6. At the request of either party, and for good cause shown, the arbitrator shall provide for the confidential treatment of commercially sensitive information.

7. The arbitration process shall be concluded and a decision rendered within 90 days after the receipt by the American Arbitration Association of the Demand for Arbitration or 60 days after the appointment of the arbitrator, whichever is later.

8. The Trailer hire rate established by an arbitration award shall remain in effect until a new rate is established by a bilateral agreement or by a subsequent

arbitration award, provided, however, that the new rate established by a subsequent arbitration award shall not take effect until the rate established by the previous arbitration award has been in effect for a period of one year.

9. The parties shall share equally the first $2,000 incurred for the administrative fees and expenses of the American Arbitration Association and for the fee of the arbitrator. The party whose rate is not selected by the arbitrator shall bear such fees and expenses in excess of $2,000.

10. A party to an arbitration may petition the appropriate court for enforcement or review of the award in accordance with the United States Arbitration Act, 9 U.S.C. § 1 *et seq*. Pending judicial review, the rate in effect shall be the rate established by the arbitration award.

Verified Statement

of

Don Saylor

My name is Don Saylor and I am Vice President, Intermodal, Vermont Railway, Inc. ("VTR"). I have been responsible for VTR's intermodal operations since 1976.

Background

VTR is a short-line railroad that began operations on January 7, 1964. Pursuant to ICC Finance Docket 22830, dated December 20, 1963, VTR began piggyback trailer operations in 1964. VTR leased its first trailers in 1967 on account of its inability to secure any useable trailers from other carriers.

VTR supplies piggyback trailers to various Class I rail carriers, including CSX Transportation, Inc. ("CSXT") (one of the Primary Applicants herein), pursuant to trailer interchange agreements. VTR's trailers are "railroad" marked, using the "VTRZ" mark assigned by AAR, and are operated in the neutral trailer pool in the free running rail system. VTR operates terminals in St. Louis, Missouri and Chicago, Illinois, where VTR trailers can be returned empty by the interchange carriers. CSXT also is a supplier of piggyback trailers in competition with VTR and various other trailer suppliers.

VTR's current interchange arrangement with CSXT dates back to 1987. In late April 1997, VTR learned that representatives of CSX Intermodal, Inc. ("CSXI") reportedly had individually approached representatives of various large trailer suppliers at a national trade show in an apparent effort to interest them in a new CSXI trailer use program. VTR also learned that in these discussions CSXI reportedly informed the large trailer suppliers that although they would have to make some concessions to CSXI under the new program, the longer-term benefit to the suppliers would be the elimination of smaller trailer-supplier competitors. VTR, a smaller trailer supplier, was not a party to any of these reported discussions.

VTR is also aware that CSXT, through its trucking operations, has been aggressively soliciting intermodal customers in New England, including VTR's customers in Vermont.

By letter dated May 15, 1997, CSXI notified VTR that CSXI would be implementing its new trailer program on August 1, 1998. Attachment 1. Any trailer equipment owner which did not sign up for the new program would not be offered an interchange agreement. Non-interchange trailer suppliers would remain free to continue to move their equipment on CSXI's network, but would not be compensated for any such movement.

By letter dated June 3, 1997, CSXI sent VTR another notification letter, substantially similar to the May 15 letter, except for the conspicuous difference that the June 3 letter advanced the effective date of the program one year, from August 1, 1998 to August 1, 1997. Attachment 2. No explanation was provided for this change.

After numerous unsuccessful efforts by VTR to resolve this matter, CSXI notified VTR by letter dated September 3, 1997 that CSXI would terminate the VTR-CSXT Interchange Agreement on October 1, 1997. Attachment 3. However, VTR learned from various shippers that CSXI had notified them that the new program would not take effect until December 1, 1997, and that various provisions of the program differed from those contained in the notice to VTR. After VTR counsel wrote to CSXI requesting clarification of the termination notice, CSXI counsel on September 26, 1997 informed VTR counsel that the termination would now take place at the "end of November." Attachment 4.

VTR has been and continues to be engaged in negotiations with CSXI pertaining to the continuation of the interchange agreement between VTR and CSXT, but does not know at this point what the outcome of these negotiations will be.

Impact of CSXT's New Trailer Program

The pending termination, if not resolved by negotiation with CSXI, means far more than the loss of substantial per diem revenue to VTR. The termination will not only eliminate VTR from the trailer equipment supply business, but will permanently preclude VTR from expanding its TOFC business or entering the COFC business. Given operational realities, the interlinkage of CSXT's rail lines with other carriers' lines means that any equipment supplier which does not have an interchange agreement with all the major rail carriers, including CSXT, cannot remain in the trailer equipment supply or TOFC business or enter the COFC business. Major carriers often will require blocks of trailers for various shippers. If a VTR trailer is included in that block (as is often the case) and the VTR trailer ends up on a CSXT line, without an interchange agreement with CSXT the rail carrier delivering the trailer to CSXT would be responsible for the per diem compensation and damage or loss due to collision or theft until the trailer is returned to a subscribing carrier that has an interchange agreement with VTR. Faced with this unacceptable prospect, carriers will simply refuse to accept VTR trailers unless VTR has an interchange agreement with CSXT. Indeed, VTR has already been contacted by various carriers expressing concern over the possibility that VTR will not have an interchange agreement with CSXT. Also, as a practical matter, CSXT will not report interchange receipt or delivery of VTR trailers on its lines. VTR thus will be unable to effectively manage its units in other parts of the country.

In addition, CSXT's representatives have been vigorously seeking rail business from VTR customers in Vermont. If the loss of VTR's trailer equipment business weakens or eliminates VTR as a rail carrier in New England -- a market CSXT has targeted -- the resulting shift of rail to truck traffic would further benefit CSXT. I would also note that the state of Vermont has been investing in and otherwise promoting efforts to increase both passenger and freight rail traffic in the state in order to alleviate growing highway congestion and resulting adverse environmental consequences. As a major rail carrier in Vermont, VTR is well-positioned to play an important role in this effort, including making potential investments in additional trailer facilities in Vermont, but obviously will be precluded from doing so if it is driven from the trailer business by CSXT's tactics.

Conclusion

CSXT's proposed trailer program will eliminate VTR as a trailer equipment supplier, will result in an increase in highway traffic in New England over what it otherwise would be, and will eliminate VTR's ability to contribute to the reduction of such traffic through enhanced rail traffic.

ATTACHMENT 1

CSX INTERMODAL

BELLSOUTH TOWER
301 WEST BAY STREET
JACKSONVILLE, FLORIDA 32202-4424

May 15, 1997

Mr. Don Saylor
Vice President - Intermodal
Vermont Railway
1717 Dixie Highway, Suite 380
Covington, KY 41011

Dear Don:

As you know, the intermodal business is vigorously competitive. CSXI's viability as an intermodal carrier depends on its ability to provide efficient, cost effective service that is competitive with the services of other intermodal carriers, trucks, and other transportation providers. CSXI's competitiveness, and thus its ability to service its customers, has been jeopardized by substantial increases in rail trailer equipment costs over the past several years. CSXI thus has no alternative but to attempt to reduce its equipment costs.

Attached for your review is a copy of a new program that CSXI will implement effective August 1, 1998. The objective of this program is to reward those trailer vendors who are able to reduce per diem charges, provide more competitive trailer rental terms, and otherwise work with CSXI to reduce trailer costs. All interchange holders will have an opportunity to bid on this program. The equipment owners who meet the program ground rules will be qualified as a preferred mark. Equipment owners who decline to participate in this cost reduction program will not be offered and Interchange Agreement. Non-interchange owners equipment will be allowed to continue to move on CSXI's network under CSXI's plan three hundred terms; however, under applicable AAR rules CSXI will not be responsible for per diem charges on such equipment while it is on CSXI's network.

I would like to review this program in more detail with you at your earliest convenience. I have set aside the balance of May to meet with all Suppliers. Please call me at (904) 633-1310 to set up a meeting. Thank you for your anticipated cooperation and I look forward to hearing from you.

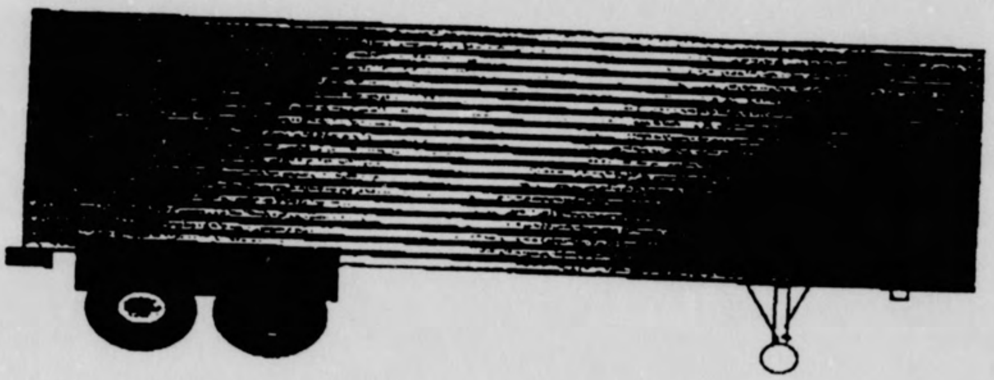
Sincerely,

Val T. Noel

Val T. Noel
General Manger, Equipment

VTN/djk
Enclosure

CSX INTERMODAL



RAIL TRAILER SUPPLIER PROGRAM

RAIL TRAILER
SUPPLIER DISCUSSION ITEMS

- REVIEW CURRENT STATUS OF RAIL TRAILER LINE OF BUSINESS AT CSXI
  - COST

- HIGH PREDICTABILITY OF EQUIPMENT COST

- PROCESS DESIGN THAT INFLUENCES THE MOVEMENT OF PREFERRED TRAILER MARKS ON CSXI'S NETWORK

- CUSTOMER RESPONSE, IF ANY, WILL BE HANDLED

- ALLOW ALL NON-PREFERRED MARKS TO MOVE ON CSXI'S NETWORK AS PRIVATE EQUIPMENT

- REVIEW GROUND RULES FOR A PREFERRED TRAILER MARK

RAIL TRAILER INTERCHANGE
GROUND RULES

- Relief Points - Relief points in all geographic areas to include the Northeast, Southeast, Florida, Midwest and Chicago with agreement on quantity. - Equipment held will be maintained in loading condition.

- Terminations - Only when CSXI requires, CSXI will only be responsible for the drayage cost when we terminate.
  - CSXI will not be responsible for any drayage in event a termination is required by the owner.
  - Agreed to equipment quantities will be held on our terminals at termination points. Any equipment beyond that quantity will be charged a storage fee or will be returned at owner's expense.
  - Termination points in all geographic areas.

- Maintenance - In the event CSXI must terminate, the only cost exposure for CSXI will be versus AAR equipment standards.
  - Standardized rate and time charges.

- Street Free Days - Allow units to move off the terminal for agreed upon number of days for a revenue load.

- Per Diem Rate - Must be at or below the CSXI benchmark rate.

ATTACHMENT 2

CSX
INTERMODAL

BellSouth Tower
301 West Bay Street
Jacksonville, Florida [illegible]

June 3, 1997

Mr. Don Saylor
Vermont Railway
1717 Dixie Highway, #380
Covington, KY 41011

Dear Don:

CSX Intermodal will be implementing a new trailer program effective August 1, 1997. The objective of this program is to reward those trailer vendors who are able to reduce per diem charges, provide more competitive trailer rental terms, and otherwise work with CSXI to reduce trailer costs. All interchange holders will have an opportunity to bid on this program. The equipment owners who meet the program ground rules will be qualified as a preferred mark. Equipment owners who decline to participate in this cost reduction program will not be offered and Interchange Agreement. Non-interchange owners equipment will be allowed to continue to move on CSXI's network under CSXI's plan three hundred terms; however, under applicable AAR rules CSXI will not be responsible for per diem charges on such equipment while it is on CSXI's network.

I would like to review this program in more detail with you at your earliest convenience. Unfortunately, I have not heard from you or your organization regarding this program. Please contact me as soon as possible to arrange a meeting. If I do not hear from your organization I will assume you do not wish to participate in the program. Thank you for your anticipated cooperation and I look forward to hearing from you.

Sincerely,

Val T. Noel

Val T. Noel
General Manager Equipment

VTN/djk

ATTACHMENT 3

CSX INTERMODAL

301 West Bay Street
Jacksonville, Florida

September 3, 1997

VIA TELECOPIER (802/658-2553)
CERTIFIED MAIL, RETURN
RECEIPT REQUESTED

Vermont Railway, Inc.
1 Railway Lane
Burlington, Vermont 05401
Attention: Mr. Dan Stein

VIA TELECOPIER (606/331-8235) &
CERTIFIED MAIL, RETURN
RECEIPT REQUESTED

Vermont Railway, Inc.
1717 Dixie Highway, Suite 380
Covington, Kentucky 41011
Attention: Mr. Don Saylor,
Vice President - Intermodal

Re: Agreement for Interchange of Trailers dated as of December 1, 1987 by and between Vermont Railway, Inc. and CSX Transportation, Inc. (the "Agreement")

Ladies and Gentlemen:

Please accept this letter as notice of termination of the Agreement effective as of 11:59 P.M. on September 30, 1997. In accordance with the provisions of paragraph 14 of the Agreement, you must initiate the return of any CSX trailers in your possession within forty-eight (48) hours of receipt of this letter. We will initiate the return of all VTR trailers to you within this same timeframe.

Please provide directions as to home destination for the return of the VTR trailers. Any CSX trailers in your possession under the Agreement may be returned to any CSX Intermodal terminal. In effecting the termination of the Agreement and the return of each party's trailers, transportation, maintenance and repair and other charges shall be allocated between the parties in accordance with the provisions of the Agreement.

Thank you for your prompt attention in this matter.

Very truly yours,

CSX Intermodal, Inc., as agent for
CSX Transportation, Inc.

By: David E. Lane

ATTACHMENT 4

CSX INTERMODAL

BellSouth Tower
301 West Bay Street
Jacksonville, Florida [illegible]
(904) [illegible]
Fax (904) [illegible]

Mark S. Hoffmann
General Counsel

September 26, 1997

Kevin M. Sheys, Esquire
Oppenheimer Wolff & Donnelly
1020 Nineteenth Street N.W.
Suite 400
Washington, DC 20036-6105

RE: CSXI / Vermont Railway

Dear Mr. Sheys:

This will confirm our telephone conversation of April 24 in which I informed you that CSXI has withdrawn its termination of the Agreement as of the end of September. It is expected that termination will now take place at the end of November. Notice to that effect will be issued when appropriate.

If you have any questions, feel free to call me.

Very truly yours,

Mark Hoffmann

Mark S. Hoffmann

MSH:pkw

** TOTAL PAGE.001 **

VERIFICATION

State of Kentucky)
) SS:
County of Kenton)

Don Saylor, being duly sworn, deposes and says that he is the Vice-President, Intermodal, Vermont Railway, Inc., that he is authorized to verify the foregoing **Comments and Requests for Conditions of Vermont Railway, Inc.** ("Comments and Conditions") on behalf of Vermont Railway, Inc., that he has read the foregoing Comments and Conditions, and that the facts asserted therein are true as stated.

Don Saylor

Don Saylor

SUBSCRIBED AND SWORN to
before me this 20th day of October, 1997.

Notary Public

My Commission expires: MY COMMISSION EXPIRES JUNE 16, 2001

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of October, 1997, a copy of the foregoing **Comments and Requests for Conditions of Vermont Railway, Inc. (VTR-3)** was served by first class mail, postage prepaid, upon all Parties of Record on the Service List.

Paul M. Laurenza

PAUL M. LAURENZA

STB FD 33388 10-21-97 D 182817 1/2

182817

WP DISC FILE GTC2

BEFORE THE SURFACE TRANSPORTATION BOARD

FINANCE DOCKET 33388

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

Comments and Requests for Conditions

by the

GENESEE TRANSPORTATION COUNCIL,
ROCHESTER, NEW YORK

VERIFIED STATEMENT

OF

H. DOUGLAS MIDKIFF

Due Date: October 21, 1997

SURFACE TRANSPORTATION BOARD FINANCE DOCKET 33388

VERIFIED STATEMENT OF H. DOUGLAS MIDKIFF

GENESEE TRANSPORTATION COUNCIL

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BEFORE THE SURFACE TRANSPORTATION BOARD

FINANCE DOCKET 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

Comments and Requests for Conditions

by the

GENESEE TRANSPORTATION COUNCIL, ROCHESTER, NEW YORK

Comes now H. Douglas Midkiff, of the Genesee Transportation Council, Rochester, New York, hereinafter referred to as the GTC, and submits, as a verified statement, the following comments and requests for conditions in the above described proceedings. I have been authorized by the GTC Policy Committee[1] to represent the GTC before the STB. I will use "GTC" as the required acronym.

1. Legal Name and Domicile

Genesee Transportation Council, 65 West Broad Street, Suite 101, Rochester, NY 14614-2210, telephone (716)232-6240, fax (716)262-3106. The E-mail address is gtcmpo@frontiernet.net.

[1] The membership of the GTC Policy Committee is composed of elected or appointed representatives from various governmental agencies in the region. See Appendix 1 for a list of the members.

2. Qualifications of Witness

I have been in the transportation business for 55 years, beginning with my employment in 1942 as a freight house clerk with the Norfolk & Western Railway (N&W) in Pulaski, VA. After three years in the Army during WW II, I returned to the N&W as a call boy and yard clerk in Pulaski and Bristol, VA-TN. I was subsequently recruited by the Marketing and Sales Division of the Southern Railway and was assigned to sales offices in Bristol, Knoxville, Chicago, and San Francisco. I was employed as Commercial Agent for the Southern Railway in Bristol when I was recruited by Eastman Kodak Company's Chemicals Division in Kingsport, TN, which is now a separate company named Eastman Chemical Company. I worked as a transportation manager for Eastman Kodak in Kingsport for 27 years, where, among other things, I was responsible for all rate matters and negotiations and the evaluation of the transportation features of potential plant sites and distribution warehouses. I also handled Chemicals Division transportation regulatory matters, such as hazardous materials regulations with the Department of Transportation and trucking authority support with the Interstate Commerce Commission. In 1982, I was transferred to Kodak's corporate headquarters in Rochester, where I served as Director of Rates and Regulations in Kodak's World-Wide Transportation Department, where, among other duties, I had the responsibility for the evaluation of rail service and for negotiation of rail rates and contracts.

During my time at Kodak in Kingsport and Rochester, I was the Company's corporate representative to the Distribution Committee of the Chemical Manufacturers Association (CMA), where I served as chairman of the Rail Committee and later as vice chairman and chairman of the full CMA

Distribution Committee. I, with others, led the CMA in its support for passage of the Staggers Act. During the same period, I also served as an active member of the Rail Committee of the National Industrial Transportation League. After retirement from Kodak, I operated a transportation consulting business, with Kodak and area industrial development agencies as my principal clients. I joined the Central Staff of GTC in 1993. I am employed as a Transportation Specialist, with responsibility for the planning the movement of goods to, from, and within the GTC region.

3. Description of the GTC Planning Region

The GTC is the Metropolitan Planning Organization (MPO) for nine counties in Upstate New York, consisting of Genesee, Livingston, Monroe, Ontario, Orleans, Seneca, Wayne, Wyoming, and Yates counties. (See map in Appendix II) The 1990 population of the nine-county region[2] was 1,161,470. All but Seneca, Wyoming, and Yates counties are included in the Rochester Metropolitan Statistical Area (MSA). The Rochester MSA is ranked No. 38 among the top 50 MSAs in the nation, with a 1995 population of 1,088,516. Some of the other cities and towns in the GTC region, besides Rochester, that originate and terminate rail traffic are Albion, Arcade, Avon, Batavia, Brighton, Brockport, Canandaigua, Chili, Clyde, Farmington, Gates, Geneva, Greece, Henrietta, Lakeville, Leroy, Lyons, Macedon, Medina, Newark, North Java, Palmyra, Penn Yan, Pittsford, Scottsville, Shortsville, Webster, Williamson, and Victor.

According to the New York State Labor Department, the civilian labor force in the region was

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[2] Wherever the term "region" is used in this document, it refers to the nine-county region shown on the map in Appendix II.

580,300 in 1994. There are approximately 25,520 business establishments in the region, of which 1,710 are manufacturing businesses, with 64% of those located in Monroe County. This includes the internationally known firms of Eastman Kodak Company, Xerox, Bausch & Lomb, Garlock Inc., the Gleason Corporation, Johnson & Johnson, ITT Automotive Electrical Systems, the General Motors Delphi Division, and Goulds Pumps. Other regional firms are the Archer Daniels Midland Distribution Facilities, Genesee Brewery, Victor Insulators, Sweeteners Plus, Jones Chemical, Kraft Foods, Canandaigua Wine, Mobil Chemical, Genesee Leroy Stone, and Seneca Foods.

A major part of the economic activity in the Region is tied to exports. According to figures supplied by the Greater Rochester Metro Chamber of Commerce, which surveyed its more than 2,000 members and compared the results with U. S. Department of Commerce figures, the nine-county greater Rochester area is the number one exporter, on a per capita basis, of manufactured goods and services in the nation. With an estimated value of $14 billion in 1996, the nine-county GTC region exports more than 39 of the Nation's 50 states and is among the top 10 exporting areas in the country.

4. Description of Existing Rail Service

Because of the many high tech firms in the area, as opposed to the "smokestack" industries of many cities of the Northeast and Midwest, the major percentage of the freight traffic shipped in and out of the region moves via truck. The Rochester area has excellent truck and air freight service, with numerous trucking firms of every description, but there is a class of traffic that cannot be handled by truck, hence, freight service in the GTC region is not complete without good rail service.

According to TRANSEARCH DATA supplied by Reebie Associates, Greenwich, CT, the railroads handled 3,927,285 tons in and out of the region in 1995. Using the Association of American Railroads (AAR) average of 89 tons per car, this is the equivalent of 44,127 carloads to and from the region, consisting of 29,004 carloads inbound and 15,123 carloads outbound. While this is less than the truck tonnage, the commodities handled by the railroads are of significant importance to the area. For example, over one and one-half million tons of coal move via rail to the electric generating plants in the nine-county region. Several of industries, such as Eastman Kodak, also receive large volumes of coal and other bulk raw materials and supplies by rail. This traffic cannot be economically handled by any other mode. Thus, rail service is a critical component of the Rochester economic picture.

The dominant rail carrier in the GTC region is Conrail[3]. The Conrail Main Line[4], the former New York Central Water Level Route between New York City and Buffalo, crosses the region from east to west through Wayne, Monroe, and Genesee counties. In addition to six to eight Amtrak trains operated daily, this line handles approximately 50 freight trains per day, with an estimated annual gross tonnage of approximately 70 million tons. Ten to twelve freight trains stop to pick up and deliver in Rochester, but no rail intermodal traffic is loaded or unloaded in Rochester. Despite

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[3] References to "Conrail" in this document means Conrail, Inc. and Consolidated Rail Corporation. References to Applicants refers to CSX Corporation and CSX Transportation, Inc. which are referred to as CSX, and to Norfolk Southern Corporation and Norfolk Southern Railway Company, which are referred to as NS.

[4] Under the agreement announced by CSX and NS, CSX would operate this route.

objections from local shippers, Conrail removed its intermodal facilities from Rochester in 1992[5].

Conrail's Southern Tier Line (the former Erie Railroad route)[6] between Buffalo and Croxton Yard in Newark, NJ, runs through the southern portion of the GTC region, crossing Genesee, Wyoming, and Livingston counties. It handles 18-20 trains per day, made up of a mixture of intermodal and conventional trains operated by three railroads, Conrail, the Canadian Pacific (CP), and the New York, Susequehanna & Western (NYSW). Unlike the NS, which will own the line if the application is approved, the CP uses the Conrail trackage rights of its component Delaware & Hudson (D&H) and other Conrail trackage rights, to operate through trains over the Southern Tier Line between Buffalo and Binghamton, where it is combined with the D&H and by using other Conrail trackage rights, it provides service to Oak Island Yards in New Jersey, Philadelphia, and Potomac Yards, VA. The NYSW also has trackage rights over the Southern Tier Line, which it uses to handle dedicated intermodal stack trains between Buffalo and Albany, Taylor, PA, and Little Ferry, NJ. All dispatching on the Southern Tier Line is done by Conrail.

The region has ten short-line railroads[7] The short-line carriers are the Arcade & Attica (ARA), the Dansville & Mount Morris (DMM), the Depew, Lancaster & Western (DLWR), the Falls Road Railroad (FRRR), the Finger Lakes Railroad (FGLK), Genesee & Wyoming Railroad (GNWR),

[5] The impact of the removal of the Conrail facilities is discussed in a subsequent section of this statement.

[6] Under the agreement announced by CSX and NS, NS would operate this route.

[7] See map of railroads in the region in Appendix III.

the Livonia, Avon and Lakeville Railroad (LAL), the Ontario Central(ONCT), the Ontario Midland(OMID), and the Rochester and Southern Railroad (RSR).

The principal business of the ARA is handling agricultural products between Arcade and North Java. The DMM handles heavy and oversized shipments of pressure vessels from a manufacturer in Dansville, NY, that are not practical to ship over the highways.

The DLWR, a subsidiary of Genesee Valley Transportation Inc. (GVT), provides industrial switching service to industries in Batavia. The Falls Road Railroad (FRRR), also a subsidiary of the GVT, operates a segment of the former Conrail Falls Road Line between Lockport and Brockport. Through a connection with Conrail at Lockport, it serves the towns of Albion, Brockport, Holley, Knowlesville, Medina, and others in Monroe and Orleans counties.

The FGLK serves Canandaigua, Shortsville, Waterloo, Geneva, Watkins Glen, Penn Yan, Auburn, Seneca Falls, and other points on the former Conrail Auburn Line between Syracuse (Solvay) and Canandaigua and its branch lines.

The GNWR's primary business was the movement of salt from the Akzo mines at Retsof. Due to collapse of the mine, this business is no longer available, but GNWR is expected to provide similar service to a new mine, on which construction is expected to begin in the fall of 1997 or in the spring of 1998.

