STB FD 33388 10-21-97 D 182807 2/4

trains (even if traffic volumes do not increase) and additional train starts means that arrival and departure yards will be more congested than they are today.

Another major unresolved issue for the SAAs is labor. The issues of how, for example, crews will be called, and how the railroad seniority rosters will be merged needs to be explored in detail before implementation of integrated operations is allowed to occur. It is apparent from the testimonies of witnesses Spenski and Peifer that NS and CSX have not even decided who will administer labor issues for the SAAs.[9] Other issues of how customer service and management information functions will be operated in the SAAs have also not been addressed.

Subsequent to the identification of the SAA traffic volumes, GRA attempted to identify post-merger service levels in the SAAs. After reviewing the record, the responses to specific interrogatories directed at these service issues, and the results of the deposition of key operating witnesses from both NS and CSX, GRA concludes that neither NS nor CSX currently has an operating plan for the SAAs that would enable development of specific service levels. In response to interrogatories concerning service to the SAAs, specifically CMA Interrogatory No. 4, CSX indicates that:

> "Section 3(a)(v) of each Shared Assets Area operating Agreement anticipates that details of the local movement, handling, pick-up, set off, switching, transfer and interchange of railcars, blocks of railcars (staffed by a road crew) to, from or at local industries, the Operator's facilities, or jointly-operated facilities, in connection with movements described in sections 3(a)(i) through (iv) will be set forth in the Local movement Guidelines to be agreed to by the parties. CSX expects to preserve the existing Conrail patterns of service for local and yard services, which are set forth in the Conrail Schedules and Classifications Book located in the Applicants' depository."[10]

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9 Spenski/Peifer depo. tr. p. 89 lines 9-10.

10 CSX-17, p. 10.

This response clearly indicates that, from CSX's perspective, local movement guidelines for the operation of the SAAs have not been agreed to by the parties. To further support this belief, CSX indicated, in response to CMA Interrogatory No. 7,

> "The CSAO [Conrail operating organization] will perform switching and classification services for the accounts of CSX and NS in accordance with the Operating Plans, the Shared Assets Area agreement and the Local Movement Guidelines. In developing the Local Movement Guidelines, the parties will determine the most efficient, cost effective and safest way to meet the service needs of CSX and NS customers, taking into consideration the physical layout and capacity of each Shared Assets Area."[11]

Again, this response indicates that from CSX's perspective, the SAA operations have not been finalized.

NS' response to CMA's interrogatories stated: "NS expects that current times and frequencies of local switching service will continue and has no present intention of changing them."[12] However, under cross-examination, NS witnesses also indicated that plans for service in the SAAs are still undeveloped.[13]

The failure to have plans in place to operate the SAAs leads GRA to conclude that shippers should expect substantial diminution in service in the SAA. NS and CSX and "residual Conrail" will try to operate three railroads where, today, there is only one. There will be two line-haul carriers feeding into Oak Island, which already has limited receiving/departure capacity—this has the potential for congestion and delay. At a minimum, there is no basis to find that the Conrail break-up will preserve, let alone enhance, competitive service to the public.

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[11] CSX-17, p. 13.

[12] NS-16, p. 11.

[13] Mohan depo. tr. p. 289 lines 15-19.

Based on this information, and the recent experience in Houston where service in the terminal area has deteriorated greatly since the UP-SP merger,[14] GRA concludes that service in the SAAs after the Co. rail break-up will not be as good as it is today, even after the SAA operating plans are implemented, with resulting cost and service impacts on CMA/SPI members.

Several additional aspects of SAA operations could harm shippers. First, the application does not clearly delineate how liability and responsibilities for shipments will be allocated, both for movements under contract and movements under tariffs. Second, the application splits up access to the Conrail bulk terminals between NS and CSX. Because of local market access issues, product incompatibility and the difficulty of trucking to customers in these congested areas, existing terminals and those built in the future should be open to all shippers, including Croxton (N. Jersey SAA) and Eastside Yard (S. Jersey/Philadelphia SAA).

Conrail Local Traffic

The other area of service concern is for traffic which is currently Conrail local which will become NS/CSX interline after the Conrail break-up. This represents approximately 6,600 carloads of chemical and plastics traffic. This traffic currently has Conrail single line service, that is, the origin and destination are both on Conrail. After the Conrail break-up, this traffic will move from an NS station to a CSX station, or vice versa. The traffic will no longer have the benefits of single line service and will become an interline movement. Because Conrail's lines are being divided between NS and CSX, the current route for this traffic might not be available after the Conrail break-up. Therefore, NS and CSX must find new routes for some of this traffic

[14] Finance Docket 32760 (Sub.-No. 21) Applicants' Third Quarter 1997 Progress Report, pp. 8-43.

and since joint line service is inferior to single line service, it will be difficult for the current service levels to be maintained.

The application is silent about how this traffic will be handled. Witness Williams in his deposition, indicated that he had informed NS management that they should look into this problem during the merger planning process.[15] His recommendations have not led to any concrete plan. CSX's and NS' response to CMA Interrogatory No. 17 states that no new gateways for interline traffic within official territory between NS and CSX were created for purposes of Mr. Rosen's General Merchandise Study except at Oak Island, NJ and Greenville, NJ.[16] Witnesses Williams and Mohan also indicated that NS had only belatedly received Conrail 100 percent tapes and had not included information from these tapes in the NS diversion studies of operating plan.[17] It is a fundamental premise of the Applicants' case that single line service is better than interline service. This traffic will suffer a reversal of fortune from single line to interline service.

It is GRA's conclusion that because of the limited number of gateways between NS and CSX in Official Territory and the potential for circuitous routing that this traffic will suffer a significant deterioration of service versus the Conrail single line service which it enjoys today. This is effectively conceded by Applicants' witnesses.[18]

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[15] Williams depo. tr. p. 142 line 10 - p. 143 line 4.

[16] CSX/NS-101, p. 6.

[17] Williams 08/18/97 depo. tr. p. 37 lines 11-24; Mohan 09/17/97 depo. tr. p. 602 lines 5-14.

[18] Jenkins depo. tr. p. 24 line 23 - p. 25 line 19.

COMPETITIVE ANALYSIS

GRA also evaluated traffic where CMA/SPI members will suffer a potential reduction in the ability to negotiate competitive rates because of a changed rail-to-rail competitive environment. There are three types of traffic which will have a less competitive ratemaking environment after the merger.

The first is Conrail local traffic which will become NS/CSX interline traffic after the Conrail break-up. This traffic was also discussed under the service analysis above. It is traffic which today enjoys single line service via Conrail but which, after the transaction, will move interline between CSX and NS. It represents approximately 6,600 carloads. Since, after the Conrail break-up, Conrail lines will be divided among NS and CSX, the potential exists for substantial circuitry for some of these moves, particularly since NS and CSX have not established any new interchange points between themselves in Official Territory except for Oak Island. Cars may have to move a considerable distance "out of route" in order to reach one of these gateways. This will result in additional car miles (and costs) for both carriers which they would likely attempt to pass on to the shippers.[19]

Also, NS and CSX will favor their own single line traffic versus interline hauls. Thus, a local Conrail shipper which changes to a joint NS-CSX haul may compete with a shipper enjoying continued single line service, such that the former shipper is competitively harmed.

The application is silent about pricing issues for this type of traffic. In addition, CSX witness Jenkins said that while the current local Conrail rate would be "a consideration" in

[19] Jenkins depo. tr. p. 24 line 23 - p. 25 line 19.

pricing this traffic, CSX would be most concerned that the pricing was "competitive" with truck transportation.[20] GRA believes that this type of traffic will be subject to potential rate increases after the Conrail break-up as the railroads attempt to pass their additional costs through to the shippers. Also, since this traffic will have a monopoly railroad at each end of the move, the shippers have no negotiation leverage.

The second traffic type that will have a less competitive ratemaking environment is Conrail interline traffic between NS or CSX which, after the merger, will become NS or CSX local traffic. It amounts to approximately 13,000 carloads. This includes traffic which, prior to the Conrail break-up, could potentially move either NS/Conrail or CSX/Conrail which, after the Conrail break-up, since the destination point is closed to the other carrier, will become "de facto" a local move. An example of this type of traffic might be useful. Traffic currently moving from Atlanta from a station which is jointly served by NS and CSX which is moving to a Conrail destination at Corning, NY (which after the Conrail break-up will become an NS local point) currently can route NS, Hagerstown-Conrail or CSX, Potomac Yard-Conrail. After the Conrail break-up, because of the fact that NS serves the destination, they are unlikely to be willing to make a rate for an interline movement with CSX which effectively short hauls NS. In this situation, because NS controls the service to the destination point, the shipper is unlikely to have a viable competitive option via CSX. This monopoly at the origin or destination will reduce the rate making options for the shippers and will lead to higher rates, particularly on traffic for the southeast and Midwest where NS and CSX currently compete.

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

The third type of traffic that will likely be competitively impaired is traffic which is potentially divertable through the Memphis and New Orleans Gateways which is discussed in Charles N. Marshall's verified statement.

START UP ISSUES

In reviewing the application and, in particular, the operating plans, it is apparent that NS and CSX have not yet developed plans for the integration of Conrail into their systems. This pre-merger planning is essential to the smooth transition from an independent Conrail to a Conrail broken up between NS and CSX. The complexity of this transaction cannot be over-emphasized. There has never been a transaction in which a railroad the size of Conrail has been broken up between two major competitors. There are myriad issues which need to be addressed in ensuring that this transaction goes smoothly. The data processing and management information systems must be dismantled and reintegrated into NS' and CSX's systems. New labor agreements must be forged, customer service arrangements put in place, and a new operating plan implemented. The application is largely silent about how these elements of implementation will be conducted and contains no information about the results of any transition planning effort.

According to the testimony of Applicant witnesses, transition planning is ongoing, but far from complete. For example, CSX operating plan witness Orrison testified that operations issues would continue to be worked out over the next year.[21] Planning is hampered in some areas by the

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[21] See, Orrison 09/11/97 depo. tr. p. 216 line 23 - p. 217 line 4.

inability of CSX and NS to obtain information from CR, which is still considered an "independent corporation."[22]

During the Penn Central merger (and subsequent bankruptcy), lack of pre-merger planning, particularly in the integration of the operations, caused numerous problems which if repeated here could be a source of considerable problems and expense to CMA/SPI members. It became vividly apparent shortly after the Penn Central merger that field operating employees had no idea about how to route cars for this new company. And, in fact, Penn Central was forced to push the ball back into the shipper's court by asking them to route cars PC (P) to former Pennsylvania railroad destinations and PC (N) to former New York Central destinations in order to help the field clerks to properly route cars. It is not hard to visualize that similar circumstances could occur here for former Conrail lines that will be operated by CSX or NS.

In addition, there is an abundant record being built in the UP/SP oversight case (Finance Docket 32760 (Sub. No. 2) that indicates that lack of accurate planning has resulted in a substantial and serious degradation of service in the Houston area.

Another example of lack of completed planning is in the area of management information systems (MIS). In part, as noted, this stems from lack of access to Conrail information.[23] Whatever the reason, it is clear that transition planning for data information management systems

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[22] Mohan 09/17/97 depo. tr. p. 602 lines 15-22. See also, e.g., McClellan depo. tr. p. 164 lines 11-18 (lack of access to Conrail costing systems).

[23] Mohan 09/17/97 depo. tr. p. 602 lines 15-22.

is far from complete.[24] It is essential that a working MIS be available on Day 1 of the merger for a smooth transition to occur.[25]

All of these factors point to the need for a series of assurances that pre-merger implementation efforts have been made, and that the systems and procedures to provide customer service are in place on implementation day.

The testimony of CSX Witnesses Snow and Hart shows that CSX believes the complexity of the planning and implementation process dictates extending the time between the "Control Date" and the start of integrated operations.[26] The pre-implement conditions outlined below are consistent with CSX's position on this issue.

CONDITIONS

For the reasons outlined previously, CMA/SPI members are concerned that the Conrail break-up could cause rates to increase and service to deteriorate, contrary to the explicit efficiency-building premise upon which the acquisition is predicated. For that reason, CMA/SPI seek certain conditions. The following discussion explains how each condition helps mitigate the service, competition, and start-up concerns described above.

Conditions A.1 through A.5: *Pre-implementation conditions.* It is apparent from the Application and the record, that the Applicants have not completed planning associated with the

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[24] Orrison 09/11/97 depo. tr. p. 145 line 16 - p. 146 line 8.

[25] In a very recent speech to the annual meeting of the Intermodal Association of North America, Mr. A.R. Carpenter of CSX said the merger of Conrail's and CSX's MIS is "...the biggest concern of the moment." Traffic World, September 22, 1997, p. 17.

[26] Snow depo. tr. p. 19 line 9 - p. 20 line 3; Hart depo. tr. p. 278 lines 8-25 (implementation would occur only six to nine months after Control Date).

break-up of Conrail. The various pieces of this puzzle such as SAA management and operations including MIS, labor agreements, filings of tariffs and circulars, etc., need to be completed before the implementation of this transaction. These conditions need to be in place in order to ensure smooth transition to integrated NS-CSX systems from an integrated Conrail system. It will help avoid the problems associated with the SAA start-up and difficulties similar to those currently being experienced in Houston.

Conditions B.1 through B.4: *SAA-related conditions.* The justification of the Conrail break-up is public benefit, not dire need, so the benefits to shippers should be clear. Innocent, (but important) parties such as CMA/SPI members should not be asked to absorb large risks for the benefit the railroads. The reduced service in the SAAs represents a considerable potential harm to CMA/SPI members.

CSX and NS should be required to absorb full responsibility and liability for movements to and from the SAAs (Condition B-1). This seems to be the intent of CSX and NS. For example, Mr. Anderson for CSX testified that CSX intended to be completely responsible for SAA movements from start to finish.[27] Nonetheless, the record on this issue is not completely clear,[28] and the matter should therefore be the subject of an explicit condition that shows exactly where liability will lie.

All chemicals and plastics bulk terminals in the SAAs (including Croxton and Eastside Yard) should be open to service by both NS and CSX (Condition B.2). This condition is important because there are a number of markets in the SAAs where joint access will be the only

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

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

practical way to provide service (e.g., at places where the market is small, or the terminal is unique to certain commodities, highway access is restricted, particularly to key shippers/receivers, or when zoning or environmental limitations inhibit the opening of additional terminals). For this reason, all SAA terminals should be open to both carriers. This will help alleviate the service dysfunction in the SAAs.

It is implied in the application that all new facilities in the SAAs will be open to both carriers (Condition B.3). We believe that the intent of the carriers is to have all new facilities in the SAA open to everyone. Therefore, it should be made clear by an explicit condition associated with the Conrail break-up.

Condition B.4 states several options that should be extended to shippers whose SAA traffic is carried under current Conrail contracts to enable them to take advantage of the new competitive options created by the SAAs. Contracts or shipments to and from the SAA should be reopenable at the shipper's option, and shippers will have two years to test the service of both acquirers under the contract if continued. These options are also needed in light of changes in junctions, routings, and line haul carriers that will be thrust upon shippers as a result of the transaction. The current problems in Houston show that shippers must be given a choice of carriers if they have any hope of protecting themselves from service disruptions, particularly if they are in a high risk, joint facility area. These options need to be spelled out in specific conditions (Conditions B.4a through B.4c).

Condition C.1(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.* If the promise of the Conrail break-up is better service and greater efficiency, Conrail local movements that become interline certainly should not suffer from poorer rates and decreased efficiency. This condition would only ensure that Applicants fulfill the promise of their application on the rate side, since there is no practicable condition that would ensure the same or better service for this traffic after the Conrail break-up.

Condition C.2(a): *Keep open all reciprocal switching points on Conrail/NS/CSX that were open when the application was filed (June 23, 1997).* The purpose of this condition is to ensure that existing competition is maintained and that shippers who are open to switching have an alternative outlet if their preferred routing is adversely affected by the Conrail breakup. The entire analysis on the preceding pages is predicated on the premise that existing competitive relationships at points open to reciprocal switching are maintained.

Condition C.2(b): *Specify reciprocal switching charges between NS and CSX within Conrail territory ($130 per car).* An agreement to this effect was reached by applicants in the Union Pacific-Southern Pacific acquisition. If there is in fact to be strengthened competition throughout the East, as promised by the Application, workable reciprocal switching at a reasonable price level is essential.

Condition C.2(c): *Eliminate reciprocal switching charges on all former Conrail-NS and Conrail-CSX interline movements that become NS and CSX single-line movements.* The issue here is that because of the Conrail break-up reciprocal switching charges may increase for some shippers without any action or change in their routings on their part. A shipper who ships Conrail-NS today may find that NS has acquired the Conrail line between the origin and the former Conrail-NS junction but that CSX has acquired the local service at origin. In this case, CSX switching charges at origin will be *in addition to* the through rates that previously applied.

Any such new charges should be fully absorbed by the carrier that acquires Conrail's linehaul track.

Condition C.2(d): *Reinstate reciprocal switching at Buffalo and Niagara Falls.* In fact, there will continue to be switching at Buffalo, but practically usable switching at Niagara Falls disappeared when CSX abandoned its own line through Ontario and substituted haulage. The important Buffalo and Niagara Falls markets should have access to the outside world on the same competitive terms as other important Eastern markets. This need for switching is accentuated by the fact that some former single-line Conrail moves will become interline moves, e.g., traffic moving to points where NS is acquiring the Conrail line at the other end of the move will become a CSX-NS interline move where before it was a Conrail single line haul. Buffalo and Niagara Falls should be open to reciprocal switching to avoid this problem.

VERIFICATION

John J. Grocki, being duly sworn, deposes and says that he has read the foregoing statement and that the contents thereof are true and correct to the best of his knowledge and belief.

John J. Grocki

Subscribed and sworn to before me the 16th day of October, 1997.

Notary Public Pamela S. Allen, Notary

My Commission Expires October 14, 2000

APPENDIX A
to Verified Statement
of John J. Grocki

JOHN J. GROCKI

Business and Professional Experience

09/93 -Present Executive Vice President, GRA Incorporated

Mr. Grocki has over 30 years experience in management, executive and consulting roles in the Transportation Industry. He has particular experience in planning, railroad operations and valuation. He has served as President and Chief Executive Officer of a short-line railroad, and he has been a Vice President of two nationally-known transportation consulting firms. A representative sample of projects which he has directed include:

- Analysis of numerous proposed and actual mergers and acquisitions of transportation companies. These analyses were performed for carriers, government agencies, financial institutions and potential acquiring companies. For example, Mr. Grocki directed an evaluation of Conrail for Alleghany Corporation as part of their efforts to acquire Conrail from the Federal Government.

- Evaluation of intermodal transportation systems and programs to reduce shipper and carrier costs and improve efficiency. For example, Mr. Grocki directed a study of use of intermodal transportation for a Fortune 100 company that resulted in a 45% reduction in transportation costs for a key segment of the company's business.

- A variety of specialized economic studies in connection with the transportation industry. These included computer modeling of traffic flows, forensic evaluations of transportation accidents, hazardous material handling, ridership studies, rate and pricing studies, and anti-trust evaluations of mergers.

- Operations, maintenance and valuation studies of short line railroads.

- Valuation studies of transportation company assets, equipment and infrastructure, as part of acquisition, divestiture and abandonment programs. For example, for Merrill Lynch Leasing, Mr. Grocki directed a valuation study of a fleet of 400 covered hopper cars. This study included condition evaluation, recommendations for a revised maintenance program and fair market value assessment.

- Oversight of new construction, rebuilding and upgrading programs of railcar fleets. Assignments included boxcars, container cars, tank cars, high capacity gondola cars, open and covered hopper cars and specialized rapid-discharge cars for bulk material handling. For example, for Sierra Pacific Power, Mr. Grocki directed the design and construction of a fleet of specialized, rapid-discharge hopper cars for a dedicated coal movement.

- Feasibility and design studies of a variety of integrated transportation systems, such as coal transloading facilities, bulk material handling systems and rail container operations.

- Mr. Grocki has testified as an expert witness before the Interstate Commerce Commission and other judicial bodies. He has also served on several Boards of Directors.

1985-1992	Canonie Incorporated, Vice President Eastern Operations, Canonie Atlantic, President and CEO (1985-87)
1985-1987	President and Chief Executive Officer - Eastern Shore Railroad, Norfolk, VA.
1980-1985	Vice President - URS Coverdale and Colpitts, New York, NY
1974-1980	Vice President - Gellman Research Associates, Inc., Jenkintown, PA
1973-1974	Vice President-Manager of Industrial Parks - I. Heller Construction Co., Edison, NJ
1970-1973	General Manager, Marketing and Industrial Development - Central Railroad Company of New Jersey, Newark, NJ
1967-1970	Managerial positions with the Penn Central and the New York Central Railroads

Education

Stanford University, MBA, 1965

California Institute of Technology, M.S., Chemistry, 1964

Worcester Polytechnic Institute, B.S., Chemistry, 1962

Professional Affiliations

American Railroad Development Association
Transportation Research Forum
Railway Systems Management Association
National Association of Industrial Parks
Who's Who in the East
Who's Who in Railroading and Rail Transit

APPENDIX B
to Verified Statement
of John J. Grocki

GRA RAIL SERVICES

Over the past 25 years, the railroad industry has undergone dramatic changes. The major railroads have consolidated dramatically. A wide variety of short lines and smaller carriers have sprung up. Deregulation has dramatically impacted the way railroads provide services, and many new technologies and systems have been developed. Generally, railroad profitability has improved and the crises of the 1970's and 1980's have evolved into the profits of the 1990's. While railroads have continued to dominate the transportation of bulk commodities such as coal and iron ore, they have lost substantial shares in the transportation markets for manufactured goods. However, recently railroads have rediscovered ways to compete with trucks by providing higher levels of reliable service with less damage to high valued shipments.

Among GRA's first assignments was an engagement to provide advisory services to eight bankrupt eastern railroads in the United States. The firm continued its reorganization work with numerous engagements for most of the interested parties to the eastern railroad crisis including: trustees, potential acquirers, suppliers, the Interstate Commerce Commission, the U.S. Department of Transportation, USRA, and leasing firms. GRA has been involved through the process, participating in the auction process for Conrail and more recently, participating in the regulatory reform of the rail industry in the United States. GRA has played a central role in establishing the criteria for pricing, cost allocation, and maximum rate regulation.

Today, the firm's main areas of specialization within the rail industry are:

- Rail economic issues including rates and pricing, costing and cost allocation, revenue projections and financial analysis;
- Public/private sector issues including privatization;
- Special studies in marketing, operations and maintenance, including short line operations;
- Asset valuation;
- Expert testimony.

While developing capabilities on the regulatory side of the rail industry, GRA has also provided consulting services to various other interested parties. GRA has assisted numerous shipper groups and third parties in rate negotiations, equipment supply and valuation and the planning and implementation of rail-oriented transportation systems.

Rail Reorganization and Privatization

GRA has specialized in developing optimal corporate and government policies for reorganized railroads. The firm develops its financial and operating analysis using practical railroad knowledge as a foundation. In addition, because GRA has been involved in the development of much of the regulatory structure which now governs railroads in the United States, it is well versed in what is possible to accomplish under existing and prospective institutional frameworks.

The firm's assignments have included:

- Advisory services to trustees and other parties involved in reorganization of bankrupt carriers;
- Advisory services to investors and railroad equipment lessors, including bankruptcy cases;
- Expert witness testimony in merger, acquisition and abandonment cases;
- Counseling services to governments on rail privatization;
- Operations and maintenance planning and costing for parties to acquisition/privatization projects.

Asset Valuation

Increasingly, railroads have come to depend on rolling stock owned by third parties and either operated independently or as part of railroad fleets. Because there have sometimes been wide swings in the demand for third party fleets, investors must be concerned with current and future market values.

GRA has assessed the values of some of the largest privately owned fleets of rolling stock in the United States, including cars owned by ITEL and Emons. In developing valuations, the firm relies upon its experience in rail car markets worldwide, and on state-of-the-art sampling techniques to assess both market demand for and current physical condition of fleets.

The sampling techniques utilized by GRA result in far more accurate assessments of the marketability of rail car fleets than less formal methods used by many valuation firms. For example, GRA uses stratified random sampling to segregate particular fleets into categories by age, physical characteristics, and other relevant variables. Using statistical methodologies, the firm identifies a representative sample of cars to be physically inspected; the result of these inspections can then be confidently extrapolated to other cars in the same category. These same sampling categories become the basis for structured interviews with rail car brokers and other cognizant parties in order to assess current market values. As a result, GRA clients receive not only an opinion as to value, but also an accurate assessment of current market conditions and the physical characteristics of their cars.

Expert Testimony, Pricing and Cost Allocation

Since the passage of the Staggers Rail Act, shippers and railroads have been involved in regulatory proceedings concerning the appropriate techniques for establishing maximum rates for shipments. In several proceedings before the ICC, GRA provided expert testimony concerning the appropriate means for allocating costs and establishing maximum prices under conditions where railroads dominate particular markets. GRA's testimony influenced how Ramsey pricing and stand-alone costs concepts would be applied in the railroad industry.

Today, GRA helps shippers evaluate whether railroads accurately apply these concepts under ICC guidelines. The firm also represents shippers in regulatory proceedings before the ICC, or in civil matters relating to railroad pricing and cost allocation behavior.

In many instances, GRA has been asked to evaluate the damages due to railroad actions. For example, the firm assessed the damages to the ETSI Pipeline Project due to alleged efforts by railroads to foreclose the project from transportation markets. The resulting decision in favor of ETSI was at the time the second largest civil damages award in history.

In addition, GRA testified in numerous railroad merger cases and also provided analysis for the U.S. government on appropriate mechanisms for reorganizing bankrupt carriers. In these engagements, the firm became among the first to apply appropriate mechanisms for applying revised Department of Justice merger guidelines to railroad markets.

Economic Impact Model

Transportation facilities are among the most important assets in a community. Often essential to a region's economic well-being, they can also be a controversial neighbor. It is the duty of a facility's sponsor to maximize the contribution of the improvement to the community and at the same time to operate as a good neighbor.

Economic impact studies are often used to help the community better understand the economic role of the transport facility. In many cases, local interest groups have difficulty visualizing their stake in the expansion and improvement of the infrastructure. GRA's Economic Impact Model makes clear the direct link between the improvement and the benefits to the local economy and local constituencies.

The GRA Model is actually a system of interrelated computer programs which allow a sponsor to identify the improvement's impact on both a large regional economy and smaller geographic subregions and industries. Instead of a paper study, GRA delivers to its clients an interactive computer system written in Lotus 1-2-3 which allows the sponsor to develop customized presentations for individual groups. This system can easily be updated as new economic information becomes available. In other words, the GRA Economic Impact Model can be integrated into the full-time job of keeping the community informed.

Sponsors may seek economic impact studies to make clear the net benefits of large capital expenditures. In the sometimes contentious public debates which attend large investments, it is important that the study stand up to public scrutiny. The GRA Model is based upon the latest advances in regional economics, and the firm has successfully presented it on behalf of numerous sponsors. For example, upon the recommendations of the FAA, the Government of Hong Kong selected GRA to examine the economic consequences of not replacing Kai Tak airport. The resulting study demonstrated the substantial net benefits to the Hong Kong economy of the now-announced new airport, which is part of the largest infrastructure development program in the history of the world. Similarly, sponsors in the Dallas-Fort Worth, Philadelphia, Baltimore and other areas have chosen GRA's Economic Impact Model to assess economic impacts on infrastructure changes.

Marketing and Logistics

GRA has conducted numerous studies involving the marketing of rail services, in both the freight and passenger areas. These studies have involved the movement of carload freight -- including merchandise and bulk commodities -- and intermodal traffic utilizing containers and trailers. some examples of studies conducted by GRA follow:

- 10 year demand forecast for coal transportation for a Class 1 railroad;
- Regional forecasts of rail freight traffic under system reconfiguration such as mergers;
- Demand forecasts for various equipment types;
- Intermodal growth projections for carriers and equipment suppliers;
- Passenger demand estimates for proposed new services and revised schedules and equipment.

In addition, GRA has developed and evaluated integrated logistics systems for shippers. In a recent assignment, GRA reviewed the current shipping patterns of a multi-plant, multi-product company which ships large volumes of time-sensitive merchandise to worldwide destinations. GRA developed a revised approach to these shipments which dramatically reduced transportation costs and increased reliability of delivery.

Corporate Profile

Founded in 1972, GRA is one of the nation's oldest firms specializing in economic and financial matters relating to transportation. Virtually all GRA assignments have immediate strategic significance to our clients in the public and private sectors. The firm has played a leading role in helping to shape many important industry developments including deregulation, globalization, privatization, mergers, ratemaking, new technologies and distribution channels.

