STB FD 33388 10-21-97 D 182841 1/3

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Vernon A. Williams, Secretary
Office of the Secretary
Case Control Branch
ATTN: STB Finance Docket No. 33388
Surface Transportation Board
1925 K Street, NW
Washington, DC 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, Finance Docket No. 33388

Dear Secretary Williams:

Enclosed are an original and twenty-five (25) copies of the highly confidential version, an original and twenty-five copies of the confidential version, and an original and twenty-five (25) copies of the public version of the Comments, Requests for Conditions, Opposition Evidence, And Supporting Argument of the Port Authority of New York and New Jersey (NYNJ-14, NY/NJ-15 and NY/NJ-16) for filing in the above-captioned proceeding. An additional copy of each is enclosed for file stamp and return with our messenger. Please note that copies of these filings are also enclosed on 3.5-inch diskette in WordPerfect 5.1 format.

Very truly yours,

Paul M. Donovan

182841

PUBLIC VERSION

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

COMMENTS, REQUESTS FOR CONDITIONS, OPPOSITION
EVIDENCE, AND SUPPORTING ARGUMENT OF THE
PORT AUTHORITY OF NEW YORK AND NEW JERSEY

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Attorneys for
The Port Authority of New York
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Dated: October 21, 1997

NY/NJ-14

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

COMMENTS, REQUESTS FOR CONDITIONS,
AND SUPPORTING ARGUMENT OF THE PORT AUTHORITY
OF NEW YORK AND NEW JERSEY

INTRODUCTION

The Port Authority of New York and New Jersey (the Port Authority) is an agency of the States of New York and New Jersey whose bi-state compact was approved by the Congress. Foremost among the statutory responsibilities of the Port Authority is the protection of the commerce of the New York/New Jersey Port District. This Port District, which is roughly a 25 mile radius around the Statue of Liberty, includes virtually all of the North Jersey Shared Asset Area as set forth in the Application.

Pursuant to the Final Procedural Schedule, the Port Authority hereby files the following Comments, Requests for Conditions, Opposition Evidence and Supporting Argument (Comments). Inasmuch as Applicants have not filed their operating plans for The New

York/New Jersey Metro Area, or what Applicants refer to as the North Jersey Shared Asset Area, these Comments must necessarily be incomplete.

Even with the incomplete record regarding the New york/New Jersey Metro Area, several important facts are apparent: (1) the Shared Assets concept is unique and unprecedented; (2) the New York/New Jersey area that would be covered by the Shared Assets Operating Agreement involves 14 million people and congested rail terminal and operating facilities; (3) the Applicants and the Port Authority agree that there will be a substantial increase in rail traffic into, out of and through the North Jersey Shared Assets Area in the immediate future: (4) the operating plans necessary to serve this area are so complicated that six months after the establishment of the area, and four months after filing of the Application, they still have not been completed; (5) as Mr. John Snow, the CSX Chief Executive Officer readily admits, the Shared Asset concept carriers within it the "opportunity for mischief" as between the competing NS and CSX; and (6) the Shared Asset agreement between the carriers was the result of business negotiations and not the result of operating efficiency or even operating feasibility considerations.

In addition to the above, the Shared Asset structure results in a terminal carrier (Conrail Shared Asset Operator or CSAO) that is not designed to make a profit or operate in a manner consistent with its best interests, but, rather in the best interests of NS and/or CSX. Thus, investment decisions, resource allocations etc. would not be made on the basis of the most efficient allocation of economic resources, or on the basis of what an independent profit making operator would do, but, rather, on the basis of what is most desirable for one or both of the competing line-haul carriers serving the area. As will be discussed below, what is best for the carriers may not, in all cases, be best for the region.

In view of the foregoing, and the more complete discussion that follows, and based upon the record as it now stands, recognizing that the operating plan(s) that will be filed pursuant to Decision No. 44 may alter the record in several material ways, the Port Authority requests that NS and CSX be ordered, as a condition to approval of the transaction, to divest themselves of all assets within the North Jersey Shared Assets Area that Applicants presently propose to be operated by CSAO. Those assets within the area that Applicants propose to have operated by either NS of CSX or jointly by NS and CSX would remain with those respective carriers according to the Application.

ARGUMENT

I. There Is Insufficient Evidence To Permit The Board To Find That The Proposed Transaction Is In The Public Interest Insofar As Operations Within The North Jersey Shared Assets Area Are Concerned.

In virtually all rail consolidation proceedings the Interstate Commerce Commission and now the Board have been called upon to ascertain the public interest by determining whether the efficiencies produced as a result of the combining or merging of rail carriers will outweigh any actual or potential anticompetitive effects of the transaction. Here, however, at least with respect to the New York/New Jersey Metro area and in particular the Port of New york and New Jersey, quite a different public interest examination will be required.

Applicants propose that the congested North Jersey area presently served by Conrail be served by NS, CSX and CSAO. They have no operating plan to accomplish this service, and apparently are unable to develop one in a timely fashion.

Applicants have candidly admitted that although they have been working to develop operating plans, but have not been successful to this point. During his deposition, Mr. John Snow testified in response to questions from Port Authority Counsel:

> Q. .....One, we are taking an area which Conrail had spent 20 years rationalizing and eliminating facilities and now we're splitting up among two carriers plus a shared asset operator. We're concerned that the commercial arrangement that might make great commercial sense for CSX and Norfolk Southern was arrived at without substantial operational input, so much so that we still don't have a real operating plan. Do you understand the basis of our concern? I know you've been to the Port of New York and New Jersey. You've seen how congested it is. Do you understand our concern?
>
> A. I think I do. And I think we will be able to address it here with meetings with the Port Authority and your clients and yourself in the not too distant future. I can tell you that that matter is being given intense attention within CSX and I understand we have a joint team with NS so it's being given intense attention jointly. We have one of our ablest young and most promising rail executives heading that effort for us, someone -- you spoke well of Mr. Orrison and I have a high regard for him.. This young man is of a comparable capacity.
>
> And I could say to you that I don't think there is any issue receiving more attention today than that one. And I would say that we are making a great deal of progress in putting together an operating plan.

Mr. Snow's testimony points out two things. The Applicants are working on an operating plan for the North Jersey Shared Asset Area. Secondly, that plan is both extremely important and quite complicated.

In the absence of information as to how the Applicants will be able to provide any acceptable level of service at New York/New Jersey it is plainly impossible to determine the impact of this transaction on the public interest in that region. The unfortunate conditions presently existing in and around the Houston area stand as a warning to overly-optimistic projections and wishful thinking as to terminal capabilities, and the impact of terminal problems upon entire rail systems.

The failure of Applicants to provide a meaningful operating plan for the North Jersey region is not merely a failure of proof. It indicates that the Shared Assets concept may not be workable. How else can Applicants explain the inability of their most talented executives to produce a plan even though they have obviously been working at the task for some time? In short, Applicants have failed to demonstrate that the North Jersey Shared Assets Operating Area concept is in the public interest.

Documents produced by Conrail in response to Port Authority discovery requests demonstrate the possible adverse consequences of two carriers serving New York/New Jersey. For example, in hearings before New Jersey Joint Senate and Assembly dealing with the then proposed CSX/Conrail merger, representatives of CSX and

Conrail testified on February 24, 1997.[1] Their joint testimony stressed the advantages of a single carrier serving the Port of New York and New Jersey.

Similarly, in CR 09 CO 000411-CR 09 CO 000427 entitled "Impact Analysis of Two Railroads Serving the Port of New

The North Jersey Shared Assets Area, Conrail's current New York/New Jersey terminal area, is to be divided among three operators: CSX, NS and CSAO. As noted above, all parties project traffic volume increases. As described in the verified statement of Lillian Borrone, there is already a looming shortage of terminal capacity within the terminal area. Applicants now propose to divide the terminal area in a way that Conrail so recently argued would require more terminal infrastructure. In the face of these facts, the Application proposes no real termi-

[1] This document bearing the designation CR 09 CO 000351-CR 09 CO 000375 is attached hereto as Appendix A is stamped "Confidential". However, that document has been declassified to a "Public" status.

[2] This document is attached as Appendix B, but has not been declassified to "Public" status, and remains "Confidential."

nal expansion and the Applicants are at a loss to develop an operating plan for the region.

In short, there is no reason to conclude that the Shared Asset concept, which Applicants concede was developed for commercial and not operating reasons, can result in anything other than severe congestion, and a breakdown in rail services within the region. As discussed below, this breakdown in service would most likely strike international waterborne commerce the hardest, and cause the diversion of substantial amounts of that traffic to competing ports.

II. Since International Traffic Is Highly Competitive And Easily Diverted To Competing Ports, The Loss Of Conrail As An Independent Geographic Competitor To Both CSX And Norfolk Southern At Those Competing Ports Must Be Replaced By Effective Intramodal Rail Competition At New York/New Jersey.

The Port Authority is charged by statute with protecting the economic welfare of the entire New York/New Jersey region. It is also particularly directed by those statutes to protect the commerce of the Port of New york and New Jersey. As the verified statement of Lillian Borrone points out, the Port is such a vital component of the economy of the entire region that the protection of the Port's commerce has in and of itself a positive impact on the economy of the region.

While Applicants view New York/New Jersey as a huge consuming market into which they can deliver increasing volumes of rail traffic, the Port is, in fact, a gateway through which international waterborne traffic can move by rail to and from interior points. In this capacity, the Port is in intense competition with other ports serving the same interior points.

While the issue of which gateway international waterborne traffic may move through may be of little consequence to the rail carriers serving various of these gateways, it is of vital concern to the Port and to those economically dependent upon the Port. Further, any shift in normal shipping patterns based upon the failure of a rail carrier or carriers to provide adequate service, by definition, results in the inefficient allocation of economic resources.

The record developed in this proceeding, including the verified statements of Lillian Borrone and Thomas Schmitz, demonstrates that over the past several years Conrail has become an efficient competitor with respect to international waterborne traffic. Its improved service and aggressive pricing have caused the recently developed and expanded ExpressRail on-dock rail terminal operations to become a great success.

Conrail's aggressiveness is obviously in its economic best interest inasmuch as New York and New Jersey is vital to Conrail if it is to move large volumes of international traffic. CSX and Norfolk Southern seek to replace Conrail's effective geographic competition with other ports with two competing carriers serving New York and New Jersey. Conceptually, the Port Authority applauds the intramodal competition that this transaction could provide in the region. However, it is axiomatic that this intramodal competition can only successfully replace Conrail's geographic competition if the new carriers can serve the region and the Port efficiently and effectively. For the reasons stated above, there is real doubt that the carriers can provide this efficient and effective service using the undefined, untried and unprecedented Shared Assets concept that their respective negotiators created in an effort to insure that neither carrier had any competitive advantage, without regard to whether either carrier could adequately serve the competitive area.

There is no showing on this record that the Shared Asset Area concept can or would provide an adequate substitute for the geographic competition now provided by Conrail at the Port of New York and New Jersey. Thus, unless conditions are imposed on this transaction, New York and New Jersey would be economically damaged and rendered less able to compete for the international waterborne traffic volumes that all agree will increase in the future.

III. An Independent Terminal Rail Carrier Serving New York/New New Jersey Offers The Best Chance Of Providing The Efficient Terminal Rail Services That Are In The Best Interests Of The Region, The Port And The Shipping Public.

As noted above, one searches the Application in vain for any explanation for the creation of the unique Shared Assets concept other than each line-haul carrier wanted an opportunity to serve the highly attractive markets of Detroit, Philadelphia, and most importantly, New York/New Jersey. Obviously, this concept was developed in the heat of intense business negotiations and without regard to the operating problems that would be involved.

One must assume that a desire to keep other potential rail carrier competitors out of the market was one consideration, as was the admitted desire to keep each Applicant on as equal a competitive footing as possible. As reasonable as these motives may seem when viewed from the perspective of the Applicants, they do not provide a justification for putting at risk the economic welfare of the New York/New Jersey region.

It is not the position of the Port Authority that the Shared Assets Operating Area concept cannot provide efficient and effective service within the New York/New Jersey area. It is the position of the Port Authority, however, that the current record, absent the detailed operating plan(s) ordered by the Board in Decision No. 44 to be filed by October 29, 1997, does not contain sufficient information to permit the Board to make the necessary public interest findings that it recognized in Decision No. 44 it must make with respect to the New York/New Jersey region. Thus, the Port Authority, at this time, and while awaiting the operating plan(s) believes that the Board should order divestiture of all Conrail assets within the North Jersey Shared Assets Area that the Application provides to be operated by the Shared Assets Operator.

CONCLUSION

In view of Decision No. 44, and the additional operating materials called for therein, the Port Authority will reserve its final position until it has an opportunity to review those materials as contemplated by the Board's Decision.

Respectfully submitted,

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<u>Attorneys for
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Dated: October 21, 1997

Before the Joint Senate and Assembly

Special Hearings on Railroad Mergers

State of New Jersey

Remarks of William G. M. Goetz
Consolidated Rail Corporation

February 24, 1997

CONFIDENTIAL

Good morning.

My name is Bill Goetz.

I am Assistant Vice President for Intermodal Assets with Conrail in Philadelphia.

Joining me today is Mike Reuhling representing CSX Corporation in Richmond, Virginia.

We both appreciate this opportunity to testify about the CSX-Conrail merger transaction.

Today I want to do three things.

First, I want to talk about Conrail and the realities of running a railroad in today's New Jersey economy.

Second, I want to discuss the CSX-Conrail merger.

Finally, I want to explain why the CSX-Conrail merger represents the best outcome for New Jersey.

Conrail was created from six bankrupt railroads in 1976.

All six of those railroads had operations in New Jersey.

The situation then was nothing short of a total disaster. In its early years Conrail lost $1 million per day.

Service levels didn't come close to being competitive.

1. The network Conrail operates today was pieced together from those six carriers.

It has an east-west orientation.

Conrail serves large population centers which have successfully migrated from heavy manufacturing to service-oriented economies.

If you want to survive in the railroad business in this area, you better figure out how to haul consumer goods.

For a railroad, that's a tough business.

2. Since the interstate highway network was built, motor carriers have owned this market.

With the service territory it has, Conrail discovered years ago that it had to get good at two things.

First, it had to get good at intermodal.

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Intermodal is the movement of truck trailers and containers on railroad trains.

Intermodal is the service product which has allowed Conrail to get back into the business of hauling consumer goods.

Last October we had the highest volume of intermodal traffic in our corporate history. We're very proud of our progress because the intermodal business is so highly competitive.

Nearly every intermodal shipment begins as a highway move.

Nearly every intermodal shipment ends as a highway move.

Most of the time, the railroad doesn't own the truck trailer.

A trucker or the customer owns the container or trailer.

Some of the fastest growing railroad business is traffic where the railroad's customer is a trucking company.

This is a trucker's market with trucking equipment and economics.

It's the reality of transportation in 1997. And no where is it more real than in New Jersey.

72% of Conrail's traffic in New Jersey is intermodal.

The second thing Conrail had to get good at was servicing local siding customers.

In our service territory we tend to be on the receiving side of the equation.

For example, we don't serve big concentrated timber reserves like they have in the south and west, but we serve a lot of lumber yards.

We're proud of our short line program because it helped to grow our siding business.

In New Jersey we have 12 shortlines.

We have the largest staff dedicated to shortlines of any railroad.

Our Conrail Express Program has been recognized as being innovative and progressive.

But we don't force our shortlines into any pre-packaged program.

Now let's talk about this CSX-Conrail merger.

3. The first thing you need to know is that it is not a revolutionary idea.

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It isn't even a new idea.

The number of large railroads has changed from 12 to 9 in the past twenty years.

Three large railroad mergers have occurred in the past two years alone.

4. The second thing, something you probably already know, is that there is a well-defined federal review process that governs transactions like this.

I'm here to tell you that we intend to follow that procedure to the letter.

Now let's look at this CSX-Conrail deal a little closer.

5. At Conrail we make a big deal out of the fact that this is a merger of equals.

This should be a big deal for you too, because it provides a level of comfort that your major serving carrier is not going to be turned upside down by a management team you don't know.

Here's an example you should consider:

Conrail operates freight trains in more passenger service districts than any other railroad.

It takes a lot of cooperation and finesse to get that kind of operation to work right.

Our operating headquarters for most of the east coast is right here in Mt. Laurel, New Jersey.

In that office whe have people who know NJT, SEPTA, MARC and Metro North.

They know how to get the job done.

In a merger of equals that kind of expertise is valued for what it is.

A second example is the shortline program we talked about earlier.

When you have a merger of equals, you have the luxury of taking the best of the best from both sides.

That's valuable.

That's important.

And you only get that result guaranteed with this transaction.

CONFIDENTIAL

The next benefit I want to discuss are the new services which result from the growth orientation of the merged company.

6. I mentioned earlier that Conrail has an east-west orientation.

This merger will position the new company to compete in the north-south corridor.

In our operating plan we expect to develop new single line services linking Northern New Jersey with Florida, Atlanta and New Orleans.

You will likely see a major new corridor develop over Memphis, Tennessee to reach Texas and Mexico on the diagonal rather than moving via Chicago.

7. Neither Conrail nor CSX are in any kind of financial trouble today, but the new merged company will be even stronger.

It will have a more diversified traffic base.

Conrail today has a heavy concentration of intermodal and automotive traffic.

CSX has coal.

It makes a nice marriage.

Working through our operating plan, we've discovered dozens of examples where the merged volumes introduce operating efficiency.

Cost efficiency is extremely important when you're competing for traffic against motor carriers.

If you want to grow business in a market like New Jersey, you've got to get your costs down so that you can price competitively.

Because profit margins are tight, the secret to success is becoming more efficient.

8. With the CSX-Conrail merger, we'll have two main lines to use west of Pittsburgh.

That will help us to develop more express routes from the east coast to the midwest.

9. With the merged volumes, we'll be able to realize savings in car utilization too.

Before we open for questions, I want you to know that the CSX-Conrail merger represents the best option for New Jersey.

I suspect that you're going to hear from people today who have other plans for Conrail.

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Let's consider Conrail's position at the Port of New York/New Jersey.

10. Conrail serves four major container port cities: Boston, Baltimore, Philadelphia and New York/New Jersey.

The CSX-Conrail merged company will retain that focus.

The next fact is very important.

11. The CSX-Conrail network will not have a route network or port access advantage at the ports of Halifax, Montreal or Norfolk.

You need to know this because those ports have been growing at New Jersey's expense.

And if you're a rail carrier with a Canadian or Norfolk franchise, that transfer works to your advantage.

With CSX-Conrail you're going to know where your rail partner stands.

If traffic shifts from New Jersey to Norfolk we both lose.

12. We've worked hard to grow our Atlantic intermodal container business.

13. This business is so competitive that the rates and margins nearly forced us out of the business several years ago.

But we went to work on the cost structure, pushed down cost, and pushed down rates.

And it's been a success.

We've made our Atlantic international traffic grow in New Jersey.

When these merger decisions are finished, New Jersey is going to live with the result.

We know the CSX-Conrail transaction is a net benefit because it brings new services and efficiencies without subtracting anything Conrail already has in New Jersey.

It's a net plus.

Nobody is going to come here today and propose to build their own new railroad lines into New Jersey.

They're going to propose that part or all of Conrail be turned over to their operation.

They will describe benefits.

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What they won't tell you is the negative impact their plans will have on Conrail's operation and efficiency.

You need to examine all of these proposals carefully.

If you sign up for a plan that takes more away from Conrail than it adds with the new carrier, you lose.

Let's go back to the port for one more example.

14. A railroad's cost structure is driven by volume efficiencies.

A fragmented operation is less competitive than an integrated network.

15. A fragmented operation uses more locomotives, burns more fuel, uses more people and drives up unit costs.

You don't want to see costs going up if your port is in hand-to-hand combat with the Port of Norfolk.

You don't want to see costs going up if you're trying to attract new business to New Jersey.

When you divide up an operation, operating costs do go up.

Don't be fooled into believing that someone else is going to give you something without taking away a part of something you already have.

That's why CSX and Conrail haven't embraced simplistic solutions to routing access questions.

We are negotiating with other railroads to develop the best plan from both a competitive and efficiency perspective.

We are negotiating in good faith.

I urge you to allow that process to reach a fruitful conclusion before taking a position on that merger aspect.

We have twenty years of progress on the line.

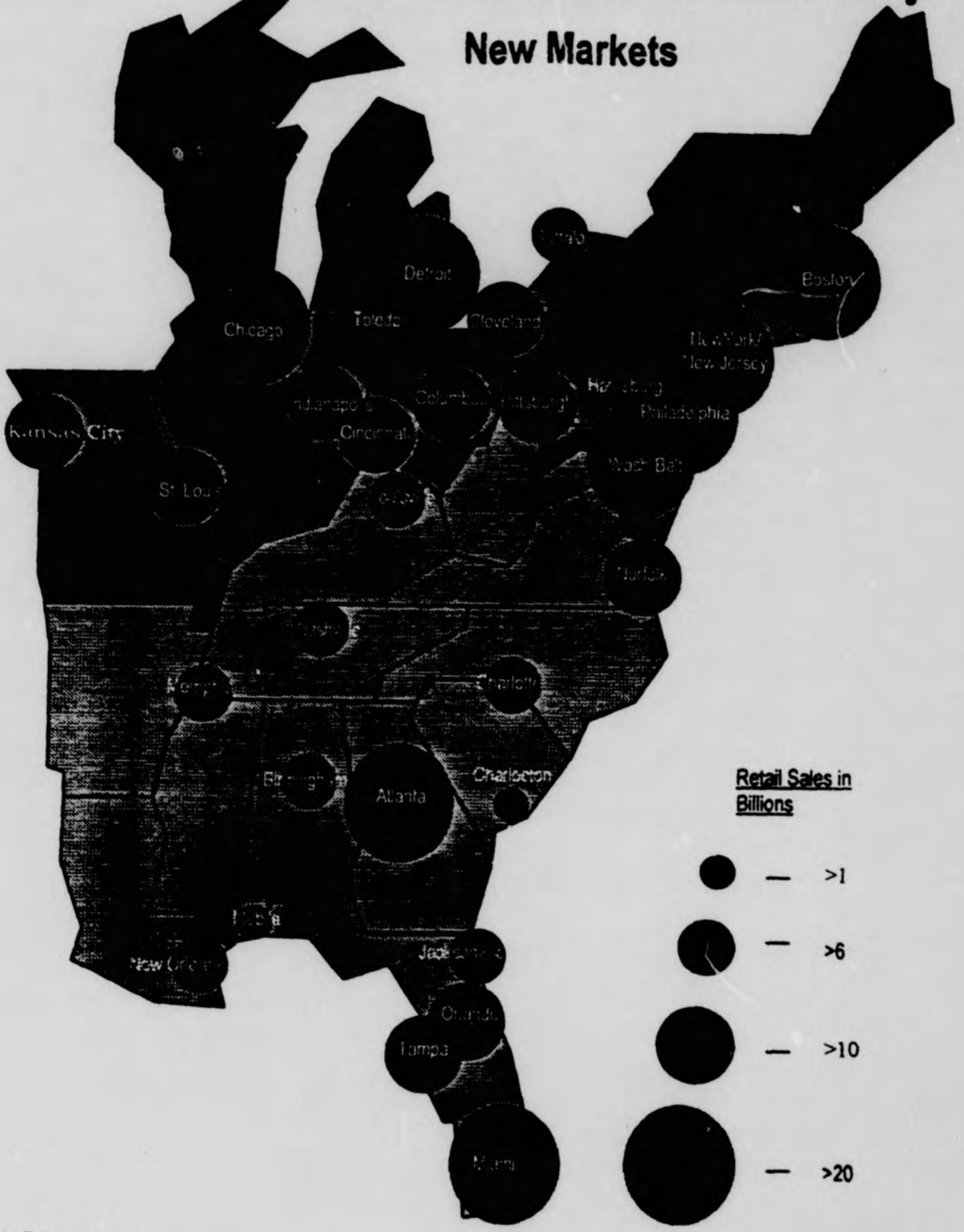
We at Conrail and CSX want to create the best operating railroad we possibly can, because we know our customers won't tolerate bad service or bad economics.

And our customers vote with their feet.

Thank you. Mike and I will take your questions now.

CONFIDENTIAL

The CSX-Conrail System Will Reach Many New Markets



CONFIDENTIAL

CR 09 CO 000358

CONFIDENTIAL

CSX-CR
A Merger of Equals

- Shared leadership
  - Equal board of directors representation
  - CR/CSX management team representation
- Shared responsibility going forward

CR 09 CO 000359

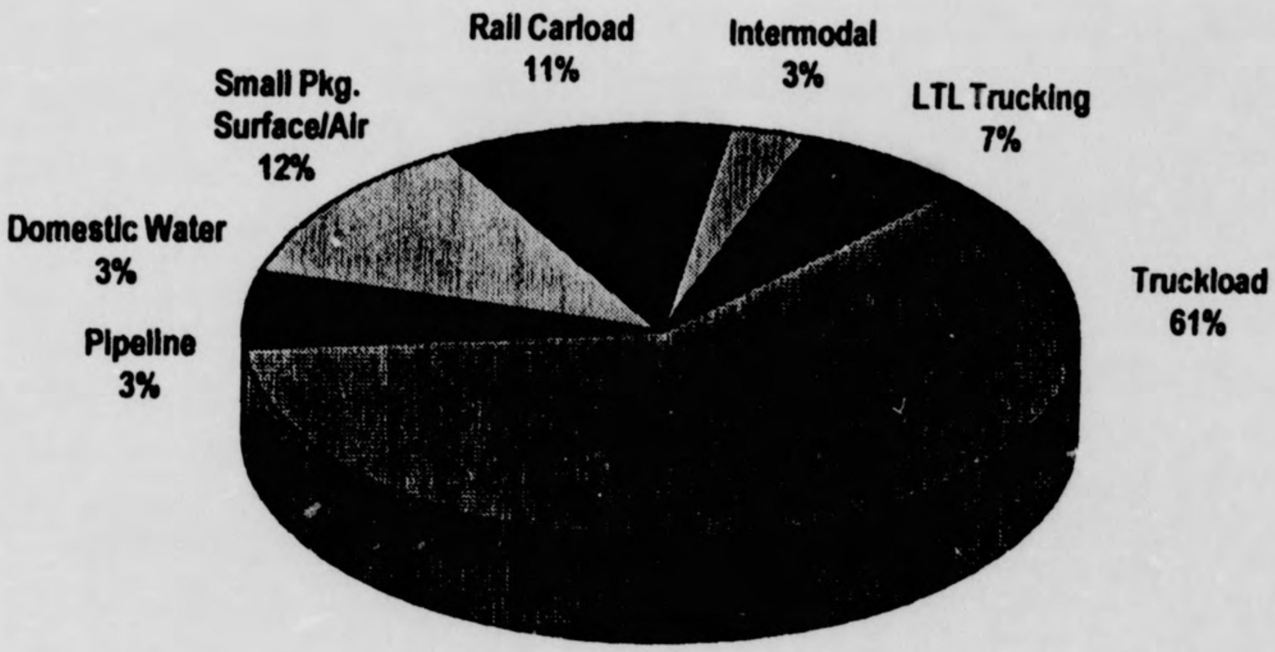
Intermodal Network

- New Intermodal Service Lanes

I-95 and I-85
I-75/59
Memphis Gateway

CONFIDENTIAL

Truckers, Not Other Railroads, Govern Intermodal Price Levels

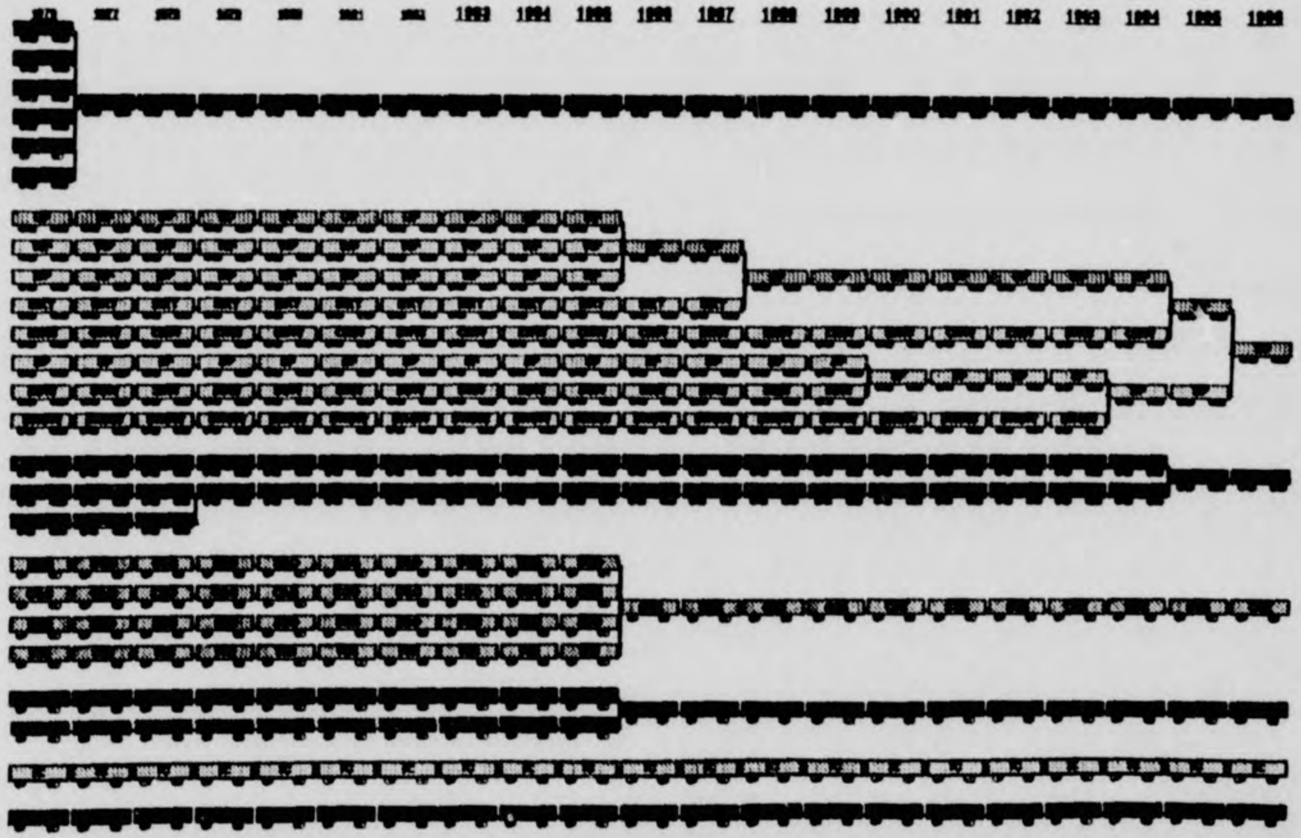


U.S. Intercity Freight Bill - 1992
Total = $241 Billion
Source: Mercer Management

CR 09 CO 000361

Class I Railroads

From 52 to 9 in Twenty Years*



*Not pictured: SOO Line (CP subsidiary) and Grand Trunk Western (CN subsidiary)

CONFIDENTIAL

The STB's Timetable Anticipates Closure in Early 1998

October, 1996	Merger Announced
February, 1997	Norfolk Southern Filed Preliminary Environmental Report
March, 1997	Filing with Surface Transportation Board
May, 1997	Other Parties File Notification of Intent to Participate in Merger Proceeding
July, 1997	Inconsistent and Responsive Applications Due
January, 1998	Voting Conference, Surface Transportation Board
March, 1998	Service Date of Surface Transportation Board's Decision

CSX-CR
A Merger of Equals

- Shared leadership
  - Equal board of directors representation
  - CR/CSX management team representation
- Shared responsibility going forward

CONFIDENTIAL

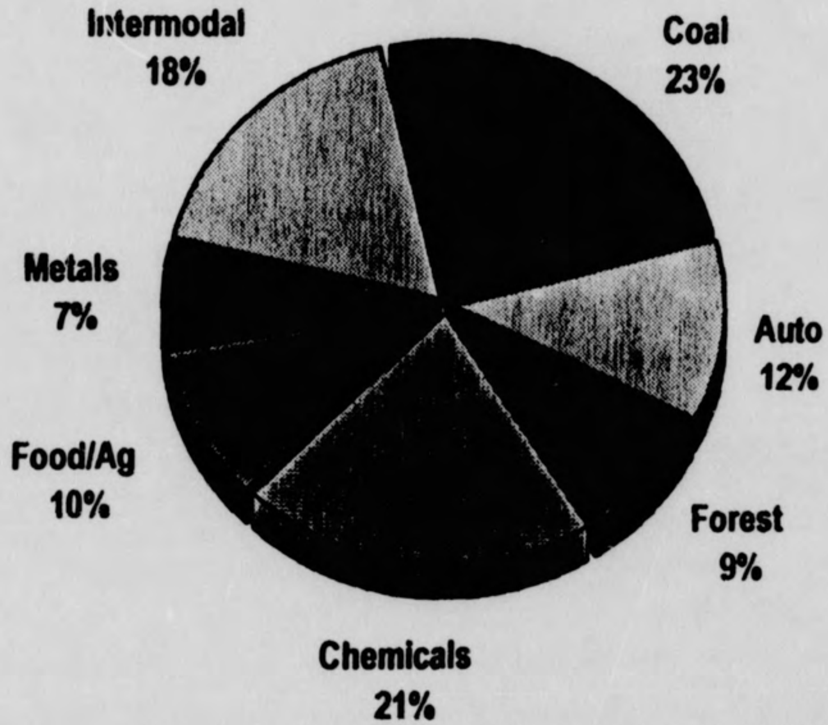
Intermodal Network

- New Intermodal Service Lanes

I-95 and I-85
I-75/59
Memphis Gateway

CONFIDENTIAL

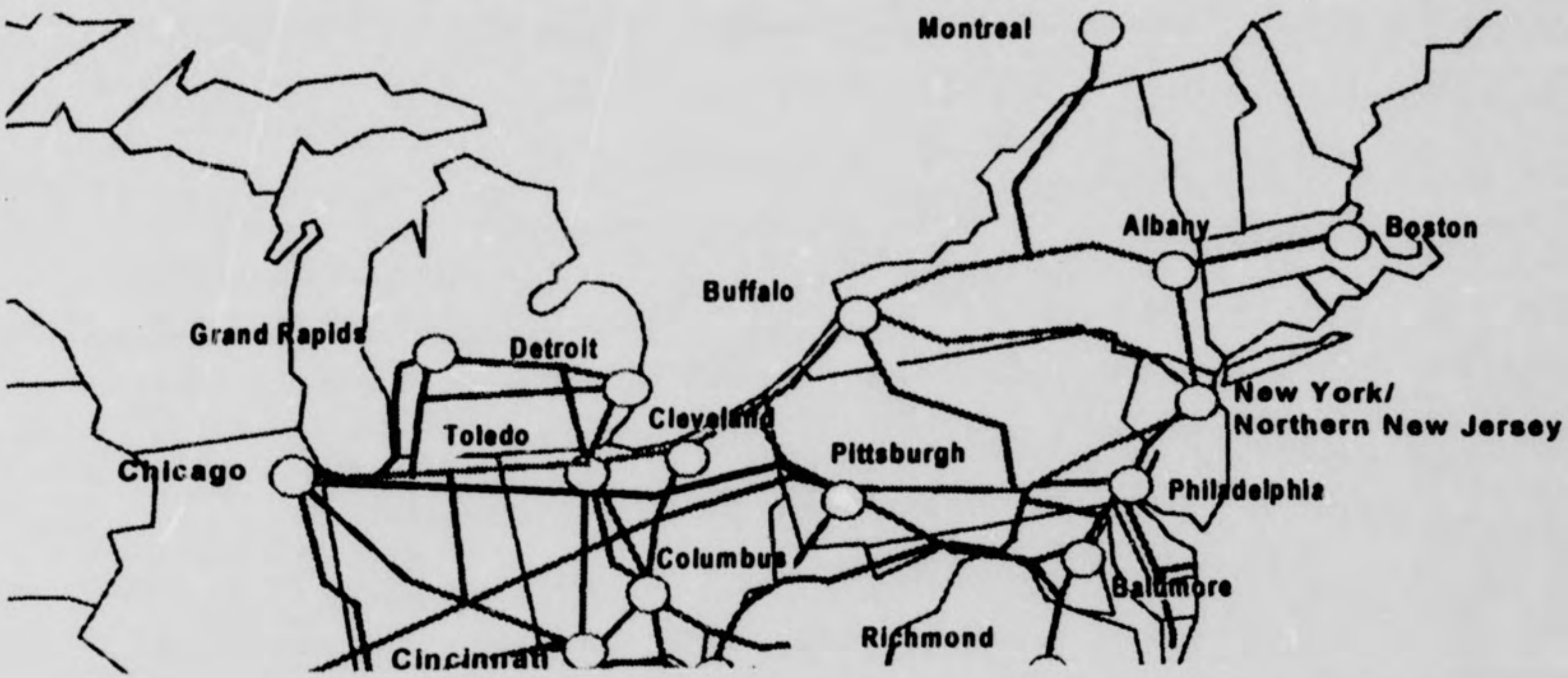
The Combined CSX - Conrail Traffic Base will be More Balanced and More Stable