The ONCT provides rail service to shippers in the Shortsville-Farmington area and in Victor. The OMID serves the fruit and vegetable processors in Wayne County and the Xerox plant in Webster.

The LAL operation is of particular economic significance to the region, because of the intermodal facilities it serves in Lakeville. It operates between Lakeville and the Rochester suburb of Henrietta and the Conrail-owned Genesee Junction Yard[8] in Chili, where it connects with the Conrail West Shore Line. There are also industrial spurs that serve customers in Henrietta.

As noted, the LAL has a large break bulk intermodal terminal in Lakeville. Rail carloads of bulk products, such as corn sweeteners, plastic granules, and fertilizer chemicals, are trans-loaded to bulk trucks, for delivery to local plants and wineries. Outbound shipments consist of carloads of locally grown grain that is brought in by truck from area farms and trans-loaded to rail cars; logs for paper mill feedstock; and a variety of agricultural commodities. The facilities offer the use of relatively low cost rail service to off-track industries in the region, many of which lost rail service due to abandonments during the restructuring of area railroads into Conrail.

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[8] LAL's sole connection is Conrail. The RSR main line also adjoins the Genesee Junction Yard, but due to the restrictions imposed by Conrail when the so-called Rochester Cluster was sold to LAL, RSR and LAL are unable to interchange traffic, thereby preventing access by LAL to competitive carriers at Silver Springs and Buffalo. In Decision 28, which designated LAL's Description of Anticipated Responsive Application (LAL-2) as a minor transaction, it is reported that "LAL intends to ask that approval of the CSX/NS/CR transaction be conditioned on the conveyance of Conrail's Genesee Junction Yard, consisting of approximately three-quarters of a mile of trackage, to LAL at a price to be negotiated or set by the Board."

We have also noted that, under Sub Docket No. 52, RSR has filed a Description of Anticipated Responsive Application, in which it seeks authority to use CSX tracks in Genesee Junction Yard "for direct interchange of traffic with Livonia, Avon & Lakeville Railroad without restrictions". In the interest of allowing more vigorous participation by the region's short-lines and to enhance the competitive benefits from the CSX/NS/CR transaction, GTC supports these requests and urges Board approval. These restrictions and others that limit interchange will be discussed in more detail in subsequent sections of this statement.

The RSR is the only short-line serving the city of Rochester directly. It has a yard from which it serves several companies, including Kodak and the General Motors plants. It connects with Conrail in Rochester and with the Conrail Southern Tier line at Silver Springs[9], 50 miles southwest of the city. It also has a connection at Silver Springs with the CP. RSR has haulage rights with the CP (D&H) between Silver Springs and Buffalo, for a connection with a sister railroad, Buffalo & Pittsburgh (BPRR)[10], which makes a through route to connections with other railroads in Pennsylvania. It also connects with other railroads in Buffalo.

Although the RSR offers good service to Silver Springs, service via the CP has been poor. This is understandable. Conrail controls train operations and dispatching over the Southern Tier. Despite promises and agreements to the contrary, Conrail trains get priority handling. Despite attempts by GTC to interest the CP in serving Rochester in connection with RSR, the CP has not demonstrated any interest in developing business in the Rochester area, concentrating instead on using the Southern Tier Line for its overhead traffic between the Niagara Frontier and points along the

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[9] As noted in Footnote 6, the CSX/NS operating plans propose that NS operate the Southern Tier route through Silver Springs. However, for the Rochester area to get any competitive benefit from the proposed acquisition of Conrail by CSX and NS, NS must use RSR as a full partner for all types of traffic, including intermodal. Both RSR and NS must vigorously solicit inbound and outbound traffic to and from the Rochester area, to or from any direction, and provide rates and service competitive to the CSX.

[10] BPRR and RSR are wholly owned subsidiaries of Genesee &Wyoming Inc. Whatever happens to one will inevitably affect the other. BPRR and another sister railroad, Allegheny & Eastern (ALY), in a Description of Anticipated Responsive Applications (Sub Docket Nos. 43-51), dated August 22, 1997, stated that, because of an estimated revenue loss of $7 to $8 million resulting from expected diversion of current overhead traffic to single line routes of CSX and NS, BPRR, as one option, will ask that it be included in the CSX/ NS/CR transaction. If BPRR and RSR are included in the CSX system, Rochester would be left without competitive rail service and it would become a 2 to 1 city. If STB orders the inclusion of BPRR and ALY in either CSX or NS, GTC urges that RSR be included in the NS system.

Eastern Seaboard For all practical purposes, CP has not provided competitive rail service to the GTC region.

Conrail is the only carrier with switching access to the industrial sidings of many Rochester industries. While it has a reciprocal switching agreement with the RSR, which as noted, has switching access to several Rochester shippers, the Conrail switching charge to and from the industries it serves exclusively is at a level that often effectively prohibits the RSR from participating in competitive traffic. An example is coal consigned to Rochester Gas & Electric's (RG&E) coal-fired generating plant on Lake Ontario, in the Rochester suburb of Greece. The power plant is served exclusively by Conrail. The RSR division of the line-haul revenue is so small, it cannot add the $390 per car switching charge[11] to the line-haul rate and make a competitive rate. Unless it absorbs the charge, it is not competitive. There is no switching charge when Conrail receives the line-haul. Moreover, Conrail now has exclusive access to the mines in West Virginia that supply RG&E coal.

5. Events leading to decision to participate in STB proceedings

The announcement on October 15, 1996, that CSX and Conrail had agreed to merge, which was followed on October 23 by the announcement of a competing bid by Norfolk Southern Corporation, created considerable concern within the GTC over the significant economic impact exclusive control by either CSX or NS would have on the GTC region. The initial reaction was that neither railroad

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[11] Switching charges are perfectly legitimate, of course, since the carrier performing the switching incurs operating expense in performing the switch and it must maintain track access to the siding, but if there is no effective competition, there is reason to examine the reasonableness of the charges on captive traffic.

should have complete control of Conrail. The GTC Policy Committee decided it was exceedingly important that, whichever railroad was the winner in the "bidding war", GTC should ask the Surface Transportation Board (STB) to rationalize routes and impose conditions that will provide rail competition to industries in the Rochester region, including competitive access to the coal fields that supply RG&E, Niagara Mohawk, NYSEG, Kodak, and others.

6. Development of GTC Position

GTC functions under the provisions of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA)[12]. Simply stated, the Act notes that, for all practical purposes, the national highway system is essentially complete, therefore, the states and local governments must utilize the existing transportation infrastructure and invest transportation dollars where they will best accomplish the region's goals for moving goods and people. Funding for new construction will be authorized only when all alternatives have been examined. The Act requires that MPOs plan for the transportation of goods in a manner that is economically and energy efficient, as well as environmentally sound, a plan that provides the foundation for the area it represents to compete in the global economy, a requirement that is of particular significance to the Rochester region, which, as previously noted, exported goods valued at $14 billion in 1996. In pursuit of these objectives, GTC established a goods movement planning program and established contacts with the transportation executives of area businesses, utilities, short-line railroads, trucking companies, third party brokers, economic development agencies, industrial development agencies, and others.

[12] Under re-authorization legislation pending in Congress, the acronym may be changed to BESTEA (Building Efficient Surface Transportation and Equity Act) or NESTEA (New Expanded Surface Transportation Efficiency Act).

I have had discussions with these contacts in the following areas regarding the proposed Conrail acquisition:

- Frequency of switching service and ability to get cars placed or picked up when they are needed.
- Problems with securing reasonable rates, rate/route quotations and tracing/expediting information.
- Car supply and problems with securing the type of cars, containers, and trailers that shippers need, when they need them.
- Lack of interest in small shippers[13]. Conrail does not regularly solicit business from some of the area shippers.
- Problems with obtaining dependable and competitive intermodal rail service to the ports of New York and Philadelphia and second and third morning intermodal service to destinations in the Southeast, such as Atlanta, Norfolk, Richmond, and Florida, North Carolina, and South Carolina origins and destinations.
- Problems with maintaining switch connections, or getting switch connections installed, or

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[13] In the Summer 1995 edition of Conrail publication "PARTNERS, News From Conrail's Short Line Network Group", it was reported that, on April 25, 1995, John Sammons, Conrail Senior Vice President for the CORE Services Group, told the American Short Line Railroad Association Eastern Region meeting in Cincinnati, that "Conrail will cooperate with but not solicit, new plants producing fewer than about two carloads a day. Such smaller firms can be more efficiently served by our short line connections." (Emphasis supplied) While the remarks referred to industrial development efforts, it illustrates the Conrail philosophy toward small shippers served by Conrail. Moreover, in a meeting in Batavia, NY, in 1996, area short line representatives were told that Conrail would not allocate staff resources to develop rate and service proposals for short lines shippers of less than 500 cars per year.

other actions that impede economic development.

- The need to convert more truck traffic to rail intermodal because of the projected increase in volume of trucks that will move over the region's highways.
- The lack of competitive rail service on coal.

During round table discussions, one-on-one meetings, responses to GTC communications, telephone calls, etc., it became plain that many problems have evolved during the 21 years of Conrail dominance of the State's rail transportation service. Most of those interviewed believe a break-up of Conrail will be good for the Northeast, for New York, and for the region. While there is general support for the way Conrail has become a private carrier, operating in the black, it is pointed out that, in New York State in recent years, the post-Crane Conrail management, apparently under pressure to show a profit as a private company and to meet the earnings targets of Wall Street stock analysts, has increasingly emphasized the concept of "wholesale" railroading, in which the operating and marketing plans seem to concentrate on serving large shippers in the transportation corridors between city pairs. It has left the "retail" railroading to the short-lines, making public statements that it is not interested in small shippers, leaving such shippers to the short-lines, which obviously is not a solution for small shippers located exclusively on Conrail.(See Footnote 13) This is particularly apparent in the intermodal arena, with Conrail management concentrating on "stack trains" with steamship containers and such large intermodal shippers as United Parcel Service, J.

B. Hunt, Schneider Brothers, Wal-Mart, and the U. S. Postal Service.[14] Parenthetically, we note the proposed CSX/NS operating plans in Finance Docket 33388 make much over the projected conversion of thousands of truck shipments to rail intermodal through the use of various single-line intermodal corridors the acquisition and control of Conrail will make possible, but again, the emphasis seems to be on traffic between big city pairs, which would leave a huge volume of truck traffic untapped in the "vast wasteland" in between.[15]

While we applaud the efforts of the railroads to cut costs, recover lost business, and through innovation, acquire new business, these efforts should not be made at the expense of the common carrier obligation to provide conventional rail service and intermodal access at intermediate points. Conrail officials have told us they have no interest in investing private funds to put more shippers within economical range of intermodal terminals, unless there is a clear demand for intermodal service that will provide a balanced and profitable operation. On the face of it, this makes good business sense, but how far can cost-cutting go without a corresponding effort to "grow" the business? Without a vigorous sales and marketing effort that recognizes the potential intermodal

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[14] In August, 1994, Conrail announced it would no longer accept intermodal shipments to destinations less than 500 miles from Syracuse. As noted in Section 4 herein (Description of Existing Rail Service), Conrail removed its intermodal facilities from Rochester in 1992, despite the region's strong position in the export market. These cut-backs in local service came at a time when GTC, following the objectives of ISTEA, was seeking to increase the use of rail intermodal service from and to the region.

[15] The number of trucks moving to, from, and within the GTC region is expected to increase from 634,000 in 1992, to approximately 1 million by 2015. The increase in truck traffic will put a disproportionate demand upon the transportation infrastructure in terms of pavement wear and congestion. According to an American Association of State Highway Officials (AASHTO) study, one 18-wheeler, loaded to the authorized gross weight of 80,000 pounds, can do the damage of 9,000 automobiles. Increased use of intermodal service would obviously slow the demand for new construction and wear and tear upon the existing infrastructure.

traffic volume that is available to intermodal facilities strategically located at points other than the ports or major cities, such demand may never materialize. Ideally, such effort would be made in collaboration with the regional MPO, which is seeking to follow the ISTEA mandate to blend public and privately-owned infrastructure into a regional and national intermodal system.

ISTEA makes no specific provision for using federal funds on rail intermodal facilities and other intermodal hardware, confining its funding to access roads, etc., leading to such facilities. However, several versions of the legislation pending in Congress would create public-private partnerships that would give the Class 2 and Class 3 carriers, i.e, regional and short-line railroads, access to federal infrastructure funds. These changes would not apply to the Class 1 railroads, who have chosen not to support them, for fear it could lead to new taxes on locomotive fuel. The GTC Policy Committee has not taken a position on these specific proposals to include the short-lines and regionals, although it supports re-authorization legislation that would continue ISTEA's present path. I personally believe the Class 1 carriers can well afford to make the intermodal connections, but that the Class 2 and Class 3 carriers should be included as full partners in creating public-private partnerships if a practical cost-benefit procedure can be established. I realize this is a political question and that STB will not be involved in the final decision, but it is being discussed in this statement because of the importance of blending public and private infrastructure to accomplish ISTEA's goals. How best to accomplish this goal of is a question that deserves the expert consideration of the STB as it evaluates the request of CSX and NS to virtually control rail transportation in the Eastern half of the Nation.

7. GTC Position

As a result of discussions and comments developed through the GTC goods movement planning process, the following position evolved before the CSX/NS announcement on April 8:

1. There should be separate ownership [i.e., CSX or NS] of the Conrail Main Line between Buffalo and New York and the Southern Tier Line.
2. There should be a competitive north-south route to the Southeast via CSX at Potomac Yards, VA or the NS connection at Hagerstown, MD, via Harrisburg, PA, from a Southern Tier junction, such as Binghamton, Corning (Gang Mills), or Waverly.
3. There should be access by both railroads to the Port of New York and other North Atlantic ports.
4. There should be competitive access to the Pennsylvania and West Virginia coal fields that supply RG&E, Niagara Mohawk, NYSEG, Kodak, and others with coal.
5. The RSR route between Rochester and Silver Springs should be protected to link the Conrail Main Line to the Southern Tier Line.
6. The restrictions imposed on short-lines by Conrail against interchanging to competing carriers should be removed, to allow full participation by these carriers in providing competitive rail service to regional shippers.
7. Intermodal facilities should be re-established in the immediate Rochester area in order to convert more truck traffic to rail intermodal because of the projected increase in truck traffic.

8. The importance of Amtrak to the region and the need for maintaining track and schedules should be recognized.

The proposed division of Conrail as described in the joint application filed by the Applicants is, in many respects, in line with the GTC position. CSX and NS apparently worked hard to create a balanced, post-purchase market share that will be viewed as competitive by the STB, but simply dividing Conrail between CSX and NS and allowing them to operate their respective segments in the same manner the segments have been operated by Conrail will do little to provide competitive rail service in such places as the Genesee-Finger Lakes Region of Upstate New York. GTC supports the acquisition and proposed division, *in principle*, but from the discussions we have had with responsible transportation officials, industrial transportation managers, and others in the region, it is clear the STB, in order to create a rail transportation system that will truly offer competitive rail service for large and small shippers, must take the opportunity presented in Finance Docket 33388, to impose conditions that will correct the problems that have evolved during 21 years of Conrail domination. Many of these problems have already been referred to and they and others will be further addressed and described in succeeding sections of this statement.

8. Competitive Access to the Monongahela Coal Fields

Utilities in the GTC region, such as RG&E, Niagara Mohawk, NYSEG, as well as Eastman Kodak, receive coal from the Monongahela coal fields in Pennsylvania and West Virginia. Consequently, we are particularly gratified that the CSX/NS operating plans call for joint competitive access to these mines. We have noted the proposed Monongahela Usage Agreement

(Exhibit GG of CSX/NS 25, Volume 8C), in which CSX and NS have agreed, subject to STB approval, that the lines of the former Monongahela Railroad, now Conrail, be controlled and operated by NS, but with equal access by CSX. While we have not analyzed the agreement in detail, it appears to provide an equitable arrangement for joint access to the mines. However, we point to the experience of CSX. Despite an understanding by its coal marketing officials that it had been granted access by the ICC to the Monongahela mines after the Monongahela Railroad was merged into Conrail,[16] it was denied access to certain mines on the former Monongahela when it attempted to move coal to an Upstate New York utility. Therefore, to avoid any problems of future competitive access, we ask the Board to establish a procedure for monitoring the fair and impartial enforcement of the terms of the CSX/NS Monongahela Usage Agreement.

9. Removal of Interchange Restrictions on Short Line Railroads

In the post-Staggers era, many Class 1 carriers have abandoned or sold many of their secondary lines. Some of the lines were simply redundant. This is especially true for Conrail, which inherited many parallel bankrupt lines. More recently, under the broad umbrella of "asset management," decisions have been made to abandon or discontinue service on a segment, or cluster, of lines because the lines in question fail to meet an arbitrarily determined ROI benchmark. Asset managers give careful consideration to the question of what is the best way to relieve the Class 1 carriers of the "burden" of operating a less than desirable piece of property. Should there be a request to abandon it, or to discontinue service and seek a short-line buyer?

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[16] For background information, see ICC Finance Docket No. 31630, Consolidated Rail Corp.- Control - Monongahela Railway Co., August 14, 1990, and ICC Finance Docket No. 31875, Consolidated Rail Corporation - Merger - Monongahela Railway Co., October 4, 1991.

The wrong answer could have serious consequences for those seeking competitive rail service, as I will try to illustrate.

In some instances, it is clear a line should be abandoned because there are no critical movements that would justify its operation and no expectation that it will generate enough rail revenue to interest a short-line buyer, even with local government subsidy. On the other hand, there are lines not earning enough to reach the pre-determined ROI number, but still generating rail traffic and serving industries key to the economy of the area they serve. In such cases, Conrail usually looks for a short-line buyer, making a conscientious effort to locate one that will provide good service.

When announcement is made that the lines are to be abandoned, or that service is to be discontinued, elected officials and economic development leaders in the communities threatened with the loss of rail service eagerly work with prospective short-line operators to purchase the lines.[17] Objections are rarely raised. Because they fail to recognize the options open to them in abandonment or discontinuance of service proceedings, the public entities that will ultimately fund or subsidize the lines are seldom parties to the STB, *nee* ICC, proceedings that must

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[17] Unfortunately, in many instances, the track is allowed to deteriorate from the time it is decided to abandon or sell and the time of actual abandonment or sell of the property. Little effort is made to solicit business, improve profitability, or to give good service. When the line is eventually sold, the buyers, i.e., the short-lines, industrial development agencies, or county officials, usually appeal to state officials in Albany for money to upgrade the track and construct new facilities. Over the years, millions of New York State tax dollars have been spent in this fashion. To minimize the use of public funds for these purposes, there should be some policy that requires the selling railroad to maintain the track to the level that will handle the traffic reasonably expected to move over the line.

approve the purchase. The short-lines are generally in no position to select the end points nor to object to the imposition of restrictive conditions, fearing the selling price will be increased and with it, a corresponding increase in the amount of public subsidy, since most will need tax concessions to make a profit or public funding to finance the purchase.

Finally, there is a third category of lines that connect key cities or junctions, which may be generating revenue, but not enough to produce a satisfactory return. The problem facing the asset managers is how to sell the line without opening the door to competition, which could be the case if the line were sold intact. Consequently, a solution often used is to divide the line into smaller segments and create "gaps" that will prevent through service. Furthermore, it is easier to win approval for abandonment of smaller segments that provide no critical service.

An example is the Falls Road Line of Conrail, a former New York Central secondary that linked Rochester and the Conrail Main Line with connecting railroads at Suspension Bridge in Niagara Falls. When Conrail decided to stop using the line for through automobile traffic from Detroit and Canada and other overhead traffic, the Falls Road Line did not produce enough revenue from on-line shippers to reach the magic ROI number. Nevertheless, Conrail did not put the entire line up for sale. This would have made available a link between connecting carriers on the Niagara Frontier and key Rochester industries. Instead, Conrail decided to limit the sale to the eastern end of the line and create a "gap" in the line. It established a western end point at a point just east of Brockport, NY, and an eastern end point in a Rochester suburb at a point just west of a possible physical interchange with the RSR, which has access to Eastman Kodak's huge industrial complex at Kodak Park, and with its own Charlotte secondary line to RG&E's coal-fired generating plant. With ICC approval, it abandoned the cut-off segment, which has since been purchased by Monroe County to be "banked" for recreational use, or for use as a possible transit corridor. No short-line was interested in a rail segment that had been effectively insulated from any potential freight customers.

When the eastern end of the Falls Road Line was sold, Conrail then put the western end up for sale, but, again, it set restrictive end points at Brockport on the east, which had no outlet after the eastern end was abandoned, and Lockport on the west. Because of potential business on the line, several short-line operators tried to buy the line, in spite of the interchange restrictions at the western end that effectively limited the buyer to interchanging only with a Conrail secondary that will become a CSX line if the merger is approved. The buyer was Genesee Valley Transportation, which began operating the FRRR as a wholly owned subsidiary about a year ago, however, to relieve the FRRR of the tax burden, the counties through which it operates will assume ownership of the right-of-way and FRRR will become the designated short-line operator. Ironically, one of the largest shippers on the FRRR ships grain to a point on the Delmarva Peninsula that will be served by NS if the CSX/NS/CR transaction is approved, yet, because of establishment of an end point that limits interchange, the revenue from such low-rated traffic as grain must be divided between three railroads, i.e., FRRR, CSX, and NS.

As other examples, I have already described how the LAL interchanges traffic with Conrail at the Genesee Junction Yard[18] and how Conrail has placed a "firewall" between the LAL and the RSR that prevents interchange of traffic between the two, thus denying LAL access to another carrier. A similar condition was imposed upon the FGLK to prevent interchange in Syracuse with the NYSW, by restricting the its eastern end point to Solvay, a Syracuse suburb.

Some may question why interchange restrictions and the sale of Class 1 segments to short-line operators are issues for consideration in this proceedings. I am fully aware, of course, that "asset management" is a good business practice and that interchange restrictions are aimed at guaranteeing that all of a short-line's traffic will be handled by the seller, but in the context of this proceeding, which will establish the rail system for the Eastern half of the Nation for generations to come, I believe it is proper that the Board consider how past practices of Conrail in the Northeast have led to "fragmented" rail service by the short-lines, without which many shippers would have no rail service at all. I believe that, when it is physically feasible for the short line to connect with a competing carrier, such restrictions should be removed because they ultimately limit the chances of success by the short line, whose success is presumed to be in the public interest. More importantly, unrestricted interchange increases the opportunities for competitive rail service in the region. These arbitrary restrictions should be removed and the short-lines should have access to both CSX and NS if it physically feasible to make the connections. Furthermore, I recommend the Board consider the implications of such restrictions

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[18] See Description of Existing Rail Service and Footnote 8.

in future proceedings.

10. Lack of Intermodal Facilities in the GTC Region

In Section 4 herein (Description of Existing Rail Service), it is noted that Conrail removed its intermodal facilities from Rochester in 1992. Intermodal shippers in the region must now use the Conrail intermodal facility in Dewitt Yard, east of Syracuse, some 90-100 miles from Rochester proper and further from other points in the region, or a small recently established Conrail facility in Buffalo, approximately 60 miles from Rochester proper and further from other points in the region. Rochester shippers can also use the NS facility in Buffalo, but for westbound traffic only. At present, Triple Crown Services offers limited westbound service from the RoadRailer terminal at Conrail's Goodman Street Yards in Rochester, but this facility is expected to be removed to an NS Buffalo location when acquisition of Conrail is consummated. This will leave the GTC nine-county region, with a population of over one million and an area of 4,838 square miles, which is four times the size of the State of Rhode Island, without a single rail intermodal facility for handling trailers and containers.

Based on figures we were given in late 1993 and early 1994, over 37,000 intermodal containers/trailers were shipped from Rochester in 1993, the first full year after the Conrail Rochester facility was closed.[19] Of that total, an estimated 20,200 trailers/containers moved via Buffalo and Syracuse, the nearest intermodal facilities. Approximately 15,000 trailers/containers

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[19] This figure does not include the rail carload shipments in bulk that are trans-loaded at facilities served by the LAL in Lakeville, and cement trans-loaded to trucks from lake boats at the Port of Rochester.

went to the NS facilities in Buffalo and 5,200 to the Conrail facility in Syracuse, with the balance trucked directly to various points, such as the New York/New Jersey ports, Chicago, Montreal, and Toronto.

During visits to the Conrail and NS facilities in Buffalo and Syracuse, we were given information that, upon analysis, reveals that many shipments that formerly moved via rail have apparently been diverted to over-the-highway carriers. In 1995, only 500 trailers/containers from Rochester were handled via Syracuse, while the NS Buffalo facility handled approximately 5,000, for a total of 5,500 for both facilities. This compares with 20,200 trailers/containers from Rochester that were handled through the same facilities in 1993, or a decrease of 73%. Yet, according to reports from local shippers, in today's booming economy, the total number of units shipped to and from the region has increased.

It is frustrating to see Conrail "stack" trains, carrying steamship containers from all over the world, pass without stopping through a community that exports more than 39 of the 50 states. As noted, the number of shipments has increased, but the majority of Rochester's substantial export business now leaves Rochester via the highways. This illustrates how rail intermodal traffic has a tendency to revert back to truck when the lower cartage expense and convenience of a later cut-off time are removed. Many exporters claim it hardly makes economic sense to truck containers 100 miles east to Syracuse, when the total distance to Port Elizabeth, New Jersey, for example, is approximately 360 miles. On the other hand, with intermodal facilities in Rochester, the later cut-off times and lower cartage costs would justify use of rail intermodal service to the ports.

11. CSX North-South Routes to the Southeast via the Maryland-Virginia Gateways

In a news release on September 16, 1997, CSX President and CEO A. R. "Pete" Carpenter is quoted as telling members attending a recent Intermodal Association of North America (IANA) conference that "We are committed to opening up opportunities for the intermodal industry. Intermodal traffic will be the growth vehicle for the rail industry for the future." (Underscoring supplied). I agree, but unless CSX and NS "open up opportunities" by providing easily accessed intermodal facilities in the immediate Rochester area and provide truck-competitive north-south rail routes between the Southeast and the region via the Maryland-Virginia Gateways, regional shippers may not be a part of that growth. I will now address how the GTC region has been by-passed in the CSX/NS plans to open up new north-south intermodal corridors.

