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FD-33388

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JUN 4 1998

Part of  
Public Record

BEFORE THE  
SURFACE TRANSPORTATION BOARD



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

VERIFIED STATEMENT  
OF  
ROSS P. CAPON

My name is Ross B. Capon. I am the executive director of the National Association of Railroad Passengers, a membership organization which works to educate the public about the benefits of rail passenger service, to help Amtrak and other carriers provide the best service possible and to help secure adequate resources for the service. I assumed my present position in April, 1976, after having served as assistant director of the association starting in January, 1975.

The central concern of the National Association of Railroad Passengers regarding the proposed division of Conrail is its impact on existing and potential, future rail passenger service. In general, we support the application to merge Conrail into CSX and Norfolk Southern. However, we ask this Board to retain oversight jurisdiction of CSX and NS for ten years to ameliorate any negative impacts of the Conrail breakup on rail passenger service, both intercity and commuter.



**CSX Handling of Amtrak Trains.** As outlined below, we believe the public interest demands some assurance that the "worst behavior" CSX will be corrected rather than extended to the Conrail lines CSX plans to acquire. With regard to Amtrak's statutory right to dispatching priority, Conrail performance has improved significantly over the past year. CSX performance, which had been dismal for many years, has improved in the past few months, but there are many who believe that this improvement is part of CSX's effort to make sure that passenger concerns do not derail the CSX/NS plan for Conrail. We welcome this improvement, but its timing and short duration concern us.

**Access:** Railroad passengers require "meaningful access," that is, the right of Amtrak and commuter authorities to use tracks owned by applicants with appropriate frequencies and in compliance with the Rail Passenger Service Act that passenger trains get "priority" in dispatching. We understand that, for example, adding several commuter trains to an existing freight-only or mostly-freight railroad generally will require capacity-enhancing capital investments. We believe it is only fair that the passenger operator be required to make such reasonable capital improvements. This is far different from the CSX attitude reflected until recently, which can be paraphrased as "we don't want passenger trains under any circumstances."

Comments of CSX officials have reflected an almost religious belief that passenger trains should not share the same tracks with freight trains, completely independent of track capacity questions. Comments also reflect strong antipathy towards Amtrak and a lack of knowledge about the extent of demand for Amtrak service.

- In the 1994 annual report, Chairman Snow states: "CSX is required by law to play a somewhat reluctant host to more Amtrak trains than any other railroad except Conrail. Many are not justified by public demand, yet they constrict rail capacity or force maintenance standards that exceed those needed for freight operations."
- The 1995 annual report's "Public Policy Statement" says: "We also support the concept of public commuter rail service where it is properly funded, well planned and does not hurt our efforts to improve rail freight service. However, forcing a combination of today's rail freight demands with those of urban areas is a compromise for both sets of needs that inevitably leads to dissatisfied customers. Ultimately, more commuters would return to already congested highways to face more large trucks hauling freight. CSX believes that the best option is to develop separate commuter systems where feasible along existing rights of way."
- In a March 14, 1996, "Dear CSX Shareholder" letter accompanying the 1995 Annual Report, Mr. Snow stated: "Until a commitment is made to invest in dedicated passenger networks, travelers and commuters will not enjoy the high standards of service they deserve."

CSX knows well how great are the capital demands of "dedicated passenger networks," and how severe the logistical barriers. It is far safer to mix passenger and freight trains on the same tracks than to mix automobiles and big trucks on the same highways, yet the nation long has taken the latter for granted. CSX sets conditions which threaten to eliminate the passenger train in the U.S. That in turn would worsen the safety record of U.S. transportation overall.

Then-Maryland Transportation Secretary David Winsted was astounded at his initial meeting (on the new commuter-train contract) with CSX officials, who told him they didn't want his business and wished the service wasn't there.

We are glad to read in Mr. Snow's Verified Statement that "this transaction should not negatively impact passenger operations. We can accommodate those operations, and we welcome them." Given Mr. Snow's contrary statements in the recent

past, it should be easy to understand our concern as to which Mr. Snow is speaking and for what reasons.