Our advantage is an ability to combine the resources our clients need to successfully complete new initiatives in the transportation industry in a timely and efficient manner. This is achieved through:

- Senior personnel with officer-level experience in the major modes
- State-of-the-art and specialized analysis and research capabilities
- Up to date insights into the strategic direction of the transportation industry and its customers and suppliers
- Unparalleled experience in dealing with regulatory authorities;
- Access to industry and government leaders
- Experienced in managing large and complex assignments.

GRA is often called upon to handle the most sensitive and time critical matters for its clients; the firm has established procedures for protecting sensitive information and managing projects on a fast-track.

RAIL INDUSTRY ECONOMIC ANALYSIS

Bangor & Aroostock Railway Negotiations. Prepared for the Presque Isle Industrial Development Corporation.

GRA, on behalf of the Presque Isle Industrial Development Corporation, developed a proposed agreement between PIIDC and the BAR for rail service to the Skyway Industrial Park in Presque Isle, Maine. This assignment included:

- Analysis of potential options for PIIDC (caused by the abandonment of the Aroostock Valley Railroad);
- The development of a draft agreement between PIIDC and BAR; and
- Negotiation of the agreement with BAR.

Kansas City Southern Railway, UP-SP Merger Testimony. Prepared for Troutman Sanders.

In support of KCS's position before the Surface Transportation Board, GRA prepared a series of analyses of the impact of the proposed Union Pacific-Southern Pacific merger. These analyses included:

- An analysis of the current financial health of the Southern Pacific and the viability of the Southern Pacific in the event that the merger was denied.
- Potential impact on shipper's rates of the proposed UP-SP merger as a consequence of the premium UP was paying to acquire the SP.
- The analysis of the value of the SP in a disaggregate condition, i.e., would the SP's share value be greater if it was sold piecemeal to a diverse group of railroads rather than the UP.

All of these issues were summarized in expert witness testimony which was submitted to the Surface Transportation Board as part of this merger case.

Analysis of Merger Proposals. Prepared for a confidential private client.

GRA provided assistance to a Class I railroad in evaluating alternative merger proposals. GRA's services included:

- Evaluation of competitive considerations;
- Analysis of potential for ICC approval;
- Review of economic benefits;
- Analysis of impact on shareholder value.

GRA also reviewed the anticompetitive implications of the potential mergers and provided analysis of the issues pertaining to ICC approval.

Class I Railroad Merger Analysis. Prepared for a private client.

For a major shareholder in one of the Class I railroads in the United States, GRA prepared a series of confidential issue papers concerning merger strategy and implementation. The strategic analysis included:

- Evaluation of savings from a merger currently taking place;

- Development of a strategy for merger implementation and achieving merger benefits;

- Implications of other merger combinations among the Class I railroads; and

- Development of a strategic Agame plan@ for potential future mergers.

Deprescription Analysis. Prepared for a consortium of railroads.

GRA provided economic analysis and a review of the impacts of the deprescription of rail freight car hire. GRA reviewed the proposal for the deprescription of car hire and evaluated the institutional, regulatory, competitive and economic impacts on railroads, shippers and the public. GRA also evaluated the transaction costs both from the railroads' and AAR's standpoint of the proposed system. GRA analyzed the distribution of economic benefits along the various railroads and also reviewed and estimated the implementation costs to the AAR.

Four Corners Transportation Economic Impact Model. Prepared for San Juan Basin Transportation Development District.

GRA developed and implemented an economic impact model for the eight- county Four Corners region of New Mexico, Colorado, Arizona and Utah. This model will assess the economic impacts of transportation infrastructure improvements such as railroads, pipelines and highways.

The GRA model is based on a regional input-output framework and utilizes GRA's proprietary computer model. It projects impacts of transportation improvements on total output, wages, taxes and employees for the study area.

The work program included a survey of businesses in the study area, the modification of GRA's model to meet the special conditions of the study area, the development of an economic impact submodel for the Navajo Nation and a pilot test of the model on the proposed San Juan Railroad.

As part of the work program, GRA delivered a working version of the model to the San Juan Basin Transportation Development District (SJBTDD) which SJBTDD can use to evaluate projects in the future.

Rail Right-of-Way Evaluation. Prepared for the Sussex and Warren Holding Company.

The Lackawanna cutoff is a 28 mile segment of grade separated right-of-way that was built by the Delaware Lackawanna Western Railroad in the early 20th century as a high speed passenger cutoff in New Jersey. Subsequent to the formation of Conrail, the cutoff was eliminated from Conrail's operating plans and was abandoned and sold to private interests.

Renewed interest in high speed passenger operations in New Jersey resulted in the State of New Jersey condemning the property. GRA assisted the property owner in determining the fair market value for the Lackawanna Cutoff and supported the owner in the condemnation proceedings. Also, GRA evaluated alternative valuation methodologies, provided detailed economic analysis, supporting documentation and expert witness testimony for this project.

Analysis of Worldwide Rail Markets. Prepared for a private client.

GRA conducted an analysis of the markets for a product line for the railroad industry world-wide. GRA assessed the needs of the railroad industry and identified the areas where specific products and services best fit the railroads' needs. GRA then identified alternate strategies for penetrating this market.

GRA worked closely with the client's marketing and sales departments in developing a comprehensive strategy for increased market penetration in the rail industry. GRA also helped develop sales tools and promotional information in support of these marketing efforts.

Analytical Model to Predict Impact on Railroads of Labor Strikes by Various Elements within the Rail Transportation Environment. Prepared for the U.S. Department of Transportation, Federal Railroad Administration.

GRA developed an analytical model to measure and predict significant impacts on each U.S. railroad of labor strikes within the railroad industry and in industries responsible for three percent or more of total rail shipments. The model simulates various strike situations and enables planners to improve their capacity to neutralize the disruptive effects of rail strikes.

Conrail Coal Futures Model. Prepared for the Consolidated Rail Corporation.

GRA prepared a report which:

- Forecast a range of future market conditions, described in terms of scenarios for purposes of analysis, which incorporated assumptions regarding federal energy policy, available resources, and technological developments;
- Analyzed the sources of demand for coal transportation in the region served by Conrail;
- Created a detailed compilation of data on industrial and utility demand for coal, including specific information about coal consumption over the next twenty years by individual utility plants.

The results were summarized in a coal futures model to be used by Conrail in planning studies.

Alternative Railroad Corporate Structures. Prepared for the U.S. Department of Transportation, Federal Railroad Administration.

This study provides a comprehensive examination of both innovative and traditional techniques for restructuring internal and external relationships of railroad enterprises. GRA examined possible alternative structures and assembled a group of constituent panelists, each an expert in some relevant area, who gave their opinions on a wide range of corporate restructuring issues. Many innovative and superficially promising ideas, some modeled after structures in other transportation modes and industries, were analyzed. Some of the concepts GRA evaluated are:

- Profit centers;
- Realignment of divisions according to responsibilities for asset type;
- The product manager form of organization;
- Horizontal restructuring and integration possibilities;
- Terminal restructuring alternatives; and
- Vertical separation.

The constituent panelists generally supported existing railroad corporate structures as preferable to most alternatives, but identified a number of promising concepts for application in certain structures. These alternatives were analyzed and recommendations were made concerning the potential effectiveness of a given structure.

Milwaukee Control Case. Prepared on Behalf of the Soo Line Railroad.

GRA prepared expert testimony using Transearch data which analyzed the impacts upon competition likely to result from the proposed acquisition of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (MILW) by the Chicago and North Western Transportation Company (CNW). This market impact analysis was structured in terms designed to assist the Interstate Commerce Commission in fulfilling its obligation to consider whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region. In this testimony GRA examined:

- The extent to which a combined CNW/MILW would possess market power in the geographic territory to be served by that system;
- The degree to which CNW and MILW face competition from other modes of transportation in counties in which the combined CNW/MILW system would have a 100% share on the rail market;
- The likely rate increases in markets dominated by CNW/MILW that would result from the proposed consolidation;
- The consequent effects on shippers and the public;
- The salutary impact which approval of conditions requested by the Soo Line would have upon the shipping public.

Discriminatory Rate Divisions Analysis. Prepared for a common carrier railroad.

On behalf of a common carrier, GRA inspected the grounds for claiming unfair revenue divisions on traffic interchanging with another carrier at a particular gateway. Data tapes were provided by the client indicating the traffic involved, its total revenue, and the miles of haul and revenues accruing to the client. GRA utilized the official FRA digitized rail network (NET3) and a weighted minimum path algorithm to calculate miles of haul for both the client and the competing carrier. Actual divisions tables were used to calculate the interchanging carrier's revenue divisions. Costs for each participating carrier were developed on a Rail Form A basis from the parameters supplied by the data, including miles of haul, terminal movements, car type, etc. Revenues and costs for the two carriers were used to calculate relative revenue cost ratios for particular origin and destination Standard Point Location Codes on either the connecting carrier or the client's railroad. The resulting printout identified movements on which the client lost money and movements where the revenue cost rations of the connecting carrier exceeded that of the client, indicating a potentially discriminatory divisions arrangements.

Economics of Coal Unit Train Movements. Prepared for the U.S. Department of Energy.

GRA collected data and performed computations to produce costs appropriate for analysis of the economics of coal unit train movements in the Southwest. The costs were derived using the so-called Form A cost procedure. The objective of the project was to produce costs for prototypical unit trains for inclusion in other economic models used by the Department of Energy.

Rail Reorganization Planning Study for the State of Connecticut. Prepared for the State of Connecticut, Department of Transportation.

This study was designed to provide the State of Connecticut with data to be used in meeting the requirements for a State Rail Plan under the Regional Rail Reorganization Act of 1973. GRA compiled and formulated data relating to traffic movements, frequencies and densities; routes and commodity volumes; facility conditions; and socioeconomic, environmental and energy matters. GRA analyzed current demand for passenger and freight service, formulating estimates of future demand. GRA assessed the viability of individual branch lines along with the primary and secondary impacts of the possible discontinuance of service on these lines.

Economic Analysis and Counseling Services. Provided to the bankruptcy trustees of certain Penn Central leased lines.

GRA provided economic counsel to these bankrupt railroads with respect to issues such as the valuation of properties either as going concerns or in liquidation and the assessment of various options for the disposition of estates. The work involved extensive traffic analyses and forecasts, including rigorous analyses of potential traffic diversions under various system structure configurations.

GRA developed a proprietary computer model to facilitate these traffic diversion studies. Physical inspections were made to determine the condition of the track, roadbed, and other structures on these lines. Evaluations were made of a railroad's competitive position in markets along its right of way and of potential for industrial development on land adjacent to its tracks. In addition, GRA gave counsel on alternatives to the dispositions presented in the Final System Plan and assisted in negotiations with prospective purchasers of assets of the estates.

Summary of the Financial Analysis of the Preliminary System Plan Presented to the Office of Rail Public Counsel. Prepared for the Office of Rail Public Counsel, Rail Services Planning Office, Interstate Commerce Commission

The Preliminary System Plan was issued on February 26, 1975, and according to the *Regional Rail Reorganization Act of 1973*, the ICC was required to formally review the document. As a part of the review process, the ICC commissioned GRA to prepare a financial analysis of the issues bearing on the formulation and successful implementation of the Final System Plan. GRA presented the results of the analysis ICC staff in the form of a seminar. This focused on the "ProForma Statements" which represented ten year forecasts of Conrail's Income Statement, Balance Sheet and Statement of Sources and Uses of Funds.

Analysis and Critique of Financial and Economic Aspects of the Final System Plan. Prepared for Rail Services Planning Office, Office of Rail Public Counsel, Interstate Commerce Commission.

GRA assessed the financial issues in the Final System Plan for reorganization of the Northeast railroads. It examined the proposed disposition of rail properties and methods of funding acquisitions. GRA evaluated the methods and programs for financing the rehabilitation and maintenance of the Conrail system and presented alternative means of financing. As part of this project, GRA briefed Public Counsel outreach attorneys on the anticipated startup problems of Conrail from a shipper's point of view, on the financial viability of the Final System Plan, and on the funds needed by Conrail in order to acquire and rehabilitate the bankrupt railroads.

Acquisition of Bankrupt Railroads by Solvent Carriers. Prepared for the Federal Railroad Administration, U.S. Department of Transportation.

The 1971 merger of the Monon Railway into the Louisville & Nashville Railroad was selected for in-depth study. GRA examined data and literature pertaining to both pre and post-acquisition periods in its analysis of the financial impacts of the acquisition. Shippers were interviewed concerning changes in the level and quality of service resulting from the merger and the tracks were inspected to determine whether pre-merger maintenance standards were being met. The impacts of the merger on railroad employment and competition were also examined and economies of scale resulting from the merger were identified and evaluated.

A Series of Studies on Various Aspects of the Railroad Revitalization and Regulatory Reform Act of 1976. Prepared for U.S. Department of Transportation, Office of the Secretary.

The Railroad Revitalization and Regulatory Reform Act (4R Act) mandated reforms in ICC principles and procedures governing a number of key matters in the area of railroad ratemaking. The Department of Transportation utilized GRA to prepare submissions, position papers, and issue papers on several specialized problems. GRA developed a basis on which distinct railroad services could be defined and distinguished. For example, traditional "accessorial services" are a subset of these distinct services. GRA suggested accounting techniques for developing costs of these services. The legal, regulatory and investment impacts of distinct service ratemaking were evaluated fully, in order to recommend the principles that should govern this activity.

On other issues, present accounting practices and the proposed ICC uniform accounting system were critiqued both on the basis of meeting 4R Act requirements and on their overall feasibility. GRA prepared a thorough and rigorous series of definitions in economics, railroad, and accounting terms of the following 4R Act concepts: variable costs, incremental costs, avoidable costs, cash outlay costs, and contribution to going concern value. The reports also included an in-depth investigation of the compatibility of railroads' existing management information systems with each of the alternative proposals for new accounting systems. GRA prepared an extensively documented critique on the ICC's Rail Form A costing formula.

Analysis of Mortgage Related Problems in the Financial and Corporate Restructuring of Railroads. Prepared for the Federal Railroad Administration, U.S. Department of Transportation.

This study's objective was to develop some of the basic resources necessary for the analysis of mortgage related problems in railroad corporate structures and to suggest some of the steps which might be taken to overcome them. The project resulted in:

- An index of existing railroad mortgages;
- A number of case studies which explored possible new configurations of railroad corporations and projected transfers, exchanges, sales, and reorganizations of debt which might be required for each;
- A paper which analyzed the factors influencing mortgage bond values, reviewed the present methods of bond valuation and evaluated the feasibility of developing a pricing formula for such instruments.

Feasibility Analysis of Controlled Transfer of the Properties of Bankrupt Railroads. Prepared for the U.S. Department of Transportation.

This study explored the feasibility of controlled transfer of property from the bankrupt estates to profitable railroads. Various methods for the sales of these properties were evaluated and criteria for assembling component properties in the bankrupt estates were outlined. The financial aspects of such transactions were analyzed from various standpoints:

- The market extensions gained by the solvent railroads;
- The massive rehabilitation expenditures necessary to bring the bankrupt lines up to standards;
- The financing vehicles available to the purchasers;
- The financial capability of each solvent railroad to purchase and rehabilitate lines.

Analysis of NWWabashNickel Plate Merger. Prepared for the Federal Railroad Administration, U.S. Department of Transportation.

The FRA conducted a series of studies designed to identify cost and service improvements which might be engendered by mergers and consolidations within the railroad industry.

As part of this program, GRA studied the merger of the Norfolk & Western (NW) with the former New York, Chicago & St. Louis (Nickel Plate), the Wabash and the Pittsburgh and West Virginia Railroads to form the system which is now the Norfolk & Western Railway Corporation. GRA focused on the impact of the merger on the viability of the overall national railway network, in addition to identifying cost savings and service improvements resulting from the merger. The study team reviewed published data and pre-merger testimony before the Interstate Commerce Commission, conducted interviews with NW officials and key shippers, inspected affected rail locations and held discussions with affected parties.

Alternatives to Merger. Prepared for Rail Services Planning Office, Interstate Commerce Commission.

This issue paper addressed alternatives to railroad mergers which have been proposed by many rail experts as a solution to the financial difficulties of railroads. The traditional justification, presented by the proponents of mergers, has been that mergers could either reduce costs through the consolidation of fixed plant equipment administrative support and personnel, or increase revenues by offering better service. This paper addressed the issue of whether the benefits of a merger can be obtained by other means. Some of the alternatives presented in this paper already have been implemented by railroads to achieve the same end as mergers. GRA determined that some of the alternatives presented in this paper already have been implemented by railroads to achieve the same end as mergers. GRA determined that some of these alternatives, either singly or in groups, could offer most of the benefits of a true merger without generating the institutional opposition which inevitably arises in a full-scale merger proposal.

Branch Line Abandonment Manual. Prepared for the Rail Services Planning Office, Interstate Commerce Commission.

GRA prepared a general explanation of a carrier's submission in an abandonment case which included:

- The methodologies and techniques used by carriers to support their conclusions;
- Key elements of and variables in analyzing a carrier's submission;
- An effective protestant response to a carrier's submission.

GRA reviewed the overall outline and draft of the manual that emerged, including its uniformity, comprehensibility and completeness.

Opportunity Costs in Railroad Mergers. Prepared for the trustees of a rail corporation.

GRA developed a methodology for measuring "opportunity costs" as incurred by solvent carriers faced with the reorganized corporation. GRA utilized the One Percent National Waybill Sample of rail traffic movements to create a computer program. Errors were identified and removed from the data base, and the data was sorted in a manner to facilitate analysis.

APPENDIX C
to Verified Statement
of John J. Grocki

TRAFFIC ANALYSIS

Data

As the first step in its analysis, GRA obtained a 100 percent traffic tape for Conrail for the year 1995 from ALK, Associates (ALK) as agents for the applicants. Along with this traffic tape, GRA also obtained a list of the assignment of stations in this tape between CSX, NS, and the SAAs.

In their application, NS and CSX used, for the most part, the Carload Waybill Sample enhanced to include Canadian traffic for the year 1995 for traffic data. GRA felt that it was more appropriate for its analysis to use Conrail's 100 percent data because the 100 percent traffic sample offered greater accuracy, particularly in dealing with a small portion of the overall traffic, i.e., chemicals and plastics traffic only. The principal advantages of using the 100 percent sample for a database are:

- It includes all traffic originating and terminating in Canada; the Carload Waybill Sample only includes traffic originating in Canada if it terminates on a Class 1 railroad in the U.S. It does not include any traffic terminating in Canada.
- The 100 percent sample includes traffic originating and terminating on all railroads, while the Carload Waybill Sample only includes traffic which originates or terminates on a Class 1 railroad. This could lead to undercounting chemical and plastics traffic which originates or terminates on a short line.
- Stations with relatively small traffic volumes may tend to be excluded from the Carload Waybill Sample.

For these reasons, GRA elected to use the 100 percent Conrail 1995 traffic tape for its analysis. Use of the 100 percent data required several activities to "clean up" the data in the tape.

GRA found a number of problems in the Conrail data which required corrections to make the tape useful for this study. The data cleaning and corrections activities are summarized below.

- Total Conrail Traffic Data for 1995 was contained on six tapes received from ALK on June 24, 1997. They contain a total of 4,012,319 readable traffic records consisting of one carload or one trailer each.

- GRA analyzed the 1997 Centralized Station Master CD-ROM (CSM) from the Association of American Railroads (AAR) to identify every 6 digit Standard Point Location Code (SPLC) and 5 character Rule 260 (R260) junction code in the U.S.

- A total of two bad blocks were encountered on the six reels, rendering 280 carload or trailer records unreadable and are not included in the total above.

- An additional 44 carloads or trailers were unusable since they contained entries of cars or trailers greater than 1, Tons greater than 999, or revenues or divisions greater than 99999. These 44 carload records were not used.

- A total of 366,498 records were found to have originated or terminated on Conrail at invalid SPLCs. A total of 412 SPLCs were found in the data that were unusable in their raw form. Generally, the SPLC was either invalid, or the last two digits were missing. GRA was able to correct 365,742 of these records using the alphabetic 9 character station name in another field on the tape.

- A total of ten SPLCs were found in the Conrail data which did not appear as active stations in the 1997 AAR Carload Station Master Database. They were active stations in 1995, but were subsequently abandoned, sold or otherwise disposed of by Conrail. These were added to the GRA station list.

- GRA then examined files provided by ALK that identified either CSX or NS or both as the operator(s) of each SPLC on Conrail. GRA also found that 617 currently operated SPLCs on Conrail are not assigned to either CSX, NS, or an SAA in ALK's files. These 617 SPLCs were separated for further analysis. This issue was resolved by communication between GRA and NS and CSX and their consultants.

After the traffic tapes had been cleaned, GRA conducted the following analysis.

Identification of Traffic Outcomes

Because this transaction represents a unique disaggregation of Conrail rather than a conventional merger of two carriers, the number of outcomes for various types of traffic is dramatically larger than from a traditional merger. For example, traffic which is currently Conrail local traffic could, after the transaction, become NS local, CSX local, NS/CSX interline, or it could move from, to, within, or between a SAA. These potential outcomes are summarized in Figure JGC-1. As this figures shows, there are 31 possible outcomes from the nine original traffic types in the current Conrail traffic mix.

Identification of Competitive Harms

GRA then reviewed the application and compared the information from the application with the various traffic outcomes described above and identified those areas where potential service and competitive disbenefits for the CMA/SPI members would occur.

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Figure JG C-1
POTENTIAL ROUTE CHANGES

NOW			POST MERGER		
Origin RR	**Intermediate Carrier**	**Destination RR**	**Origin RR**	**Intermediate Carrier**	**Destination RR**
CR		CR	NS		NS
			NS		SAA
			NS		CSX
			SAA		NS
			SAA		SAA
			SAA		CSX
			CSX		CSX
			CSX		SAA
			CSX		NS
CR		NS	NS		NS
			SAA		NS
			CSX		NS
CR		CSX	CSX		CSX
			SAA		CSX
			NS		CSX
CR		Other	NS		Other
			CSX		Other
			SAA		Other
CR	(NS)	Other	NS		Other
			CSX	(NS)	Other
			SAA	(NS)	Other
CR	(CSX)	Other	CSX		Other
			NS	(CSX)	Other
			SAA	(CSX)	Other
Other	(CR)	Other	Other	(NS)	Other
			Other	(CSX)	Other
			Other	(NS-CSX)	Other
Other	(NS-CR)	Other	Other	(NS)	Other
			Other	(NS-CSX)	Other
Other	(CSX-CR)	Other	Other	(CSX)	Other
			Other	(NS-CSX)	Other

Source GRA analysis

Service

From a service standpoint, GRA concluded that potential service disbenefits could occur on traffic moving to, from, within, and between the SAAs. The application was silent on how operations would be conducted within the Shared Asset Areas. GRA concluded that because of the fact that Shared Asset Areas will now be hosting three carriers rather than one in areas in which are already congested and complex, service could be impacted. Furthermore, the operating plan described in the application suggests that SAA operations would be similar to a number of other switching operations which do not currently provide good service (such as Houston). GRA therefore analyzed traffic moving to and from, within and between the SAAs.

In addition, it was felt that Conrail local traffic, which after the transaction, will be come an interline move between NS and CSX would also suffer significant service problems. The application was silent as to how this traffic would be handled. Because Conrail currently operates as an integrated system and would be split in two after the Conrail break-up, it was felt that many of the internal routing patterns of Conrail would be disrupted by the Conrail break-up. Therefore, service on this class of traffic would also be impaired after the Conrail break-up. Therefore, it was decided to identify, analyze, and evaluate this class of traffic.

Competition

GRA identified areas where competitive alternatives would be reduced as a result of this transaction. These would occur on current Conrail local traffic which will become interline traffic after the merger. This traffic would also suffer service disbenefits

Traffic which is currently interlined between NS or CSX and Conrail which becomes NS or CSX local traffic after the merger would also have competition. This traffic includes traffic that is currently has competitive options where the shipper could route NS-Conrail or CSX-Conrail today and after the Conrail break-up, the choices could be reduced. Under these circumstances, it was felt that the shippers' potential competitive options would be reduced dramatically as NS for example, would be reluctant to make competitive interline rates with CSX versus its own single line rate. And, in addition, NS would use its ability to control the service via the gateway with CSX to effectively exercise monopoly power.

GRA identified another competitive issue concerning the gateways over which the traffic flows. After the merger, both NS and CSX will have the opportunity to obtain substantially longer line hauls by routing traffic through Memphis or New Orleans into Official Territory. These longer hauls could enhance NS and CSX profitability. However, the impact on the shippers is dependent on behavior of the Western railroads (such as under BN-Santa Fe), and their willingness to share cost savings with shippers, and/or their rail connections. This would put shippers in the unenviable position of being caught between Eastern and Western railroads' desires (mutually exclusive) each maximizing its length of haul. The current situation involving, for example, the St. Louis Gateway, has a roughly balanced division between Eastern and Western carriers. Diversion to a southern gateway such as New Orleans would result in a dramatically reduced line haul to the Western carrier and a dramatically increased line haul for the Eastern carrier. Therefore, even though the overall mileage might be shorter and costs lower, the Western carriers would be unwilling to relinquish the revenue which they currently enjoy via the St. Louis Gateway. Since the Eastern carrier would want to retain its current dollar margin on the movement, then the logical consequence is that the shippers would have to pay a rate increase to support this traffic diversion. Therefore, it was decided to analyze and identify these traffic flows.

Traffic Analysis

GRA then conducted an analysis of the cleaned 100 percent 1995 Conrail traffic tape described above. The principal assumptions in this analysis were:

- GRA defined chemicals and plastics as Standard Transportation Commodity Code (STCC) 28 (chemicals and allied products) which includes STCC 28211 (plastic materials or synthetic resins 000), STCC 29 (petroleum or coal products), STCC 48 (waste, hazardous materials, or waste hazardous substances), and STCC 49 (hazardous materials).

- GRA used the Conrail 1995 100 percent traffic tape as supplied by ALK.

- GRA used its own SPLC analysis described in prior sections of this statement to clean the tape.

Using these assumptions, GRA then conducted an analysis for chemical and plastics traffic to identify the service and competitive impacts. This analysis involved approximately 345,700 impacted carloads totaling almost $1 billion in freight revenue. The traffic was divided into nine major categories, depending on the potential impact of the break-up of Conrail on competition and service. The results of this traffic analysis are contained in Figure JG C-2, in which the nine traffic classes are shown. The note to JG C-2 explains which types of traffic are included in each service/competition category. Figure JG C-3 shows the logic flow diagram for the computer analysis of the traffic data which resulted in the development of Figure JG C-2.

GATEWAY DIVERSION ANALYSIS AND RATE IMPACTS

As part of the analysis above, it was necessary to identify the potential traffic diversions through specific gateways. A series of decision rules, which are included as Figure JG C-4, were developed for traffic diversion analysis. These rules were applied to the 100 percent traffic database to create Sections 6a and 6b in Figure JG C-2.

GRA then conducted an analysis of the cost impacts of these diversions from existing Conrail gateways. This analysis was conducted as follows:

- GRA assigned each carload to a node on the FAR network
- GRA applied the decision rules described in Figure JG C-4 to identify traffic which was divertable from one gateway to another. GRA flowed the traffic over the network using the GRAPATH minimum path algorithm to determine the miles for each carload by railroad.
- We used this mileage information and the uniform railroad costing (URCS) Phase 3 movement costing program dated April 1991 and rail costs for 1995 to develop costs by railroad for each movement.
- These movements were then aggregated on a state-to-state basis.
- GRA then assumed the Western railroad would maintain its existing revenue through the revised gateway, and the Eastern railroad would retain the same dollar margin that it enjoyed via the original gateway. These decision rules were used to develop Table CM-2 in Mr. Marshall's verified statement to identify potential rate impacts on gateway diversions.

In view of the fact that after the Conrail break-up, Conrail lines will be operated by NS or CSX, GRA substituted NS or CSX costs for Conrail costs in conducting this analysis to avoid the impact on costs differences caused by NS's and CSX's lower URCS variable costs than Conrail.

The results of this cost analysis are summarized in Table CM-2 in Mr. Marshall's verified statement.