In the press release cited above, Mr. Carpenter was reported to have pledged to IANA members that CSXT is fully committed to them and their business, telling them "That is why we bought Conrail and that is why we are spending another $500 million to construct a world-class intermodal network that will link the fast growing southeast to the consumer markets in the northeast. At CSXT, we're putting our money where our mouth is in order to win your business." The release goes on to say that the most direct advantage that intermodal shippers will experience from the Conrail deal is new extended single-line service on new major north-south and east-west intermodal routes. (underscoring supplied)

Unfortunately, for shippers in the immediate Rochester area and in most of the GTC region, there will be no new north-south intermodal routes in connection with the CSX. Rochester is well-situated on the CSX east-west service route between Boston/New York and Chicago, via Albany, which connects with the St. Louis Gateway Service Route and the Memphis Gateway Service Route at Cleveland. If CSX would re-establish an intermodal facility in Rochester, shippers could expect to get good service over those single-line routes to and from the Southwest and Southeastern destinations west of Interstate 75. However, as illustrated in CSX map (Figure JWO-3 of Volume 3A of CSX/NS-20), a copy of which is shown in Appendix IV, there is no truck-competitive north-south route between Rochester and destinations in the Southeast east of Interstate 75. Southeastern intermodal traffic from Rochester to those destinations would have to travel west some 194 miles to Ashtabula, Ohio, or 248 miles to Cleveland, before heading south. The alternate would be to travel east some 220 miles to Selkirk, NY, thence southeast for another 140 miles to a connection with the congested Northeast corridor in New Jersey, before heading south to the Maryland-Virginia Gateways. Such routes would hardly provide the required second morning delivery at points in East Tennessee, North Carolina, South Carolina, Virginia, and north Georgia, nor second and third morning on fruits and vegetables from South Carolina, south Georgia, and Florida.

12. NS North-South Routes to the Southeast via the Maryland-Virginia Gateways

The proposed NS operating plan also makes no provision for a north-south route that would provide a truck-competitive operation between the Rochester area and the Southeast. Under the proposed plan, the NS, as noted, would operate the Southern Tier Line between Buffalo and

Newark. Except at Buffalo and at New Jersey junctions with the Northeast Corridor and the post-transaction plan for NS to have haulage rights with the CP through Binghamton, there are no through Conrail outlets to the southeast from the Southern Tier.

In 1989, Conrail abandoned the old NYC Newberry Junction route between its Southern Tier connection at Corning (Gang Mills), on the north and Jersey Shore on the south, where the line connected with the Buffalo-Olean-Williamsport-Harrisburg line. In the light of Conrail's concentration on east-west traffic and lack of interest in north-south traffic via the Southern Tier, plus the fact the line had little potential for generating on-line traffic, one can understand why Conrail abandoned the line. However, some have questioned the wisdom of the abandonment, claiming a combination of the Southern Tier Line from Buffalo to Gang Mills and the abandoned route, with its virtually level grades, would make a better connection to Harrisburg than the Buffalo Line through Olean, with its 2.6% grade northbound and 2% southbound, at Keating, PA. The Wellsboro and Corning Railroad (WCOR) now operates between Gang Mills and Wellsboro, PA, but the remaining 63 miles to Jersey Shore are being converted to a hiking trail. However, I understand the entire right-of-way has been "rail banked", under an agreement between Conrail and the Commonwealth of Pennsylvania. In any event, this route is the shortest route between Rochester and Harrisburg and the Hagerstown Gateway.

The outlet via Waverly, NY, has also been closed as a through route since Conrail sold a segment of its line between Mehoopany, PA and Pittston to the Reading & Northern Railroad

(RBMN). I am not sure the Vossburg Tunnel is cleared for double-stacks. This and the fact the interchange between the RBMN and CP (D&H) would require a complex switching maneuver to accomplish, would make through service difficult between the Southern Tier and Harrisburg via Waverly and the CP (D&H) route through Sunbury, PA.

NS officials have pointed to the Buffalo Line as providing a viable outlet to the Southeast, which it may be on traffic originating in the immediate Buffalo area, or delivered to the line from rail connections in Buffalo. However, it is not a viable route for truck-competitive intermodal traffic from the Rochester area, as the following will illustrate.

From time to time, we have encouraged the RSR to consider building a facility for handling trailers and containers at their Brooks Avenue Yard in Rochester, for use in connection with CP and more recently, with the NS. I am now advised RSR expects to have a terminal for use with intermodal traffic that would be interchanged to NS at Silver Springs and Buffalo. Such traffic would be handled in conventional train service for the 50 miles from Rochester to Silver Springs, then moved another 56 miles in conventional train service via CP to Buffalo, with RSR using its haulage rights with CP.[20] At Buffalo, the Rochester traffic would be interchanged to the NS and added to intermodal trains the NS proposes to operate between Buffalo and

[20] It is not likely westbound NS intermodal trains operating over the Southern Tier Line would stop at Silver Springs to pick up Buffalo traffic, however, the potential volume could justify stopping eastbound intermodal trains for Rochester-originated domestic and export intermodal traffic consigned to Middle Atlantic and New England destinations and the North Atlantic ports of Boston, New York/New Jersey, and Philadelphia.

Harrisburg. It is 310 miles from Buffalo to Enola Yard, near Harrisburg, via this route, which, as noted, has one of the steepest, if not the steepest, grades on Conrail. The additional 106 miles between Rochester and Buffalo makes a total distance of 416 rail miles from Rochester to Harrisburg, via Buffalo and the Buffalo Line. In order to make connection with afternoon or evening NS intermodal trains from Buffalo, the Rochester cut-off time would have to be established too early to be practical. A later cut-off would mean shipments would not leave Buffalo until the next day, which would mean third day delivery at best to destinations in the Southeast east of I-75. That is not truck-competitive.

An alternate to this would be for local shippers to by-pass the RSR and truck the trailers and containers directly to the NS intermodal facility in Buffalo, but, as is the case today, this would also result in earlier cut-off times, as well as the additional over-the-road trucking expense that would not be incurred if the intermodal terminal were located in Rochester. In either event, moving shipments to Buffalo via truck or rail would make the intermodal option to the Southeast less attractive via this route.

One solution that would make the Buffalo-Olean-Williamsport-Harrisburg route more attractive would be re-opening the 33-mile segment of the RSR line between Silver Springs and Machias, NY, where it would connect with the Buffalo Line. RSR has discontinued service on this segment, but has preserved the right-of-way. Traffic from Rochester using this route would by-pass Buffalo and the total distance to Harrisburg would be reduced from 416 miles via Buffalo to 348 miles via Machias.

Another option that should be considered is to move Rochester-originated traffic eastbound from Silver Springs on NS intermodal trains, for set off in Binghamton. From Binghamton, the traffic could be handled in intermodal trains the NS expects to operate between Albany and Harrisburg via Binghamton, over the CP route through Sunbury. With proper scheduling, it could beat the Buffalo route.

In terms of distance and grades, the Corning-Wellsboro-Jersey Shore connection to the Buffalo Line is the best choice. In telephone calls and in a letter dated April 7, 1997, (See Appendix V), I have called attention to this route, but have had no response. I recognize that, in spite of the fact the ROW is "rail-banked", the building of 63 miles of new railroad and upgrading the WCOR route is no small venture, but the Board, in establishing rail routes and patterns for years to come, should order a thorough investigation of this option for providing a north-south route between the GTC region and the Southeast.

13. A New NS Intermodal Terminal on the New York State Thruway

While it would be in direct competition with an RSR intermodal facility in Rochester, another opportunity for NS to provide the Rochester region with north-south intermodal service would be the opening of an NS intermodal facility at Exit 42 on I-90, the New York State Thruway. According to the proposed operating plan, NS will operate the Conrail Corning Secondary between Corning and Lyons, via Geneva, NY. Exit 42 is the Geneva-Lyons exit for New York

State Route 14. The Corning Secondary Line parallels Route 14 and the railroad and the highway go under the I-90 Thruway at Exit 42. There appears to be ample room for a facility. In fact, there is already a substantial parking area that is used for staging common and private carrier trucks.

Exit 42 is approximately 7 rail miles north of Geneva and 64 miles north of the connection with the Southern Tier Line at CP East at Corning. From the Corning connection, it is 3 miles to Gang Mills, 35 miles to Waverly, and 77 miles to Binghamton. More importantly, Exit 42 is only 38 miles by an interstate highway from Rochester proper, or roughly 45 minutes travel time. It is approximately 30 miles from Canandaigua, home of Canandaigua Wine, a large user of intermodal service.

The GTC Position notes the importance of protecting the RSR route between Rochester and Silver Springs to provide a connection with an NS operation over the Southern Tier Line (Item 5 in Section 7 (GTC Position) and Footnotes 9 and 10). For this reason, I am reluctant to suggest an NS intermodal facility at Exit 42 that would be in direct competition with an RSR terminal at its Brooks Avenue location in a Rochester suburb. However, it should be noted that the RSR location would have the advantage of being more conveniently located to shippers in the immediate Rochester area. If the Board should order inclusion of the RSR in the NS, or in the alternate, NS becomes a full and active partner with the RSR in seeking intermodal business in the Rochester region and establishing competitive schedules, a facility at Exit 42 may not be necessary. Nevertheless, it is an option that the STB should ask NS to consider in evaluating the need for conversion of truck traffic to rail service and the availability of north-south routes to the Southeast from the GTC region.

For a better understanding of the routes described above, I am attaching a map of the routes as Appendix VI. For a convenient comparison of the total rail miles from an RSR facility in Rochester and an NS facility at Exit 42 on the New York State Thruway, please see the table in Appendix VII. Please note the distances from both Rochester and Exit 42 to Harrisburg via Gang Mills and Jersey Shore are less than the distances via any of the other routes.

14. Reciprocal Switching and Switching Charges in Rochester

In Section 4 (Description of Existing Rail Service) and in Footnote 11, I call attention to the problem of switching charges to Rochester industries served exclusively by Conrail. Conrail and RSR have a reciprocal switching agreement for shipments originating or terminating at shippers listed in their respective tariffs. The current switching charge is $390[21] per car. The same charge applies to 38 different industries listed in the Item as industries switched exclusively by Conrail, which will become a CSX responsibility if the Applicants proposal is approved. The same charge applies, regardless of distance from Conrail's Goodman Street Yard, or the time required to perform the switch. The charge applies equally to a carload of lumber switched from RSR to Otis Lumber Company, whose siding can be seen from the trainmaster's office in the Tower at Goodman Street, and carloads of coal switched from RSR to the RG&E Russell Station plant,

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[21] This charge is published in Item 18160, Conrail Switching and Accessorial Services Tariff ICC CR 8001-D and RSR Switching Tariff ICC RSR 8001.

some 15 miles round-trip north of Goodman Street. Until the operation at RG&E BeeBee plant was down-sized, ending the need for it to receive carloads of coal, the same charge also applied to coal delivered at BeeBee, which required a round-trip switching run of over 30 miles.

Obviously, the $390 charge is not based on the cost to switch the different industries. I have no quarrel with the idea of grouping several industries and applying the same switching charge, provided the grouping is reasonable and recognizes the differences in the degree of the cost of the service. For example, Otis Lumber should not be grouped with RG&E at Russell Station. There are other similar disparities that should be considered in establishing the switching groups.

We do not believe switching charges should be used to generate revenue, nor should they be used to discourage competitive traffic. We believe they should be set at a level that will cover variable cost, with a revenue to cost ratio not exceeding 120%. Consequently, we ask the Board to order the CSX to examine reciprocal switching charges in the Rochester District and adjust the level of the charges accordingly.

15. Amtrak Service

Efficient handling of Amtrak trains and other passenger service by CSX is important to the many people in the region who use Amtrak for business and pleasure. The tracks utilized by Amtrak, such as the Water Level Route, should be maintained to standards that will protect current or better schedules and a conscientious effort must be made by operations and dispatc' ng personnel to run the Amtrak trains on time. Conrail's record in that regard has not been good, although there has been improvement in recent months, due to the diligent efforts of Amtrak Empire Corridor personnel.

Track should be maintained for a minimum of 79 MPH in segments without automatic train control and 90 MPH or higher where such protection exists. Without public notice, on January 1, 1996, Conrail down-graded its track between Buffalo and Schenectady from Class 5 track to Class 4. Fortunately, this has not had a significant effect on Amtrak schedules thus far, but with re-introduction of rebuilt and improved Turbo-Trains to the Empire Corridor, Class 5 track or better will become exceedingly important. The CSX has announced plans to restore the track to Class 5 and has said at local meetings that it will cooperate with efforts of Amtrak and the New York State Department of Transportation to improve Amtrak schedules. The present level of Amtrak service on the Empire Corridor must be accommodated with priority dispatching and additional schedules should be accommodated if possible.

Amtrak service is important to New York State. The spacing between major cities on the Water Level Route promotes the use of passenger rail instead of airline service for the relatively short distances. Over 115,000 passengers, from numerous points in the region, boarded Amtrak trains in Rochester in 1995 and the number is steadily increasing, with growth rates of 6 to 8% for the Empire Corridor.

The STB is reminded of the responsibility by law and by tradition for the freight railroads to provide the appropriate priorities to passenger service. In the minds of most rail passengers, there is no distinction between the freight railroads and Amtrak. If passenger service is poor, it reflects on rail freight service and railroads in general. That is why so many American railroads of the past made their passenger trains the showcase for their railroad. True, with the advent of better highways and competition from the family car and the airlines, passenger rail became a financial burden, hence, the creation of Amtrak. In my opinion, the idea of showcasing your railroad by providing good Amtrak service is still valid.

Commingling high speed passenger trains and freight trains will be difficult. At some future date, if not at present, New York State and the nation must face the fact that state and federal funds must be spent to build high-speed tracks that will be dedicated to providing fast, frequent, and dependable passenger service as an alternative to the airlines. In the meantime, we ask that the STB take note of the importance of Amtrak service and call attention the need for compatibility between Amtrak and CSX and NS.

16. Summation

In conclusion, I will re-state the GTC position and make comments and, as necessary, request conditions for each of the eight points:

A. There should be separate ownership [i.e., CSX or NS] of the Conrail Main Line between Buffalo and New York and the Southern Tier Line.

Comments: The proposed division of Conrail in New York State described by the Applicants meets this GTC condition, with CSX to operate the Conrail Main Line and NS to operate over the Southern Tier Line. Since it provides the foundation for the competitive balance GTC is seeking in the region and in New York State, GTC supports the proposed plan. However, as previously stated, simply dividing Conrail between CSX and NS without correcting problems that have evolved during the 21 years of Conrail domination is not enough.

B. There should be truck-competitive north-south routes to the Southeast via CSX at Potomac Yards, VA and via the NS connection at Hagerstown, MD, from a Southern Tier junction, such as Binghamton, Corning (Gang Mills), or Waverly.

Comments: In Sections 11 and 12 herein, I have discussed the lack of north-south routes from Rochester via CSX and NS. Based on responses received from area intermodal shippers, there is a definite need for competitive north-south routes to the Southeast from the Southern Tier, via Harrisburg and the Virginia-Maryland Gateways. Unless such routes are made available from and to the Rochester region, shippers in the region will be at a competitive disadvantage with shippers in other parts of the State and the Northeast. As a condition of approval, we ask the Board to require the NS to report to the Board how it proposes to offer truck-competitive north-south service from the Southern Tier to and from the Rochester region, keeping in mind that, to be competitive, second morning would be required to such points as Atlanta and to points east of I-75 and north of Atlanta. In this connection, we ask that the Board order the NS to examine and report its findings on the feasibility of re-opening the Gang Mills-Jersey Shore connection with the Buffalo Line, via WCOR to Wellsboro Junction and the 63-mile "rail banked" ROW beyond. Such a study would include a survey of the potential conventional and intermodal north-south traffic in the GTC region and, in addition, would compare operating expenses for through traffic moving via Buffalo and the Southern Tier Line through Gang Mills and Jersey Shore to Harrisburg, versus handling the same traffic via Olean and Keating.

C. The need to establish intermodal facilities in the region to convert more traffic to rail intermodal because of the projected increase in truck traffic and the corresponding impact on the region's transportation infrastructure.

Comments: Beginning in Section 10, we discuss the removal of the Conrail intermodal facilities in Rochester in 1992, despite the region's strong position in export business. Removal of the terminal has resulted in a substantial diversion of international traffic to truck. Generally, truck service is more expensive than rail intermodal, consequently, Rochester shippers are at a competitive disadvantage with shippers who have relatively convenient access to intermodal facilities for less cost. Moreover, removal of the facilities comes at a time when GTC, as the MPO for the region, under the mandate of ISTEA and facing substantial projected increases in the volume of truck traffic, is seeking to convert more traffic to rail service to make better use of the existing transportation infrastructure.

For Rochester shippers to have the same access to intermodal facilities as other parts of the State and the Northeast, we ask the Board to order CSX to examine the merits of re-establishing an intermodal terminal in Rochester to allow the region's shippers to use the proposed Boston/New York-Chicago Gateway Service Route, the St. Louis Gateway Service Route, and the Memphis Gateway Service Route. In support of this, we are attaching, as Appendix VIII, a letter from Trailer Transport, Inc. of Rochester, which is representative of the kinds of comments we have received from others.

D. There should be competitive access to the Pennsylvania and West Virginia coal fields that supply RG&E, Niagara Mohawk, NYSEG, Kodak, and others with coal.

Comments: The Monongahela Usage Agreement proposed by the Applicants meets this GTC condition, however, we ask the Board to establish a procedure for monitoring the Agreement to ensure fair and impartial enforcement of its provisions.

E. The RSR route between Rochester and Silver Springs should be protected to link the Conrail Main Line to the Southern Tier Line.

Comments: As noted in Footnote 10, Genesee & Wyoming Inc., through its subsidiaries, BPRR and ALY, have filed a Description of Anticipated Responsive Application that, as one option, calls for their inclusion in either the CSX or NS. Their inclusion would impact the RSR by leaving it to stand alone, with the practical effect being to make Rochester a 2 to 1 city. If the Board honors the request for

BPRR and ALY and orders their inclusion with either CSX or NS, we ask that it recognize the importance of RSR in providing rail service that is competitive to CSX in Rochester. In the event an order is given to include the petitioning carriers in either CSX or NS, we ask that RSR be included as a branch line of the NS from the Southern Tier connection at Silver Springs.

In the alternate, if RSR continues to function as a separate railroad, the NS must join it as a full partner in offering coordinated schedules and competitive rates for conventional and intermodal traffic via Silver Springs and vigorously compete with the CSX Main Line route. If studies show that an intermodal terminal at Exit 42 is not feasible or practical, the NS must support efforts by RSR to build and operate truck-competitive intermodal facilities in Rochester.

F. The restrictions imposed on short-lines by Conrail against interchanging to competing carriers should be removed, to allow full participation by these short-lines in providing competitive rail service to regional shippers.

Comments: We ask the Board to honor the request of the LAL for authority to purchase from CSX the Genesee Junction Yard, located in the Rochester suburb of Chili, at a price to be negotiated or set by the Board, which will give LAL a direct interchange with the RSR and through RSR, a connection with the NS at Silver Springs. As an indication of the support this has in the region, I am attaching

Appendices IX and X, which are copies of resolutions of support from the Livingston County Board of Supervisors and the Livingston County Industrial Development Agency. We also ask that the Board honor the request of RSR and authorize its use of CSX tracks in Genesee Junction Yard, in order to make a direct connection with the LAL.

We have pointed out that FRRR's sole connection is Conrail, which will become CSX if the application is approved. Attached, as Appendix XI, is a letter from the president of the GVT, owner of the FRRR, it which he points out that grain shipped from Knowlesville to a point now on Conrail, but which will become an NS point, will now require the use of a rate based on a three-line haul, i.e., FRRR-CSX-NS, which could leave the shipper in jeopardy of losing market share and FRRR in jeopardy of losing badly needed business. More importantly, it will mean Orleans County farmers could lose an outlet for their products. This is but one example of the need for the FRRR to have direct access to other carriers. GVT seeks open access for CSX and NS to all short-lines in the Buffalo-Niagara Frontier area. Since this is in line with our position to remove interchange restrictions imposed on short-line railroads in order to enhance competitive rail service and spur economic development, GTC supports that view.

G. There should be access by both railroads to the Port of New York and other North Atlantic ports.

Comments: The proposed division of Conrail and method of operation in the Shared Assets Areas at the ports meet this GTC condition, provided there is fair and impartial enforcement of the operating agreements that will provide equal access.

H. The importance of Amtrak to the region.

Comments: We ask the Board to remind CSX and NS of their obligation under federal law to give priority handling to Amtrak trains operating over the segments of Conrail each will acquire and that tracks should be maintained to Class 5 or better standards.

17. Conclusion

In concluding this statement, I ask these rhetorical questions. Why should an MPO plan for the movement of goods and why is an MPO participating in this proceeding? The simplest answer is that the efficient and economical movement of goods and materials to, from, and within the region is vital to the health of the regional economy. Competitive rail service is just one of the tools we need to compete in the global economy. For a section of the country that exports $14 billion worth of goods and service, that statement is not a platitude.

Moreover, unless we maintain and improve the freight transportation network we have, it could become difficult to maintain the standard of living we enjoy. Most of us take for granted that we will find grapefruit, oranges, and melons at our local supermarket. We are accustomed to finding fruits and vegetables and other foodstuffs not native to Western New York. We seldom think about the logistics involved in having North Carolina-made furniture at our favorite furniture outlet, or Pacific Rim computers and other electronic marvels at the discount stores. Few of us know, or care, about the vital role the railroads play in having electricity available when we plug in a hair dryer, or a respirator at the hospital, or flick the switch to light a Christmas tree.

These are just a few examples of the way the movement of goods affects our daily lives. There are many others. That is why the GTC and local companies are vitally interested in what happens to Conrail and rail transportation in this region. (See statement from Eastman Kodak Company in Appendix XII.)

When I was authorized to represent GTC in this proceeding, it was with the knowledge that I would continue the GTC policy of seeking the views of others in the region. To illustrate that the views expressed herein are representative of local thinking, I am attaching, as Appendix XIII, copies of an article and an editorial from the local Gannett paper, the DEMOCRAT & CHRONICLE, which were published in response to a well-attended round-table meeting I convened to hear CSX representatives, and a subsequent CSX meeting with the editorial board. As the editorial states, the GTC supports the proposed division of Conrail between CSX and NS, but asks the STB to take the opportunity to "make (the) Conrail deal better."

I have used the transportation contacts made during our regular goods movement planning program to find out what they are thinking. The foregoing comments and requests represent those views. It is as close to "grass roots" as you can get. Admittedly, I have translated some of their concerns and concepts into concrete solutions and recommendations that come from 55 years of close association with the railroad industry. I ask that the STB give them careful consideration.

When Conrail was created 21 years ago, the region's shippers supported it to keep it alive. It needed all the help it could get, but times and Conrail's philosophy have changed. When CSX and NS acquire Conrail, they should not be allowed to make the same mistakes. I urge the STB to seize this opportunity to correct the problems that have evolved and produce a plan that will give the territory east of the Mississippi River, the Northeast, New York State, and the GTC region, a truly competitive rail system.

Respectfully submitted for the

GENESEE TRANSPORTATION COUNCIL

H Douglas Midkiff

H. Douglas Midkiff,
Transportation Specialist

I, H. Douglas Midkiff, declare, under penalty of perjury, that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement.