**Olympics Service Torpedoed:** At the time of the 1996 Summer Olympics in Atlanta, NS and CSX both refused to cooperate in the operation of special trains, despite the service's low frequencies (two or three daily round-trips) and short duration (six weeks). We were disappointed by the attitude of both railroads towards this opportunity to be good corporate citizens and let some people escape highways anticipated to be unusually congested. While Amtrak should have pressed the railroads early enough to permit application to this board with a view towards a board access order, such application should not have been necessary. Once again, the railroads displayed an anti-passenger attitude.

**Maryland commuter rail (MARC):** The MARC timetable that takes effect next month is the product of lengthy negotiations which, it appears, were successfully concluded primarily because CSX was anxious to get Governor Glendening's endorsement of this application, which he promptly gave. We should not, however, forget that in 1997 this same CSX Corporation refused to operate baseball specials to Baltimore.

In recent years, CSX and MARC participated in a study of ways to enhance capacity on the Camden and Brunswick Lines, with a view to preserving "reverse-commute" service. At the conclusion of the study, CSX refused to deal with its results and simply said MARC would be confined to one track. This even means the elimination of deadhead, reverse moves, that is, positioning moves which are not in the public timetable and therefore not held to the same performance precision. This in turn will

harm the economics of MARC's operation, particularly after Frederick service begins. The CSX policy also means that, when the Penn-Camden lines connection is built, the Camden Line's century-old, scheduled reverse-commute service will end. People who, for example, live in Laurei and work in Baltimore will lose their service.

Contrary to trends elsewhere in the nation, the new MARC contract also narrows commuters' options and thus reduces MARC's market appeal. The last inbound train on the Brunswick line will arrive Washington 20 minutes earlier--9:00 AM instead of 9:20 AM. This will make a marginal difference to CSX freight operations, but a great difference to some commuters.

CSX officials have said that no freight runs during the rush hour, but it is common to see freight trains operating here at rush hour, an indication that the MARC impact on freight service is not as great as CSX comments would indicate.

Moreover, the contract with Maryland expires at the end of calendar 1999, giving CSX an opportunity--presumably after STB approval of this application--to put even more restrictions on the commuter operation.

In both the Atlanta and MARC cases, CSX policy often seemed driven more by political agenda than by a sober analysis of the company's real interests. *We urge the Board to state the importance of cooperation by the railroads in the development of rail passenger service.*

**Health of Canadian Pacific (CP):** CP's Schenectady-Rouses Point-Canada line is of vital importance to Amtrak and to NARP. It forms part of Amtrak's New York-Montreal *Adirondack* route. Amtrak's Washington-Vermont-Montreal *Montrealer* was



replaced in early 1995 by a train whose northern terminal is St. Albans. As a result, the *Adirondack* became even more important—it is now Amtrak's only train to Montreal.

Consequently, while we are glad to see that NS plans to route traffic over CP between Binghamton and Albany, we are concerned that CP's other concerns about this application remain unaddressed. We do not want to see CP's competitive position in the Eastern U.S. marginalized to the point that the railroad's interest in or ability to properly maintain the Schenectady-Canada line is brought into doubt.

We add an expression of concern about plans for the Binghamton-Albany segment: NS reports this as part of its 1,071-mile Boston-Chicago alternative to CSX's prospective operation of the former New York Central "Water Level Route." NS would rely on Guilford east of the Albany area. We hope NS will offer an effective Boston-Chicago service in conjunction with Guilford, but we have our doubts. *We urge the Board to recognize the importance of CP's Eastern U.S. operations to Amtrak as well as to shippers and to insure that the ultimate result of this proceeding does not create a probability that CP would downgrade or seek to abandon its Schenectady-Canada line.*

**Union Pacific Lessons:** A CSX October 17 news release reports comments to the joint U.S.-Canadian Transportation Research Forum in Montreal by CSX Assistant VP--Planning Michael F. Brimmer. The release is silent on the CP situation, but quotes Brimmer saying this about the application: "Whenever a new level of service is introduced into a market, whether it's for goods or services, for high-tech or low-tech, prices have trended downward and value upward. More competition is always good for business."