Figure JG C-2
CHEMICAL TRAFFIC ANALYSIS

Carloads (000)	Competition	Service	Note
0.6 (0.2%)	Improved	Same	1
51.4 (14.9%)	Improved	Worse	2
175.2 (50.7%)	Same	Same	3
31.9 (9.2%)	Same	Worse	4
12.6 (3.6%)	Worse	Improved	5
21.2 (6.1%)	Worse if Gateway Shifted	Worse	6a
43.4 (12.6%)	Worse if Gateway Shifted	Same	6b
6.6 (1.9%)	Worse	Worse	7
2.7 (0.8%)	Unknown	Unknown	8
345.7 (100%)			Total

NOTES

1. Bridge traffic which will now have an additional route choice with the same service and no New Orleans/Memphis diversion potential

2. Current Conrail local traffic which will become SAA to SAA traffic; and,
Traffic to/from off Conrail origins/destinations which will move to/from SAA's which has no New Orleans/Memphis diversion potential

3. Conrail local traffic which becomes NS local or CSX local traffic;
Traffic which currently moves via Conrail to/from NS or CSX which becomes NS-CSX interline traffic;
Bridge traffic which currently has multiple routing options and will continue to have them after the merger; and,
Traffic to/from off Conrail points which currently moves to/from Conrail which will, after merger, originate/terminate on NS or CSX and is not divertable to Memphis or New Orleans

4. Conrail local traffic which becomes NS or CSX traffic to/from an SAA; and,
Traffic which moved NS or CSX to/from Conrail which becomes NS or CSX to/from SAA

5. Traffic which currently moves Conrail to/from NS or CSX which becomes NS local or CSX local traffic

6. a) Traffic to/from off Conrail points which currently moves to/from Conrail which will originate/terminate in the Shared Asset Area and is potentially divertable to Memphis or New Orleans; and,
b) Traffic to/from off Conrail points which currently moves to/from Conrail which will originate/terminate on CSX or NS and is potentially divertable to Memphis or New Orleans

7. Conrail local traffic which becomes NS-CSX interline traffic; and,

8. Traffic which was handled by Conrail in 1995 but now originates or terminates on a short line which has multiple routing options. This traffic could potentially move via another railroad than NS or CSX after the Conrail breakup

Figure JG C-3

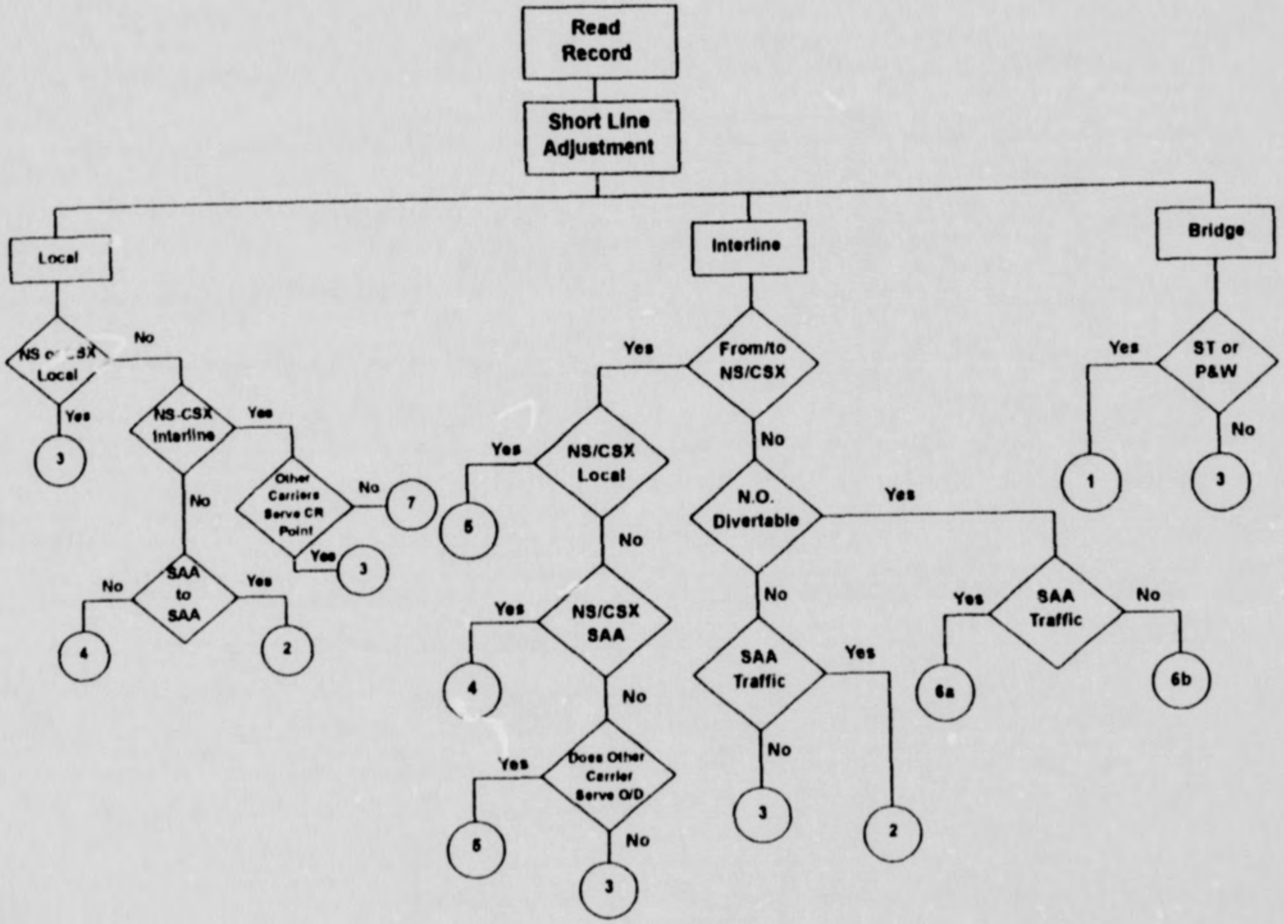

Read Record
Short Line Adjustment
Local
Interline
Bridge
NS or CSX Local
No
Yes
3
NS-CSX Interline
Yes
No
Other Carriers Serve CR Point
No
7
Yes
3
SAA to SAA
No
Yes
4
2
From/to NS/CSX
Yes
No
NS/CSX Local
Yes
5
No
NS/CSX SAA
Yes
4
No
Does Other Carrier Serve O/D
Yes
5
No
3
N.O. Divertable
Yes
No
SAA Traffic
Yes
No
3
2
SAA Traffic
Yes
No
6a
6b
ST or P&W
Yes
No
1
3

Figure JG C-4
DECISION RULES

Chicago Gateway (Chicago, Streator and Pine)

1. Exclude any move that is internal to official territory, i.e., cars that move from Indiana to Illinois via Chicago should be excluded.

2. For diversions to the Kansas City gateway, include cars moving from an NS origin or to an NS destination (including SAAs) and which originate or terminate in any state West of the Mississippi except Wisconsin, North Dakota, South Dakota, Minnesota, Canada, Iowa, Missouri and Arkansas.

3. For traffic divertable to St. Louis include cars originating and terminating West of the Mississippi except Wisconsin, North Dakota, South Dakota, Minnesota, Canada, Iowa and Arkansas.

4. For carloads divertable to Memphis, exclude destinations or origins in Illinois, include cars originating or terminating in Louisiana, Arkansas, Oklahoma, Texas, New Mexico, Arizona and California.

5. For traffic divertable to New Orleans exclude Illinois as an origin or destination, and include traffic from or to Louisiana, Texas, New Mexico, Arizona and California.

St. Louis Gateway (East St. Louis, St. Elmo and Effingham)

1. Exclude traffic intra-official territory and SFA

2. For diversions to the Kansas City gateway include cars moving from an NS origin or to an NS destination (including SAAs) and which originate or terminate in any state West of the Mississippi except Wisconsin, North Dakota, South Dakota, Minnesota, Canada, Iowa, Missouri and Arkansas.

3. For carloads divertable to Memphis, exclude destinations or origins in Illinois, include cars originating or terminating in Louisiana, Arkansas, Oklahoma, Texas, New Mexico, Arizona and California.

4. For traffic divertable to New Orleans exclude Illinois as an origin or destination, and include traffic from or to Louisiana, Texas, New Mexico, Arizona and California.

APPENDIX D
to Verified Statement
of John J. Grocki

GLOSSARY

Blocks	A rail operating term to describe groups of cars which are destined for a common point such as a yard or an interchange with another railroad.
Bridge Traffic	Traffic which passes over a railroad without originating or terminating on it. For example, a carload which is routed CSX-Conrail-Canadian National is a bridge traffic to Conrail.
Carload Waybill Sample	A database maintained by the Surface Transportation Board which contains a sampling of traffic moving over all the railroads in the United States. It is routinely used in merger cases or traffic analysis.
Chemical Coast	An area in Northern New Jersey roughly extending from Jersey City to Perth Amboy which has a high density of rail chemical traffic. At one time it was almost exclusively served by the Central Railroad Company of New Jersey which was absorbed into Conrail.
Conrail	The railroad which is to be split apart as part of this proposed transaction. One part will be acquired by Norfolk Southern and the other part will be acquired by CSX. It serves the Northeast.
Conrail Breakup	The term used to describe the transaction covered by Surface Transportation Board Finance Docket 33388, which is the acquisition of Conrail by Norfolk Southern and CSX.
CSAO	A term used to describe the residual Conrail organization which will operate the shared asset areas.
CSX Corp., also CSX Transportation (CSXT)	A term generally used to describe the rail operations of CSX Transportation, one of the two companies about to acquire Conrail. It serves the Southeast and Midwest.
Data Cleaning	The process of taking data obtained from traffic tapes and insuring that it is accurate and reflects the "real world." Data cleaning activities make more records available for analysis and therefore insure greater accuracy.
Flat Switch Yards	A yard where there is no "hump" and locomotives must be used to switch the cars in and out of the yard tracks.
FRA Network	A link-node model of the U.S. railroad system developed by the Federal Railroad Administration which is used in traffic diversion and simulation studies.
Gateway	The place where one railroad interchanges (hands off) a car to another. For example, on traffic moving from Houston to Northern New Jersey which is routed via the Union Pacific and Conrail, the gateway where Union Pacific hands the car of Conrail might be St. Louis, MO.

Hump Yard	A railroad yard which utilizes a hill (or hump) to expedite the switching of cars. A locomotive pushes cars up the hill; they roll under gravity down the hump and into the switch yard. Hump yards are considered more efficient and have greater capacity than flat switch yards.
Interchange	The process whereby rail cars are handed off from one railroad to another.
Interline Traffic	Traffic which moves from one railroad to another as part of the movement, *e.g.*, a car which originates on CSX and terminates on Conrail is interline traffic between CSX and Conrail.
Local Traffic	Traffic which originates or terminates on the same railroad.
Management Information Systems (railroad)	Railroad management information systems exist at several levels. In the operating area there are communications and signaling which convey instructions to train crews about when to move a train and when a particular section of track is occupied. In the management area, management information systems include reporting systems, accounting systems, financial systems, payroll systems, service measurements, *etc.*
Norfolk Southern (NS)	One of the two principal acquirers of Conrail. It served the Southeast and Midwest.
Oak Island	A yard in Northern New Jersey which is the principal serving yard for the Northern Jersey SAA.
Official Territory	A term used to describe the territory in which Conrail generally operates. It is roughly bounded by Chicago, St. Louis, Washington, DC and New York.
Pavonia	A yard near Camden, New Jersey which is the principal yard for the Southern New Jersey/Philadelphia SAA.
Pricing	The process whereby rail freight rates are made.
Reciprocal Switching	The process whereby one carrier provides switching service for a second carrier at an agreed charge at a customer's location which would otherwise be closed to a second carrier.
Record (the)	All of the support documentation, interrogatories and responses thereto and deposition of witnesses which underlie the Conrail breakup application (Finance Docket 33388).
Shared Asset Area (SAA)	The term used to describe the areas which Norfolk Southern and CSX, after the Conrail breakup, will jointly serve through a terminal operation run by a residual Conrail organization. These SAAs are located in Northern New Jersey, Southern New Jersey/Philadelphia and Detroit.
Single Line Service	The same as local service, *i.e.*, the same carrier originates and terminates the car.

Southern Freight Association Territory (SFA)	A territory which roughly includes the southeast quarter of the United States.
SPLC (Standard Point Location Codes)	A system of classifying and assigning a unique six-digit code to every railroad station.
Standard Transportation Commodity Code (STCC)	A classification system for commodities which move on the railroads that assigns a unique seven-digit number to every commodity which moves by rail.
Traffic	Carloads of chemicals and plastics and other commodities which move over the rail networks.
Traffic Tapes	Computer tapes which contain the records of all traffic moving on a railroad. For example, in the Conrail breakup analysis, GRA made use of a traffic tape which contained all of Conrail's traffic for the year 1995.
Uniform Railroad Costing System (URCS)	A costing system developed by the former Interstate Commerce Commission to create a standardized cost base and system of analysis for each railroad in the U.S.

ATTACHMENT 3

Verified Statement of Charles N. Marshall

VERIFIED STATEMENT OF CHARLES N. MARSHALL

My name is Charles N. Marshall. I am an associate of GRA, Incorporated (GRA) who has been retained by CMA/SPI to analyze the CSX-NS Conrail merger application (the Conrail break-up) under Finance Docket 33388.

For thirty-six years, I have worked in the railroad industry in various capacities. I was chief marketing officer of Conrail from 1983 until 1990, and prior to that I worked as a regulatory lawyer for Conrail, Southern Railway, and Chessie System. I designed the ratemaking and divisions compromise which allowed the railroads to join forces in supporting the Staggers Act, and I helped Conrail plan the commercial strategy which implemented the Staggers Act and which was one of the things which made Conrail a profitable company. Included in this strategy were significant changes in routes, reciprocal switching, and the structure of joint rates including gateway changes.

A complete biography is attached as Exhibit A.

A substantial amount of traffic, approximately 244,000 cars of chemicals traffic (72 percent of all chemicals traffic) representing about $800 million in freight revenue, originate or terminate at points outside of Conrail and are destined to or from points on Conrail (interline forwarded and interline received traffic). For Conrail, the principal gateways for this traffic are in the Chicago and St. Louis areas. Figure CM-1 lists the top 20 gateways for Conrail. These gateways account for about 77 percent of Conrail's interline traffic.

A substantial amount of Conrail's interline chemical and plastics traffic originates and terminates in the Gulf Coast today and will in the future. Historically, this traffic moves to and from Conrail via the St. Louis and Chicago Gateways. There has never, in my experience, been traffic moving via routes through Southern Freight Association (SFA) territory from the Gulf Coast to Conrail destinations. This is because such a route, (for example UP/New Orleans, NS Hagerstown/Conrail), would be a three line haul with a resultant short haul for Conrail. This would not have been acceptable to Conrail because Conrail has followed a policy of maximizing the dollar contribution of each movement. The short haul route would almost inevitably result in lower dollar margins for Conrail, and so Conrail would discourage SFA routings for chemicals.

However, now that Norfolk Southern and CSX are dividing Conrail, the potential exists for new routes to Conrail territory that utilize gateways such as Memphis and New Orleans to reach Conrail destinations. This has the advantage to Norfolk Southern and CSX of greatly lengthening their haul and hence cash income while at the same time reducing the overall length of haul for the customer (see, for example, the verified statement of NS witness Don Seale (vol. 2B p. 298) which indicates that a 166 mile overall savings could be achieved routing from Houston, Texas to Philadelphia via the New Orleans Gateway versus the Sydney, IL gateway). In an idealized situation, this indicates that there would be cost saving to the involved railroads from such a shift in gateways which, at least theoretically, could be shared with the shippers.

Figure CM-1
MAJOR CARRIER GATEWAYS

Gateway	1995 Carloads (000)
Chicago, IL	42.8
E. St. Louis, IL	40.7
St. Elmo, IL	38.1
Buffalo, NY	13.2
Effingham, IL	13.1
Potomac Yard, VA	10.8
Hagerstown, MD	9.1
Cincinnati, OH	8.7
Worcester, MA	6.6
Streator, IL	5.2
Total	**188.3**

Source: GRA analysis, Conrail 100% traffic tapes, chemical traffic.

However, price reductions or even price stability are unlikely to occur in the real world if the gateway shifts. A reroute from the St. Louis Gateway to New Orleans Gateway on traffic from, e.g., Texas to New Jersey, would reduce overall mileage, but it would also change the allocation of mileage between the participating carriers dramatically. The result of such a shift would be for the mileage of the Western carriers (such as BN/Santa Fe and UP/SP) to be dramatically reduced while, at the same time, the Eastern carriers' mileage would be greatly increased. Only if the Western carriers would accept a reduced revenue division could the Eastern carriers maintain their margins without an increase in rates.

In my experience, this is unlikely to happen. The Western carriers will want to protect the cash stream of their current revenue base even though the gateway is shifted. The Eastern carriers may well choose to shift the gateways and establish revenue factors to those gateways that maintain their margins. (The advantage they would perceive in "maintaining" margins is a greatly increased flow of cash from the higher factor to the new gateway.) Thus an increase in operating efficiency brought about by a reduction in mileage could well result in an increase in price where one would not otherwise occur.

If Conrail has been a profit-maximizing organization, as it often has stated, why are shippers afraid of post-acquisition price increases in markets where a profit-maximizing carrier has been unable to take them? The answer is twofold. First, the acquisition will bring about market changes. At least some Conrail chemical rates have been constrained by perceived geographic competition from Southern producers and users. This constraint will be greatly reduced with a combination of ownership of rail lines in the North and the South. Second, Conrail has been inhibited from raising rates on the two-line hauls from the Southwest because of concern that commercial, regulatory, or political levers might force traffic leakage to Southern gateways with attendant revenue loss. The effectiveness of all these levers will be diminished after the acquisition in the absence of appropriate conditions. The gateway shift problem can be illustrated by an example.

For a car moving from Texas to New Jersey, today, with $5,000 in revenue, the division via St. Louis might be $2,000 for UP and $3,000 for Conrail. UP's costs might be $1,000 and Conrail's costs might be $1,500, so that the railroad's total profit for the move is $2,500. However, via the New Orleans Gateway, for the same traffic, the UP's costs might be $500 and NS/CSXs costs might be $1,800. Even though the overall costs is reduced $200, the allocation of costs between UP and CSX is dramatically different. If UP refuses to reduce its revenue factor, which I think is likely, and CSX wishes to retain the same margin ($1,500) that Conrail enjoys today, then the overall rate to the shipper would have to increase to $5,300, an increase of

6%. The problem for the shippers is they are trapped in a negotiation between the Eastern and Western lines which would have increased rates as a likely outcome.

In an effort to evaluate the overall impact of such as an occurrence, GRA developed a traffic flow analysis which analyzed diversion of traffic to the Southeast Gateways from the existing Conrail Gateways. From this analysis, GRA concludes that if Western carriers wish to retain their revenue share and the Eastern carriers wish to maintain their dollar margin, then on traffic from, e.g., Texas to New Jersey, an average freight rate increase of 9.92% would be necessary. This analysis was also conducted for other origin/destination pairs and is summarized in Figure CM-2. It should be noted that the average rate increase for all divertable cars is 10.75%. The details of this traffic diversion analysis are contained in Appendix C of the verified statement of John J. Grocki.

As can be seen from these data, a substantial rate penalty potentially exists to CMA-SPI members as a result of the Conrail break-up and the diversion of traffic to the Memphis-New Orleans Gateways as the Western roads attempt to maintain their current revenue base and the Eastern roads (NS and CSX) attempt to maintain their current margins.

Figure CM-2

Sample Origin-Destination Pair		Current Rate Per Carload	New Rate Per Carload	% Increase
TX	NJ	5,090	5,595	9.92
TX	PA	5,176	5,645	9.06
TX	OH	3,844	4,277	11.27
LA	NJ	6,008	6,812	13.37
All Divertable Cars		4,672	5,174	10.75

Both acquiring carriers have indicated that they have no intention of diverting traffic to the Southern Gateways. See, for example, CSX Witness Jenkins[1] and NS Witness Seale.[2] Why then are we concerned, and what do we propose?

As I explained previously, this acquisition will bring about some changes in the market and structural environment that will make rate increases on chemical traffic easier if gateway shifts do occur. And "gateway shifts" *can* occur, not all at once by decree, but as a result of cumulative changes in service and pricing over time. Because this acquisition is justified on the grounds of increasing efficiency, that efficiency should be obtained without burdening shippers who already shoulder a large share of the applicants' costs.

If view of the concerns outlined above, CMA and SPI seek the imposition of certain conditions.

EXPLANATION OF CONDITIONS

CMA and SPI are concerned that the Conrail break-up could cause rates to increase and service to deteriorate. For that reason, CMA and SPI seek certain conditions with respect to rates and routes.

Condition C.1(a): *Keep open all existing gateways and interchanges on competitive rate and service terms.* The purpose of this condition is to prevent CMA-SPI members from being caught in the kind of three-way disagreement among themselves, the Eastern railroads, and the Western railroads described in the analysis. In a merger that is predicated upon service

[1] Jenkins depo. tr. p. 15 lines 11-15.

[2] Seale depo tr. p. 10 lines 12-17.

improvement and efficiency, shippers should not be forced to accept inferior service or increases in rates because connecting carriers cannot agree upon the level of service to a particular gateway or the way in which total charges should be divided. Because the applicants acknowledge that they intend to keep service in place across the St. Louis and Illinois junctions, this condition should not be onerous for them or objectionable to them, and it will preserve the pre-Conrail break-up routing options.

Condition C.3: *Service Standards: Hold NS and CSX to the post-transaction transit times presented in their operating plans and train schedules.* This condition is related to the CMA-SPI concern over gateway changes and resulting increases in cost. If serv[illegible]e is not maintained as shown in the operating plans, existing routes could become commercially unavailable, and the result could be increased prices, particularly if connecting railroads have not agreed to appropriate price adjustments to t[illegible]ew gateways toward which decreased service is pushing traffic. An even worse situation could develop if Applicants divert good service from Gateway "A" to Gateway "B" while connecting carriers, who might prefer "A" maintain acceptable service only to and from "A." Thus some enforcement of the represented service levels of Applicants is appropriate.

Condition C.4: *Oversight Process.* The STB should maintain oversight of the Conrail break-up and NS and CSX in order to ensure that the Applicants live up to their commitments to provide good service and not engage in anti-competition pricing policy practices.

VERIFICATION

Charles N. Marshall, being duly sworn, deposes and says that he has read the foregoing statement and that the contents thereof are true and correct to the best of his knowledge and belief.

Charles N. Marshall

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

Notary Public

Notarial Seal
Lori Gertner, Notary Public
North Coventry Twp., Chester County
My Commission Expires Sept. 28, 2000
Member, Pennsylvania Association of Notaries

EXHIBIT A
to Verified Statement
of Charles N. Marshall

CHARLES N. MARSHALL

Business and Professional Experience

Charles Marshall is a GRA associate with 34 years experience in the railroad industry, including work for Conrail, Southern Railway, and Chessie System. He served as Senior Vice President Marketing & Sales and Senior Vice President Development for Conrail and in various legal capacities for all three railroads. He is currently engaged in consulting work in the United States and Mexico. His clients include Genesee & Wyoming Industries, the Maryland Midland Railroad and EDS.

Mr. Marshall designed the joint rate compromise among the railroads that made the Staggers Act and rail deregulation possible, and he addressed the commercial needs of objecting shippers in a way that averted threatened rollback of deregulation.

While at Conrail he:

- Designed and oversaw Conrail's short line sale program.
- Developed and presented the worldwide road show supporting the Conrail privatization and IPO.
- Was in charge of Conrail's relationships with the four major ports it serves, and ran its public affairs and government affairs activities.
- Began the use of auctions to liquidate Conrail's excess real estate.
- Directed the restaffing, stabilization, and sale of Conrail's failing hazardous waste subsidiary.
- Directed Conrail's commercial activities during the period when decades of shrinkage were changed into a decade of growth.

He has a thorough understanding of railroad markets, competition and industry structure.

Mr. Marshall is a member of the Philadelphia Regional Port Authority and a former director of the Pennsylvania Chamber of Business and Industry, Provident National Bank, Trailer Train Company and the Concord Resources Group. He is licensed to practice law in Pennsylvania, Maryland and the District of Columbia. Mr. Marshall is the author, with Cheryl A. Cook, of the article "Issues of Cost Recovery in the Debate Over Competitive Access," University of Denver, Transportation Law Journal, Vol. XV, No. 1 (1986).

ATTACHMENT 4

Newspaper Articles cited in Comments

STB FD 33388 10-21-97 D 182807 3/4

CSX Agrees to Acquire Conrail For $8.1 Billion in Cash and Stock

But Norfolk Southern Looms in Background As a Possible Bidder

By STEVEN LIPIN
And DANIEL MACHALABA
Staff Reporters of THE WALL STREET JOURNAL

In a surprising move that would create the nation's second-largest railroad and could force more giant rail mergers, CSX Corp. agreed to buy Conrail Inc. for cash and stock currently valued at $8.1 billion.

The combination of Richmond, Va.-based CSX, currently the third-largest railroad, and No. 5 Conrail, based in Philadelphia, would form a freight powerhouse east of the Mississippi River. But CSX may have a battle on its hands from Norfolk Southern Corp., long considered the most logical other candidate to buy Conrail. And shippers could raise concerns about rising rates with yet another railroad being swallowed up.

Yesterday, Norfolk Southern said it wouldn't rule out any options, though an immediate hurdle is the rich price being offered by CSX. "Whatever happens in this process initiated by our competitor, Norfolk Southern will be part of it," it said in a boldly worded statement.

Whoever eventually wins Conrail, the agreement announced yesterday appears to open the final chapter in the 20-year saga of Conrail, a government-created enterprise that was spawned from the collapse of the Penn Central and other troubled northeastern railroads. The government sold the railroad to the public in 1987 at a split-adjusted $14 a share. Since then, Conrail streamlined operations and won back freight lost to truckers, though it has arguably plateaued in recent years.

Still, CSX's offer, which is currently valued at $89 a share, means that Conrail's shares, excluding dividends, have provided more than twice the return of the overall stock market since the railroad went public, according to Baseline.

Dominant in New York Area

Conrail's potential as a takeover candidate escalated in the fall of 1995 after more railroads began merging, including Union Pacific Corp.'s $3.9 billion takeover of Southern Pacific Corp. That combination preserved Union Pacific's position as the nation's largest railroad in terms of rail revenue.

Conrail was particularly attractive to Norfolk Southern because Conrail has a dominant position over rail freight in the greater New York area, the largest consuming market in the country. Now, ana[illegible] that if Norfolk Southern is unab[illegible] to derail CSX's plans, it will be forced to merge with a Western railroad, creating the nation's first coast-to-coast rail line. Railroads have been joining forces in an effort to slash costs, increase their market reach and win business back from the trucking industry.

"This enhances the likelihood that further mergers will follow," said Robert L. Banks, chief executive officer of R.L. Banks & Associates, a transportation-consulting firm in Washington. Added Walter Rich, president and CEO of Delaware Otsego Corp., a Cooperstown, N.Y.-based regional railroad: "I don't think this is the end of the dealing. We are clearly moving toward two transcontinental railroads by the turn of the century."

Good Mix of Freight

The combination of CSX and Conrail, which the companies describe as a merger of equals, would create an East Coast giant with $14 billion in annual revenue, including nonrail operations, and 29,000 miles of track serving 22 states. It would combine Conrail's Northeast dominance and CSX's strong position in the Southeast. The merged company would also have a good mix of freight, combining Conrail's strength in automotive shipments and CSX's power in the lucrative coal trade.

"This is simply a terrific marriage that benefits shareholders, shippers and the American public," said John Snow, CSX's chairman and chief executive, who would hold the same titles with the combined company.

David LeVan, Conrail's CEO, said he favored a Conrail-CSX combination because CSX "is both bigger and better than Norfolk Southern's system in terms of geographic coverage." He added, "CSX offers more [freight] origins and therefore more opportunities for new single-line service and better port coverage and better potential for cost savings."

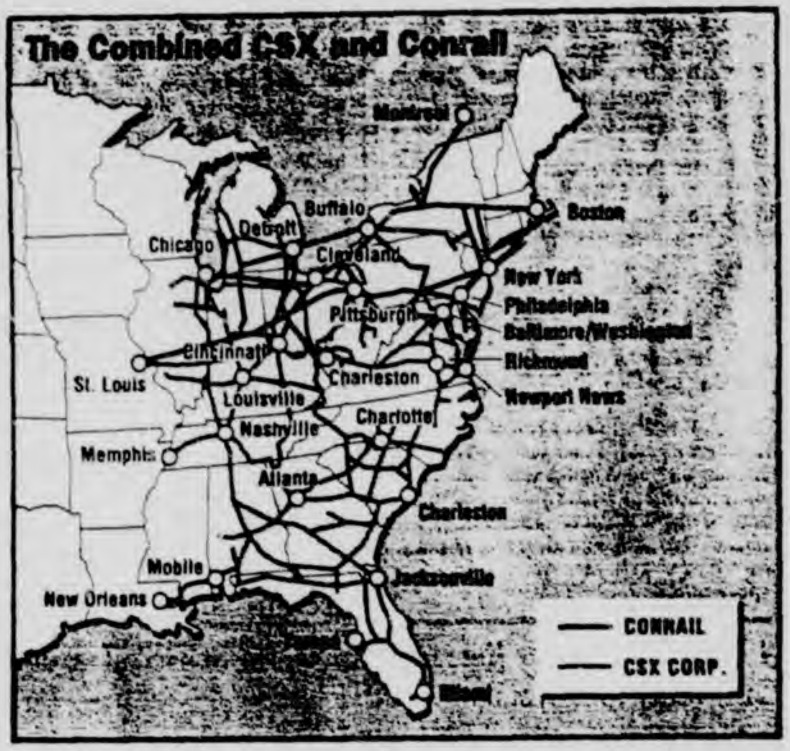
Cost Savings Predicted

The companies predicted the combination would produce $550 million in annual benefits stemming from both cost savings and expected new business. They said "some job losses" would result, but officials didn't provide an estimate.