CR 09 CO 000368

CONFIDENTIAL

More Mainline Capacity West of Pittsburgh will Enhance Service

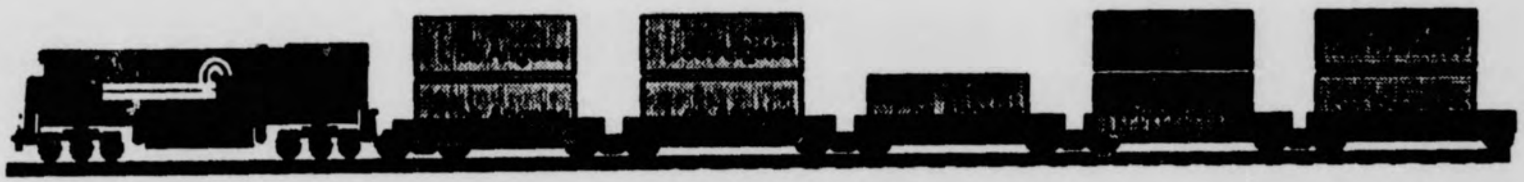


Integrated Intermodal Mainline Capacity
Exsiting Intermodal Mainline Service

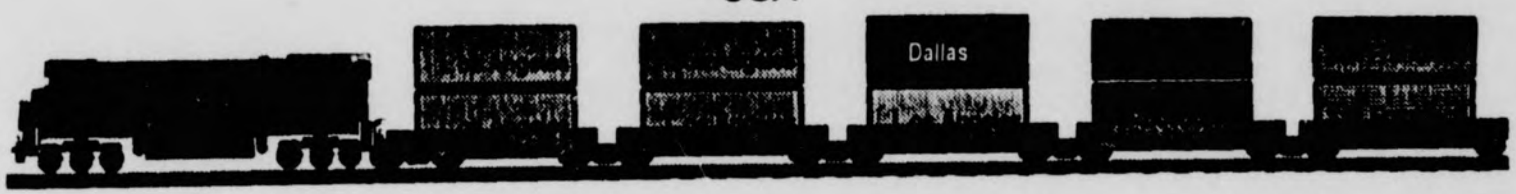
CR 09 CO 000367

Volume Density will Make Seamless Transportation More Efficient

CONRAIL

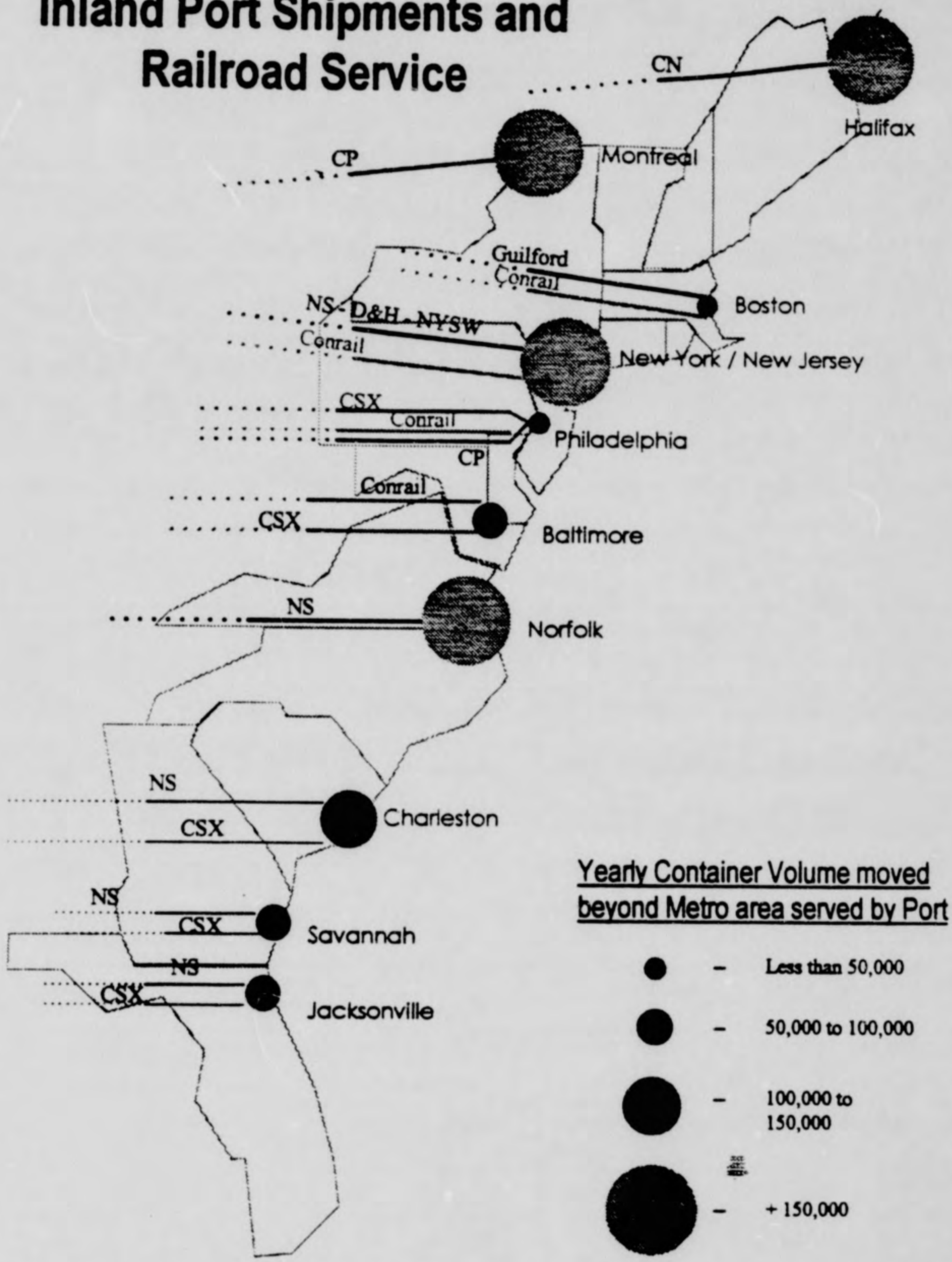


CSX



POST - MERGER

Inland Port Shipments and Railroad Service

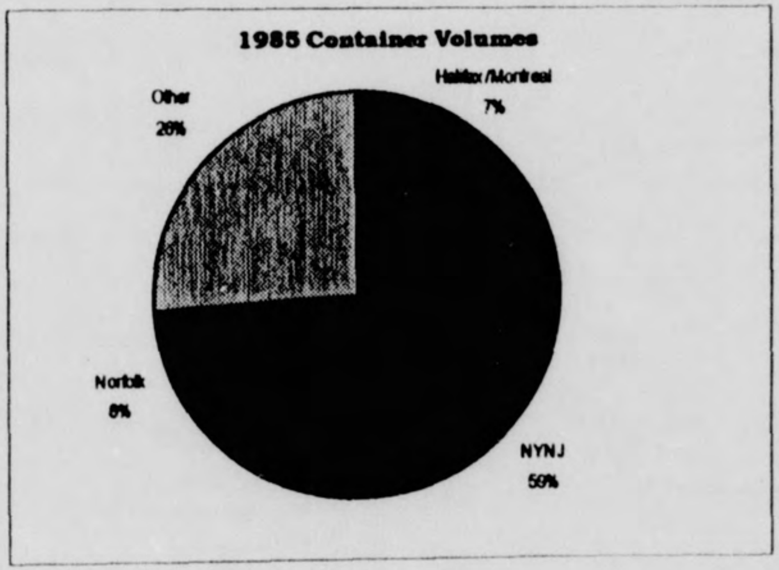


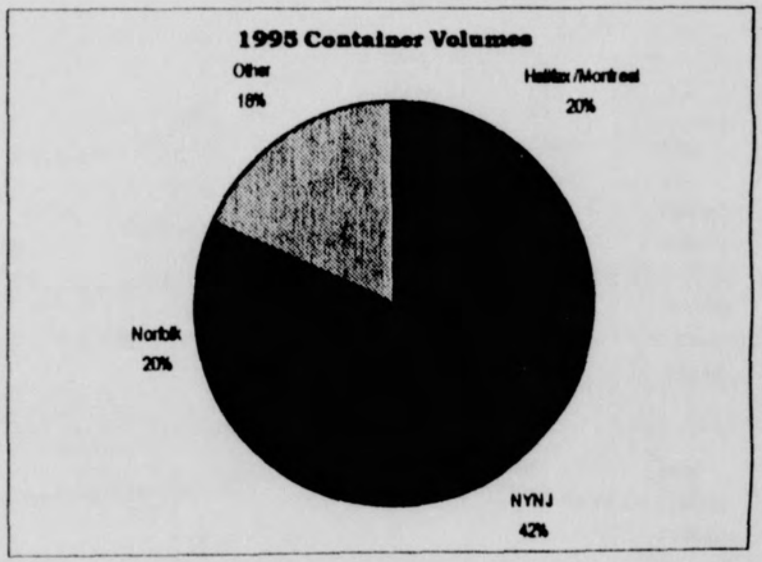
CONFIDENTIAL

CR 09 CO 000369

CONFIDENTIAL

North Atlantic Port Competition is Intense



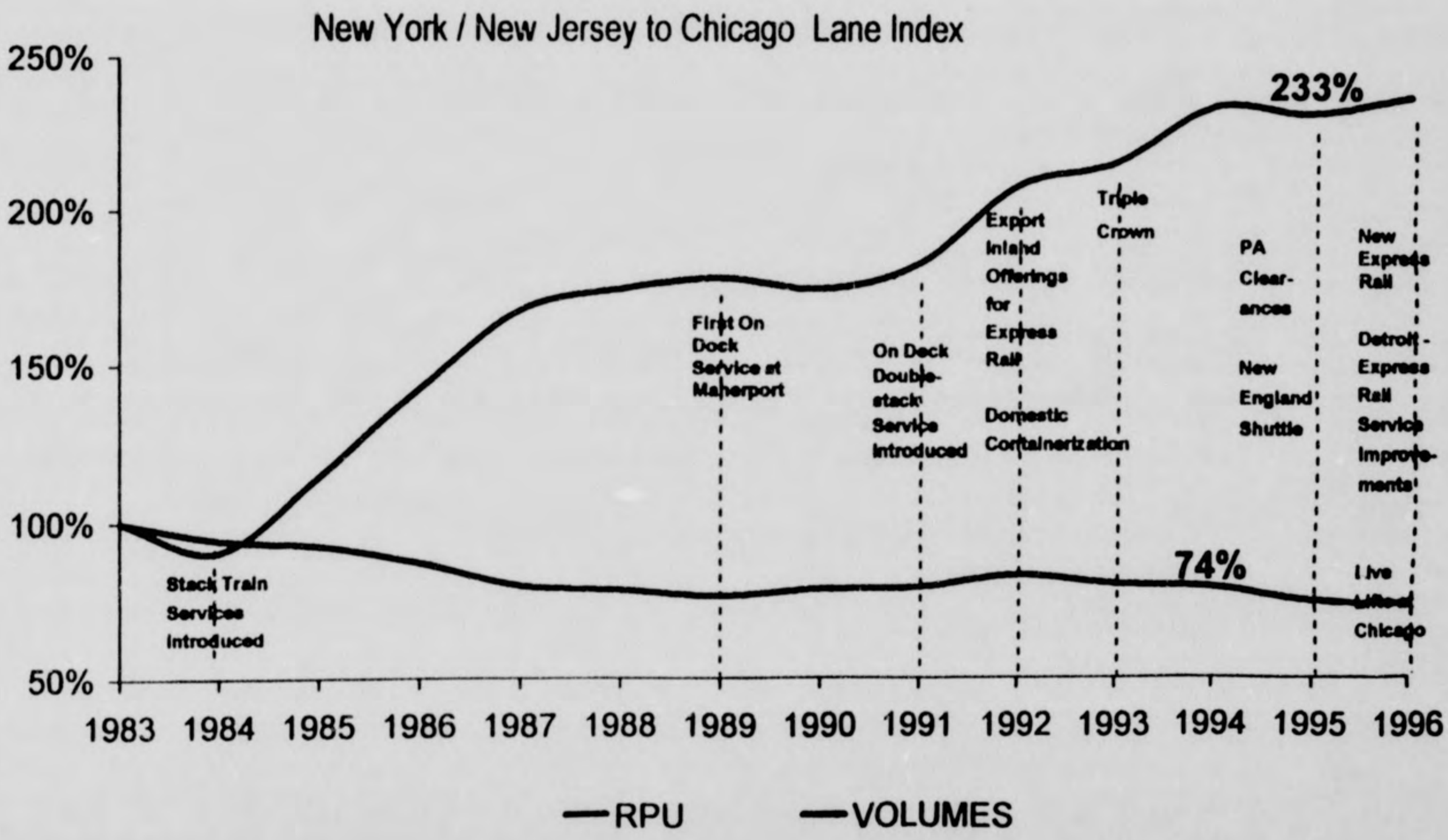


Source: MercerManagement/American Association of Ports

CR 06 CO 000370

CONFIDENTIAL

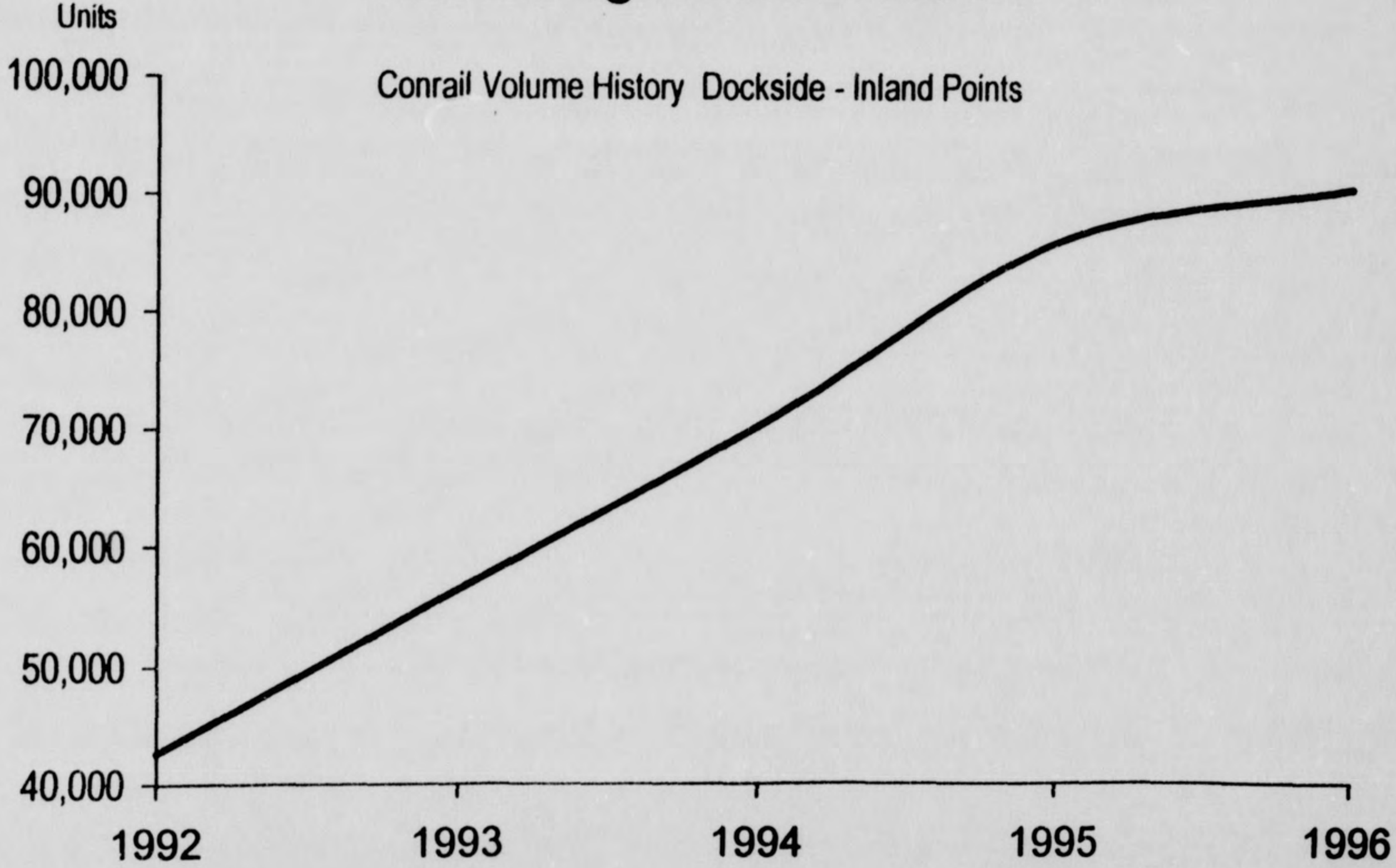
Intermodal Volume Growth is Directly Linked to Technological Innovations



CR 09 CO 000371

CONFIDENTIAL

Intermodal Volume Growth is Directly Linked to Technological Innovations



CR 09 CO 000372

CONFIDENTIAL

CSX-CR
Financially Healthier Post-Merger

- Projected debt as a percentage of total capitalization:
  - CSX-Conrail 50%
  - NS-Conrail 75%
- Projected NS debt and interest expense:
  - $11 billion in new debt
  - $1.1 billion in interest expense, 1998
    - Equates to 60% of combined 1995 Conrail-NS operating income

CR 09 CO 000373

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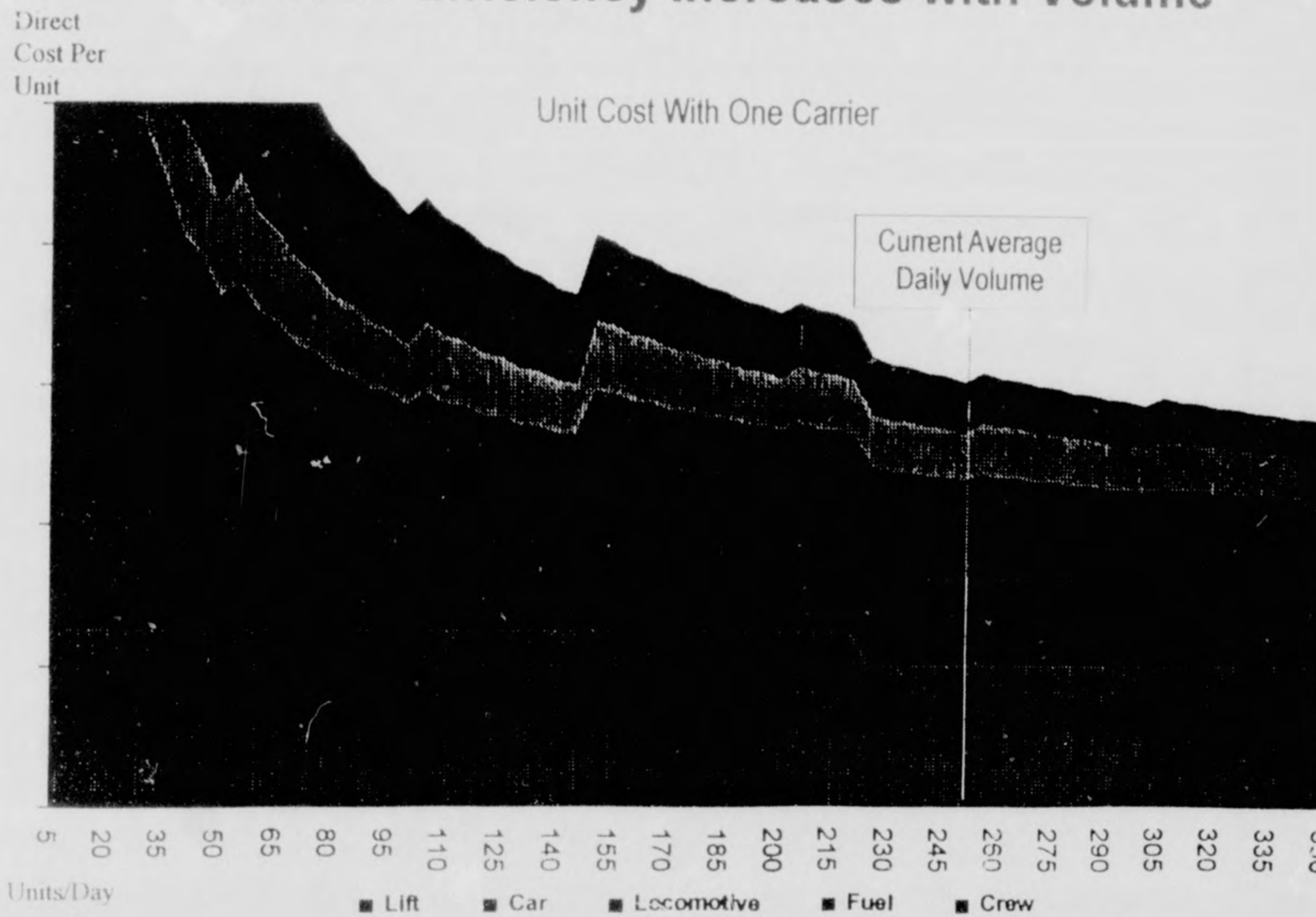
Railroad Efficiency Increases with Volume



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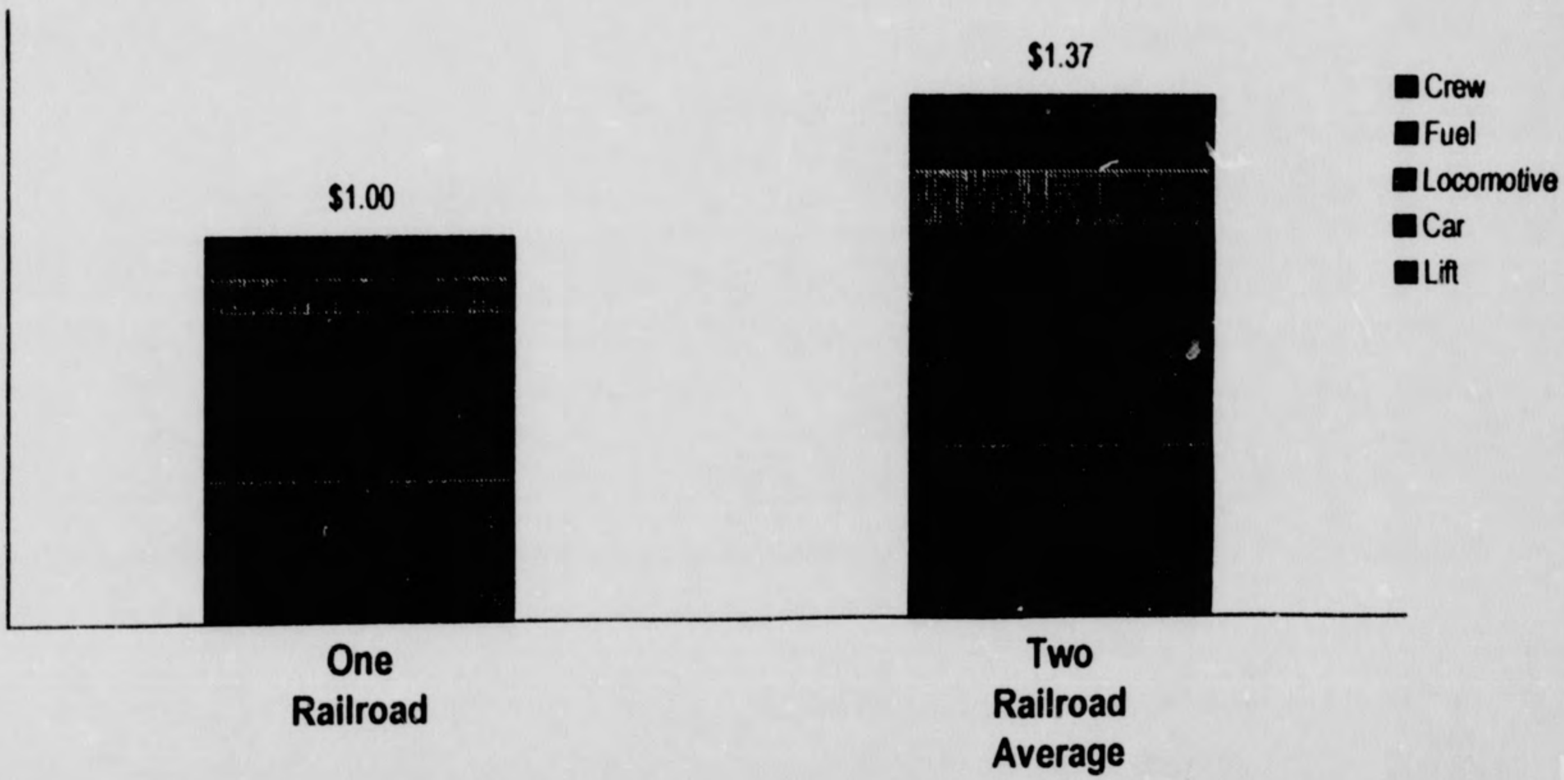
If Volume is Divided Evenly, the Costs for Both Railroads Increase

For Every Dollar Spent by One Railroad, Two Railroads must Spend $1.37 to Move the Same Number of Units

Outbound Volume = 350 Units Daily, Split 50% for Each Railroad



CR 09 CO 000375

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 LILLIAN C. BORRONE

I. Introduction

My name is Lillian C. Borrone. I am the Director of Port Commerce for The Port Authority of New York and New Jersey (the Port Authority). In that capacity, I am responsible for the promotion, protection and development of the Port of New York and New Jersey, and the initiation, development and operation of facilities and programs that support the region's economy.

My responsibilities include management and direction of the Port Authority's marine terminals in Elizabeth and Newark, New Jersey as well as in Brooklyn and Staten Island, New York. In addition, I oversee three modern urban industrial parks; the Newark Legal and Communications Center; the Teleport on Staten Island; the Essex County Resource Recovery Facility in Newark; and mixed-use waterfront development projects in Hunter's Point, New York and Hoboken, New Jersey. Further, Port Commerce works to strengthen the region's role as a center for trade and business through its foreign and domestic trade offices.

Through my staff, I oversee functions ranging from new capital development and construction; marketing, tenant leasing and sales arrangements; facilities' operation, maintenance and safety; and various business development services aimed at enhancing the New York and New Jersey Port District. I am responsible for guiding policy implementation for the Port Commerce Department in such areas as dredging, new business development and long-range strategic and financial issues.

Prior to joining the Port Department I held various other positions within the Port Authority as Director of the Management and Budget Department; Assistant Director of he Aviation Department; and various positions in the Rail Transportation and Terminals Departments. I also served with the U.S. Department of Transportation as Deputy Administrator, and prior to that, Associate Administrator of the Urban Mass Transit Administration.

Current I am Chairperson of the American Association of Port Authorities, a member of the Board of the North Atlantic Ports Association and the Regional Business Partnership, and past Chairperson of the Transportation Research Board.

II. Purpose of Statement

The purpose of my statement in this proceeding is to describe the marine terminal facilities and related facilities at the Port of New York and New Jersey. Because of their obvious relevance to this proceeding, I will focus on the Port's on-dock rail operations (ExpressRail) and their importance to the Port. Further, I will point out the impact of the Port's operations on the overall economy of the New York/New Jersey Metropolitan Region.

I will describe the competition faced by the Port with respect to the movement of waterborne intermodal traffic, particularly the portion of that traffic that moves, or could move by rail. In addition, I will discuss the Port Authority's efforts to increase the volumes of waterborne intermodal traffic moving by rail through the Port and the relationship between the Port Authority and Conrail with respect to those efforts.

Finally, I will describe the congested conditions of rail facilities and rail terminal facilities within what the Applicants call the North Jersey Shared Asset Area, and point out the need for substantial investment and improvement in rail operations within that area if the Port is to meet its future needs and the competitive challenges it faces.

III. Terminal and Related Facilities at New York/New Jersey

The Port Authority has, over the course of many years, invested billions of dollars in various facilities to improve the transportation capabilities of the New York/New Jersey Region. Interstate tunnels (the Holland and Lincoln), and interstate bridges (the George Washington, Goethals and Outerbridge Crossing) permit the movement of freight, as well as passengers, throughout the Region. Port Authority Trans Hudson (PATH) is a major commuter rail line and, of course, the three major airports

(Kennedy, LaGuardia and Newark) serve millions of passengers and billions of dollars worth of freight shipments each year. The Port Authority Bus Terminal serves more than 200,000 passengers each weekday.

None of the Port Authority facilities is more important to the economic welfare of the Region than its marine terminal facilities. While breakbulk cargoes are still extremely important to the Port, the major emphasis of modern international shipping is containerized traffic. The Port of New York and New jersey is the premier container port on the Eastern seaboard and a vital component of the economic life of the New York/New Jersey region.

The majority of container terminal capacity in the Port is concentrated in the Port Newark-Elizabeth complex which accounts for nearly 75 percent of the total Port capacity. Newark-Elizabeth maintains 33 container cranes in six terminals. When added to the four cranes located at Global Marine Terminal in Bayonne, the New Jersey side of the Port boasts a berth capacity of nearly 4.8 million TEUs.[1] The combined 37 cranes at the two complexes provide an annual capacity of 4.9 million TEUs.

Container facilities at the Red Hook and Howland Hook Marine Terminals located within the City of New York have a combined berth capacity of 1.4 million TEUs. Eleven cranes have an annual

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[1] Since containers vary in size from 20 to 40 or more feet, a generally accepted way of expressing container capacity is in terms of twenty-foot equivalent units (TEUs). This method assumes all containers to be of a uniform twenty-foot length for measurement purposes.

capacity of nearly 1.6 million TEUs. Thus, the Port of New York and New Jersey has a total annual container capacity of approximately 6.5 million TEUs.

The Marine terminal facilities at New York/New Jersey are capable of handling a great deal of additional international container traffic. Notwithstanding the New Jersey capacity of 4.9 million TEUs, these facilities handled only 2.2 million TEUs in 1995. Even more dramatically, the New York facilities with an annual capacity of 1.6 million TEUs handled only .05 million TEUs in the same year.

A. ExpressRail

Rail operations at the Port Authority's New Jersey Marine Terminals (Port Newark and Elizabeth) generally consist of three services: conventional (boxcar, tank car etc.), vehicles (multi-level auto racks at the Marine On-Dock Automobile Rail Terminal), and intermodal (ExpressRail service). Conventional rail generally serves the tank farm, road salt, scrap, warehouse and similar tenants located in the marine terminal complex. By far greatest activity in terms of volume is the import/export containers, although the other rail services represent an important part of the Port's business.

Between August 19th and September 1st, 1991, the former Portside intermodal rail terminal was phased out and all double-stack rail activity shifted to an interim on-dock operation at the Elizabeth Port Authority Marine Terminal. Customer acceptance of this pilot project proved the concept and value of on-dock rail service by substantially reducing ship-to-rail drayage costs, enabling gateless, paperless transfer and providing same-day ship-to-rail container transfers.

Since opening, volume at ExpressRail has grown over 25% per year, necessitating an entirely new terminal with greater capacity and the ability to expand further. Even during planning and construction of the new facility, twice it was necessary to add capacity to the existing operation with temporary additions both in April 1994 and again in March 1995.

The new expanded ExpressRail on dock terminal at the Elizabeth-Port Authority Marine Terminal opened January 22, 1996. The $19 million project virtually doubled the port's rail terminal capacity to some 150,000 lifts annually, with expansion capability to double that amount again. As part of the project, the Port Authority also purchased state-of-the-art loading equipment including straddle carriers and reach stackers, to lift containers on and off trains. The facility handled nearly 105,000 containers in its first full year of operation.

Generally, ExpressRail operates one extended shift per day six days per week, unloading inbound (export) containers from rail cars in the morning and loading outbound (import) containers on the same cars in the afternoon. Because of scheduling and service factors, most weekdays there are as many as three separate train (block) arrivals at the facility; two from the midwest and one from Canada. One midwest train is routed through Pennsylvania, the others arrive over the vater level route.

When time permits, inbound trains may be placed by "road" crews since the new lead track into ExpressRail is able to accommodate six-axle power. Most of the time, ExpressRail cars are dropped in the nearby Port Newark yard and placed at the facility by one of the local switching crews stationed at the Port. It is also typical that more rail cars are needed for outbound (westbound) loading than are available from the inbound trains, so local crews are dispatched during the day to other regional yards to pick up additional empty equipment. Car supply has been a problem in 1997, and there is not always enough empty equipment available to meet the needs of the terminal. In these situations terminal management works closely with customers to coordinate outbound loads until the situation is resolved, with empty containers often taking the lowest priority.

Within the Newark-Elizabeth complex, containers are transferred between ships and ExpressRail by labor represented by the International Longshoremen's Association. Depending on the location and operating practice of individual customers, transfers within the marine terminal complex are made directly by straddle carriers or by drivers with power units ("yard hustlers") and chassis. Import containers received at ExpressRail are normally loaded to an outbound train the same day; export containers received from inbound trains are delivered to the marine terminals the same day.

Distances and train schedules between ExpressRail and major markets in the midwest, Canada and New England are such that virtually all containers arrive the second morning after departure. For example, containers on Monday night's train are available to customers in Chicago by 8:00 a.m. Wednesday morning.

The Port's rail business to/from Canadian points moves almost entirely through ExpressRail. The Canadian block is handled by Conrail as far as Selkirk, where it is picked up by the Delaware & Hudson (CP Rail) and transported to Montreal and Toronto. D&H also offers a single-line service for international containers between the Oak Island terminal and Canada via a combination of trackage rights and their proprietary line through Scranton. However, demand for this route is relatively small largely due to cost of drayage between the piers and the terminal. U.S. highway weight limits also play a role in inhibiting drayage between the Port and Oak Island since Canadian highway regulations allow heavier containers than are permitted in the U.S. By using rail, heavy containers moving through the Port may be legally transported to Canada, and the ExpressRail on-dock terminal eliminates drayage over local roads to reach Oak Island. Total volume through Oak Island is estimated as less than one thousand units annually.

B. Other Rail Operations

The Little Ferry terminal in Bergen County is owned by CSX Corporation and functions largely as a mini-land bridge terminal for Sea-Land as well as a domestic intermodal terminal for CSX Intermodal. Currently served only by the New York Susquehanna & Western Railroad, train schedules are oriented to Chicago and the west coast rather than to intermediate points or Canada. Sea-Land moves an estimated 15,000 waterborne containers annually between the Port and Little Ferry, about 55% being Exports.

Because of corporate volume contracts, large mini-land bridge ocean carriers such as Maersk Line match some of their waterborne business with available train capacity primarily at Croxton and South Kearney. Some "reverse-land bridge" containers (e.g. Europe to Los Angeles via the Port of NY/NJ) are moved this way, as well as some business to Chicago. Although it is not possible accurately to capture these statistics, it is estimated from prior work that as many as 10,000 of the Port's waterborne containers per year may move through terminals other than ExpressRail.

II. The Port's Economic Impact Upon the Region

I am attaching as Appendix A to this statement a document entitled Economic Impact of the Port Industry on the New York-New Jersey Metropolitan Region. This 1995 study was prepared by the Port Authority to assess the importance of the Port upon the regional economy, and is relied upon by the Port Authority in determining how to allocate funds and capital expenditures.

Since it is attached, I need not go into the study in depth. I will, however, mention its major findings. The port industry was responsible during the 1993 period for over $19 billion in regional sales; 166,500 jobs in the regional economy; $6.2 billion in regional wages; and over $0.5 billion in regional income and sales taxes. The impact of the port industry repre-

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sents a significant portion of the total regional economy. It is estimated that the port industry produced 2.0 percent of Gross Regional Product and 1.3 percent of total regional employment. By any measure, the port industry at the Port of New York and New Jersey is of vital economic concern to the region.