We understand and agree with the general argument that Penn Central and Conrail both were compromises and that the alignment of most ex-New York Central lines with CSX and of most ex-Pennsylvania lines with NS would have been preferable in previous years and should today create a healthier, more competitive rail system. We have read the glowing accounts of what approval of this application would mean for shippers and how substantial cargo would be shifted from road to rail.

For example, the Verified Statements of NS VF--Strategic Planning James W. McClellan and of Mr. Snow, respectively, state:

"Rail customers and potential rail customers throughout the eastern United States are denied the efficiencies of single line service by the current structure of the region's rail system. Barriers in the rail system force substantial volumes of freight from the rail system onto an overburdened highway system. With our extended routes, NS's strategic options expand and change dramatically. Atlanta and New York are about 800 miles apart by highway, about the same distance as New York and Chicago.... Today's routes will be maintained and improved; many new routes will be introduced. The result for NS and its customers will be almost a 'go everywhere' eastern system."

"The ability to offer single-line service will enable the eastern railroads, for the first time in history, to compete effectively with trucks for significant volumes of traffic. This not only benefits railroads and their shareholders, but it also produces major public benefits. A shift of traffic from trucks to trains will mean less highway congestion, thus reducing damage to roadbeds and improving highway safety. Railroads are safer than trucks, and on a per-ton-mile basis CSX is the safest railroad in the United States. Trains are also cleaner and more fuel efficient than trucks. This transaction thus holds the promise of improving competition between modes, cutting traffic congestion, enhancing highway safety and reducing pollution. ...It is with some pride that I note the unprecedented interest of certain trucking groups. They fear competition -- and they will certainly get it."

Certainly the two railroads have raised expectations, at a time when UP has utterly failed to confirm expectations raised in the Union Pacific/Southern Pacific merger. We understand that one factor leading to the present situation is years of deferred investment

by the financially-weak Southern Pacific. We understand that Conrail's plant and finances, by contrast, are in good condition. There is a widespread belief in the industry, however, that UP's woes in part are due to UP's eagerness to lay off people (including managers) prematurely, that is, before the true needs of the merged operation were known from experience. It also appears that there was a possibly harmful drain of personnel from SP in the run-up to the merger.

It is good that CSX is meeting with UP officials "to learn from them about the challenges they had to overcome" (AP story, October 7). It is vital that they get the right lessons.

**Increased Freight on Existing and Potential Amtrak Lines:** While we endorse the competitive goal of diverting freight from highways to the safer railroads, we do not believe this should come at the expense of passenger schedules and reliability.

NS is taking over the single-track **Detroit-Kalamazoo** line and intends to increase freight-train density there. Figure D.6-1 at page 462 of Volume 3B shows, for the 74-mile West Detroit-Jackson segment (from 2.9 trains a day in the "base case" to 12.1 trains "post acquisition"); comparable numbers for the 67-mile Jackson-Kalamazoo segment are 5.4 freight trains a day "base case," 12.0 "post acquisition." It is not clear whether these numbers include CP freights which we understand are to be diverted from CSX to this line; in other words, thus total freight movements could exceed the "post acquisition" numbers shown.

This line is of unusual importance to passenger service because it forms part of Amtrak's Detroit-Chicago mainline. Amtrak owns and has put considerable public resources into the adjoining Kalamazoo-Porter segment. Those resources would be



wasted and prospects for development of this important passenger corridor lost if a major increase in freight traffic causes further lengthening of schedules and/or deterioration of on-time performance. There are stories, hopefully accurate, that NS plans to increase capacity commensurate with the traffic it adds.