In New York Stock Exchange composite trading, shares of Conrail jumped $14.125, or 20%, to $85.125, while CSX shares fell $2.75, or 5.6%, to $46.75. Norfolk Southern shares jumped $3 to $95, and Burlington Northern Santa Fe Corp., which has been rumored to be interested in Norfolk, rose $1.25 to $84.875.

CSX said it would pay $92.50 a share in

Please Turn to Page A6, Column 1



	CONRAIL	CSX
1995 revenue (billions)	$3.7	$10.5
Route miles	11,000	18,645
Employees (1995 data)	23,510	47,000
Corporate Headquarters	Philadelphia	Richmond, Va.

CSX Agrees to Acquire Conrail

Continued From Page A3

cash for 40% of Conrail's shares and 60% in CSX stock at a ratio of 1.856 shares of CSX for each share of Conrail. That comes out to a per-share value of about $89 in stock and cash based on CSX's closing stock price.

Initially, however, CSX will acquire 20% of the shares until Conrail obtains shareholder approval to abide by a quirky provision in Pennsylvania law. State law could also play a role if the transaction is contested because its takeover statutes appear to give added leeway to companies that purport to be in strategic mergers.

While dubbed a merger, the financial terms of the agreement make it an acquisition, given that Conrail shareholders are receiving a big premium over the market price of their stock and that CSX is quickly arranging a cash tender offer that begins today.

In a move that may create risks for CSX, the stock will be held in a so-called voting trust until the federal Surface Transportation Board, which reviews rail combinations for their competitive impact, makes a ruling, expected late next year. Shareholder approval is also required.

In moves carefully calibrated to accommodate both sides, the board and top management planned for the combined company will be drawn equally from Conrail and CSX. Mr. Snow, 57 years old, will give up the CEO role of the new company two years after consummation to Mr. LeVan, 50, who first will become president and chief operating officer of the combined company. Mr. Snow will remain chairman for two years after giving up the CEO post. The company's headquarters will be in Philadelphia, and a name hasn't been decided upon.

If another bidder steps in, it would have to pay a $300 million breakup fee plus options granted to CSX on Conrail stock that could total another $100 million if a bidder decides to offer $6 a share more, for instance. Wasserstein Perella & Co. and Salomon Brothers Inc. are advising on the merger and financing, respectively, while Lazard Freres & Co. and Morgan Stanley & Co. are advising Conrail.

Already, analysts were expecting some opposition from shippers worried about too much concentration in the nation's rail system. "They're going to reap the whirlwind of customer dissatisfaction," said Anthony Hatch, analyst with NatWest Securities. "There are no guarantees whether this is a treasure box or a Pandora's box."

The National Industrial Transportation League, the nation's largest shipping organization, said the deal "raises serious concerns" for members. "Shippers need the type of transportation options that come from increased competition, not decreased competition," said Robert [illegible]mann, the league's director of policy. "On the surface, this seems to decrease competition."

Conrail's Mr. LeVan said in an interview that recent rail mergers prompted him to abandon Conrail's often-stated goal of wanting to remain an independent company. "Recent changes in the railroad industry and in the patterns of distribution required us to seek a broader market reach," Mr. LeVan said.

In addition, executives of the two companies said they found their cultures strongly compatible during talks over the past month. The talks "have gone very quickly, much faster than either of us anticipated," said Mr. Snow.

Executives of the two companies said they would resist any efforts by Norfolk Southern to secure major Conrail routes in exchange for Norfolk's blessing of the CSX-Conrail linkup. Indeed, Mr. Snow said the Surface Transportation Board approved Union Pacific's takeover of Southern Pacific after the railroad agreed to grant extensive trackage rights to its chief rival, Burlington Northern Santa Fe. The board "made it clear that divestitures are not required and in fact are detrimental to the integrity of the merger," said Mr. Snow.

—Anna Wilde Mathews contributed to this article.

WALL STREET JOURNAL
November 5, 1996

Fight for Conrail Confuses Wall Street

Stock Price Jumps Around On Statements by CSX, Rival Norfolk Southern

By DANIEL MACHALABA
And STEVEN LIPIN
Staff Reporters of THE WALL STREET JOURNAL

The takeover battle for Conrail Inc. took an unusual turn when the two rival bidders put out conflicting announcements that sent Conrail's stock on a wild ride.

CSX Corp., which has signed a friendly merger pact with Conrail now valued at $7.87 billion, said late Sunday that rival bidder **Norfolk Southern** Corp. had approached CSX about acquiring some Conrail assets after the completion of a CSX takeover. The CSX announcement implied that Norfolk Southern was pursuing the Conrail assets it wanted through the talks with CSX rather than through the $9.1 billion hostile bid for all of Conrail that Norfolk Southern had made after CSX's friendly offer.

But in an announcement yesterday, Norfolk Southern, while confirming its talks with CSX, insisted it was still "fully committed" to its $100-a-share offer for Philadelphia-based Conrail. The company said it was only discussing "the respective offers for Conrail." And Norfolk Southern is running ads recommending that shareholders at a special meeting vote against a key provision of Pennsylvania law that Conrail must opt out of in order for CSX to complete the transaction.

Conrail Approval Is Required

The discussions between the two sides were held over the weekend. According to people familiar with the situation, the two chairmen – John Snow of CSX and David R. Goode of Norfolk Southern – met on Saturday to discuss the bid. It appears that there were no other discussions, these people say.

Conrail must approve any material asset sales by CSX. Thus, what David LeVan, Conrail's chief executive, thinks about any breakup is crucial.

News of the announcement from CSX initially sent Conrail's shares plummeting $8 to $87 on the New York Stock Exchange in the morning, as investors became concerned that Norfolk Southern might be throwing in the towel on its offer. But the stock rebounded strongly following Norfolk's statement, closing at $93.625, down $1.625. The price is still well above CSX's offer, now valued at $86.55 a share.

Escalating Contest

The confusion on Wall Street only underscored how high-pitched the fight for Conrail has become. Already, the combination with either bidder, if approved, would be the largest in railroad history. But yesterday's developments were the nastiest yet in the two-week battle, with some analysts accusing CSX of issuing a premature news release to gain a tactical edge. CSX has been expected to sweeten its bid this week.

"To the extent that they can make investors believe that Norfolk Southern is not committed to their bid, it is favorable to CSX," said James Higgins, an analyst at Donaldson, Lufkin & Jenrette Inc. "But it doesn't look like it worked."

In response, Richard Wolff, spokesman for Richmond, Va.-based CSX, said "the lawyers felt that once they had reached a certain point in the discussions, they felt obligated to put it out."

Mr. Wolff said that lawyers for all sides – CSX, Conrail and Norfolk – had agreed on the language. But Morris Kramer, partner at Skadden, Arps, Slate, Meagher & Flom, Norfolk's lead lawyer, said that statement is competely inaccurate and Norfolk didn't approve the language of the CSX release.

And the two companies now disagree over which side had started talking to each other. "They initiated the talks; the first call came from CSX," said Robert Fort, a spokesman for Norfolk Southern, based in Norfolk, Va. But CSX yesterday insisted the opposite – that Norfolk initiated the talks – was the case.

Critical Days Lie Ahead

These next few days are crucial to the battle. A board meeting for Conrail is scheduled today. By tomorrow, Conrail must file a formal response to the Norfolk bid. Many people on Wall Street are speculating that CSX will be forced to raise its bid this week. If it doesn't, many people believe CSX won't get the shareholder approval it needs to purchase more than 20% of Conrail's shares for cash.

Meanwhile, some analysts and industry consultants welcomed the disclosure of talks between the two railroads and said a split-up of Conrail's routes was an inevita-

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Conrail's Two Bidders Confuse Wall Street About the Next Move

Continued From Page A3

ble outcome. Norfolk Southern and CSX have been competing for more than a decade for the freight hauler, which has an effective monopoly over rail shipping in the New York metropolitan area. Conrail was created by the federal government from the ruins of bankrupt Northeastern railroads 20 years ago and was sold through an initial public offering in 1987.

"It all makes sense because it spreads the cost of buying Conrail between two railroads and enhances freight competition in the Northeast," said Gruntal & Co. analyst Steve Lewins. "There's a real possibility that what emerges from the present battle will be a balanced Eastern rail system with two strong competitors," said Robert Banks, chief executive officer for R.L. Banks & Associates, a transportation-consulting firm in Washington.

If a deal is struck, some people believe that Norfolk Southern would want two of the four main railroad routes connecting Chicago with East Coast cities. CSX has one of these routes, and Conrail has the other three. In addition, Norfolk Southern would demand a Conrail route to connect its track from Atlanta to New York. CSX has coveted Conrail's direct railroad routes to the New York market as well as wanting to improve routes between St. Louis and Detroit.

The Wall Street Journal

Wednesday, April 9, 1997

Business Brief: Conrail's Breakup Plan Is Released By Norfolk Southern, CSX Corp.

By Daniel Machalaba
Staff Reporter of The Wall Street Journal

Norfolk Southern Corp. and CSX Corp. released details of their plan to divide Conrail Inc. amid industry concerns that the buyers will have to expand significantly the freight business on Conrail's route system to justify the $10.2 billion takeover.

Specifics of the breakup were in line with expectations, with Norfolk Southern receiving 58% of Conrail's lucrative Northeast route system and CSX the remainder. But analysts and industry executives say that in negotiations, CSX and Norfolk Southern found that cost-cutting alone wouldn't justify the high price of the Conrail acquisition, the costliest in railroad history.

"It's going to require much more revenue growth than any other railroad merger we have seen," said James Higgins, an analyst at Donaldson, Lufkin & Jenrette, who added that such an expansion is doable. Walter Rich, president of Delaware Otsego Corp., a regional railroad based in Cooperstown, N.Y., agreed. "They can't justify the purchase price on the current level of business," he said. "You will see both being very aggressive to take business away from trucks."

Yesterday, Norfolk Southern and CSX officials insisted the merger was going as anticipated. "We have always seen growth in revenues and freight business as the foundation of this transaction," said John Snow, chairman, president and chief executive officer of CSX. David Goode, chairman and chief executive officer of Norfolk Southern, said, "I see this as the finest opportunity that anyone in railroading ever had."

In a joint statement detailing the $115-a-share Conrail deal, the companies said Norfolk Southern will pay $5.9 billion for Conrail routes from Chicago through Ohio and Pennsylvania to the New York City area, as well as routes linking New York City to Buffalo, N.Y., and points south. CSX will spend $4.3 billion for its 42%, which will include routes from St. Louis and Chicago through Ohio and New York state to Montreal, Boston and New York City. The companies also will share a portion of the old Conrail system.

The announcement culminated a five-month battle between CSX and Norfolk Southern for Philadelphia-based Conrail, whose 11,000-mile system controls freight traffic in much of the Northeast, including the metropolitan New York market. Before Norfolk Southern entered the fight, CSX, based in Richmond, Va., in mid-October planned to buy Conrail for cash and stock initially valued at $92.50 for each Conrail share. But Norfolk Southern, based in Norfolk, Va., mounted an offensive using the courts, newspaper advertising and numerous meetings with government officials to press its counteroffer.

With the agreement between the railroads, the deal will go before the federal Surface Transportation Board, which is expected to approve it, barring any unforeseen major opposition.

For now, some 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.

"Conrail has been there 21 years, and still hasn't fully done it in its region," said Steve Lewins, an analyst at Gruntal & Co.

Of the two new buyers, Norfolk Southern is in the stronger position to achieve that growth, analysts said. It is one of the most profitable companies in the railroad business, with net income of $770 million on revenue of $4.77 billion last year. And its executives have been successful in stealing customers away from trucks in the South and Midwest.

"Everyone in the railroad industry says they want to take trucks off the highway, but we're the guys that have done it," James McClellan, vice president of strategic planning for Norfolk Southern, said in an interview. CSX, for its part, lacks the same financial muscle, but the railroad says it will be as competitive as Norfolk Southern in going after the truck business.

What's more, both companies could face competition for truck business from an unexpected source: Canadian railroads. Canadian National Railway, based in Montreal, is trying to garner support from shippers and government officials for rail access over Conrail lines to New York City from Buffalo, N.Y., and Montreal.

"Norfolk Southern and CSX bring increased competition from the South and West," said David Todd, a Canadian National vice president. "But we could enhance competition from the West and create it from the North, where it currently doesn't exist."

---- INDEX REFERENCES ----

COMPANY (TICKER): CANADIAN NATIONAL RAILWAY CO.; CONRAIL INC.; CSX CORP.; NORFOLK SOUTHERN CORP.; CANADIAN NATIONAL RAILWAY CO. (CNI CRR CSX NSC T.CNR)

NEWS SUBJECT: Acquisitions, Mergers & Takeovers; World Equity Index (TNM WEI)

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THE WALL STREET JOURNAL THURSDAY, OCTOBER 2, 1997

Wrong Track

A Big Railroad Merger Goes Terribly Awry In a Very Short Time

Union Pacific Is Hammered Over Service and Safety; Have Patience, It Says

Have You Seen Our Rice?

By DANIEL MACHALABA
Staff Reporter of THE WALL STREET JOURNAL

Its railroad safety record, marred by three fatal crashes in three months, is being characterized as a "fundamental breakdown" by federal regulators. Its route system west of the Mississippi River has slipped into near gridlock in many places, with thousands of freight cars backed up in the Houston area alone. Its chairman was forced to publicly apologize in August to its big customers.

So bad has service become that customers say Union Pacific Corp., the nation's largest railroad, can't account for millions of dollars of shipments for weeks at a time. Riviana Foods Corp., a Texas rice producer, tried to ship a freight car full of rice from Missouri to Tennessee in early August. A month later, the car was spotted on a track in Devil's Slide, Utah. The latest word is that it was somewhere in Texas. "I still don't know where it's at," says Terry Nickens, Riviana's distribution manager.

Is this any way to run a railroad?

A Major Debacle

Union Pacific's attempts to put together the biggest railroad merger in history is fast becoming one of the industry's biggest debacles. With high hopes last year, the company bought Southern Pacific Rail Corp. for $3.9 billion and promised to begin merging the systems this summer into a seamless link between the West Coast and the Midwest.

Instead, with amazing speed, the merger has unraveled in recent weeks into a series of service and safety snafus. Analysts estimate the carrier has already lost about $125 million in revenue as customers diverted shipments. Hundreds of customers have threatened to take away business, and the Federal Railroad Administration could well impose stiff fines on the company for safety violations. The company concedes that its service problems will reduce its third-quarter earnings by 10% to 15%. And the stock price has fallen 13% in the past month.

Yesterday, things got worse. The Dallas-based company said it would abandon an embarrassing plan to move goods by ship through the Panama Canal—a plan that was rejected this week by its customers. Instead, in an even-more remarkable step, it agreed to hand over some of its business to competing railroads and to "borrow" the services of dozens of former managers from Eastern railroads to help untangle the mess.

Surprised Observers

The setbacks have startled industry observers, who only a few months ago expected the merger to go smoothly, especially because Union Pacific had had a sterling reputation in railroading.

"They thought they could conquer the world," says William Withuhn, transportation curator at the Smithsonian Institution in Washington and a widely recognized expert on railroads. "They were counting on having a great success. But they just didn't plan it right. It fell apart."

Union Pacific acknowledges that it has been caught by surprise – and humbled by the experience. Richard Davidson, its chief executive, said in an interview after a recent meeting with more than 200 angry chemicals-company officials and other shippers in Houston: "I never imagined in my wildest dreams that I'd be down here apologizing for our service." Yesterday, a Union Pacific spokesman said, "There's no denying we have severe service problems, but we are making headway."

Problems Acknowledged

The carrier's executives concede that they overestimated their ability to combine giant rail systems operating hundreds of thousands of freight cars. Its own long record of success, unmatched through much of the late 1980s and early 1990s, may have bred overconfidence. "We are arrogant," Greg Garrison, Union Pacific's Houston superintendent, said last month. "We consider ourselves the best."

Union Pacific's woes raise troubling questions about how well railroads can transport goods in the nation's ever-growing economy. For more than a decade, the industry has been on an unprecedented merger binge that was supposed to give the remaining five powerful railroads a better chance at competing against trucks, which now earn nearly 80% of the nation's freight revenues. That improvement, in turn, was supposed to help reduce everything from highway congestion to air pollution to fuel consumption. Consumers would gain, too, because railroads can haul goods about 20% more cheaply than trucks can, with much of the saving to be passed on to the public.

But Union Pacific's problems suggest that the railroads are a long way from fulfilling this promise and that shippers may be discouraged from using them. Chemicals companies on the Gulf Coast have been switching to trucks whenever possible because Union Pacific's delays have cost them an estimated $100 million in plant closings, lost revenues and extra expenses.

In Waverly, Ohio, Mill's Pride Inc., a maker of prefabricated kitchens that had turned to railroads to save money, says it

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Big Railroad Merger Quickly Goes Awry

Continued From First Page

has dropped Union Pacific and the railroad industry entirely. "They give us excuses. They have derailments, floods, breakdowns, snow, just stuff you wouldn't think would happen," says Armando Sanchez, the distribution manager. "You would think, if a truck can get through, why can't they?"

Moreover, Union Pacific's headaches pose a threat to the next great railroad merger – the $10 billion breakup of Conrail Inc. between Norfolk Southern Corp. and CSX Corp. Once considered almost certain to be cleared by the government's Surface Transportation Board, the merger is now raising questions from members of Congress, labor unions and community leaders worried about a repeat performance.

An Enormous Challenge

To be sure, Union Pacific faced an enormous challenge in trying to create a system with 36,000 miles of track and more than 150,000 freight cars. What's more, the company it was buying, Southern Pacific, was the weakest of the major railroads; it suffered from inadequate investment in freight yards and locomotives. Some industry executives, who jokingly called it "the Suffering Pacific," say it couldn't have survived on its own over the long haul.

Nevertheless, Union Pacific officials hoped that the merger, which became effective in September 1996, would yield huge rewards, not only through major cost savings but by increasing freight business with more-direct routes between the Midwest and West Coast. Southern Pacific's major routes stretch in a great arc from Portland, Ore., to Los Angeles, Houston, St. Louis and Chicago; Union Pacific forms a large funnel-like system, from the Midwest to Salt Lake City, with branches to Seattle, Oakland, Calif., and Los Angeles. Combining the two, Union Pacific promised, would slash delivery times as much as 20%, more than enough to win new business.

But company officials concede that they badly underestimated the number of crews and locomotives they would need; in part, they relied on their past success in acquiring other railroads. Those mergers allowed Union Pacific to lay off great numbers of employees and still keep the trains running. But 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.

"We miscalculated," says Mr. Garrison, the Houston superintendent. "It upset a lot of customers."

The Houston Trouble

The company also cut back operations at an important railyard near Houston, shifting 300 freight cars a day to the bigger but overtaxed Englewood yard in Houston 20 miles away. The result: Within a few weeks, the bigger yard was swamped, causing delays of as long as a month in various areas. "The yard is like a coffee cup that's already too filled," says Rick Carswell, a yard manager at Englewood. "It just overflowed."

In a railroad, delays at a hub can quickly spread throughout the system – and this one did in a big way. By August, at the start of the peak season for shipping holiday merchandise, trains were backed up for miles along the Gulf Coast.

In one 7-mile stretch outside Houston recently, five Union Pacific freight trains – each with about 100 cars – were backed up nose to tail; frustrated crews were simply taken off, leaving the trains unmanned. "Finally, you throw up your hands and say the heck with this," says Bert Hohlt, a Union Pacific crew member after a particularly grueling run aboard a Texas-to-Chicago freight train.

A Union Pacific spokesman says floods in Texas as well as hurricane-related damage in the Gulf Coast region compounded the problems. The company tried to persuade its labor unions to agree to new flexible work rules, but the unions didn't go along until last month. By then, the snarl had spread to Union Pacific's facilities in the Los Angeles/Long Beach harbor complex, where as many as 3,000 containerized shipments have been piling up for lack of locomotives. "I've never seen it this bad," says David McLean, director of global marketing for Circle International Inc., of San Francisco, which arranges freight transportation for major firms.

Through its buyouts, Union Pacific also encouraged an exodus of many Southern Pacific executives and managers, whom industry officials said were skilled at keeping the weaker line going. "They lost a lot of institutional knowledge," says Ed Emmett, president of the National Industrial Transportation League, which represents about 1,200 rail and truck customers.

What's more, the exodus aggravated the clash of corporate cultures that a merger would be sure to provoke. Led by the 6-foot-4-inch Mr. Davidson, who surrounded himself with equally imposing subordinates, Union Pacific runs a well-heeled and aggressive rail operation out of its Omaha, Neb., rail headquarters. Executives there, accustomed to using the latest equipment to dispatch trains and repair tracks, were skeptical about the talents of many Southern Pacific people. Former Southern Pacific executives say many of their suggestions were ignored. "You are merging two cultures, one that had no money and one that had a lot of money," says Art Shoener, who resigned last week as Union Pacific's executive vice president for operations.

Traditions Slighted

Most merging railroads, to bolster morale, have tried hard to preserve the traditions of their predecessors. But recently, Union Pacific replaced the name of a famous Southern Pacific high-speed freight train, the Memphis Blue Streak, with the symbol "IMELB" (standing for Intermodal Memphis to Long Beach train). "It was an inspirational thing," says Fred Frailey, who wrote a book about the Blue Streak. "The Memphis Blue Streak was the heart and soul of the Southern Pacific. But all that was lost on the Union Pacific." In response, a Union Pacific spokesman says: "That's the least of our concerns right now."

Yesterday, the company hit what analysts described as rock bottom: It announced a service-recovery plan that appears to mirror parts of a rescue operation outlined by its chief rival, Burlington Northern Santa Fe Corp. Union Pacific said it would temporarily divert certain business, including coal, grain and automobile shipments, to other railroads throughout the western two-thirds of the country, including Burlington Northern. In addition, Union Pacific plans to reroute trains around congested hubs and use less-busy freight yards to handle more of its business. It also said it would operate fewer trains and reduce the number of locomotives on its faster trains and spread them around the system.

"Everyone at our company is working hard on restoring service to levels that will satisfy our customers," Mr. Davidson said in a statement yesterday.

An Unsolved Mystery: Where Are Shippers' Rail Cars?

By ANNA WILDE MATHEWS
And DANIEL MACHALABA
Staff Reporters of THE WALL STREET JOURNAL

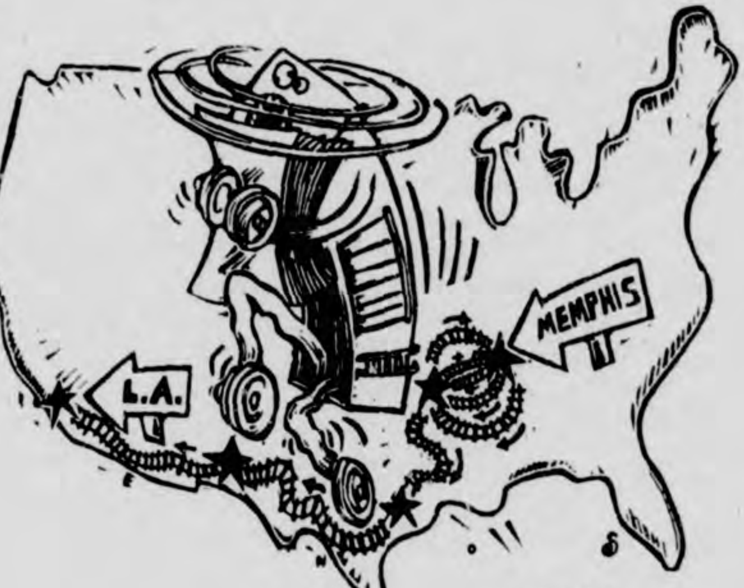
Have you seen Ed Shineberger's rail car?

It's nearly two stories tall, 60 feet long and crammed with 120,000 pounds of carbon soot — the stuff that makes tires black. For a month now, the rolling behemoth has been caught up in Union Pacific Corp.'s unprecedented tie-up, riding aimlessly around Louisiana and Arkansas and stopping twice in the same city. It was last seen somewhere near Lake Charles, La., still 700 miles from its final destination near Nashville, Tenn.

"It's like a lost puppy looking for its home," says Mr. Shineberger, who, as a logistics manager for Degussa Corp. in New Jersey, is in charge of tracking the rail car's wayward journey.

Forget about making the trains run on time. Union Pacific's mounting debacle isn't just about late shipments, but a series of misroutings and missed deliveries that can only be described as a comedy of errors. Just last week, one company's entire load of liquid gas virtually evaporated into thin air by the time it arrived. Other boxcars have arrived full — but in the wrong city — or have been bounced half a dozen times between places. The most frustrated shipping executives have gone to Union Pacific's rail yards to search for their freight — only to find their cars hopelessly trapped.

One company, Solvay Polymers Inc., waited 51 days for Union Pacific to move a shipment of plastic resin from Houston to Fort Worth, Texas, about a four-hour drive by car. "A covered wagon could have gotten it there quicker," says logistics director Mike Scherm.



Randy Enos

The problem comes down to this: The nation's largest railroad has lost its ability to accurately track the movements of hundreds of freight cars in the Gulf Coast region and western U.S., although it still is making on-time deliveries through much of its system.

Normally, the company can follow shipments through a computer network linked to its 36,000 miles of track. Crew members on trains transmit their location to Union Pacific's main computer center in St. Louis, where routes are monitored and assigned. But for several months now, the company has been trying to implement a $3.9 billion merger with Southern Pacific Rail Corp. that has thrown much of that tracing system into disarray. Each railroad had its own computer system and dispatching methods. Integrating them turned out to be more difficult than anticipated, says John Bromley, a Union Pacific spokesman.

"It's a huge task," he says. Trying to pull together a combined work force of 52,000 only made matters worse; many workers from one railroad were unfamiliar with the other's computers and operations. What's more, cutbacks left the company short of the crews and equipment needed to handle the combined freightload.

"We're making progress," says Mr. Bromley, adding that the company has ordered or leased 300 more locomotives and plans to hire hundreds of additional train operators. He says Union Pacific expects to put both railroad systems under the same computer system by early next year.

But that's little consolation to the hundreds of companies and transportation managers swapping horror stories. Carloads have disappeared for days when they were moved without being picked up by Union Pacific's computers. Some transportation managers are following the errant journeys of their urgent rail shipments with computers tied to Union Pacific's tracking data. "We're monitoring it every day," says Donald Welch, logistics manager for a unit of Temple Inland Inc., which makes giant rolls of paper for cardboard boxes and other goods.

Mr. Welch describes an itinerary of one recent shipment that reads like a game of ping pong: Memphis to Little Rock, then back to Memphis, then back to Little Rock, and so on for 2½ roundtrips, before finally making it to California via El Paso, Texas. "It's almost comical except it is costing lots of people lots of money," says Mr. Welch.

Indeed, some companies like Air Liquide America Corp. are considering charging Union Pacific for lost cargo and other costs. (The railroad has declined to comment on any potential liability.) The company, a unit of French firm L'Air Liquide SA, recently shipped 15,000 gallons of liquid argon from Houston to southern California in a specialized insulated rail car that resembles a big thermos bottle. But by the time the shipment had wound its way through a series of logjams and

Please Turn to Page B8, Column 5

THE WALL STREET JOURNAL, MONDAY, OCTOBER 13, 1997

Unsolved Mystery: Lost Rail Cars

Continued From Page B1

arrived 21 days late, there was almost no cargo to unload: 90% had evaporated in the container, where temperatures are kept at minus 300 degrees Fahrenheit. "Obviously, the customer was pretty let down," says Joe Cacciotti, product-supply manager for Air Liquide.

Few companies, though, have experienced what Elgin Cotton Oil Mill Inc. has endured. The tiny company operates a grain elevator and processes cottonseed oil for snack-food makers out of its plant in the central Texas town of Elgin. The family-owned business has dispatched 20 carloads of grain on Union Pacific this year. "I don't think there was a normal deal on any of them," says manager Brian Lundgren.

First, Elgin struggled to get empty cars from Union Pacific to load its grain; six of them took a month to arrive even though they all came from Texas. One showed up on the company's rail spur with no doors on the bottom – useless for loading – and another pulled up with an entire carload of wheat that belonged to someone else. After the empty cars were filled, they were left standing twice: once for ten days on the company's grounds waiting for pick up and another inexplicably for three weeks at a rail yard 15 miles away.