In addition to assessing the economic impact of the Port's current operations, the Port Authority has also identified the anticipated economic impact of the authorized $856 million investment in new facilities and equipment the Port Authority slated for the region's Port over the 1997-2001 capital plan. These investments are geared to accommodate future growth and the adoption of changing technologies in the port industry. In annual terms, this new Port Authority capital investment will contribute approximately 9,925 jobs generate over $1 billion in regional sales, and account for $340 million in regional wages in 1997 dollars.

Moreover, as a vital component of the region's transportation infrastructure network, the Port helps better our market access and business environment relative to competing regions. In addition, the Port gives global reach to manufacturing firms in the two states totaling more than $12 billion annually in manufactured goods that are shipped by water.

III. Port and Rail Competition for International Traffic

Anyone even remotely familiar with the movement of international traffic is aware of the intense competition that exists among the various ports through which this traffic can move.

Some traffic, because of the proximity of the origin or destination to a particular port, can be said to be "captive" to a port. But, even then there are examples too numerous to mention of traffic moving through a port even though it originated or terminated within a competing port's local region.

The North Atlantic is, in my opinion, the most competitive of all of North America's port ranges. The number of U.S. ports, coupled with the Canadian port competitors of Montreal and Halifax, the interstate highway system and the several rail carriers serving these ports offer ocean carriers and shippers an plethora of choices as to how to route their international shipments.

Within the North Atlantic range, each of the Applicants in this proceeding current focus their efforts to attract international business at one port. Norfolk Southern concentrates on the only port it serves in the range Norfolk. CSX seeks to move traffic primarily through Baltimore, and Conrail concentrates its efforts at New York/New Jersey. Accordingly, the three Applicants currently compete with each other at those respective ports and the ports benefit from their "geographic" competition.

Conrail and the Port Authority have become very effective partners in their efforts to attract international traffic moving to and from the Port by rail. Beginning in the mid-1980s, the Port Authority began a focused effort to increase rail movements to and from the Port. The tonnage assessment collected by the ocean carriers to fund longshore fringe benefit costs have been reduced with respect to containers moving beyond 260 miles from the Port. This has made the Port more attractive for the inland, competitive container movements that can and do move by rail. Similarly, the Port Authority introduced its container incentive program which offered financial incentives for containers moving more than 260 miles by rail to and from the Port. Collectively, these actions reduced the cost of inland container movements by approximately $150 per unit.

Despite an improved rail cost structure, service levels were lacking. An extensive examination of rail issues to identify strategic alternatives led to greater partnering with Conrail to attract new rail traffic to the region. A study of rail service needs in 1990 identified the region's line-haul rates and ship-to-rail transfer costs as disproportionately high relative to competitor ports. Furthermore, the analysis indicated that the Port would benefit from consolidation of the dispersed New Jersey rail terminal activity in a single modern facility designed to reduce costs of intermodal transfers.

In may 1991, Conrail introduced doublestack rail service from the Port to Chicago which created line-haul cost efficiencies that were passed onto customers in reduced rates. Later in 1991, Conrail and Canadian Pacific joined to provide direct service from the Port to Montreal and Toronto. With service and line-haul costs vastly improved, terminal efficiency remained the missing ingredient in the Port's rail strategy.

In August of 1991, the Port Authority and Conrail took the first steps to address the issue of terminal efficiency and ship-to-rail transfer costs. Conrail's primary rail operation was relocated from the outdated Portside Yard immediately west of the Port to an interim on-dock facility adjacent to the vessel berths of the Elizabeth Port Authority Marine Terminal. The interim facility was created by the Port Authority taking back approximately five acres that had been leased to Maher Terminals. The five acres were then leased back to Maher on a month to month basis, and Maher operated the interim facility using ILA labor and performed train loading and unloading services for Conrail. Despite less-than-optimal operational conditions attributable to track limitations and storage constraints, the interim terminal ExpressRail facility achieved the desired effect of reducing the time and cost involved in intermodal transfers. The cumulative result of the rail strategy was to enable the Port to enjoy a cost advantage to the Midwest over competitors in Montreal, Baltimore and Norfolk.

As I discussed previously, ExpressRail has grown from its interim facility beginnings to an expanded permanent facility that in turn is scheduled to be expanded yet again.

The rail activity at the Port reflects the success of the combined Port Authority/Conrail efforts. In 1991, the Portside Yard handled approximately 20,000 containers. ExpressRail handled its 100,000th container in October of 1993, its 200,000th container in March of 1995, its 300,000th container in

May of 1996 and its 400,000th container in March of 1997. In 1996 its first full year of operation, ExpressRail handled some 105,000 containers and in 1997, 130,000 containers.

Along with this substantial growth in rail traffic, some capacity problems have begun to appear. As I will discuss below, very real yard capacity constraints are right around the corner for the North Jersey area. An independent Conrail could be expected to make the necessary investments to advance the capacity of its major port. I am not so sure about the NS and CSX that each has a substantial presence in ports that compete with New York/New Jersey.[2]

IV. Rail Congestion Problems

It is no secret that Conrail has, as a matter of sound business judgment over the past several years, "rationalized" its

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[2] I am advised that the Applicants have entered into certain stipulations with the Port Authority. Specifically, the stipulations provide:

"1. Conrail has made investments in its rail lines and related facilities to enhance its capacity to handle efficiently waterborne intermodal export-import traffic moving through the Port of New York and New Jersey, which has been a major ocean port for Conrail.

2. The ability of a rail carrier to handle such traffic efficiently and profitably can be constrained by physical capacity limits, such as the size of terminals, and by operating practices.

3. Were Conrail to remain an independent company it is reasonable to expect that over the next several years it would (a) make further such investments if increased demand for its rail services to handle such traffic appeared likely to exceed its capacity to do so efficiently, the likely return warranted such investments, and the necessary cash to make such investments was available, and (b) continue to identify and where practical implement reasonable, economic changes to its operations."

Based upon my experiences with Conrail, I have no doubt but that such investments in rail operations at New York/New Jersey would be made in the future as they have been made in the past.

rail operations and facilities at New York/New Jersey. Conrail has successfully eliminated the duplicative terminal and track facilities that were necessary to service its predecessor railroads. The Port Authority is obviously concerned that the rationalization process may have so reduced the rail facilities that the North Jersey area, referred to by Applicants as the North Jersey Shared Asset Area, may have insufficient rail infrastructure to support the efficient operations of two line haul carriers and one terminal carrier in place of Conrail. In fact, our analyses show that, given the port cargo projections we have for the New York/New Jersey regional marketplace even without regard to the increases traffic projections expressed by the Applicants in the Application, following the acquisition of Conrail serious operational issues and deficiencies loom for the Region's freight rail and intermodal terminal network.

The regional marketplace for rail intermodal traffic totaled about 1.024 million containers in 1996. International cargo volumes moving by rail numbered 132,000 units; domestic cargo by rail (including mini-land bridge service from the West Coast ports) totaled 892,000 units. Port Authority projections of future freight demand are based both on the growth of the Region's consumer market and in export activity. Over the next ten years, we anticipate a 3.5 percent annual growth rate in container volume to satisfy regional consumer demand, and based on the rapid gains of our ExpressRail and growth in global trade, a better than 5 percent annual growth in international container traffic moving by rail. Overall, in ten years hence, this would require regional intermodal terminals to handle an additional 325,000 domestic containers and more than 100,000 international containers.

However, based on information contained in the 1997 IANA Rail Intermodal Terminal Directory, our analysis shows that the New york/New Jersey Region is rapidly running out of rail terminal capacity. Indeed, international cargoes will have to compete directly with domestic service for this spare capacity. After the ExpressRail terminal, which operates at about 85 percent capacity, the next largest handler of international container cargoes, including mini-land bridge containers, in the Region is Croxton Yard which has been assigned to NS. Croxton currently operates at full capacity - there is no room for additional container traffic.

Furthermore, many of the largest terminals in the CSAO operate at or near capacity with no room for expansion. This would include North Bergen (at 100% of capacity), E-Rail (at 90% of capacity) Kearney (at 90% of capacity) Little Ferry (at 90% of capacity), and non CSX or NS owned terminals at Resource International and APL's Kearney facility (both also at 90% of capacity). Terminals that have the most excess capacity (CP's Oak Island Yard and Harlem River Yard) can provide only limited service because of restrictive trackage rights, operational difficulties, and high drayage costs from the port.

Terminal capacity problems are not the only impediment to movements by rail within the CSAO. Important operational issues such as dispatch and train switching through the CSAO may obstruct terminal access and freight market growth. For example, service to ExpressRail will also have to traverse a significant length of a congested CSAO district. Similarly, increased north-south traffic projected by CSX to arrive at Little Ferry will also have to negotiate the length of the CSAO.

V. Conclusion

In my opinion, the experience of the Port Authority and the New York/New Jersey region with only one rail carrier having unrestricted assess to the territory is far from ideal. On the other hand it has had certain beneficial results. Conrail has competed for international traffic, particularly that traffic moving to and from the Midwest and Canada, in an aggressive manner. This Conrail competition has clearly helped New York/New Jersey increase rail movements through the Port.

At the same time, the prospect of two efficient carriers serving the region and the Port includes real potential benefits. For those benefits to be realized, however, these carriers must invest in the region and operate here in a way that will overcome the very real shortcomings in terminal capacity and Shared Assets operating problems that I have noted above. Thus, my opinion is that until the questions I have raised are answered, I must reserve my judgment as to the relative merits of the proposed transaction, and I will of course advise the Port Authority accordingly.

VERIFICATION

Lillian C. Borrone, being duly shown, deposes and says that she has read the foregoing statement and that the contents thereof are true and correct to the best of her knowledge and belief.

Lillian C. Borrone

Lillian C. Borrone
Director
Port Commerce Department

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

Joan Mullaney

Notary Public
Commission Expires

JOAN MULLANEY
Notary Public, State of New York
No. 41-4700210
Qualified in Queens County
Commission Expires May 31, 19~~98~~ 99

Economic Impact of the Port Industry on the New York-New Jersey Metropolitan Region

Prepared By:
Economic Impacts Division
Office of Economic and Policy Analysis
Port Authority of New York & New Jersey

For
The Port Department

July 1995

THE PORT AUTHORITY OF NY & NJ

Study Conducted by the Economic Impacts Division, Office of Economic & Policy Analysis

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TABLE OF CONTENTS

EXECUTIVE SUMMARY

The Port of New York-New Jersey remains a premier gateway for the nation and a major asset to the region's economy. Although not as visible as it was many years ago when the region's shipping activity was concentrated at the congested city waterfront, the port's operations contribute in many ways to the region's economic health and standard of living.

The impacts generated by the port industry span many sectors of the region's economy. The actual handling of cargo which is concentrated in marine terminals and piers along the waterfront is only a part of the many activities that are linked to the port. Activities that take place on railroad and truck lines, at related inland warehouses and freight forwarding facilities, as well as in downtown offices that handle the daily financing, insurance, and related government services, are all integral aspects of the direct port industry. The purpose of this report is to quantify the linkages between these direct port industry activities and the regional economy and to document the port's economic contributions to the New York-New Jersey metropolitan region.

Major Findings

Analysis, using the Port Authority's Regional Input-Output Model, showed that based on 1993 activity levels (in 1994 dollars), the Port Industry was responsible directly and indirectly for:

- Over $19 billion in regional sales[1]
- 166,500 jobs in the regional economy
- $6.2 billion in regional wages
- Over $0.5 billion in regional income and sales taxes

The impact of the port industry represents a significant portion of the total regional economy. It is estimated that the port industry produced 2.0 percent of Gross Regional Product and 1.3 percent of total regional employment.

Other Contributions to the Regional Economy

Beyond the economic impacts generated by the port industry via its linkages to other industries in the regional economy, the Port of New York-New Jersey is an important asset to this region in other respects:

- The existence of the port is essential for other regional industries that are significantly dependent on direct access to a port and waterborne shipping. These industries, such as scrap and waste materials, petroleum refining and sugar cane refining, employ a total of 17,340 in the region, generating a total payroll of over $0.8 billion, and sales

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1 All dollar figures are reported in 1994 Dollars.

of $7.3 billion. Through the multiplier process, these industries generate 32,310 total jobs, $1.4 billion in wages, and $10.0 billion in regional sales.

- In addition to the impact of the port's current operations, the port must also gear up for future growth and changing technologies which require heavy investment in facility construction and equipment. Expressed in annual terms, capital investments by the Port Authority and tenants in marine facilities, generated a total of 1,412 jobs, $0.053 billion in wages, and $0.148 billion in sales.

- The port is a major component of the regional economy and the regional infrastructure network, and as such, its existence leads to a number of positive effects. These include increased business opportunities and improvements in the regional business environment, improved access to markets, generally lower consumer costs, and transportation benefits such as reduced highway congestion.

Including the impact of the port industry, port dependent industry, and capital spending, the Port of New York-New Jersey stimulated a total of 193,390 jobs, over $28 billion in sales revenues, $7.5 billion in wages, and $0.6 billion in state and local taxes in the 17-county metropolitan region. These port industry impacts represent a significant contribution to the regional economy, accounting for 3.3 percent of the Gross Regional Product and also generating about 1.6 percent of regional employment.

SECTION 1: INTRODUCTION

The New York-New Jersey metropolitan region's preeminence in international trade and commerce stems from the activity of its port. Beginning with European settlement of the region, and for many decades thereafter, the arrival of a ship in port was a great occasion. In those simple times, everyone knew that ship arrivals benefitted the community, by providing new stock for merchants' shelves, activity and jobs at marine terminals and business for exporters and importers.

Then, as now, the unloading, and storage of cargo, provided numerous employment opportunities. Back then, much of the region's shipping activity was concentrated at the congested city waterfront. With the advent of containerization, this activity shifted to more spacious, less populated, areas. Consequently, the port has become less visible, and unlike the activities of the region's airports which are directly observed by millions of travellers every year, the region's waterborne trade was removed from the mainstream of everyday experience. Even though the port's contributions to the New York-New Jersey metropolitan region are not as apparent as they were in earlier periods, the industry remains a vital component of the region's economic base.

The purpose of this report is to quantify the linkages between the port and the regional economy and to document its economic contributions to the New York-New Jersey metropolitan region. It is the third in a series of reports documenting the economic impact of the port industry on the regional economy. While the study was designed to be comparable to the earlier 1987 study in terms of data collection and analysis, its scope is different. In addition to the economic impact of the port industry, this study presents the economic impact of port-dependent industries and capital expenditures made by the Port Authority and its tenants in port facilities.[2] It also explores certain qualitative aspects of the cost and benefits of the regional port system. The report focuses on data for 1993 and is not a chronological study of the industry. All economic impact results are reported in 1994 dollars.

The report is divided into seven main sections. This introduction sets forth the background and purpose of the report, defines the port industry and develops conceptual linkages to the regional economy. Section two discusses the components of the port industry. Section three presents the results of the economic impact analysis which quantify the port industry's many contributions to the region. The fourth section presents the economic impact of port-dependent industries. Section five presents the economic impact of port investment by both the Port Authority and port tenants, and section six is a summary of all impacts of the port industry. The final section looks at additional non-quantified benefits of the port, and takes a look at associated costs.

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2 Capital expenditures made by the port-dependent industries are not included in this study.

Definition of the Port Industry

The port industry is defined as any regional economic activity that is directly needed for the movement of waterborne cargo. This includes not only land and waterside activities, but also documentation, financing, brokering and other essential services that are directly required for the movement of each ton of cargo. In addition, services that are performed in this region which are directly related to the physical movement of waterborne trade through other ports are included as an integral part of the port industry.

Specifically, the industry has been defined as firms which:

- Provide products and services involved in the transportation of cargo through all terminals of the Port of New York-New Jersey and between the Port and an inland destination/origin.

- Provide major products and services directly required for the conduct of international trade, to companies which transport cargo through the Port of New York-New Jersey.

- Provide warehousing and distribution services for cargo shipped through the Port.

- Directly provide ocean transportation, local water transportation or trade related services for cargo moving through ports other than the Port of New York-New Jersey.

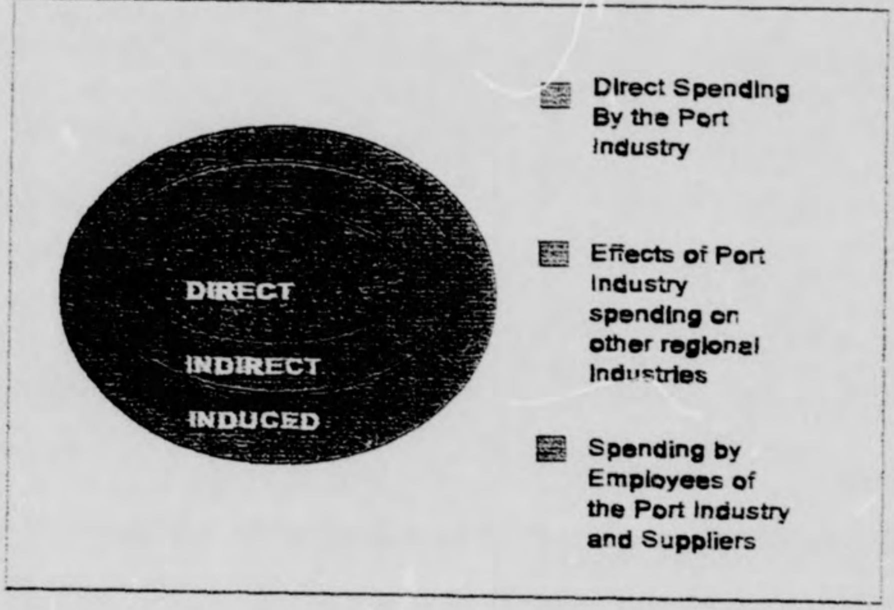
- Passenger carrying vessels and firms providing services for passengers are not included as a part of this analysis.

The activities of firms which provide support services to the port industry (i.e., ship repair, chandlers, truck repair, automotive insurance), are not included as direct impacts; however, the activities of these firms make up a large component of the indirect impact of the industry.

Linkage of the Port Industry to the Region's Economy

The economic activities of the port industry are linked to other industries in the regional economy. Port activities which take place at the waterfront, on board vessels, on railroad and truck lines, at related inland warehouses and freight forwarding facilities, as well as in downtown offices that handle the daily financing, insurance, brokerage and other direct needs of the industry, generate indirect and induced economic effects in the regional economy. Regional impacts occur when these companies which are directly engaged in maritime commerce purchase goods and services such a ship maintenance, repair services and fuel from other regional firms. These purchases lead to further inter-industry activity, the impact of which is called the indirect impact. Additionally, induced impacts occur when workers involved in direct and indirect activities spend their wages in the region. The ratio between total economic and direct impact is termed, the multiplier. The framework in Chart 1 above illustrates these linkages.

Chart 1
Multiplier Effect of the Port Industry



SECTION II: ECONOMIC IMPACT OF THE PORT INDUSTRY

This section will present the results of the economic impact study of the port industry in a number of different ways. First, the total direct, indirect and induced impacts will be examined. This will be followed by a discussion of impacts by handling mode. Next a breakdown of impacts by direction and trade (foreign vs. domestic) will be presented. All results are based on 1993 activity levels and are reported in 1994 dollars. Totals may not add due to rounding.

Economic Impact of the Port Industry

The direct impacts reported below include the activities of firms directly related to the movement of waterborne cargo. These include the jobs of people who perform the work, their wages, sales directly related to services involved in the movement of cargo by water, and related government activities. Direct impacts were determined for each of 13 specific industry sectors:

- Ocean Transportation
- Marine Cargo Handling
- Local Water Transportation
- Other Support Services
- Trucking and Warehousing
- Inland Rail Transportation
- Movement of Cargo by Pipelines
- Wholesaling
- Banking
- Insurance
- Freight Forwarding/Customs House Brokerage
- Federal Government
- State and Local Government

In addition to the direct impacts, the Port Authority's Regional Input/Output model, along with the methodology described in detail in Appendix 1, was used to estimate the indirect and induced economic impacts of the port industry on the NY/NJ 17-county metropolitan region.

In sum, the port industry was responsible for the following regional economic impacts in 1993:

- Total direct, indirect and induced regional sales of over $19.0 billion.

- 166,500 jobs in the region and $6.2 billion in wages.

- Regional income and sales taxes[3] of over $0.5 billion.

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[3] Tax revenues for the states of New York and New Jersey and the City of New York.

The impact of the port industry represents a significant portion of the total regional economy. It is estimated that the port industry produced 2.0 percent of Gross Regional Product and 1.3 percent of total regional employment in 1993.

Direct Activity

Of the 166,500 jobs generated by the port industry, 55 percent, or 92,320 were direct jobs. These jobs represent actual employment that can be counted or directly linked to cargo activity. Direct jobs were measured for the 13 sectors according to the methodology presented in Appendix 1. Of the total direct employment, 20 percent was due to marine cargo transportation and handling activities and 15 percent to the inland transportation of cargo. Another 43 percent of the total jobs were in the warehousing and wholesaling sectors, 20 percent in trade related services and 2 percent were government jobs. Table 1, on page 6, lists direct employment impacts by sector.

All of the direct impacts of the port industry are driven by the cargo moving through the regional port system. Shippers moved over 116.7 million metric tons of cargo through the regional port system in 1993 valued at approximately $9.4 billion.[4]

Indirect and Induced Impacts

The economic activities of the port industry are linked to those of other industries in the regional economy. The Port Authority Input/Output Model is used to identify the economic effects of direct port activities throughout the regional economy. These effects include the indirect impacts resulting from the expenditures by industries that supply materials and services to the port industry and the induced impacts generated by the expenditures of wage earners involved in both direct and indirect activities. Table 2, on page 7, lists a number of economic sectors with indirect and induced impacts. All told, the indirect and induced effects of the port industry accounted for more than $8 billion in regional sales. These sales produced 74,180 jobs with over $2 billion in wages. These jobs represented 45 percent of the employment generated by the port industry.

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4 All dollar values are in 1994 dollars.

Table 1
Direct Employment in the Port Industry by Sector

SECTOR	DIRECT JOBS	PERCENT
Marine Cargo Transportation and Handling		
Ocean Transportation	10.579	11.46%
Marine Cargo Handling	5.831	6.32%
Local Water Transportation	1.200	1.30%
Other Support Services	883	0.96%
Subtotal	18,493	20.03%
Inland Transportation Activities		
Trucking	11.420	12.37%
Rail Transportation	2.240	2.43%
Pipelines	7	0.01%
Subtotal	13,667	14.80%
Wholesaling and Warehousing Activities	40.000	43.33%
Trade Related Services		
Banking	7.230	7.83%
Insurance	1.164	1.26%
Freight Forwarding and Customs House Brokerage	9.723	10.53%
Subtotal	18.117	19.62%
Government		
U.S. Customs Service	1.000	1.08%
Other Federal Government	331	0.36%
Port Authority of New York/New Jersey	565	0.61%
Other State and Local Government	147	0.16%
Subtotal	2.043	2.21%
Total	92.320	100.00%

It is interesting to note how many different industries indirectly benefit from the sales of firms involved in moving waterborne cargo. Overall, firms in over 470 economic sectors can attribute at least a small portion of their total sales to the port industry. Most of these firms are involved in business support and service activities, however: over $0.7 billion in regional manufacturing sales resulted from the port industry in 1993. In sum, almost 4,700 regional manufacturing jobs are indirectly linked to the port industry. Not only are longshore jobs affected when the port prospers, but so are the jobs of metalworkers, textile workers, commercial printing workers, and plastics manufacturing workers. In fact, the port industry touches almost every single sector in the region's economy.

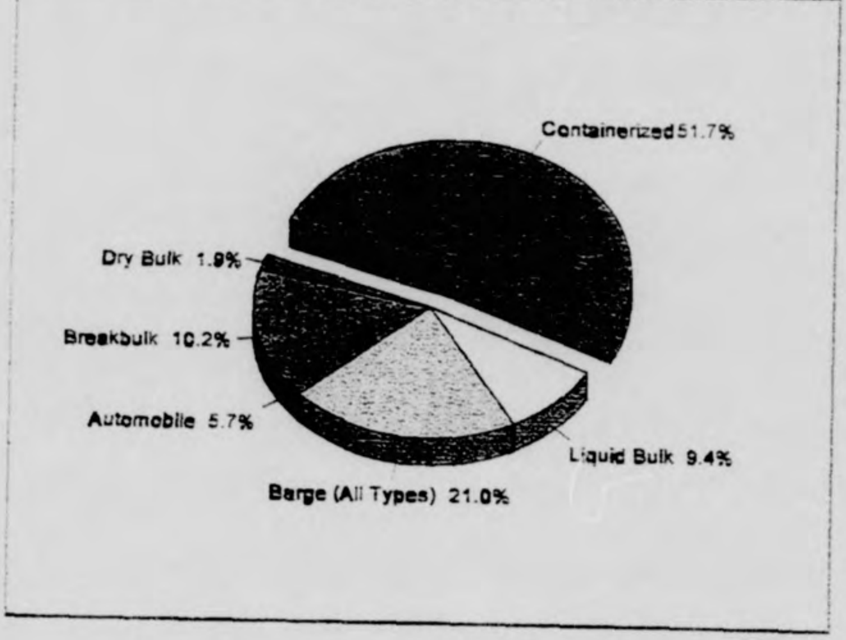
Table 2
Major Indirect and Induced Impacts of the Port Industry

SECTOR	EMPLOYMENT	SALES (Million $ 1994)
Other Transportation	12,098	2,069
Wholesale & Retail Trade	12,096	805
Business Services	11,573	1,163
Real Estate	9,546	1,083
Eating & Drinking Places	6,528	275
Medical & Educational Services	5,473	415
Personal Repair Services & Hotels	4,862	355
Communications	2,970	491
Printing & Publishing	1,854	220
Government	1,723	168
Utilities	1,555	540
Truck & Auto Repair Services	1,373	143
Amusements	504	72
Shipbuilding & Repair	169	14
Food & Kindred Products	139	22
Apparel Manufacture	49	5
Other	1,668	225
Total Indirect and Induced Impacts	74,180	8,065

Economic Impact by Cargo Handling Mode

The total impacts calculated above are based on aggregate cargo handled through the region's port facilities including both general and bulk cargoes. General cargo include containerized cargo, breakbulk cargo and automobiles. Containerized cargo are commodities that arrive at the terminal

Chart 2
Direct Jobs By Handling Mode (92,320 Jobs)



in individual units and are then packed into containers, e.g., clothing, plastics, footwear, and electrical machinery. Breakbulk cargo are commodities that are handled in individual units not packed in containers, e.g., heavy machinery, lumber, steel and iron. Bulk cargo consists of free flowing, either dry or liquid commodities, moving in large homogenous loads, e.g., grain, sand, gravel, cement, and petroleum.

The regional port complex handled a total of 116.7 million metric tons of cargo in 1993, of which 14.4 million tons, or 12.3 percent, consisted of general cargo, and 102.3 million tons (almost 88 percent) was bulk. Table 3 below lists cargo moved through the port in 1993 by handling type.

Table 3
Cargo Handled in the Region by Handling Mode (1993)

Handling Mode	Cargo Volume (Thousand Metric Tons)	Percent	Cargo Value (Million $ 1994)	Percent
Containerized	11,055	9.47%	47,400	50.29%
Breakbulk	2,591	2.22%	9,698	10.29%
Automobile	759	0.65%	7,970	8.46%
Subtotal - General Cargo	14,405	12.34%	65,068	69.04%
Dry Bulk	3,574	3.06%	1,010	1.07%
Liquid Bulk	24,897	21.33%	5,610	5.95%
Barge (All Types)	73,867	63.27%	22,560	23.94%
Subtotal - Bulk Cargo	102,338	87.66%	29,180	30.96%
Total Cargo	116,743	100.00%	94,248	100.00%

The movement of general cargo, on average, has a greater impact on the regional economy than does bulk cargo. For example, containerized cargo, which accounted for only 9.5 percent of the total by weight directly contributed 47,760 jobs to the region, verses 29,870 for all bulk cargoes combined. Overall, general cargo accounted for 67.6 percent of the direct employment impact of the port industry, with containerized cargo contributing the largest share of this. Breakbulk cargo generated just 9,380 jobs, (10.2 percent) and motor vehicles produced 5,310 jobs or 5.7 percent.

The largest of the bulk categories was barge cargo (mostly domestic in nature) which generated 19,420 jobs. Table 4 lists all of the direct impacts of the port industry by handling mode.

Table 4
Direct Economic Impact by Handling Mode

Handling Mode	Employment	Pct.	Wages ($ Million)	Pct.	Sales ($ Million)	Pct.
Containerized	47,760	51.73%	1,955	51.77%	5,650	51.69%
Breakbulk	9,380	10.16%	382	10.12%	1,160	10.61%
Automobile	5,310	5.75%	216	5.72%	622	5.69%
Dry Bulk	1,730	1.87%	70	1.85%	229	2.10%
Liquid Bulk	8,720	9.45%	368	9.75%	1,196	10.94%
Barge (All Types)	19,420	21.04%	785	20.79%	2,073	18.97%
All Cargo	92,320	100.00%	3,776	100.00%	10,930	100.00%

Economic Impact by Direction

Trade within the Port of New York-New Jersey was not balanced, particularly in the international trades. In terms of volume, international imports outweighed exports by 5 to 1 (the ratio for general cargo trade is 1.5 to 1.) Exports, however, tend to be more valuable than imports with the divergence between the two being reduced to only 2 to 1 in value terms. Volumes of domestic cargo, on the other hand, are more balanced, with exports slightly outweighing imports. These differences between the directional components of foreign and domestic cargo tend to balance each other, leading to a 60/40 split between imports and exports for the harbor as a whole. Table 5, on page 10, presents cargo handled in the region by import and export.

Table 5
Cargo Handled in the Region by Direction (1993)[5]

Direction	Cargo Volume (Thousand Metric Tons)	Percent	Cargo Value (Million $ 1994)	Percent
Import				
Domestic	36.510	31.27%	12.998	13.79%
International	33.179	28.42%	39.350	41.75%
Subtotal - Import	69.689	59.69%	52.348	55.54%
Export				
Domestic	40.499	34.69%	23.842	25.30%
International	6.555	5.61%	18.058	19.16%
Subtotal - Export	47.054	40.31%	41.900	44.46%
Total Cargo	116.743	100.00%	94.248	100.00%

Chart 3
Direct Jobs by Direction (92.320 Jobs)

The economic impact of the port industry tends to reflect both the value of cargo handled as well as volumes. In terms of jobs, the economic impact of import cargo is about 58.300, (63 percent) compared with 34.000 for exports (37 percent). This basically mirrors the 60/40 percent tonnage split. This does not, however, directly lead to the conclusion that the tonnage of cargo handled is more important than value in terms of job development, but rather reflects the high proportion of domestic export cargo, most of which is handled by barge (see foreign vs. domestic below).

5 Note that domestic cargo traveling outbound is classified as an export, inbound cargo as an import. Interharbor cargo traveling downbound (toward the sea) is classified as an export, upbound (away from the sea) as an import.

The differences between the makeup of import and export cargoes lead to differences in the makeup of their relative economic impacts. Of the total jobs attributed to export cargo, 18 percent are due to inland transportation, 20 percent from water transportation and cargo handling, 38 percent for wholesaling and warehousing, 22 percent for trade related services and 2 percent for government. Jobs for import cargo differ in that only 13 percent are related to inland transportation, 18 percent for trade related services, and a full 46 percent are for wholesaling and distribution. This is because a higher proportion of import cargo goes through the distribution channel than exports. Table 6 lists total impacts by direction.

Table 6
Direct Economic Impact by Direction

Direction	Employment	Pct.	Wages ($ Million)	Pct.	Sales ($ Million)	Pct.
Import	58.280	63.13%	2.386	63.19%	6.926	63.37%
Export	34.040	36.87%	1.390	36.81%	4.004	36.63%
All Cargo	92.320	100.00%	3.776	100.00%	10.930	100.00%

Economic Impact: Foreign vs. Domestic Cargo

Even though the Port of New York-New Jersey is one of the nation's leading ports for foreign trade, the majority of the volume handled in the region is domestic cargo. Most of this trade consists of the movement of petroleum and petroleum based products from refineries to other points in the harbor, or the movement of construction materials and garbage throughout the region by barge. Another important component of the domestic trade is cargo movements between mainland United States, and overseas territories such as Puerto Rico and the US Virgin Islands. A smaller, though important, part of the domestic trade consists of the intercoastal transportation of containerized cargo and petroleum products between New York and other Atlantic coast ports.

Table 7, on page 12, shows the breakdown of cargo handled in the region by domestic vs. international trade. Domestic cargo accounts for almost 66 percent of the total because it consists mostly of bulk items such as petroleum, sand and garbage. International cargo, on the other hand, contains a higher percentage of high value items such as automobiles and containerized consumer products, therefore, it accounts for the majority of the cargo value.

Table 7
Foreign vs. Domestic Cargo Handled in the Region (1993)[6]

Trade	Cargo Volume (Thousand Metric Tons)	Percent	Cargo Value (Million $ 1994)	Percent
Domestic	77.009	65.96%	36.840	39.09%
International	39.734	34.04%	57.408	60.91%
Total Cargo	116.743	100.00%	94.248	100.00%

As was stated above, in the discussion about imports and exports, economic impacts tend to be driven by both the labor intensive general cargo trades, and by cargo value. Because of this, international cargo accounts for a higher percentage of the direct economic impact (about 66 percent), even though there is far less of it. In employment terms, international cargo generated 59,090 jobs, compared to only 33,230 for the domestic trades. Table 8 lists direct impacts for both trades in employment, wage and sales terms.

Table 8
Direct Economic Impact: Foreign vs. Domestic

Trade	Employment	Pct.	Wages ($ Million)	Pct.	Sales ($ Million)	Pct.
Domestic	33.230	35.99%	1.360	36.02%	3.698	33.83%
International	59.090	64.01%	2.416	63.98%	7.232	66.17%
All Cargo	92.320	100.00%	3.776	100.00%	10.930	100.00%

Comparison of Economic Impacts, 1987 and 1992

Table 9, on page 13, compares the impacts calculated in this analysis with those of the last study of the economic impact of the port industry which used data from 1987. The volume of cargo handled by the regional port industry declined significantly between the two study years. Overall, the volume of international cargo handled over the region's wharves was 24.3 percent less in 1993 than in 1987. This was due mainly to large decreases in imported petroleum products. Companies imported over 39 million metric tons of bulk cargo through the New York Customs District[7] in 1987.

[6] Please note that domestic cargo includes Puerto Rico and Overseas US Territories.

[7] The New York Customs District includes the Port of Albany, New York.

This was down to just 25.7 million metric tons in 1993. This 24 percent decrease was largely due to major reductions in the importation of residual fuel oils, which are used as feedstock for electrical power plants (down by 49 percent or almost 7.6 million tons), and gasoline (off by 63 percent or 6.2 million tons). While bulk petroleum imports were off dramatically, both bulk exports, and general cargo volumes remained relatively flat between 1987 and 1993.

The sizable decrease in bulk cargo imports, along with productivity increases throughout the port, have led to significant reductions in the economic impact of the port industry. Overall economic impact, or sales, were 11.2 percent smaller in real terms. This decrease led directly to the smaller number of jobs in 1993, when compared to 1987. It is important to note that neither economic impact or jobs fell as precipitously as did cargo volumes during this same period. This is due to the fact that liquid bulk cargoes do not create nearly as much economic impact per ton as do products handled either in containers, breakbulk form or even as dry bulk.

Table 9 shows a brief comparison of the job impacts between the 1993 and 1987 study periods. Total jobs in the current period are slightly lower than was the case in 1987. Overall, the port industry generated 14,300 fewer jobs (7.9 percent), in the regional economy than it did just six years ago. Direct jobs were down from 1987 by 14 percent. Some of this decrease is due to the fall in petroleum imports; however, much of it is due to changes that have occurred in both the industry and the regional economy.

Jobs in the physical handling segment of the industry have declined by 24.4 percent. This large decrease is due primarily to losses in ocean transportation headquarter jobs and continued consolidation in the industry, continued attrition among longshoremen, the tugboat strike of 1989, and the recession of 1989-1992 which led to reductions in local water and other support activities.

Table 9
Regional Economic Impact of the Port Industry, 1987 vs 1993

Sector	1987 Jobs	1993 Jobs	% Change
Physical Handling	24.500	18.510	(24.4)
Inland Transportation	20.000	13.700	(31.5)
Trade Related Services	21.000	18.120	(13.7)
Wholesaling & Warehousing	40.000	40.000	0.0
Government	2.000	2.040	2.0
Total Direct	107.500	92.370	(14.0)
Indirect & Induced	73.300	74.130	11.3
TOTAL	180.800	166.500	(7.9)

The decrease in petroleum imports was partly responsible for the 31.5 percent decline in inland transportation jobs; however, structural changes in both the industry and the economy (e.g. deregulation of the trucking sector and increases in intermodal rail movements) also contributed to this fall.