By H Douglas Midkiff

H. Douglas Midkiff, Transportation Specialist, Genesee Transporation Council

WP 6.1 FILE GTC2A

CERTIFICATE OF SERVICE

I, H. Douglas Midkiff, hereby certify that on October 21, 1997, I have mailed by first class mail, postage prepaid, to the parties listed below and to all parties of record listed on the Service List in Decision 21, dated August 19, 1997, as amended in Decision 43, October 7, 1997, copies of the VERIFIED STATEMENT of H. DOUGLAS MIDKIFF, offering comments and requests for conditions by the GENESEE TRANSPORTATION COUNCIL, in STB Finance Docket 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.*

H. Douglas Midkiff
GENESEE TRANSPORTATION COUNCIL

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Constance L. Abrams
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Philadelphia, PA 19103

APPENDIX I

GTC POLICY COMMITTEE

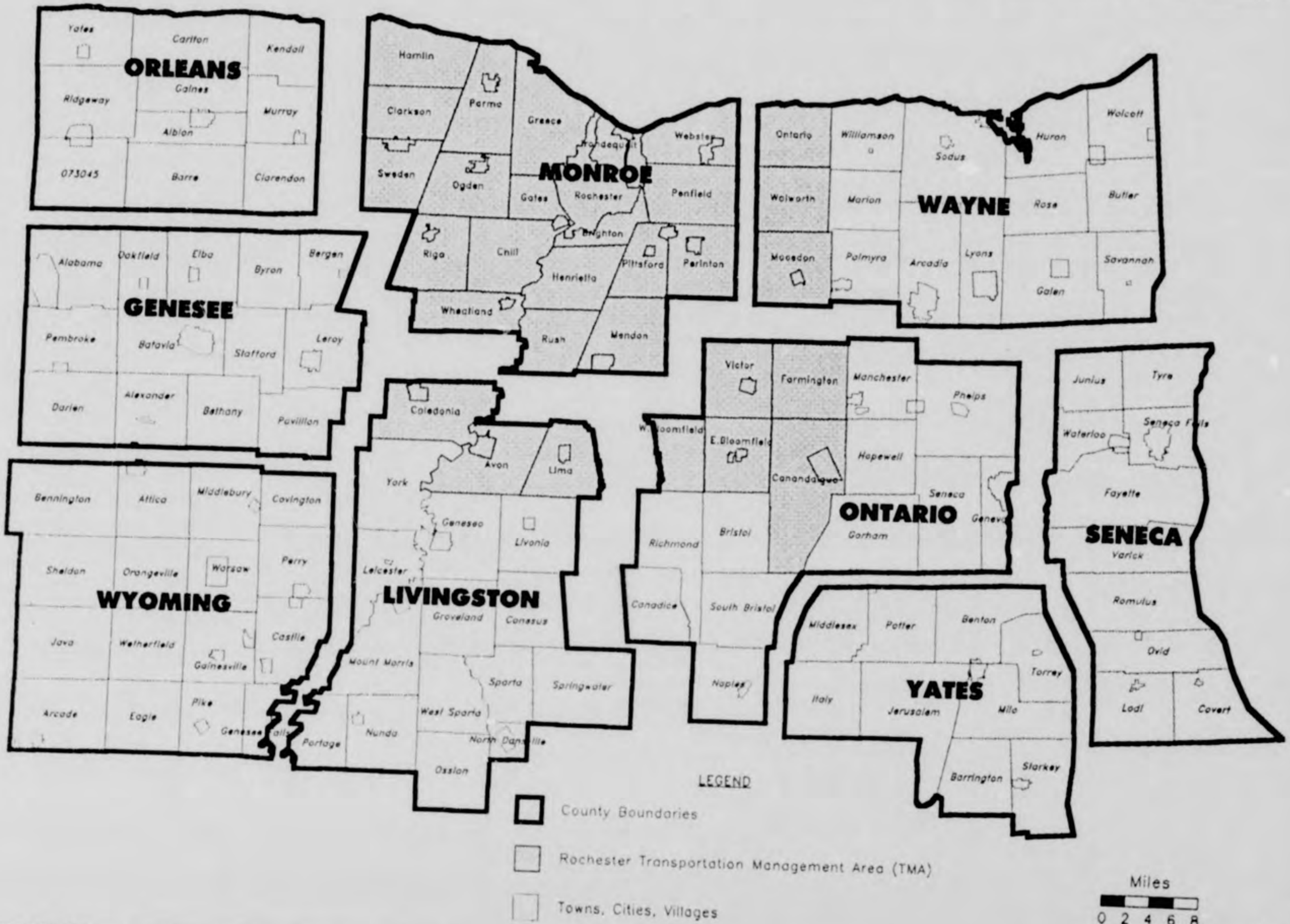
Roger Triftshauser, Genesee Co. Legislature
Dennis House, Livingston Co. Board of Supervisors
John T. Auberger, Monroe Co. Legislature
John D. Doyle, Monroe County Executive
Bonnie Coles, Monroe County Planning Board
Daniel C. Hogan, Monroe County At-Large
Keith E. Griswold, Monroe County At-Large
William Kelly, Monroe Co. Assoc. of Town Supervisors
Raymond Barend, Ontario Co. Board of Supervisors
Marcia B. Touhey, Orleans County Legislature
Raymond Zajac, Seneca Co. Board of Supervisors
Marvin Decker, Wayne Co. Board of Supervisors
Paul Agan, Wyoming Co. Board of Supervisors
Robert H. Multer, Yates County Legislature
William A. Johnson, Jr., Mayor, City of Rochester
Lois Giess, Rochester City Council
Elizabeth Wallace, Rochester City Planning Council
Juanita Alvarez, City of Rochester At-Large
Wilfred S. Brooks, Genesee/Finger Lakes Regional Planning Council (G/FLRPC)
William R. Nojay, Rochester-Genesee Regional Transportation Authority (R-GRTA)
John Cahill, NYS Dept. of Environmental Conservation
Lewis M. Gurley, Region 4, NYS Dept. of Transportation
John R. Platt, NYS Thruway Authority
Charles A. Gargano, Empire State Development Corp.

Representatives (non-voting) of Federal Aviation, Highway, and Transit Administrations

APPENDIX II

APPENDIX II

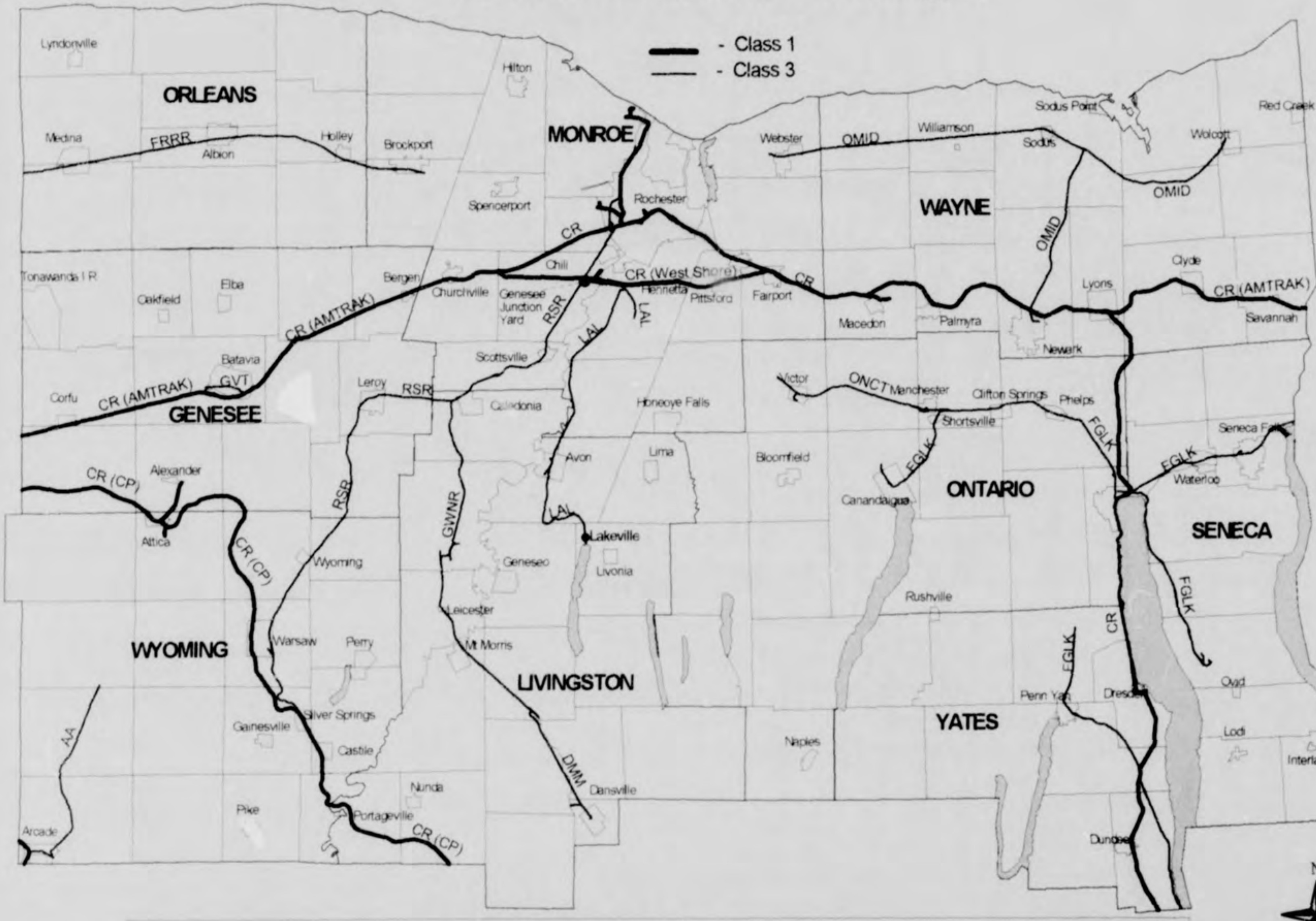
Rochester Transportation Management Area and GTC Nine County Planning Region



2/95 GTC

APPENDIX II

Active Railroads in the GTC Region



Railroad Names

AA - Arcade and Attica	DMM - Dansville and Mt. Morris	GVT - Genesee Valley Transportation	ONCT - Ontario Central
CP - Canadian Pacific	FGLK - Finger Lakes Railway	GWNR-Genesee and Wyoming Railroad	OMID - Ontario Midland
CR - Conrail	FRRR - Falls Road Railroad	LAL - Livonia, Avon, and Lakeville Railroad	RSR - Rochester and Southern

Genesee Tranportation Council
Rochester, NY

APPENDIX III

Appendix IV

CSXT Service to Eastern Ports

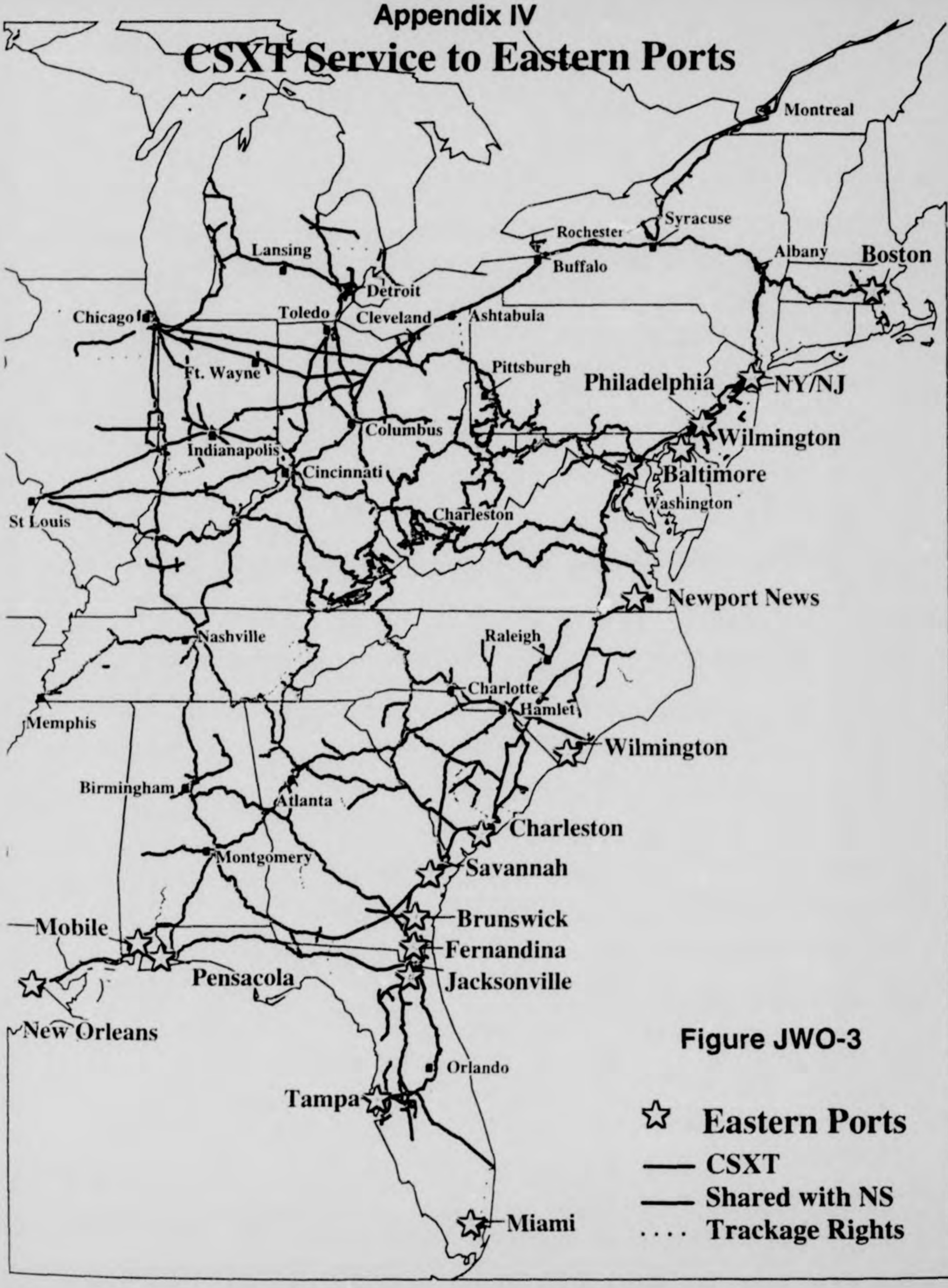


Figure JWO-3

APPENDIX V

GENESEE TRANSPORTATION COUNCIL

April 7, 1997

Mr. Steve Eisenach, Director
Strategic Planning Department
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510-9207

Dear Steve:

This to confirm our telephone conversation last week and to emphasize the importance of the Rochester area having an outlet to the Southeast without back-tracking through congested Buffalo.

Some have said that using the present Conrail Line between Buffalo and Harrisburg, via Olean, Keating, Jersey Shore, and Williamsport, would provide the needed outlet to Hagerstown. I don't agree. Handling traffic via this route would add at least a day and possibly two to the transit time between Hagerstown and this area, which would put you in a poor position to compete for traffic to and from East Tennessee, Florida, South Georgia, the Carolinas, and Virginia.

From this area, you need a more direct route [illegible] Harrisburg and Hagerstown which would leave the Southern Tier Line at a point east of Hornell. I suggested that you investigate the feasibility of buying, or using, the Wellsboro and Corning from Gang Mills to what used to be Wellsboro Junction, then rebuild a 55-60-mile line from that point to reconnect with the Buffalo Line at Jersey Shore. This is the old New York Central route from Newberry Junction to Lyons, NY, via Gang Mills and Corning. The line between Wellsboro Junction and Jersey Shore was abandoned by Conrail in the late 80's. It is now used as a trail, but I believe it was "Rail Banked" to preserve it for possible future freight service. I don't know anything about its ruling grades, but it couldn't be any worse than the 2.6% on the Buffalo Line near Keating.

I know you probably have hundreds of requests to do this or do that and I appreciate your predicament. Nevertheless, I wanted to call to your attention a good route between this area and the above southeastern points that would open up opportunities for conventional and intermodal traffic that haven't been available for many years.

Thanks for keeping me informed.

Sincerely yours,

Doug Midkiff

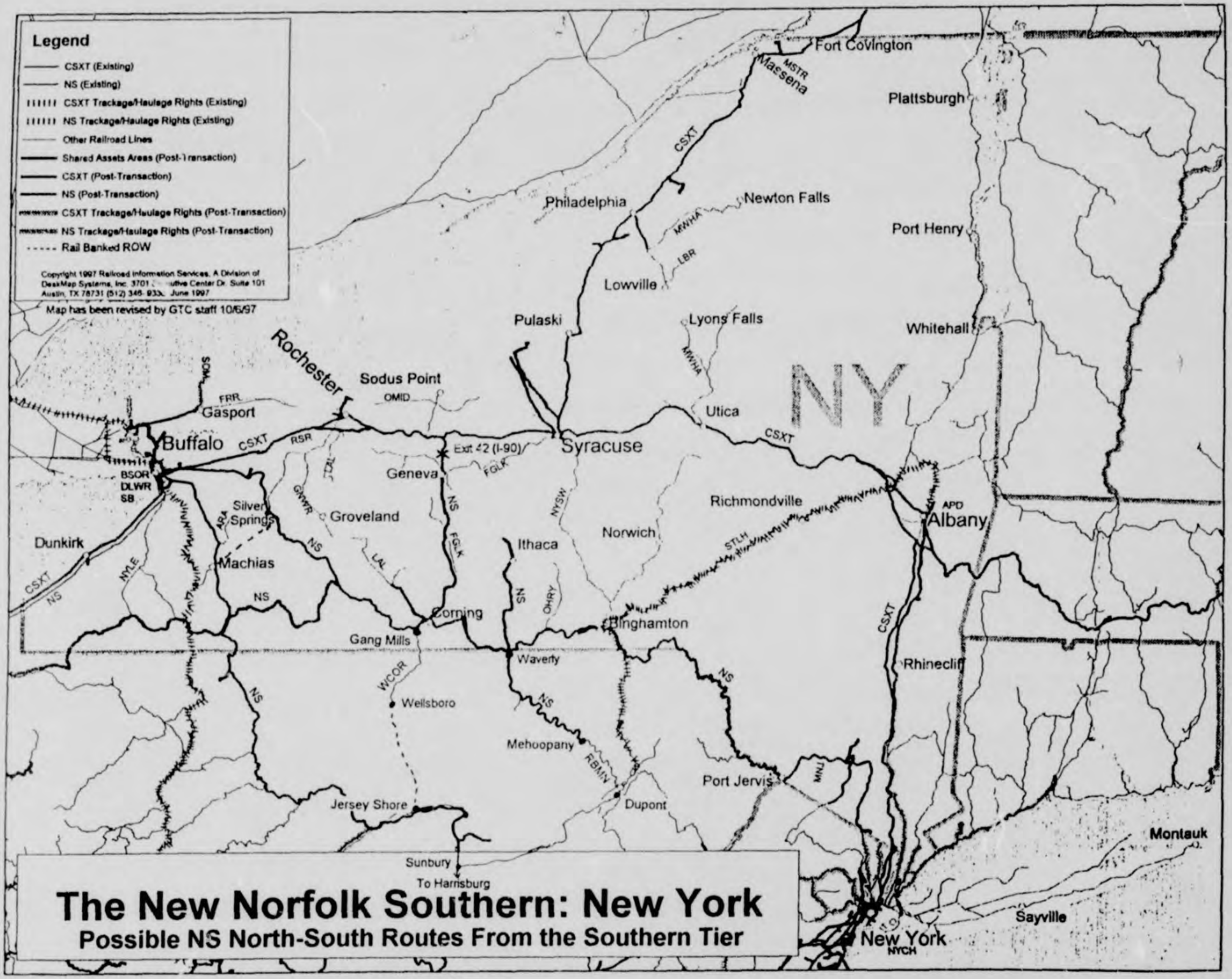
Doug Midkiff
Freight Transportation Planner

HDM/wp

65 West Broad Street • Suite 101 • Rochester, New York 14614-2288 • 716-232-6240 • Fax 716-262-3106 Chairman: *Marvin E. Decker*; Central Staff Director: *Nathan L. Jaschik*

City of Rochester • Counties of: Genesee, Livingston, Monroe, Ontario, Orleans, Seneca, Wayne, Wyoming, and Yates
Genesee/Finger Lakes Regional Planning Council • Rochester-Genesee Regional Transportation Authority • State of New York

Appendix VI



The New Norfolk Southern: New York
Possible NS North-South Routes From the Southern Tier

Rail Distance to Harrisburg, PA from RSR Rochester, NY and New NS Facility at NYS Thruway Exit 42

Route	Rail Milage
*From Rochester via: RSR-Silver Springs-NS-Buffalo-NS via Buffalo Line	416
RSR-Machias- thence via NS Buffalo Line	348
RSR-Silver Springs-NS-Gang Mills-WCOR-Wellsboro Jct-thence new construction on rail-banked ROW to Jersey Shore, thence via NS Buffalo Line	329
RSR-Silver Springs-NS-Waverly-NS-Mehoopany-RBMN Trackage Rights-Dupont-CP Trackage Rights to Sunbury, thence via Buffalo Line	384
RSR-Silver Springs-NS-Binghamton-CP Trackage Rights to Sunbury, thence via Buffalo Line	394
*From Exit 42 NYS Thruway via: NS- Gang Mills-WCOR-thence new construction on rail-banked ROW to Jersey Shore, thence via Buffalo Line	266
NS-CP East Corning-NS-Waverly-NS-Mehoopany-RBMN Trackage Rights to Dupont-CP Trackage Rights to Sunbury, thence via Buffalo Line	310
NS-CP East Corning-NS-Binghamton-CP Trackage Rights to Sunbury, thence via Buffalo Line	328

*The RSR Brooks Avenue Yard, the site of the proposed terminal, is in the southwestern part of Rochester in the suburb of Gates, one mile from an exit of I-390, approximately 4 highway miles from the center of the city. Exit 42 is approximately 38 highway miles from center city via I-490 and I-90.

APPENDIX VIII

APPENDIX VIII

TTC
TRAILER TRANSPORT SYSTEMS, INC.

MAIN OFFICE - ROCHESTER
900 Jefferson Rd. - Admin. Bldg.
Rochester, New York 14623
Phone: (716) 427-2080
Fax: (716) 427-0559

SYRACUSE
8149 Morgan Road
Clay, New York 13041
Phone: (315) 652-4600
Fax: (315) 652-1874

BUFFALO
13290 Colonial Woods
Alden, New York 14004
Phone: (716) 937-4738

PHILADELPHIA
1426 Oakwood Road
Coatesville, PA 19320
Phone: (610) 384-5082
Fax: (610) 384-2888

October 6, 1997

Mr. H. Douglas Midkiff, Transportation Specialist
Genesee Transportation Council
65 West Broad Street, Suite 101
Rochester, NY 14614-2210

Re: Finance Docket 33388, <u>CSX Corporation and CSX Transportation Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company - Control and Operating Lease/Agreements - Conrail, Inc. and Consolidated Rail Corp.</u>

Dear Mr. Midkiff:

We are pleased the Genesee Transportation Council is a Party of Record in the above referenced proceedings. The GTC's participation in behalf of the nine county region it serves gives us the opportunity to express our support, in principle, for the manner in which CSX and NS have agreed to divide Conrail, as described in the joint application filed in the above referenced proceeding.

Trailer Transport Systems, Inc. is an Intermodal Marketing Company (IMC) headquartered in Rochester, NY with offices in Buffalo and Syracuse. As and IMC we have volume contracts with all the major rail carriers, including CR, CSX, NS. We move thousands of loads comprised of various commodities throughout the country annually.

The Rochester area has been without a local intermodal facility since Conrail closed it's ramp back in the early nineties. As a result we have more trucks on the roads and highways of the area, and less competition for truckload traffic, hence, more stress on the infrastructure and higher rates for shippers and receivers in this area. The long, expensive drays to either Buffalo (NS) or Syracuse (CR) intermodal facilities do not offer a competitive rate or service option. A local intermodal facility would attract thousands of long-haul transcontinental truckloads which now move via highway.

I, David Buschner, declare under penalty of perjury that the foregoing is true and correct. Further I certify that I am qualified and authorized to file this verified statement.

Respectfully submitted,

David Buschner

David Buschner
President

DBB/ms

RECEIVED
OCT 7 1997
Genesee Transportation Council

TIA
Transportation Intermediaries Association
MEMBER

INTERMODAL SPECIALISTS
ICC LICENSED FREIGHT BROKER LIC. MC 170574

IANA
INTERMODAL ASSOCIATION OF NORTH AMERICA
MEMBER

APPENDIX IX

LIVINGSTON COUNTY
BOARD OF SUPERVISORS
Livingston County Government Center
6 Court Street, Room 302
Geneseo, New York 14454

(716) 243-7030
Fax (716) 243-7045

Dennis R. House
Chairman

Virginia O. Amico
Clerk of the Board

May 29, 1997

Mr. Bill Burke
Livonia, Avon & Lakeville Railroad
3637 Rochester Road
Lakeville, NY 14480

Dear Mr. Burke:

Enclosed please find certified resolution(s) adopted by the Livingston County Board of Supervisors at their meeting on Wednesday, May 28, 1997.

Res. No(s). 97-168

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

Sincerely,

Virginia O. Amico

Virginia O. Amico
Clerk of the Board

Enc.

APPENDIX IX
(CONT'D)

County of Livingston
Geneseo, New York 14454
Board of Supervisors

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

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

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

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

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

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

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

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

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

Dated at Geneseo, New York
May 28, 1997

Richard J. Essler
RICHARD J. ESSLER, CHAIRMAN

Emery Jaeger
EMERY JAEGER

James E. Layland
JAMES E. LAYLAND

LIVINGSTON COUNTY
Board of Supervisors
GENESEO, NEW YORK

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

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

Virginia O'Amico
Clerk of the Board

APPENDIX X

LIVINGSTON COUNTY
INDUSTRIAL DEVELOPMENT AGENCY

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

GEORGE TRABER III
CHAIRMAN

RAYMOND SCIARRINO
COUNSEL

PATRICK ROUNTREE
DIRECTOR

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

June 10, 1997

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

Dear Mr. Burt:

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

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

Sincerely,

Darlene Essler

Darlene Essler
Administrative Assistant

Enclosure

g\ida\0087

APPENDIX X
(CONT'D)

RESOLUTION REGARDING IMPACT OF CONRAIL MERGER ON LIVINGSTON COUNTY RAILROADS

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

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

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

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

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

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

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

Dated at Geneseo, New York
June 5, 1997

g\ida\0080

APPENDIX X
(CONT'D)

Livingston County Chamber of Commerce

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

RESOLUTION : IMPACT OF CONRAIL MERGER ON
LIVINGSTON COUNTY RAILROADS

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

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

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

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

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

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

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

APPENDIX XI

The Lowville & Beaver River Railroad Co.

Mohawk Adirondack & Northern Railroad Corp.

Depew Lancaster & Western Railroad Co., Inc.

GVR Associates Inc.

"the" Delaware-Lackawanna Railroad Co., Inc.

Genesee Valley Transportation Company Inc.

RECEIVED
OCT 6 1997
Genesee Transportation Council

October 1, 1997

Mr. H. Douglas Midkiff, Transportation Specialist
Genesee Transportation Council
65 West Broad Street, Suite 101
Rochester, NY 14614-2210

RE: Finance Docket 33388, CSX Corporation and CSX Transportation Inc., Norfolk Southern Corporation and Norfolk Southern Railway company - Control and Operating Lease/Agreements - Conrail Inc. And Consolidated Rail Corporation

Verified Statement
on behalf of
GVT Rail System
Parent Company of the
Falls Road Railroad Co., Inc.

Dear Mr. Midkiff:

We are pleased to see that the Genesee Transportation Council (GTC) has chosen to become a party of record with the Surface Transportation Board on the issues involved with the division of Conrail by the Norfolk Southern and CSX. Our company supports, in principle, the manner in which the two parties have agreed upon to divide Conrail. However, we now have an opportunity to correct some of the competitive issues that have come about since 1976. When Conrail was created, some 21 years ago, it needed all of the competitive edges it could get, but times and economics have changed. Conrail has evolved into a strong carrier.

The Falls Road Railroad Co., Inc. is a subsidiary of the Western New York based Genesee Valley Transportation Co., Inc. (GVT Rail System), a privately help corporation established in 1989. GVT Rail System has provided industrial development opportunities throughout its growing system, which consists of 5 subsidiary railroads: the Lowville and Beaver River Railroad Company (LBR), Mohawk, Adirondack & Northern Railroad Corp. (MHWA); "the" Delaware-Lackawanna Railroad Co., Inc. (DL); Falls Road Railroad CO., Inc. (FRR) and, Depew, Lancaster & Western Railroad Co., Inc. (DLWR). GVT Rail's 5 railroads encompass 272 miles

8364 Lewiston Rd. Batavia, NY 14020-1245 Phone: 716-343-5398 Fax: 716-343-4369

Appendix XI
(Cont'd)

serving 92 companies which employ 6,400 people.