The delivery still hasn't reached Louisiana. Mr. Lundgren tells an even more frustrating tale of watching his own freight car on Union Pacific tracks barreling past his office. A few days later, he saw it pass again in the opposite direction. "It's like watching volleyball," he says. "The car went back and forth."

As a short-term solution, Union Pacific has been trying to shift some of its business to its competitors, including rival Burlington Northern Santa Fe Corp., the nation's second-largest railroad. But Burlington Northern says it can only do so much, because it shares some of Union Pacific's most congested tracks in the Gulf Coast region. And the two railroads don't agree on how to untangle the bottlenecks anyway. "There's no evidence they are really working together," says Ed Emmett, president of the National Industrial Transportation League, which represents more than 1,200 customers of truck and rail companies.

All of which leaves Mr. Shineberger still looking for all that tire soot in car No. FURX6022. By his count, the car has stopped 14 times in Louisiana and Arkansas, and has yet to cross the Tennessee border. On Friday, a month and a day after the car's departure, he vowed to call up Union Pacific. "I'm going to ask what they're doing with this car," he says, "and would they please, please get it to its destination."

ATTACHMENT 5

Excerpts from Depositions cited in Comments

Deposition of
John Q. Anderson
September 8, 1997

CERTIFIED COPY

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

RAILROAD CONTROL APPLICATION

HIGHLY CONFIDENTIAL

Washington, D.C.

Monday, September 8, 1997

Deposition of JOHN Q. ANDERSON, a witness herein, called for examination by counsel for the Parties in the above-entitled matter, pursuant to agreement, the witness being duly sworn by JAN A. WILLIAMS, a Notary Public in and for the District of Columbia, taken at the offices of Arnold & Porter, 555 Twelfth Street, N.W., Washington, D.C., 20004-1202, at 10:05 a.m., Monday, September 8, 1997, and the proceedings being taken down by Stenotype by JAN A. WILLIAMS, RPR, and transcribed under her direction.

intermodal traffic?

A. Yes.

Q. What would that be?

A. There could be coal movements or there could be aggregates and rocks that were moving in unit trains. There could be some individual customer movements. We had unit trains that haul finished food commodities, finished hard consumer goods, and so forth.

Q. Would you anticipate that there would be any trainload or unit trains of chemicals or plastics moving to and from the shared asset areas?

A. I don't anticipate much of that. We're not clear on exactly how we'll define the size of unit train that it will be efficient enough to operate directly in. If that's defined small enough, there could be some chemical shippers who on a daily or weekly basis receive a train that might qualify as a unit train even though it's smaller than we might normally think of as a large full length unit train. So I don't right now anticipate there will be a lot of that, but there may be some cases.

Q. Is it your anticipation that CSX, in

the case of traffic moving to and from the shared asset areas for which CSX is the line haul carrier, that CSX would be completely responsible for the movement from start to finish?

A. That's the plan we have right now and that's our desire.

Q. Just continuing with this series of questions about movements to and from the shared asset areas for which CSX is the line haul carrier, do you know who the customer would call to arrange local pickup or delivery of traffic?

A. We haven't gotten to that level of detail yet. And our objective will be to make that as efficient, smooth, and customer friendly as possible.

Q. Do you think it would be within the range of your current contemplation that the shipper would need to call the local residual Conrail operator to arrange for pickup or set-off of cars?

A. That is in the range of possibilities, yes, when you look at the practicalities.

Q. Do you know whether there is any sort of a team working within CSX now trying to develop the protocols for movements to and from

Deposition of
Thomas M. Corsi
September 29, 1997

CERTIFIED COPY

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

RAILROAD CONTROL APPLICATION

HIGHLY CONFIDENTIAL

Washington, D.C.

Monday, September 29, 1997

Deposition of THOMAS M. CORSI, a witness herein, called for examination by counsel for the Parties in the above-entitled matter, pursuant to agreement, the witness being duly sworn by FERNITA R. FINKLEY, a Notary Public in and for the District of Columbia, taken at the offices of Zuckert, Scoutt & Rasenberger, L.L.P., 888 Seventeenth Street, N.W., Washington, D.C., 20006-3939, at 9:50 a.m., Monday, September 29, 1997, and the proceedings being taken down by Stenotype by FERNITA R. FINKLEY, RPR, CRR, and transcribed under her direction.

would be -- referred to would be the rail to rail savings, that is existing rail shippers --
Q. Yes. That's right.
A. 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.
Q. Well, let me just clarify in the portion of your study that dealt with, if you will, more efficient rail movements post transaction, did you look at only coal automotive and intermodal traffic?
A. In calculating my estimate of savings, the answer is yes.
Q. Was there reason that you examined only those three types of traffic?
A. Based on Mr. Williams' statement and identification of the commodities, those were the three that were the largest that we could identify the route changes and the savings. They constitute 84 percent of the total carloads

Deposition of
Thomas L. Finkbiner
August 18, 1997

CERTIFIED COPY

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

RAILROAD CONTROL APPLICATION

HIGHLY CONFIDENTIAL

Washington, D.C.

Monday, August 18, 1997

Deposition of THOMAS L. FINKBINER, a witness herein, called for examination by counsel for the Parties in the above-entitled matter, pursuant to agreement, the witness being duly sworn by JAN A. WILLIAMS, a Notary Public in and for the District of Columbia, taken at the offices of Zuckert, Scoutt & Rasenberger, L.L.P., Suite 700, 888 Seventeenth Street, N.W., Washington, D.C., 20006-3939, at 10:05 a.m., Monday, August 18, 1997, and the proceedings being taken down by Stenotype by JAN A. WILLIAMS, RPR, and transcribed under her direction.

Q. I don't want to get into a semantic debate, but could we say then that NS's service for the origin/destination pairs we've just described is not as competitive as CSX's service?

A. That would be correct.

Q. Mr. Finkbiner, do you know whether there are currently doublestack operations from the Philadelphia area ports?

A. Yes, Ameriport -- Conrail services Ameriport westbound. I know of no southbound doublestack operations from the Philadelphia port.

Q. Would Norfolk Southern conduct southbound doublestack operations?

A. To the extent we are competitive, yes. As the example that you just brought up illustrates, we are somewhat at a disadvantage on the direct due south routes.

Q. And do you know whether CSX conducts any doublestack operations from Philadelphia?

A. CSX doesn't have the clearances either westbound or southbound to conduct such operations.

Q. Because of the restrictions on the B&O line and the Virginia Avenue Tunnel in

Washington?

A. Correct.

Q. Do you know what routing or routings Conrail currently uses for intermodal traffic to and from Philadelphia?

A. Well, actually they have two routings and they're related to specific terminals. They have a train, a daily train that services -- between Ameriport and Harrisburg. They also have several trains that actually originate or terminate at some other point but makes a stop at Morrisville to pick up or drop off traffic. To my knowledge there are no trains that originate or terminate in Morrisville in and of themselves.

Q. Do you know if Conrail uses the water level route for any traffic from Philadelphia today or to Philadelphia?

A. It would make no sense. They may in the case of a weekend train, Scott, or in the case of work on the Pennsylvania line or earlier last spring a flood on the Pennsylvania line, that would be the only reason. And frankly, rather than the water level route, my guess is they would use the Southern tier.

Q. Is it your understanding that CSX has are doublestack, what percentage of total movements are doublestack including or excluding roadrailers?

Q. Let's just start with containers. What percentage of your containers are doublestack today?

A. Just over 50 percent.

Q. Do you know what percentage of Conrail's containers are doublestack today?

A. I do not, no.

Q. When would you expect the transition to doublestack containers to be complete for Norfolk Southern?

A. I think that's an ongoing process. And I wish it was sooner rather than later, but it's -- complete, I would have no guess.

Q. There's no projection, five years, ten years?

A. Even in a ten-year horizon, I don't see every container moving doublestack.

Q. If you would go with me to page 223 of your verified statement, please. At the top of the page, you talk about Conrail's traditional preference for east-west intermodal traffic. Can you tell me in what ways Conrail has preferred

Deposition of
David R. Goode
September 30, 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

RAILROAD CONTROL APPLICATION

HIGHLY CONFIDENTIAL

Washington, D.C.

Tuesday, September 30, 1997

Deposition of DAVID R. GOODE, a witness herein, called for examination by counsel for the Parties in the above-entitled matter, pursuant to agreement, the witness being duly sworn by JAN A. WILLIAMS, a Notary Public in and for the District of Columbia, taken at the offices of Zuckert, Scoutt & Rasenberger, L.L.P., Suite 700, 888 Seventeenth Street, N.W., Washington, D.C., 20006-3939, at 10:00 a.m., Tuesday, September 30, 1997, and the proceedings being taken down by Stenotype by JAN A. WILLIAMS, RPR, and transcribed under her direction.

timing of implementation between the two of us.

Q. Could you identify which of the planning task forces are joint between NS and CSX?

A. I'm not sure I could without looking back at notes. Certainly the shared asset area task force comes to mind immediately. And I know we have pretty close coordination on the safety task force. Whether we're operating as a joint group I don't recall.

Q. Mr. McClellan indicated that in NS's view at least the key unions would have to have implementing agreements in place. And he mentioned basically the various operating unions, the trainmen and engineers, as well as the dispatchers and a number of the clerks who would be responsible for billing and so forth. What's your view on which implementing agreements would have to be in place?

A. Well, I would hope that we could have all the implementing agreements in effect. Again it's very early in the process. But I would hope that -- but we already have started working with many of the unions, if not all of them. And I certainly would hope that that could be achieved, if not at control date, certainly very close to control date.

Q. Do you think it likely that NS would make any announcements about a projected implementation schedule within the next month or two?

A. Again I don't know that I can say when we'll feel comfortable enough with it. I would doubt that in the next month or two we would be at the point where we would be comfortable in making a final decision about what the implementation date is.

But I think we want to get our planning into shape as soon as we can and do everything we can to get people in the right frame of mind and in the posture to look towards implementation because I think that will help us achieve the efficiencies and safety that we want to out of this. But we're not certainly at or near the point where we'll know what the implementation date is right now.

Q. Would you say today that CSX's view that implementation would take six to nine months after the control date, that that view is something that would have to be changed in your view; in other words, do you see that as too long an implementation time schedule?

A. I guess I am an optimist. But I would hope that, because the benefits of this transaction to the shippers and the shipping public are so great and some of the human factors involved, the long period of uncertainty on behalf of the Conrail employees, it would seem to me that we should strive for the fastest possible implementation date again that we can, again having to make sure that we're comfortable with the operations and safety and all of the systems and all of the other aspects of the transaction. But I remain optimistic that we can do that sooner rather than later.

Q. I'd like to switch subjects. You mentioned the shared asset areas. My chemical clients are concerned about the fact that in some sense there will be two railroads handling movements in and out of the shared asset area, the line haul carrier and the residual Conrail entity.

Is it your understanding of NS's intent that NS will be fully responsible for those movements including making sure the traffic gets there, taking care of any loss, damage, or spillage of that traffic, and everything else that goes along with the movement of chemicals so that the Conrail entity would essentially be transparent, would be a nonentity in that equation?

A. Well, it's my general thought, and I'm not directly involved in the day-to-day work as we develop the plans for the implementation, the plans for the shared asset areas. But it's my own thought that, to the extent possible, we should have a single carrier responsible for the movements into and out of the shared areas and make it as simple and transparent to the customer as possible. So I think that's the general objective that I would have in mind for final regulations and the implementation there.

Q. Well, without asking for a legal conclusion about any particular circumstance, let's suppose I send a car of chemicals from the Gulf Coast up to Northern New Jersey. And for whatever reason the car derails in Northern New Jersey when it's being handled by the residual Conrail operator. Is NS going to be responsible for dealing with that situation?

A. Well, I don't know that I'm competent to answer that as a legal matter. You know, certainly, in terms of service, you know, NS wants to be responsible for the service for its customers. But exactly how it will work out if something occurs in the shared asset area, I'm not sure I'm the person to ask about that.

Q. Okay. Are you aware of the fact that some traffic that is currently handled solely on Conrail today would become interline traffic, assuming this transaction goes forward; that is, it would start on NS and CSX and then move over into the territory of the other?

A. I understand there's some situations like that, yes.

Q. Have you looked at those situations enough to have any notion of what NS might be able to do that would help to reduce the harm that those shippers will experience as a result of the transaction?

A. I understand that Norfolk Southern people have been working with the shippers in the case of movements like that. And we'll work to make sure that the service levels are up to the standards certainly that have been experienced

Deposition of
William M. Hart
September 24, 1997

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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

RAILROAD CONTROL APPLICATION

HIGHLY CONFIDENTIAL

Washington, D.C.

Wednesday, September 24, 1997

Deposition of WILLIAM M. HART, a witness herein, called for examination by counsel for the Parties in the above-entitled matter, pursuant to agreement, the witness being duly sworn by JAN A. WILLIAMS, a Notary Public in and for the District of Columbia, taken at the offices of Arnold & Porter, 555 Twelfth Street, N.W., Washington, D.C., 20004-1202, at 9:05 a.m., Wednesday, September 24, 1997, and the proceedings being taken down by Stenotype by JAN A. WILLIAMS, RPR, and MARY GRACE CASTLEBERRY, RPR, and transcribed under their direction.

and rather specifically to make sure that -- the first example that comes to mind is Cleveland west, where those crews today operate in exclusively Conrail territory. Some of the Cleveland west crews will be required to run on the B&O and some of the Cleveland west crews will be required to run on the Conrail Elkhart line.

So in order to effect a logical and orderly transition from Conrail today to the proposal that Norfolk and ourselves have made before the STB, will require us to get labor implementing agreements with our unions and then to train the unions, to the extent that it will require them to become familiar with a line that they don't operate on today. So the best guess on that today is perhaps a period of six to nine months to effect that.

During that interim period, if you will, a continuing Conrail operation honoring the contracts that are in place today, as Sam said, which is one of the things sought in this application, to allow that to continue during the interim period, in order that the right level of service is provided while the rate set and implementation activities are being put in place,

Deposition of
Christopher P. Jenkins
September 16, 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

RAILROAD CONTROL APPLICATION

HIGHLY CONFIDENTIAL

Washington, D.C.

Tuesday, September 16, 1997

Deposition of CHRISTOPHER P. JENKINS, a witness herein, called for examination by counsel for the Parties in the above-entitled matter, pursuant to agreement, the witness being duly sworn by JAN A. WILLIAMS, a Notary Public in and for the District of Columbia, taken at the offices of Arnold & Porter, 555 Twelfth Street, N.W., Washington, D.C., 20004-1202, at 10:00 a.m., Tuesday, September 16, 1997, and the proceedings being taken down by Stenotype by JAN A. WILLIAMS, RPR, and transcribed under her direction.

moving to official territory, there would be no shift from the current gateways and specifically no shift to Memphis or New Orleans as a gateway. Were you aware of that assumption?

A. I was not aware of that assumption.

Q. Okay. Now, Mr. Rosen testified that he had some discussions with some CSX marketing personnel and that, as a general matter, there was concurrence on the part of CSX marketing personnel that that assumption was reasonable in light of the real world. Would you concur that post-transaction there would not be any shift in gateways for that Western to Northeast traffic?

A. Yes, we don't anticipate any significant change in gateways.

Q. Can you tell me why you don't if the New Orleans routings would involve less distance to the destination?

A. Well, New Orleans has a limited throughput capacity. And we are approaching the limit of what can be done at New Orleans. So we believe that we're going to use New Orleans primarily to support existing traffic and traffic growth to and from the Southeast and that we're going to use the St. Louis area gateways on

in part to truck carriage?
A. Well, we would certainly do everything in our power to prevent that from occurring.
Q. Have you personally thought about what CSX might do specifically to deal with the traffic that's moved solely on Conrail today and that would become interline post-transaction?
A. Yes.
Q. What are some of the things that could be done?
A. The key thing would seem to me to work with the shipper and establish an interline rate that was competitive and allowed the business to remain on rail.
Q. And, when you say competitive, do you mean in part competitive with the current local rate on Conrail?
A. I mean competitive with truck, so that the use of rail represents a good decision for the shipper.
Q. Would part of your thinking in trying to establish a rate be what the current Conrail rate is today?
A. Yes, I think that would be a consideration.

responsible that a shipment got somewhere. As far as you know, is CSX also going to be fully responsible should there be some loss or damage or spillage of cargo?

A. That is my understanding.

Q. Now, let me turn to page 435 of your statement. The passage I would like to deal with actually begins on page 434 and relates to the Memphis gateway. I asked you a few questions about New Orleans earlier and whether there would be a shift to New Orleans as a gateway for Western to Northeastern traffic. You said you didn't anticipate that for chemicals or plastics.

A. Right.

Q. What about Memphis, would there likely be increased use of Memphis as a gateway for chemicals or plastics traffic from the Southwest including Texas and Louisiana moving to the Northeast?

A. Well, we don't have a definite plan with respect to volume changes at Memphis, at least to my knowledge. But Memphis would constitute an alternative route to St. Louis, particularly if the St. Louis area gateways are the most direct and efficient.

Q. Does the latter interest extend to instances in which the originating Western carrier would be short hauled?

A. That's possible, yes.

Q. Is CSX having any conversations with Western carriers that you're aware of that might facilitate in any way the use of the Memphis gateway?

A. No.

Q. Would you likely be aware of those conversations if they were occurring?

A. With respect to chemicals, I would, yes.

Q. Now, you said that the choice of gateways for the most part is in the hands of the shipper. What about a situation in which a shipper could reach a destination either by CSX or CSX and a combination of some other railroad, does CSX have any general policy permitting shipper choice in that circumstance so that the shipper could choose either the single-line CSX route or the joint route with another carrier?

A. I guess maybe a question of clarification there. We're talking about moving from a CSX origin to a CSX destination single line CSX versus moving from a CSX origin to another carrier and then back to CSX?

Q. That would be one way. The origin and destination stay the same and CSX single line is one of the alternatives. The other is a joint route with CSX being part of the route and another carrier being part of the route.

A. Okay. Well, there are some circumstances where joint routes exist. Generally speaking they're less efficient and more expensive.

Q. And is that for all the reasons that are stated repeatedly in the application about why single-line service is more efficient?

MR. SIPE: Well, I object to that question in that it supposes the witness knows all the reasons stated in the application.

MR. STONE: That's fine, Sam. I was really trying to shake a shortcut. Let me just not take a shortcut.

BY MR. STONE:

Q. Why is it that joint routes are generally less efficient and more expensive?

A. 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 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.

Q. Well, I appreciate that explanation. My example wasn't intended to be one in which there would be a double switch between carriers but only a single switch. But I take it, even when there's only a single interchange, there would be less efficiency and more cost; is that just react to his result. Actually I should correct the record. I think what he said was there could be a 10 percent reduction on this highly rated traffic in about half the cases.

So he applied an average 5 percent reduction to this broad range of what he called highly rated traffic. Does that strike you as something that would be a reasonable result to expect post-transaction?

A. Well, that's hard to say. I think it may well be the kind of thing that can only be determined in practice and that accuracy of any prediction is going to be limited.

Q. Do you think there would be pressure on rail rates post-transaction for chemical traffic moving to and from the shared asset areas?

A. There could be.

Q. In what circumstances would you expect there to be rate pressure for that traffic?

A. Well, it would be circumstances where the level of rates wasn't already determined by competition from vessels, competition from trucks, source competition. It would have to be the case where the railroad or railroads were the preferred alternative and the competition between the two railroads would -- could push the price down to some extent.

Q. Thank you. Let me change subjects now to go back briefly to the Memphis gateway. I asked you concerning New Orleans about whether, if the operating plan of CSX showed an increase in traffic over the New Orleans gateway, whether that would be traffic moving to Northeastern destinations from Southwest origins, and you said no; is that right?

A. Well, I think the question was did I know what accounted for the increase in New Orleans to Mobile traffic. And my answer to that was I did not know.

Q. But I think you said it was probable that it was traffic moving to and from the Southeast?

MR. SIPE: Well, I'm going to object to that characterization because the record obviously will speak for itself, but I don't think that's what the witness testified in response to that particular question about New Orleans to Mobile.

BY MR. STONE:

Q. Well, I will let the record speak for

Deposition of
James W. McClellan
September 25, 1997

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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

RAILROAD CONTROL APPLICATION

HIGHLY CONFIDENTIAL

Washington, D.C.

Thursday, September 25, 1997

Deposition of JAMES W. McCLELLAN, a witness herein, called for examination by counsel for the Parties in the above-entitled matter, pursuant to agreement, the witness being duly sworn by JAN A. WILLIAMS, a Notary Public in and for the District of Columbia, taken at the offices of Zuckert, Scoutt & Rasenberger, L.L.P., Suite 700, 888 Seventeenth Street, N.W., Washington, D.C., 20006-3939, at 10:05 a.m., Thursday, September 25, 1997, and the proceedings being taken down by Stenotype by JAN A. WILLIAMS, RPR, and transcribed under her direction.

refer to as ex-Cons there, people who did work at Conrail.

A number of people at Conrail were released last summer and we used people like Gordon Kuhn, their former chief commercial officer, Bob Hatton, AVP transportation, about a year ago Bob was still on the property, and a number of other people who know the property to help educate our own people. I guess that's sort of Phase II of all this.

Phase III is that, looking at the transition now, we've got team after team going to Philadelphia and talking about Norfolk Southern, meeting people, and looking at the hiring process just to give the Conrail people a sense that they were both needed which they are and will be wanted.

Q. So there's actually been direct communication from NS to Conrail employees saying we're looking forward to working with you in effect?

A. Our chairman just finished a video which conveys that message. And all of us in management have been up meeting folks.

Q. On 551 of your statement, you state in the last sentence, before the heading conclusions, that Conrail remains independent until after the control date?

A. Yes.

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.

Most of the operational items I think are accessible because they don't get into competitive issues; in other words, the condition of the tracks, we've got our test cars are out all over the railroad taking measurements and doing that, we're following -- they're looking at their capital plans, we see the work they're different, is that NS projects that, by operating the Conrail properties, it can be make sufficient revenues to pay off the debt of acquiring the properties; is that correct?

A. That's correct.

Q. Okay. And, in fact, to return to the current debt ratios or indebtedness ratios that NS has today within a few years after acquisition; is that generally right?

A. It will be more than a few years I think before we get down to where we were before this started. But we'll be at a comfortable level in a few years.

Q. Okay. How long will it take based on your understanding before NS gets back to the level that it's at today, if ever?

A. I've seen those numbers which were run by the bankers, but I don't remember. I couldn't give you an answer.

Q. You don't have any different view than what's stated in the application, do you?

A. No.

Q. Okay. Now, I recognize you're not the principal witness put forward on this issue, but let me just ask you, based on all of the conversations that you had as part of this planning process, did you assume that the Conrail properties that you would acquire; that is, NS, would generate sufficient revenue that you could do all the things that you say need to be done on page 512 and pay off the debt of acquisition and not have to raise rates to shippers on any identifiable segment of traffic or type of commodity, can you do all of that and not have to assume that you're going raise rates?

A. That's what the financials show.

Q. And is it accurate also to say that the financials reflect the estimate made by Mr. Williams of rate compression?

A. That is included, yes.

Q. Are you aware of any other study or analysis or calculation other than that done by Mr. Williams of rate decreases or compression result of this transaction?

A. Yes.

Q. What are you aware of?

A. When the preliminary financials were given to Wall Street, Bill Ingram who works for me made calculations on revenue compression.

Q. Do you have any understanding of what

A. No, I don't recall any sort of assumption made on that.

Q. Okay. Regardless of the fact that there wasn't any assumption, do you have any impression as to whether it would be feasible to run a train from somewhere in Southwest Virginia from a junction with the Shenandoah route up NS's lines through Southern West Virginia and connecting with Conrail's West Virginia secondary to go into Charleston that way?

A. That's -- once the NS line is upgraded for coal service, that would be certainly a feasible route. I don't know whether they have -- operationally, given all the blocking considerations, it makes sense from a service standpoint. But physically it will be certainly well equipped to handle chemical traffic.

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 intents, a spider web of lines, with a lot of intermodal terminal operations. So we've go. en pretty good at it.

Q. Does success in running this kind of a railroad depend upon maintaining what some people call a scheduled railroad; that is, trying to have all traffic meet schedules rather than sort of dispatching whatever happens to be on the track at the time and deciding ad hoc what traffic should go through?

A. It works better if you run a pure schedule railroad. But what it most of all requires is a lot of efficiency and a lot of attention to detail, especially in the terminals.

Q. Now, are you aware of anything about the Northeast that would make this kind of an operation more difficult than it is in NS's territory today?

A. There are more extensive passenger operations on certain routes. So that creates problems, potential problems. However, the qualifier here is we've had some pretty long-term experience in places like Chicago, where there's a huge level of passenger operations and a level of complexity which exceeds I think anything I've seen in the Northeast.

Q. Anything else, is there anything else lot of traffic, CSX is a major interline partner for us. So we have some experience in interlining with them.

The keys I guess to my -- my sense of it is that you find interchange points that are relatively efficient and high volume and you focus -- you focus the interchange operation at points that are efficient for both carriers. That's probably the key. You find an efficient hub for both and that's where you make the handoff.

Q. Have you personally thought about what interchanges would likely be used for the range of movements that would go from single-line Conrail service to interline service?

A. No. That will depend on a lot more information than we had at the time that I was involved in this plan.

Q. Would I be reasonable in concluding that it would be very unlikely that transit times would decrease for traffic that is local to Conrail today and would become interline?

A. The interlining involves an extra level of complexity. So I think the bias is, yes, that there would be some tendency towards more harm.

exercise was through the time of the ALK models which did flow the traffic over presumed efficient junctions. But again I didn't see the underlying detail. So that's kind of where we're at.

Q. Let me go back to the issue of transition planning. On page 551 which is 49 of your statement, you used the term just in the middle of the page control date. What is your understanding of the meaning of that term?

A. Control date is the time when we -- I think that's the legal term, we can exercise control of Conrail.

Q. Okay. Some people in this proceeding I think including Mr. Snow refer to implementation date as the time actual operations over the Conrail property or over the integrated Conrail property would commence. Is that a term that you're happy to use, implementation date?

A. Yes, that's acceptable.

Q. Okay. Do you know whether NS has a timetable today looking forward for the probable lapse of time between the control date and the implementation date?

A. They're different dates for us, yes.

There's an assumption they will be different dates.

Q. How much later than the control date would the implementation date be in NS's thinking?

A. Our planning assumption is that there will be approximately a two-month lag.

Q. Okay. Do you think that NS -- strike that.

Do you think it would be feasible for NS and CSX to have different implementation dates; that is, NS starts to operate its half of Conrail or its 58 percent two months after control date and CSX waits until six to nine months after control date?

A. They have to be -- we have to march in lockstep on every piece of this.

Q. Have you had a chance to look at the deposition testimony of Mr. Snow on this subject?

A. I have reviewed the summary of his deposition.

Q. Are you aware of any discussions going on in upper management of NS today about the schedule between control date and implementation date in light of what CSX's views apparently are, that there be a fairly lengthy period of time between those two dates?

A. No, I've heard no conversations. Let me point out, all this happened when I was in Europe. I just came back.

Q. I gather from the testimony that you just gave, that NS and CSX have to march in lockstep, that there will, of necessity, be some conversations on that subject; is that true?

A. Absolutely.

Q. Do you know whether NS has any view whether or not it can begin operating its part of the Conrail properties before labor implementing agreements are nailed down?

A. What I have heard is that we will -- the key crafts will have to have implementing agreements. That doesn't mean we have to have an implementing agreement for every craft.

Q. What are the key crafts?

A. T&E certainly or UTU -- let me start over. Trainmen, locomotive engineers, a lot of the clerical functions, mechanical department personnel, train dispatchers.

Q. What kind of clerks do you think would have to have their implementing agreements tied down?

A. I think, in terms of -- this is not my area of expertise so I'm listening to what other people say. But the service center, the whole question of receiving orders, billing which is done in some clerical functions on Conrail. That's the sort of thing where we're going to need those resources.

Q. What crafts aren't considered key crafts as far as you know?

A. No one has told me, but I would speculate, for example, Conrail has a police union. I don't see us holding up startup because we didn't have a full implementing agreement on policemen.

Q. And by mechanical do you mean the people in the shops primarily?

A. Shop personnel, yes.

Q. Do you know whether any training of any personnel that would operate in the Conrail territory is going on now by NS, is NS training anybody today who it expects to work in the Conrail territory?

A. My understanding is that we have requested and Conrail is training additional

Q. Do you know enough to say whether the planning for how NS and CSX handle Conrail contracts has or has not been completed; that is, is that planning process ongoing or is there an understanding of how that's all going to be done?

A. I would say it's ongoing simply because we don't have access to the contracts. Nor does CSX, of course.

Q. Let me step back to where we started I think today talking about some of your work in negotiating the split of Conrail assets. I'm not sure anybody has asked you yet what you thought the rationale for the creation of the Northern New Jersey shared asset area was. Could you just focus on that one specifically and tell me what the rationale was for creating that?