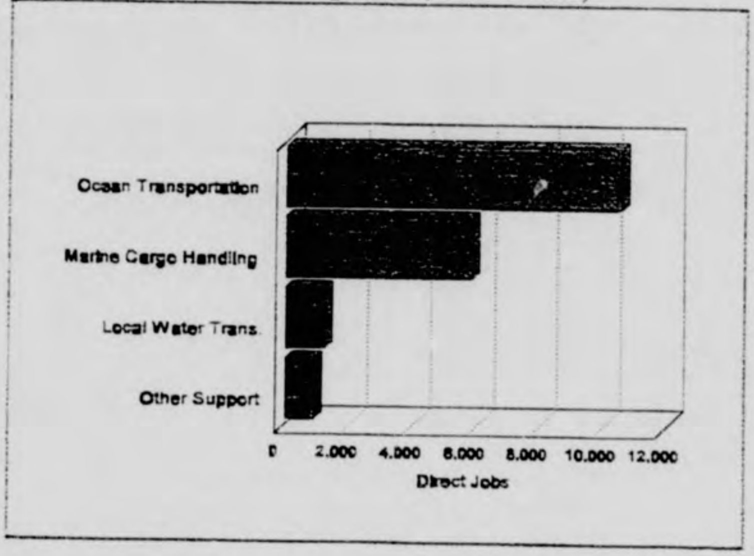
The trade-related services component dropped by 13.7 percent due to the drop in the volume of cargo handled at the port during this period. In addition, the severe regional recession of 1989-1992, during which overall regional employment declined by 8.6 percent, or 657,000 jobs, also impacted this segment of the industry.

Finally, although the direct component of the industry was smaller than in 1987, the number of indirect and induced jobs grew by 11.3 percent. This reflects a total change of 17.6 percent which reflects both productivity increases in the port industry and changes in the structure of the regional economy. In other words, in 1993, the port industry produced more services per worker than it did in 1987. In addition, both the industry and its workers spent more within the regional economy than they did in 1987.

SECTION III: DESCRIPTIVE COMPONENTS OF THE PORT INDUSTRY

The firms which make up the port industry can be divided into five major segments: physical handling, inland transportation, warehousing and distribution services, trade related services, and government agencies. These major segments can, in turn, be broken down into a number of sub-components, or industry sectors as described below.

Chart 4
Direct Physical Handling Jobs (18,510 Jobs)



The Physical Handling segment of the industry includes those firms which directly move cargo over the water, and handle cargo at the port facilities. Included in this sector are firms involved in ocean transportation such as steamship lines, shipbrokers and charters; firms involved in local water transportation such as tug and towboat operators and barge lines; stevedores and longshoremen; and firms and individuals who involved in specialized activities at the port such as samplers, surveyors and weighers. In addition the local harbor pilots are included in this segment of the port industry. The direct job impact of the physical handling segment of the port industry is shown in Chart 4 above. This segment generated just over $3.4 billion in direct sales and $881 million in direct wages.

Table 10
Direct Impacts of the Inland Transportation Segment of the Port Industry

Sector	Employment	Pct.	Wages ($ Millions)	Pct.	Sales ($ Millions)	Pct.
Trucking	11,420	83.6	341.7	81.9	1,153.9	85.8
Railroads	2,240	16.4	75.1	18.0	187.1	13.9
Pipelines	7	0.0	0.3	0.1	3.1	0.2
Total	13,667	100.0	417.1	100.0	1,344.1	100.0

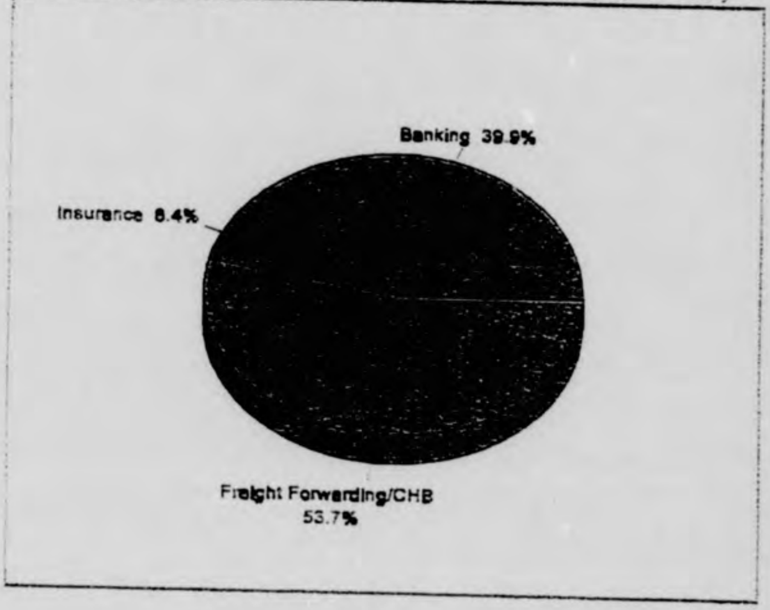
The inland transportation segment of the port industry is comprised of firms involved in moving cargo by land between the port and an inland destination within North America. Barge companies are not included in this industry segment, but are a part of the physical handling component of the port industry. Inland transportation firms are primarily engaged in the trucking, railroad and pipeline industries. Table 10, on page 15, lists the direct economic impact for these industry sectors.

The Wholesaling and Warehousing Services segment of the industry includes those firms which are engaged in storage and allocation services for goods moving over the docks and wharves of the port. Included in this segment are companies which operate general warehouses, refrigerated warehouses, bonded warehouses, tank farms, grain elevators, etc. In addition firms engaged in wholesaling and trading activities are included in this industry segment. The warehousing and distribution services segment of the port industry produces approximately 40,000 direct full time equivalent jobs in the region, generating over $1.6 billion in direct wages from sales of $3.8 billion.

The trade related services segment of the port industry consists of freight forwarding businesses, customs house brokers, bankers involved in financing both trade and investment in vessels, and marine cargo and hull insurance companies. Firms involved in trade related services generated $2,310 million in regional sales in 1993, generating over 18,117 direct jobs with almost $784 million in wages. Chart 5 shows the relative contribution of the three trade related services sectors.

Chart 5

Direct Job Impacts of Trade Related Services Sector (18,120 Jobs)



The government segment of the port industry includes those federal, state and local government activities which directly support the movement of waterborne cargo through the port. The major components of this segment are the U.S. Customs Service, the U.S. Army Corps of Engineers, the Port Authority of New York and New Jersey, and the Waterfront Commission of New York Harbor. In sum, the government segment provides $274 million in services to cargo moving through the port, and generates about 2,000 jobs with $91 million in wages.

SECTION IV: ECONOMIC IMPACT OF PORT-DEPENDENT INDUSTRIES

In addition to the industries that are directly involved in moving cargo through the port, there are other industries that generate regional economic impacts. These are industries that are significantly dependent on direct access to the port and waterborne shipping. Raw materials handled through the port are critical inputs for these industries, and without the port, these firms could not be located in the region. Examples of these firms include: petroleum refineries, sugar cane refining, electric utilities, and scrap and waste materials processing. Table 11 below shows the economic impact of these industries in the regional economy.

Table 11
Economic Impact of Port Dependent Industries

Impact	Jobs	Pct.	Wages ($ Million)	Pct.	Sales ($ Million)	Pct.	Taxes ($ Million)	Pct.
Direct	17,340	53.7	820	56.6	7,300	73.0	68.0	56.7
Indirect	14,970	46.3	630	43.4	2,700	27.0	52.0	43.3
Total	32,310	100.0	1,450	100.0	10,000	100.0	120.0	100.0

Port dependent industries directly employ 17,340 workers in the region, generating a total payroll of $820 million, and sales of $7.3 billion. Through the multiplier process, port dependent industries generate 32,310 total jobs, $1.4 billion in wages, and $10.0 billion in regional economic activity.

Chart 6
Direct Job Impacts in Port Dependent Industries (32,310 Jobs)

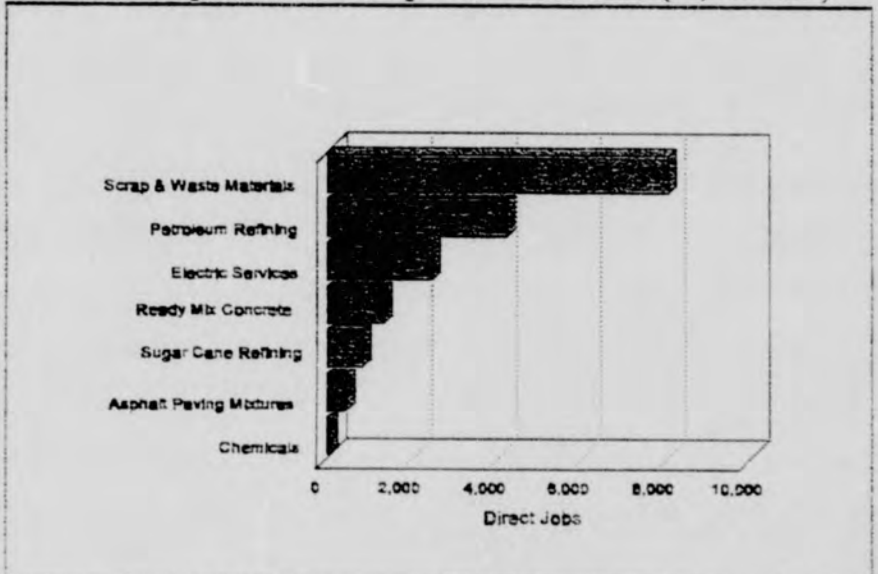


Chart 6 shows the distribution of direct jobs in port dependent industries. The scrap and waste materials industry is the largest in the region, followed by petroleum refining and electric utilities, with the chemical industry generating the least regional jobs.

SECTION V: ECONOMIC IMPACT OF PORT INVESTMENT

The impact of the Port Industry is not limited to current operations: the port must also gear up for future growth and changing technologies which require heavy investment in facility construction and equipment. As such, there are two levels at which impact should be measured. One is the economic impact of port operations: the other is the economic impact of port investment. So far, our analysis has focused on the economic impact of port operations. This section focuses on the impact of port investments by the Port Authority and tenants at Port Authority facilities.

Port Authority Facility Investments (1987-1994)

Analysis of Port Authority capital investment showed that over the 8-year period, 1987-1994, the Port Authority invested more than $507 million in marine facilities to improve the competitiveness of the Port of New York-New Jersey. These investments have improved access to the port, enhanced basic infrastructure, and upgraded terminal facilities.

As shown in Table 12 below, capital investments in the Port of New York-New Jersey by the Port Authority during the 1987-1994 period generated or supported a total of 10,180 jobs, $1.1 billion in sales, and $384 million in wages. Construction activity accounted for the majority of the impacts generated, about 63 percent of jobs. Non-construction jobs are mostly supporting jobs comprised of engineering, finance, Port Authority labor and benefits. On an annual basis, Port Authority capital investments over the 8-year period generated 1,272 jobs, $134.5 million in sales, and $48 million in wages in the regional economy.

Table 12
Economic Impact of Port Authority Capital Investments in the Port

Impact	Employment	Pct.	Wages ($ Millions)	Pct.	Sales ($ Millions)	Pct.
Construction	6,610	64.9	244	63.5	708	65.8
Non-Construction[8]	3,570	35.1	140	36.5	368	34.2
Total	10,180	100.0	384	100.0	1,076	100.0
Average	1,272		48		135	

[8] Non-Construction includes engineering, finance, Port Authority labor, and benefits.

Tenant Capital Investments

Exact figures for capital investments in port facilities by tenants during the 1987-1994 period were not available. Nevertheless, port tenants made significant investments in marine facilities. For example, during the 1991-1994 Port Authority capital plan window, it is estimated that tenants made investments of $40 million in port facilities. These investments were estimated to have generated a total of 700 jobs during the five-year period, $68 million in sales, and $23 million in wages. On an annual basis, this equates to 140 jobs, $13.6 million in sales, and $4.6 million in wages.

SECTION VI: SUMMARY OF PORT-RELATED IMPACTS

This section presents the total economic impacts of the Port of New York-New Jersey. The port directly stimulated 110,552 jobs, over $18 billion in sales revenues, $4.6 billion in wages, and $0.38 billion in state and local taxes in the 17-county New York-New Jersey metropolitan region during 1993. The total impacts across all three categories below are not additive because of the problem of double-counting among the indirect impacts. When the double-counting is eliminated, the Port of New York-New Jersey was responsible for a total of 193,390 jobs, over $28 billion in sales revenues, $7.5 billion in wages, and $0.6 billion in state and local taxes.

Table 13
Overall Impact of the Port Industry by Category

Category	Employment	Wages ($ Millions)	Sales ($ Millions)	Taxes ($ Millions)
Port Industry				
Direct	92,320	3,780	10,960	312
Total	166,500	6,220	19,024	514
Port Dependent Industries				
Direct	17,340	820	7,300	68
Total	32,310	1,450	10,000	120
Port Capital Spending[9]				
Direct	890	36	89	N/A
Total	1,410	53	148	N/A
Total Direct	110,550	4,636	18,349	380
Overall Total[10]	193,390	7,500	28,350	615

Overall activities linked to the port accounted for 3.3 percent of the Gross Regional Product, and direct jobs generated represented about 1.6 percent of total regional employment. Table 13 above lists both the direct and total impacts by category.

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9 Annualized data. Includes both Port Authority and tenant spending.

10 Adjusted to exclude all double-counting in the indirect impacts. Many of the indirect impacts accounted for as a part of the port industry are direct impacts of the port dependent industries, and vice versa.

SECTION VII: NON-QUANTIFIED BENEFITS AND COSTS OF THE PORT

Thus far, the analysis has focused on the regional economic impact of the port industry. The regional economic impact analysis presented in the preceding sections assesses the incremental changes in certain economic indicators -- jobs, wages, sales and taxes -- arising from the business transactions of the port industry. In addition to this, there are a number of effects that can be attributed to the port itself which go far beyond the value of the port to the Port Authority or to any individual person or firm, but accrue to the region as a whole.

Regional Cost/Benefit Analysis is a methodological tool employed by the Port Authority to determine, measure and monetize numerous benefits and costs associated with an industry such as the port. Regional effects, for the most part, cannot be attributed to a single individual or firm, but are the result of the entire port. For example, the existence of the port in the region allows raw materials, such as fuel oil, to be shipped into the region in bulk by water. This may reduce the need for truck trips utilizing the regional highway system to deliver these same products. Reduced regional air pollution and reduced automobile related accidents may be the beneficial result of this.

Section VII will examine the other effects (cost-benefit attributes) that accrue to the region due to the existence of the port itself. Although an actual cost/benefit analysis will not be presented at this time, the attributes will be examined qualitatively starting with a discussion of the social costs of the port to the region. Next, the benefit attributes will be examined, starting with the regional economic development benefits. This discussion will be followed by an examination of transportation benefits, and finally environmental benefits to the region.

Social Costs of the Regional Port System

Although the port of New York-New Jersey has a number of positive impacts, such as the creation of jobs, wages and taxes, these do not come without costs to some regional stakeholders. These effects in themselves may not be large, and are definitely not as large as the offsetting benefits; however, they must be taken into account in any discussion of the qualitative effects of the port on the region.

As a whole, the port is environmentally benign. In fact, many ports, especially those on the west coast, are havens for wildlife. If the port were not to exist, most of its negative effects would still exist in another context, and some of the positive impacts would not exist at all. There are, however, some regional environmental costs which must be considered. There is a general perception of the port as being a major contributor to regional water pollution; however, in general, the port is fairly benign to the water environment. Most pollutants, such as fecal chloroform, chlorine, potassium and nitrogen compounds, result from waste-water systems or farm operations. Others, such as silt, are natural, and petrochemicals and heavy metal contaminants come mainly from industrial operations. Since the enactment of the Oil Pollution Control Act of 1990 (OPA - 90) the port industry has had to contain and eliminate pollution caused by runoff from the facilities themselves. In addition, international regulations have virtually eliminated the discharge of pollutants from vessels in the harbor. While the existence of the port can lead to local oil and chemical spills from tankers, similar pollution would likely occur if these materials were to be brought into the region by truck or rail. Other specific effects such as increased solid waste, especially waste that is generated from ships and international cargo (considered by law to be contaminated) should be mentioned in this context.

Other opportunity costs of the port are economic in nature. The use of waterfront space by port facilities, especially in urban areas such as Manhattan, consumes land which may have better economic uses or could provide higher tax revenues to the municipality. The reuse of this space for other activities, such as commercial, residential or recreational development must be considered if these negative effects are to be reduced. In addition, the port may affect various segments of the society differently. For example, although the port has a positive impact on those who are employed there (i.e. longshoremen) it may be a detriment to residents of nearby neighborhoods, i.e., Red Hook Brooklyn, due to increased congestion, air pollution and noise.

Economic Development Effects

The mission of the Port Authority reflects the agency's desire to improve the economy of the New York metropolitan region. This desire is reflected in the regional cost/benefit analysis by the relative weight placed on economic development benefits. These benefits may be derived by consumers, producers, or government, and can be in one sector of the economy, or may be felt throughout the region.

The port is a major component of the regional economy and the regional infrastructure network, and as such, its existence produces a number of positive effects. These include increased business opportunities and improvements to the regional business environment, improved access to markets and generally lower consumer costs than would exist if it were not for the port.

One of the Port Authority's main goals in constructing and operating facilities is to attract new enterprises to the region. The regional port network is just such a facility. As was mentioned in Section III above, many businesses are located in this region specifically because of the access to waterborne transportation. In addition, many other businesses have located in the region since the port provides convenient links to suppliers and customers not only domestically, but throughout the world. This may, in turn, lead additional businesses to locate in the region, or to increase production at regional facilities. Other firms have located directly on port property to take advantage of specific benefits such as the Foreign Trade Zones.

In addition to lowering direct costs to regional businesses, the regional port system lowers costs to consumers as well. If cargo could not be imported through the Port of New York-New Jersey, but rather had to come via our nearest competitor, Philadelphia, the per container cost of imported goods would rise by approximately $250.00. This may not seem like much; however, a recent study by the Port of Philadelphia which examined the cost of imported alcoholic beverages found that moving this cargo to Philadelphia via the Port of New York-New Jersey added one percent to the final retail price of the average bottle of imported wine and liquor.[11] If a similar one percent "surcharge" were to be placed on all imported containerized cargo entering the New York-New Jersey region via the port, the cost to consumers would be approximately $160 million.

Transportation Effects

Many of the facilities owned and operated by the Port Authority of New York-New Jersey create sizable direct benefits to the regional transportation system. In addition to these direct benefits, many improvements to the transportation system will also result in indirect improvements in such other areas such as air and water pollution and regional productivity.

The port is a major component of the regional transportation system and a full analysis of its effects would undoubtedly highlight numerous positive impacts for all users. In general qualitative terms, the major transportation benefit of the port is a reduction in congestion on the regional highway network. If the Port of New York-New Jersey were not to exist at all, the citizens of this region would still need to be supplied with goods, not only from abroad, but from other regions of the country. Undoubtedly, many of these products would be brought in by air through the regional airport system; however, many products, especially bulky raw materials such as cement, sand, sugar and most importantly petroleum products and crude oil, would need to be brought into the region either by truck or rail. This would lead to a tremendous increase in the number of trucks on the regional highway network, which would in turn, lead to increased congestion. A specific example can illustrate this point. In 1993, almost 5 million metric tons of sand and gravel were handled over the docks of the port. If this cargo, which represents just four percent of the total cargo handled, had to be moved into and through the region by truck instead of by barge, an additional 278,000 annual truck trips (one way) would need to be made. The additional truck, rail and air traffic that would be needed if a significant percent of 116.7 million metric tons of cargo now handled by the port had to move through this region without water transportation, would undoubtedly be immense. Congested highways have many negative social impacts, ranging from increasing delays for individuals and firms using the system, to increases in air pollution, and higher maintenance costs.

The reduced highway congestion which can be attributed to the port leads to one of its main transportation benefits -- time savings. When congestion on the regional transportation system is reduced, so are travel times. These reductions in times allow both motorists and trucking companies

11 Testimony to the House Merchant Marine and Fisheries Committee, January 1993.

to better utilize both work and leisure time, a direct benefit to all users of the regional transportation system.

Environmental Effects

Although there is a general perception that the port is a major source of pollution, most direct water pollution sources have been eliminated or at least reduced in recent years. Additionally, regional dredging operations may actually lead to a generalized cleaning of the harbor, as contaminated sediments are removed from the environment.

Even if the port does not improve the quality of the local waterways, it may improve the habitat for local aquarian species. Throughout the United States, port facilities are quickly being overrun by wildlife. This is especially true on the west coast. The port does not directly harm terrestrial wildlife, and may actually provide an enhanced habitat for underwater life by providing areas between pilings for fish spawning, and for aquatic vegetation and bi-valves to grow.

Finally, as a result of the reduction in local truck traffic which may be caused by the port, there may be a concurrent reduction in regional air pollution. The port is a major industrial enterprise, and its cranes, yard equipment and the ships themselves create some level of air pollution. This pollution, however, must be compared, to the negative effects on air pollution that would occur if all of the commodities currently moved into and out of the region by water were to be moved by air, rail or truck.

APPENDIX I.
METHODOLOGY AND ASSUMPTIONS

The Economic Impact of the Port Industry begins with the definition of the industry to be studied. For the purpose of this analysis, the port industry is defined as:

1) Those firms providing the major products and services involved in moving cargo through the Port of New York-New Jersey and between the Port and a domestic inland destination/origin.

2) The port industry only includes firms providing services to cargo. (The passenger sector was not included in this analysis.)

3) Only firms located in the 17-county region were included.

The methodology that was used to determine the regional economic impact of this industry is described below.

DIRECT IMPACTS (JOBS)

The direct impacts include all employees in firms involved in the movement of waterborne cargo, whose jobs are directly related to this activity. These are the people who can actually be counted. Direct jobs were determined for each of 13 specific industries:

- Ocean Transportation
- Marine Cargo Handling
- Local Water
- Other Support
- Trucking and Warehousing
- Inland Rail
- Pipelines
- Wholesaling
- Banking
- Insurance
- Freight Forwarding/Customs House Brokerage
- Federal Government
- State and Local Government

Ocean Transportation: Direct jobs were obtained from the United States Department of Labor Employment Series (ES202) report. This report lists total insured employees in the region. (Self employed and non-insured individuals are not included; however, there are relatively few people not employed by major firms working in this sector).

Marine Cargo Handling: Direct jobs were obtained from the ES202 report. There are virtually no self-employed individuals in this sector. Most workers are ILA longshoremen.

Local Water Transportation: Direct jobs were obtained from the ES202 report. There are virtually no self-employed individuals in this sector. Most of these employees work for firms in the towing and barge industry.

Other Support Services: Direct jobs were obtained from the ES202 report and organizational membership rosters.

Trucking/Rail/Pipelines: Direct jobs for each of these three sectors were obtained in the same manner, and are all derived from the value of cargo moved as per the following formula:

(((87BEA*F&D)*IHM)*RPC)/OER

where:
BEA = Bureau of Economic Analysis
87BEA = % of a commodity's total value added in 1987 as developed by the Bur. of Econ. Anal.
F&D = is the total value of Foreign and Domestic Cargo
IHM = the percent of cargo handled by each mode (Rail/Truck/Pipe)
RPC = Regional Purchasing Coefficient from the Port Authority's I/O Model
OER = Output per Employee Ratio from the Port Authority's I/O Model

Step by step, the following calculations were performed:

☞ Foreign cargo statistics for 1993 were obtained from E&P's Strategic Information Division. These figures are from the US Department of Commerce, Bureau of the Census, with an estimate of intransit added by the Port Department (Intransit cargo is that cargo which is handled in the Port but which clears customs in another Customs District). Data includes both tonnage (metric tons) and value.

☞ The Port of Albany is included in the customs district for New York, therefore, this cargo must be removed from the total. This was done by estimating the percentage of total cargo by commodity and by direction (export or import) handled in Albany. This estimate came from the 1992 Waterborne Commerce Statistics of the United States, developed by the US Army, Corps of Engineers.

☞ Domestic cargo statistics were developed by commodity type, by reach (handling location) and by direction (inbound or outbound) for all reaches in the Port District. This data came from the 1992 Waterborne Commerce Statistics of the United States, developed by the US Army, Corps of Engineers. Since this data is given in short tons, it was converted into metric tons using the ratio (2000 lbs/2204.6 lbs).

☞ An estimate of 1993 domestic cargo tonnage was developed by reducing the 1992 data by 9.1 percent. This factor was based on the average annual percent change (geometric average) in cargo volumes for all reaches between 1990 and 1992.

☞ The value of international cargo was obtained from the U.S. Department of Commerce, Bureau of the Census, and the Port Department in the same manner as tonnage.

☞ The value of domestic cargo was estimated by multiplying domestic tonnage by the international value/ton.

☞ Each commodity was assigned a Port Authority Input-Output (PAIO) code from the original 89 sector port model.

☞ Commodity values were compiled by PAIO code for both imports/inbound and exports/outbound.

☞ A bridge between PAIO code and National Accounts Input-Output (NAIO) code was created. Commodity values were evenly distributed by NAIO code in each PAIO sector.

☞ The total value in each NAIO sector was multiplied by the inland transportation modal split, resulting in the total value handled by mode and by direction. This modal percentage comes from the modal distribution associated with the original port model.

☞ The value of cargo by each mode was multiplied by the BEA margin, or the percent of a commodity's value associated with each form of inland transportation. This gives total sales by mode, by commodity and by direction.

☞ Sales within the region were calculated by multiplying "sales by mode" with the Regional Purchase Coefficient (RPC) from the Port Authority's I/O model.

☞ Employment was calculated for each mode by dividing sales by mode with the Output/Employee Ratio.

☞ Total Direct Employment in each sector was calculated by summing employment for all commodities.

Wholesaling: Direct jobs in wholesaling were calculated in the same manner as that for the Trucking, Rail and Pipeline sectors with the following adjustments:

1) Intransit cargo, high value goods (artworks, precious stones, jewelry) and live animals were removed from the analysis.

2) The total value of the remaining cargo was reduced to 67.9 percent. This is the estimate of total cargo which either originates from or is destined to the region. The export value was reduced by 40 percent to account for the fact that not all export cargo goes through the distribution channel.

Banking/Insurance: Direct jobs in these sectors are based on a survey of the industries which was done in 1987. This survey found that 5.2 percent of regional banking jobs, and 2.8 percent of regional insurance jobs were related to the handling of marine cargo. Direct jobs were calculated by multiplying total jobs from the ES202 report by the above percentages.

Freight Forwarding/Customs House Brokerage: The same 1987 survey showed that 46.6 percent of jobs in this sector were related to the handling of marine cargo. Again, direct jobs were found by multiplying total jobs from the ES202 report by 46.6 percent.

Federal Government: The following government departments were surveyed telephonically to determine the number of employees whose jobs were dependent on waterborne cargo:

- US Customs Service
- US Coast Guard
- US Army Corps of Engineers
- US Dept. of Trans. Maritime Admin. (MARAD)
- Environmental Protection Agy.
- Food and Drug Administration
- Other (inc. Fish and Wildlife, DEA, ATF)

State and Local Government: The Waterfront Commission and several departments within the City of New York were surveyed telephonically to determine the number of employees whose jobs were dependent on waterborne cargo. In addition, it was estimated that 10 jobs in various State and City agencies were also dependent on waterborne commerce. Direct Port Authority jobs were obtained by adding an estimate of related staff department jobs (approximately 5 percent of the total staff jobs) to the headcount of the Port Department.

DIRECT IMPACTS (SALES)

For all sectors, direct sales were estimated as the product of direct jobs and the Output/Employee ratios from the Port Authority I/O Model.

DIRECT IMPACTS (WAGES)

For all sectors, direct wages are estimated as a product of average regional wages from the ES202 report and direct jobs. The only exception to this is in the ocean transportation sector where $49,038 was used. This is the average of the national wages for the deep sea foreign, deep sea domestic, coastwise and intercostal sectors. ES202 wages were not utilized because they did not seem to reflect reality in the industry.

INDIRECT IMPACTS (JOBS)

Step 1:

Direct Output Impacts were consolidated into NAIO sectors. In this case, there were 10 distinct sectors:

- 650100 - Rail Transportation
- 650300 - Trucking/Warehousing
- 650400 - Waterborne Transport
- 650600 - Pipelines
- 650701 - Freight Forwarding/CHB
- 690100 - Wholesale Trades
- 700100 - Banking
- 700400 - Insurance
- 780100 - Federal Government
- 790300 - Local Government

Step 2:

Each of the sectors was loaded into the I-O model and the total impacts were obtained

Step 3:

A cross tabulation of total impacts (by jobs) was compiled. The jobs on the diagonal (direct jobs by sector) were removed for all but the Federal and State Government sectors (these are not calculated by the model). Crosstabulation percents were calculated based on total jobs.

Step 4:

The crosstabulation matrix was used to eliminate double counting. The direct impact vector was determined outside of the model. Logically, if all direct impacts in a sector are included in this vector, all indirect impacts which may show up in the second round run (impacts which result from spending by the companies and individuals directly involved in waterborne transportation) are already included. Based on further discussion of the industries, many of these impacts were removed from the analysis. In this case:

- All Waterborne Transportation impacts relating to the use of this service by any of the other sectors. This was removed because the direct employment figures come from ES202 and should already reflect all regional employment in this sector.

- Banking impacts related to the use of this service by Freight Forwarders and Customs House Brokers was removed from the totals since banking jobs are calculated based on survey research and should already include all bank impacts related to international waterborne trade.

- Trucking, wholesale, rail and pipeline impacts related to the use of these services by Freight Forwarders/CHB. These impacts were removed from the totals since trucking, rail, pipeline and wholesaling impacts are based on BEA margins applied to total cargo values and should already be included for situations where the Freight Forwarder is either the shipper, or is hiring the inland transportation.

- Impacts on the trucking, rail and pipeline sectors relating to purchases in the wholesale industry were removed

APPENDIX II
THE PORT AUTHORITY INPUT-OUTPUT MODEL

Input-output models, in general, and the Port Authority's Model, in particular, focuses on the interrelationships or flows of products between industries. The Port Authority's Regional Input-Output Model was first developed in 1978 and is continually updated to reflect changes in the regional economy as well as to integrate the results of regional studies, surveys and current regional data.

The mathematics of this techniques are designed to capture the "ripple effects" of changes in an economy, in this case the economy of the 17-county New York-New Jersey region. These ripple effects can be illustrated as follows: If industry "A" increases its production by $100 million, it purchases additional quantities of goods and services from other industries. To meet "A's" needs, each of "A's" supplying industries increase their production, which, in turn, requires additional quantities of their respective inputs. The producers of these inputs increase their output and so on resulting in a domino effect throughout the economy.

The Port Authority's Regional Input-Output Model calculates the total economy-wide sales, employment, personal and business income impacts resulting from the spending of industries or projects in the region. In addition, personal income and retail/sales tax collection impacts are also estimated for the states of New York and New Jersey as well as for New York City.

At the heart of the Port Authority's Regional Input-Output Model is a matrix of inter-industry flows developed from the latest national input-output data assembled by the Bureau of Economic Analysis of the United States Department of Commerce. This matrix represents the transactions of 538 industrial, governmental and consumer sectors of the national economy by displaying how each sector in economy uses the output of other sectors in producing its own product - and to what sectors its product is eventually sold.

In order to develop the national matrix of inter-industry flows into the Port Authority's Regional Input-Output Model, coefficients are developed which reflect the purchasing patterns of the 17-county regional economy by indicating what share of a product consumed in the region is actually produced within the region. These Regional Purchase Coefficients, developed by the Port Authority, are based on data from the New York and New Jersey State Bureaus of Labor Statistics, Regional Commodity Flow Surveys, Commerce Department export statistics and other information.

The databases and interactive programs required to run the regional input-output model are stored on the Port Authority's computers.

BEFORE THE
SURFACE TRANSPORTATION BOARD

PORT AUTHORITY OF NEW YORK AND NEW JERSEY Complainant, v. CSX TRANSPORTATION, INC., AND NORFOLK SOUTHERN RAILWAY COMPANY Defendant.	)	Docket No. 33388

VERIFIED STATEMENT OF THOMAS A. SCHMITZ

I. Introduction, Purpose and Summary

My name is Thomas A. Schmitz. I am a Director of the Fieldston Co., Inc. (FCI), a transportation and energy consulting firm engaged in providing economic, cost, financial, operations and strategic planning studies, management advice and related services to our clients. My business address is Suite 500, 1800 Massachusetts Ave, N.W., Washington, D.C. 20036. My resume is attached as Exhibit TAS_1.

I hold a B.S. degree in Business Administration from George Mason University in Fairfax, Va. I also have over 23 years experience in a variety of areas related to transportation analysis, regulatory economics, carrier cost-of-service calculations, and financial analysis. In my present position I am responsible for business development, which includes identifying and resolving transportation, supply/procurement and logistics problems for FCI clients.

My experience in the transportation industry is quite broad and covers studies, projects, negotiations and other strategic planning efforts on behalf shippers of captive and non-captive traffics. This work requires that I have a comprehensive and up-to-date understanding of regulatory policy, precedent, and procedures as well as techniques that railroads are employing in pricing competitive and non-competitive traffics. Additionally, I must be involved in, and have knowledge of, the leading edge (or "best practices") techniques that shippers are implementing in order to respond to changing railroad pricing initiatives.

For the most part, my work necessitates that I have specific knowledge of prior railroad mergers, a general knowledge of the public interest debate surrounding the consolidation of the railroad industry, and an understanding of the impact of increasing railroad market power in order to develop and implement a strategic plan for my clients to negotiate rate and service contracts for the transportation of their freight. Because of my day-to-day involvement in this business, I am keenly aware of that transportation rate and service elements are of critical importance to shippers in executing a successful sales strategy in a competitive market.

In this proceeding, I have been retained by the Port Authority of New York and New Jersey (the Port Authority) to review, and analyze the joint application to acquire Conrail (hereinafter referred to as the transaction), which was filed by CSX, NS, and Conrail in June, 1997. The primary focus of my effort was devoted to studying applicants' respective operating and marketing plans and claimed public interest benefits. That is, I reviewed applicants' operating and marketing evidence and resulting traffic diversion estimates, claimed cost savings associated with the new proposed service(s) and scale economies of the acquisition, as well as capital investment and cash flow projections for the post-transaction railroads (including the surviving portion of Conrail). In addition, I reviewed a number of relevant workpapers related to current terminal and line-haul capacity as well as confidential and highly confidential documents and deposition transcripts which describe the carriers' past, present and future business relationships with the Port Authority as well as their perspectives on competition among East coast ports.

The objective of my analysis (and the purpose of my testimony) was to draw conclusions regarding the impact of the transaction (as proposed) on service at the Port of New York/ New Jersey and on the future competitive status of the Port generally. In light of the disastrous service consequences now being experienced by shippers using the Union Pacific/Southern Pacific Railroad (UP/SP) in the post-transaction implementation of that merger, the importance of this objective has become even more apparent.

Specifically, I have focused on the potential impacts of the transaction on the Port's ability to compete for waterborne intermodal traffic. By waterborne intermodal traffic, I mean traffic or cargoes that are loaded onto or unloaded from ocean carrier at ports located on the Atlantic

Ocean and the Gulf of Mexico within the United States and Canada, and move through these ports to or from points beyond these ports by ocean carrier and by either truck or rail, or by both truck and rail. I am specifically excluding from my definition traffic moving to or from these ports after, or prior to, ocean carrier movements to or from Pacific Coast ports in the United States or Canada.

II. Summary Conclusions

I have concluded that the Port Authority can be reasonably assured that, after the expected start-up problems associated with implementing a transaction of this size and scope, **line-haul service between** the Port and its major markets will be enhanced in the post-transaction environment. However, I have also concluded that neither the Port Authority nor the Surface Transportation Board (STB, or Board) can be assured that train operations, management, capital investment, and operating budgets **related to switching (and other) services within** the North Jersey Shared Asset Area (NJSAA) will be an efficient and effective replacement for the loss of competitive services currently provided by Conrail within the Port District. Moreover, the post-transaction operations must accommodate the current and projected growth of all traffic (domestic and international) at New York/New Jersey. With respect to this later point, the Port may well suffer a significant lessening of critically important competition; i.e., of Conrail as a geographic competitor for the inland transportation of waterborne intermodal traffic, without any corresponding increase in intramodal rail competition, if capacity expansion and operations do not accommodate the projected growth in that traffic.