The FRR is a 45 mile branch line which runs from a Conrail connection at Lockport, Niagara County, New York through Orleans County and terminates in Brockport, Monroe County. It should be noted that the latter two counties are in the area served by the GTC. This line was purchased by GVT Rail in November 1996 from Conrail which is the sole source of interchange.

Our largest shipper, Knowlesville Agway, ships over 500 cars of grain products out from this Orleans County site via a 100% Conrail routing to Delaware, Pennsylvania and Maryland. Following the breakup of Conrail, this routing will become a CSX to NS movement. This structure will leave this Agway mill, and the FRR, in jeopardy of loosing a significant portion of its market share.

We would like to implore the GTC, in concert with the Erie County Industrial Development Agency, to seek open access for NS and CSX to all of the shortlines in the Buffalo-Niagara Frontier area. At a minimum, the FRR would like to see a low reciprocal switch fee established between CSX and NS, therefore guaranteeing that both the FRR and Agway will continue to enjoy the market access we have for this traffic.

I, David J. Monte Verde, declare under penalty of perjury that the foregoing is true and correct, and that I am qualified and authorized to file this verified statement. Executed this 2nd day of October 1997.

Sincerely,

David J. Monte Verde
President

Notary

JEAN M. PECA
Notary Public, State of New York
Qualified in Genesee County
My Commission Expires 9-18-99

DJMV/lm

cc: file

STB FD • 33388 10-21-97 D • 182817 2/2

APPENDIX XII

Kodak

October 7, 1997

Mr. H. Douglas Midkiff, Transportation Specialist
Genesee Transportation Council
65 West Broad Street
Rochester, NY 14614-2210

Re: Finance Docket 33388, CSX C ETS

Eastman Kodak Company, Rochester, NY is pleased to join the efforts of the Genesee Transportation Council (GTC) in support of the above referenced docket. Enclosed you will find the verified statement submitted by KODAK earlier this year to both CSX Corporation and Norfolk Southern Corporation.

As you have stated there are several issues which need to be addressed by the STB to insure the Rochester area realizes the benefits claimed by the parties. Many of the proposals identified in Volume 3 A & B in the Operating Plans are critical to the success of improved service and competition. For example, one of several specific requests by Norfolk Southern ('New Connections 7.1.6', Volume 3B, NS Operating Plan) is for new connections over Buffalo to avoid CP-Draw. CP-Draw has been a bottle neck for years. Approval of this request is important because it will:

1. Improve service to and from Rochester via the Rochester and Southern Railroad at Silver Springs, Norfolk Southern for points in the West.

2. Provide better access to the Southern Tier Route for shipments to the ports, including Rochester shipments interchanged with the Rochester and Southern railroads.

3. Assure the continued utilization and thus financial stability of the Rochester and Southern Railroad. This will provide competitive service for Rochester and additional competition through other interline routes.

APPENDIX XII
(CONT'D)

We strongly support approval of this Docket 33388 with appropriate conditions. It will enhance the position of all businesses utilizing rail services located in the area served by the Genesee Transportation Council. We believe the competition it will foster, will serve as a catalyst for future growth.

Linda Kelley

Linda Kelley
Worldwide Transportation Services
Mgr. Inbound, Rail and Bulk
2400 Mt Read Blvd
Rochester, NY 14650-3061

I Linda L. Kelley, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement.
Executed 23 day of May, 1997

Linda L Kelley

GTC VERSTATEMENT.doc
10/01/97 2:53 PM

APPENDIX XII
(CONT'D)

Kodak

VERIFIED STATEMENT OF LINDA L. KELLEY
On behalf of
EASTMAN KODAK COMPANY
FINANCIAL Docket No. 33388

My name is Linda L. Kelley, I am the Manager of Inbound Transportation, Rail and Bulk, at Eastman Kodak Company.

For the past 15 years I have been responsible for the inbound transportation of raw materials used in our manufacturing process. My responsibilities include but are not limited to negotiating rail rates, rail contracts and maintaining a relationship with the railroads who provide delivery of the raw materials. Our mission is to be the "World Leader in Imaging" and continue to increase our market share as the largest manufacturer of film, chemicals and paper used for taking pictures not only by individual consumers but also in various industries like Publishing, Entertainment, Professional and the Health markets.

Our major manufacturing facility is located in Rochester, NY and rail service is a vital part of our operations. It constitutes 40-50% of the transportation expense of inbound goods. We handle between 10,000 and 15,000 carloads of coal and raw materials at our site each year.

The agreement, reached by the CSX Corporation and the Norfolk Southern Corporation, announced jointly in a press release issued April 8,1997, contained plans of the two railroads, to jointly seek approval of the acquisition and division of the routes and assets of Conrail, Incorporated. Sales Representatives of both railroads have personally described this as the same plan to be presented to the Surface Transportation Board for consideration, Financial Docket 33388. It is their belief, approval will create balanced competition, restore competition where there is only single service today and improve service to customers.

As a user of rail services, the plans proposed by CSX and Norfolk Southern appear to be very encouraging. We support the merger, as long as the details of the application match the information which has so far been published.

The issues important to the continued growth and future competitive position of our company involving the Conrail acquisition and divestiture of the assets, tracks and trackage rights are as follows:

APPENDIX XII
(CONT'D)

1. It is a must that we continue to maintain our present position of dual rail service to Kodak Park from financially sound carriers, which today offer competitive, reliable rail service.

   Today, Kodak is fortunate to be in the unique position of having direct service to our manufacturing facility from two railroads, Conrail and the Rochester and Southern Railroad a short line railroad owned by the Genesee and Wyoming Inc.

   Two railroads offering a choice of competitive routes for shipping or receiving bulk commodities of raw materials to/from points West and Southwest is an advantage we do not want to loose either directly or indirectly due to impacts of the proposal on either railroad.

   It is also important to have the ability to interline our rail shipments to other rail carriers in Buffalo, NY and assurance today's process of 'open access' will continue for the Rochester & Southern Railroad. If CSX will own the Conrail line in Buffalo, these interline connections while providing reliable service must continue to be available at 'reasonable' rates.

2. It will provide an exceptionally favorable opportunity to have two carriers share access to the rail lines serving the Monongahela coal fields located in Pennsylvania and West Virginia. Such shared access was listed in the announced plan.

   This shared access would truly foster competition not previously available. The final determination of the services to be available from the coal mines must include reasonable and equitable joint facility charges at origin.

   Since reasonable and reliable rail transport of coal to our Steam and Electric co-generation plants, the largest such industrial site in New York state, is critical to the economic production of our products, joint access to the coal fields, linked with our present dual delivery capability, assures us of competitive transportation rates for coal and will help our photographic products remain competitive in the marketplace.

APPENDIX XII
(CONT'D)

3. It is important to continue to maintain and improve service for our Import/Export ocean container freight. Our opportunities for container freight may be expanded if both railroads will serve the East coast ports and jointly share operations as indicated in preliminary information.

   Kodak is the 12th largest Importer/Exporter in the United States and the majority of our Imports/Exports are shipped in ocean containers. Railroads are used by Kodak to transport some of these containers to and from coastal ports.

   With an approximate annual volume exceeding 10,000 containers, the potential to expand the usage of rail service resulting from competitive access to the Eastern ports, will help maintain our position as we expand in the global markets.

In closing we are hopeful the application being presented to the Surface Transportation Board matches the spirit of the April press release and will truly establish competitive rates and service options for all phases of Eastman Kodak Company's rail business. In that spirit we support the joint Docket No. 88833.

I Linda L. Kelley, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement. Executed 23 day of May, 1997.

Linda L. Kelley

Note: We will be sharing these comments with both CSX and the Norfolk Southern as well as the appropriate State and Federal agencies in support of the issues outlined above.

8/11/97 APPENDIX XIII

ROCHESTER
Democrat and Chronicle

STEVEN R. BRANDT President & Publisher
THOMAS E. CALLINAN Editor & Vice President/News

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

FIRST AMENDMENT TO THE U.S. CONSTITUTION

A GANNETT NEWSPAPER • FOUNDED IN 1833

Editorials

Make Conrail deal better

Recommendations by Genesee Transportation Council shouldn't be taken lightly.

A furious bidding war for Conrail, the biggest freight rail serving Rochester, has culminated in a $10 billion proposal that's calming concerns about creation of a giant railroad monopoly. There remain, however, issues that federal transportation experts need to address before finalizing the deal.

The Surface Transportation Board in Washington, D.C., is scheduled to decide whether to approve the proposed joint takeover of Conrail by CSX and its leading competitor, Norfolk Southern railroad, by June 1998. The plan resulted from individual attempts by CSX and NS to buy Conrail, formed in 1976 with the federal government's blessing from the merger of six bankrupt railroads.

Among those nervous about the possibility of CSX or NS gaining total control of Conrail was the Genesee Transportation Council, which coordinates and assesses transportation services in the Rochester region. However, after the two lines announced in April that they'd jointly own Conrail, GTC said it supported their 25.2-inch thick new proposal "in principle."

Looking at the potential benefits to New York, GTC's latest position seems reasonable. Existing Conrail service provides only direct routes east and west. Under the new plan, in which CSX will invest more than $20 million in capital improvements in New York state alone, for the first time, direct north and south routes will also become available. This will give New York businesses direct freightline access to the nation's fastest growing region. Utilities like Rochester Gas and Electric Corp., which depend on coal shipments from West Virginia, are understandably excited about having a choice in major railroads. That's something Rochester-area businesses haven't had since 1968 when Conrail's predecessors went under.

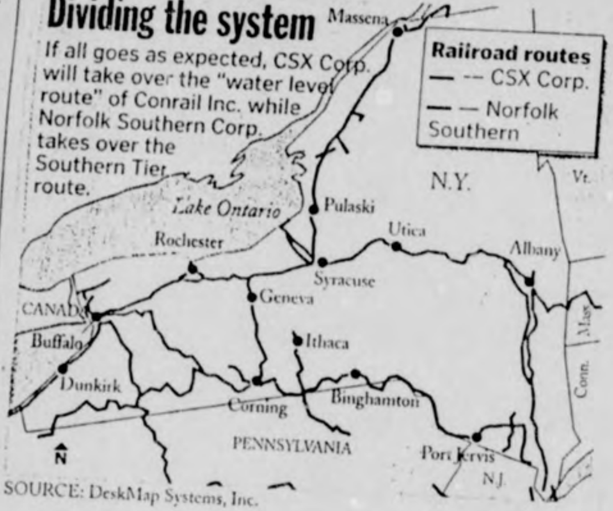
Drawbacks? Well, for one thing, the proposed service to the Southeast isn't as direct as it could be. Shipments from Rochester would have to go first to Buffalo or Albany, and then southward. Consideration also needs to be given to so-called short-line railroads, like Rochester & Southern, being able to connect to the vast CSX-NS rail system.

Local rail experts like Doug MidKiff of the GTC are expected to express their reasonable concerns about these and other regional rail issues in a resolution to be filed with the STB. Their views deserve to carry weight, if the takeover, which is almost certain to be approved, is to be as beneficial to New Yorkers as it's being touted by the affected railroads. ❑

D+C - 8/11/97

Dividing the system

If all goes as expected, CSX Corp. will take over the "water level route" of Conrail Inc. while Norfolk Southern Corp. takes over the Southern Tier route.



SOURCE: DeskMap Systems, Inc.

KEVIN M. SMITH staff artist

Railroads ready to split up Conrail system

■ Rochester will benefit as CSX and Norfolk Southern redo New York routes.

BY STAFF WRITER
PHIL EBERSOLE

During the next 12 months, the pattern for railroad service in upstate New York will be set for a generation or more.

The U.S. Surface Transportation Board is scheduled to rule by June 8, 1998, on a plan by CSX Corp. and Norfolk Southern Corp. to split up the Conrail system.

While it's a foregone conclusion that the deal will be approved, the STB hearings provide a forum to resolve the region's longstanding issues in rail service, said Doug Midkiff, a staff expert of the Genesee Transportation Council.

It is like a "constitutional convention" for Northeast railroads, he said.

Michael Brimmer, part of a CSX delegation that met with Rochester business and community leaders last week, said CSX bought into Conrail as an investment "not to solve every problem."

Overall, he said, the Rochester area stands to benefit when the Northeast rail map is redrawn.

The biggest benefit is that CSX Corp. will offer direct, one-day freight service to most of the Southeast, which its current track covers.

Conrail, which is limited to the Northeast and Midwest, faces delays when it hands over freight cars to railroads outside its region.

It will be like having a direct airline flight to a destination instead of having to lay over in several different cities, Brimmer said, except a layover in a switching yard can take a day or more.

Only about 11 percent of the Northeast's freight moves by rail. Most of the rest goes by truck. But rail service is important to companies that use or sell coal, chemicals, lumber, farm produce or anything else that has to be shipped long distances in bulk.

CSX will serve Rochester directly. It will operate the "water level route" connecting Buffalo, Rochester, Syracuse and Albany and running

RAILS, PAGE 6E

Rails

FROM PAGE 1E

south to New York City.

Norfolk Southern will operate a Southern Tier route, running from Buffalo through Binghamton to northern New Jersey.

Rochester will be linked to that route at Silver Spring by the Rochester and Southern Railroad, a unit of the independent Genesee & Wyoming Railroad company.

Even so, Midkiff said, Rochester ought to have a more direct route going south. Under the CSX-Norfolk Southern plan, local shippers who want rail service to the Southeast would have to swing west to Buffalo or east to Albany.

Brimmer, who's CSX assistant vice president for strategic planning, said the plan will be better than the present system. Currently, for example, freight cars that go from Rochester to Atlanta must be routed through a switching yard near Cincinnati, he said.

Another issue for local shippers is intermodal rail-truck service for truck trailers and other bulk containers. Conrail ended intermodal service in Rochester in 1992, despite this city's position as a leading regional export and manufacturing center, Midkiff said.

"This area has a great deal of intermodal potential," said David B. Buschner, president of Trailer Transport Systems Inc., a Henrietta-based company specializing in intermodal service. But many customers were lost for good after Conrail's pullout from Rochester, he said.

The cost of building an intermodal yard averages $10 million to $15 million. The economics of service vary on different routes, but it's desirable for a stand-alone intermodal yard to generate one train a day with 80 to 100 cars. CSX will look at the feasibility of intermodal service in Rochester, he said. But he noted that intermodal service is available in Buffalo and Syracuse.

Managers of short-line railroads want an end to "Chinese walls" that keep them from making connections to other nearby rail lines.

Examples are the Livonia, Avon and Lakeville, which terminates within sight of the Rochester & Southern in Henrietta, and the Falls Road Railroad, which extends from Brockport to Lockport, but can't link up with railroads going farther west.

William D. Burt, vice president and general manager of LA&L, said he can reach out a locomotive window and shake hands with an engineer of Rochester & Southern, but not connect the two railroads' track.

Brimmer said CSX is interested in alliances with short-line railroads that could be feeders into its system.

But he added that CSX won't give away trackage rights for nothing, particularly to railroads that may divert traffic to competitors.

Overall, most upstate New York shippers should benefit from the takeover, Brimmer said. CSX will spend $220 million on upgrading the Conrail system even before the merger is officially approved. That's roughly equivalent to one year's capital expenditure for CSX itself. About $27 million of that will be spent in New York state.

Midkiff said competition will be good for Rochester. "Conrail has behaved with the arrogance of a monopoly," he said.

Brimmer responded ruefully, "In addition to buying Conrail's track, we've also taken on a lot of their baggage." ❑

Railroad history

1968. New York Central and Pennsylvania railroads merge to form Penn Central, ending railroad competition in upstate New York.

1976. Penn Central is one of six bankrupt Northeast and Midwest railroads that merge to form the Consolidated Rail Corp., later renamed Conrail Inc.

1980. Staggers Act deregulates railroad industry, leading to a new era of competition. Railroads make a comeback, hauling 40 percent more traffic than during World War II, their previous peak, over 44 percent less track.

1997. CSX Corp. and Norfolk Southern Corp. end a bidding war for Conrail by agreeing to divide its routes and assets. If their plan is accepted, New York state will once again have major railroad competition.

Appendix XIIII

LIVONIA AVON & LAKEVILLE RAILROAD CORP.
5769 Sweeteners Blvd.
P.O. Box 190-B
Lakeville, New York 14480
(716) 346-2090 ph.
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October 14, 1997

H. Douglas Midkiff
Transportation Specialist
Genesee Transportation Council
65 West Broad Street, Suite 101
Rochester, NY 14614-2210

re: Finance Docket No. 33388

Dear Mr. Midkiff:

I am writing to express the support of the Livonia, Avon & Lakeville Railroad Corporation (LAL) for the participation of the Genesee Transportation Council in the above referenced proceeding.

As you know, LAL is a party of record in this proceeding. We have expressed our opposition to the proposed division of Conrail in its unconditioned form, and our intent to seek conditions that would remove the restriction on interchange between LAL and the Rochester & Southern at Genesee Junction Yard in the Town of Chili.

I have noted that the Genesee Transportation Council supports our request for such conditions. We appreciate GTC's support, and would like to express our agreement with the views you have expressed that now is the time to correct mistakes that were made in creating Conrail (e.g., LAL's captive status) before they are further exacerbated by the proposed division of Conrail's assets.

I hereby declare under penalty of perjury that the foregoing is true and correct, and further certify that I am qualified and authorized to file this letter of support.

Yours very truly,

William D. Burt
Vice President and General Manager

STB FD 33388 10-21-97 D 182810

182810

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October 17, 1997

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

Re: CSX Corporation and CSX Transportation, Inc., and Norfolk Southern Corporation and Norfolk Southern Railway Company - Control and Operating Leases/Agreements - Conrail, Inc. and Consolidated Rail Corporation, STD Finance Docket No. 33388 Service of Filings Pursuant to Decision No. 43

Dear Secretary Williams:

Pursuant to Decision No. 43 of the Surface Transportation Board in Finance Docket No. 33388, enclosed is an original and ten (10) copies of a Certificate of Service indicating that the service required by said Order has been accomplished.

Sincerely,

ENTERED
Office of the Secretary
OCT 21 1997
3 Part of Public Record

Michael P. Maxwell, Jr.

Counsel for City of Indianapolis, Indiana

MPM/csg
Enclosures

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Before The
SURFACE TRANSPORTATION BOARD
Washington, D.C.

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Finance Docket No. 33388

CSX Corportion and CSX Transportation Inc.
Norfolk Southern Corporation and
Norfolk Southern Railway Company
-- Control and Operating Leases/Agreements --
Conrail, Inc. and Consolidated Rail Corporation --
Transfer of Line By Norfolk Southern Railway Company
To CSX Transportation Inc.

CERTIFICATE OF SERVICE

Pursuant to Decision No. 43, STB Finance Docket No. 33388, the undersigned certifies that a copy of all filings submitted so far in the proceeding by the City of Indianapolis have been served on the following, via first class mail, postage prepaid this 17th day of October, 1997.

ENTERED
Office of the Secretary
OCT 21 1997
3 Part of Public Record

Michael P. Maxwell, Jr.

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CMA-10

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BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

CSX CORPORATION AND CSX TRANSPORTATION, INC.
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
-- CONTROL AND OPERATING LEASES/AGREEMENTS --
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION --
TRANSFER OF RAILROAD LINE BY NORFOLK SOUTHERN
RAILWAY COMPANY TO CSX TRANSPORTATION, INC.

D

JOINT COMMENTS OF THE
CHEMICAL MANUFACTURERS ASSOCIATION
AND THE SOCIETY OF THE PLASTICS INDUSTRY, INC.

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Date: October 21, 1997

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D. Michael Mohan, 09/17/97
John W. Orrison, 09/12/97
Donald W. Seale, 08/26/97
John W. Snow, 09/18/97
John H. Williams, 08/11/97

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

CSX CORPORATION AND CSX TRANSPORTATION, INC.
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
-- CONTROL AND OPERATING LEASES/AGREEMENTS --
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION --
TRANSFER OF RAILROAD LINE BY NORFOLK SOUTHERN
RAILWAY COMPANY TO CSX TRANSPORTATION, INC.

JOINT COMMENTS OF THE
CHEMICAL MANUFACTURERS ASSOCIATION
AND THE SOCIETY OF THE PLASTICS INDUSTRY, INC.

The Chemical Manufacturers Association ("CMA") and The Society of the Plastics Industry, Inc. ("SPI") respectfully oppose the Control Application. CMA's and SPI's members should not be asked to bear the very substantial risks created by NS' and CSX's multi-billion dollar bidding war. NS and CSX can pay for their purchase of Conrail stock only if they faultlessly execute their strategy of increasing traffic while cutting personnel and costs substantially. It is doubtful this can be done. Nonetheless, if the Board decides to approve the Application, which CMA and SPI oppose, the Board should at a minimum condition its approval as suggested herein and in Attachment 1.

I. Introduction and Summary

Applicants' proposed transaction is not in the public interest because:

- By Applicants' own testimony, the transaction depends on "almost faultless" execution of a strategy of capturing increasing volumes of marginally profitable traffic using an intricate "spider web" of multiple intermediate classifications, at the same time they intend to reduce employment levels and locomotive power. In the real world this strategy is unlikely to work, and will instead lead to congestion, higher rail costs, and harm to existing Conrail shippers, including chemicals/plastics shippers.

- The transaction represent an unprecedented effort to disaggregate operations and parcel out traffic that now flows over an integrated Conrail system into three systems -- a new NS, a new CSX, and a new, pared-back Conrail entity. The complexity of this dismemberment, particularly given NS' and CSX's incomplete knowledge of Conrail's traffic and operations, increases the likelihood of massive confusion, disruption and delay.

- The contemplated timetable for implementing the propo ɜd transaction is too rapid, with NS taking the position that implementation of service over integrated systems can occur a mere two months following the Control Date.

- Applicants have not adequately explained how their proposed Shared Assets Areas ("SAAs") are expected to function, nor how they could accommodate the trains of <u>three</u> carriers (NS, CSX and Conrail) where today there is only enough line capacity to accommodate Conrail. As CSX's Mr. Snow testified, operations in the SAAs have the "potentiality for mischief" and CSX will have to watch NS "like a hawk," and vice versa, to prevent abuses. At a minimum, shippers in and out of the SAAs can expect to experience worse service than they do currently for shipments to and from the points that are proposed to be included in the SAAs.

- While NS and CSX argue that SAA operations will be "transparent" to shippers, they have not made it clear that they will assume responsibility for loss, damage, delay or spillage of traffic to and from the SAAs.

- NS or CSX do not have a clear idea about which railroad would perform current Conrail contracts for traffic to and from the SAAs, and absent protective conditions shippers are likely to be harmed by the uncertain responsibility for and fragmentation of their contract traffic.

- Relatively few chemicals/plastics shippers would benefit from new single line service that is cited as one of the major advantages of this transaction. This is principally because relatively little chemicals/plastics traffic originates or terminates today on CSX or NS. Rather, the heaviest flows of chemicals/plastics traffic today move interline from Western railroads to Conrail via St. Louis/Illinois gateways. Moreover, for the remaining traffic, for every two cars of chemicals that would gain single line service, one car would lose single line service as a result of the split of Conrail. Applicants have not explained how the harm to these shippers can be remedied.

- There is the potential for higher rates if NS and CSX attempt to shift traffic to "more efficient" Southern gateways, rather than the St. Louis/Illinois gateways used today.

These concerns can be ameliorated, although not eliminated entirely, by adopting the conditions suggested herein by CMA and SPI, which would (1) permit implementation of the transaction only after NS and CSX have certified that labor agreements, detailed SAA operating and management protocols, and other necessary pre-implementation steps are in place, (2) ensure NS' and CSX's responsibility for shipments to/from/within the SAAs, and provide shippers options for reopening or modifying current Conrail contracts for traffic that becomes SAA traffic, and (3) institute a five-year oversight proceeding, with performance standards and certain other competitive standards such as maintenance of current gateways and reciprocal switching. These conditions are discussed in the final section of these comments and are set out in full in Attachment 1.

This merger must be scrutinized extremely carefully by the Board. As Applicants admit, there is little room for error in their plans. Moreover, as the UP/SP merger has shown, there is very little room for error in rail mergers generally. A generation ago, if a merger created a bottleneck, there was usually another railroad available to route around the problem. That flexibility is gone today. If a railroad gets into trouble, shippers are immediately affected. Particularly in light of the problems created by the UP/SP merger, CMA and SPI do not feel their members should bear the risks of another merger in which the Applicants try to merge too fast, cut costs too much, and fail to plan effectively. If the Board has doubts -- and the record raises many doubts -- it should err, if at all, on the side of disapproving the Control Application.

II. Statement of Identity and Interest of CMA and SPI

A. Statement of CMA's Interest

CMA is a non-profit trade association whose member companies represent more than 90% of the productive capacity for basic industrial chemicals in the United States. In 1995, the chemicals/plastics industry shipped 138 million tons of products by rail and paid over $4.5 billion in rail freight charges. CMA's members depend heavily on rail transportation in particular for movement of bulk chemicals, which typically move in tank cars and covered hopper cars owned or leased by the companies. CMA's rail transportation policy emphasizes safety, service, and competition.

As shown in the attached Verified Statement of John J. Grocki of GRA, Inc., the proposed Conrail break-up transaction would affect over 345,000 carloads of chemicals/plastics traffic annually, representing annual rail revenues of almost $1 billion -- about 22% of all chemicals/plastics rail freight charges in the entire United States.

Given the heavy concentration of chemicals production facilities in Texas and Louisiana areas served by the UP and SP prior to their merger, CMA participated actively in the UP/SP merger proceedings, and negotiated with the Applicants an agreement containing a series of provisions designed to augment the BNSF Comprehensive Agreement and otherwise to attempt to maintain rail-to-rail competition post-merger. This agreement, which is now generally referred to as the "CMA Agreement," was broadened and strengthened by the Board in its Decision No. 44 approving the merger.