A. A large body of traffic in Northern New Jersey, principally terminating traffic. As I stated earlier, we tended to -- our bias, our tendency, indeed what we did was to assign routes A or B and then all the feeder network attached to each route got so assigned.

And, when we got to Northern New Jersey, the hard reality was that, in terms of our desire to have our railroad and their desire, CSX's desire, to have their railroad, that's, of course, the maximum area where Conrail made huge consolidations. That's the territory of the Reading and the Penn Central, New Jersey and Pennsylvania.

So that had all been mashed together, consolidated for efficiency purposes, and you really couldn't unscramble that egg without creating a tremendous amount of service disruption in our judgment. So, while neither company is overjoyed with shared companies, the answer -- shared operations, the answer is that's the best solution up there.

I would also say that neither side was willing to concede the entire market to the other which would have been another potential solution but would have missed a couple of objectives.

Q. Would it be fair to say that some thought was given to the salability of this transaction in the eyes of the board and the public in creating the shared asset areas?

A. As my verified statement said, we were cognizant of the fact that the transaction would require STB approval. And I think the -- needless to say, the NS in its original proposal

Deposition of
D. Michael Mohan
September 17, 1997

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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

RAILROAD CONTROL APPLICATION

HIGHLY CONFIDENTIAL

Washington, D.C.

Wednesday, September 17, 1997

Continued deposition of D. MICHAEL MOHAN, a witness herein, called for examination by counsel for the Parties in the above-entitled matter, pursuant to agreement, the witness being previously duly sworn, taken at the offices of Zuckert, Scoutt & Rasenberger, L.L.P., Suite 700, 888 Seventeenth Street, N.W., Washington, D.C., 20006-3939, at 9:05 a.m., Wednesday, September 17, 1997, and the proceedings being taken down by Stenotype by JAN A. WILLIAMS, RPR, and transcribed under her direction.

decrease in train movements in that area is correct. But can you refer me to how you are calculating the 23 trains a day?

Q. This may not be accurate. I was simply totaling the change in trains over those segments for the four segments that run between Oak Island and Allentown.

MR. PLUMP: You mean you're just adding minus nine plus minus nine? The witness can explain that.

THE WITNESS: You can't do that. Those are geographically contiguous segments. And you have to look at the individual segments. So the addition isn't possible.

However, the conclusion that the line segments in this area will show a slight decrease, that's basically correct. And then, with respect to the question why are you investing what I believe you characterized as 31 million in these line segments, the answers are as follows:

With reference to page 270, other Lehigh line improvements are basically bridge and structural improvements to permit the handling of full envelope doublestack container traffic. And that's 10.5 million. With respect to the item bullet point Pattenburg, New Jersey, the improvements here again are associated with providing capacity to clear full envelope doublestack loads.

With respect to Flemington Junction, Read Valley, as you may be aware, NS has a commitment to service reliability. This exit and entry route is the principal or one of the principal accesses for east-west intermodal traffic. And it's more a function in this particular corridor of providing service reliability for what does move than any particular increase in volume.

Also, as you may be aware, as one leaves the Bound Brook area, you begin a general ascent to the Pattenburg Tunnel and train speeds decrease. And NS's feeling was that the additional sidings would be necessary to maintain reliability.

And then, with respect to Bound Brook, you'll note that the sidings shown on the plan are also involved with providing more fluid access in the Bound Brook/Manville area, not only for siding capacity, but because of the interface general way to account for the perceived decrease in a number of these New Jersey line segments?

A. Well, with some exceptions there would be. Between Oak Island and Aldene, you're seeing the effects of traffic splits with CSX based on the judgments of the traffic witness. You're also seeing the effects of some rerouting of NS postacquisition traffic to the Southern Tier. And.

In that case you're also seeing the effects of some diversion of traffic in NS's account to the Northeast corridor. Beyond that link what you're seeing principally is the traffic witness' judgment on traffic splits diverted to CSX and away from Conrail lines to be controlled by NS.

Q. Okay. On page 15 of the operating plan volume, there's a statement in the second full paragraph, at the end of that paragraph, that refers to congestion in the Northern New Jersey terminal area. Could I ask you to identify what that congestion is and where?

A. The statement has reference to the use of the Southern Tier from certain NS facilities in Northern New Jersey. The congestion alluded

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to is generally between Oak Island and Croxton.

There are two available routes between those two points. And, even though the distances are not greater on average than five miles, transit times can be highly variable because of potential congestion in the area and can range from 45 minutes to an hour and a half to make the five-mile move. And what the allusion is to in this case is that traffic to and from Croxton can avoid that congestion by operating via the Southern Tier.

Q. Now, based on your understanding in the operating plan of the likely route for movements of chemical and plastics general merchandise trains in and out of the North Jersey shared asset area, would those trains be able to avoid that congestion?

A. They could, depending upon their ultimate destination and inbound routings. For example, to the best of my recollection, there is a general manifest train planned to operate inbound from Allentown via the Port Reading Secondary, setting out at Port Reading, operating via Bayway and the Chemical Coast into Oak Island.

list is common commercial control for the benefit of the customer. High on the list is common operational control for the purposes of coordination, safety, and realization of benefits.

Q. I only asked you the question because your statement in the operating plan did address the integration of functions. And one of the things that was addressed was the integration of the data processing or information technology systems. And there was a reference to a decision that that integration should proceed quite quickly. Can you explain in simple terms why that is?

A. There are two reasons. One is the reason alluded to in the plan text which is the year 2000 problem which NS's computer systems are on target to address. Conrail's computer systems as we understand the issue may have some problem dealing with year 2000 issues if there are any significant delays in the implementation of the transaction.

The other reason for integrating computer systems as rapidly as can be done is that in today's world most commercial and operational transaction is done through the computer system. It's difficult to integrate fully without integrated systems.

Q. On page 180 in particular there is a reference to a plan for direct real-time linkage with the NS and CSX data systems; that is, linkage between the Conrail territories and the NS and CSX data systems.

MR. PLUMP: This is in the context of the shared asset discussion?

MR. STONE: Yes. That is in numbered paragraph 5. I appreciate that clarification, Andy.

BY MR. STONE:

Q. Are you aware of function linkages of this type that exist somewhere in the U.S. railroad system today?

A. Bearing in mind that the shared asset areas are not a terminal company, it's still true, for purposes of providing you with a comprehensible answer, that certain terminal companies do have direct linkages to the computer systems of line haul carriers.

The example that comes to mind is the Alton & Southern terminal operation in East

St. Louis, Illinois, which prior to the consolidation of SP and UP had access to both line haul carrier systems.

Q. Switching the subject again to the relationship between intermodal traffic increases on the new NS and the handling of merchandise traffic including chemicals, is it the general intent that there be levels of priority for different types of traffic in dispatching or is the intent of the new NS operations to run a scheduled railroad in which you simply adhere to schedules for whatever train is supposed to be passing through at the particular time?

A. NS runs a highly scheduled operation. And my understanding of NS's intent is to run that same type of operation for the consolidated system. But an integral part of building the schedules is to determine what the commercial priorities of the traffic are.

Q. As a practical matter, there are always going to be some trains that are running late for whatever reason. Now, let's suppose an intermodal train is running late. Do you think based on your experience that there will be some tendency to hold other traffic including general merchandise traffic to let priority intermodal trains through sometimes?

A. At times. But I can tell you honestly it depends on the commercial priorities. 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.

Q. Well, pursuing that issue a little bit, would you characterize intermodal traffic as among the most competitive traffic that the railroads handle?

A. For many intermodal accounts, that would be true.

Q. And under those circumstances would the priority according to that traffic tend to be greater in the sense of the commercial priorities that you spoke of a moment ago?

A. It could be. But that is not always the case, if there are contractual commitments on a merchandise train with a great many chemical customers than the commercial priority would dictate.

any knowledge about reciprocal switching arrangements in the Buffalo area and the closing of Buffalo to reciprocal switching sometime in 1996?

A. Given the way you phrased the question, I would have to say no, I don't know.

Q. Do you know anything about reciprocal switching in Buffalo and its history?

A. I thought I understood that Buffalo was open. You've told me something when you've indicated that it's closed.

Q. Do you have any understanding about an agreement that was recently reached between NS and the Illinois Central concerning routing?

A. No.

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.

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.

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.

Q. Just so I understand your current role, I think you said you're not directly involved in transition planning; is that correct?

airline operations. And I know the general intent in an airline is you bring in all the incoming flights in a certain narrow time slot and you send all the outgoing flights back out during another narrow time slot. Do the intermodal operations that will occur at Rutherford have anything in common with that airline model?

A. I certainly hope they're better than O'Hare.

Q. Let the record reflect laughter among all parties.

A. I'm sorry, excuse me.

Q. I'm going to put my question specifically, will there be limited times a day when all incoming trains come into Rutherford and then another time when all outbound trains go out?

A. There won't be limitations, no. There will be by virtue of customer need a tendency to concentrate the traffic such that traffic for the Eastern Seaboard can reach its destination from Rutherford at the times required by the customer which is typically before six or seven in the morning.

And inbound to Rutherford from the East Coast there will be a tendency to leave as soon as -- leave the origin as soon as the traffic is available and can be assembled which would be around ten o'clock at night in most cases. So, just as in an airline hub, there will be some times when Rutherford is much busier than other times.

Q. What times of day do you predict that it would be busiest?

A. In the late evening hours, it would certainly be busy eastbound. And, in terms of processing westbound traffic, sometime in the early morning hours it would also be quite busy I would think.

Q. If it were to happen that there was a backup of trains waiting to get into Rutherford, what lines, if any, would those trains back up on?

A. Well, I don't know that there would be. But the Harrisburg line to the West towards Philadelphia and Reading is a possibility. Again, with the installation of centralized traffic control, it's difficult to see that being much of a problem, if it becomes a problem at

Deposition of
John W. Orrison
September 12, 1997

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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

RAILROAD CONTROL APPLICATION

HIGHLY CONFIDENTIAL

Washington, D.C.

Friday, September 12, 1997

Continued deposition of OHN W. ORRISON, a witness herein, called for examination by counsel for the Parties in the above-entitled matter, pursuant to agreement, the witness being previously duly sworn by JAN A. WILLIAMS, a Notary Public in and for the District of Columbia, taken at the offices of Arnold & Porter, 555 Twelfth Street, N.W., Washington, D.C., 20004-1202, at 9:10 a.m., Friday, September 12, 1997, and the proceedings being taken down by Stenotype by JAN A. WILLIAMS, RPR, and transcribed under her direction.

Q. Okay. Well, I appreciate that. Does CSX post-transaction plan to measure train on-time performance?

A. Yes.

Q. And will it keep statistics that are readily producible should the STB be interested in checking how CSX is doing?

A. Yes.

Q. Okay. How about car performance; that is, would CSX establish a baseline of the movement of cars by way of some sort of sampling program or some sort of a universal statistical --

A. Yes.

Q. What exactly will CSX do?

A. Would you want me to speak to train performance or to car performance?

Q. Car performance.

A. With respect to car performance, CSX has a measurement system called TPMS. It measures the dock-to-dock car trip performance of cars from the time of release from the customer at waybill to the time of placement at the dock. When the car is released, an original trip plan is scheduled for the car.

And then the trip plan is measured in terms of the movement of the car to the final results of the trip. The measurements are where you can look at them and review them over periods of time, you know, by a number of different methods of analysis.

Q. Is this a 100 percent sampling program or is it more limited in terms of the samples that it takes?

A. The sampling program is not currently 100 percent. We are trying to achieve levels of 100 percent measurements.

Q. When you say you're trying to achieve 100 percent measurement, is that one of the objectives you would have for, say, the first year post-transaction?

A. Well, on day one and, you know, when you're talking about the periods of the implementation of this operating plan with CSX, we will be implementing this car scheduling type system to measure trips on Conrail and we will continue the measurement of the car trips on CSX.

It is our objective to get the measurement of all these car types into the system so that we have full analysis capabilities to understand the movement of the cars with regard to performance.

Q. Do you think that can be done by the end of year one?

A. I don't want to speculate on the exact time period. We have transition teams that are working to implement these systems.

Q. One final question. It's totally unrelated to anything else I've asked you, it relates to the Chicago terminal. I believe there's a statement somewhere in the operating plan about increasing speeds of trains or speed limits of trains in Chicago to 40 miles an hour. Does that ring a bell with you?

A. It would be best for me to refresh my memory.

Q. Okay. Do you want to go ahead and do that?

A. Sure.

(Discussion off the record.)

THE WITNESS: I have found a statement on page 458 of my second verified statement, the one that was submitted with regard to the IHB.

BY MR. STONE:

Deposition of
Donald W. Seale
August 26, 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

RAILROAD CONTROL APPLICATION

HIGHLY CONFIDENTIAL

Washington, D.C.

Tuesday, August 26, 1997

Deposition of DONALD W. SEALE, a witness herein, called for examination by counsel for the Parties in the above-entitled matter, pursuant to agreement, the witness being duly sworn by JAN A. WILLIAMS, a Notary Public in and for the District of Columbia, taken at the offices of Zuckert, Scoutt & Rasenberger, L.L.P., Suite 700, 888 Seventeenth Street, N.W., Washington, D.C., 20006-3939, at 10:00 a.m., Tuesday, August 26, 1997, and the proceedings being taken down by Stenotype by JAN A. WILLIAMS, RPR, and transcribed under her direction.

Q. So is it fair to say that everyone reviewing the Southwest exclusion assumption concurred with it?

A. I'm not sure that everyone agreed, but I can't recall any major disagreement.

Q. Okay. Do you recall any minor disagreement?

A. No.

Q. Could you explain, if you're able, in your own words, the rationale for the Southwest exclusion assumption in the Williams study?

A. From a routing standpoint, current gateways will probably most likely be maintained after our acquisition of the Conrail lines and that no artificial transfer or attempt to transfer traffic to other gateways will be able to be made in the marketplace.

Q. And why is that?

A. With respect to routing of traffic, the origin carriers have routes in place today, they have connections with Conrail, they will have connections with the new lines post-Conrail, and it's a natural flow of traffic over those routes.

Q. And, when you say it's a natural flow

Q. Okay. Are there any other gateways that you would characterize as efficient gateways?

A. I'm sure that there are others with respect to -- where the two carriers involved in the joint-line route have sufficient volume to drive the network and have sufficient agreements in place to manage that traffic in an efficient manner.

Q. Okay. Would it be your testimony that there are not such efficiencies and not such agreements in place with respect to the New Orleans and Memphis gateways?

A. If you could repeat that, I didn't get the question clearly.

Q. Let me turn it around. With respect to the New Orleans and Memphis gateways, would it be your testimony that there are not the same sort of efficiencies or agreements allowing traffic to move efficiently through those gateways?

A. With today's traffic flows, I don't think that those agreements are in place for traffic that would move to the Midwest or upper Northeast.

Q. Okay. Now, let's assume that the

transaction we're all talking about here today is approved by the STB and CSX and NS would have at least a theoretical ability to move traffic via single-line service from either New Orleans or Memphis to Northeastern points. Under those circumstances do you think that the New Orleans and Memphis gateways might become efficient gateways for chemical traffic moving from Texas and Louisiana?

A. With the mileages involved and the networks and routes that will be available, in my opinion I would say that those gateways do have the potential of becoming efficient junctions for chemicals from the Southwest to the Northeast.

Q. What would it take for those gateways; that is, New Orleans and Memphis, to realize the potential that you just referred to?

A. It depends on the specific commodities, where they're sourced, the network density of the origin carrier to the gateway, a multitude of factors.

Q. Are you aware that Mr. Williams testified regarding the Southwest Exclusion Territory traffic that the Western railroads originating that traffic would be extremely

Deposition of
John W. Snow
September 18, 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

RAILROAD CONTROL APPLICATION

HIGHLY CONFIDENTIAL

Washington, D.C.

Thursday, September 18, 1997

Deposition of JOHN W. SNOW, a witness herein, called for examination by counsel for the Parties in the above-entitled matter, pursuant to agreement, the witness being duly sworn by MARY GRACE CASTLEBERRY, a Notary Public in and for the District of Columbia, taken at the offices of Arnold & Porter, 555 Twelfth Street, N.W., Washington, D.C., 20004-1202, at 10:00 a.m., Thursday, September 18, 1997, and the proceedings being taken down by Stenotype by MARY GRACE CASTLEBERRY, RPR, and transcribed under her direction.

lines as to CSX, that is, when you say the day after which we have full control, does that assume that the operating leases that are at issue in this proceeding have been executed and are in effect?

A. What I have in mind by control date is the point at which the Surface Transportation Board authorizes the transaction which is before them to proceed. That's what I have in mind by that date.

Q. And do you have an understanding of what your counsel meant when he said implementation date a few minutes ago?

A. Well the implementation date, in my mind, is the time in which we are not only legally authorized to exercise control but actually undertake the operation of the properties, the NYC and the PRR.

Q. And just to clarify, when you say implementation date, is it the first date on which you begin to undertake the operation of those properties?

A. The implementation date is the date at which we have some of these conditions fulfilled that would allow us to begin to operate on an integrated basis. And obviously there are some things that have to get done before you can do that, one of which is implementing labor agreements.

Q. Do you have an operating assumption in your mind of how long after the control date the implementation date would occur?

A. Well, as soon as practicable.

Q. For planning purposes, do you have in mind some lapse of time after the control date when implementation will start to occur?

A. Yes. I think that we'll take some time after the approval date to be in a position to operate the properties on an integrated basis. It will take some time to get the implementing agreements in place. And I think it's ill-advised to proceed with operations as one unified rail system until those labor agreements, implementing labor agreements are in place.

Q. I note in your verified statement at page 304, using the sequential volume page numbering in volume 1, that you have had experience in merging railroads. You cite the example of the merger of the Chessie and the Seaboard. Based on that experience, 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. In fact, there is a day one team whose the business, win the game. And it's across the whole range of service characteristics that shippers work for, including logistics, adjusting time, inventory controls, overall logistics costs, not just price but overall logistics costs becoming more and more a basis on which we compete. So it's an endless range really that constitute the competitive makeup of the struggle between NS and CSX.

Q. Just one more question for CMA. Are you aware that in the Union Pacific-Southern Pacific merger transaction, the Surface Transportation Board established an oversight period following that merger to monitor the implementation of the merger?

A. I'm aware of that, yes.

Q. Would you be open to the possibility of having an oversight proceeding in this case to ensure the steps you plan to make sure that there is a smooth implementation would in fact work? Or not to make sure but just to have a public forum for presenting those issues.

A. As I said earlier, we're bending every effort to make sure that does occur. We won't start up -- we won't go to day one until we're convinced that we'll be able to implement effectively and avoid problems with the startup. If the Commission determines that there is some value in some kind of oversight, oversight can take lots of different forms. I don't want to commit myself to the specifics of something but if the Commission determines that it's useful from their point of view to have some oversight, I'm not going to -- far be it for me to say they shouldn't do it.

Q. Well, I appreciate your answers and I will now put on my Pennsylvania hat and have just a couple of questions. You mentioned industrial development as one of the ways in which NS and CSX compete. Without asking you to recapitulate CSX's entire industrial development program, can you just outline the forms of assistance that CSX can provide in assisting in the location of facilities?

A. Well, sure. We sometimes acquire property in our name that will eventually be the site of the new plant or new facility. We sometimes point prospects to sites along our railroad that we think would be appropriate to suit their needs. We sometimes enter into its particular competitive struggle?

A. I think both Norfolk Southern and CSX recognize that we have to have strict neutrality from the shared asset operator and structure the governance of the operations in a way that we will get that sort of neutrality. It's true that we'll be intense competitors but we've tried to put in place, through the SAA mechanism, a vehicle to assure that that's even-handed and that one of us doesn't gain an advantage over the other. We're going to watch each other closely.

I remember somebody told me about the honor system at the University of Notre Dame, watch them like a hawk when they take the test. We're going to watch them like a hawk and they're going to watch us like a hawk. And we will undoubtedly have people in the management of -- I think we've agreed to have in the management of the shared asset areas people who come from neither CSX or NS, have no prior allegiance to either one of us and will be able to be strictly neutral.

I think we understand the potentiality for mischief in that area and since we both understand it, we're equally committed to taking

Deposition of
John H. Williams
August 11, 1997

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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

RAILROAD CONTROL APPLICATION

HIGHLY CONFIDENTIAL

Washington, D.C.

Monday, August 11, 1997

Deposition of JOHN H. WILLIAMS, a witness herein, called for examination by counsel for the Parties in the above-entitled matter, pursuant to agreement, the witness being duly sworn by JAN A. WILLIAMS, RPR, a Notary Public in and for the District of Columbia, taken at the offices of Zuckert, Scoutt & Rasenberger, L.L.P., Suite 700, 888 Seventeenth Street, N.W., Washington, D.C., 20006-3939, at 10:15 a.m., Monday, August 11, 1997, and the proceedings being taken down by Stenotype by JAN A. WILLIAMS, RPR, and transcribed under her direction.

equipment, et cetera?

A. Well, it varied in my estimate. I used different estimates as to whether the traffic was diverted traffic or base traffic. And I varied the estimate according to the commodity.

Q. Okay. And did you look at the commodity by two-digit STCC code or at some other level of aggregation?

A. Two-digit STCC code.

Q. Any other breakdown other than by commodity such as type of car or anything like that?

A. No.

Q. Is the $82.0 million rate compression figure reflected in the diversion figures in your attachment JHW-1 on page 85?

A. No.

Q. If one were to reflect that rate compression estimate, would one do so by subtracting $82.0 million from $190.6 million?

A. No. One would have to subtract the $82 million from the combined total of 1,998.8 million plus $190.6 million.

Q. And why is that?

A. Because the rate compression estimate the maximum number of records that DNS can handle or is it capable of handling more than that?

A. No, it can handle more.

Q. A lot more?

A. Yes.

Q. I'm trying to get an understanding of why the model was run using waybill sample data rather than 100 percent traffic data. It's not I take it because of a limitation of the model?

A. It is not.

Q. What then was the reason that the waybill sample was used rather than 100 percent data?

A. The 100 percent data would have had to have been available at least from Conrail. And the evaluation of all other carriers' traffic including CSX's traffic and Canadian Pacific and all other carriers would have had to have been studied using the carload waybill sample. But, so far as the availability of Conrail's 100 percent traffic data, it was simply not made available to Norfolk Southern in a timely manner so that the study could have been done using that.

Q. I see. If 100 percent Conrail data had

A. Yes, I did break it down by commodity group.

Q. Why don't you, if you could, just walk briefly through the methodology and assumptions you used in creating your $82 million estimated rate compression.

A. All right. The first portion of the traffic base I considered was the diversions which totaled $190.6 million as shown by my table JHW-3. And my view was that the negotiations required either between the affected railroad customers or the affected railroads would result in an estimated 10 percent reduction in revenue because of the competition, if you would, between carriers for the diverted traffic. And that 10 percent reduction applied across all commodity groups.

I next considered the Penn Lines' base traffic or the traffic that is being acquired by NS which is really Conrail traffic today. And my view was that about half of that total revenue base was being opened up to competition, to specifically NS/Conrail-CSX/Conrail competition.

And it was my opinion that the highest margin commodity groups, coal, chemicals, primary metals, and autos, would experience a reduction of not 10 percent because only about half of the traffic was subjected to head-to-head competition but 5 percent.

Then I considered the remaining commodity groups which was everything else. And my view was that there would likely be some average rate compression of about 1 percent applicable to all the other commodity groups. So in total I calculated -- from the diversions I calculated 19.1 million of the $82 million and the balance of 62.6 million came from rate compression in the base traffic of the Penn Lines.

Q. All right. So, as I understand it, you did not undertake an analysis that looked at movements of particular commodities from particular points to other particular points and did not analyze those particular movements in terms of whether they were to and from open points but rather simply looked generally and broadly over the let's call it official territory and thought that about half the high-margin traffic might be open to competition; is that correct?

Q. Now, I'd like to go to the top of page 77, where you talk about the Southwestern exclusion territory. And could I just ask you to explain the rationale for that move?

A. Yes. The rationale for that move as I have already testified was the traffic originating or terminating in the Southwestern exclusion territory except for KCS traffic was originated or terminated by either the Union Pacific System or the BN/Santa Fe system.

And that diversion of that traffic away from the St. Louis area gateways including St. Elmo or Sidney in the case of the new Norfolk Southern gateway or away from the Chicago gateway to a Memphis or a New Orleans gateway would short haul either the Union Pacific or the BN/Santa Fe system. And such short hauls were considered unlikely to occur. In other words, the two Western carriers were not expected to concur in routing changes that substantially short hauled them.

Q. Okay. Do you have any prediction based on your experience in the industry of what it would require to induce BN or UP to be short hauled?

Ohio; is that correct?

A. That's my understanding.

Q. I believe you indicated that the interchange point had not yet been established or agreed upon; is that also correct?

A. That's my understanding.

Q. Could such trains also be interchanged at Ashtabula?

A. If the parties involved in the movement agreed to an Ashtabula interchange.

Q. There's no operational reason why they couldn't be interchanged at Ashtabula as far as you know; would that be correct?

A. It's fundamentally correct.

Q. Are you aware that, as part of this transaction, CSX will be acquiring trackage rights over NS between Youngstown and Ashtabula, Ohio?

A. I believe they will be reactivating rights they already have.

Q. From an operational standpoint, could such Centerior coal trains also be interchanged at Youngstown?

A. Again, if the parties to the movement agreed upon it, I don't know an operational

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NLS-2

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 AND CONSOLIDATED RAIL CORPORATION

**PROTEST OF NATIONAL LIME AND STONE COMPANY
AND REQUEST FOR IMPOSITION OF CONDITIONS**

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October 21, 1997

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NLS-2

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 AND CONSOLIDATED RAIL CORPORATION

PROTEST OF NATIONAL LIME AND STONE COMPANY
AND REQUEST FOR IMPOSITION OF CONDITIONS

Pursuant to the procedural schedule established by the Surface Transportation Board (Board), 62 F.R. 29387, National Lime and Stone Company (National) herewith submits its Protest to the change in control for which approval is sought in the above referenced proceedings and to request the imposition of conditions to prevent substantial economic injury to National and its customers. National's protest and request for conditions is supported by the attached verified statement of Ronald W. Kruse, National's Vice President of Marketing.

On June 23 1997, CSX Corporation (CSX) and Norfolk Southern Corporation (Norfolk) filed an application with the Board to acquire control of, and divide, the assets of Conrail Inc. (Conrail). Following the proposed transaction, *inter alia*, Conrail assets located in western Ohio will be controlled by CSX while Conrail assets located in eastern Ohio will be controlled by Norfolk.

National Lime and Stone Company (National) is one of the largest suppliers of crushed limestone products in Ohio. Founded in 1903, National is headquartered in Findlay, Ohio, and operates eight quarry and stone processing locations (at Bucyrus, Buckland, Carey, Delaware, Findlay, Lima, Marion, Upper Sandusky, and Wapakoneta, Ohio), four rail distribution yards (at Wooster, Canton, Tusky Valley (Midvale), and Cadiz, Ohio), and two truck distribution yards at (Rimer and Westerville, Ohio). On June 25, 1997, National filed with the Board its Notice of Intent to Participate as a party of record in the above referenced proceedings.

National produces and ships more than 11 million tons of crushed limestone per year in aggregate and industrial mineral forms. Limestone aggregate products are used for road stone and construction. Limestone is used as an industrial mineral in the making of glass and steel. Limestone is also used in environmental protection processes and for agricultural purposes. Purchasers of limestone products select sources of supply based on particular chemical characteristics. National sells limestone as crushed stone for aggregate applications and processes limestone by drying or calcining to produce dried limestone and lime products, respectively, for industrial mineral uses.

National ships its products by rail or by truck as appropriate given the availability of service and relative cost. National has for many years been a substantial shipper of limestone and limestone products on Conrail, CSX Transportation

(CSXT), the Norfolk & Southern Railway (NS) and the Wheeling & Lake Erie Railroad (WLE). For large volume (more than 1000 tons) and long-distance (more than 75 miles) shipments, rail transportation is essential to National's business and for such shipments there is no practical substitute for rail transportation.

National currently has available to it single-line hauls on Conrail and CSXT to major customers of National's limestone and limestones products produced at its Bucyrus and Carey, Ohio quarries. At Bucyrus, Conrail is the only provider of rail transportation service available to National. At Carey, National has three rail service providers: Conrail, CSX and Wheeling & Lake Erie (WLE), an Ohio short-line railroad. Service on WLE is available to only a few destination markets; single-line service to several key destination markets is available only via Conrail or CSXT.