On the basis of the evidence presented in the carriers' joint application, the STB cannot discharge its obligation to consider the "effect of the proposed transaction on the adequacy of transportation to the public" 49 U.S.C. 11324(b)(1). Thus, this transaction cannot be shown to be in the public interest. Indeed, there is no operating plan which outlines the manner in which the three applicant carriers will operate within the NJSAA....an area which a single carrier (Conrail) has continually strived to "rationalize" since it was created. Applicants' response to NYNJ-13[1] unfairly characterizes the Port Authority's request for such a service plan as "minutiae" and as "inappropriate micromanagement".

It is hardly "micromanagement" to seek the most basic information with respect to operations within a vitally important and congested metropolitan area. Shippers only wish the STB had engaged in such "micromanagement" when approving the UP/SP merger. The service problems experienced following that transaction have resulted in substantial "harm" to the public interest of shippers/receivers who have lost sales, experienced increases in car costs, have curtailed production, or shut down plants and/or experienced an interruption in critical supply chains amid the confusion in Houston and throughout the UP/SP system. I assume these horrendous public interest losses (and the effect on the adequacy of transportation) will be more fully documented before the Board in its public hearing on these issues scheduled for October 27, 1997. The Board's recent decision in the instant proceeding (Decision No. 44, served 10/15/97), which orders the parties to supplement the record with an operating plan(s) for the NJSAA recognizes the importance of this data and orders its production.

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[1] NYNJ-13 refers to the Port Authority Motion to Compel Applicants to Supplement the Primary Application by Filing the North Jersey Shared Asset Area Operating Plans.

Hopefully the plan will demonstrate that existing service within the New york/New Jersey area will be replaced with strong competitors within the NJSAA with well-coordinated and carefully considered operations...each with the authority to act independently, now and in the future, to make appropriate decisions as the volume and nature of traffic at New York/New Jersey may dictate. The Port Authority is concerned that NS and CSX have no real understanding of the highly complex and congested operation they will acquire in the New York/New Jersey metropolitan area.

In addition to a study of the proposed operation within the NJSAA to ensure adequate transportation, the STB should ensure that the proposed formation and governance of the NJSAA will not act as an impediment, or otherwise lessen the ability of the Port to be competitive for waterborne intermodal traffic ......now and into the future. The Board must mitigate the loss of Conrail (with its geographic and competitive market focus, as well as its current ability...... and its future incentive...... to perform efficient terminal switching operations at New York/New Jersey). Failure to do so will result in the diversion of competitive waterborne intermodal traffic and a deterioration of service for the remaining domestic traffic. These disastrous outcomes would result in significant harm to the Port of New York and New Jersey and the regional public interests.

III. Overview of the Port Authority's Position

The carriers' joint application provides no operating plan for the NJSAA, nor does it provide a pro forma income statement, balance sheet or cash flow analysis for the surviving part of Conrail, much less specific data for the NJSAA. Although these materials (normally required evidence in a major railroad financial transaction under 49 CFR 1180.9 (a), (b), and (c)) were specifically exempted for this filing by the STB (See Decision No. 7, served May 30, 1997), the Board did require that applicants make detailed data available to address the concerns of the Port Authority, i.e. the nature of operations in the New York/New Jersey Metro area, the competitive and economic effect of those operations, the investment that applicants anticipate making in the area, and the level of competition following the proposed transaction.

Although, applicants have offered a plethora of information allegedly to address these issues, their data fails to satisfy the burden of proof the Board required. Applicants have not produced any real evidence associated with the NJSAA, to ensure (or even provide a comfort level) that three carriers can operate efficiently within the congested area without a deterioration in the level of service presently provided by Conrail. Thus, it is not possible to assess the impact of the transaction on the region generally, and on the Port Authority's significant investments in the Dockside (ExpressRail) facility which handles the bulk of the Port's competitive waterborne intermodal traffic.

Furthermore, even if applicants' promised operating plan for the NJSAA is filed later, the STB must ensure that the plan and the specific terms of the associated business/operating agreement...the Shared Asset Operating Agreement (SAOA).... enables either (or both) of the acquiring carriers to take appropriate actions (at New Yore/New Jersey) as may be necessary to compete for the growing volumes of waterborne intermodal (as well as domestic) traffic. Applicants' SAOA[2] appears to permit one carrier or the other to skew, block, or otherwise impede efficient and economic allocation of assets, investment decisions, operating budgets, and/or service design(s) and changes within the NJSAA ....changes or initiatives which might otherwise be economically consistent with the projected growth of traffic at New York/New Jersey and the current or future capacity constraints.

Because the proposed acquisition of Conrail clearly results in a restructuring of eastern railroad operations and business plans, a post-transaction environment may be created in which NS's economic incentives to serve the NJSAA may be much less strong than those of CSX, particularly in the case of waterborne intermodal traffic. As capacity is constrained with the growth of this (and other) traffic at the Port, NS may be incented to divert this competitive traffic to Norfolk, rather than make capacity investments to handle it at New York/New Jersey[3]. At the same time, the current SAOA appears to permit NS (if it is so inclined) to impede rationale

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[2] See: North Jersey operating agreement in Volume 8C, Exhibit G of the application

[3] The highly confidential workpapers provided by NS witness Finkbiner (NS-04-HC-00107) depict a substantial amount of unused capacity at NS' Hampton Roads, VA facilities. Similarly, Mr. Finkbiner's workpapers (NS-04-HC-00108) depict a current full capacity utilization at Conrail's North Jersey - Croxton Yard,; the location to which NS traffic to/from the Port Authority's on dock rail facility (ExpressRail) is proposed to be transferred (See page 131 of Exhibit 13, the CSX operating plan). Similarly, in Mohan exhibit 8 (NS -21-HC-06221), Mr. McClellan's notes demonstrates states that NS must add capacity at Croxton Yard, as well as other New York/New Jersey terminals. A copy of the referenced workpapers are provided, for convenience, as TAS-Exhibit 2.

business decisions of its competitor CSX at New York/New Jersey.[4] Such a result would contravene the public interest benefits upon which this transaction is justified.

IV. The Nature of Port Competition and Waterborne Intermodal Traffic and the Impact of This Transaction on the New York/New Jersey Metropolitan Area

That ports are competitive is unarguable....as is the notion that intermodal traffic is highly competitive and subject to diversion. Ocean carriers and shippers select a port based on a number of factors which define a port's competitiveness. Among these are the port's access to competitive marine, rail and highway costs as well as access to : assets (navigation channel depth, labor productivity and costs, and terminal facilities); key markets (sailing schedules and transit times and rail service); and the institutional environment (access to capital for investment, the port's organizational structure, and the overall business environment).

Historically, when break-bulk cargo dominated United States import/export moves, the size of the local New York and New Jersey market was a significant determinant in port selection. As a result, the Port used to handle more than a third of the U.S. international waterborne cargo. However, with the significant growth of containerized cargoes and the increasing use of supply chain logistics techniques, the size of a port's local market no longer ensures its utilization for the

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[4] For example, the construction of capital improvements (and the definition of such improvements as "severable" or "non-severable"....see SAOA, Volume 8C, Exhibit G) must be approved by the CRC Board and each CSX and NS are to be responsible for an equal share of the initial funding, with final accounting to determine the share of each on the basis of usage (see Exhibit G, Section 6) . Upon arbitration, it can be determined that such investments not be made...if they "impair or interfere with the use of Shared Assets" or "conflict with capital improvements included in an approved Capital Expenditure Budget".

movement of discretionary waterborne "through" traffic (intermodal traffic). Rather, the most cost-effective transportation route has quickly become the most influential factor in determining port selection. As a result, the Port's market share of container traffic has eroded over the past two decades, i.e. it has increased at a rate significantly slower than the ports with which it competes.

Nonetheless, the decline in overall market share at the Port has stabilized since 1990. In fact, the compound annual growth rate (CAGR) in all the Port's container traffic over the 1990 to 1995 period was 4%; significantly higher than the 1% CAGR over the period 1980-1995. The Port Authority now projects an overall CAGR of 3%-5% over the next 10 to 15 years and a 5% CAGR over the following period to the year 2015. Moreover, the growth in waterborne intermodal traffic has grown significantly faster and represents an important and growing market segment for the region.[5]

The Port Authority has undertaken various initiatives and investments in order to stabilize its market share and to position itself to compete effectively for the expected growth of traffic well into the next century. In addition to significant and costly dredging operations, the reactivation of the Staten Island Railroad, the re-opening of the Howland Hook Marine Terminal, and the Oak Point Link; the Port Authority has worked with the New York Shipping Association, the International Longshoremen's Association, terminal operators and Conrail to increase volumes

[5] The growth of intermodal traffic at ExpressRail was up 20%, 1996 over 1995.

and reduce the cost of inland cargo moves to and from the Port. Among these later initiatives are significant capital investments in the ExpressRail Terminal in Elizabeth, NJ[6] as well as Conrail's program for the clearance of rail routes to the west for double-stack service.

Conrail's role in growing the discretionary (competitive) waterborne intermodal traffic has been significant. In fact, a recent study[7] predicts that the rail share of all Port traffic is expected to double (to 20% of total) by the year 2040. Such an increase in rail (over truck) market share will be absolutely essential in order to handle the projected growth in cargo at New York/New Jersey, but it will further strain rail terminal capacity. Because current capacity utilization at New York/New Jersey rail intermodal terminals is high (averaging 83%)[8], the proposed business and marketing plans of CSX and NS will also have a critical impact on the Port's capacity to handle rail shipments. The emphasis applicants will place on growing the North-South intermodal traffic that Conrail was reluctant to handle[9] are expected to result in diversions from truck to rail; thus the applicants' acquisition of this new traffic will put it in direct competition for the use of already limited rail intermodal terminal capacity at New York/New Jersey.

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6 ExpressRail is the Port Authority's on dock rail facility which is operated by Maher Terminals. The $19 million dollar expansion of this facility, which is dedicated to rail handling of waterborne intermodal traffic, virtually doubled the port's capacity to handle such traffic.

7 "Feasibility Study of *Hub Port* Development" performed for the New York City Economic Development Corporation, by Booz-Allen Hamilton Inc., dated March 20, 1997

8 See VS Mrs. Lillian Borrone and, more specifically, page VII-7, "A Strategic and Economic Analysis of Changes in Rail and Maritime Competition and Implications for New York/New Jersey Port Competitiveness", performed by Booz-Allen Hamilton Inc., dated March 24, 1997

9 See VS of Thomas Finkbiner, pages 221-231, North-South service, "changed strategy" and resulting diversions, the VS of Patrick Krick, page 100, et al ..."Changed Strategy", as well as CSX witnesses G.B. Bryan's discussion of diversions due to single line service, and Darius Gaskins similar discussion, pages 100-105, and John Anderson at pages 290-311.

Thus, as a direct result of the proposed transaction, the Port could be harmed in its ability to compete for waterborne intermodal traffic. As capacity is constrained at New York/New Jersey, either (or both) of the acquiring carriers may find it more economic to handle the competitive import/export intermodal traffic through another port, rather than make capacity investments or service accomodations at New York/New Jersey. This result could not happen with a status quo Conrail which, as a geographic rail competitor, has had cost-effective access to this waterborne traffic only at the Port of New York/New Jersey[10]. Because the proposed acquisition and re-structuring of the Eastern rail map results in significant rail industry concentration, it consolidates the control of all U.S. East Coast ports under only two carriers; namely CSX and NS. Thus, the Port will suffer a loss of geographic competiton as a direct result of this transaction.

Although offsetting this loss of competiton are potential benefits the Port of New York/New Jersey could enjoy from applicants' promised capital investments in line-haul capacity expansions, network efficiencies which may lower line-haul unit costs, and reduced route circuity (and hopefully, transit time) in certain traffic lanes; the STB must not allow Port's ability to compete for waterborne intermodal traffic to be compromised by applicants' less than complete treatment (to date) of operations and investment within the NJSAA. Moreover, the

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[10] While Conrail can serve Baltimore, highly confidential documents obtained from during discovery (see Snow Exhibit 15, CSX- HC-42-000106) indicate that Baltimore had been losing competitive waterborne intermodal traffic to the Port New York/New Jersey at ExpressRail due to the "predatory pricing" actions of Conrail and the efficiency of Maher Terminals. Similarly, Baltimore had been losing traffic to Norfolk. Clearly, such data indicates that Conrail's intermodal business/marketing focus was on New York/New Jersey, as opposed to Baltimore (access which it uses largely for export coal moves) and that Conrail provided substantial regional and geographic competition versus CSX at Baltimore or NS at Norfolk.

STB must ensure applicants' operating plan for the proposed transaction will not restrict or otherwise impede efficient growth of all commerce (both domestic and international) which is projected for New York/New Jersey.

As discussed in more detail in the accompanying V.S. of Mrs. Borrone, the Port Authority supports significant economic activity. The Port serves the largest and most affluent market in the U.S. -- 17 million people and within a 250 mile radius, an additional 20 million people. The Port supports 166,500 jobs in the region as well as $6.6 billion in salaries and wages and $19.6 billion in sales.....which in turn generates $510 million in income and sales taxes. Its share of the Gross Regional Product is 3.3% and its share of regional employment is 1.6%. Clearly these public interests deserve the Board's highest priority protection in this proceeding.

V. Applicants' Proposed Transaction Anticipates Significant Changes in the Manner in Which Traffic is Moved to and from New York/Northern New Jersey. Insufficient Consideration Has Been Given to the Impact of These Changes on Capacity and Investment....and Resulting Service... at New York/New Jersey.

The Port Authority has invested heavily in the construction of its on-dock rail intermodal facility at Dockside (ExpressRail) to handle waterborne containers to/from New York/New Jersey from/to inland destinations. This investment includes the purchase of state-of-the-art loading equipment including straddle carriers and reach stackers. By the end of 1995 the facility was operating well beyond its functional capacity. Construction to expand that capacity was completed in January 1996 and doubled the Port Authority's rail terminal capacity to 150,000 lifts annually. Thus, in 1997 ExpressRail will have about 130,000 container lifts....a 26%

increase over the 103,000 lifts in 1996. Conrail participated strongly in the terminal's development and has been an excellent partner, along with the contracted terminal operator, Maher Terminals who serves the facility. Although the facility has the capability for further expansion that could double the volume again, the Port Authority must be able to ensure that efficient and competitive service will be available to justify those investments as traffic grows, and that the acquiring carriers will make whatever investments and service accomodations are necessary (on their part) in order to handle that traffic and keep the Port competitive.

Conrail currently runs two inbound and two outbound trains to and from ExpressRail daily. Service is provided to and from the Midwest, New England and Canada. ExpressRail loads direct to 30 destinations daily providing second AM availability to Chicago, Cleveland, Columbus, Detroit, E. St. Louis, Indianapolis, Worcester, MA and Montreal; third AM availability to Toronto and fourth AM to Kansas City. Conrail closely coordinates switching ExpressRail with Maher Terminals. In fact, Maher has its own switch engine that works in conjunction with Conrail to shift loaded and empty cars within ExpressRail and to block shipments to facilitate Conrail's unloading of inbound trains as well as the building of outbound loaded trains. Thus, Conrail has a current operating agreement to coordinate the operation with Maher.

When time permits, the two daily inbound trains may be placed by "road" crews since the latest investments at ExpressRail were designed to alleviate prior rail curvature that precluded direct service from the line-haul train. Most of the time, Conrail road trains drop ExpressRail cars in nearby Port Newark yard and they are placed at the facility by a local crew operating out of that yard. Since there is very little room to store and switch empty cars within the facility, Conrail has used the imbalance of loaded inbound cars (carrying domestic intermodal traffic) to the New York/ New Jersey area to provide additional empty cars to supplement the opposite imbalance at ExpressRail.[11] Therefore, additional Conrail crews are dispatched during the day to collect empty cars from its Kearny, E-Rail, Croxton, and other terminals to supply ExpressRail's demand for outbound cars. On these occassions, the yard crews may pull loaded and pre-blocked cars out of Expressrail and begin to make up the next outbound train on a nearby track outside the Expressrail facility. There is extremely limited room in the area to make up the next train. Conrail sometimes combines ExpressRail's train with an outbound train from E-Rail.

The division of traffic between CSX and NS throughout the NJSAA is sure to require significant coordination. In fact, beyond its specific concerns for its own investments and service at its ExpressRail facility, the issue of operating efficiency and cost (within the entire NJSAA) creates a much broader concern for the Port Authority in its role as protector of regional public interests. Specifically, confidential documents obtained during discovery (numbered as CR 09 CO 000411 through 000427 and attached for convenience as TAS_ Exhibit 3) show that Conrail and CSX were presenting detailed information that provided economic justification for their earlier plan to merge their two railroads independent of the NS.

[11] Waterborne import traffic to inland destinations far outbalances loaded export traffic received at ExpressRail for subsequent waterborne movement.

The railroads' own data (as shown in those documents reproduced in TAS_ Exhibit 3) demonstrate a generally accepted fact that railroad efficiency increases with volume, that an even split of volume substantially increases unit costs, and that even an uneven split will increase costs (but to a lesser extent). The referenced presentation concludes that the division of Conrail's service at New York/New Jersey would be adverse to the Port's competitiveness as cost increases would eliminate margins and rates would increase. Moreover, train starts out of the area (and presumably inbound as well) could not be as easily staggered; leading to potential service deterioration and requiring more terminal infrastructure investment to facilitate simultaneous train starts. In any event, the end result of all this may be a less efficient operation which has the potential to adversely affect service and increase cost......and thus, impact the Port's competitiveness viz a viz Norfolk and other ports.

At ExpressRail, the split of traffic will presumably require the loading and building of two separate trains and the coordinated supply of empty cars (for the loading requirements each -- CSX and NS -- may dictate). Such a modified operation is sure to be much more difficult (and perhaps more costly) with two carriers serving the terminal; and thus, it can be potentially harmful to the Port's ability to retain (and grow) this competitive traffic. The only detailed information contained in the carriers' application with respect to the manner in which ExpressRail will be switched can be found in the CSX operating plan (See Volume 3A, page

231...which is also numbered as CSX-Exhibit 13, page 131) and confirmed in NS's operating plan (See Volume 3B, page 198...which is also numbered as NS-Exhibit 13, page 130).

While CSX generally states that it will provide service (through Conrail...as its shared asset area operator) unchanged from current practices; it notes that NS traffic will be transferred (again by Conrail) to Croxton (a yard currently operating at full capacity which has been assigned to NS)[12]. Neither CSX's nor NS's operating plans provide any specific insight as to how empties will be supplied to ExpressRail or how either carrier's road trains might directly serve the facility (a specifically reserved right that each has under the SAOA[13]). Moreover, NS's operating plan[14] compares present and proposed operations within the NJSAA and depicts both an increase and a change in service at E-Rail, and an increase in train starts at Portside Yard. Specifically, NS proposes a $25 million expansion of the four track E-Rail facility with a corresponding increase in trains at that location.[15] Similarly, NS's plan indicates four Triple Crown RoadRailer trains will operate daily (to/from Harrisburg and Atlanta) as opposed to the single train operating today between Portside and Atlanta. NS also indicates that Portside will be assigned to the SAA.

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[12] See again, the highly confidential workpapers of NS's witnesses Finkbiner and Mohan (including McCellan's handwritten notes) reproduced in TAS-Exhibit 2.

[13] See SAOA, Volume 8C, Exhibit G, page 10...Section 3(a) (ii).

[14] At NS Exhibit 13, 4.1.1 North Jersey, pages 116 through 132.

[15] E-Rail currently handles two outbound and one inbound train daily to/from Chicago. NS will arrive and depart six trains daily, two from Atlanta and one from Harrisburg, with matching outbound schedules. The current Chicago bound traffic at E-Rail will presumably be transferred to Croxton, and will additionally strain current capacity at that location.

These projected increased volumes and attendant train starts/terminations and crew assignments at E-Rail and Portside, being virtually contiguous to ExpressRail, have a tremendous potential to radically change already difficult operations at that facility. Outbound trains are often built near the Portside tracks by Conrail today......an operation that is likely to be compromised by increased Triple Crown service. Moreover, independent delivery of CSX and NS loaded cars, the separate handling of empties and separate make up of outbound trains resulting from a traffic split at ExpressRail will likely be affected by increased trains to/from the proposed new NS operation at E-Rail.

Absent a more definitive operating plan for New York/New Jersey, the Port Authority has good reason to fear a deterioration in service and or increase in the cost of the more inefficient handling of its traffic; competitive traffic at that, which is readily divertable to Norfolk and potentially other East and Gulf Coast Ports. The Port Authority's request for a detailed understanding (of the manner in which current service will be replaced) is essential to its ability to measure the impact of this transaction on the recovery of capital associated with its current (and future) infrastructure investments.

It is as unfair to characterize the Port Authority's request for such an understanding as "minutiae", or "inappropriate micromanagement" of day-to-day operations, as it is any shippers' request (and necessity) to know the manner in which its facility will be served in a post-transaction environment. The Port of New York/New Jersey is no less entitled to assure itself that it will not be "harmed by a lessening of competiton", i.e., to know that its current competitive transportation situation (geographic incentives and consolidated/efficient single-railroad service offered by Conrail) will be maintained. The Board cannot determine here that any "system" (and specifically line-haul) efficiencies will offset the potential public interest harms resulting from the split of current and future traffic between rail carriers at large origin and destination markets such as the NJSAA.

The Port Authority also anticipates making new capital investments in ExpressRail in 1998 and/or beyond as necessary to accommodate the projected growth of waterborne intermodal commerce. In order to expand the adjacent marine terminal(s), ExpressRail will be forced to remove a number of buildings on its property and many of the tracks aside of these buildings.....tracks that are currently used for the storage of empty cars. Replacement of these tracks and their optimal re-location (as well as potential reconfiguration of lead track to serve an expansion of the facility) will require that the Port Authority get assurance from both carriers that this additional capital investment in ExpressRail will be served in manner that will allow for the recovery of capital and an appropriate return on that investment. Additionally, under the current structure of the SAOA, to the extent that either carrier would require capital investments to serve an increased traffic base at ExpressRail, such investments will have to pass the scrutiny of the CRC Board and be funded through a complex cost allocation process....if, in fact, the investments are approved at all.

The complexities associated with a determination of whether or not such investments are "severable" or "non-severable" and the manner in which they would be funded, is a new and unique hurtle that New York/New Jersey will face in coordinating expansion plans with either (or both) CSX and NS in the post-transaction environment. Conrail was successful when it placed a high priority on growing this competitive intermodal business. Will CSX and NS be likewise incented to grow this divertable traffic? Moreover, can New York/New Jersey be assured that, if these carriers are to be as competitive with one another as they are positing, that the untried and untested SAOA will not be used as a weapon (or at least an impediment) in the competitive struggle?[16]

Finally, the Port Authority, acting in its broader role as protector of regional public interests, likewise has reason to be concerned regarding the failure of applicants to produce a more definitive operating plan for the NJSAA. One fact is indisputable, that CSX and NS intend to pay for their acquisition of Conrail through a growth of traffic and reduction in cost-of-service. By virtual necessity, the railroad share of traffic must grow in the NJSAA to handle the heretofore projected increases in domestic and international traffic. Currently congested highways and terminal areas will, in the future, demand the volume efficiencies normally associated with rail service. Applicants' here state that their post-transaction operating and marketing plans are designed to further increase rail traffic through the introduction of single-line service and a new focus on North-South and other traffic lanes previously shunned by Conrail.

[16] Further, testifying at his deposition, John Snow stated that both CSX and NS understand that the SAOA "creates the potentiality for mischief".

All these increases in rail traffic will create additional service and capacity (investment) concerns for all traffics moving to, from, and within the currently congested NJSAA. The virtual absence of any significant proforma investments (beyond that at E-Rail) within the NJSAA is an indication that the applicants' proposed implementation of this transaction (assuming approval by the Board) was precipitous. The much maligned "acquisition premium" paid for Conrail, and the hurriedly negotiated settlement to split the carrier, has created a commercial transaction which has been on a fast track ever since.[17] Thus, the Port Authority also has good reason to fear a "Houston at New York" scenario. Not only do I question the availability of local yard crews and power to handle the increased volumes, absent a more detailed plan for the NJSAA, I question the efficiency of current local crews with new and more complex switching assignments (such as building two separate trains and separate return of empties to ExpressRail, increases in nearby Triple Crown trains, and new traffic at E-Rail) as well as the introduction of new "road" trains and crews for other new traffic to be moved to, from, or within the NJSAA.

With limited terminal capacity, and close quarter track operations and limited track capacity (and more frequent service disruptions from increased maintenance due to the projected new traffic volumes), the careful consideration of coordinated operations within the NJSAA will be extremely onerous. There is little reason to believe that applicants had, at the time the

[17] With a carrying cost associated with this transaction of $2 million a day (See Journal of Commerce article "Ports See Threat in Remarks by NS Official" dated July 9, 1997) one can assume that all the "tees" were not crossed, nor the "eyes" dotted regarding the detailed implementation of the transaction on day one. The referenced article is reproduced in Exhibit TAS_4.

application was filed, fully assimilated all the facts of the proposed post-transaction traffic levels into a well thought out operation....much less one or more "seamless" logistics networks which characterize intermodal service if it is to be competitive.

VI. Strucure and Governance of the Shared Asset Operating Agreement and the NJSAA Operating Plan

There is no doubt in my mind that applicants intend to manage and operate and dispatch their Shared Asset Areas impartially. Further, I believe NS and CSX fully intend that the construction of needed "non-severable" assets to meet capacity or operating demands should not be reasonably withheld, nor should the construction, operation and use of any assets ("severable" or "non-severable) impair or interfere with the use of Shared Assets by Conrail (or each other). Finally, the applicants do not intend for any changes in operations or capital investments to conflict with agreed on capital and operating budgets.

Nonetheless, experience indicates that intentions and the reality of implementation often part company, especially if applicants' intentions are conceptual....as opposed to an actual plan and management focus that addresses the realities of operation. Surely, one can believe that UP did not intend that its newly acquired operations become so mired in confusion and the resultant reality of "gridlock". Here there is no operating plan ....although its production has now been ordered. Moreover, the Shared Asset Operating Agreement proposed here is unique and, as previously noted, untested. While any arrangement can work, if well planned in advance, properly coordinated in implementation, and monitored subsequently, even the carriers recognize the potential for problems. In fact, I believe that applicants' oft repeated and unenlightening responses to discovery and interrogatories regarding the division and operation of Shared Assets represent strong evidence that they had not (at the time the application was filed) fully focused on the specific realities and requirements of the SAA and integration of those significant markets into their own subsequent system operating plans.[18] I believe the potential for problems is exacerbated by the creation of a common management structure for the SAA's; i.e., a General Manager with responsibility for the management, operating and cpaital budgets, supervision, ownership, operation, maintenance and used of the Shared Assets subject to the authority of the CRC Board.[19]

Indeed, the STB has already recognized that a "unique situation has been shown to exist in the North Jersey Shared Assets Area". (See Decision No. 44) The NJSAA has specific traffic, capacity, infrastructure, land, and labor issues. Moreover, the Port Authority agrees with applicants that these issues will present a moving target for the acquiring carriers to accommodate. Overall projections of traffic growth for the NJSAA, and within specific traffic

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18 For example, see CSX-31 responses to Rail-Bridge Terminals....."the determination that ......[sic] would/would not be operated as part on the North Jersey Shared Assets Area was a culmination of an arms length bargaining process over the division of Conrail assets and was only one aspect of the negotitation of a complex plan to divide a major rail system consisting of thousands of miles of track and hundreds of rail facilities". See also applicants CSX/NS 61 in which applicant responded to a question regarding the criteria they had used to determine SAA's ...." Determining the location and scope of the Shared Assets Areas was the culmination of an arms length bargaining process over the division of Conrail assets" and further that ......the determination of the location and scope of the Shared Asset Areas was only one aspect of the negotiation of a complex plan to divide a major rail system consisting of thousands of miles of track and hundreds of rail facilities".

19 See Volume 8C, Exhibit G, Section 2 and Volume 1, pages 6 through 9, 31 through 61 and numerous descriptions elsewhere.

segments, will be peculiar to New York/New Jersey. The NJSAA may be particularly affected by the growth of rail traffic moving to/from the area as a result of applicant's proposed single-line marketing and operating plans. Finally, NJSAA has a significant number of commuter operations that may be affected by the operations within the area. All these peculiarities are cause for significant individual study. All have the potential to create significant and problematic operating and captial issues. For these reasons, the details of a specific operating plan for New York/New Jersey are necessary to ensure the proposed operation is feasible and the resulting impact on the adequacy of transportation is minimal (or is likely to produce some enhancement). Similarly, the Shared Asset Operating Agreement that implements that plan may require a unique management structure, budget and capital investment plan and approval process different than what it proposed now.

Thus, until such operating details and implementing agreements are filed, the Port Authority is not in a position to specify any potential mitigation it might seek to ensure effective replacement of the geographic competition and service currently provided by Conrail.

VERIFICATION

Washington)

District of Columbia)

I, Thomas A. Schmitz, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on October 16th 1997.

Thomas A. Schmitz

Thomas A. Schmitz

Sworn to and signed before me this 16th day of October, 1997.

Notary Public

My Commission expires: April 30, 2001

Exhibit TAS_1

RESUME OF

THOMAS A. SCHMITZ

Education

George Mason University - B. S., Business Administration - 1973

Work Experience

1995 - Present **Fieldston Company, Inc.** - Director. Experienced transportation consultant with practical understanding of industry issues and highly sought after for expert testimony in the areas of litigation support; i.e. rate cases, rail mergers and acquisitions, rail constructions and line crossings, abandonments, and operating analyses. Regularly advises corporate executives, industry associations and the financial investment community in the area of transportation and logistics matters. Proactively involved in long-term strategic planning issues for major logistics operations primarily addressing organizational concerns, modal alternatives and capital investment initiatives, rail/truck/barge contract rate/service negotiations, evaluation of existing contracts, and development of purchasing and marketing strategies using logistics as an "edge." Applies industry "Best Practices" to evaluate and benchmark the effectiveness of rail transportation systems and works closely with management and MIS teams to generate problem-solving models and reports.

1988-1995 **Interstate Commerce Commission** - Chief, Section of Economic Research and Analysis - Office of Economics. Managed a staff of 23 economists, cost and financial analysts, and engineers. Established goals, assigned and reviewed work, developed and prepared budget; designed and implemented complex and sophisticated economic and financial research projects and reported conclusions. Recommended ICC regulatory policy, and evaluated evidence in rail rate cases, motor carrier rate undercharge cases, abandonment proceedings; mergers, and other financial dockets. Managed the development and application of costs and databases derived from the Uniform Rail Costing System (URCS) and the Rail Carload Waybill Sample.

1983-1988 **A. T. Kearney** - Project Manager. Managed project teams for this large international management consulting firm. Prepared and presented proposals to clients for consulting engagements (in transportation and logistics), handled client relations and billings; developed project workplans, timelines and budgets. Supervised multi-disciplinary staff in completion of work, including the development and presentation of a final report and presentation; coordinated the development of long-term strategic plans for coal procurement and transportation for electric utilities, including the development of a custom computerized procurement model; and proposed and coordinated studies to examine competitive alternatives for rail/truck/barge transportation and distribution of a wide range of products.

1974-1983 **Interstate Commerce Commission** - Chief, Cost Analysis Branch. Managed and supervised a staff of 25 cost analysts in the development, refinement and application of the Commission's costing formulas; i.e. rail, truck, barge, tank truck, rail switching, rail car per diem, etc. Supported the Commission's review of "cost-based" rate reasonableness decisions in the pre-Staggers period, and developed the Commission's post-Staggers regulatory principles of "Constrained Market Pricing;" i.e. differential pricing, Stand-alone Costs, revenue adequacy measures, and productivity adjusted inflation measures.

1973-1974 **National Mortgage Corporation** - Treasurer/Comptroller.

Exhibit TAS_4

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al of Commerce

SDAY JULY 9, 1997 $1.50 A COPY

Late money recipients

Several candidates in tight congressional races received large contributions from transportation-related PACs during the fall campaign. Often the contributions were made at the request of Democratic and Republican party officials hoping to infuse some last-minute money into a close race.

	Candidate	Party/ State	PAC money Fall 1996 Sept. 15 to Nov. 5	1995-96
Senate	Landrieu, Mary L.	D-La.	$54,500	$73,000
Senate	Brownback, Sam	R-Kan.	38,993	67,293
Senate	Strickland, Tom*	D-Colo.	37,500	53,000
House	Shuster, Bud	R-Pa.	35,057	203,207
House	Frost, Martin	D-Texas	34,750	159,000
House	Abercrombie, Neil	D-Hawaii	28,000	98,200
Senate	Cleland, Max	D-Ga.	27,000	84,000
Senate	Swett, Dick*	D-N.H.	26,250	39,250
Senate	Boschwitz, Rudy*	R-Minn.	25,569	44,569
House	Bonior, David E.	D-Mich.	25,000	138,220
Senate	Brennan, Joseph E.*	D-Maine	25,000	59,000
Senate	Bruggere, Tom*	D-Ore.	24,650	42,150
Senate	Harkin, Tom	D-Iowa	24,375	90,000
House	Fazio, Vic	D-Calif.	24,050	112,980
Senate	Johnson, Tim	D-S.D.	23,500	84,000
Senate	Lightfoot, Jim Ross*	R-Iowa	23,500	80,500
House	Oberstar, James L.	D-Minn.	22,500	171,500
House	Tate, Randy*	R-Wash.	22,130	119,950
House	Menendez, Robert	D-N.J.	22,000	82,750
Senate	Allard, Wayne	R-Colo.	21,775	50,274

*Losing candidates

SOURCES: Journal of Commerce, Federal Election Commission

The Journal of Commerce

cy via illegal contributions

...amatic convening of the ...ake his announcement ...hill U.S.-China relations.

...mittee believes that ...ese officials crafted a ...ase China's influence ...olitical process," Sen. ... While some of

steps that foreign governments take to communicate their views ... other parts of the plan direct action that are illegal under U.S. law."

Up to now, charges of a Chinese conspiracy have been just allegations, detailed in American newspapers and subject to an FBI investi-

Ports see threat in remarks by NS official

Comments hint at retaliation for seeking longer Conrail review

• *Norfolk Southern's Thomas R. Finkbiner reminded a North Atlantic ports group that intermodal traffic can be diverted from one port to another.*

BY WILLIAM ROBERTS

JOURNAL OF COMMERCE STAFF

WASHINGTON — Blunt remarks by a Norfolk Southern Corp. railroad executive are producing a stiff backlash from ports and politicians who fear the breakup of Conrail won't deliver on promises of increased competition.

Speaking to the North Atlantic Port Association at its annual meeting June 5, Thomas R. Finkbiner, a Norfolk Southern vice president, said the group's decision not to support a quick review by federal regulators would cost NS and CSX Corp. $200 million in finance expenses on the money it borrowed to complete the deal.

NS and CSX have been telling customers they should welcome their plan to split up Conrail. Ports have been smarting for more than 25 years under Conrail's practical monopoly of Northeast freight traffic. If the Conrail breakup plan is approved by the Surface Transportation Board, NS and CSX would be the only major railroads in the East.

Mr. Finkbiner, whose taped public comments also have drawn congressional criticism, further

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...by Whi- consist ...r. Ruff's Burling. ...150,000 ...dino & ...nan al- ...ey was ... Presi- charges ...midate

...ters the accord concluded that international organized crime is posing significant problems for the TIR.

The experts said common vi-

Closer consultations between customs authorities, the transport industry and insurance groups, will also be a priority for the board.

...more than 60 developing countries that will help overcome bottlenecks and reduce problems such as unauthorized checking of goods while in transit.

Continued from Page 1A

Finkbiner

emphasized to port officials that intermodal traffic — ocean containers and truck trailers that move by rail — can be diverted from one port to another.

A transcript of Mr. Finkbiner's remarks was obtained by The Journal of Commerce and verified by the port association.

Complains about letter

In his comments, Mr. Finkbiner complained angrily of a letter by the port association to the transportation board. In that letter, the port group pressed for assurances that each port would get service from both NS and CSX. The letter did not support NS' request for a 250-day regulatory review timetable. Instead, the board ultimately agreed to a 350-day review schedule.

"Let me tell you what the cost of this (the additional 100 days) is," he told the association. NS and CSX, he said, are collectively paying about $700 million a year in interest on the money borrowed to buy Conrail.