Freight movements decline over much of the Cleveland-Chicago line, but some segments see increases (Oak Harbor-Airline, OH, 24 miles is to increase from 48.6 to 61.1 trains a day).

On the eastern approach to Chicago, used both by Amtrak trains from Cleveland and from Michigan, freight movements rise from 43.4 to 56.5 (CP 501, IN, to Indiana Harbor, IN, 1 mile) and from 41.1 to 49.0 (Indiana Harbor-South Chicago, 8 miles).

**Perryville-Baltimore** "will be cleared for high-cube domestic doublestacks," according to Mr. McClellan (page 532 of Volume 1). This is the nation's fastest passenger railroad; line modification work and the resulting freight operation must not jeopardize Amtrak's marketshare here.

**Columbus-Cincinnati**, part of the "3-C" corridor from Cleveland which we expect to see developed for passenger purposes, will experience a major increase in NS intermodal traffic.

#### **VERIFICATION**

I, Ross B. Capon, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement. Executed on October 21, 1997.

  
ROSS B. CAPON

STB

FD-33388

8-24-98

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ID-190685

LAW OFFICES

**ZUCKERT, SCOUTT & RASENBERGER, L.L.P.**

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RICHARD A. ALLEN

August 24, 1998

Via Hand Delivery

ENTERED  
Office of the Secretary

AUG 25 1998

Part of  
Public Record

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

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

Dear Secretary Williams:

I am writing on behalf of Applicants Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, "NS") and CSX Corporation and CSX Transportation, Inc. (collectively, "CSX") in compliance with Ordering Paragraph No. 2 of Decision 89 in the above referenced proceeding to notify the Board that on August 22, 1998, NS and CSX assumed control over Conrail, Inc. ("CRI") and Consolidated Rail Corporation ("CRC"). On that day, Green Acquisition Corporation, an entity that is jointly controlled by NS and CSX and is the holder of Trust Certificates representing all of the Common Stock of CRI under an Amended and Restated Voting Trust Agreement Dated as of April 8, 1997 (the "Trust Agreement"), tendered those certificates to Deposit Guaranty National Bank, the Trustee under the Trust Agreement, and directed the Trustee to transfer to Green Acquisition Corporation all of the Common Stock of CRI. On that day, the Trustee did transfer all of the Common Stock of CRI to Green Acquisition Corporation and thereby terminated the Trust Agreement according to its terms.

ZUCKERT, SCOUTT & RASENBERGER, L.L.P.

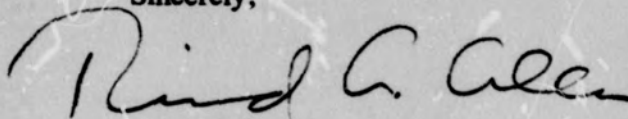
The Honorable Vernon A. Williams

August 24, 1998

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Also on August 22, 1998, all of the directors of CRI and CRC resigned all positions with CRI and CRC and were replaced by directors designated by NS and CSX.

Sincerely,

A handwritten signature in dark ink, appearing to read "Richard A. Allen". The signature is fluid and cursive, with the first name "Richard" being more prominent and the last name "Allen" following in a similar style.

Richard A. Allen

Counsel for Norfolk Southern  
Corporation and Norfolk  
Southern Railway Company

cc: Dennis G. Lyons, Esq.  
All parties of record.

STB

FD-33388

8-24-98

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ID-190664



DONELAN CLEARY  
WOOD & MASER, P.C.

ENTERED  
Office of the Secretary

AUG 24 1998

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Public Record



190664

August 20, 1998

Hon. Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, NW  
Washington, DC 20423

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Re: Finance Docket No. 33388, *CSX Corporation, et al*  
— *Control and Operating Leases/Agreements* —  
*Conrail Inc. et al*

Dear Mr. Williams:

In Decision No. 89 in the above proceeding (served on July 23, 1998), the Board, in ordering paragraph 20, imposed as a condition the implementation of the NITL Agreement between the applicants and The National Industrial Transportation League dated December 12, 1997. As part of that Agreement, a Conrail Transaction Council has been meeting for the last several months. NITL Agreement, App. A, Section I.A.