As the Board is aware, implementation of the UP/SP merger has resulted in severe congestion that has caused major economic harm not only to Gulf Coast chemicals/plastics shippers, but to many other shippers nationwide. CMA is extremely concerned lest the problems created by the UP/SP merger -- including crew and power shortages, rushed training, safety problems, the absence of timely labor implementing agreements, and failures in coordinating the merged systems' computer and communications systems -- are repeated in this transaction, with similar crippling effect.

B. <u>Statement of SPI's Interest</u>

SPI is the major trade association of the plastics industry. Its members consist of more than 2,000 companies which supply raw materials, process or manufacture plastics and plastics products, and engage in the manufacture of machinery used to make plastics products or materials of all types. Its members are responsible for an estimated 75% of total sales of plastics materials and plastic products in this country. Plastics resins, STCC 28211, the primary material of interest to SPI in this proceeding, constitute approximately 60 billion pounds, or more than 347,000 carloads, of railroad traffic, amounting to $1.1 billion in freight revenue nationwide.

SPI also actively participated in the UP/SP merger proceeding, and unlike CMA, opposed that merger. The Board's decision approving the merger cited many of the facts and arguments advanced by SPI as the basis for imposing conditions on the merger approval. SPI shares CMA's concern that the problems created by the UP/SP merger not be multiplied by the even more complex Conrail break-up transaction.

III. Discussion

A. The Revenue Growth Needed to Pay for the Transaction Depends on "Almost Faultless" Execution, but in the Real World Execution is Never Faultless.

The events of the past year which led to the Control Application have received wide publicity, but perhaps bear brief summary to highlight the risks inherent in the proposed break-up transaction. On the morning of October 15, 1996, Conrail's market valuation amounted to $71 per share. That day, CSX announced its agreement to acquire Conrail's stock for a total price of $8.1 billion, or $89 per Conrail share as of 10/15/96.[1] To that end, CSX argued forcefully to Conrail shareholders that the price CSX offered reflected the fair value of Conrail's operations, as combined with CSX. By November 5, 1996, NS had offered Conrail shareholders $100 per share and was in a proxy fight with CSX for 100% control of Conrail.[2] On April 8, 1997, CSX and NS announced that they had agreed to pay $10.2 billion for joint control of Conrail, the equivalent of $115 per Conrail share.

In sum, during the course of a few short months, the Conrail stock ultimately acquired by NS and CSX increased in price from $6.3 billion ($71/share) to $10.2 billion ($115/share). While Applicants would seek to characterize the extra $3.9 billion as reflecting increased synergies and efficiencies created by the break-up transaction, the reality is that the bidding war was little short of a fight for dominance by CSX and for survival by NS. The ultimate settlement between CSX and NS reflected the desire of both to avoid being relegated to second tier status in the Eastern United States.

---

1 "CSX Agrees to Acquire Conrail For $8.1 Billion in Cash and Stock," Wall Street Journal, Oct. 16, 1996 at A3. See Attachment 4, copies of newspaper articles cited herein.

2 "Fight for Conrail Confuses Wall Street," Wall Street Journal, Nov. 5, 1996 at A3. See Attachment 4.

It is obvious to all observers, including NS and CSX themselves, that the Applicants will have to generate very substantial new business to justify the price they have paid for Conrail. Some observers have expressed doubts, however, that this can be done:

> [S]ome analysts worry that Norfolk Southern and CSX won't be able to earn an adequate return on their investment in Conrail routes, because the price being paid reflects an assumption that Conrail's monopoly will be retained. There will be some opportunities to reduce labor costs, they said, but not enough to offset the higher-than-anticipated price for Conrail.
>
> Instead, analysts and some railroad executives think both companies will have to expand the $13 billion-a-year rail market east of the Mississippi River close to 30% in the next five years. And most of that growth will have to come from the trucking industry, long a strong competitor.[3]

As explained in the following discussion, CMA and SPI do not believe that NS and CSX can achieve the traffic growth they need while at the same time cutting costs. Ultimately, the risks that they will fail will likely be borne by Conrail's existing captive shippers, including chemicals/plastics shippers.

1. To Achieve Revenue Growth, Applicants, Particularly NS, Will Rely on Intricate Operating Plans Requiring Multiple Classification of Traffic.

According to the testimony of James W. McClellan, NS Vice President for Strategic Planning and the chief NS architect of this transaction, the proposed transaction depends for its success on "almost faultless" execution of a strategy to attempt to squeeze new revenues from fragmented traffic, particularly intermodal traffic, that Conrail has found it uneconomic to serve:

[3] "Conrail's Breakup Plan Is Released By Norfolk Southern, CSX Corp.," Wall Street Journal, April 9, 1997 (on WestLaw, 1997 WL-WSJ 2416163). See Attachment 4.

> Eastern railroads face a challenge, because most hauls are short and traffic is fragmented. Dense, long haul lines that favor railroads, such as Chicago-Los Angeles and Chicago-Seattle, are relatively rare in the East.
>
> **Alternative Market Strategies.** Given this challenge, eastern railroads have two fundamental choices: (1) carve out certain niche markets (long haul traffic, heavy loading traffic, trainload movements) that best fit rail technology and economics, or (2) choose to attach the larger and broader market where success is harder to achieve. The latter approach requires almost faultless execution and an iron grip on costs, as there simply is no margin for poor performance or high costs.
>
> CR, which has long-haul east-west routes and access to some truly huge markets (New York, especially) has chosen a niche strategy. Coming out of its predecessors' bankruptcies, it had to focus on those markets that were most favorable for rail technology. And it had to focus on those markets that best fit its linear, east-west route structure, to the detriment of its north-south routes.
>
> Norfolk Southern has not been disadvantaged either by past bankruptcy or shortage of capital. However, given its location and lack of long haul routes, NS had no choice but to tackle the short haul-fragmented markets. We learned certain skills in the process that will be invaluable in implementing the Plan.

McClellan verified statement ("VS"), vol. 1, p. 525 (bold in original, underlining added).

In his deposition Mr. McClellan explained that this low-density traffic would require multiple classification and re-classification of rail cars over a "spider web" network of yards, and that if execution is not almost faultless, service will suffer and costs will go up:

> Q. I want to refer you to page 525 of your statement which is also page 23 of your statement. The statement I'm looking at is in the second paragraph, the last sentence. And tell me if this is a fair summary. I think you're saying that, where you choose to try to serve a broader and more fragmented market, you need in your words, quote, almost faultless execution and an iron grip on costs, close quote. Now, did I summarize that fairly or not?
>
> A. Yes.
>
> Q. Speaking generally what happens if your execution isn't faultless?
>
> A. Service deteriorates and costs go up.

Q. Can you give me an example of the kind of service that you're talking about to serve these fragmented markets that might deteriorate if it weren't executed right?

A. The fragmented markets I'm referring to here are, of course, what we generally call loose car railroading. It means there's a lot of switching involved, it means that you have to pass through a number of nodes, and at each step along the way you've got to make connections and not delay the cars. It requires substantial rehandling. It's a complicated business to run. We happen to have the kind of railroad that that's the way we've always been, especially on the Southern side of the equation. We have always had terminal intense, a spider web of lines, with a lot of intermodal[4] terminal operations. So we've gotten pretty good at it.

McClellan depo. tr. p.170 line 18 - p. 172 line 1 (underlining added). (See Attachment 5, an appendix of all pages of depositions which CMA/SPI cite herein.)

Plainly, the increased handling of traffic will, at some level, require increased personnel-hours, and the increased number of trains to serve the "spider web" will require increased locomotive power. CMA and SPI are therefore skeptical in the extreme that NS and CSX can achieve their projected increases in traffic above the Conrail base traffic at the same time they cut personnel and locomotive power (see discussion below). Again, if NS and CSX fail, CMA and SPI members will likely pay the price because, in the words of McClellan (quoted above), "service [will] deteriorate[ ] and costs [will] go up." It is rail-captive shippers such as chemicals/plastics shippers that will disproportionately suffer the consequences.

2. **Intermodal Traffic, Which NS and CSX Will Rely On Heavily to Pay for the Transaction, Also Requires More Than Average Handling Relative to the Revenue It Generates.**

NS relies on intermodal traffic for fully 53.1% of the new gross revenues it hopes to realize as a result of the transaction (above Conrail 1995 base revenues), as can be seen on the following table:

---

4 S.i.c. -- probably should be "internodal."

Table CMA/SPI-1

NS Incremental Annual Gross Revenue (Above 1995 Base Conrail Revenues) By Type of Traffic			
Type of Traffic	**Gross Revenue (millions)**	**% of Total**	**Source**
Rail to Rail	183.5[1]	40.6	Williams (vol. 2B, p. 85)
Truck to Intermodal	240.4	53.1	Bryan (vol. 2B, p. 127)
Truck to Carload	28.6	6.3	Bryan (vol. 2B, p. 127)
Totals	452.5	100.0	

[1] The $183.5 million figure represents the $190.6 million calculated by Mr. Williams as the net annual diversion gains to the NS/Penn Lines, less $7.1 million representing the pro-rata share of Mr. Williams' calculated $82.0 million annual "rate compression." See Williams VS, vol. 2B, p. 85 and Williams depo. tr. at 27, lines 14-23.

For CSX, 50% of the new gross revenues it expects to generate post-transaction would be from intermodal traffic, as shown in the following table:

Table CMA/SPI-2

CSX Incremental Annual Gross Revenue (Above 1995 Base Conrail Revenues) By Type of Traffic			
Type of Traffic	**Gross Revenue (millions)**	**% of Total**	**Source**
Intermodal	158.1	50.0	Bryan (vol. 2A, p. 241)
Coal, Coke & Iron Ore	52.5	16.6	Sharp (vol. 2A, p. 354)
General Merchandise	42.0	13.3	Rosen (vol. 2A, p. 175)
Truck/Barge to Carload	42.3	13.4	Jenkins (vol. 2A, p. 436)
Automotive	15.4	4.9	Hawk (vol. 2A, p. 390)
CCIO Remainder	5.6	1.8	Rosen (vol. 2A, p. 181)
Totals	315.9	100.0	

Capturing this new intermodal revenue would not be a matter of NS' or CSX's simply extending the length of their haul or diverting to a single system move traffic that was formerly interline traffic between one of their systems and Conrail. Rather, to a great extent, particularly because of NS' "spider web" approach, it would mean creating whole new trains, with all the new handling those new trains would entail. Yet it is well known that intermodal traffic, which is by definition subject to competition from trucks, generates relatively low per-car revenues.[5] Moreover, it would be surprising in the extreme is motor carriers did not fight back vigorously with lower rates to attempt to preserve their market share. This would drive rail intermodal margins even lower. Thus, in order to generate the necessary revenues to pay their huge debts incurred in buying Conrail's stock, NS and CSX will have to haul a great deal of additional intermodal traffic, with the attendant personnel and locomotive requirements.

3. **Despite the Need for Increased Handling, NS and CSX Plan to Cut Employment and Locomotive Fleets.**

Despite all of the new traffic NS and CSX project, and despite the increased handling this traffic will require, NS and CSX, driven by the economics of their transactions, plan to drastically and rapidly cut employment levels, and pare back their locomotive fleets.

NS and CSX combined plan to cut 3090 jobs, most within the first year, and to transfer 2323 other positions.[6] Although these job abolishments are partially offset by the creation of

---

[5] For example, intermodal revenue for Penn Lines base traffic is \$446.2 per unit (\$315.7 mil. ÷ 707,500 units). Vol. 2B p. 86. This is less than half of the \$1,068.8/unit non-intermodal revenue ((\$2,050.4 mil. - \$315.7 mil) ÷ (2,330,500 units - 707,500 units)). Id. Double-stacking containers can increase per-car revenues, but only about half of NS's containers today are double-stack, and even in ten year NS does not expect to make a full transition to double-stacks. Finkbiner depo. tr. at 126 lines 7, 19-20. In addition, NS does not currently have full envelope double-stack clearance on its key route out of Northern New Jersey, the Lehigh Line, although it is planning improvements at the Pattenburg Tunnel to provide such clearance. Mohan depo. tr. p. 372 line 22 - p. 373 line 5. CSX lacks double stack clearance on its north-south routes through Washington and on its east-west B&O route. Finkbiner depo. tr. at p. 80 line 19 - p. 81 line 2.

[6] CSX/NS-26, Labor Impact Exhibit (based on 1996/97 head count), p. 13 of 13.

1109 new positions, including new trainmen and engineers, key crafts such as yardmasters, signalmen, supervisors/foremen, carmen, and clerks would all be substantially cut.[7]

CSX projects that its combined locomotive fleet (CSX's current fleet plus 42% of Conrail's) can be cut by 59 road units (2.3% of the road fleet) and 11 yard units (1.7% of the yard fleet) through more efficient routings, better maintenance and fueling practices, and yard closings.[8] NS calculates that it will need 268 fewer road units and 22 fewer yard locomotives as a result of more efficient routings, better triangulation and matching to requirements, and combining yard jobs.[9]

Particularly in light of the costly and painful lessons of the UP/SP merger, CMA and SPI do not believe that NS and CSX will be able to split Conrail into three parts and carry increased traffic on each of those parts, while simultaneously cutting personnel and locomotive fleets. In fact, the UP/SP experience has made it abundantly clear that rapidly laying off personnel from the "target" railroad, and failing to provide for adequate power, can be disastrous in terms of the acquiring railroad's ability to run the merged system.[10]

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[7] Id. at pp. 1, 2, 10, 13.

[8] CSX Op. Plan., vol. 3A at 293-95.

[9] NS Op. Plan. vol. 3B at 308.

[10] See "A Big Railroad Merger Goes Terribly Awry In a Very Short Time", Wall Street Journal October 2, 1997 at A1: "...company [UP/SP] officials conceded that they badly underestimated the number of crews and locomotives they would need. *** Instead of adding to a combined work force of 53,000, the company offered buyouts to more than 1,000 workers at a time when freight shipments were booming nationwide." Moreover, UP executives, according to the Wall Street Journal report, "were skeptical about the talents of many Southern Pacific people," and ignored the suggestions of Southern Pacific executives. Id. at A13.

4. In the Real World, Execution Is Never Faultless

In the real world, of course, execution is never faultless. More likely the transaction will lead to greater congestion, service and safety problems as the Applicants seek to attract more and more low-margin intermodal traffic in an effort to generate the cash needed to pay the huge price of their acquisition of Conrail stock. Other traffic is likely to suffer, both from impaired service, and from upward pressure on rates as Applicants' systems become more congested and their costs escalate. The potential for congestion is compounded in East by the presence of extensive commuter and passenger traffic with which freight traffic must coexist.

One important example of the potential for congestion is at Harrisburg, Pennsylvania. In NS' proposed operating plan, Harrisburg is the epicenter of its "spider web." Harrisburg will not only become a major new intermodal hub yard, but will also be the major junction point for NS' lines in the Northeast, including the Penn main line over which there will be large flows of chemical and plastics traffic from the St. Louis/Illinois gateways to Philadelphia and New Jersey.[11] Although Applicants contend that the yard facilities in Harrisburg (after planned expansions) and the lines leading into Harrisburg (after installation of centralized traffic control) will have sufficient capacity to handle the expected increase in traffic, NS operations witness D. Michael Mohan testified that, just as with an airline hub operation, much of the inbound and outbound intermodal traffic would need to meet rather narrow time windows each day.[12] This would increase the possibility of congestion. Mohan said that if congestion did occur at the Harrisburg hub, it had the potential to cause backups on the Penn main line to Reading and

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11 See the maps at Vol. 1 pp. 531, 533, 535, 537, and 539.

12 Mohan depo. tr. p. 633 line 14 - p. 634 line 15.

Philadelphia.[13] This is of course would be one of the main arteries of NS' Northeastern region post-transaction. If it becomes congested, the rest of NS' system could follow. As Mr. McClellan testified, if execution is not almost faultless, service deteriorates and costs go up.[14]

Operations in the North Jersey SAA could also suffer from congestion and impaired service. Even today, when Conrail operates in this area essentially alone, there are congested segments in the immediate vicinity of the key Oak Island Yard and extending to Croxton, where there is a bulk chemical and intermodal facility.[15] As described in the verified statement of John J. Grocki (Attachment 2), whose credentials include experience with the former Central Railroad Company of New Jersey, there are other potential points of congestion as well, given that after the merger three railroads will be attempting to operate in this area -- NS, CSX and the residual Conrail entity -- with an increased number of daily trains. The likely magnitude of this problem is somewhat difficult to gauge given that only sketchy information has been provided by Applicants on the nature of their operations in the SAAs. Nonetheless, in the words of CSX's President Snow, there is at a minimum the "potentiality for mischief"[16] inherent in the fact that the SAA will be jointly operated by intense rivals, albeit through a jointly-held residual Conrail entity.

The recent severe congestion and service disruptions experienced in the West and Southwest in connection with the UP/SP merger serve as a reminder of the stark difference between making optimistic predictions in a control application and actually attempting to

[13] Mohan depo. tr. p. 634 lines 16-22.

[14] McClellan depo. tr. p.170 line 18 - p. 172 line 1 (quoted in text above).

[15] Mohan depo. tr. p. 572 line 17 - p. 573 line 11.

[16] Snow depo. tr. p. 197 lines 23-24.

consolidate large rail systems. These problems also make clear that congestion beginning in only one key point can bring an entire rail system to its knees. To compound the severe problems created by the UP/SP merger with new congestion and confusion created by the proposed Conrail transaction would be a disaster for rail shippers and the nation.

5. If Necessary Revenues Cannot Be Generated By Increased Intermodal and Other New Traffic, the Difference Will Likely Be Made Up on Existing Captive Traffic.

In the very likely event that NS and CSX find themselves unable to generate the necessary revenues by means of their new traffic, there is a real prospect that NS and CSX would raise rates on captive traffic, including on their long-distance movements of chemicals and plastic. Although NS witness Williams performed a back-of-the-envelope "rate compression" calculation to express one scenario of possible increased competitive pressures on "high-margin" commodities including chemicals, he did not conduct any study or analysis that predicted the likelihood of rate reductions.[17] Although the Applicants projects that the transaction can be paid for without the need to raise rates,[18] neither carrier has promised not to raise rates, and CSX witness Jenkins testified that even in the Shared Assets Areas there may not be new downward pressure on rates.[19] The pressure to increase rates could well be compounded by increased costs,

[17] Mr. Williams stated in his deposition that his calculations took a total of one hour to perform (Williams depo. tr. p. 301 lines 15-17) and were based solely on the <u>assumptions</u> that (1) one-half of selected "high margin" commodities forming part of Conrail base traffic -- chemical, metals, automotive traffic and coal -- would see 10% rate reductions, (2) there would be 10% rate compression on the traffic diverted to NS, in order to capture it, and (3) all other traffic would see 1% reductions. Williams depo. tr. p. 130 line 7 - p. 131 line 14.

[18] McClellan depo. tr. p. 167 line 23 - p. 168 line 11.

[19] Jenkins depo. tr. p. 33 line 14 - p. 34 line 2.

which, as noted, Mr. McClellan predicted if execution of NS's strategy for gaining new traffic is not "almost faultless."

In sum, red flags are raised by the fact that Applicants' control transaction does not make financial sense in the absence of substantial increases in freight volumes which will require an especially large increase in carloads handled, at the same time Applicants substantially decrease employment and locomotive fleets. These stark facts, coupled with the other shortcomings of the proposal discussed below, call into question whether the transaction is workable, and indicate that it is contrary to the public interest. CMA's and SPI's members do not wish to bear the risks of that failure, because chemicals and plastics traffic, particularly long-haul traffic, is among the categories of captive traffic that will bear the brunt of service disruptions and rate increases.

B. Planning for the Proposed Transaction Is Based On Incomplete Knowledge, and Rapid Implementation Threatens Great Harm to Shippers and the Nation's Economy.

Although the Application reflects a great deal of work and analysis on the part of NS and CSX, the information presented is incomplete in several respects. In fact, to a striking extent, NS and CSX have entered into their transaction without full knowledge of Conrail's operations, costs or traffic base. For example, NS was originally denied access to Conrail's 1995 100% traffic tapes. Hence NS's rail traffic diversion study, which is the basis for roughly half of NS's projected increased revenues relative to 1995 base revenues, was not based upon Conrail's 100% 1995 traffic tape, but rather on the 1995 Waybill Sample tapes.[20] This problem was referred to in the deposition testimony of Mr. D. Michael Mohan, NS's Operating Plan witness:

[20] Williams depo. tr. at 37 lines 11-24.

> Q. Can you think of any areas that you would consider to be important for transition planning in which those impedances have slowed down transition planning?
>
> A. The receipt of 1996 100 percent traffic tapes from Conrail was received very late relative to hopes and expectations. My understanding is those tapes have now been received and are being dealt with. That would be one example of an impediment.

Mohan depo. tr. p. 602 lines 5-14.

Furthermore, becaus › of the huge cost of their stock acquisitions and the reported $2 million in interest charges accruing every day, CSX and NS were driven to prepare their application in haste. For example, NS and CSX did not pause to work out the details of their SAA operating plans (see part C below).

NS and CSX remain unable to obtain from Conrail information that is considered commercially sensitive. Again, this issue was referred to by Mr. Mohan in his deposition:

> Q. Referring back to our discussions about transition arrangements, you said earlier today that, at least at the time the application was being prepared, there was not sufficient information available from Conrail to fill out the details of transition planning. My question is today, as far as you are aware, is there any limitation on the ability of NS to get information from Conrail that restricts in any way transition planning?
>
> A. There are still impedances there. Anything that is commercially sensitive or of a highly confidential nature is either slow to come or is prohibited from coming.

Mohan depo. tr. p. 601 line 16 - p. 602 line 4.

A glaring example of NS' and CSX's incomplete knowledge is that they are not privy to the terms of Conrail's contracts, including what rates, service levels and routings Conrail may have guaranteed.[21] Without this knowledge, Applicants' operating plan is based to a certain

[21] McClellan depo. tr. p. 163 lines 14-15.

extent on guesswork. As acknowledged by the principal author of NS' proposed operating plan, Mr. Mohan, contractual service standards would be important in building the operating plan:

> [A]n integral part of building the schedules is to determine what the commercial priorities of the traffic are. *** If there's a commercial contract with chemical shippers and a chemical train involved and it has a higher priority than a given intermodal schedule, then the priority would go to the general manifest or chemical train. It is honestly a determination of commercial priority.

Mohan depo. tr. p. 592 line 17 - p. 593 line 10. Yet the CSX and NS operating plans were created with no knowledge of the terms of Conrail's contracts.

The integration of data processing and communications systems is particularly critical to the ability to operate merged rail systems, as illustrated by the calamitous events during the current implementation of the UP/SP merger, in which the incompatibility of the UP and SP waybill and car tracking systems has meant the loss of many cars for extended periods.[22] NS Operating Plan witness Mr. Mohan testified that there are still barriers to transition planning in this area:

> Q. Do you know whether there are any impediments in terms of planning for the integration of data processing?
>
> A. I believe, although this is beyond the scope of my current responsibilities, that there are impediments there caused by the necessity for Conrail to operate as an independent corporation and conduct its business.

Mohan depo. tr. p. 602 lines 15-22.

The lack of current access to important Conrail information, including critical costing information, was also discussed by Mr. McClellan in his deposition:

[22] See, e.g., "An Unsolved Mystery: Where Are Shippers' Rail Cars?", Wall Street Journal, October 13, 1997 at B1. See Attachment 4.

Q. Now, my question really is what information is it, if any, that is not accessible to you today that would be necessary for you to analyze and incorporate after the control date in order to plan for the startup of integrated operations?

A. The implementation is -- let me start that over. Let me give you a couple of for instances. We cannot have access to customer contracts. Yet, from a commercial standpoint, you very much would want to get with the customers immediately and make adjustments as necessary. So there's going to be a level of -- I mean, the way we run our commercial functions right now, we have a whole body of information about the customers and we have the contracts and we know what's going on. All that information by necessity is being denied us. And, until we get on the property, we just won't know that, we'll have to come up the learning curve. And there will be some slippage and some delays because we just won't know stuff. And some of that is being solved again by hiring the ex-Cons or at least using the services of ex-Cons. They tend to know things. Some of that is being solved by talking to the customers direct because, of course, the customers can tell us what they want to tell us about contracts. Costing systems, we don't have Conrail costing systems. We can make approximations, but we don't have them, which leads to the problems we have in terms of what's going to be the result in the shared asset area. We're trying to make rates in anticipation of these things, customers want answers, and yet the costing information is not available to us.

McClellan depo. tr. p. 162 line 25 - p. 164 line 18.

As confirmed by Mr. McClellan, much information that would be needed for start-up of integrated operation could be gained only after the Control Date on which NS and CSX take the Conrail stock out of the trust, and even then can only be gained reliably and efficiently if Conrail personnel are kept on the job at least for a reasonable transition period before NS and CSX begin implementation of service over integrated systems. Yet despite the very incomplete state of CSX's and NS' planning for transition, NS has testified that it contemplates implementation a bare two months after the Control Date,[23] while CSX is speaking of implementation after six to nine months.[24]

In the UP/SP merger, labor implementing agreements are still not in place more than a year after consummation of that merger, training is incomplete, and the UP and SP data and car tracking systems are still not integrated.[25] It strikes CMA and SPI as unrealistic to expect that two intense rivals such as NS and CSX, whom Mr. Snow testified need to watch each other "like hawks," (depo. tr. 197 lines 15-16) would be capable in even nine months of (1) finding and disentangling their respective portions of Conrail physical assets, personnel, computer systems, databases, contracts, and communications systems, (2) resolving the inevitable disputes about what is NS' and what is CSX's, (3) refining their planning for integrated operations based upon information that can only be acquired as of the Control Date, (4) training all personnel as necessary to use new systems and implement new operations, and (5) cutting over to integrated operations. If NS and CSX, driven by their daily interest costs, believe they need to implement quickly, that is another reason the Control Application should be denied as not in the public interest, because rapid implementation of this transaction simply would not work, and would cause great harm to shippers and the nation's economy.

[23] McClellan depo. tr. p. 176 line 3 - p. 177 line 7. Mr. McClellan testified that, in light of CSX's position, NS would have to re-evaluate its plans, because NS and CSX would have to implement "in lockstep." Id. at p. 178 lines 6-10. But Mr. Goode stated that NS would not make any decision soon about the pace of implementation, and was optimistic implementation could be speeded up. Goode depo. tr. p. 15 line 3 - p. 16 line 15.