"Now we ask for your support, and we ask for expedited handling of that support — 250 days instead of 350 days," Mr. Finkbiner said. "You didn't give that support, and we didn't get it, and that will cost us 100 days times $2 million a day."

Seeking investment

Despite the added expense, Mr. Finkbiner complained, ports have asked NS to invest more in rail service at their facilities.

"Every one of you individual ports that I have had meetings with have come with hat in hand and a list of things you would like me to spend money with your port," he said.

"You write to the STB and you say, 'We can't support this unless all these nitpicking little things, which are politically correct and practically incoherent, are going to happen,'" Mr. Finkbiner said.

"Quite frankly, I've got to tell you that we are human beings on the railroad, and we know who supported us and we know who didn't, and if you think any of us are going to forget that, you are crazy," he said.

Legal review

To some, Mr. Finkbiner's remarks came across as an implicit threat. He so angered representatives of the Port Authority of New York and New Jersey that the transcript was sent to a Washington law firm for legal review.

"I think the comments speak for themselves. I think it was a very unfortunate choice of words on his part," said Hugh Welsh, deputy general counsel for the port authority. "What he is really saying is that there is no traffic that is captive to any port. It is subject to diversion."

Mr. Finkbiner's comments caught the attention of a New Jersey congressman who has been an advocate for New York port interests.

"I am seriously disturbed by...

ly publishes a transcript of the proceedings of its annual meetings.

Mr. Finkbiner's statements angered several other port representatives who were at the meeting, according to some who were present.

'A tad aggravated'

"He was just a tad aggravated and a little condescending in the way he made those remarks," said Jeffrey W. Monroe, deputy port director for the Massachusetts Port Authority in Boston.

Rep. Menendez said he is taking the comments very seriously. The issue of competitive intermodal access to New Jersey's cargo terminals "will dictate whether or not we survive into the next century," he said.

The congressman said he thinks Mr. Finkbiner's speech "certainly raises a lot of legitimate questions about what is the implication of the remarks . . . as we continue to look at the concentration of a number of railroads and the growth of what I consider to be near-monopoly power."

Rep. Menendez said he is concerned that Norfolk Southern's management had "become so insulated that they can make a statement like that and actually carry it out."

"We've been looking at the legal aspects of this and wondering what's the best way to pursue this," Rep. Menendez said, adding that he is considering whether, in addition to seeking official clarification from Mr. Finkbiner, to ask the Justice Department and the STB to review the comments.

'Window of opportunity'

In a verified statement contained in Norfolk Southern's voluminous filings to the board, Mr. Finkbiner asserts that the breakup of Conrail would improve competitive access for ports in the Northeast.

...commissioner.

Mr. Pottle, an executive with **On-Line Software**, also urged the port to build on its recent success attracting **Sunmar Container Lines**, which operates a service to the Russian Far East.

He said the container cranes and other infrastructure the port has put in operation for Sunmar and its sister company, **Sunmar Terminals**, could be used to lure other shipping business.

In a release, he said the regional airport could be built into an alternative to **Sea-Tac International**, 120 miles away.

DuPont picks partner

...tion Co. "Dereg... eliminate... ours," he... Mr. Du... gional ca... to shrink... ners on ... the rules... Interlin... million i... was expec... $6 millio... Mr. Duns... "We n... well and t... ed with t... a compan... very hard... into your... said. "Shi... depressed... too much... While i... have taken... link's bus... wrong to... for the do... Burke, spo... tario Truck... "We ha... years ago," simply bee... too little fr... Lisa Mac...

Continued fro...

Walk...

...als," refus... both ports... Joe Fran... cific Conta... 250 longsh... 179 marine... not fill bec... shortage.

'It was...

Jos...

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Pacific Mar...

As a resul... schedules we... sels that sho... ished Monda... LAXT is a... that include... pants in th... Equity hold... of Los Ange... panies and...

... of this (the additional 100 ...s) is," he told the associa... NS and CSX, he said, are ...ectively paying about $700 ...ion a year in interest on the ...ney borrowed to buy Con-

...mmissioner.

...r. Pottle, an executive with ...Line Software, also urged ...port to build on its recent ...ess attracting **Sunmar** ...**ainer Lines**, which ...ates a service to the ...sian Far East.

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...a release, he said the ...nal airport could be built ...an alternative to **Sea-Tac** ...**national**, 120 miles away.

...ont picks partner ...ts import logistics

...ILADELPHIA — **E.I. du** ...**de Nemours & Co.** chose ...**nternational Inc.** as its ...s services partner for ... and project services.

..., of Philadelphia, has ...rted the coordination of ... logistics operations for ... since 1973 and this ... of it relationship ... chemicals maker takes ... the third quarter.

..."'s proven liability to ...uPont reduce costs in ...pply chain was a major ...ration in their selection ...ngle source supplier," ... Stuart Blanton, ...'s manager of ...rtation procurement.

...plans to add staff ... dedicated to DuPont ... Philadelphia and at ...rts as needed, said ... J. Bolte Sr., BDP's ...n.

... Wire and Staff Reports

on the railroad, and we know who supported us and we know who didn't, and if you think any of us are going to forget that, you are crazy," he said.

Legal review

To some, Mr. Finkbiner's remarks came across as an implicit threat. He so angered representatives of the Port Authority of New York and New Jersey that the transcript was sent to a Washington law firm for legal review.

"I think the comments speak for themselves. I think it was a very unfortunate choice of words on his part," said Hugh Welsh, deputy general counsel for the port authority. "What he is really saying is that there is no traffic that is captive to any port. It is subject to diversion."

Mr. Finkbiner's comments caught the attention of a New Jersey congressman who has been an advocate for New York port interests.

"I am seriously disturbed by his comments," Rep. Bob Menendez, D-N.J., said in a telephone interview. "A cold reading of his comments would lead you to believe that there clearly was a threat, that you're not going to get the kind of access to your port that you wanted."

Contacted by telephone Monday, Mr. Finkbiner said he did not mean to threaten or browbeat the North Atlantic ports into supporting NS' merger application before the board.

"It's not a threat," he said. "We didn't spend $5.2 billion not to serve people or to threaten people."

Upon hearing portions of the transcript read back to him, Mr. Finkbiner said he did not recall making some of the most controversial remarks. Although he downplayed his comments, the underlying issue of rail competition in the Northeast goes to the heart of what the board must rule upon in the Conrail merger.

The port association regular-

... As we continue to look at the concentration of a number of railroads and the growth of what I consider to be near-monopoly power."

Rep. Menendez said he is concerned that Norfolk Southern's management had "become so insulated that they can make a statement like that and actually carry it out."

"We've been looking at the legal aspects of this and wondering what's the best way to pursue this," Rep. Menendez said, adding that he is considering whether, in addition to seeking official clarification from Mr. Finkbiner, to ask the Justice Department and the STB to review the comments.

'Window of opportunity'

In a verified statement contained in Norfolk Southern's voluminous filings to the board, Mr. Finkbiner asserts that the breakup of Conrail would improve competitive access for ports in the Northeast.

"For the first time since Co... was formed in 1976, rail competition will be introduced by this transaction into major markets now served only by Conrail, including the New York metropolitan area. This transaction creates a window of opportunity to correct this serious anti-competitive deficiency, which has existed in the Northeast for two decades," Mr. Finkbiner's STB statement says.

The NS and CSX proposal calls for introducing two-railroad service in New York and replacing current Conrail service with NS at Philadelphia and Baltimore to give ports rail-to-rail competition. Nothing is changed directly at Boston, where CSX is taking over Conrail's intermodal operations. NS can only serve Boston if it negotiates an agreement with Guilford Transportation Industries, a small carrier that currently serves Boston.

Rip Watson in Washington contributed to this report.

Walk

als," refused assignmen... both ports.

Joe Francis, manager ... cific Container Terminal, 250 longshore positions 179 marine clerk position... not fill because of the shortage.

'It was very costly.'
Joseph Miniace
President
Pacific Maritime Associa...

As a result, intermodal ... schedules were missed and ... sels that should have been ... ished Monday were not.

LAXT is a unique partner... that includes dozens of pa... pants in the coal export ch... Equity holders include the ... of Los Angeles, U.S. coal c... panies and railroads, Japa... bulk carriers and the Japa... utility companies that will ... port the coal.

The terminal, which ... have an annual export capa... of 10 million tons, is virtu... complete. It recently recei... its first test shipment of c... and is scheduled to b... building stockpiles in prep... tion for the first vessel call... October.

Anti-union charges

The ILWU is upset beca... LAXT hired **Savage Industr...** of Salt Lake City to perform ... backland work where coal ... dumped from trains. The ILW... charges that Savage is an an... union company because it ki... ed out the International Brot... erhood of Teamsters when ... took over a trucking operati... in the harbor several years a...

Pacific Carbon Services, ... company formed by Savage ... perform the backland work, ... hire about 50 persons. T... company said those work... can vote to affiliate with t...

16A
13A
14C
14A
12A

CERTIFICATE OF SERVICE

I, Paul M. Donovan, certify that on October 21, 1997, I caused to be served by hand on Applicants' counsel four copies of each of the Public, Confidential and Highly Confidential Versions of NY/NJ-14,15, and 16. I also caused to be served by first class mail on all other parties on the Service list, according to their respective confidentiality status, copies of the same documents.

Paul M. Donovan

STB FD 33388 10-21-97 D 182839

182839

TRANSPORTATION • COMMUNICATIONS
INTERNATIONAL UNION

AFL-CIO, CLC

ROBERT A. SCARDELLETTI
International President
MITCHELL M. KRAUS
General Counsel
CHRISTOPHER J. TULLY
Assistant General Counsel

LEGAL DEPARTMENT

RECEIVED
OCT 21 1997
MAIL MANAGEMENT
STB

October 21, 1997

VIA HAND DELIVERY

Mr. Vernon A. Williams, Secretary
Case Control Branch
ATTN: STB Finance Docket No. 33388
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

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

Dear Mr. Williams:

Enclosed please find an original and twenty-five copies of Transportation·Communications International Union's Comments to Proposed Railroad Control and Operating Leases/Agreements Application (TCU-6), Verified Statement of Thomas R. Roth (TCU-7), Verified Statement of Joel M. Parker (TCU-8), Verified Statement of Richard A. Johnson (TCU-9) and Certificate of Service (TCU-10) in the above-captioned matter.

Also enclosed are two 3.5-inch IBM compatible floppy disks containing the above documents.

Thank you for your attention to this matter.

Very truly yours,

Mitchell Kraus

Mitchell M. Kraus
General Counsel

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

MMK:fm
Enclosures
CC: The Honorable Jacob Leventhal
All Parties of Record (per Service List)

3 Research Place • Rockville, MD 20850 • (301) 948-4910 • FAX (301) 330-7662

182839

TCU-10

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

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

CERTIFICATE OF SERVICE OF MITCHELL M. KRAUS

I hereby certify that on this 21st day of October, 1997 Transportation·Communications International Union's Comments to Proposed Railroad Control and Operating Leases/Agreements Application (TCU-6), Verified Statement of Thomas R. Roth (TCU-7), Verified Statement of Joel M. Parker (TCU-8), Verified Statement of Richard A. Johnson (TCU-9), was served by hand delivery on the parties identified below and by first-class mail, postage prepaid, on all Parties of Record in the above-captioned matter and upon Administrative Law Judge Jacob Leventhal.

Dennis G. Lyons
Arnold & Porter
555 - 12th Street, NW
Washington, DC 20004-1202

Samuel M. Sipe
Steptoe & Johnson L.L.P.
1330 Connecticut Avenue, NW
Washington, DC 20036-1795

Richard A. Allen
Zuckert Scoutt & Rasenberger, L.L.P.
888 - 17th Street, NW, Suite 600
Washington, DC 20006-3939

Paul A. Cunningham
Harkins Cunningham
1300 - 19th Street, NW, Suite 600
Washington, DC 20036

Mitchell M. Kraus

Mitchell M. Kraus
General Counsel
Transportation·Communications
International Union
3 Research Place
Rockville, MD 20850
(301) 948-4910

Dated: October 21, 1997

STB FD 33388 10-21-97 D 182837

SIGNED ORIGINAL

ATMC-2

BEFORE THE

SURFACE TRANSPORTATION BOARD

WASHINGTON, D.C.

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

ARGUMENT OF
A. T. MASSEY COAL COMPANY, INC.,
IN SUPPORT OF REQUEST FOR
IMPOSITION OF CONDITIONS

William P. Jackson, Jr.
Attorney for A. T. Massey Coal
Company, Inc., et al.

OF COUNSEL:

JACKSON & JESSUP, P.C.
Post Office Box 1240
Arlington, VA 22210
(703) 525-4050

Due and Dated: October 21, 1997

ATMC-2

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

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

ARGUMENT OF
A. T. MASSEY COAL COMPANY, INC., ET AL.
IN SUPPORT OF REQUEST FOR
IMPOSITION OF CONDITIONS

In CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company--Control and Operating Leases/Agreements-- Conrail Inc. and Consolidated Rail Corp., STB Finance Docket No. 33388, approval is sought for dividing the assets of Conrail, Inc., and its subsidiaries, including Consolidated Rail Corporation, referred to collectively as "Conrail." The application proposes that the Conrail assets be divided between Norfolk Southern Corporation and its subsidiaries including Norfolk Southern Railway Company, which will be collectively referred to as "NS," and CSX Corporation and its subsidiaries including CSX Transportation, Inc., which will be collectively referred to as "CSX."

A. T. Massey Coal Company, Inc. ("Massey"), timely filed its Notice of Intent to Participate in this proceeding individually as well as on behalf of certain named subsidiaries. The subsidiaries named in the notice of intent were the following:

Bandytown Coal Company
Central West Virginia Energy Company
Eagle Energy, Inc.
Elk Run Coal Company, Inc.
Goals Coal Company
Green Valley Coal Company
Hillsboro Coal Company
Independence Coal Company,Inc.
Knox Creek Coal Corporation
Long Fork Coal Company
Marfork Coal Company, Inc.

Martin County Coal Corporation
A.T. Massey Coal Company, Inc.
Massey Coal Sales Company, Inc.
New Ridge Mining Company
Omar Mining Company
Peerless Eagle Coal Co.
Performance Coal Company
Rawl Sales & Processing Co.
Sidney Coal Company, Inc.
Stirrat Coal Company
Stone Mining Company
Tennessee Consolidated Coal Company
United Coal Company
Vantage Mining Company
Vesta Mining Company
Wellmore Coal Corporation

Power Mountain Coal Company and Spartan Mining Company were recently formed to develop properties acquired by Massey earlier this month, and also join in the Massey presentation to the Surface Transportation Board (STB). In this argument, reference to Massey will include all of its subsidiaries named previously, unless otherwise specified.

Massey is one of the five largest marketers of coal in the United States. Until earlier this year Massey was the largest coal shipper on both CSX and NS, and is now the second largest such shipper, following a merger involving Massey competitors. The accompanying Verified Statement of A. T. Massey Coal Company, Inc., ATMC-3, gives specific data to support this assertion.

Massey's concern relates to how its own competitive position will be affected by the proposals contained in the application in the above-styled proceeding. The application itself ("Application") at pages 4 and 5 shows the reason for that concern:

> CSX and NS have agreed that certain areas will be served by both of them, including the three "Shared Assets Areas" of South Jersey/Philadelphia, North Jersey and Detroit, as well as the coal fields served by the former Monongahela Railroad and the Ashtabula, Ohio dock facility. Numerous shippers in these areas will have access to dual rail service for the first time since the creation of Conrail. CSX and NS will compete aggressively for automotive traffic moving from Detroit to Baltimore, Philadelphia and New York, for coal moving off the former Monongahela Railroad and for coal moving to the Ashtabula Dock facility for subsequent lake movement. [emphasis added]

As stated in the accompanying verified statement of Massey, ATMC-3, Massey has major competitors located on the former Monongahela Railroad ("MGA") who will enjoy rail rates set by intramodal rail competition following the reallocation of Conrail assets. Presently, neither Massey nor its MGA competitors enjoy intramodal rail competition for their traffic.

Following consummation of the transaction proposed in the Application, Massey is quite concerned that its competitive position may be significantly degraded with respect to its MGA competitors. Considerable adverse effect could be experienced by Massey. Despite this, Massey is in favor of the proposed transaction, since it will produce more single-line service than has ever existed for the movement of Massey's coal.

But service is only one factor in the transportation equation. Another, and one which frequently is determinative of Massey's ability to sell its coal, is freight cost. It is the per ton delivered price of coal which is ultimately the important number. If the price is too high, the coal can't be sold.

Railroad pricing policy generally has been to charge what the market will bear - and that refers <u>not</u> to the coal market, but to the transportation market. That being the case, it is clear that the coal producers on the MGA will receive better rates than they presently get. Indeed, NS and CSX each state in no uncertain terms that they will compete strongly for the MGA coal traffic, with the result being lower freight rates than at present. The verified statement[1] of James McClellan, Vice President - Strategic Planning of NS, Vol. I, p. 514, confirms this:

> **Shared Assets Areas.** In some major areas -- Northern New Jersey, Southern New Jersey, most of Philadelphia and the CR lines in Detroit -- separation of trackage between NS and CSX was not feasible or was not acceptable to NS or CSX. Therefore, these markets will be in Shared Assets Areas, with both CSX and NS having access to all customers within each. The Monongahela coal region in southwestern Pennsylvania presents a similar situation. <u>Because virtually all Monongahela traffic is coal moving in full trainloads, under NS operation with full CSX access via trackage rights, both will serve all customers directly, in a position of equality.</u> [emphasis added]

CSX also acknowledges competition and hence lower rates for the MGA coal shippers, as evidenced by the verified statement of John Q. Anderson, its Executive Vice President, Sales and Marketing, Vol. 2A, p. 275 <u>et seq.</u>

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[1] Citation to a verified statement submitted with the Application will be to a volume of the Application and page number therein; <u>e.g.</u>, Vol. I, p. 1.

While it is clear that the MGA coal shippers will very much enjoy their new intramodal rail competition post consummation, it is not at all clear that Massey will be so favorably affected. Despite the discussions in various verified statements of Applicants which attempt to equate the two-carrier competitive structure of eastern railroads to area-wide competition, it remains to be seen how this will play out for coal shippers not actually served by two railroads. If rail competition is indeed enjoyed by all coal shippers, then that will be well and good. But it is the nagging possibility that this will not happen which has caused Massey to bring its concerns to the STB.

The remedy that Massey suggests is a mild one, tailored as closely as possible to cover the situation without unduly imposing on the post-consummation prerogatives of the Applicants. Massey assumes that the Application will ultimately be granted, albeit with appropriate conditions. Massey wants the STB to hold oversight proceedings during a ten year period following consummation of the division of Conrail in order to allow problems that crop up to be addressed.

For the first several years, the proceedings should be held annually. For example, annual proceedings could be conducted beginning on each anniversary of consummation for four years, and then biennially or at such intervals as the STB, in its discretion, may find useful. The results in Union Pacific Corp., Union Pacific Railroad Co., and Missouri Pacific Railroad Co.--Control and Merger--Southern Pacific Rail Corp., Southern Pacific Transportation Co., St. Louis Southwestern Railway Co., SPCSL Corp. and The Denver and Rio Grande Western Railroad Co., Finance Docket No. 32760, indicate that it is wise not to take at face value what applicants say in a proceeding that involves unknown and unknowable consequences at the time approval is given. In that matter, oversight proceedings have been prescribed for a five year period. Based on grave service deficiencies and other problems that have arisen, oversight is definitely needed. How much more oversight will be needed in connection with the Conrail dismemberment awaits the judgment of time.

Accordingly, in view of the facts currently known to Massey, adoption of conditions for approving the application in conformance with the following precepts is requested:

1. In view of the great uncertainty and significant problems that could develop following the division of Conrail assets, oversight proceedings should be conducted following consummation.

2. Oversight proceedings should be conducted over a ten year period, no less often than annually for the first several years and then at such intervals as experience warrants.

3. Because of the consequences that will flow from consummation, the Board should reserve continuing jurisdiction to impose such conditions as future

facts and circumstances may warrant, in order to correct problems as and if they occur.

4. Should it become apparent after consummation that Massey's competitive position has suffered with respect to its competitors who will have competitive rail service following consummation, then Massey should be granted leave to seek the imposition of competitive access or other conditions in the oversight proceedings to remedy any substantial harm that may be done to Massey's relative competitive position as a result of changed rail service.

Imposition of conditions based on the foregoing standards will encourage fair treatment of Massey. The mere existence of such conditions will tend to negate the need to invoke the help of the STB. But without such conditions and the possible imposition of appropriate sanctions, railroad pricing practices may adversely affect Massey's competitive position in the post-consummation future.

Respectfully submitted,

A. T. Massey Coal Company, Inc.,
and Named Subsidiaries

By ______________________
William P. Jackson, Jr.
Their Attorney

CERTIFICATE OF SERVICE

I, William P. Jackson, Jr., hereby certify that on this 21st day of October, 1997, I have served a copy of the foregoing Argument of A. T. Massey, Inc., in Support of Request for Imposition of Conditions upon all parties of record in this proceeding, by first class mail, postage prepaid.

William P. Jackson, Jr.

STB FD 33388 10-21-97 D 182835

182835

182835

TRANSPORTATION • COMMUNICATIONS
INTERNATIONAL UNION

AFL-CIO, CLC

ROBERT A. SCARDELLETTI
International President
MITCHELL M. KRAUS
General Counsel
CHRISTOPHER J. TULLY
Assistant General Counsel

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OCT 21 1997
MAIL MANAGEMENT
STB

LEGAL DEPARTMENT

October 21, 1997

VIA HAND DELIVERY

Mr. Vernon A. Williams, Secretary
Case Control Branch
ATTN: STB Finance Docket No. 33388
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

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

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Also enclosed are two 3.5-inch IBM compatible floppy disks containing the above documents.

Thank you for your attention to this matter.

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

Very truly yours,

Mitchell Kraus

Mitchell M. Kraus
General Counsel

MMK:fm
Enclosures
CC: The Honorable Jacob Leventhal
All Parties of Record (per Service List)

3 Research Place • Rockville, MD 20850 • (301) 948-4910 • FAX (301) 330-7662

182835

TCU-9

RECEIVED OCT 2 1 1997 MAIL MANAGEMENT STB

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 33388

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

VERIFIED STATEMENT OF RICHARD A. JOHNSON

I am the General President of the Brotherhood of Railway Carmen Division (BRC) of the Transportation•Communications International Union (TCU). I have held this position for two years. Prior to my election as General President, I held international office of Assistant General President and General Vice President, and General Chairman of the Milwaukee Road Joint Protective Board. Prior to my election to full-time union office, I had twenty-six years experience in the carman craft. My office address is 3 Research Place, Rockville, Maryland 20850. The BRC represents employees of CSX Transportation (CSXT) and Norfolk Southern, employed in the carmen craft and class. BRC represents certain carmen employed by Conrail and represents that craft and class on Conrail, as does the Transport Workers Union (TWU).

Labor Protection

A. Norfolk Southern

NS maintains that all carmen currently working under a Conrail collective bargaining agreement in the NS allocated portion of Conrail will have that collective bargaining agreement replaced with the Norfolk & Western Agreement.[1] NS' basic position is that the acquiring carriers' collective bargaining agreements should override the agreements on the acquired carrier.

In no rail merger involving carmen has such a practice been implemented so that the acquiring carrier's agreement would be the uniform agreement over the merged system. To the contrary, in virtually all instances, separate agreements have been maintained post-merger. Where work has been transferred, normally it is the agreement at the receiving location which is applicable. NS' approach in this regard is unique and without precedent. Indeed, NS continues to apply the N&W and Southern collective bargaining agreements, and CSXT administers seven carmen agreements. NS cites five efficiencies to justify the wholesale override of existing Conrail agreements.[2] As we set forth below, such efficiencies are either illusory or available without such drastic action.

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[1] Vol. 3B at p. 374, CSX/NS-20.

[2] NS' Answer to TCU Interrogatory No. 3, NS-13.

Payroll Process -- NS maintains that such an override is necessary so that a uniform payroll process similar to that applicable on NS can be established.

Neither Conrail nor NS has conducted a study of the differences in the payroll processes used in the two carriers.[3] Nor has any study been done of the savings to be attained by implementing such a uniform payroll system.[4] Finally, I note that such a uniform system was implemented on the N&W and Southern while separate collective bargaining agreements remain in effect. Accordingly, I see no reason that changes in the Conrail system, if needed, could not be accomplished either consistent with the Conrail collective bargaining agreement or through negotiations.

Uniform Training Procedure - NS wishes to use its McDonough training center in Georgia to train Conrail employees. This facility is used by NS to train its carmen employees as the result of agreements with BRC's General Chairmen representing the N&W and Southern carmen, respectively. There is no reason to assume that similar agreements could not be negotiated with the Conrail General Chairman.

Efficient Equipment Repair - NS believes that multiple collective bargaining agreements would inhibit necessary

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[3] Applicants' Answer to TCU Interrogatory No. 5, CSX/NS-112.

[4] Deposition of R. Spenski, September 2, 1997, pp. 83, 104.

flexibility by placing restrictions on the location of repairs and on who would perform such repairs.

The work rules and practices in Conrail shops are generally similar to the practices in N&W shops. Work could be transferred between N&W and Conrail shops under the New York Dock procedures requiring implementing agreements. When pressed as to what specific efficiency could be attained by applying the N&W Agreement in Conrail shops, NS could only cite the ease of labor relations administration.[5]

As noted above, NS currently administers two carmen collective bargaining agreements. Moreover, the Shared Asset Area will continue to apply the Conrail collective bargaining agreement. NS has not done any studies to establish the cost of administering the Conrail agreement.[6]

Seniority Districts - NS maintains that applying the N&W agreement with its point seniority system will be more efficient than the current Conrail seniority system which encompasses geographic districts. NS indicates that the seniority system commonly used in the industry is that of point seniority and that the seniority system on Conrail is unique.[7]

The Conrail seniority system reflects the complicated history of that carrier. Without describing that system in

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[5] Deposition of R. Spenski, September 2, 1997, pp. 85-88.

[6] Deposition of R. Spenski, September 2, 1997, pp. 88-89.

detail herein, it should be noted that Conrail has a point seniority system for all employees hired after April 1, 1976, the date Conrail began operating. Employees hired by Conrail's predecessors also have point seniority, but in addition they enjoy prior rights to jobs on the predecessor carrier lines on which they first established seniority. The prior right system was established because employees represented by BRC had to complete a four year apprenticeship program before establishing seniority, while TWU-represented carmen established seniority one hundred days after date of hire. Imposing a point system on the pre-April 1, 1976, employees will cause great inequity with no apparent savings.

Administration - NS maintains that imposing the N&W agreement on Conrail will simplify the grievance procedures. As noted above, NS already administers two agreements, has done no cost study to support this claim, and will, in some fashion, be responsible for administrating the Conrail agreement in the Shared Asset Area.

The reasons cited above do not even support the override of specific provisions of the Conrail agreements, no less the override of the entire agreement.

Conrail carmen are covered by Conrail's Supplemental Unemployment Benefit Plan (SUB), which provides for protective

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[7] Answer to TCU Interrogatory No. 3, NS-13; R. Spenski Deposition,

benefits in the event of furlough. The SUB plan is different than <u>New York Dock</u> protections in that no connection to a transaction need be established. By imposing N&W agreements and overriding Conrail SUB, NS will create an inequitable hardship on Conrail employees, particularly those collecting SUB payments. This issue is discussed in greater detail on page 7 of the Verified Statement of Joel M. Parker.

B. CSXT

CSXT intends to impose CSXT agreements on six areas where it will consolidate work between CSXT and Conrail facilities.[8] CSXT will operate three shops in its allocated portion of Conrail at Selkirk and Buffalo, New York and Indianapolis. It is unclear which agreement will be applicable in Selkirk and Buffalo. A CSXT agreement (B&O) will be applicable in Indianapolis.[9]

Where CSXT intends to impose a CSXT agreement on a Conrail location, the same inequities discussed above regarding the Conrail SUB Plan and seniority for those with pre-April 1, 1976, seniority dates will exist.

C. Summary of Position

In short, BRC maintains that the wholesale imposition of the N&W agreement on Conrail is unprecedented and unwarranted; that

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September 2, 1997, pp. 90-91.

[8] Vol. 3A at p. 504, CSX/NS-20.

[9] Answer to TCU Supplementary Interrogatory No. 2, CSX/NS-112, referring to Allied Rail Union Interrogatories 195 and 149(a), CSX/NS-69, 84.

the agreement currently in existence at each location should remain in effect; and that, where there is work transfer, the agreement at the receiving location should prevail except that Conrail employees SUB rights should continue, and the prior seniority rights of Conrail pre-April 1, 1976, hires must be respected.

Safety

Like the U.S Department of Transportation (DOT) and the Federal Railroad Administration (FRA), the BRC believes that one of the most important issues before the Surface Transportation Board as it considers this transaction is the maintenance and improvement of safety on the applicant carriers and their respective portions of Conrail should this application be approved. This goal will require strict compliance with federal rail safety regulations and a greater reliance on mechanical inspections performed by qualified mechanical inspectors (QMIs). The use of a safety equivalency arrangement - either devised or approved by the Federal Railroad Administration (FRA) with an opportunity for comment and/or participation by affected labor organizations - and continuing oversight over safety programs on the applicant railroads and their respective portions of Conrail, will be critical to achieving maximum safety. If this merger is approved by the STB, it should be approved contingent upon the implementation of a safety equivalency plan to be devised or approved by the FRA, with rigorous oversight of compliance with that plan by that agency.

The potential safety issues that accompany this transaction have already attracted the concern of the FRA and the U.S. Department of Transportation (DOT), spurred largely as a result of their experience following the Union Pacific-Southern Pacific (UP/SP-SP) merger one year ago. In summarizing the findings of its safety assurance assessment of UP/SP, the FRA "came to the conclusion that there is a fundamental breakdown in basic railroad operating procedures and practices essential to a safe operation." Federal Railroad Administration, Summary, Safety Assurance Assessment of Union Pacific Railroad (September 10, 1997) (Exhibit A). Moreover, in reporting the preliminary findings of the FRA regarding safety conditions on the UP/SP, the DOT noted several categories of operations in which safety problems were prevalent on the UP/SP-SP, including: a) train control systems and operating practices; b) training and quality control in dispatching; c) hours of service for train crews; d) documentation and labeling of hazardous materials transport; and e) train inspections. The last of these categories is particularly relevant for purposes of this statement, as the FRA's inspections turned up "increased power brake-related safety problems at UP/SP, particularly on routes between Chicago and the West Coast." U.S. Dept. of Transportation, Comments Re:

Union Pacific Corp., Union Pacific R.R. Co. and Missouri Pacific R.R. Co.--Control and Merger--Southern Pacific R.R. Corp., Southern Pacific Transp. Co, St. Louis Southwestern Rwy. Co., SPCSL Corp., and the Denver and Rio Grande Western R.R. Co. (Oversight), Fin. Docket No. 32760 at 4 (Sub-No. 21) (August 1, 1997). As a result of its findings, the FRA decided to intensify its review of safety practices on the merged UP/SP for another six months.

The FRA released its Safety Assurance Compliance Program (SACP) report on October 16, 1997, which found " an atmosphere on CSXT in which some CSXT field managers consistently failed to demonstrate full commitment to safety[,]" often placing train operations ahead of safety considerations. Federal Railroad Administration, CSX Transportation, Inc.: Safety Assurance Compliance Program Executive Summary at ix (October 16, 1997) (Exhibit B). Among the safety violations committed by CSXT were the movement of defective or non-compliant hazardous material tank cars in violation of federal regulations. Id. at vii. Moreover, with respect to ensuring that TOFC/COFC securement, the FRA found CSXT's program to " lack[] direction," such that quality control processes were impaired " to the point where railroad follow-up inspections are ineffectual[,]" and which the FRA found, in turn, to lead to the acceptance of trailers by CSXT " with little assurance that proper loading or securement steps have been taken." Id. at ix. Also cited by the FRA as a major safety problem was the crew management system, inefficiencies in which the Administration found " added to extended duty days and overall fatigue for operating crews." Id. at vi. The FRA also cited the role being played by joint working groups (made up of CSXT management, the FRA, and affected labor organizations) in helping to prioritize and resolve outstanding safety issues. Id. at iii.

Noting that previous mergers, like the UP/SP, " have given rise to concerns about the timely, effective integration of different corporate cultures as they relate to safety[,]" the DOT (on behalf of the FRA) has expressed its commitment to taking a more active role in ensuring that such an " integration of corporate cultures" in this transaction will not undermine safety programs currently in place on the applicant carriers and Conrail. Notice of Intent to Participate of the United States Department of Transportation, Fin. Docket No. 33388 (August 1997). In doing so, the DOT expressed its intent to rely upon many of the same issues raised by the FRA in its evaluation of safety conditions on the UP/SP, including train safety inspection issues. To that end, the FRA is conducting an assessment of all three involved railroads, and will be submitting its findings to the Board, along with its recommendations.

In the past year alone, the occurrence of several derailments has made clear just how important it is that railway freight cars are properly inspected for mechanical defects. For example, in May of 1997, the derailment of twenty-eight (28) cars from a Conrail train near Schuyler, New York (due to a mechanical failure) resulted in the leakage of hydrochloric acid from one of the train's tank cars and the consequent evacuation of sixty (60) town residents. (CNN Interactive, U.S. News Briefs, May 31, 1997.) Little more than one week later, two cars on a CSXT train derailed in Scary Creek, West Virginia, causing a major fire and the evacuation of several hundred local residents due to the possibility that the fire could spread to cars carrying sulfuric acid, bleach and other chemicals.[10] (CNN Interactive, U.S. News Briefs, June 8, 1997.) And in August, thirty (30) cars of a Conrail freight train jumped the tracks in South Plainfield, New Jersey after the brakes were suddenly and automatically applied; although the train was carrying no hazardous material, the area

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[10] This accident was among those cited by the FRA in its SACP Executive Summary as one of those that led FRA to escalate its safety oversight of CSXT. The others occurred in: Marianna, Florida (derailment of 17 CSXT freight cars carrying hazardous material resulted in a four-hour evacuation of local citizens near the derailment site); Rosslyn, Virginia (shifted trailer on CSXT flat car side-swiped a passing Amtrak train); Baltimore (truck trailer loaded with waste paper fell off a CSXT flat car); and Lawrenceville, Illinois (a CSXT freight car with a shifted load side-swiped another CSXT train passing in the opposite direction, resulting in the puncturing of a hazmat tank car which caught fire). (Exhibit B at 2.)

within which it was traveling is a major corridor for the transport of chemicals and other hazardous materials. (CNN Interactive, U.S. News Briefs, August 9, 1997.) Thus, while these particular derailments resulted in no injuries, the prospect for a catastrophe under these circumstances is very real and highlights the importance of preventive safety measures, one of the most important being the inspection of freight cars by QMIs.

Currently, FRA regulations require several types of inspections on rail freight cars, including (but not limited to) initial terminal inspections,[11] pre-departure inspections,[12] tank car inspections[13] and air brake inspections that are required to be carried out every 1,000 miles.[14] During the course of inspections conducted by QMIs represented by the BRC in the past year alone, thousands of mechanical defects and violations of inspection regulations were found in freight cars operated by the Applicants and by Conrail, several hundred of which were serious

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[11] An initial departure inspection is the inspection conducted by QMIs at the train's initial point of origin.

[12] A "pre-departure inspection" is one conducted whenever a new freight car is added to a train, regardless of whether the car is added at the initial point of origin or in transit; these inspections are mandated by 49 CFR § 215.13. Where a qualified mechanical inspector is not on duty at a particular location where a new freight car is attached, Appendix D to Volume 49, Part 215 permits a cursory, pre-departure inspection to be carried out by less-qualified train crews.

[13] 49 C.F.R. § 172.

[14] 49 C.F.R. § 232.12(b).

enough to be referred to the FRA. These violations include everything from defects in power and air brake systems and components, to cracked or otherwise defective wheels, to malfunctioning or broken draft gears and couplings, to poorly secured cargo. Although the carriers in many cases contend that such defects and violations first occur while a given train is en route, their position only highlights the need for regular inspections by QMIs. Any of the above mentioned defects, if undetected or unrepaired, could easily result in a major derailment. For the Board's information, I have included with this statement a listing of those defects and violations found on freight cars used by the three carriers in question which were serious enough to warrant reporting to the FRA. (Exhibit C.)