National's business will be severely injured by the proposed transaction and National therefore urges the Board to deny the transaction as proposed as being inconsistent with National Transportation Policy and inconsistent with national competition policy. National respectfully submits that the transaction may only be approved if conditioned in the following manner:

1. CSXT grants NS trackage rights from Crestline, Ohio to Spore (the site of National's Bucyrus plant).

2. CSXT grants NS trackage rights from Upper Sandusky to National's Carey, Ohio plant.

3. NS grants CSXT reciprocal trackage rights to enable CSXT to compete to deliver single-line service to National's existing and future markets east of Crestline, Ohio.

4. If control over WLE or its facilities changes as a result of the transaction, a railroad other than WLE's successor should be granted trackage rights over WLE's tracks to National's markets now served by WLE.[1]

PROTEST

As structured, the proposed transaction threatens National with two distinct injuries that are relevant to the Board's merger analysis. First, the transaction would significantly degrade the adequacy of rail transportation presently provided to National. National relies heavily on single-line service provided by Conrail. After the transaction, National's only rail transport option to markets now served by Conrail will involve

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[1] On several occasions since the applicant railroads filed their application for a change in control of Conrail, National has sought to explain to CSXT the adverse effects the application, if granted as filed, would have on National's business. It was not until October 13, one week before protests were due to be filed in these proceedings, that National had any response. That response was short on detail and temporal focus and did nothing to address National's concern that it continue to have single-line service in the future to the markets now served by Conrail and WLE. This inadequate response was also conditioned on National's acceptance by October 21 and on National's signifying its support for the transaction.

two-line service over CSX and Norfolk. If the transaction has the effect of putting WLE out of business (as WLE believes it will), National will no longer have single-line service to the markets to which WLE now provides service to National.

The replacement of existing single-line hauls with two-line hauls would severely degrade the character of rail transportation service currently linking National's Bucyrus and Carey facilities to destination markets in eastern Ohio, Pennsylvania and West Virginia. This one to two effect of the transaction would cause three problems: (1) transportation costs to National or its customers will increase; (2) rail cars will be more difficult to source; and (3) service will be slower and less reliable.

National faces a second injury as a result of the proposed transaction. National will lose access to competing suppliers of rail transportation. With respect to the Carey facility, National's rail transport options will be reduced from at least three to two, and may be reduced as a result of the transaction from three to one. An important existing supplier of rail transport service -- Conrail -- will be lost immediately when the relevant Conrail facilities are controlled by CSX. At the same time, the proposed transaction is likely to divert business away from WLE. WLE claims that it will no longer be able to provide existing services if such a diversion of traffic in fact occurs, and has requested that its assets be acquired as a part of the CSX/Norfolk/Conrail consolidation. National's position is that, if one of the railroads involved in this proceeding acquires WLE, then trackage rights over these facilities must be offered to another railroad so that National's rail options at Carey are not reduced as a result of the transaction.

Neither of these injuries to National could be ameliorated by intermodal shipping options. National ships over three million tons per year by rail. Because of the unique characteristics of aggregates and crushed rock, truck transport is not a viable option except for very short distances. At the same time, neither Carey nor Bucyrus is located near a water transport route and as a consequence barge shipping is not available to National.[2] Thus, the degradation of service to National and the loss of competitive rail options serving National will not be mitigated by trucking or barge transportation.

To remedy these injuries, National proposes a narrowly tailored exchange of trackage rights between CSX and Norfolk. Such trackage rights would be provided only on those facilities over which National currently obtains single-line service from Conrail. This remedy will ensure National access to single-line service between Carey and Bucyrus and its destination markets. At the same time, this remedy will assure to National the availability of competitive rail options.

In addition, if WLE is acquired by CSX, National asks that trackage rights be granted to NS over WLE facilities currently

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[2] The closest navigable body of water, Lake Erie, is 60 miles from Carey and 50 miles from Bucyrus.

used by National. Without this remedy, National will lose an important rail option serving its Carey facility.

A. Rail Shipments from Carey, Ohio That Will Be Adversely Affected by the Transaction.

At Carey, National is currently served by Conrail, CSXT and WLE to various markets. Carey is one of two sources in Ohio of dolomitic limestone, which is desirable for its high magnesium and low silica and sulfur content. National's single-line shipments from Carey via Conrail east of Crestline, Ohio include the following:

1. *Shipment of calcined dolomitic limestone (i.e., lime) to Weirton Steel Company at its Weirton, West Virginia*. These sales by National to Weirton provided National revenues of $564,005, $780,433 and $438,953 in 1996, 1995, and 1994, respectively. Weirton pays the rail freight cost for these shipments under contract with Conrail.

2. *Shipment of dried dolomitic limestone to PPG's Meadville (Stoney Point), Pennsylvania plant*. These sales by National to PPG provided National revenues of $259,000, $252, 986 and $264,802 in 1996, 1995, and 1994, respectively. National pays the rail freight cost for these shipments under contract with Conrail and paid Conrail an average of $14/ton for the three years 1994-1996.

3. *Shipment of dried dolomitic limestone to Lesco's Martin's Ferry, Ohio plant*. These sales by National to

Lesco provided National revenues of $374,000 and $243,000 in 1996 and 1995, respectively. Lesco pays the rail freight cost for these shipments under contract with Conrail.

National's single-line shipments from Carey via WLE east of Crestline, Ohio include the following:

1. *Shipment of crushed dolomitic limestone to Medina Supply in Medina, Ohio.* These sales by National to Medina Supply provided National revenues of $2,410,000, $2,641,000 and $3,333,000 in 1996, 1995, and 1994, respectively.

2. *Shipment of crushed dolomitic limestone to National's sales yards in Canton, Ohio.* These shipments by National provided National revenues of $2,757,233 and $1,997,393 in 1996 and 1995, respectively.

3. *Shipment of crushed dolomitic limestone to National's sales yards at Tuskey Valley in Midvale, Ohio, and in Cadiz Ohio.* These shipments by National began in June 1996 and April 1997, respectively.

In 1996, National paid rail freight costs of $3,300,000 to WLE and has budgeted $3,500,000 for such costs in 1997.

B. Rail Shipments from Bucyrus, Ohio That Will Be Adversely Affected by the Transaction.

At Bucyrus, National is currently served only by Conrail. National's single-line shipments from Carey via Conrail east of Crestline, Ohio include the following:

1. *Shipment of limestone to Weirton Steel Company at its Weirton, West Virginia plant.* These sales by National to Weirton provided National revenues of $776,440, $521,393 and $373,617 in 1996, 1995, and 1994, respectively.

2. *Shipment of limestone to National's sales yards at Wooster, Ohio.* These shipments by National via 50-car unit trains provided National revenues of $2,331,000 and $1,659,997 in 1996 and 1995, respectively.

National's estimates that its annual freight costs for movements to Weirton Steel from Bucyrus exceed $1,100,000. National's freight costs for movements to its sales yards in Wooster were $970,000 in 1996 and National has budgeted $1,300,000 for such costs in 1997.

C. **The Transaction Will Materially Injure National and its Customers in Their Business Unless Conditioned to Prevent Harm.**

The Railroad Control Application filed by CSX and Norfolk, in boasting about the substitution of single-line service for two-line service ("2 to 1") that the transaction will apparently offer to many shippers, amply explains the kinds of business injuries that the proposed transaction will visit upon National and its customers if it is approved without appropriate conditions. ***Kalt*** at 28; ***Gaskins*** at 13; ***Jenkins*** at 18. The 1 to 2 impacts on National will surely include significantly higher freight costs, delays in delivery and poorer service.

The costs of two-line service would necessarily be materially higher than the single-line service that National now receives from Conrail to destinations east of Crestline because two-line hauls would involve two sets of locomotives and train crews. Because CSXT and NS would prefer to use their own cars and National would have to deal with two carriers generally, National would experience shipping delays. Dr. Gaskins has eloquently described the service degradation that comes from interline service.

> Cars were frequently delayed, lost, mis-switched, and inefficiently prioritized--while each carrier pointed to the other as the guilty party. As a result, shippers face an increase in actual transit time and transit time availability. As any inventory management professional will state, an increase in either will lead to a costly increase in product inventory levels, further reducing the attractiveness of rail.

Gaskins at 14.

National has no economic substitute for rail for its east of Crestline movements. As noted earlier, National's Carey and Bucyrus quarries are not located near navigable waters and, hence, barging is not available as a substitute for the rail service National now receives from Conrail. Truck transportation would not be feasible because the costs are too high and the volume of National's east of Crestline shipments is too large. For example, National's costs to ship from Carey to the customers identified above would increase by about $6,500,000 per year. In addition, if National were to lose WLE as an independent single-haul carrier, it would not be physically feasible to ship by truck because more than 57,000 truck shipments would be required to move the same tonnage that National now ships on the WLE. At Bucyrus, National estimates that its annual freight costs would increase by more than $1,900,000 if it had to (and could) replace Conrail service with truck transportation. Moreover, it would take 22,000 truck loads to move the same volume.

If National were confronted with these additional costs, its product would no longer be price competitive and National would lose all of the business shipped east from Carey and Bucyrus because the customers identified above would have lower cost alternatives. National's competitors would be able to ship to these customers at lower cost in one or more of the following ways: (1) single haul movements from points east of Crestline; (2) truck shipments from closer and therefore economically viable distances; and (3) in some cases by barge.

If National were to lose these customers National would lose the economic value of investments that National has made to serve its east of Crestline markets. These investments include over $6,000,000 National paid to acquire real estate for and to make improvements to its sales yards in eastern Ohio, all of which would be worthless if National is unable to ship its aggregate products to these locations by single-line rail hauls, and over $6,000,000 that National expended to make capital improvements at its Bucyrus quarry and processing plant, an investment that was predicated on processing limestone for National's eastern Ohio sales yards and other potential markets to the east and that would be worthless if single-line service were no longer available. Of course, if National's customers lose National as an economically viable competitor for their custom, they too will suffer economic injury because National will no longer constrain the prices charged or quality of product and service provided by other suppliers that are not injured by (or may be the beneficiaries of) the proposed transaction.

National itself will be affected in this way if the proposed transaction results in the disappearance of WLE. WLE has stated that, absent the imposition of adequate remedial conditions, it would be bankrupted by becoming a joint-line competitor to NS single-line service. If National no longer has an WLE alternative to NS, the transaction will reduce National's rail alternatives from three to one and it will be at the mercy of NS.

REQUEST FOR CONDITIONS

By statute, the Board shall approve and authorize the acquisition of control of a rail carrier by one or more other rail carriers "when it finds the transaction is consistent with the public interest."[3] In a proceeding involving the merger or

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[3] 49 U.S.C. § 11324(c) (1994).

control of at least two Class I railroads,[4] the Board shall consider at least the following five factors:

> (1) the effect of the proposed transaction on the adequacy of transportation to the public;
>
> (2) the effect on the public interest of including, or failing to include, other rail carriers in the area involved in the proposed transaction;
>
> (3) the total fixed charges that result from the proposed transaction;
>
> (4) the interest of rail carrier employees affected by the proposed transaction; and
>
> (5) whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region or in national rail system.[5]

Subject to this same public interest standard, the statute authorizes the Board to "impose conditions governing the transaction, including the divestiture of parallel tracks or

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[4] A Class I railroad is a major railroad. In this proceeding, the Board requested that all written comments include "an analysis of the issues with particular attention to our general policy statement for the merger and control of at least two Class I railroads . . . , the statutory criteria . . . , and antitrust policy." <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 Corporation</u>, STB Finance Docket No. 33388, Decision No. 12, "Notice of Acceptance of Primary Application and Related filings; Notice of Related Abandonments Proposed by Applicants," 1997 WL 408295 (decided July 15, 1997).

[5] 49 U.S.C. § 11324(b) (1994).

requiring the granting of trackage rights and access to other facilities."[6]

The Board's application of this statute is guided by its "policy statement" for mergers of Class I railroads, 49 C.F.R. § 1180.1 (1996).[7] There, the Board explains that it "encourages private industry initiative that leads to the rationalization of the nation's rail facilities and reduction of its excess capacity" through, among other means, rail consolidation.[8] However, the Board does not favor consolidations if (1) the controlling entity does not assume full responsibility for carrying out the controlled carrier's common carrier obligation "to provide adequate service upon reasonable demand," or (2) the transaction "substantially reduces the transport alternatives available to shippers" unless there are substantial and demonstrable benefits to the transaction that cannot be achieved in a "less anticompetitive fashion."[9]

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[6] 49 U.S.C. § 11324(c) (1994). This "conditioning" provision does not explicitly refer to the public interest standard. However, the context of the statute and the legislative history establishes "beyond cavil" that it was Congress' intent that the Board "apply the same 'public interest' test both to the basic merger and to any conditions it imposes on the merger." Lamoille Valley R.R. Co. v. ICC, 711 F.2d 295, 301 n.3 (D.C. Cir. 1993).

[7] In the policy statement, the Board notes that its analysis is also guided by the national rail transportation policy, 49 U.S.C. § 10101 (1994). This statute states fifteen separate objectives with respect to rail transportation policy.

[8] 49 C.F.R. § 1180.1(a) (1996).

[9] Id.

The critical inquiry under the policy statement is whether the transaction is consistent with the public interest.[10] The policy statement states:

> In determining whether a transaction is in the public interest, the Commission performs a balancing test. It weighs potential benefits to the applicants and the public against the potential harm to the public.[11]

The policy statement identifies two potential harms from a transaction -- "reduction of competition and harm to essential services."[12] With respect to a reduction in competition, the policy statement notes that a merger of two railroads serving the same market will result in a loss of competition. Whether or nor this loss of competition is significant depends on the other transportation options available to serve those markets. The policy statement recognizes that "intermodal competition from motor and water carriers" may play a key role in this analysis, but intermodal rivalry is not available to National.[13]

As an example of a harm to essential services, the Board notes that a transaction often results in a shift in "market patterns."[14] In some instances, a carrier (such as WLE) will lose its ability to serve a market due to such a shift in

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[10] 49 C.F.R. § 1180.1(b) (1996).

[11] 49 C.F.R. § 1180.1(c) (1996).

[12] 49 C.F.R. § 1108.1(c)(2).

[13] 49 C.F.R. § 1108.1(c)(2)(i) (1996).

[14] 49 C.F.R. § 1108.1(c)(2)(ii) (1996).

traffic.[15] The policy statement explains that a service is essential "if there is sufficient public need for the service and adequate alternative transportation is not available."[16] That is precisely the future that National faces if the transaction is approved without appropriate conditions.

The Board has "broad discretion" to impose conditions on consolidations. A central public benefit provided by railroad consolidation is that many shippers will be able transform existing two-line service into a higher quality single-line service. Single-line movements offer many advantages to shippers. For example, in the Burlington Northern/Santa Fe decision,[17] the ICC explained:

> Single-line service is important to shipper logistics strategies. Interchange between railroads can be costly. A single-line railroad route is becoming more important for carriers wanting to compete for more service-sensitive freight. As a result of the new single-line service capability of the combined BN/Santa Fe, shippers will likely see decreases in working capital requirements as base inventories shrink due to improved transit times, and as safety stocks of inventory are reduced because the combined system can eliminate the uncertainty of interchange. The transaction costs shippers incur in initial rate negotiations, in arranging equipment supply, in tracking

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[15] Id.

[16] Id.

[17] Burlington Northern Inc. and Burlington Northern Railroad Company -- Control and Merger -- Santa Fe Pacific Corporation and the Atchinson, Topeka and Santa Fe Railway Company, Finance Docket No. 32549, 1995 ICC LEXIS 214 (August 16, 1995), aff'd., Western Resources, Inc. v. Surface Transportation Board, 109 F.3d 782 (D.C. Cir. 1997).

> shipments, and in billing and payment procedures, will likely be reduced.[18]

National currently benefits from the efficiencies offered by single-line service though its arrangements with Conrail and WLE. After the proposed transaction, however, National will lose the benefits of single-line service. Instead, National's only rail option in many instances will be two-line service.

In Union Pacific/Southern Pacific,[19] the Board rejected a proposed divestiture remedy based on the value of retaining -- rather than destroying -- single-line services:

> These divestiture proposals would also take the railroad system backwards by destroying, rather than creating, single-line service. Many shippers who would have received new single-line service, or who would see existing single-line service eliminated, would no longer share in the merger's benefits.[20]

The Board acknowledged that trackage rights would regain for shippers many of the benefits lost due to a divestiture-related destruction of single-line service.[21]

The Board separately analyzes the effects of a merger on distinct classes of freight. In Union Pacific/MKT,[22] the ICC

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[18] 1995 ICC LEXIS 214 at 167-68.

[19] Union Pacific Corporation et al. -- Control and Merger -- Southern Pacific Rail Corporation et al., Finance Docket No. 32760, Decision No. 44, 1996 STB 220 (August 12, 1996).

[20] Id. at *432-33.

[21] Id. at 441-42.

[22] Union Pacific Corporation et al. -- Control -- Missouri-Kansas-Texas Railroad Company et al., Finance Docket No. 30800, 4 I.C.C. 2d 409 (1988), 1988 ICC 155 (My 13, 1988).

found that trucking was not competitive with rail with respect to shipments from specific quarries to the Houston destination market:

> The Houston area provides essentially the only market for these aggregates. Truck transport is prohibitively expensive for the long haul; crushed stone is a high bulk, heavy loading commodity, for which motor carriers are effective only for a distance of less than 75 to 100 miles. There are no barge connections from these quarries to the Houston market. Rail, therefore, provides the only access to the Houston area.[23]

The ICC also relied on (1) the fact that other sources of crushed stone would be of limited suitability for the markets served by the shippers; and (2) the fact that one of the crushed stone shippers had made "a considerable investment in rail delivery facilities and equipment."[24] The accessibility of rail transport had also influenced a shipper's decision to locate its quarry at its present site. Based on these considerations, the ICC found that the merger of two railroads serving these quarries would harm competition. The ICC ameliorated the harmful effects of that transaction by approving a voluntary agreement whereby Union Pacific provided a competitor, Southern Pacific, with certain trackage rights. In addition, the Board has emphasized the important historical role played by trackage rights in resolving

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[23] Id. at *117. One crushed stone shipper explained why "truck movements from TCS' quarry to the Houston receivers would not be feasible, both because an extraordinary number of trucks would be required to move even a portion of the crushed stone, and because the added expense would price TCS out of the market." Id. at *120.

[24] Id. at *120.

the potentially harmful competitive effects of a rail consolidation.[25]

National transportation policy, as applied in these cases, points clearly to the need for and appropriateness of the Board's requiring NS and CSXT providing each other trackage rights as necessary to assure to National continuing access to competitive single-line service to its east of Crestline markets. Therefore, National Lime and Stone Company respectfully requests that the Board not approve the proposed transaction unless such approval is conditioned in the manner described above.

Respectfully submitted,

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October 21, 1997

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[25] Id. at *291-92 ("trackage rights have been a widely used and time-tested means of assuring against a threatened loss of competition in rail merger proceedings"; other remedies frequently cannot be narrowly tailored to alleviate only the merger-related harms).

October 17, 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

VERIFIED STATEMENT OF RONALD W. KRUSE
OF NATIONAL LIME & STONE COMPANY

1. My name is Ronald W. Kruse and I am Vice President of Marketing for National Lime & Stone Company ("National"). My responsibilities include direction and oversight of all sales and marketing efforts for National. I graduated from Ohio Wesleyan University in 1957 and joined National at that time. Since 1957, I have held a variety of positions with National in finance and sales. I was named Vice President of Marketing in 1975 and joined the Board of Directors in 1993.

The purpose of this statement is to: (1) describe the detrimental effect on National and its sales if the proposed acquisition of Conrail and the division of its tracks by CSX Transportation ("CSXT") and Norfolk Southern "NS") is permitted to proceed as CSXT and NS currently propose, and (2) describe the remedy National seeks to preserve its business.

2. National Lime & Stone Company ("National") is one of the largest suppliers of crushed limestone products in Ohio. Founded in 1903, National is headquartered in Findlay, Ohio and operates in Ohio eight quarry and processing locations (at Bucyrus, Buckland, Carey, Delaware, Findlay, Lima, Marion, Upper Sandusky and Wapakoneta), four rail distribution yards (at Wooster, Canton, Tusky Valley (Midvale) and Cadiz) and two truck distribution yards (at Rimer and Westerville, Ohio). National produces and ships more than 11-million tons of crushed limestone per year for aggregates and industrial mineral markets.

Limestone products in the aggregates markets are used for road stone and construction. National's industrial mineral products, for steel, glass, environmental and agricultural markets, include limestone selected by customers for its specific chemical character and limestone processed by drying or calcining to produce dried limestone and lime products respectively.

3. National's products are shipped to its customers via rail and truck transportation as appropriate for each customer given availability of service and relative cost. National has been a long-time substantial shipper on Conrail, CSXT, Norfolk Southern and Wheeling and Lake Erie Railroad ("WLE"). It depends on the rail service of those four common carriers for shipping over 3,000,000 tons per year of stone to its customers. It relies on

"single line hauls" to its customers which are essential for it to ship products to customers at competitive costs to the customers. For larger volume (more than 1,000 tons) and/or longer distance (more than 75 miles) shipments, rail transportation is essential to be cost competitive, whereas truck shipment is feasible only for smaller volumes and shorter distances. Barge shipping is not available to National, as the closest navigable body of water, Lake Erie, is 60 miles from Carey and 50 miles from Bucyrus.

4. National is informed that under current proposals for the division of the Conrail system, there will be a division point at Crestline, Ohio whereby CSXT would acquire and operate Conrail trackage to points west of Crestline and Norfolk Southern would acquire and operate Conrail trackage to points east of Crestline. Under such proposals for the division of the Conrail system, National would be confronted with "two line hauls" from its two largest plants, at Carey and Bucyrus, Ohio. If this were to occur, National would be unable to ship at competitive rates to long-time significant customers of National at points east of Crestline, and, as a result, would lose substantial business. This harm would be compounded if WLE were financially undermined as a result of CSXT and Norfolk Southern acquiring Conrail's trackage rights.

At Carey, National is currently served by Conrail, CSXT and WLE. WLE is an Ohio short-line railroad providing service to only a few destination markets; single-line service to several key destination markets, as described below, is only available via Conrail. Shipments from Carey of dolomitic limestone, selected by customers for its high magnesium and low silica and sulfur content (for which there is only one alternative source in Ohio of comparable chemical content for customers in Ohio), will or potentially will be impacted by the proposed division of the Conrail rail system are set forth below.

The annual freight charges for shipments via Conrail for Carey and Bucyrus exceed $3,000,000.00.

National's shipments from Carey via Conrail to points east of Crestline, Ohio include the following:

- Calcined dolomitic limestone, i.e., lime, to Weirton Steel at its Weirton, West Virginia plant at Sales volumes of $564,005.00, $780,433.00 and $438,953.00 for 1996, 1995 and 199f4 respectively. Weirton pays for the rail freight cost for the shipments which National estimates to be $13.00-$14.00 per ton.
- Dried dolomitic limestone to PPG's Meadville (Stony Point) Pennsylvania plant at sales volumes of $259,505.00, $252,986.00 and $264,802.00 for 1996, 1995 and 1994 respectively. National pays for the rail freight for these shipments at a cost of $14.30 per ton.

Dried limestone to Lesco's plant at Martin's Ferry, Ohio at sales volumes of $374,000.00 and $243,000.00 for 1996 and 1995 respectively. Lesco pays for the rail freight costs for these shipments. National estimates the costs of such shipments to be $12.00 per ton.

National's shipments from Carey via WLE to points east of Crestline, Ohio at a contracted cost of $3.10 per ton include the following:

- Dolomitic limestone to Medina Supply at Medina, Ohio at sales volumes of $2,410,000.00, $2,641,000.00 and $3,333,000.00 for 1996, 1995 and 1994 respectively.
- Dolomitic limestone to National's sales yard at Canton, Ohio representing sales volumes sold to customers from that location at $2,757,233.00, $1,997,393.00 for 1996 and 1995 respectively.
- National commenced shipping to its sales yards at Tusky Valley in Midvale, Ohio in June, 1996 and Cadiz, Ohio in April, 1997.

The freight costs payable to WLE for shipments in 1996 were $3,300,000.00 (and National has budgeted $3,500,000.00 for such costs in 1997).

6. At Bucyrus, Conrail is the only provider of rail transportation available to National. Shipments from Bucyrus that will or potentially will be impacted by the proposed division of the Conrail rail system are set forth below:

- Limestone to Weirton Steel at its Weirton, West Virginia plant at sales volumes of $776,440.00, $521,393,00 and $373,617.00 for 1996, 1995 and 1994 respectively.
- Limestone to National's yard at Wooster, Ohio via 50-car unit trains, representing sales volumes sold to customers from that location at

$2,331,020.00 and $1,659,997.00 for 1996 and 1995 respectively.

The annual rail freight costs for the shipments to Weirton Steel from Bucyrus are estimated to exceed $1,100,000.00 and the rail freight charges for the shipment to National's sales yard at Wooster were $970,000.00 in 1996 (National has budgeted $1,300,000.00 for shipments to this sales yard from Bucyrus for 1997).

7. If National were faced with the prospect of "two line hauls" from Carey and Bucyrus to points east of Crestline, Ohio, it would suffer the loss of all the business currently shipped by Conrail from these locations as noted above. It would likewise be prevented from developing new business from these or other customers at locations to the east.

National would also face the possibility of losing the business represented by the shipments from Carey by WLE as noted above.

Moreover, National would lose in its entirety the benefit of its substantial investments in its sales yards in eastern Ohio and the capital committed to operations at Bucyrus and Carey to serve National's eastern customers.

This may be explained more specifically:

- A "two line haul" will result in prohibitive increased rail freight costs, lack of sufficient rail cars and poor service: The costs of a two line haul would necessarily be substantially more than a single line haul as there would be the need for two sets of locomotives and two separate crews, i.e. one set of locomotives and crew for each line, with the attendant cost for each. Since each carrier prefers to use their cars on their own lines, there would be a certain shortage of available cars to serve National at Carey and Bucyrus. The need for coordinating between the two lines for switches of locomotives and transfer of cars would inevitably result in delays and poor service to the detriment of National's ability to deliver timely products to its customers.

- Truck shipments would not be cost competitive or feasible given tonnage volumes and distances.
  - At Carey, National estimates that freight costs to make shipments noted above by Conrail and WLE would increase by $6,500,000.00 due to an incremental increase in freight costs per ton of $5.00. Moreover, in addition to the increased costs, it would not be feasible to ship by truck to customers for those accounts currently served by Conrail and WLE, as it would require in excess of 57,000 truck shipments to cover the annual volumes of the WLE shipments. In addition, the distances to the customer from Carey make truck shipments unfeasible. Weirton, WV is 160 miles from Carey. Meadville, PA (PPG's Meadville Plant) is 250 miles from Carey. Martins Ferry, OH (Lesco) is 180 miles by rail, but would be 210 miles by truck. National also plans to grow its business to the East,

including to PPG at is Mount Holly Springs, PA plant. That plant is over 500 miles from Carey, thus only single-line haul rail shipments would be viable to grow this business to the East.

- At Bucyrus, National estimates that if the shipments currently made via Conrail were by truck the freight costs for such shipments would increase by $1,900,000.00 annually, at an incremental increased freight cost of $4.00 per ton. Moreover, it would take 22,000 truck shipments to cover the annual volume of these shipments.

- If National were faced with the increased freight costs noted above it would lose all of the business currently shipped from Carey and Bucyrus to points east as set forth above as National's customers would have lower cost alternatives for all products sold. National's competitors would be able to ship to these customers at costs lower than National's in one or more of the following ways: (I) single line rail shipments from points east of Crestline, Ohio, (ii) truck shipments from locations closer to the customers than National's plants; and in some cases, (iii) shipment via barge.
- If National were to lose the business outlined above, it would lose the benefit of substantial investments it has made to serve such business:
  - National has invested in excess of $6,200,000.00 to acquire the property and to make the improvements for its sales yards in eastern

Ohio all of which would be worthless if National is unable to ship its aggregate products to these locations by rail via single line hauls.

- National has invested in excess of $6,000,000.00 to make capital improvements at its Bucyrus plant. This investment is predicated on producing limestone products for its sales yards in eastern Ohio. This investment would be rendered useless if National is unable to ship its aggregate products to these locations by rail via single line hauls.
- As a result more than 40 jobs would be lost.

8. National proposes as a remedy that CSXT and Norfolk Southern extend to each other cross trackage rights, at no cost to either party, to enable both to serve National's Carey and Bucyrus plants and to do so on terms to enable price competition for such service.

Sepcifically, National needs Norfolk Southern to have trackage rights to serve the Bucyrus Plant (Spore). Trackage rights would be from Crestline, Ohio to Spore. National also needs Norfolk Southern to have trackage rights from Upper Sandusky to the Carey Plant.

VERIFICATION

I, Ronald W. Kruse, verify under penalty of perjury that I am Vice President of Sales and Marketing for National Lime & Stone Company, that I have read the foregoing document and know its contents, and that the same is true and correct to the best of my knowledge and belief.

Executed on October 17, 1997.