One of the tasks the Council has been addressing is the development of "objective, measurable standards" for inclusion in the quarterly reports to be submitted by the Applicants as part of the Board's continuing oversight of the transaction. NITL Agreement, App. A, Section II.B.

We are pleased to report that the shipper and railroad members of the Council have come to an agreement on a set of objective, measurable standards, which are set out in the attachment. The railroads will begin reporting this data with the first reporting period after the Closing Date (Day One). Although the NITL Agreement requires quarterly reports, the railroads have agreed to provide this information to the Council on a weekly basis.

However, the shipper and railroad members of the Council have agreed to disagree on the inclusion in the reporting requirements of transit times. The railroads believe that transit times are competitively sensitive information. On the other hand, the shippers believe that transit times are necessary to monitor the progress of the merger in terms of the benefits that have been promised.

ATTORNEYS AND COUNSELORS AT LAW

1100 New York Avenue, Suite 750, N.W., Washington, D.C. 20005-3934, Tel: 202-371-9500, Fax: 202-371-0900



Letter to Mr. Williams  
August 20, 1998

The railroad members of the Council are willing to give individual shippers transit times on their own movements on request. If the railroad members respond reasonably to these requests, the shipper members will not request the Board to require the public reporting of more aggregated transit times, as long as serious service problems do not arise. It is also understood that the Board has requested the railroads to report to the Board on a non-public basis train performance in twelve corridors (six each). In the event of a general service deterioration after the implementation date of this transaction, the shippers would like this information provided to the Board to be made public.

Respectfully submitted,

*Paul R. Hitchcock*

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CSX Transportation, Inc.  
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*George A. Aspatore*

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(202) 371-9500

*For the Conrail Transaction Council*





DONELAN CILARY  
WOOD & MACE, P.C.

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**Letter to Mr. Williams**  
**August 20, 1998**

**cc: Mr. Melvin F. Clemens, Jr.**  
**Director**  
**Office of Compliance and Enforcement**  
**Surface Transportation Board**

**Conrail Transaction Council**  
**Norfolk Southern Post Transaction: Performance Measures**  
**For the week ending: 99/99/99**

Measure	Historical		Post "Day 1"											
	9 Qtr 99	Prior Mth	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99
<b>Total Cars On-Line</b>														
System	999,999	999,999	999,999											
Foreign	999,999	999,999	999,999											
Private	999,999	999,999	999,999											
Total	999,999	999,999	999,999											
Box	999,999	999,999	999,999											
Covered Hopper	999,999	999,999	999,999											
Gondola	999,999	999,999	999,999											
Intermodal	999,999	999,999	999,999											
Multilevel	999,999	999,999	999,999											
Tank	999,999	999,999	999,999											
Other	999,999	999,999	999,999											
Total	999,999	999,999	999,999											
<b>Average Train Speed (by train type)</b>														
Intermodal	99.9	99.9	99.9											
Manifest	99.9	99.9	99.9											
Multilevels	99.9	99.9	99.9											
Coal	99.9	99.9	99.9											
Grain	99.9	99.9	99.9											
System Average	99.9	99.9	99.9											

**Conrail Transaction Council**  
**Norfolk Southern Post Transaction Performance Measures**  
 For the week ending: 99/99/99

Measure	Historical		Post "Day 1"										
	9 Qtr 99	Prior Mth	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99
<b>Average Terminal Dwell/Volume</b>													
Allentown, PA*	99.9	99.9	99.9										
	99,999	99,999	99,999										
Bellevue, OH	99.9	99.9	99.9										
	99,999	99,999	99,999										
Birmingham, AL	99.9	99.9	99.9										
	99,999	99,999	99,999										
Chattanooga, TN	99.9	99.9	99.9										
	99,999	99,999	99,999										
Columbus, OH*	99.9	99.9	99.9										
	99,999	99,999	99,999										
Conway, PA*	99.9	99.9	99.9										
	99,999	99,999	99,999										
Decatur, IL	99.9	99.9	99.9										
	99,999	99,999	99,999										
Elkhart, IN*	99.9	99.9	99.9										
	99,999	99,999	99,999										
Knoxville, TN	99.9	99.9	99.9										
	99,999	99,999	99,999										