[24] Hart depo. tr. p. 278 lines 8-25.

[25] "An Unsolved Mystery: Where Are Shippers' Rail Cars?", Wall Street Journal, October 13, 1997 at B1. See Attachment 4.

C. The Operating Plan and Customer Interface for the Shared Assets Areas Are Still Largely Unknown, and Should be Subject to Review Prior to Implementation.

As is discussed in more detail in the verified statement of Mr. Grocki (Attachment 2 hereto), Applicants have not adequately explained how their proposed Shared Assets Areas ("SAAs") are expected to function, nor how they could accommodate the trains of <u>three</u> carriers (NS, CSX and Conrail) where today, particularly in the Northern New Jersey SAA, tracks have been consolidated and facilities rationalized to fit the operations of a single carrier -- Conrail.[26] Mr. Grocki, who is familiar with the New Jersey SAAs by virtue of his experience on the New York Central, Penn Central, and Central of New Jersey railroads, notes that there is congestion on these lines even today when Conrail is the only operator.

CMA and SPI understand that the Board has ordered Applicants to submit an operating plan for the North Jersey SAA, and reserve the right to comment further after that operating plan is provided. As Mr. Grocki explains, however, there are problems inherent in the limited configuration of tracks in the North Jersey SAA that will lead to problems from increased operations no matter how ingenious the operating plan may look on paper. Among other complicating factors are frequent commuter operations through the area by New Jersey Transit.[27]

Moreover, dispatching and operations in the SAA will likely be hampered by the rivalry of CSX and NS. As CSX's CEO Mr. Snow testified, operations in the SAAs have the "potentiality for mischief" and CSX and NS will have to watch each other "like a hawk," to

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[26] McClellan depo. tr. p. 182 line 9 - p. 183 line 10.

[27] Because the Board may have limited authority to impose conditions relating to commuter operations, Applicants should indicate in their operating plan for the North Jersey Shared Assets Area their ability to accommodate the range of possible future operations by New Jersey Transit, Amtrak, and other passenger and commuter train operators, if any.

prevent abuses. Snow depo. tr. p. 197 line 11 - p. 198 line 1. Although disputes regarding the operations and investments of the SAAs will be subject to arbitration, such arbitration is a cumbersome and time-consuming way to run a railroad, as Mr. Grocki discusses in his attached verified statement.

At a minimum, according to Mr. Grocki, shippers in and out of the SAAs can expect to experience worse service than they do currently for shipments to and from the same points.

Of particular concern to CMA and SPI is the issue of who will be responsible for their traffic. This issue includes the important day-to-day issue of who the shipper must call to pick up cars, but also includes issues that everyone hopes will arise only rarely -- namely, accidents and spillage of product. Although Mr. Anderson, CSX's Executive Vice President for Sales and Marketing, testified that CSX intended to be completely responsible for SAA movements from start to finish,[28] and Mr. Goode for NS concurred in that general intention, Mr. Goode also hedged on the subject of who would be responsible if a car of chemicals were to be spilled while being handled by the residual Conrail shared assets operator.[29]

CMA and SPI submit that the issue of NS' and CSX's responsibility for shipments to and from the SAAs must be resolved clearly up front. If the local operations in the SAAs are to be left in the hands of a residual Conrail entity that is not a common carrier and has been stripped of most of its revenues by the structure of this transaction, NS and CSX should be held to full responsibility for shipments handled by that entity for their accounts, as well as for cars that may be picked up by the SAA operator prior to the preparation of billing documents, as often occurs

[28] Anderson depo. tr. p. 46 line 25 - p. 47 line 6.

[29] See, e.g., Goode depo. tr. p. 16 line 23 - p. 18 line 7.

in the industry. NS' and CSX's unwillingness to do so would be an additional basis for denying the Application.

D. Several Factors Limit the Extent to Which the SAAs Will Create Competition.

It is worth noting that not all traffic to and from the SAAs will enjoy rail competition. Most importantly, if the other end of the movement is open only to NS or only to CSX, there will be no competition.

In addition, CMA and SPI note that the SAAs are not joint in all respects, in that some facilities are off limits to one of the Applicants, including bulk chemical terminals at Croxton in Northern New Jersey and Eastside Yard in Philadelphia. As explained in the attached verified statement of Mr. Grocki, even though certain other bulk chemical facilities may be open to both NS and CSX, there are a variety of reasons why those facilities may not be fungible or equally accessible to shippers or customers in the area. Such facilities, as well as all new facilities, should be open to both NS and CSX.

A final issue that limits the rail-to-rail competition created by the SAA is that some traffic moving to and from the SAAs today is under contract. Those Conrail contracts are allocated to either NS or CSX, or split, under the complicated provisions of §2.2 of the Transaction Agreement.[30] Yet those provisions do not answer the question how NS and CSX will decide which of them will handle contract movements to and from open points, nor do they give shippers under those contracts the right to choose service as between NS or CSX.

[30] Application Vol. 8B at 25-29.

E. The Proposed Transaction Would Provide New Single Line Service to Relatively Few Chemicals/Plastics Shippers, Would Eliminate Single Line Service for Many Chemicals/Plastics Shippers, and Would Likely Impair Service for Many Others.

As is explained in detail in the attached verified statements of John J. Grocki and Charles N. Marshall, relatively few chemicals/plastics shippers would benefit from new single line service on the merged NS-CR and CSX-CR systems. This is principally because relatively little chemicals/plastics traffic originates or terminates today on CSX or NS. Rather, the heaviest flows of chemicals/plastics traffic on Conrail today move interline from Western railroads to Conrail via St. Louis/Illinois gateways.

The benefits to chemicals/plastics shippers from new single line service are so slight that Mr. Corsi, NS' witness who testified on the benefits to shippers of new single line service, was not even asked to include benefits for chemicals/plastics shippers in his calculations of logistical cost savings resulting from new single line service:

> The three categories based on the estimates provided by Mr. Williams of the carload traffic that was going to benefit from this, I specifically looked at three categories of traffic benefiting, coal, automotive -- and if I just might refer to my notes for a second -- and intermodal. So I didn't -- chemicals were not included.[31]

Although the analysis performed by GRA, Inc. for CMA and SPI, and reported in Mr. Grocki's attached verified statement, shows some new chemical traffic that will receive single line service, this traffic amount to only 3.6% of the total chemicals/plastics traffic that is handled by Conrail today.[32] Moreover, as shown in Mr. Grocki's verified statement, a substantial volume

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[31] Corsi depo. tr. p. 27 lines 4-11.

[32] See Figure JG C-1 at p. 9 of Appendix C to Mr. Grocki's attached verified statement.

of chemicals/plastics traffic also <u>lose</u> single line service as a result of the split of Conrail -- one car for every two cars that will gain single line service. This is a substantially worse ratio of lost single line service to gained single line service than is estimated in the verified statement of Mr. McClellan.[33] But CMA and SPI do not think it is appropriate in any case to offset the harm that will occur to some shippers by comparing it to asserted benefits to be realized by other shippers. Rather, if shippers are harmed by the transaction, as they would be, they should receive an appropriate ameliorative condition if the transaction were approved.

The loss of competitive options will also occur in other ways. For example, movements terminating on Conrail from jointly served southern points like Atlanta may benefit from a degree of competition today between CSX and NS. Post-transaction, that competition would disappear, as the carrier taking over the Conrail destination point will effectively insist on carrying the traffic single line over its expanded system. Mr. Grocki discusses this point and provides a number of other examples of ways in which shippers' service or competitive options would be impaired post-transaction.

Applicants have not explained how the harm to these shippers can be remedied. Applicants' witnesses say only that they will try to make the interline service work as well as possible, but they uniformly concede that service over interline routings is likely to be worse and costs higher. For example, Mr. Jenkins testified that

> Well, joint routes in many cases, in fact, I guess by definition involve an interchange between two carriers. At that interchange typically trains are stopped, the cars are switched out of those trains, some of the cars are reclassified for a transfer move over to the receiving carrier's yard. At the receiving carrier's yard, the cars are put back into trains on the receiving

33 McClellan VS, vol. 1 at 550. Mr. McClellan reported information from Mr. Williams that 9.4 cars of chemicals traffic would gain single line service for every one car losing it.

carrier's railroad and then they're moved. And, in the example we have here, where the car then comes back to a CSX destination, that would happen a second time. So there's a tremendous loss both in absolute transit time as well as reliability, because each of the steps imposes a risk with respect to reliability. And the cumulative effect of each of those steps can bring about a serious degradation in reliability to say nothing of the cost.

Jenkins depo. tr. p. 24 line 23 - p. 25 line 19. Jenkins said that while the current local Conrail rate would be "a consideration" in pricing this traffic, CSX would be most concerned that the pricing was "competitive" with truck transportation.[34] As stated in the attached verified statement of Mr. Grocki, GRA believes that this type of traffic would be subject to potential rate increases after the Conrail break-up as the railroads attempt to pass their additional costs through to the shippers. Since this traffic will have a monopoly railroad at each end of the move, the shippers would have no negotiating leverage.

F. Potential Shifts to "More Efficient" Gateways Would Likely Lead to Higher, Not Lower, Rates for Chemicals/Plastics Shippers.

As noted, the heaviest flows of chemicals/plastics traffic over Conrail today move interline from Western railroad origins (particularly from the Gulf Coast of Texas and Louisiana) to northeastern point on Conrail via St. Louis/Illinois gateways. Applicants' diversion studies assumed that there would be no gateway shifts for such traffic because Western Railroads would presumably not agree to be shorthauled, and they therefore excluded such shifts a priori without studying the issue.[35] NS and CSX say they have no plans to shift gateways, or at least will not

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[34] Jenkins depo. tr. p. 19 lines 18-25.

[35] Williams VS, vol. 2B at 77 (regarding "Southwestern Exclusion Territory"); Williams depo. tr. p. 157 lines 1-21; Rosen VS, vol. 2A at 158, first paragraph; CSX/NS-89, Applicants' Responses to Illinois Central Railroad Company's First Set of Interrogatories and Requests to Produce Documents, response to Interrogatory No. 13 c): the assumption that gateways would not shift for traffic from the Southwest "is that as the originating or terminating carrier, IC would

make "artificial" attempts to shift gateways,[36] but they say New Orleans and Memphis may be more efficient if sufficient flows of traffic are attracted.[37]

As is shown in the attached verified statement of Charles Marshall -- who as Conrail's chief marketing officer was responsible for Conrail's gateway strategy -- the market shifts caused by this transaction are likely to put pressure on CSX and NS to attempt to shift traffic to the New Orleans and Memphis gateways. If these gateways are used, as shown by Mr. Marshall, there could be serious harm to chemicals/plastics shippers whipsawed between the Western carriers' desire to preserve their revenues and the Eastern carriers' desire to preserve their margins but on a longer haul. The danger that this will occur raises another cautionary flag.

IV. If the Board Does Approve the Transaction, Which CMA and SPI Oppose, It Should Impose Pre-implementation, Shared Asset Area and Oversight Conditions.

In the event the Board determines, contrary to CMA's SPI's opposition, that the Control Application should be approved, it should at a minimum condition its approval upon adoption of the CMA/SPI conditions set forth in Attachment 1. These conditions fall into three general categories:

> (A) Pre-Implementation Conditions designed to ensure that NS and CSX will not begin operations of their respective integrated systems until critical management information systems are integrated, tariffs and circulars are in place, collective bargaining agreements have been concluded, physical connections have been constructed, and other management and operations protocols necessary for integrated operations are in place;
>
> (B) SAA Related Conditions, including conditions specifying that NS and CSX will be fully responsible and liable for shipments to and from the SAAs, that all existing bulk chemicals/plastics terminals and all new facilities within

not accept a shorthaul of such traffic."

[36] Seale depo. tr. p. 10 lines 9-17; Jenkins depo. tr. p. 15 lines 14-15.

[37] Seale depo. tr. p. 12 line 25 - p. 13 line 21; Jenkins depo. tr. p. 22 line 16 - p. 23 line 2.

the SAAs will be open to both NS and CSX, and that shippers with contract traffic to and from SAAs have flexibility including the ability to use either NS or CSX to perform contracts to and from open points; and

(C) Other Competition and Service Conditions, including a five-year oversight proceeding with performance standards, restrictions on closing interchanges and reciprocal switching, and monitoring of service levels for new and existing traffic, and of attainment of new traffic and other projections made in the Application.

A. Pre-Implementation Conditions

For the reasons discussed herein, it is essential, to minimize the risk that the implementation problems of the UP/SP merger are not to be repeated, for NS and CSX to have in place prior to implementation of operations on integrated NS-Conrail and CSX-Conrail systems, the elements stated in conditions A.1 through A.5 below. (The numbering reflects that in Attachment 3, which contains the full statement of the CMA/SPI conditions). Assuming Board approval of the Control Application, NS and CSX could certify at any time that the foregoing elements were in place. Copies of the certifications would be served on all parties of record, who would have 15 days to comment. The Board would review the record and accept or reject the NS/CSX certifications no more that 30 days after they are filed.

The following testimony of Mr. John Snow, President of CSX, sets out some of the basic elements that would need to be in place prior to implementation of operations over the integrated systems:

> **Q:** What steps other than the labor implementing agreements do you believe need to occur before operating a unified property can occur?
>
> **A:** Well, there are a number of things that you want to have well in place before you begin operating on a unified basis. Obviously everybody needs to be trained in the rules. So you have a unified set of operating rules. You want to make sure that the information systems are integrated, that the data input is accurate, that you've got good management information. You want to make

sure that you've got appropriate number of people at the various operating locations on the railroad. You would like to make sure that people understand the day one operating plan. You better make sure that your customer service functions are integrated so that when a customer orders a car, there is a process in place that seamlessly produces that car where it's supposed to be. There ought to be a car tracking, car tracing, billing. Better have your payroll systems working right. You might have some problems if you don't have that right. Lots and lots of things you better get right before you plan to integrate two complex properties.

Q: Which of the items that you've just mentioned can be put in place essentially so that they are ready to go as soon as you're ready to go over to the new system?

A: I think virtually all the things I mentioned. A trained work force, familiarity with the rules, customer service cutovers, payroll cutovers, unified information systems covering basic functions, maybe not all functions but basic functions. And of course we have now in place efforts to do that. Training engineers, it takes seven months to train an engineer and get him certified. A lot of planning has to go into determining how many new engineers you'll need, how much training they'll need, what's the half life of training, when do you train, to make training costs effective, so on. All of that is going on right now. I would say that CSX is putting an enormous effort into being ready for what we call day one.

Snow depo. tr. p. 18 line 25 - p. 20 line 25. CMA and SPI believe that their proposed pre-implementation conditions are consistent with the spirit of Mr. Snow's remarks.

CMA and SPI would support any STB actions that might be necessary and appropriate to allow NS, CSX and Conrail to work together prior to the Board's decision on pre-implementation planning. In devoting resources to such planning, however, NS and CSX would continue to bear the risk that the Board would ultimately decide not to approve the Control Application.

The individual conditions are discussed in more detail below.

A.1. SAA management and operations protocols, including establishment of Management Information Systems ("MIS") for the SAAs.

As discussed in Section III.C. of the comments above, Applicants have provided only the sketchiest outline of the manner in which operations would be conducted in the SAAs. Condition A.1 would require NS and CSX to establish the necessary management and operations protocols, including Management Information Systems ("MIS") for the SAAs that are integrated with the NS and CSX MIS systems so that, e.g., cars can be immediately traced and billing and routing information are immediately available.

CMA/SPI have not attempted to outline in cumbersome detail the full range of management and operation systems that would need to be in place. Nor have CMA/SPI attempted to establish standards for evidence or presentations that NS and CSX should make to demonstrate compliance with this condition. Rather, CMA/SPI advocate a "rule of reason" in which NS and CSX, prior to or at the time of certifying compliance with the condition, would demonstrate in a manner the Board deems appropriate that they had put in place the management and operation protocols necessary to effectively operate the SAAs. It would be up to interested parties, in their comments in response to the NS and CSX certifications, and the Board, in passing upon those certifications, to determine the adequacy of the information provided by NS and CSX.

A.2. Adoption of all existing tariffs and circulars that were in effect when the application was filed (June 23, 1997) and publication of supplements incorporating new routes.

The purpose of this condition is to ensure that, immediately upon implementation of operations on the merged systems, shippers have ready reference to the full range of tariffs rates and routes that they can use to ship their products, in part so that no traffic is prevented from moving because of the absence of a quoted rate. These rates could also serve as a basis for negotiating contract rates as appropriate.

An additional purpose of the adoption of existing tariffs and circulars in effect when the Application was filed (June 23, 1997) is to ensure that Applicants do not restrict the range of quoted rates and routes and thereby constrain competitive options post-transaction. The tariffs published under this condition would function as a clear baseline in the oversight proceeding to better enable the Board to assess whether rate or route changes are inconsistent with the promised benefits of this transaction.

A.3. Collective bargaining agreements

An obvious lesson of the UP/SP merger is that, in order to effectively operate a merged system, labor implementing agreements must be in place prior to integrated operations. Top officers of both NS and CSX in the depositions have agreed that implementing agreements, at least for the operating and mechanical crafts, should be in place prior to implementation.[38] It goes without saying that all necessary safety and other training, and familiarization of personnel with new territories, must be complete prior to start-up of integrated operations.

A.4. Extension or integration of their own MIS by NS or CSX to their respective portions of Conrail's assets

The failure of MIS systems, notably car tracking systems, has been one of the major disruptive elements of the UP/SP merger. Mr. Snow, CEO of CSX, testified in his deposition that he believed that MIS systems need to be integrated prior to initiating integrated rail

[38] Snow depo. tr. p. 17 line 23 - p. 18 line 4; McClellan depo. tr. p. 178 line 11 - p. 179 line 8; Goode depo. tr. p. 14 line 11 - p. 15 line 2.

operations.[39] It appears to be the intent of both NS and CSX that their own systems supplant those of Conrail for the portions of Conrail each operates. It therefore would appear necessary for the NS and CSX systems to be operated in parallel with the Conrail systems prior to implementation of merged operations in order to permit Conrail information to be systematically downloaded into the NS and CSX computer systems. At the same time, NS and CSX will need to ensure that all of the peripheral terminals at yards, dispatching centers, customer service centers, and other work locations can communicate effectively with the new computer systems and databases, and that all personnel are trained in the use of the new systems. Only when this process is complete should there be a simultaneous "cutover" of merged operations and merged MIS systems.

A.5. Construction of connections

NS and CSX have already applied for exemptions that would permit them to begin certain construction projects prior to their control of Conrail. CMA/SPI have not opposed those exemptions, which are still pending environmental review. In order to prevent the development of bottlenecks, these projects should be completed prior to implementation of integrated operations.

B. SAA-Related Conditions

In addition to the pre-implementation condition requiring establishment of management and operations protocols for the SAAs, there are a number of conditions that are needed so that shippers will be able to realize the benefits potentially created by the establishment of the SAAs.

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[39] Snow depo tr. p. 19 lines 9-12; see also Mohan depo. tr. p. 590 line 6 - p. 591 line 3.

Therefore, CMA and SPI request the following conditions (again, the numbering follows that of the full statement of the CMA/SPI conditions in Attachment 3):

B.1. Recognizing that Conrail will operate the SAA as an agent, NS and CSX each must be fully responsible and liable for its shipments to/from/within SAAs.

NS and CSX in various presentations to shippers, as well as in their application and in deposition testimony, have stated their intention that operations by the residual Conrail operator be "transparent" to shippers. The stated intent is that all shipments be for NS' or CSX's account, and that NS and CSX will be responsible for the customers' traffic from start to finish.[40] Yet, while Mr. Goode for NS concurred in that general intention, Mr. Goode also hedged on the subject of who would be responsible if a car of chemicals were to be spilled while being handled by the residual Conrail shared assets operator.[41]

If, as NS and CSX intend, the residual Conrail operator will not be a common carrier, shippers are entitled to the assurance that NS and CSX will be fully responsible for their shipments, including for loss, damage, delay or spillage. As previously noted, operations in the SAAs will be complicated enough without the necessity of shippers having to make two phone calls to determine where there cars are, or to gain redress in the event of problems.

It is especially important given that the residual Conrail entity will have been stripped of most of its revenues by the transaction, that NS and CSX should be held to full responsibility -- including responsibility for spillage or release of products -- for shipments handled by the Conrail entity for their accounts, as well as for cars that may be picked up by the SAA operator

40 Anderson depo. tr. p. 46 line 25 - p. 47 line 6.

41 See, e.g., Goode depo. tr. p. 16 line 23 - p. 18 line 7.

prior to the preparation of billing documents, as often occurs in the industry. In sum, NS and CSX must accept full responsibility and liable (as applicable) for shipments to, from and within the SAAs.

B.2. <u>All existing bulk chemicals/plastics transloading terminals located within SAAs, including rail-to-truck terminals, must be open to both NS and CSX.</u>

In allocating Conrail assets among themselves, NS and CSX have chosen in some cases not to make facilities within the SAAs open to both NS and CSX. For example, the Croxton bulk terminal in the Northern New Jersey shared asset area would be served only by NS.

To fully appreciate the importance of opening all bulk terminals to both carriers, it should be understood that bulk terminals typically have only a limited range of products that they can serve. For example, for product integrity reasons plastic pellets cannot be commingled with other types of plastic pellets, or in facilities where bulk food products are also handled. Hence, bulk terminals are not "fungible," and the fact that some bulk terminals within the SAAs are open to both NS and CSX does not diminish the harm of closing other bulk terminals. In sum, to fully realize the benefits to shippers of the establishment of the SAAs, all bulk facilities in the SAAs should be open to both NS and CSX.

B.3. <u>All new facilities within SAAs must be open to both NS and CSX.</u>

Lest there be any doubt, it is necessary for the Board to make clear that facilities constructed in the future in the shared asset areas will be open to both CSX and NS. Otherwise, the benefit of joint access in the SAAs will diminish over time as existing facilities are retired and new facilities are constructed.

Making clear that all new facilities in the shared asset areas will be open will provide greater certainty to industries considering locating in the SAAs, and will remove a possibly troublesome source of friction between NS and CSX. Most important, a condition tying down this point would ensure the integrity of the principle that there be joint access in the SAAs in perpetuity, and that NS and CSX are not free to bargain away their joint access to this or that point or industry by granting private considerations between themselves.

B.4. Where the transaction provides contract shippers of traffic to/from/within SAAs with new competitive options (*i.e.*, alternatives for traffic not moving to/from closed points on NS or CSX):

a) Each shipper must have an "open season" (not to exceed two years from the date of implementation of the transaction) to test service from both NS and CSX under Conrail contracts.

b) Each shipper must have the right to decide whether to have Conrail contract service performed by NS or CSX or both.

c) Each shipper must have an option to reopen its Conrail contracts.

Section 2.2(c) of the Transaction Agreement between CSX and NS provides a complex set of rules for allocating the revenues from and performance of existing Conrail contracts.[42] Yet these provisions do not resolve which carrier will handle contract traffic moving between an SAA and points that are open to both NS and CSX. Nor do the provisions give shippers any say in the matter.

CMA and SPI submit that, in order for shippers to benefit from the proffered new regime of competition in traffic to and from the SAAs -- and to avoid routing or service shifts that they

[42] Vol. 8B at 25-29.

deem undesirable, the shippers themselves should have the ability to determine, as between NS and CSX, which carrier should perform the existing Conrail contracts (assuming that service under the contract is not to or from a closed NS or CSX point), and to have a two-year period of free choice as between NS and CSX. NS and CSX have made representations concerning their intention to allow shippers a period of free choice, but this point should be tied down. In addition, shippers, in order to realize some of the benefits of SAAs, which for the most part were not foreseeable at the time their existing contracts with Conrail were negotiated, should have the right to elect to terminate their current Conrail contracts where the SAAs create new competitive options (i.e., where the traffic is not moving between the SAA and closed points on the NS or CSX systems).

C. Oversight And Other Competition And Service Conditions

CMA and SPI seek the following additional conditions to alleviate anti-competitive effects and to prevent deterioration of service now provided by Conrail and by NS and CSX:

The following discussion explains the purpose of these conditions.

C.1. Interchange Issues:

a) Keep open all existing gateways and interchanges on competitive rate and service terms.

b) Prohibit increases (other than RCAF-adjusted) on rates in effect when the application was filed (June 23, 1997) for Conrail single-line traffic that becomes NS-CSX interline traffic.

CMA and SPI request that the Board require all existing interchanges and gateways to be kept open on competitive rate and service terms. Rather than prescribing rigid rate levels, proportions, or escalation factors, CMA and SPI believe it is preferable to establish a "rule of reason" that can be invoked in an oversight proceeding (see discussion of oversight proceeding below). If there is in fact a demand by shippers for a certain routing, and NS or CSX by one means or another forecloses that routing as a competitive option, shippers should be permitted to make a case to the Board for appropriate relief in the oversight proceeding. If, as NS and CSX argue, this is the most pro-competitive merger in history, they should not be permitted to give with one hand and take away with another. This extremely flexible condition would prevent such abuse while not tying the railroads' hands with elaborate rules and guidelines.

The second part of condition C.1 would establish a rigid rule in one very limited category of cases. Where a shipper now has a movement receiving single line Conrail service, and that movement would become interline NS-CSX or CSX-NS post-transaction, the condition would prohibit increases (above escalation based on RCAF-adjusted) on rates in effect when the application was filed (June 23, 1997). The rationale for the rule is simple. NS and CSX have justified their merger to a large extent on the basis that it extends the benefits of single-line service to many shippers. Yet, as shown in the attached verified statement of Mr. Grocki, many shippers of chemical and plastics products will actually <u>lose</u> single-line service.

NS and CSX witnesses have acknowledged that these shippers will be harmed,[43] but have not suggested any means by which such harm could be mitigated.[44] By preventing rate increases (other than on the basis of the RCAF-adjusted for productivity), the Board can at least ensure that the shippers are not hurt twice -- first by the increased delays and difficulties created by interchanging their traffic between two carriers, and a second time by increased rates "justified"

[43] McClellan VS, vol. 1 at 549-550; McClellan depo. tr. p. 174 lines 19-25; Jenkins depo. tr. p. 25 line 23 - p. 26 line 19.