Ronald W. Kruse

(Ronald W. Kruse)

CERTIFICATE OF SERVICE

I certify that I will cause to be served a conformed copy of the foregoing Protest and Request for Condition of National Lime and Stone Company filed in Finance Docket No. 33388, and conformed copies of the accompanying verified statement of Ronald Kruse, by first class mail, properly addressed with postage prepaid, or more expeditious manner of delivery, upon all persons required to be served as set forth in 49 C.F.R. § 1180.4(c)(5), namely:

(i) The Governor (or Executive Officer), Public Service Commission, and Department of Transportation of each State in which any part of the properties of Applicant carriers involved in the proposed transaction is situated;

(ii) The Secretary of the United States Department of Transportation (Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Room 5101, 400 7th Street, S.W., Washington, D.C. 20590);

(iii) The Attorney General of the United States;

(iv) The Federal Trade Commission;

(v) Judge Jacob Leventhal; and

(vi) All parties of record in Finance Docket 33388.

Dated at Washington, D.C., this 21st day of October, 1997.

Clark Evans Downs

STB FD 33388 10-21-97 D 182803

182803

AMTRAK • LONG ISLAND R.R. • METRO NORTH CRR • CONRAIL • DELAWARE & HUDSON/CANADIAN PACIFIC • B & M R.R. • NORFOLK - SOUTHERN • SOUTH BUFFALO R.R. • R & S R.R. • NATIONAL SCHOOL BUS • TRAILWAYS • CSX R.R.
AIRPORT GROUP INTERNATIONAL - BUFFALO - PITTSBURGH • STATEN ISLAND RAPID TRANSIT OPERATING AUTHORITY • SPRINGFIELD TERMINAL R.R.

united transportation union

UTU

NEW YORK STATE LEGISLATIVE BOARD

AFL-CIO

Samuel J. Nasca
State Legislative Director/
Chairperson
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Vaughn Becker
Secretary-Treasurer

Vice Chairpersons

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R.J. Vincent (Bus) 1908
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October 20, 1997

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

Re: 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 In Finacne Docket No. 33388 before the STB

Dear Secretary Williams:

Enclosed are and original and twenty five (25) copies of a verified statement of Mr. Samuel J. Nasca, Legislative Director/Chairperson of the New York State Legislative Board of the United Transporation Union. Also enclosed is an original and twenty five (25) copies of a certificate of service served on all parties of record, all relating to the above referenced proceedings.

Please file this statement in the usual manner and thank you for your efforts.

Respectfully submitted

Samuel J. Nasca

Samuel J. Nasca
Legislative Director/Chair
New York State Legislative
Board

Enclosures

cc: Parties of record

182803

BEFORE THE SURFACE TRANSPORTATION BOARD

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FINANCE DOCKET NO. 33388

CSX CORPORATION AND CSX TRANSPORTATION, INC.
NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN
RAILWAY COMPANY
CONTRAOL AND OPERATING LEASES, AGREEMENTS
CONRAIL INC, AND CONSOLIDATED ARIL CORPORATION

COMMENTS OF:

NEW YORK STATE LEGISLATIVE BOARD
UNITED TRANSPORTATION UNION
35 FULLER ROAD
SUITE 205
ALBANY, N. Y. 12205

ENTERED
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OCT 21 1997
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SUBMITTED BY: SAMUEL J. NASCA
LEGISLATIVE DIRECTOR/CHAIRPERSON
STATE OF NEW YORK
UNITED TRANSPORTATION UNION

DATE: OCTOBER 21, 1997

BEFORE THE SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388

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VERIFIED STATEMENT OF SAMUEL J. NASCA

On June 16, 1997, CSX Corporation (CSXC), CSX Transportation, Inc. (CSXT), Norfolk Southern Corporation (NSC), Norfolk Southern Railway Company (NSR), Conrail Inc. (CR) and Consolidated Rail Corporation (CRC) filed their preliminary application seeking Surface Transportation Board authorization under 49 U.S.C. 11343-45 for, among other things, (1) the acquisition by CSX and NS of control of Conrail through a special purpose liability company (LLC) and LLC's wholly owned subsidiary, Green Acqusition Corporation, and (2) the division of Conrail's assets which will continue to be held by Conrail or its susidiaries and operated for Conrail's account and that for the benefit of its stockholders, (b.) certain assets which will be the subject of long term operating agreements, operating leases or other operating arrangements with CSX and NS respectively; and (c.) certain assets which will be separately owned by CSX nd NS. Further, NS will transfer to CSXT, a line of railroad formerly owned by Conrail and currently owned by NS.

Subsequently, on June 23, 1997 CSX Corporation and CSX Transportation , Inc. (CSX), Norfolk Southern Corporation and Norfolk Southern Corporation (NSC) and Norfolk Southern Railway Company (NS), and Conrail, Inc. (CR) and Consolidated Rail Corporation (CRC) filed a consolidation application with the Surface Transportation Board under 49, U.S.C. 11323-25. NS, CSX, and Conrail (collectively) , The Applicants seek authority for NS and CSX to acquire control of Conrail and for the subsequent division of Conrail's assets. The proposed transaction involves over 44,000 miles of rail lines and related facilities covering a significant portion of the mid and eastern United States.

Introduction

1) The New York State Legislative Board (NYSLB) of the United Transportation Union hereby submits its comments in the earlier identified proceeding. The witness who will be submitting a verified statement is Samuel J. Nasca, the Legislative Director/Chairperson, who is the Executive Officer of the New York State Legislative Board. My business address is 35 Fuller Road, Suite 205, Albany, New York 12205. My telephone number is 518-438-8403 and my fax is 518-438-8404. I have served as the Executive Director of the New York State Legislative Board of the United Transportation Union for the past fourteen (14) years and I am authorized to present this verified statement on behalf of the New York State Legislative Board of the United Transportation Union.

New York State Legislative Board of the United Transportation Union

2) The New York State Legislative Board of the United Transportation Union is an umberella entity, which represents transportation employees in all walks of transportation in the transportation industry, such as rail, bus and airline. The responsibilities and obligations of the New York State Legislative Board are vast and protecting the interests of the employees that it represents, in railroad sale or transfer transactions, is one of those responsibilities. Since the primary application, filed by CSX Corporation (CSXC), CSX Transportation, Inc. (CSX), Norfolk Southern Corporation (NSC), Norfolk Southern Railway Co. (NS) and Conrail, Inc. and Consolidated Rail Corp. (Conrail) is the most significant transaction to take place in the Eastern portion of the United States, we are submitting these comments.

The New York State Legislative Board's Position

3) The New York State Legislative Board has reviewed the primary application and has found that the plans alluded to in their primary business plan, to integrate services with their acquired lines, will seriously disrupt and significantly adversely affect the social, economic status and family lives of the employee members that our Board represents. As an example of what the future holds for Conrail employees,

one only has to examine page 485 of book 3-A of 8 when it states in pertinent part, as follows:

> "In order for the expanded CSX system to realize the benefits and efficiencies afforded by the Operating Plan, a significant rearrangement of the districts for the train and engine, maintenance of way, signal, clerical, mechanical and other employees will be necessary. The Operating Plan also requires a repositioning of the combined workforce. These changes are necessary in order that the deployment of labor corresponds with the new and more efficient operations of the expanded CSX system."

This ominous statement means that hundreds, possibly thousands, of employees and their families will be uprooted and forced to be displaced to far distant points, imposing serious upheavals and huge disruption of social and family life. This disruption could also create significant economic impact on communities where rail employment is the major employment in that community.

On page 486 of volume 3-A, whereby the CSX states, as follows:

> "For example, at least twenty terminals will be consolidated initially."

What this means is that at least half of the employees, at those 20 terminals, will be forced to relocate to another area.

On that same page they state, as follows:

> "This requires that the expanded CSX be able to have its employees operate over CSX and former Conrail track without regard to their former seniority."

This is further evidence that employees will be severely displaced to distant points without regard to the serious impact on their lives. To further exacerbate the potential for vast displacement, the Norfolk

Southern will create massive so called Hub Network Systems that will create the potential for many employees to be forced to far distant points.

As an example, an employee working the Southern Tier corridor of New York State will be tied to either the Cleveland (NS-NKP) Hub or the Buffalo (NS-NKP) Hub. This means that their work obligation has now increased from Buffalo to Binghamton to (former) Buffalo, Conway/ Pittsburgh, Mingo Junction, Columbus, Toledo, Elkhart, Ashtabula, Fort Wayne, Bellevue/Sandusky, Detroit, Enola/Harrisburg, Binghamton, North Jersey, Renova/Keating, Detroit (via St. Thomas), Toledo, Cleveland. Displacement will be vast and cruel to the employees affected and will surely touch all employees in some way.

The applicants have stated, in their business plan, that they will both increase business and traffic flows in certain corridors, but reduce, rather than increase, employment. The work force of the Consolidated Rail Corporation is already overworked, yet the applicants plan to pile even more work on those employees, through what they term efficiencies, which really translates into reducing the workforce.

The CSX will also consolidate the dispatching forces, now located in Selkirk, N.Y., to Jacksonville, FL (application volume 3A at 504-505) where they will be far removed from the territory they control. This will surely affect the safety and well being of employees operating under their control. This plan will also exacerbate the potential for dispatcher error and consequently place employees operating under their control in potential danger.

The Norfolk Southern states, in their business plan, that they plan to increase train operation through the Southern Tier, Buffalo to Port Jervis, by 10 trains a day. The plant that exists today is not capable of carrying that capacity, as it is basically single track with long passing sidings. The planned operating employee levels and track and signal maintenance levels also do not support that level of traffic, if in fact the Norfolk Southern does plan to operate that level of traffic.

When the Surface Transportation Board approved the Union Pacific/ Southern Pacific merger and implementation was put forth, the operation became unsafe and ineffieent because of lack of preperation, reduction in the labor force and unmanagable circumstances, which clearly supported the theory that bigger is not better. It took a number of fatalities to bring management, the FRA and others to take remedial action and brought the vivid realization to bear that the very same thing could occur with the Conrail/CSXT/NS consolidation. This fear became even more vivid when the Federal Rail Administration, as a result of several serious events, performed a safety audit and found the railroad to have been operated in a generally unsafe manner. Track, signal and train defects were rampant and employees were overworked to a vast extent. It was clear that management was circumventing safety and regulation adherence for the sake of keeping the trains moving. How does this chaotic state of affairs go unchecked by management, from the top down, until their feet are held to the fire by Federal agencies.

The Department of Transportation stated, in their memo on the safety problems on the Union Pacific-Southern Pacific, that the Federal Department of Transportation considers it appropriate that in that merger, as in all others, approval has been conditional on various safety oriented conditions, as well as compliance with all applicable FRA rules and regulations in conducting rail operations on a merged system. The record reveals that the safety audit performed after the merger was approved by the STB found horrendous safety violations and in many cases, a total lack of concern for safety being encouraged and imposed by UP/SP managers.

The U.S. D.O.T. said, in pertinent part:

> "In any consolidation, once the requisite approval has been granted the applicants understandably wish to realize the efficiencies projected in their operating plan as soon as possible. However, this goal cannot be reached at the expense of maintaining a safe railroad. Particularly when the consolidation covers two rail

systems as extensive as those of the Union Pacific and the Southern Pacific, it is imperative that there be fundamental commitment to safety throughout the new entity, with unified safety plans and programs over the entire system. Integration of operations and services should proceed only when management is confident that safe and uniform operating practices have been implemented.

This merger in particular presents additional safety challenges because of the extensive trackage rights granted to the Burlington Northern Santa Fe. As with the integration of operations on the UP and SP, full integration of roughly 4,000 miles of trackage rights into the BNSF system must be accomplished by consistent and well understood safety practices and programs in the interest of an accident free environment."

In the CR/CSX/NS transaction, the same path is being followed, as myriad safety problems exist on all three properties, some properties worse than others.

<u>The Delaware & Hudson Railway/(St. Lawrence and Hudson Railway) and its employees</u>

4) The Delaware & Hudson Railway Company (D&H), an operating arm of the so called St. Lawrence and Hudson Railway (St. Lawrence & Hudson) and subsidiary of the Canadian Pacific Railway (CP), operates through New York State from Buffalo to Binghamton and from Binghamton to Rouses Point and Montreal and Binghamton to Allentown, PA and Philadelphia, PA and Allentown, PA to Oak Island, N.J. The traffic now operated over those lines is basically overhead traffic, which are solid trains received from the CSX and Norfolk Southern. The traffic flows off this operation from CSX and Norfolk Southern comprises most of the traffic that these employees now operate. The train operation is as follows:

1) Train 270 received from the NS at Buffalo.
2) Train 268 received from the NS at Buffalo.
3) Train 252 (solid steel) received from the NS at Buffalo.
4) Train 258 (piggyback) received from the NS at Buffalo.
5) Train 269 received from NS (piggyback) operates Allentown to Binghamton to Buffalo.
6) Train 257 (solid intermodal) received from NYS&W at Binghamton (CSXT train).

The D&H employees on these trains, represented by the United Transportation Union, will be adversely affected because the NS is to acquire the Southern Tier in the transaction, where all of these trains now operate. It is obvious that the NS will operate these trains themselves, with NS crews, which will, in all likelihood, place all of the D&H operating employees that are working in this corridor, in an adversely affected status.

While employees of third-party carriers generally have not received labor protection as a result of merger or control transactions, in the recent past, this situation presents a unique factual circumstance where such protection is warranted. Here, NS is acquiring territory over which D&H has trackage rights. This is classically different from the normal scenario where a third party carrier loses work due to a diversion of traffic upon implementation of the transaction. Therefore, UTU urges the Board to impose labor protective conditions whether they are New York Dock or Mendocino Coast protection, since the adverse impact is a result of either the trackage rights or the transaction(s) described in the application.

To further exacerbate the potential for Delaware & Hudson Railway (St. L&H) (CP) employees operating through the Southern Tier and to Montreal, Binghamton, Allentown, Philadelphia and Oak Island, the (D&H) (St. L&H) (CP) have entered into a haulage agreement with the Norfolk Southern, to grant them haulage and trackage rights over the Sunbury Branch from Philadelphia Reading and Harrisburg to Binghamton, diverting traffic now hauled over the D&H and Conrail from Binghamton, Allentown, Oak Island and Philadelphia. It is presumed that D&H employees will lose their work now operating over D&H Conrail lines from Binghamton, Allentown, Oak Island and Philadelphia, to the Norfolk Southern operating Philadelphia, Reading, Harrisburg, Sunbury Branch of D&H to Binghamton. The potential for severe job loss, to D&H employees, is significant. As stated earlier, it is our hope that D&H employees will, through appropriate means, be isolated against this real threat of their jobs by granting third party labor protection.

Position of New York State Legislative Board - United Transportation Union

5) Based upon the contents of the comments contained in this document and the numerous concers aluded to, our position is one of conditional opposition. It is certainly a possiblity that the applicants could be persuaded to correct the many concerns and fears that the New York State Legislative Board now harbors and which have been enumerated in this document. Should that become a reality, then we certainly would reconsider our position.

Respectfully submitted,

Samuel J. Nasca
Legislative Director/Chairperson
United Transportation Union
35 Fuller Road, Ste. 205
Albany, N.Y. 12205
518-438-8403
Fax 518-438-8404

VERIFICATION

I, Samuel J. Nasca, State Legislative Director/Chairperson of the New York State Legislative Board of the United Transportation Union (UTU) pursuant to 28 U.S.C. 1746, declare that the foregoing comments of the New York State Legislative Board, United Transportation Union are true and correct to the best of my knowledge. Further, I certify that I am qualified and authorized to file these comments.

Executed on October 20, 1997

Samuel J. Nasca

Samuel J. Nasca
Legislative Director/Chairperson
New York State Legislative Board
United Transportation Union

Sworn to before me
10/20/97
Jeffrey Chamberlain
Not Public Rens Co
Ex 12/31/97

CERTIFICATE OF SERVICE

I hereby certify that pursuant to Decision No. 21, Decision No. 27 and Decision No. 43, dated October 7, 1997 in STB Finance Docket No. 33388 CSX CORPORATION AND CSX TRANSPORTATION INC., NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY-CONTRAOL AND OPERATING LEASES/ AGREEMENTS-CONRAIL INC., AND CONSOLIDATED RAIL CORPORATION, all parties of record have been served with a copy of the verified statement of Samuel J. Nasca, State Legislative Director/Chairperson of the New York State Legislative Board of the United Transportation Union dated October 20, 1997 by first class U. S. Mail postage pre-paid this 20th day of October 1997.

Samuel J. Nasca

Samuel J. Nasca

STB FD 33388 10-21-97 D 182812

182812

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STB

Hon. Vernon A. Williams, Secretary
Surface Transportation Board (Case Control Unit)
1925 K Street, N.W.
Washington, DC 20423-0001

RE: 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

Dear Mr. Williams:

Enclosed is an original and 25 copies of a Certificate of Service to the parties of record included on the attachment to Decision No. 43, dated October 7, 1997.

Very truly yours,

Samuel J. Nasca
Director/Chairperson

SJN:bp

Enc.

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BEFORE THE

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Finance Docket No. 33388

CSX Corp. and CSX Transportation, Inc., Norfolk Southern Corp. and Norfolk Southern Railway Co. -- Conrol and Operating Leases/Agreements -- Conrail, Inc. and Consolidated Rail Corp.

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of October, 1997, on behalf of the New York State Legislative Board, United Transportation Union, I served by first-class mail, postage pre-paid, copies of a May 5, 1997 and September 30, 1997 document entitled a Motion of Intent To Late-File, upon the additional Parties of Record identified in the Appendix to the Board's Decision No. 43 (decided: October 7, 1997).

Samuel J. Nasca

TO: All Parties of Record Added to the Service List Pursuant to Decision No. 43 Dated October 7, 1997

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 Gentlemen/Ladies:

We are serving, with this letter, all designated Parties of Record that have been added to the service list pursuant to decision No. 43 dated October 7, 1997, all previous fillings filed with the Secretary of the Surface Transportation Board.

Samuel J. Nasca

Samuel J. Nasca

STB FD 33388 10-21-97 D 182801

182801

Law Offices

GRUCCIO, PEPPER
GIOVINAZZI, DESANTO & FARNOLY, P.A.

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JAMES J. GRUCCIO ◊
LAWRENCE PEPPER, JR.
COSMO A. GIOVINAZZI, III
ROBERT A. DESANTO ◊
THOMAS P. FARNOLY* ◊
E. EDWARD BOWMAN

◊CERTIFIED CIVIL TRIAL ATTORNEY

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16 October 1997

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Office of the Secretary
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Secretary Vernon A. Williams
Office of the Secretary
Case Control Branch
1925 K Street, NW
Washington, DC 20423-0001

Re: Conrail Merger Proceedings
Finance Docket No. 33388

Dear Secretary Williams:

Please find enclosed herewith the original and 26 copies of Certification of Mailing with 26 copies of Position of South Jersey Transportation Planning Organization and Resolution 9709-10. I have also enclosed a diskette which has the Position and Resolution.

Please return one copy marked filed in the enclosed self-addressed stamped envelope

Sincerely,

Judith C. Arnold (ab)

JUDITH C. ARNOLD

JCA:ab
Enclosures

CC: Administrative Law Judge Jacob Leventhal
(with two copies of Certification of Mailing, Position of South Jersey Transportation Planning Organization and Resolution - **PLEASE RETURN SET OF COPIES STAMPED FILED** - a self-addressed stamped envelope is also provided)
South Jersey Transportation Planning Organization
Attn: Timothy G. Chelius, Executive Director

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GRUCCIO, PEPPER, GIOVINAZZI,
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Attorneys for South Jersey Transportation Planning
Organization

SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

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

CERTIFICATION OF MAILING

1. I certify that I have this day served copies of the Position of the South Jersey Transportation Planning Organization, Resolution and cover letter upon the parties of record. Service was done by serving each party of record by first-class, U.S. mail, postage prepaid.

2. I hereby certify that the foregoing statements made by me are true; I am aware that if any of the foregoing statements made by me are false, I am subject to punishment.

Dated this 15th day of October 1997.

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

SOUTH JERSEY TRANSPORTATION
PLANNING ORGANIZATION

BY: Timothy G. Chelius
Timothy G. Chelius
Executive Director

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ENVIRONMENTAL LAW & POLICY CENTER
ILLINOIS INDIANA MICHIGAN MINNESOTA OHIO WISCONSIN

October 20, 1997

RECEIVED OCT 21 1997 MAIL MANAGEMENT STB

Mr. Vernon Williams
Office of the Secretary
Surface Transportation Board
1925 K Street, NW, Room 700
Washington, DC 20423

Re: Surface Transportation Board Finance Docket No. 33388

Dear Mr. Williams:

The Environmental Law and Policy Center of the Midwest is a nonprofit environmental advocacy organization which believes that environmental progress and economic development can go hand-in-hand. One such opportunity lies in the development of a Midwest High-Speed Rail Network connecting Chicago to Minneapolis, St. Louis, Detroit, and Cincinnati by running trains on upgraded existing track (see attached map). A regional high-speed rail network offers a fast, modern, comfortable and convenient transportation option for Midwest travel along with:

- Less pollution from cars and planes and a counter-balance to sprawl-inducing development;
- Thousands of new rail-related construction, commercial and manufacturing jobs; and
- Economic development through a stronger, better-connected regional economy.

A Midwest high-speed rail network will pull jobs, people, and business into the central cities thereby supporting urban redevelopment and counteracting expanded, inefficient land use patterns. Modern new traincars running at 110 - 125 mph on upgraded existing track are affordable, financially feasible, and have comparable travel times with airplanes on a door-to-door basis from downtown business centers. This is an opportunity to look forward to a transportation future which includes comfortable and fast regional rail service for the Midwest as we move into the next century.

This vision of improved passenger rail service is being pursued by Amtrak, the Federal Railroad Administration, and Midwestern states. State departments of transportation have completed detailed studies on the corridors extending from Chicago to Detroit, St. Louis, and Milwaukee, routes designated as high-speed rail corridors under Section 1010 of the federal Intermodal Surface Transportation Efficiency Act. Studies are now underway to examine the feasibility of extending this high-speed rail network through Minnesota and Indiana. All have revealed that high-speed rail is technically feasible and that there would be sufficient ridership revenue to cover <u>all</u> operating costs and a significant portion of the capital cost as well. A study by the Federal Railroad Administration has concluded that high-speed rail has a higher benefit-cost ratio in the Midwest than anywhere outside the Northeast Corridor -- for every dollar invested, $2.50 in benefit would be realized.

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[illegible] WILCOX CHAIRPERSON HOWARD A. LEARNER EXECUTIVE DIRECTOR

Illinois and Michigan have begun permitting and demonstration projects. An advanced signaling project will allow passenger trains will regularly travel at speeds above 100 mph between Kalamazoo and Niles, Michigan by early 1998 along the Chicago-Detroit corridor. Illinois is testing state-of-the-art railroad crossing safety devices and is working to complete a draft environmental impact statement on the Chicago-St. Louis corridor.

Midwestern states are also taking an active interest in working together to support improvements to passenger rail. Working with Amtrak and the Federal Railroad Administration, 9 Midwestern states are developing a business plan to improve speed, service, ridership, and revenues. Development of higher speeds -- and the quantitative analyses to support them -- is integral to the study, which is due for completion in early 1998.

However, these efforts to improve passenger rail service in the Midwest will not succeed without the cooperation of CSX and Norfolk Southern Railroad in their acquisition of Conrail. Conrail's track between Detroit and Kalamazoo is the only viable route for high-speed passenger service between Chicago and Detroit. Though studies are only just beginning on high-speed rail between Chicago and Cincinnati, upgrades to CSX's line now used by Amtrak is the most likely to the preferred option.

In reviewing the proposed merger, the Environmental Law and Policy Center respectfully requests that the Surface Transportation Board consider the following issues:

First, corridors should be preserved. As a precondition to the merger, the Surface Transportation Board should ensure that both existing rights-of-way and the track upon them are preserved for future passenger rail service. What today may be excess track could tomorrow prove critical for passenger movement, particularly if freight traffic continues to expand.

Second, access to Chicago from the East via the south end of Lake Michigan needs to be improved. This approach is currently a major "bottleneck" which not only impairs freight service, but delays passenger trains approaching Chicago from Detroit, New York, Boston, and other points. If freight volumes increase without addressing this problem, passenger service will continue to erode. The Surface Transportation Board should ensure that the capital plans of Norfolk-Southern and CSX address this bottleneck.

Third, the Surface Transportation Board should ensure that passenger service has primacy, in letter, spirit, and action as intended by Amtrak's enabling legislation. With pending labor disputes, uncertain access to capital, and the specter of insolvency, Amtrak's future is far from certain. We therefore urge the Surface Transportation Board to require, as a precondition to merger, that CSX and Norfolk-Southern preserve passenger access to their rails *even if Amtrak is not in a position to use them.* These rights of primary access should be transferrable to the state departments of transportation or any other party designated by Amtrak.

Finally, current safety and congestion problems on other major U.S. railroads suggest that the Surface Transportation Board should aggressively review the proposed merger to ensure that CSX and Norfolk-Southern are capable of effectively maintaining and operating Conrail's assets.

Worsened congestion East of the Mississippi River could so erode Amtrak's ridership as to bankrupt the organization. Safety problems similar to those seen elsewhere in the United States could create unthinkable human tragedy if they were repeated in a region where passenger volumes are larger and more frequent.

In closing, the Environmental Law and Policy Center respectfully urges the Surface Transportation Board to keep the needs of rail passengers foremost as it considers the proposed merger.

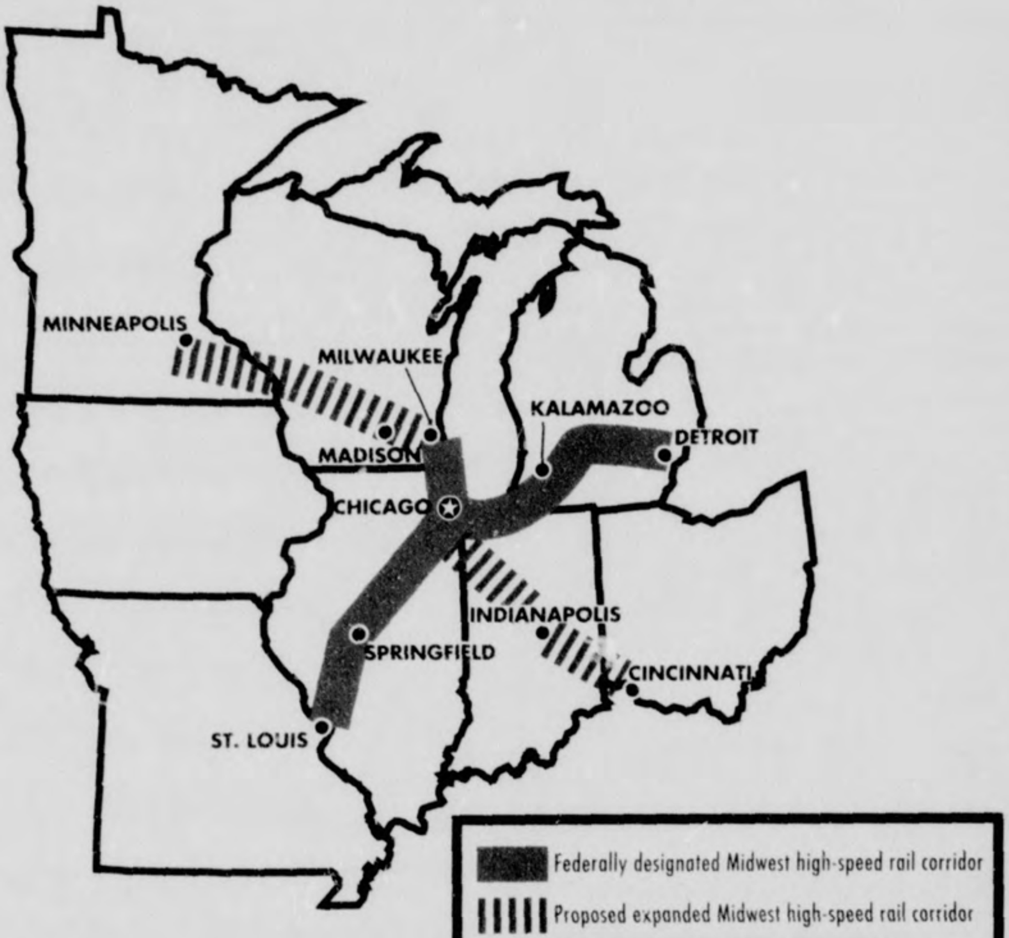
Respectfully,

Kevin Brubaker

Kevin Brubaker
High-Speed Rail Project Manager

Encl (1)

The Midwest High-Speed Rail Network



For more information, please contact:

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203 North LaSalle Street, Suite 1390 Chicago, Illinois 60601
Phone: (312) 759-3400
Fax: (312) 332-1580