# Conrail Transaction Council

## Norfolk Southern Post Transaction Performance Measures

For the week ending: 99/99/99

Measure	Historical		Post "Day 1"											
	9 Qtr 99	Prior Mth	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99
Linwood, NC	99.9	99.9	99.9											
	99,999	99,999	99,999											
Macon, GA	99.9	99.9	99.9											
	99,999	99,999	99,999											
New Orleans, LA	99.9	99.9	99.9											
	99,999	99,999	99,999											
Roanoke, VA	99.9	99.9	99.9											
	99,999	99,999	99,999											
Sheffield, AL	99.9	99.9	99.9											
	99,999	99,999	99,999											
System Average	99.9	99.9	99.9											
	99,999	99,999	99,999											

\* Terminals acquired from Conrail

### Average Loaded Days On-Line

Box	99.9	99.9	99.9
Covered Hopper	99.9	99.9	99.9
Gondola	99.9	99.9	99.9
Intermodal	99.9	99.9	99.9
Multilevel	99.9	99.9	99.9
Tank	99.9	99.9	99.9

**Conrail Transaction Council**  
**Norfolk Southern Post Transaction Performance Measures**  
 For the week ending: 99/99/99

Measure	Historical		Post "Day 1"										
	9 Qtr 99	Prior Mth	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99

**Average Empty Days On-Line (private cars only)**

Box	99.9	99.9	99.9
Covered Hopper	99.9	99.9	99.9
Gondola	99.9	99.9	99.9
Tank	99.9	99.9	99.9

**Conrail Transaction Council**  
**CSXT Post Transaction Performance Measures**  
 For the week ending: 99/99/99

Measure	Historical		Post "Day 1"											
	9 Qtr 99	Prior Mth	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99
<b>Total Cars On-Line</b>														
System	999,999	999,999	999,999											
Foreign	999,999	999,999	999,999											
Private	999,999	999,999	999,999											
Total	999,999	999,999	999,999											
Box	999,999	999,999	999,999											
Covered Hopper	999,999	999,999	999,999											
Gondola	999,999	999,999	999,999											
Intermodal	999,999	999,999	999,999											
Multilevel	999,999	999,999	999,999											
Tank	999,999	999,999	999,999											
Other	999,999	999,999	999,999											
Total	999,999	999,999	999,999											
<b>Average Train Speed (by train type)</b>														
Intermodal	99.9	99.9	99.9											
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Multilevels	99.9	99.9	99.9											
Coal	99.9	99.9	99.9											
Grain	99.9	99.9	99.9											
System Average	99.9	99.9	99.9											



**Conrail Transaction Council**  
**CSXT Post Transaction Performance Measures**  
 For the week ending: 99/99/99

Measure	Historical		Post "Day 1"											
	9 Qtr 99	Prior Mth	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99
<b>Average Terminal Dwell/Volume</b>														
Buffalo, NY*	99.9	99.9	99.9											
	99,999	99,999	99,999											
Chicago, IL	99.9	99.9	99.9											
	99,999	99,999	99,999											
Cincinnati, OH	99.9	99.9	99.9											
	99,999	99,999	99,999											
Corbin, KY	99.9	99.9	99.9											
	99,999	99,999	99,999											
Hamlet, NC	99.9	99.9	99.9											
	99,999	99,999	99,999											
Indianapolis, IN*	99.9	99.9	99.9											
	99,999	99,999	99,999											
Louisville, KY	99.9	99.9	99.9											
	99,999	99,999	99,999											
Montgomery, AL	99.9	99.9	99.9											
	99,999	99,999	99,999											
Nashville, TN	99.9	99.9	99.9											
	99,999	99,999	99,999											