[44] <u>See</u>, <u>e.g.</u>, Jenkins depo. tr. p. 19 lines 4-20.

on the basis that handling costs have increased and each of the carriers in the interline movement wants a minimum amount of revenue.

C.2. **Reciprocal Switching:**

a) **Keep open all reciprocal switching points on Conrail/NS/CSX that were open when the application was filed (June 23, 1997).**

b) **Specify reciprocal switching charges between NS and CSX within Conrail territory ($130 per car).**

c) **Eliminate reciprocal switching charges on all former Conrail-NS and Conrail-CSX interline movements the become NS and CSX single-line movements.**

d) **Reinstate reciprocal switching at Buffalo and Niagara Falls.**

The first sub-part of condition C.2. would keep open all reciprocal switching points on Conrail/NS/CSX that were open when the application was filed (June 23, 1997). The intent of this provision, again, is to prevent NS and CSX from reducing competition through the "back door" while winning approval of their Control Application on the basis of the creation of competition.

The second portion of condition C.2. would set reciprocal switching charges between NS and CSX within Conrail territory at $130 per car.[45] As noted previously, many shippers now served via Conrail single-line service will find their movements becoming interline NS-CSX or CSX-NS post-transaction. For some of these shippers, it will be possible to have a single-line

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[45] In the UP/SP merger, the Board agreed to a condition negotiated by UP, BNSF and CMA limited switching charges between UP and SP to $130, which presumably reflected UP's and SP's costs of performing the switching. STB Finance Docket No. 32760, Union Pacific Corp. et al. -- Control and Merger -- Southern Pacific Rail Corp et al., Decision No. 44 (Aug. 6, 1996) slip op. at 114 and note 116.

NS or CSX movement but for a short reciprocal switch by the other carrier. For those shippers, imposition of the $130 per car limit on reciprocal switching fees would help to limit the damage caused by loss of single-line Conrail service. The transaction would also result in the creation of certain new interchanges. In order to maximize the benefits of the transaction, and to further eliminate the detrimental effects of "Balkanizing" Conrail's current system, the $130 per car reciprocal switch fee is justified.

The third portion of condition C.2 would eliminate reciprocal switching charges on all former Conrail-NS and Conrail-CSX interline movements that become NS and CSX single-line movements. It should go without saying that "phantom" fees that serve no purpose should be eliminated. Nonetheless, this type of fee has in the past not always been eliminated by merging railroads. The Board should make clear that reciprocal switching fees at former interchanges should be eliminated.

The final portion of this condition would reinstate reciprocal switching at Buffalo, and Niagara Falls, NY. Switching at Niagara Falls is non-existent except for certain switches with the Delaware & Hudson for movements to Binghamton, and switching in Buffalo has all but been eliminated by switching fees of over $450 per car.[46] Because the most recent Conrail actions to eliminate reciprocal switching at Buffalo have been taken in the past year and a half, in and since April, 1996, it is reasonable to presume that they were made in contemplation of enhancing the value of Conrail's franchise for sale to CSX or NS or both. The Board should establish a rate for switching at Buffalo, and may wish to use the same $130 per car figure suggested by CMA and SPI in their condition C.2 (b).

[46] CMA and SPI refer the Board to the discussion of this issue in the comments of the Erie-Niagara Rail Steering Committee.

C.3. Service Standards: Hold NS and CSX to the post-transaction transit times presented in their operating plans and train schedules in this proceeding and monitor NS and CSX service not reflected in operating plans and train schedules to ensure that current NS and CSX service does not deteriorate.

This condition is an adjunct to the oversight conditions (condition C.4. and C.5). It specifies that NS and CSX will be held to the post-transaction transit times presented in their operating plans and train schedules, and will also be monitored to ensure that the service on their current systems does not deteriorate post-transaction. While shippers will know immediately whether the merger adversely affects service standards, it is necessary to have objective service standards so that shippers, the public, and the Board can measure in a concrete way the effects of the transaction on service, and tailor any appropriate remedies.

The Applicants have in place the ability to monitor their service on-time performance,[47] and this condition would therefore impose minimal hardship in terms of reporting requirements. It is fair to hold NS and CSX to the standards articulated in their operating plans because those operating plans are the basis for review by the public and the Board of the Applicants' ability to conduct operations over the merged systems. In addition, the operating plans in the application, and the train schedules submitted in response to Decision No. 19 in this proceeding, are the only source of objective standards inasmuch as the operations described in the operating plans and schedules have not heretofore been conducted.

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[47] Orrison depo. tr. p. 297 line 1 - p. 299 line 8.

C.4. <u>Oversight Process:</u>

a) <u>Quarterly reports by NS and CSX filed at STB and served on all parties or record that request copies, with opportunities for comments and carrier replies.</u>

b) <u>Five years of STB oversight (two years of semiannual proceedings and three years of annual proceedings), with public comments, carrier replies, and expedited resolution of issues by STB.</u>

CMA and SPI believe that the UP/SP oversight process has been useful in monitoring the implementation of that merger and, regrettably, tracking the development of the current shipping crisis in the Gulf and elsewhere. CMA and SPI believe that a similar five-year oversight proceeding should be established in connection with the Conrail break-up transaction. The format would be slightly different, with two years of semi-annual review proceedings and an additional three years of annual review proceedings. During each review proceeding, there would be an opportunity for public comments, carrier replies, and expedited resolution of issues by the Board. As in the UP/SP oversight proceeding, NS and CSX would file quarterly reports with the Board that would be served on all parties of record requesting copies. Parties of record would have the opportunity to comment on the quarterly reports, and the carriers could reply if they wished.

The Board may wish to take note of Mr. Snow's testimony that he would not be opposed to establishment of an oversight proceedings if the Board felt it appropriate.[48]

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[48] Snow depo. tr. p. 36 line 17 - p. 37 line 10.

C.5. **<u>Oversight Issues (with appropriate carrier performance metrics and evaluation of economic consequences for shippers):</u>**

a) **<u>Safety performance.</u>**

b) **<u>Customer transit times in key corridors (both new and existing NS and CSX service) [see Condition C.3].</u>**

c) **<u>Service efficiency gains (*e.g.*, run-through trains and 286,000-pound gross rail load routes).</u>**

d) **<u>Maintenance of shipper gateway and interchange options on competitive rate and service terms [see Conditions A.1 and C.1].</u>**

e) **<u>Attainment of projected new traffic volumes.</u>**

f) **<u>Realization of projected cost savings.</u>**

g) **<u>Post-transaction financial ratios.</u>**

h) **<u>Effects of the purchase price and premium paid for Conrail, and the financial justification for the transaction.</u>**

CMA and SPI believe that these eight general issues to be addressed in the oversight proceedings are self-explanatory. The overall thrust of the oversight proceedings would be to measure NS' and CSX's performance against the performance which NS and CSX represent in their application that they will achieve, as well as to monitor NS and CSX performance relative to conditions the Board imposes (such as the requested condition to maintain existing gateways and interchanges). The oversight proceeding should also ensure that existing NS and CSX service is not impaired by the transaction.

In sum, the requested oversight would, coupled with the Board's expertise and ability to impose additional conditions, ensure to the maximum extent that the benefits projected by NS and CSX as a result of the transaction will be realized.

V. Conclusion

For the foregoing reasons, CMA and SPI oppose the Control Application. If the Application is approved, the Board should condition approval on the CMA/SPI conditions set forth herein.

Respectfully submitted,

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Date: October 21, 1997

CERTIFICATE OF SERVICE

I hereby certify that I have, in accordance with the Board's Decisions in this proceeding, served copies of the foregoing comments this 21st day of October, 1997, by first class mail upon all parties of record and by hand upon the following:

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ATTACHMENT 1

CMA/SPI

Proposed Conditions

CMA/SPI
PROPOSED CONDITIONS

Introduction

The Conrail break-up transaction, as proposed by Norfolk Southern ("NS") and CSX, is of unprecedented complexity. The Chemical Manufacturers Association ("CMA") and the Society of the Plastics Industry, Inc. ("SPI") have reviewed the NS-CSX application and have identified adverse effects on shippers in a broad geographic area relating to the following aspects of the proposed transaction:

- implementation of the overall transaction by NS and CSX, including integration of Conrail's facilities, operations, and collective bargaining agreements into NS' and CSX's respective systems;
- operation and management of the Shared Asset Areas ("SAAs");
- the unique division of the non-SAA portions of Conrail's established route structure between NS and CSX; and
- potential shifts of inter-territorial traffic to non-traditional gateways (i.e., Memphis and New Orleans).

The full set of conditions summarized below, if adopted by the Surface Transportation Board ("STB"), would alleviate the concerns of CMA and SPI.

A. Pre-Implementation Conditions

NS and CSX are entering into the transaction with limited information about Conrail's traffic (including its existing contractual obligations), operations, and collective bargaining agreements. In light of recent experience with other railroad acquisitions, CMA and SPI believe that implementation of the proposed transaction threatens to impair service for a substantial number of shippers. Therefore, as a condition of approval, the following must be in place before NS and CSX implement the transaction by means of their respective operating agreements with Pennsylvania Lines LLC and New York Central Lines LLC:

A.1. SAA management and operations protocols, including establishment of Management Information Systems ("MIS") for the SAAs;

A.2. Adoption of all existing tariffs and circulars that were in effect when the application was filed (June 23, 1997) and publication of supplements incorporating new routes;

A.3. Collective bargaining agreements;

A.4. Extension or integration of their own MIS by NS and CSX to their respective portions of Conrail's assets; and

A.5. Construction of connections.

CMA and SPI would support STB actions that are deemed necessary to allow NS, CSX and Conrail to work together efficiently on these matters prior to approval of the application. After approval, NS and CSX should be required to certify to the STB that they have complied with all pre-implementation conditions. Copies of these certifications should be served on all parties of record, who would have 15 days to comment. STB would review the record and accept or reject the certifications no more than 30 days after they were filed.

B. SAA-Related Conditions

The transaction will create SAAs in areas that have previously been served by Conrail on an exclusive basis. CMA and SPI are concerned about clarifying operational and shipper-carrier relationships relative to the SAAs so that shippers will be able to realize the benefits of the SAAs. Therefore, CMA and SPI seek the following conditions:

B.1. Recognizing that Conrail will operate the SAAs as an agent, NS and CSX each must be fully responsible and liable for its shipments to/from/within SAAs.

B.2. All existing bulk chemicals/plastics transloading terminals located within SAAs, including rail-to-truck terminals, must be open to both NS and CSX.

B.3. All new facilities within SAAs must be open to both NS and CSX.

B.4. Where the transaction provides contract shippers of traffic to/from/within SAAs with new competitive options (i.e., alternatives for traffic not moving to/from closed points on NS or CSX):

a) Each shipper must have an "open season" (not to exceed two years from the date of implementation of the transaction) to test service from both NS and CSX under Conrail contracts.

b) Each shipper must have the right to decide whether to have Conrail contract service performed by NS or CSX or both.

c) Each shipper must have an option to reopen its Conrail contracts.

C. Other Competition and Service Conditions

CMA and SPI seek the following specific conditions to alleviate anti-competitive effects and to prevent deterioration of service now provided by Conrail and by NS and CSX:

C.1. Interchange Issues:

a) Keep open all existing gateways and interchanges on competitive rate and service terms.

b) Prohibit increases (other than RCAF-adjusted) on rates in effect when the application was filed (June 23, 1997) for Conrail single-line traffic that becomes NS-CSX interline traffic.

C.2. Reciprocal Switching:

a) Keep open all reciprocal switching points on Conrail/NS/CSX that were open when the application was filed (June 23, 1997).

b) Specify reciprocal switching charges between NS and CSX within Conrail territory ($130 per car).

c) Eliminate reciprocal switching charges on all former Conrail-NS and Conrail-CSX interline movements that become NS and CSX single-line movements.

d) Reinstate reciprocal switching at Buffalo and Niagara Falls.

C.3. Service Standards: Hold NS and CSX to the post-transaction transit times presented in their operating plans and train schedules in this proceeding and monitor NS and CSX service not reflected in operating plans and train schedules to ensure that current NS and CSX service does not deteriorate.

C.4. Oversight Process:

a) Quarterly reports by NS and CSX filed at STB and served on all parties of record that request copies, with opportunities for comments and carrier replies.

b) Five years of STB oversight (two years of semiannual proceedings and three years of annual proceedings), with public comments, carrier replies, and expedited resolution of issues by STB.

C.5. Oversight Issues (with appropriate carrier performance metrics and evaluation of economic consequences for shippers):

a) Safety performance.

b) Customer transit times in key corridors (both new and existing NS and CSX service) [see Condition C.3].

c) Service efficiency gains (e.g., run-through trains and 286,000-pound gross rail load routes).

d) Maintenance of shipper gateway and interchange options on competitive rate and service terms [see Conditions A.2 and C.1].

e) Attainment of projected new traffic volumes.

f) Realization of projected cost savings.

g) Post-transaction financial ratios.

h) Effects of the purchase price and premium paid for Conrail, and the financial justification for the transaction.

ATTACHMENT 2

Verified Statement

of John J. Grocki

VERIFIED STATEMENT

OF

JOHN J. GROCKI

TABLE OF CONTENTS

VERIFIED STATEMENT OF JOHN J. GROCKI

My name is John J. Grocki. I am an Executive Vice President of GRA, Incorporated (GRA), a transportation consulting firm. I have been involved with the railroad industry since 1967, working both for carriers and as a consultant. My first position in the railroad industry was as Chemical Market Analyst for the New York Central Railroad in New York City. I went through the Penn Central merger and subsequent bankruptcy and ultimately became Manager for Market Development-Chemicals for Penn Central. I then joined the Central Railroad Company of New Jersey where I was the General Manager-Marketing and Industrial Development. In these positions, I was very familiar with the operations and traffic on the "Chemical Coast" and chemical and rail traffic and operations in the Northeastern United States. Subsequent to my career with rail carriers, I worked for consulting firms on assignments involving Conrail and the other Eastern carriers, including assisting Alleghany Corporation in their efforts to acquire Conrail. I spent two years as President and Chief Executive Officer of the Eastern Shore Railroad, a short-line railroad operating in Virginia and Maryland and connecting to Conrail, CSX and Norfolk Southern (NS). As a consultant, I have been involved in most of the significant merger cases that have occurred within the last 20 years including Burlington Northern-Santa Fe (BN-SF) and Union Pacific-Southern Pacific (UP-SP). A copy of my credentials is attached as Appendix A, and a copy of GRA's credentials is attached as Appendix B.

GRA was retained by the Chemical Manufacturers Association and the Society of Plastics Industry, Inc. (CMA/SPI) to evaluate the proposed transaction (Finance Docket 33388) between

NS, CSX and Conrail (which will be called "the Conrail break-up" for the balance of this statement) which will result in the division of Conrail between NS and CSX. This transaction is important to CMA/SPI in that it potentially impacts about 345,700 carloads of traffic representing almost $1.0 billion in rail revenue. This is approximately 22 percent of all chemicals rail freight charges in the United States.

The Conrail break-up is a transaction of unprecedented complexity in the annals of railroading. It is unprecedented not only because of the size of the acquired carrier, but also because of the unique nature of the transaction. This is not a simple end-to-end or parallel merger where one railroad acquires another intact and integrates it into its own system. But rather, a large profitable railroad, Conrail, is being disaggregated into three parts, two of which will be merged into larger competing railroads and the third part operated by a third-party as a "Shared Asset Area." This means that rather than simply integrating the operations, systems, etc., of the acquired company into the acquiring railroad, Conrail must first be disaggregated and then reassimilated by NS, CSX and the residual Conrail entity.

It should be stressed that Conrail currently operates as a system, with its own traffic flows, operating patterns, and information systems. When Conrail is disaggregated, the "system" will have to be split in three, forcing the creation of, for example, new routes which will then have to be merged into the operations of two acquiring companies. These changed traffic patterns and new routings for traffic raises questions about how customer service will change and how the competitive balance in the northeast will evolve.

In the course of its work, GRA reviewed the application itself, supporting work papers, verified statements, responses to interrogatories and depositions of the applicants' witnesses, and conducted our own independent analysis, in arriving at our conclusions.

The balance of this statement includes our summary and conclusions. This is followed by a detailed discussion of the potential impacts of the Conrail break-up on CMA/SPI members and a discussion of how CMA/SPI's proposed protective conditions will alleviate the impacts of the merger. A technical appendix (Appendix C) contains a discussion of the traffic analysis which supports the conclusions of this statement, and a Glossary of terms used in this statement is included as Appendix D.

SUMMARY AND CONCLUSIONS

After reviewing the application and other documentation described above, GRA concludes that there are three areas of potential problems for CMA/SPI members associated with the Conrail break-up:

1. Impaired service for some shippers
2. Reduced competition for some shippers
3. Start-up issues

Each of these potential problem areas is described separately below.

Impaired Service

GRA has identified approximately 111,000 carloads of chemicals and plastics traffic out of 345,700 carloads[1] (32%) which will potentially have worse service after the Conrail break-up than it has today. This reduction in service will involve two types of traffic:

1. Traffic moving to or from a Shared Asset Area (SAA)
2. Conrail local traffic which becomes interline traffic between CSX and NS after the Conrail break-up

In both of these cases, the application and supporting record indicates that the applicants have not yet planned for operations in the SAAs and for interline traffic between CSX and NS to the point where any judgment can be made about the service that will exist after the Conrail break-up. The applicants claim to be in the process of planning for these operations. However, GRA believes that because of the inherent additional complexities of operations in the SAA (where 3 carriers will operate where one does now) and the substitution of NS-CSX interline service for Conrail single-line service, that service for both of these categories of traffic will be worse after the merger than it is today regardless of the operational details NS and CSX work out. CSX Witnesses Snow acknowledge the "potentiality for mischief" in SAA operations and management;[2] and NS witness McClellan testified that creation of the SAAs added a layer of bureaucracy and inefficiency.[3] CSX Witness Jenkins testified that traffic becoming interline will have worse service and higher costs.[4]

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[1] Based on Conrail 1995 traffic data.

[2] Snow depo. tr. p. 197 lines 23-24.

[3] McClellan depo. tr. p. 121 lines 20-23.

[4] Jenkins depo. tr. p. 24 line 23 - p. 25 line 19.

Reduced Competition

GRA has identified approximately 63,000 carloads of chemical and plastics traffic (18%) which will have a reduction in competition after this transaction. This reduction in competition will involve the following three traffic categories:

1. Current Conrail local traffic which will become NS/CSX interline traffic after the Conrail break-up.[5]

2. Traffic which is currently interline between Conrail and NS or CSX which, after the Conrail break-up, will become NS or CSX local traffic

3. Potentially divertable traffic, i.e., traffic which is currently originating or terminating at locations not on Conrail and which moves to/from a Conrail origin or destination which will be solely served by either CSX or NS after the merger and which will be potentially divertable from its current Conrail Gateway to the Memphis or New Orleans Gateway.

In each of the cases described above, the potential exists after the Conrail break-up for CMA/SPI members to suffer a potential reduction in rail-to-rail competition and thereby incur increased freight rates.

Start Up Issues

After reviewing the record, GRA believes that the applicants have not adequately developed the details of starting up this major undertaking. It is impossible to judge from the record how the breakup and reconstitution will be managed. This lack of detail planning could potentially result in substantial start up problems with attendant costs to CMA/SPI's members and to other former Conrail shippers and receivers. This lack of a definitive start-up plan in operations, management information systems, labor, and other areas could cause substantial reductions in service along with delays, lost cars and other service problems, to the detriment of

[5] Note: This traffic also will receive reduced service as described in the previous section.

industry. There is considerable precedent for problems of this sort. For example, the problems in the Houston area stemming from the UP-SP merger are well documented. The UP's absorption of the SP is a much simpler transaction than the Conrail break-up. Yet the UP is currently in a "service crisis" caused by the acquisition of the SP which is causing the UP to take extraordinary steps to solve the problem. These steps include:

- Routing trains on other railroads;
- Shifting coal traffic to other carriers;
- Diverting trains internally to less efficient routes;
- Eliminating export coal shipments;
- Slowing down intermodal trains to free up locomotives.

Most of these steps are detrimental to the UP's long-term plans but necessary for short-term survival.[6]

Protective Conditions

GRA believes that the protective conditions proposed by CMA/SPI would substantially mitigate the potential problems described above. A detailed discussion of how these conditions will provide this mitigation is included in a later section of this statement. The underlying analysis leading to these conclusions is also described in latter sections of this statement and in the verified statement of Mr. Charles N. Marshall.

[6] Finance Docket 32760 (Sub.-No. 21), Applicants' Third Quarter 1997 Progress Report, pp. 8-43.

ANALYSIS

DATA AND TRAFFIC ANALYSIS

As the first step in its analysis of the Conrail break-up, GRA obtained data from the applicants consisting of 100 percent traffic tapes for the year 1995 for the applicants and Conrail. GRA first "cleaned" these tapes in order to make them usable for subsequent analysis. After the tapes were cleaned, GRA conducted a number of traffic studies on these tapes to identify traffic volumes associated with the various issues of importance to CMA/SPI members. The data cleaning activity and the traffic analysis are explained in detail in Appendix C.

SERVICE ISSUES

SAAs

Norfolk Southern and CSX plan to operate three areas of Conrail as "Shared Asset Areas" (SAAs), rather than dividing those assets between the acquirers as is being done with other parts of Conrail's operation. The three SAAs are North Jersey, South Jersey/Phildalphia, and Detroit.

These areas are of disproportionate importance to CMA and SPI because SAA traffic equals 105,000 cars a year of chemicals. Approximately 30% of Conrail's chemical traffic originates or terminates in an SAA.

NS and CSX have established elaborate governance rules for the SAAs. (Application Volume 8C, Exhs. G, H, I) In general, operation of the SAAs will be carried out by a residual Conrail organization that will have no pricing authority or other commercial presence, and will not be a common carrier. All pricing and full service responsibility for SAA shipments will be taken by either CSX or NS. Even movements from one point in an SAA to another within an SAA or between SAAs will be priced and contracted for by one of the owning companies. The service, however, will be provided by the residual "Conrail" organization, although both NS and CSX can operate their own trains in the SAAs.

The Conrail operating company is to be governed by an evenly-divided joint board through a jointly-selected General Manager. Elaborate provisions are made for the division of expenses and capital investment costs, with arbitration provided in the event of disagreement. The normal course of arbitration would appear to be about four and a half months from the time of Board deadlock (45 days' specific wait, 45 days for submission of papers, 45 days for decision). The period could be lengthened by failure to agree upon by an arbitrator. Since the division of costs is spelled out in the agreement, the principal application of arbitration is likely to be to the *level* of cost. In other words, arbitrable disagreement is most likely to arise in decisions as to *whether* a capital expenditure should be made and *how much* to spend on maintenance in a given year.

Although the Applicants appear to have devoted much time and thought to developing rules for the governance of their joint facilities, it is not obvious whether these rules, in practical application, will work. The fundamental fact is that CSX and NS, after the acquisition has been completed will be *competitors*. There will be no natural incentive for cooperation. As previously noted, CSX's Chief Executive Officer Mr. Snow said there would be a "potentiality for mischief" in the SAAs. What is more, if there are changes in the relative economic status of the two companies, there could emerge dramatic differences in their operating and investment philosophies. If one company is relatively poor and the other relatively rich, one could manage for cash and the other for long-term growth. In such an environmental, there is some incentive for the poorer partner to send virtually every decision to arbitration just to defer the cash impact of the decision.

There is ample precedent for joint facilities and terminal operations to go wrong. For years, Southern Pacific (relatively poor) and Santa Fe (relatively prosperous) bickered about capacity improvements to shared tracks in southern California. The argument stopped capital improvements and kept maintenance levels low for years. Similarly, the Terminal Railroad Association of St. Louis, jointly owned by about a dozen connecting lines and subject to an agreement with elaborate checks and balances, suffered for years with poor service. At other times, joint terminals such as the Indiana Harbor Belt and Belt Railway of Chicago have suffered from disputes between the owners which created service problems. The point here is not that joint facility agreements such as the SAAs agreements *always* go wrong, but that there is an inherent built-in mechanism in the structure that may cause thing to go wrong with attendant problems for CMA/SPI shippers who will depend heavily on the smooth operations of the SAAs.

Furthermore, the Applicants have yet to delineate their operating plan for the SAAs, e.g.:

- How their systems will be integrated.
- How they will accommodate the changes in routings and carrier identification of SAA stations that will result.
- How they will accommodate additional new line-haul service with existing local switching service.
- What personnel will be chosen to operate the SAAs. (Will the personnel below the level of general manager be new faces or old? If old, will they be able to work with NS and CSX after the contention of the past year? If new, will they understand the operation?)
- What the labor agreements for the SAA might provide.

Each of these matters, if unresolved, bears the seeds for substantial service problems following the Conrail break-up.

From a day-to-day operating perspective, the tracks in the SAAs are already congested today (and particularly in the North Jersey and Philadelphia SAAs where most of the chemical traffic originates and terminates), the yards (Oak Island and Pavonia) are low-tech and under-maintained. Oak Island once was a hump yard and now is operated as a flat switch yard. Pavonia (near Camden, NJ) is a rider hump yard. These yards may well be inadequate to service both the Conrail residual operations and the two competing carriers. The trackage in the SAA has been operated by Conrail for many years and Conrail has rationalized the facility to produce the most efficient operations for one carrier, not three. In South Jersey, the track from Pavonia to CP "Brown" could be a source of congestion while in North Jersey, the single-track connections to the SAAs may cause problems.

Witness Mohan testified that even today, when Conrail is the sole owner of the lines that will become the North Jersey SAA, there are congested segments.[7] As another example of the potential for poor service, NS and CSX intend more arrivals and departures from Oak Island than Conrail currently has. However, NS' response to CMA's Interrogatory No. 4 indicates that they intend to maintain the current times and frequencies of local switching service.[8] This means that from a shipper's perspective, pickups and deliveries will occur no more frequently than they do today. Therefore, the additional trains will be "wasted" and, in fact, the need to classify more

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[7] Mohan depo. tr. p. 572 line 25 - p. 573 line 8.

[8] CSX-17, p. 9.