As part of their merger operating plans, both applicant carriers have proposed to eliminate interchange points throughout the current Conrail system in the interest of allowing smooth "through train" operations, which will also result in an increase in the distance between such interchanges. Because QMIs are predominantly stationed at such interchanges, it is anticipated that the proposed elimination of interchanges will likely cause the carriers to increasingly rely upon train crew inspections, particularly for pre-departure and 1,000 mile air brake inspections. In prior testimony before the FRA, the labor organization which represents train crew employees, the United

Transportation Union (UTU), has stated that train crew employees are ill-trained and unqualified to conduct such inspections, a position from which the UTU has not diverged and in which the BRC concurs. Such increased reliance on train crew inspections will increase the risk of undetected defects on CSXT, NS and Conrail freight cars, compounding the risk of future derailments or other serious rail accidents.

This increased risk of derailments or other serious accidents raises particular concerns in those portions of the merged system where chemicals and other hazardous materials constitute a substantial proportion of the freight transported by the carrier in question. One area of particular concern is the Shared Asset Area (SAA) located in New Jersey. In the applicants' submissions to the Board, details on operations within these SAA's are somewhat sketchy, not the least with respect to safety issues. At the same time, Conrail currently transports a substantial amount of chemicals and hazardous materials through the New Jersey SAA,[15] which also happens to have

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[15] For example, according to the American Association of Railroads, chemical shipments through New Jersey in 1995 constituted approximately twelve percent (864,000 tons) of the total rail tonnage originating within the state, and seventeen percent (over 3 million tons) of the total tonnage terminating within the state. Moreover, these figures do not include the amount of chemical rail tonnage that does not originate or terminate in New Jersey, but rather runs through the state between Pennsylvania or Delaware (and points south and west) and New York (and points north and east).

the nation's highest population density. Current Conrail operations in other states with high levels of chemical rail tonnage - including Massachusetts, New York, Ohio and Michigan - are also conducted through high population density areas. This merger will result in the integration of these operations to NS and CSXT hazardous materials rail traffic through high populations density areas - including Chicago, Detroit, Atlanta, St. Louis, New Orleans and Washington, DC - multiplying the risks presented by the operation of insufficiently inspected and maintained freight cars.

The BRC takes the position that the STB's approval (if any) of the transaction in question should be made contingent upon the implementation of a safety equivalency plan, devised or approved by the FRA, and that BRC and other affected labor organizations be provided the opportunity to contribute to or comment upon such a plan. The participation of labor organizations in similar efforts on CSXT was cited by the FRA in its October 16 SACP report, and the FRA has already implemented a similar agreement, negotiated between Conrail and the affected labor organizations (including the BRC), as a condition for waiving some existing regulations with respect to time-sensitive "block swapping"[16]

[16] In essence, block swapping occurs where an entire block of freight cars is moved from one train to another, with no additional cars added. Because the couplers, air brake connections, etc. for that chain of cars has already been

(Exhibit D). This agreement constitutes a comprehensive safety plan that exempted only time-sensitive trains from the pre-departure inspection requirements, and requires Conrail to provide the FRA and rail labor organizations with a list identifying the specific "time-sensitive" trains on which such block swapping would occur. Those trains eligible for the block swapping waiver are then subject to conditions of the safety equivalency agreement that are intended to ensure the safety of that block of cars.[17]

This safety equivalency agreement was implemented by the FRA beginning in July of 1997, and the FRA will have inspected Conrail's compliance with the plan during the week ending October 18, 1997. The BRC believes that the Conrail plan can set a model for how many of the outstanding safety issues attendant to this merger can be resolved. Like the Conrail plan, any equivalency

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initially inspected, the railroad took the position that a full pre-departure inspection was not necessary in this instance.

[17] Among the conditions included in the plan are: a) the trains carrying cars to be block swapped must have undergone a full initial terminal and mechanical inspection; b) at locations where the time-sensitive cars are to be added, a riding inspection must be conducted by QMIs; c) a train involved in block swapping cannot have any defective cars on it; d) if any car on the block swapping train does not have operative dynamic brakes, the train crew must be informed and the brakes repaired at the first available opportunity; and e) for purposes of determining whether the train subject to block swapping is subject to intermediate inspection (i.e., 1,000 mi. air brake inspection), the mileage is governed by the car in the block of cars which has traveled the most miles from its point of origin or last intermediate

agreement implemented to answer the safety questions raised by this merger should be developed with the input of the affected labor organizations, and should deal specifically with train inspection issues. In this way, the STB can help ensure that the efficiencies that this transaction is intended to produce are not achieved at the cost of railroad safety.

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inspection, and all such intermediate inspections must be conducted by QMIs.

DECLARATION PURSUANT TO 28 U.S.C. §1746

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on October 20, 1997 .

RAJohnson

Richard A. Johnson

News:

U.S. Department of Transportation

Office of the Assistant Secretary for Public Affairs
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FOR IMMEDIATE RELEASE
Thursday, October 16, 1997

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FRA IDENTIFIES SAFETY SHORTFALLS ON CSXT RAILROAD

JACKSONVILLE, Fla. -- Following an intensive inspection, the Federal Railroad Administration (FRA) today released a comprehensive report on CSX Transportation (CSXT) detailing safety shortfalls in the railroad's operation.

The report reviews the findings of a comprehensive safety audit FRA conducted between July and September 1997. The audit is based on the FRA's Safety Assurance and Compliance Program (SACP) model, which focuses on identifying and remedying root causes of safety concern across an entire railroad system.

"Safety is our highest priority," said FRA Administrator Jolene M. Molitoris. "The inspection and review process is not only a means to improve safety, but also serves to guide a cooperative safety partnership, to which the railroad must be committed. Today's report spells out the real and lasting safety improvements throughout the entire CSXT Railroad system which must be made."

The Safety Assurance and Compliance Program process identified specific safety concerns in each of the five functional areas of railroad operation: signal and train control, hazardous materials, operating practices, motive power and equipment, and track. In addition, although CSX has demonstrated over the years an improving safety record and top-level commitmemt to safety, inspectors uncovered instances where "safety first" is not universally observed. The FRA's key findings include:

- A need for more comprehensive employee training in railroad operations;
- A review of safety culture to eliminate harassment and intimidation;
- A need to improve dispatcher communications;
- Deficient implementation of the railroad's operational testing program;
- Inaccurate records in accident/incident reporting and locomotive engineer certification;
- Deficiencies in track program management such as track inspections; and,
- A need for stricter management oversight for cars and locomotives.

Exhibit A

FRA 24-97
Oct. 16, 1997

The information in the report represents FRA's findings during the audit period. Since September, CSXT and its labor representatives, in cooperation with the FRA, have initiated more than 250 corrective projects addressing FRA concerns. In addition, 16 labor-management-FRA teams are functioning in a collaborative process to find permanent solutions to safety issues.

The FRA used a multi-discipline team audit strategy focusing on identifying and remedying root causes of safety problems across the entire CSXT railroad system. Despite a generally good safety performance since the initial SACP process in 1995, a series of five incidents during the summer of 1997 caused FRA to accelerate its ongoing safety oversight of CSXT. These incidents included:

- **St. Albans, W. Va**. - CSXT rear-end collision resulting in one fatality.
- **Marianna, Fla**. - CSXT derailment of 34 cars, and hazardous material, which leaked resulting in a four-hour evacuation of local families around the derailment site.
- **Rosslyn, Va**. - CSXT Intermodal freight train with a shifted trailer on a flat car derailed, side-swiping a passing Amtrak passenger train.
- **Baltimore, Md**. - A truck trailer loaded with waste paper fell off a CSXT flat car after an emergency application of the air brakes.
- **Lawrenceville, Ill**. - CSXT freight train experienced a shifted load which struck a passing freight train. Six cars derailed including a hazardous materials tank car which was punctured in the pile-up and caught fire.

To stem this trend, the FRA immediately accelerated oversight of CSXT. More than 75 FRA safety inspectors and state safety specialists undertook a comprehensive review and analysis of all CSXT practices.

Molitoris said that the ability to eliminate safety hazards and promote prevention of injuries, collisions, and derailments, depends upon an atmosphere of mutual trust, respect, and openness and a true commitment to safety first at every level in the organization.

The FRA Safety Assurance and Compliance Program report was completed with the full cooperation of CSXT management and railroad labor representatives.

The CSXT railroad employs more than 29,000 people and operates in excess of 18,000 miles of track throughout the eastern portion of the United States.

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Safety Assurance and Compliance Program Report for

CSX TRANSPORTATION, INC.

THE EXECUTIVE SUMMARY

Overview

PURPOSE FOR REPORT: This report highlights the findings of the Federal Railroad Administration[1] (FRA) subsequent to a major safety assurance team inspection initiative conducted between July and September 1997 over the CSX Transportation, Incorporated (CSXT) system. It is organized into five chapters which specify FRA findings by functional area: *Signal and Train Control; Hazardous Materials; Operating Practices; Motive Power and Equipment*; and, *Track*.

TEAM REVIEW METHODOLOGY--THE S A C P APPROACH: To review the CSXT safety processes, FRA utilized a multi-discipline team audit strategy based upon the Safety Assurance and Compliance Program (SACP) model[2]. With SACP, the focus is on identifying and remedying root causes of safety concerns across an entire railroad system. Emphasis is on a collaborative approach to systemic fixes. The underpinnings of a successful SACP effort are full participation in the process by railroad labor, management, and FRA, in an atmosphere of openness and trust.

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[1] Throughout this report reference to "FRA" includes by inference all FRA state regulatory safety specialists that participated in the project with FRA personnel.

[2] For a more complete description of SACP see the Report to Congress entitled "*ENHANCING RAIL SAFETY NOW AND INTO THE 21st CENTURY*" published in October 1996.

CSXT RESPONSE: The information in this report represents FRA findings during the audit period. CSXT and their rail labor leaders did not wait for FRA to issue a final report before they acted on findings. CSXT and their labor representatives, in cooperation with FRA, have initiated over 250 corrective projects addressing FRA concerns. In addition, 16 labor-management-FRA teams are functioning in a collaborative process through SACP to find permanent solutions to safety issues. FRA applauds the proactive response by CSXT managers and labor representatives to all our safety concerns and recommendations. Upon receipt of the final report, CSXT will supplement already ongoing activities to address any issues or concerns requiring additional focus.

It is this cooperative safety partnership, to which all parties have committed, that will ensure real and lasting safety improvements on CSXT as safety remedies are implemented.

The Need to Do More

BACKGROUND: In October 1995, the FRA initiated a SACP review of CSXT. Working with CSXT management and their rail labor organizations, we identified a number of safety concerns, including improving the quality of train brake inspections, and managing employee safety--especially bridge worker safety. CSXT responded with corrective actions which helped them maintain a good overall record of safety performance since that time.

RECENT INCIDENTS: Despite generally good safety performance since the initial SACP process in 1995, a series of five incidents this summer caused FRA to escalate its ongoing safety oversight of CSXT:

- One fatality and other employee injuries occurred when a CSXT freight train collided with the rear of another CSXT freight train in St. Albans, West Virginia.

- A CSXT freight train derailed 34 cars near Marianna, Florida, including 17 placarded hazardous materials tank cars (13 cars were loaded and 4 contained residue). Five loads leaked product resulting in a four hour evacuation of local citizens around the derailment site.

- A CSXT Intermodal freight train with a shifted trailer on a flat car derailed near Rosslyn, Virginia and side-swiped a passing Amtrak passenger train. Fortunately no serious injuries were sustained although damage was extensive.

- A truck trailer loaded with waste paper fell off a CSXT flat car in Baltimore, Maryland, after an undesired emergency application of the air brakes. There were no injuries.

- An eastbound CSXT freight train with a shifted load side-swiped a passing westbound CSXT freight train in Lawrenceville, Illinois. Six cars derailed, including a placarded residue hazardous materials tank car which was punctured in the pile up and caught fire.

To stem this sudden trend, FRA immediately accelerated the magnitude of ongoing CSXT safety oversight. Large, multi-disciplinary teams were dispatched to examine every facet of CSXT's system operations. In all, over 75 FRA safety specialists from across the U.S., and state safety specialists from the States of Virginia, Florida, West Virginia, Illinois, and Ohio, provided comprehensive analysis of CSXT practices. FRA, railroad management, and labor representatives quickly established joint working groups which met initially in early July 1997. Those teams continue to meet today as they work to prioritize and resolve safety issues.

The Role of Safety Culture

RAILROAD SAFETY CULTURE: The ability to eliminate safety hazards and promote prevention of injuries, collisions, and derailments, is dependent upon an atmosphere of mutual trust, respect, and openness. Unfortunately, for decades the railroad industry has been characterized by a culture that engenders an adversarial relationship between management and labor rather than one of cooperation. Getting the job done without admitting a need for help is the standard, leading to reluctance to ever take "bad news to the boss." The significance of this culture as an impediment to maximizing safety performance is readily evident throughout the U.S. rail system. FRA has therefore made it a priority to include the issue of safety culture as part of all SACP efforts.

Based upon FRA observations and employee testimonials, CSXT, like most big railroads, is characterized in some quarters by an adversarial safety culture. Throughout this report, FRA identifies examples of this culture, instances in which line managers made decisions about train operations which compromised safety. Only through a true commitment to *safety first at every level in the organization* can a viable safety culture be developed and sustained.

Summary of Specific FRA Findings by Functional Area

The following section summarizes FRA's key findings during the audit period (more detailed discussion of each issue is provided in the report narrative).

Signals and Train Control

FRA findings revealed that CSXT needs to more effectively manage their signal and train control operations in the following areas:

- ✔ Staffing and Training
- ✔ Pole Line Maintenance
- ✔ Insulated Rail Joint Maintenance
- ✔ Preview and Visibility of Signa
- ✔ Circuit Plans
- ✔ Power and Hand-Operated Switches

FRA found a general lack of consistency in maintaining a comprehensive signal oversight program. According to employees and supervisors that FRA contacted, part of the problem may be associated with the level of staffing and training provided. For example:

- FRA inspectors repeatedly found instances in which supervisors had insufficient time to devote to their main objectives (supporting, coaching, mentoring and training signal employees) due to administrative duties.

- These concerns were substantiated by the high defect ratios FRA encountered during inspections. FRA saw sections of right-of-way with poorly maintained pole line (wires with excessive slack, broken poles and cross arms, broken or loose insulators, wires lying on the ground, and overgrown vegetation interfering with wires).

- FRA also found insulated joints defective in a number of locations due to missing end posts and/or deteriorated insulation.

- A number of wayside signals and grade-crossing lights had poor preview and visibility to approaching trains.

- FRA documented instances where circuit plans were incorrect, incomplete, illegible or missing.

- FRA noted that many power and hand-operated switches were defective with loose and ineffective braces and fasteners, improper anchoring of the rail, and defective head block ties.

Operating Practices

FRA documented inadequacies in administration of operating practices requirements in the follow areas:

✔ Efficiency Testing
✔ Locomotive Engineer Certification
✔ Accident Incident Reporting
✔ Alcohol and Drug Testing
✔ Dispatching Concerns
✔ Crew Management Center

Operational Testing-- CSXT's operational testing program, on paper, appears detailed and well conceived. However, it is the implementation of that program where FRA took exception. Specifically:

- There is little evidence that quality operational tests are conducted as required by Federal regulations and CSXT program parameters.

- CSXT management has generally not taken full advantage of this important tool as a means to identify additional safety opportunities to reduce the potential for human factors incidents.

- Employees do not normally get feedback on their test performance unless they fail the test. Such feedback is normally in the context of a disciplinary hearing. Little value results since the process becomes one promoting adversarial outcomes rather than a positive learning experience.

- Little training was provided to designated testing officers by CSXT to provide them a base upon which to build effective testing scenarios.

- Finally, there has been little quality testing of train dispatchers despite their critical safety role in the operation.

Crew Management-- problems at CSXT's crew management center were identified early in the process. Specific issues included inefficiencies in crew calling which added to extended duty days and overall fatigue for operating crews. To illustrate the degree of the problem, FRA found an instance in which a computer glitch resulted in some employees being called every 20 minutes by the automated but malfunctioning system, thoroughly interrupting their rest period. In addition, FRA believes that the crew management center staff is regularly overwhelmed given the demands of the job. Service to employees suffers. The number of telephone lines available in the center needs also to be increased to provide more ready access to crew dispatchers.

Records Compliance-- FRA's investigation revealed that CSXT is not efficiently managing all FRA required records. For example, accident/incident records for reportable employee injuries and illnesses, and rail equipment accidents and incidents, were lacking in some areas. FRA discovered in a "snapshot" review of records a total of 25 instances where reportable accidents and incidents had not been reported to FRA as required. The failure to report these incidents caused CSXT's overall safety numbers to be artificially low in that reporting period.

Likewise, CSXT was unable to provide an accurate list of certified engineers as required by the regulations. And, FRA documented instances where CSXT did not comply with all record keeping provisions of the Federal alcohol and drug testing protocol. Specifically, FRA found that CSXT improperly used Federal forms to conduct "for cause" testing under its collective bargaining agreement.

Hazardous Materials

FRA noted deficiencies in the following areas of CSXT's hazardous materials operations:

- ✔ Train Consist Accuracy
- ✔ TOFC/COFC Documentation
- ✔ Placard Compliance
- ✔ Training of Personnel

Examples:

-- FRA noted three separate instances in which CSXT personnel knowingly ordered defective or non-compliant tank cars to be moved in violation of Federal regulations (individual civil prosecutive action is pending for involved individuals).

-- Inaccurate train consists were encountered repeatedly by FRA inspectors. In addition, FRA noted a trend in which hazardous materials loads inside trailers-on-flat cars (TOFC) and containers-on-flat cars (COFC) were moved with insufficient or missing documentation.

-- CSXT didn't have a consistent or standard methodology to ensure hazardous materials cars were properly placarded, or that missing, worn, or faded placards were replaced as needed en route.

-- Finally, not all CSXT employees requiring hazardous materials training have been provided sufficient training to inspect and monitor hazardous materials shipments.

Track

A major portion of CSXT track is in good condition and fully compliant with Federal track safety standards. However, FRA found that CSXT lacks a fully consistent, sound track program across all parts of the system. Exceptions were noted by FRA in the following areas:

- ✔ Track Inspections
- ✔ Control of Water Saturation on Track Structures
- ✔ Vegetation Control
- ✔ Roadway Worker Protection Compliance
- ✔ Test Car Operation
- ✔ Procedure Manual
- ✔ Defective Rail Detection

FRA determined that some CSXT track inspections and maintenance goals are based solely on the minimum Federal standards rather than more comprehensive CSXT standards.

During inspections FRA found defects on main tracks, including overgrown vegetation, saturated subgrade, and defective rails. In 1996 there were 9 reportable main track derailments caused by defective rails. The Rivanna subdivision, in particular, has had four rail-caused derailments since the beginning of 1996.

FRA determined that while CSXT utilizes a track geometry testing car, the results produced are not always properly verified, interpreted, and corrected in the most effective way.

Finally, FRA believes CSXT's application of the Federal Roadway Worker Protection requirements needs more centralized oversight by engineering managers to minimize risks for employees working on or near the railroad rights of way.

Motive Power & Equipment

CSXT administration of maintenance programs for cars and locomotives is in need of more strict management oversight. Issues FRA encountered included:

- ✔ Locomotive Inspections
- ✔ TOFC/COFC Securement

CSXT's practice of inspecting locomotives on a 122-day cycle does not comply with requirements of the Federal regulations which specify that 92-day inspections be conducted. The quality of inspections also needs to be a recurrent subject of supervisory focus.

In terms of TOFC/COFC securement, FRA found CSXT's program lacking direction. Like many railroads, CSXT has contracted out most trailer/container loading to outside contractors. As a result, railroad oversight of quality control processes has diminished to the point where railroad follow up inspections are ineffectual. As a result, trailers are accepted on CSXT lines with little assurance that proper loading or securement steps have been taken.

Summary of General Conclusions

FRA identified several recurring themes during the audit period which CSXT and their employees must continue to address if they are to progress their safety program to the next level. Based upon comprehensive individual findings, FRA has defined several general conclusions about the CSXT safety program:

- <u>*SAFETY "FIRST" IS NOT UNIVERSALLY OBSERVED*</u>-- FRA found an atmosphere on CSXT in which some CSXT field managers consistently failed to demonstrate full commitment to safety. Some front-line managers emphasize train operations over safety considerations. For example, FRA witnessed two occasions in which locomotives were dispatched from repair facilities with known intermittent electrical ground faults. In another example, a leading tank car was dispatched from a terminal by a management official to avoid a delay in car transit[3].

Such management actions have led some employees to doubt senior management claims that safety is first, foremost, and always. In fact, some CSXT employees told FRA inspectors that they believe they must involve FRA in order to ensure corrective action for identified safety hazards.

- *HARASSMENT AND INTIMIDATION ARE EVIDENT*-- CSXT has not created a universal atmosphere where safety performance and risk reduction are rewarded. Many employees in various departments and locations reported to FRA inspectors that they feel harassed or intimidated when they raise safety concerns that might interfere with train operations. For example, FRA noted an instance where a locomotive was ordered out of a terminal without allowing a mechanic to finish a required daily inspection. The mechanic was ordered to allow the locomotive to depart by the operating supervisor or face consequences.

  Open dialogue and common resolve to address safety hazards is jeopardized by this overriding theme. Many employees simply do not feel ownership in the safety program since being a safety advocate is not valued by some managers.

- *LACK OF COMMUNICATIONS FOLLOW THROUGH HURTS SAFETY*-- CSXT's communications infrastructure is not sufficient to eliminate known safety hazards. For example, on October 9, 1997, near Savannah, Georgia, an Amtrak train collided with a "lowboy" truck trailer that lodged itself on the street crossing. Based on FRA's preliminary review, which is continuing with the National Transportation Safety Board, we learned that a local police officer notified the CSXT dispatching center almost 30 minutes prior to the collision that the truck was stuck. Despite the advance call, no warning was provided to the crew of the approaching Amtrak train resulting in the collision. The entire Amtrak train derailed with injuries to passengers

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[3] FRA is processing individual liability cases against individuals engaged in willful violations.

and crew. Less than 12 hours after the incident, FRA Administrator Molitoris and CSXT President Pete Carpenter signed a comprehensive "Safety Action Agreement" undertaking measures designed to improve communication and eliminate such hazards.

Conclusion

Over the years, CSXT has demonstrated an improving safety record and top level commitment to safety. The findings documented by the FRA teams during the August period serve as an indication that it is imperative that senior CSXT leadership build upon past successes while recognizing the need to move forward to address the shortfalls identified in this report.

Finally, FRA extends appreciation to all who participated with us throughout this safety review, especially the professional craft employees who took time to share with us their perspectives, concerns, and recommendations. In fact, it is clear that the employees who operate and maintain the railroad and equipment are the best group of safety consultants any railroad could have.

Federal Railroad Administration
October 16, 1997
Washington, D.C.

Joint Proposal to FRA for Interim Provisions for Time Sensitive Block Swapping on Conrail

The following provisions are offered to FRA by Conrail, Brotherhood Railway Carmen Division/Transportation Communications International Union (BRC/TCU), Transportation Workers Union (TWU), United Transportation Union (UTU) and Brotherhood of Locomotive Engineers (BLE) as an interim measure to temporarily provide economic relief to Conrail for time sensitive freight being block swapped at certain locations without a full mechanical inspection under 49 CFR Part 215, Subparts A and B and initial terminal test under 49 CFR §232.12. These interim provisions are also intended to address safety concerns for such operations by providing procedures with a safety equivalency which must be strictly followed by Conrail. Furthermore, these provisions are applicable only to time sensitive trains as set forth herein for no longer than 30 days. FRA will verify the time sensitivity of the block swapping of time sensitive trains and blocks of cars as identified by Conrail in the list that is to be provided immediately. Initially, FRA will focus its verification activities on three locations: the Dewitt Yard in New York and the Conrail facilities in Cleveland, Ohio and Harrisburg, Pennsylvania.

All other provisions of 49 CFR Parts 215, 231 and 232 are intact.

Prior to any final approval of these interim provisions, Conrail shall provide to FRA and rail labor representatives a specific list identifying time sensitive trains and blocks of cars with train symbols, origin, destination and locations where block swapping is to occur. This is also to include the nature of the time sensitive freight involved. Upon approval of these interim provisions, Conrail shall provide some means by which these trains can be immediately recognized by FRA, supervisory personnel, train crews and carmen. Following the 30 days in which FRA is to verify the time sensitivity of the trains, cars and freight identified in the list provided by Conrail and whether there is sufficient time to inspect such trains or blocks, additional discussions involving the parties and FRA will be required if a permanent solution to these block swapping issues is desired.

"Time sensitive" trains or blocks of cars are those that currently, by contract and train schedule, are not in the yard or other facility for a sufficient period of time to allow a mechanical inspection of the block of cars under 49 CFR Part 215, Subparts A and B prior to the block of cars being added to a departing train. For purposes of the provisions set forth in this proposal, those time sensitive blocks of cars which are at a location for less than three hours between arrival at the location and departure in another train to which they have been

Exhibit B

added shall be subject to these provisions only if they cannot be inspected. Such time sensitive blocks of car must still be inspected if there is sufficient time for inspection and the tracks where the blocks of cars are located are not otherwise unavailable for inspection due to switching operations involving the blocks of cars.

For purposes of this document, the use of the term "carmen" and the work set forth herein do not reduce or expand the rights or obligations under the Carmen Agreement in effect between Conrail and the Transportation Workers Union and the Brotherhood Railway Carmen Division/Transportation Communications International Union dated September 1, 1977 as amended.

1. Trains which will carry or receive blocks of cars to be block swapped must receive their initial terminal test under 49 CFR §232.12 and mechanical inspection under 49 CFR Part 215, Subparts A and B by carmen at the originating terminal for such trains. The mechanical inspection must be a walking inspection of both sides of the train. The initial terminal test must also include a walking inspection of both sides of the train on the application of the brakes with the option to perform a roll by inspection of the release of the brakes peformed by two carmen, one on each side of the train. The mechanical inspection and initial terminal test can be performed concurrently as long as defective equipment is removed in accordance with this plan. Carmen performing these tests must complete and sign an air slip to travel with the train. An original or copy of the air slip must travel with each block of cars and the train to which it will be added.

2. At locations where time sensitive blocks are added to trains, there must be a riding inspection (at a speed of 10 mph or less) by carmen on both sides of the train of the application and release. A roll-by inspection by carmen stationed on both sides of the train with the train moving no faster than 10 mph may be performed in place of a riding inspection of the release.

   a) If a riding inspection of only one sides is possible due to the physical conditions of the facility, then a riding inspection of one side is required as set forth above. Additionally the carmen will perform an observed set and release of the brakes on the last car in response to the train controls at the head end and a roll-by inspection of both sides of the train with the train moving no faster than 5 mph.

   b) If a riding inspection of both sides is impossible due to the physical conditions of the facility, then the carmen will perform an observed set and release of the brakes on the last car in response to the train controls at the head end and a roll-by inspection of both sides of the train with the train moving no faster than 5 mph.

c) It is the intent of this proposal that Conrail will use all of its efforts to have such trains placed where they can be inspected on both sides. If this is not possible, then the trains should be placed where inspection on one side is possible. For example, trains should be placed on outside tracks or on other tracks that are adjacent to roadways to allow a riding inspection of at least one side. Conrail is not to deliberately circumvent these provisions in order to prevent riding inspections when and where such placement is possible. Any questions regarding the ability of Conrail to perform riding inspections shall be handled on a case by case basis.

3. Any train engaged in block swapping shall not have any defective cars moving under 49 CFR §215.9. Any cars discovered with FRA defects shall be repaired in the train or removed from the train for repairs.

4. Operative 2-way EOT devices shall be required for all trains engaged in block swapping.

5. If any train engaged in block swapping does not have operative dynamic brakes on any unit, the train crew shall be notified and the dynamic brakes shall be repaired at the first opportunity.

6. Mileage for the intermediate inspection of any train engaged in block swapping shall be governed by the car or block of cars in the train with the most miles travelled from its point of origin or last intermediate inspection. All such intermediate inspections shall be performed by carmen.

7. The interim provisions set forth herein shall apply only so long as FRA is involved in the verification of the time sensitivity of the specific freight, cars and trains set forth in the list to be provided by Conrail and whether such blocks are placed in tracks for sufficient periods of time to be inspected. FRA is to verify that:

a) The "time sensitive" freight identified in the list must be delivered by a specific time or Conrail will face penalty or loss of business under the terms of an existing contract; and

b) The "time sensitive" blocks of cars identified in the list are not in the yard or other facility for longer than three hours without inspection. Furthermore, such blocks of cars must still be inspected if there is sufficient time to allow a mechanical inspection of the block of cars under 49 CFR Part 215, Subparts A and B and initial terminal test under 49 CFR §232.12 prior to the block of cars being added to a departing train and the tracks where the blocks of cars are located are not otherwise unavailable for inspection due to switching operations involving the blocks of cars.

8. a) Definition of a block of cars: *A block of cars is defined as one or more cars continuously coupled together in a solid block in a train which when removed from the train remain intact and coupled together and which were previously tested and inspected by carmen under 49 CFR §215.13 and 49 CFR §232.12(c-j) within 500 miles of origination.*

   b) The number of blocks that can be swapped is as follows: *Only three blocks are to be added to each existing through train at any one location. This restriction for three blocks runs for the life of the train. The number of cars to be added is not to exceed 50% of the total number of cars in the original through train.*

   c) Block swapping shall occur within 500 miles of original terminal as follows: *Cars to be block swapped must not travel over 500 miles from their original terminal and the location where they are to be block swapped.*

9. Conrail, BRC/TCU, TWU, UTU and BLE agree that the course of action set forth herein is without prejudice to the right of Conrail, BRC/TCU, TWU, UTU or BLE to maintain contrary positions on the subjects covered by FRA Technical Bulletins MP&E 97-1 and MP&E 97-2, and present or future FRA interpretations or enforcement guidelines affecting carrier compliance with 49 CFR Parts 215, 231 and 232.

10. This proposal is subject to the rail labor representatives' review of the specific list provided by Conrail identifying time sensitive trains and blocks of cars with train symbols, origin, destination, locations where block swapping is to occur and the nature of the time sensitive freight involved and approval by FRA. Conrail has maintained that approximately 28% of its trains contain time sensitive freight. Conrail has been reluctant to provide the information requested prior to agreement to this proposal. Accordingly, the labor organizations reserve the right to withdraw support for this proposal should the information requested not be provided immediately or the information provided is not consistent with Conrail's claims.

H. B. Lewin
Brotherhood Railway Carmen
Division/Transportation
Communications International
Union (BRC/TCU)

Gary E. Maslanka
Transportation Workers Union
(TWU)

Ray L. Lineweber
United Transportation Union
(UTU)

Leroy D. Jones
Brotherhood of Locomotive
Engineers (BLE)

Thomas P. McDermott
Counsel for Brotherhood
Railway Carmen
Division/Transportation
Communications International
Union (BRC/TCU)

5-12-97
Consolidated Rail Corporation
(Conrail)

FEDERAL RAILROAD ADMINISTRATION FILES

General Complaints: Property/Location/JPB	Reason for Investigation
Conrail	Air brake instructions issued by Conrail to be used by Car Inspectors while performing ITT test using yard air supply Filed letter with FRA 7/22/97
Conrail/Cleveland, OH U.T.U.	Moving 20 to 30 gondolas from Atlas Iron Products to Brookpark Ford Filed letter with FRA 5/15/97
Conrail/Baltimore, MD T.W.U.	Violation of Power Brake, Safety Appliance and Mechanical defects - Enola Yard (PA) and Baltimore Yard - Train UBT 398 Letter filed with FRA 3/24/97
Conrail/Buckeye, OH T.W.U.	Violation of Power Brake and Safety Appliance Buckeye Yard Letter filed with FRA 2/13/97
Conrail/Buckeye, OH T.W.U.	Violation of Power Brake and Safety Appliance Buckeye Yard Letter filed with FRA 2/14/97
Conrail T.W.U.	Carriers failure to comply with pre-departure inspection at Collinwood, Rockport and Whiskey Island facilities Letter filed with FRA 6/17/97
Conrail/Newark, NY JPB No. 150	Carrier failure to perform pre-departure inspection & air brake tests-traincrew BA2 Oak Island Yard Letter filed with FRA 2/18/97
Conrail/Newark, NJ JPB No. 150	Carrier failed to perform pre-depature mechanical inspection §215(a)(b) Oak Island Yard Letter filed with FRA 3/24/97

Exhibit C

General Complaints: **Property/Location/JPB**	**Reason for Investigation**
Conrail/Newark, NJ JPB No. 150	Carrier violation with mechanical inspection procedure (§215(a)(b) - Oak Island Yard Letter filed with FRA 3/24/97
Conrail/Newark, NJ JPB No. 150	Violation of Power Brake and Safety Appliance Oak Island Yard Letter filed with FRA 4/1/97
Conrail/Newark, NJ JPB No. 150	Violation of Power Brake and Safety Appliance Oak Island Yard Letter filed with FRA 4/7/97
Conrail/Newark, NJ JPB No. 150	Violation of Power Brake and Safety Appliance Oak Island Yard Letter filed with FRA 4/9/97
Conrail/Newark, NJ JPB No. 150	Violation of Power Brake and Safety Appliance Oak Island Yard Letter filed with FRA 4/9/97
Conrail/Newark, NJ JPB No. 150	Violation of Power Brake and Safety Appliance Oak Island Yard Letter filed with FRA 4/10/97
Conrail/Newark, NJ JPB No. 150	Violation of Power Brake and Safety Appliance Oak Island Yard Letter filed with FRA 4/11/97
Conrail/Newark, NJ JPB No. 150	Violation of Power Brake, Safety Appliance and Mechanical defects - Oak Island Yard Letter filed with FRA 6/13/97
Conrail/Newark, NJ JPB No. 150	Violation of Power Brake, Safety Appliance and Mechanical defects - Oak Island Yard Letter filed with FRA 6/16/97
Conrail/Newark, NJ JPB No. 150	Violation of Power Brake, Safety Appliance and Mechanical defects - Oak Island Yard Letter filed with FRA 7/3/97

General Complaints:

Property/Location/JPB	**Reason for Investigation**
Norfork Southern/Rocky Mount, NC JPB No. 340	Violation of defective air brake equipment initial terminal test on CSXT Train 471 Berkley Yard Letter filed with FRA 5/30/97
Norfolk Southern/Buffalo Junction,NY JPB No. 200	Letter to FRA Fine for investigation into NS moving defective equipment out of Buffalo **Letter written 5/15/97 - no response**
Norfolk Southern/Buffalo, NY JPB No. 200	Violation of Safety Appliance and Mechanical defects - Train 309 and DOT inspection Buffalo Junction Letter filed with FRA 6/18/97

COMPLAINTS UNDER INVESTIGATION

Conrail/Allentown Yard, PA JPB No.150	Violation of Safety Appliance and Power Brake **FRA FILE NO. PB96-CR-20157**
Conrail/Allentown Yard, PA JPB No. 150	Violation of Safety Appliance and Power Brake **FRA FILE NO. PB96-CR-20156**
Conrail/Allentown Yard, PA JPB No. 150	Violation of Safety Appliance and Power Brake **FRA FILE NO. PB96-CR-20158**
Conrail/Allentown Yard, PA JPB No. 150	Violation of Safety Appliance and Power Brake **FRA FILE NO. PB96-CR-20160**
Conrail/Allentown Yard, PA JPB No. 150	Violation of Safety Appliance and Power Brake **FRA FILE NO. PB96-CR-20163**
Conrail/Allentown Yard, PA JPB NO. 150	Violation of Safety Appliance and Power Brake **FRA FILE NO. PB96-CR-20164**
Conrail/Allentown Yard, PA JPB No. 150	Violation of Safety Appliance anad Power Brake **FRA FILE NO. PB96-CR-20167**
Conrail/Allentown Yard, PA JPB No. 150	Violation of Safety Appliance and Power Brake **FRA FILE NO. S96-CR-20171**

Complaints Under Investigation:

Conrail/Allentown Yard, PA JPB No. 150	Empty hopper car CR 887322 with defective air brakes, air brakes cut out-shopped at Pittson Yard **FRA FILE NO. PB96-CR-20149**
Conrail/Allentown Yard, PA JPB No. 150	Violation of Safety Appliance and Power Brake **FRA FILE NO. S97-CR-20044** **ASSESSMENT OF CIVIL PENALTIES**
Conrail/Allentown Yard, PA JPB No. 150	Violation of Safety Appliance and Power Brake **FRA FILE NO. PB97-CR-20002**
Conrail/Baltimore Yard, MD T.W.U.	Violation of Safety Appliance on Train BAEL 4 **FRA FILE NO. S96-CR-20153** **ASSESSMENT OF CIVIL PENALTIES**
Conrail/Baltimore Yard, MD T.W.U.	Violation of §215.9-defective wheels/train TV22 **FRA FILE NO. K97-CR-20029** **ASSESSMENT OF CIVIL PENALTIES**
Conrail/Bayview Yard, MD T.W.U.	Violation of Safety Appliance and Power Brake **FRA FILE NO. S97-CR-20052** **three complaints under one file number** **INVESTIGATION COMPLETE**
Conrail/Bayview Yard, MD T.W.U.	Violation of Safety Appliance and Power Brake **FRA FILE NO. PB97-CR-20059**
Conrail/Bayview Yard, MD T.W.U.	Violation of Safety Appliance, Power Brake and Mechanical defects **FRA FILE NO. S97-CR-20062** **INVESTIGATION COMPLETE**
Conrail/Bayview Yard, MD T.W.U.	Violation of Safety Appliance, Power Brake and Mechanical defects **FRA FILE NO. PB97-CR-20063** **INVESTIGATION COMPLETE**
Conrail/Bayview Yard, MD T.W.U.	Violation of Safety Appliance, Power Brake and Mechanical defects **FRA FILE NO. S97-CR-20073**

Complaints Under Investigation:

Conrail/Bayview Yard, MD T.W.U.	Violation of Safety Appliance, Power Brake and Mechanical defects **FRA FILE NO. S97-CR-20072** **two complaints under one file number** **INVESTIGATION COMPLETE**
Conrail/Bayview Yard, MD T.W.U.	Violation of Safety Appliance **FRA FILE NO. S97-CR-20043** **ASSESSMENT FOR CIVIL PENALTIES**
Conrail/Buckeye Yard, OH T.W.U.	Violation of Safety Appliance and Power Brake **FRA FILE NO. PB96-CR-20162**
Conrail/Buckeye Yard, OH T.W.U.	Violation of Safety Appliance and Power Brake **FRA FILE NO. PB96-CR-20159**
Conrail/Buckeye Yard, OH T.W.U.	Violation of Safety Appliance and Power Brake **FRA FILE NO. S97-CR-20045** **3 complaints under one file number** **INVESTIGATION COMPLETE**
Conrail/Buckeye Yard, OH T.W.U.	Violation of Safety Appliance and Power Brake **FRA FILE NO. S97-CR-20001**
Conrail/Buckeye Yard, OH T.W.U.	Violation of Safety Appliance and Power Brake **FRA FILE NO. S97-CR-20024** **INVESTIGATION COMPLETE**
Conrail/Collinwood Yard, OH T.W.U.	Failure to perform pre-departure inspection and power brake inspection (block swapping) **FRA FILE NO. PB97-CR-20016** **ASSESSMENT OF CIVIL PENALTIES**
Conrail/Collinwood Yard, OH T.W.U.	Violation of Safety Appliance, Power Brake and Mechanical defects **FRA FILE NO. PB97-CR-20061** **INVESTIGATION COMPLETE**
Conrail/Collinwood Yard, OH T.W.U.	Violation of Power Bakes - train TV 100 **FRA FILE NO. PB97-CR-20038** **INVESTIGATION COMPLETE**

Complaints Under Investigation:

Conrail/Collinwood Yard, OH T.W.U.	Violation of Power Brakes - Train TV 207 **FRA FILE NO. PB97-CR-20037** **INVESTIGATION COMPLETE**
Conrail/Elkhart Yard, IN T.W.U.	Outbound trains dispatched without effectuating repairs- violation of Safety Appliance and Power Brake **FRA FILE NO. K97-CR-40012**
Conrail/Elkhart Yard, IN T.W.U.	Improper initial terminal air brake test (ITT) **FRA FILE NO. K97-CR-40010**
Conrail/Elkhart Yard, IN T.W.U.	Violation of Power Brake and Mechanical defects **FRA FILE NO. K97-CR-40012** **INVESTIGATION COMPLETE**
Conrail/Elkhart Yard, IN	Violation of Safety Appliance and Power Brake **FRA FILE NO. K97-CR-40009** **9 complaints covered under one file number**
Conrail/Elkhart Yard, IN T.W.U.	Improper initial terminal air brake test (ITT) **FRA FILE NO. K97-CR-40010** **3 complaints covered under one file number**
Conrail/Elkhart Yard, IN T.W.U.	Improper initial terminal air brake test (ITT) **FRA FILE NO. PB97-CR-40038**
Conrail/Elkhart Yard, IN T.W.U.	Improper initial terminal air brake test (ITT) **FRA FILE NO. PB97-CR-40048**
Conrail/Elkhart Yard, IN T.W.U.	Violation of Safety Appliance and Power Brake **FRA FILE NO. K97-CR-40049**
Conrail/Frontier Yard, NY T.W.U.	Violation of Safety Appliance **FRA FILE NO. K96-CR-10047**
Conrail/Intermodal Yard, MD T.W.U.	Violation of Power Brakes - train TV 22/26 **FRA FILE NO. PB97-CR-20053** **INVESTIGATION COMPLETE**

Complaints Under Investigation:

Conrail/Oak Island Yard, NJ JPB No. 150	Violation of Safety Appliance and Power Brake **FRA FILE NO. K96-CR-10046** **3 complaints covered under one file number**
Conrail/Oak Island Yard, NJ JPB No. 150	Violation of Safety Appliance and Power Brake **FRA FILE NO. K96-CR-10048** **4 complaints covered under one file number**
Conrail/Walton Hills Yard, OH T.W.U.	Safety Appliance violation on train ELPI **FRA FILE NO. S96-CR-20166** **Requested Freedom of Information**
CSXT JPB No. 290	Defective equipment in trains arriving at Chattanooga, TN and Pensacola, FL **FRA FILE: PB97-CSX-3093 (TN)** **FRA FILE: PB97-CSX-3094 (FL)** **1 complaint-two different locations**
CSXT/Acca Yard, VA JPB No. 90	Violation of Safety Appliance and Power Brake **FRA FILE NO. S97-CSX-20051** **3 complaints covered under one file number** **INVESTIGATION COMPLETE**
CSXT/Gentilly Yard, LA JPB No. 90	Violation of Safety Appliance, Power Brake and Mechanical defects **FRA FILE NO. K97-CSXT-50248**
CSXT/Gentilly Yard, LA JPB No. 290	Violation of Safety Appliance, Power Brake and Mechanical defects **FRA FILE NO. K97-CSXT-50249**
CSXT/Gentilly Yard, LA JPB No. 290	Violation of Safety Appliance and Power Brake **FRA FILE NO. K97-CSX-50234** **INVESTIGATION COMPLETE**
CSXT/Russell Yard, KY JPB No. 90	Violation of Safety Appliance, Power Brake and Mechanical defects **FRA FILE NO. S97-CSX-20021** **ASSESSEMENT FOR CIVIL PENALTIES**

<u>**Complaints Under Investigation:**</u>

CSXT/Queensgate Yard, OH JPB No. 30 **rec. FOI 7/28/97**	Violation of Safety Appliance and Power Brake **FRA FILE NO. S97-CSX-20022** **INVESTIGATION COMPLETE** **Requested Freedom of Information**
CSXT/Queensgate Yard, OH JPB No. 30 **rec. FOI 7/28/97**	Violation of Safety Appliance and Power Brake **FRA FILE NO. S97-CSX-20023** **INVESTIGATION COMPLETE** **Requested Freedom of Information**
CSXT/Queensgate Yard, OH JPB No. 30	Violation of Safety Appliance and Power Brake **FRA FILE NO. S97-CSX-20067** **INVESTIGATION COMPLETE** **OFFICE OF CHIEF COUNSEL**
CSXT/Queensgate Yard, OH JPB No. 30	Violation of Safety Appliance and Power Brake **FRA FILE NO. S97-CSX-20068**
Norfolk Southern/Ashville, NC JPB No. 200	Violation of mechanical inspections **FRA FILE NO. PB97-NS-3045** **INVESTIGATION COMPLETE**
Norfolk Southern/Calumet Yard, IL JPB No. 200	Block swapping - failure to perform mechanical inspection and air brake inspection **FRA FILE NO. K97-NS-40061**
Norfolk Southern/Calumet Yard, IL JPB No. 200	Train LC23 with 143 cars - violated §232.12 defective air brakes to run in the train **FRA FILE NO. PB97-NS-40081**
Norfolk Southern/Chattanooga, TN JPB No. 200	Violation of mechanical inspections and air brake inspections not being performed into the "Wye" at this facility. **FRA FILE NO. PB97-NS-3070** **INVESTIGATION COMPLETE** **ASSESSMENT OF CIVIL PENALTIES**
Norfolk Southern/Detroit Yard, MI JPB No. 340	Violation of Power Brake - 13 freight cars **FRA FILE NO. PB96-NS-40090** **ASSESSMENT FOR PENALTIES**

Complaints Under Investigation:

Norfolk Southern/Detroit Yard, MI JPB No. 200	Movement of defective air brake equipment car MSE 1934 train 411 **FRA FILE NO. PB97-NS-40078**
Norfolk Southern/Elmore Yard, WV JPB No. 340	Violation of Safety Appliance and Power Brake **FRA FILE NO. PB97-NS-20060**
Norfolk Southern/E. Wayne Yard, IN JPB No. 200	Violation of Safety Appliance and Power Brake **FRA FILE NO. K97-NS-40058**
Norfolk Southern/E. Wayne Yard, IN JPB No. 200	Violation of Safety Appliance and Power Brake **FRA FILE NO. K97-NS-40059**
Norfolk Southern/E. Wayne Yard, IN JPB No. 200	Violation of Safety Appliance and Power Brake **FRA FILE NO. K97-NS-40062**
Norfolk Southern/E. Wayne Yard, IN JPB No. 200	Violation of Safety, Power Brake and Mechanical defects **FRA FILE NO. K97-NS-40086**
Norfolk Southern/E. Wayne Yard, IN JPB No. 200	Violation of Safety Power Brake and Mechanical defects **FRA FILE NO. K97-NS-40087**
Norfolk Southern/Irondale Yard, AL JPB No. 200	Violation of Power Brake and 45 USC 20303 **FRA FILE NO. PB97-NS-3003** **ASSESSMENT FOR PENALTIES**
Norfolk Southern JPB No. 200	Defective cars run from Jacksonville, FL to Macon, GA - §232 violation **FRA FILE NO. S97-NS-3039** **ASSESSMENT FOR CIVIL PENALTIES**
Norfolk Southern/Louisville, KY JPB No. 200	Violation of Safety Appliance and Power Brake **FRA FILE NO. S97-NS-3030** **INVESTIGATION COMPLETE**
Norfolk Southern/Louisville, KY JPB No. 200 2 complaints-same violations	Violation of Mechanical defects - blocks of cars in outbound trains with pre-departure inspection **FRA FILE NO. S97-NS-3033** **FRA FILE NO. S97-NS-3034** **ASSESSMENT FOR CIVIL PENALTIES**

Complaints Under Investigation:

Norfolk Southern/Louisville, KY JPB No. 200	Violation of Safety Appliance and Power Brake **FRA FILE NO. S97-NS-3050** **Requested Freedom of Information**
Norfolk Southern/Louisville, KY JPB No. 200 **rec. FOI 8/25/97**	Violation of Safety Appliance and Power Brake **FRA FILE NO. S97-NS-3049** **INVESTIGATION COMPLETE** **Requested Freedom of Information**
Norfolk Southern/Oliver Yard, LA JPB No. 200	Violation of Safety Appliance and Power Brake **FRA FILE NO. K97-NS-50233** **INVESTIGATION COMPLETE**
Norfolk Southern/Oliver Yard, LA JPB No. 200	Violation of Safety Appliance and Power Brake **FRA FILE NO. K97-NS-50243** **INVESTIGATION COMPLETE**
Norfolk Southern/Oliver Yard, LA JPB No. 200	Violation of Safety Appliance and Power Brake **FRA FILE NO. K97-NS-50238** **INVESTIGATION COMPLETE**
Norfolk Southern/Oliver Yard, LA JPB No. 200	Violation of Safety Appliance, Power Brake and Mechanical defects **FRA FILE NO. K97-NS-50245** **INVESTIGATION COMPLETE**
Norfolk Southern/Oliver Yard, LA JPB No. 200	Violation of Safety Appliance, Power Brake and Mechanical defects **FRA FILE NO. K97-NS-50247** **INVESTIGATION COMPLETE**
Norfolk Southern/Oliver Yard, LA JPB No. 200	Violation of Safety Appliance, Power Brake and Mechanical defects **FRA FILE NO. K97-NS-50246**
Norfolk Southern/Portsmouth Yard, OH JPB No. 340	Violation of Safety Appliance, Power Brake and Mechanical defects **FRA FILE NO. S97-NS-20078**
Norfolk Southern/Sheffield Yard, AL JPB No. 200	Violation of 1,000 inspection **FRA FILE NO. PB97-NS-3100**

Complaints Under Investigation:

Norfolk Southern/Woodstock Yard, LA JPB No. 200	Alleged movement of defective car TTWX 974465 from Woodstock to New Orleans, LA **FRA FILE NO. PB97-NS-3075**
Norfolk & Western/N. Kansas City, MO JPB No. 340	Violation of Safety Appliance, Power Brake and Mechanical defects **FRA FILE NO. S97-NW-60660**

STB FD 33388 10-21-97 D 182833

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TRANSPORTATION • COMMUNICATIONS
INTERNATIONAL UNION

AFL-CIO, CLC

ROBERT A. SCARDELLETTI
International President
MITCHELL M. KRAUS
General Counsel
CHRISTOPHER J. TULLY
Assistant General Counsel

LEGAL DEPARTMENT

RECEIVED OCT 21 1997 MAIL MANAGEMENT STB

October 21, 1997

VIA HAND DELIVERY

Mr. Vernon A. Williams, Secretary
Case Control Branch
ATTN: STB Finance Docket No. 33388
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

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

Dear Mr. Williams:

Enclosed please find an original and twenty-five copies of Transportation·Communications International Union's Comments to Proposed Railroad Control and Operating Leases/Agreements Application (TCU-6), Verified Statement of Thomas R. Roth (TCU-7), Verified Statement of Joel M. Parker (TCU-8), Verified Statement of Richard A. Johnson (TCU-9) and Certificate of Service (TCU-10) in the above-captioned matter.

Also enclosed are two 3.5-inch IBM compatible floppy disks containing the above documents.

Thank you for your attention to this matter.

Very truly yours,

Mitchell Kraus

Mitchell M. Kraus
General Counsel

ENTERED
Office of the Secretary
OCT 21 1997
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MMK:fm
Enclosures
CC: The Honorable Jacob Leventhal
All Parties of Record (per Service List)

3 Research Place • Rockville, MD 20850 • (301) 948-4910 • FAX (301) 330-7662

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TCU-8

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 JOEL M. PARKER

My name is Joel M. Parker. I have been an International Vice President of Transportation·Communications International Union (TCU) since 1991, where I am in charge of the Industry Relations Department. That department is responsible for the coordination and support of all negotiations and arbitrations on behalf of the international union. I am TCU's member to the joint National Salary Board which administers the National Salary Plan between TCU and the participating carriers, including Norfolk Southern and Conrail. TCU represents the clerical craft and class on NS, CSXT and Conrail.

Norfolk Southern's Proposal to Abrogate
the Conrail Collective Bargaining Agreement

TCU is compelled to respond to those facets of Norfolk Southern's Operating Plan[1] which would have significant and permanent negative effect on TCU-represented employees yet fail to rise to the level of business necessity. We take issue

[1]Volume 3B of 8, NS Operating Plan, Labor Impact Exhibit, Density Charts and Supporting Statements (CSX/NS-20), Appendix A.

specifically with Applicants' plan to abrogate Conrail collective bargaining agreements through the application of "appropriate NS practices and applicable NS collective bargaining agreements for each craft," and the coordination of Clerical seniority districts on Conrail into "the appropriate NS seniority districts, depending on over-all system operating needs." Carrier thereafter lists four "efficiencies and benefits" flowing from such arrangements.

As its first alleged "efficiency and benefit," NS avers that the elimination of the Conrail collective bargaining agreement will "permit a single, system-wide uniform claims and grievance appeals procedure..." This statement is belied by the fact that there are currently three distinct clerical collective bargaining agreements on Norfolk Southern: Norfolk Southern (Corporate), Norfolk and Western Railway, and Southern Railway (now called Norfolk Southern Railway). Each has different rules; each has different procedures. For example, the discipline appeal procedure on the Southern Railway agreement is different than those in the other two agreements. The rule governing discipline investigations is different. And there is an intermediate appeal step that is not present in the other two agreements.

More importantly, simplification of labor relations procedures and claims handling has absolutely no relationship to operational efficiencies that may be necessary to reap the benefits of the transaction. In fact, it barely rises to the level of convenience, which cannot be the standard for eliminating the Conrail collective bargaining agreement.

This "ease of administration" rationale, if accepted, would mean that the mere existence of multiple collective bargaining agreements after a transaction somehow thwarts the benefits of the merger. According to NS, it is self-evident that one collective bargaining agreement is more efficient to administer than two, and the acquiring carrier's agreement should prevail. (Deposition R. Spenski, September 2, 1997, pp. 87-88, 104-105.) The STB, and before it the ICC, has never before accepted this argument as sufficient to override an existing collective bargaining agreement. If permitted here, it would effectively mean that an automatic consequence of a merger or control transaction would be the elimination of all but the acquiring carrier's collective bargaining agreement.

That this has never before been sanctioned by the STB or ICC is evidenced by the existence of multiple collective bargaining agreements in each craft on almost every merged railroad. As previously stated, there are three existing clerical agreements on the Norfolk Southern. There are four existing clerical agreements on CSXT. When the Southern merged with Norfolk & Western, the same argument regarding the acquiring carrier agreement could have been made. But that argument was not even advanced, and the need to administer multiple agreements has not prevented NS from operating efficiently and profitably.

The second benefit that NS claims will result from the elimination of the Conrail Agreement is that "One Wage Grade structure...will continue on the expanded NS system. This simplifies the payroll process."[2] The "efficiency" of having one wage grade structure is in reality unattainable, as we will explain below, and its importance in this context is grossly exaggerated by NS.

Unlike past mergers, where often more than one thousand clerical rates of pay existed on the involved carriers, in this case both Conrail and NS have implemented the National Salary Plan (NSP).[3] We attach a copy of the Memorandum of Agreement which implemented the NSP on Conrail as TCU Exhibit "A". We also attach as TCU Exhibit "B" a copy of the Wage Grade Rates on both carriers, as summarized by the National Railway Labor Conference and made a part of the 1996 National Agreement.

Under the NSP, every clerical position on both NS and Conrail was evaluated by a joint labor-management committee according to predefined job content criteria, and then placed in one of only fifteen (15) Wage Grades. Thus, both Conrail and NS have in place identical 15 Wage Grade structures, albeit with slightly different rates of pay. Eventually, all employees on both carriers will be paid Wage Grade Rates, which means that the simplification in payroll structure that NS touts as a benefit of eliminating the Conrail CBA amounts to the reduction of thirty rates of pay to

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[2]Vol. 3B at p. 500, CSX/NS-20.

[3]In his September 2, 1997 deposition, NS's Robert S. Spenski misstated that Conrail had never implemented the National Salary Plan (NSP). (Deposition of Robert S. Spenski and Kenneth R. Peifer in Finance Docket No. 33388, before the Surface Transportation Board on September 2, 1997, Page 102, 22-25.) Applicants, however, are now in agreement that Conrail has implemented the National Salary Plan. Answers to TCU Supplemental Interrogatory No. 6, CSX/NS-112.

fifteen, hardly an efficiency necessary to reap the benefits of the transaction.

In the near term future, the elimination of the Conrail CBA would have no discernible impact on reducing the number of rates of pay. Under the NSP, existing employees maintained their individual rate of pay if it was higher than the newly established Wage Grade Rates. Approximately fifty percent of the employees on both carriers thus receive an individualized rate, rather than the Wage Grade Rate. Many hundreds of such rates exist. They would continue even if the Conrail CBA was eliminated.

It is not true that one wage grade structure is required in order for NS to employ "a single wage and payroll system." The Conrail CBA has no rule that conflicts with payroll periods or payday procedures on NS. Significantly, NS now administers three existing clerical agreements under one payroll system. It is not necessary to eliminate the Conrail collective bargaining agreement in order to include Conrail employees in the NS payroll system, which now covers employees working under the Norfolk Southern (Corporate), Norfolk and Western Railroad and Southern Railroad collective bargaining agreements.

Most importantly, the simplification of a payroll system has never before been elevated to the status of an efficiency necessary to attain the benefits of a merger. By definition, every merger in history involved multiple payroll systems. Under NS' novel theory, the mere existence of multiple rates of pay should have led the STB, and the ICC before it, to override all but the acquiring carriers' CBAs in every such transaction. Not only has the STB, and the ICC before it, never before overridden a CBA on this basis, to my knowledge no carrier has ever proposed payroll simplification as a rationale for overriding CBAs.

NS also states that the elimination of the Conrail collective bargaining agreement and imposition of an "appropriate" NS agreement would provide "expanded" employment opportunities for Conrail Clerical employees by providing them with "access to openings on the entire NS system." This NS claim is wrong on its face, as even existing NS employees do not have system-wide seniority rights, nor even unrestricted seniority rights among the three separate existing agreements. Indeed, NS does not now have the right to require employees to relocate anywhere on its system. In any event, as acknowledged by NS,[4] the issue of seniority rights in conjunction with a merger or a particular merger-related coordination is traditionally and properly addressed by an implementing agreement.

Finally, NS claims that Conrail employees brought within the coverage of existing NS collective bargaining agreements "will be protected by standard job stabilization provisions."[5]

TCU is in the process of negotiating with Conrail for job stabilization protection, and that matter is in mediation. As of this writing, TCU-represented employees are covered by Conrail's Supplemental Benefit Plan, but not by a job stabilization

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[4]Deposition R. Spenski, pp. 165-166.

[5]Volume 3B at p. 375, CSX/NS-20.

agreement. To the extent that NS' offer of coverage under its job stabilization plan constitutes an improvement in benefits, it does not provide a basis to override the entire Conrail agreement.

NS proposes to override the existing Conrail Supplemental Benefits plan (SUB) on its allocated portion of Conrail assets,[6] although the SUB will be applicable on the shared asset area.[7] Such an override would be to the detriment of employees because SUB benefits are available in situations that job stabilization benefits are not. This is particularly true for Conrail employees currently receiving SUB benefts, because such employees would lose those benefits under the NS proposal, and would not be eligible for New York Dock or NS job stabilization agreement benefits since they would be already furloughed on the date of the transaction.

In sum, NS' claimed efficiencies for the abrogation of Conrail clerical agreements are illusory, and certainly do not constitute sufficient reason to abrogate existing Conrail agreements in their entirety. NS' claim that the acquiring carrier's agreements automatically prevail is neither supported by STB precedent or past practice. NS and CSXT have maintained separate clerical agreements, as more recently have BN/Santa Fe and the Union Pacific/SP.

Ironically, even CSXT does not share NS' view that the acquiring carrier agreements automatically prevail since its

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[6]Answer to Allied Rail Unions' Interrogatory 221, CSX/NS-110.

[7]Deposition K. Peifer, p. 61.

position is that the existing Conrail agreements will apply to work performed on the CSXT-allocated portion of Conrail.[8]

Field Seniority: CSXT's Proposal To Override the B&O and C&O Agreements With the Conrail CBA

According to CSXT, "The existing field seniority districts on the CSX-allocated portion of Conrail and the corresponding area of CSX will be combined into one district. The Conrail collective bargaining agreement will apply to all locations in this field district."[9]

CSXT proposes the consolidation of previously separate rosters on Conrail and eight previously separate rosters under the B&O and C&O collective bargaining agreement to form a single seniority district encompassing a number of states from Illinois, Indiana, Ohio and Michigan to Maryland, Pennsylvania, New York and Massachussetts.[10] The geographic scope of such a district is likely to impose significant relocation burdens on employees, and as conceded by CSXT must be the subject of the implementing agreement negotiating process.[11] I note that TCU has never entered an implementing agreement calling for such a massive consolidation of seniority districts on both of the acquiring and acquired carriers. This is particularly true where, as is the case herein, no work is being transferred between locations in this putative seniority

[8]Volume 3A, pp. 497-500, CSX/NS-20.

[9] Vol. 3A, Appendix A, p. 500, CSX/NS-20.

[10]CSXT Answers to Interrogatories, CSX-16, Answer 9(b).

[11]Deposition of K. Peifer, September 2, 1997, p. 49.

district, except between CSXT's facility at Walbridge, Ohio, and current Conrail's Stanley Yard in Toledo.[12]

Although virtually no work is being transferred, CSXT intends to apply the Conrail Agreement to all locations in this field district.[13] CSXT maintains that the efficiencies to be derived from applying the Conrail agreement to CSXT locations within this planned seniority district are that all employees in this district will better understand the applicable rules.[14]

CSXT proposes to impose the acquired carrier's (Conrail's) agreements as opposed to the NS' view that it is the acquiring carrier agreement which should prevail. TCU's position in this regard is the same that has been generally followed in all prior mergers. In the absence of a transfer of work, both agreements -- in this case CSXT and Conrail -- should continue in effect at the same geographic locations where they had previously applied. If work is transferred, the agreement at the receiving location is normally applied.

CSXT claims for efficiencies derived from a single agreement in the field are belied by the fact that it currently administers four clerical agreements and CSXT has operated efficiently and profitably.

CSXT employees in the planned field district currently are covered by job stabilization agreements which provide protective

[12]CSXT Answers to Interrogatories, Interrogatory 9(d), CSX-16.

[13]Vol. 8A at p. 500.

[14]Deposition K. Peifer, p. 19.

benefits to furloughed employees. These job stabilization agreements essentially provide what is sometimes referred to as "attrition protection" -- that is, the employee does not have to demonstrate a nexus between a furlough and another event such as a merger. It is CSXT's view that these job stabilization agreements no longer should be applicable to these employees.[15] While CSXT agrees that employees in the field district will have the option of electing job stabilization protection, such employees, according to CSXT, may do so only when adversely affected by the transaction.[16]

In short, CSXT's position places these employees in a Catch-22, denying them valuable protective rights. The current CSXT job stabilization agreements provide protection regardless of nexus to a transaction, but, according to CSXT, employees may elect such protection only if affected by the merger. A CSXT employee in the field seniority district furloughed because of a reduction in force would have previously been entitled to protection under the job stabilization agreements, but would under CSXT's proposal be denied such protection. TCU is unaware of any of its employees affected by a merger being similarly required to surrender job stabilization protection, and we find it particularly egregious in this instance where virtually no work is being transferred. CSXT was unable to cite any resulting efficiencies from overriding the existing job stabilization agreements.[17]

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[15]Deposition of K. Peifer at pp. 23-24.

[16]Ibid. p. 29.

[17]Deposition of K. Peifer, pp. 31-32.

CSXT's Functional Seniority Districts

It is my understanding that CSXT proposes transferring clerical work from Conrail to Jacksonville and forming six functional seniority districts. Conrail employees, who are not offered a position being transferred to Jacksonville, will have their seniority placed on the Jacksonville CSXT roster.[18] The effect of this transfer of seniority, according to CSXT, will be that Conrail employees in a "dismissed" status drawing protection under New York Dock will be responsible for accepting work in their new seniority district in Jacksonville or lose their protection.[19] In short, the impact of these "functional" seniority districts will be to require employees to relocate to Jacksonville or surrender protection.

Once again, CSXT's approach is unique. While it is true that "dismissed" employees are required to accept positions in their craft within their existing seniority districts or lose protection, TCU is unaware of any instance where clerical seniority districts were expanded after merger to increase the scope of this responsibility. Such a change in seniority districts would markedly change New York Dock protections by expanding employee responsibility to relocate.

Indeed, CSXT acknowledged the uniqueness of this approach and was unable to cite a single instance where seniority was changed

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[18] Vol. 8A, pp. 497-500.

[19] Deposition of K. Peifer, p. 50.

for employees not following transferred work.[20] Further, there are significant questions of equity as to whether the Conrail employees' seniority under these unique circumstances should be dovetailed or endtailed. Certainly, any proposal to modify seniority as outlined by CSXT must be subject to the New York Dock implementing agreement process and may not be accomplished by carrier fiat.

For the reasons set forth above, Applicants' efforts to abrogate existing collective bargaining agreements and expand existing seniority districts should be rejected by this Board.

I have noted some of TCU's labor protective concerns with NS and CSXT's proposals. There may well be others that will become apparent as the parties engage in implementing agreement negotiations. In spite of the concerns expressed above, I note that TCU has successfully negotiated master implementing agreements in the BN/Santa Fe and UP/SP mergers.

Safety Issues

In its recently released Safety Assurance and Compliance Program Report for CSXT[21] (Johnson Verified Statement, Exhibit B), the FRA highlighted inefficiencies in crew calling which added to extended duty days and fatigue for operating crews. The FRA concluded that, "The crew management center staff is regularly overwhelmed given the demands of the job."

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[20] Deposition of K. Peifer, pp. 42-43.

[21] A copy of this report is attached to the Verified Statement of Carmen Division President Johnson submitted contemporaneously herein.

CSXT crew management is centralized in Jacksonville, Florida. Regular positions remain unfilled, and the guaranteed extra board is below the staffing levels required by agreement. The result is that employees assigned to crew management regularly are required to work overtime. For example, during the month of February, 1997, approximately 100 employees in the crew management center were required to work double shifts (16 consecutive hours on duty).

CSXT proposes to close Conrail's crew management center in Pittsburgh and transfer that work to its Jacksonville center that is the subject of FRA's critical report discussed above. CSX anticipates transfering all crew calling work to Jacksonville within a seven month transition period.[22] Further consolidations in Jacksonville are likely to exacerbate existing safety problems. Such changes should be permitted only subject to FRA review to assure compliance with acceptable safety standards.

[22] See Answer to TCU Supplemental Interrogatory 1, CSX/NS-112.

DECLARATION PURSUANT TO 28 U.S.C. SECTION 1746

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on October 20, 1997.

JOEL M. PARKER

MEMORANDUM OF AGREEMENT ENTERED INTO THIS 20th DAY OF JULY, 1993, BETWEEN CONRAIL AND ITS EMPLOYEES REPRESENTED BY THE TRANSPORTATION COMMUNICATIONS UNION CONCERNING CERTAIN CHANGES TO BE MADE IN THE NATIONAL SALARY PLAN AS ADOPTED BY THE PARTIES PURSUANT TO ARTICLE IV OF THE NATIONAL AGREEMENT DATED JUNE 1, 1991.

IT IS AGREED:

1. The National Salary Plan (NSP) will remain as adopted by the June 1, 1991 National Agreement except for the specific changes set forth hereinafter. Similarly, the interpretations and decisions which have so far been rendered by the Joint National Salary Board (JNSB), and any future interpretations and decisions, shall remain in effect, except as they may be affected by the specific changes set forth hereinafter.

2. **Establishment of Employee Maintenance Rates (EMRs)**

For purposes of establishing EMR's, Implementation Day (I-Day) will be considered July 1, 1992, or the date of actual implementation, whichever produces a higher EMR.

3. **Duration of EMRs**

EMRs will not expire.

4. **Initial Wage Grade/Obligations to Exercise Seniority**

An employee's initial wage grade will be the wage grade of the position on which the employee established his/her EMR. For EMR purposes, an employee will only be required to exercise seniority (bid/displace/apply for training) to a position in his/her initial wage grade which does not require a change

Exhibit A

in residence. If the employee does not have sufficient seniority to hold a position in the initial wage grade, the employee is obligated to obtain a position in the highest wage grade available that is lower than the initial wage grade.

Signed at Philadelphia, PA, on July 20, 1993.

For TRANSPORTATION COMMUNICATIONS UNION

General Chairman

For CONRAIL:

R. S. Swert

Vice President-Labor Relations

APPROVED:

International Vice President

Wage Grade Rates with Tentative Agreement Increases and 7% Restoration on 1/1/97
NS

	Current Rate*	COLA $0.09	3.5% 12/1/95	1.75% 7/1/96	Restore** 1/1/97	3.5% 7/1/97	1.75% 7/1/98	3.5% 7/1/99	Estimated $0.51 7/1/00
1	$69.34	$70.06	$72.51	$73.78	$79.58	$82.37	$83.81	$86.74	$90.82
2	$73.42	$74.14	$76.73	$78.07	$84.21	$87.16	$88.69	$91.79	$95.87
3	$77.50	$78.22	$80.96	$82.38	$88.86	$91.97	$93.58	$96.86	$100.94
4	$81.58	$82.30	$85.18	$86.67	$93.49	$96.76	$98.45	$101.90	$105.98
5	$87.71	$88.43	$91.53	$93.13	$100.45	$103.97	$105.79	$109.49	$113.57
6	$93.84	$94.56	$97.87	$99.58	$107.41	$111.17	$113.12	$117.08	$121.16
7	$99.96	$100.68	$104.20	$106.02	$114.36	$118.36	$120.43	$124.65	$128.73
8	$106.09	$106.81	$110.55	$112.48	$121.33	$125.58	$127.78	$132.25	$136.33
9	$112.22	$112.94	$116.89	$118.94	$128.29	$132.78	$135.10	$139.83	$143.91
10	$118.35	$119.07	$123.24	$125.40	$135.26	$139.99	$142.44	$147.43	$151.51
11	$122.43	$123.15	$127.46	$129.69	$139.89	$144.79	$147.32	$152.48	$156.56
12	$126.51	$127.23	$131.68	$133.98	$144.52	$149.58	$152.20	$157.53	$161.61
13	$130.59	$131.31	$135.91	$138.29	$149.17	$154.39	$157.09	$162.59	$166.67
14	$134.67	$135.39	$140.13	$142.58	$153.79	$159.17	$161.96	$167.63	$171.71
15	$138.75	$139.47	$144.35	$146.88	$158.43	$163.98	$166.85	$172.69	$176.77

* Current rate is the 7/1/94 rate, i.e., without subsequent COLA adjustments.

** Restoration of 7% is calculated by dividing the 7/1/96 rate by 0.89 and then multiplying by 0.96.

Note: The rates shown are full rates. Existing provisions concerning entry rates remain applicable.

7/25/96

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Exhibit B

Wage Grade Rates with Tentative Agreement Increases and 7% Restoration on 1/1/97
Conrail

	Current Rate*	COLA $0.09	3.5% 12/1/95	1.75% 7/1/96	Restore** 1/1/97	3.5% 7/1/97	1.75% 7/1/98	3.5% 7/1/99	Estimated $0.51 7/1/00
1	$68.25	$68.97	$71.38	$72.63	$78.34	$81.08	$82.50	$85.39	$89.47
2	$72.26	$72.98	$75.53	$76.85	$82.89	$85.79	$87.29	$90.35	$94.43
3	$76.28	$77.00	$79.70	$81.09	$87.47	$90.53	$92.11	$95.33	$99.41
4	$80.29	$81.01	$83.85	$85.32	$92.03	$95.25	$96.92	$100.31	$104.39
5	$86.32	$87.04	$90.09	$91.67	$98.88	$102.34	$104.13	$107.77	$111.85
6	$92.34	$93.06	$96.32	$98.01	$105.72	$109.42	$111.33	$115.23	$119.31
7	$98.36	$99.08	$102.55	$104.34	$112.55	$116.49	$118.53	$122.68	$126.76
8	$104.38	$105.10	$108.78	$110.68	$119.39	$123.57	$125.73	$130.13	$134.21
9	$110.40	$111.12	$115.01	$117.02	$126.22	$130.64	$132.93	$137.58	$141.66
10	$116.42	$117.14	$121.24	$123.36	$133.06	$137.72	$140.13	$145.03	$149.11
11	$120.44	$121.16	$125.40	$127.59	$137.63	$142.45	$144.94	$150.01	$154.09
12	$124.45	$125.17	$129.55	$131.82	$142.19	$147.17	$149.75	$154.99	$159.07
13	$128.47	$129.19	$133.71	$136.05	$146.75	$151.89	$154.55	$159.96	$164.04
14	$132.48	$133.20	$137.86	$140.27	$151.30	$156.60	$159.34	$164.92	$169.00
15	$136.50	$137.22	$142.02	$144.51	$155.88	$161.34	$164.16	$169.91	$173.99

* Current rate is the 7/1/94 rate, i.e., without subsequent COLA adjustments.

** Restoration of 7% is calculated by dividing the 7/1/96 rate by 0.89 and then multiplying by 0.96.

Note: The rates shown are full rates. Existing provisions concerning entry rates remain applicable.

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Exhibit C