**Conrail Transaction Council**  
**CSXT Post Transaction Performance Measures**  
For the week ending: 99/99/99

Measure	Historical		Post "Day 1"									
	9 Qtr 99	Prior Mth	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99
Russell, KY	99.9 99,999	99.9 99,999	99.9 99,999									
Selkirk, NY*	99.9 99,999	99.9 99,999	99.9 99,999									
Toledo, OH*	99.9 99,999	99.9 99,999	99.9 99,999									
Willard, OH	99.9 99,999	99.9 99,999	99.9 99,999									
Waycross, GA	99.9 99,999	99.9 99,999	99.9 99,999									
System Average	99.9 99,999	99.9 99,999	99.9 99,999									

\* Terminals acquired from Conrail

**Average Loaded Days On-Line**

Box	99.9	99.9	99.9
Covered Hopper	99.9	99.9	99.9
Gondola	99.9	99.9	99.9
Intermodal	99.9	99.9	99.9
Multilevel	99.9	99.9	99.9
Tank	99.9	99.9	99.9

**Conrail Transaction Council**  
**CSXT Post Transaction Performance Measures**  
 For the week ending: 99/99/99

Measure	Historical		Post "Day 1"										
	9 Qtr 99	Prior Mth	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99

**Average Empty Days On-Line (private cars only)**

Box	99.9	99.9	99.9
Covered Hopper	99.9	99.9	99.9
Gondola	99.9	99.9	99.9
Tank	99.9	99.9	99.9

**Conrail Transaction Council**  
**CSAO Post Transaction Performance Measures**  
 For the week ending: 99/99/99

Measure	Historical		Post "Day 1"										
	9 Qtr 99	Prior Mth	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99	99/99/99
<b>Average Terminal Dwell/Volume</b>													
Oak Island, NJ	99.9	99.9	99.9										
	99,999	99,999	99,999										
Pavonia, NJ	99.9	99.9	99.9										
	99,999	99,999	99,999										
Détroit North Yard, MI	99.9	99.9	99.9										
	99,999	99,999	99,999										

STB

FD-33424

8-17-98

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ID-190548



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ERIC M. HOCKY

August 14, 1998

**FedEx**

Hon. Vernon A. Williams, Secretary  
Surface Transportation Board  
Mercury Building, #700  
1925 K Street, N.W.  
Washington, DC 20423-0001

Re: Finance Docket No. 33424  
Portland & Western Railroad, Inc.  
--Acquisition and Operation Exemption--  
The Burlington Northern and Santa Fe Company  
**Reply to Petition for Reconsideration**

Dear Secretary Williams:

Enclosed please find for filing an original and ten (10) copies of Reply to Petition for Reconsideration in the above-referenced proceeding.

Please time stamp the extra copy of this letter to indicate receipt and return it to me in the stamped, self-addressed

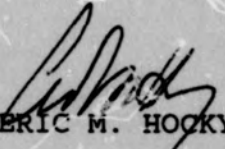


D

Hon. Vernon A. Williams, Secretary  
August 14, 1998  
Page 2

envelope provided for your convenience.

Respectfully,



ERIC M. HOOKY

Enclosure

cc: (by mail, w/encl.)  
Gordon P. MacDougall, Esq.  
Daniel R. Elliott, III, Esq.

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BEFORE THE  
SURFACE TRANSPORTATION BOARD  
STB FINANCE DOCKET NO. 33424



PORTLAND & WESTERN RAILROAD, INC.  
--ACQUISITION AND OPERATION EXEMPTION--  
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

---

REPLY TO PETITION FOR RECONSIDERATION

WILLIAM P. QUINN  
ERIC M. HOCKY  
GOLLATZ, GRIFFIN & FWING, P.C.  
213 West Miner street  
P.O. Box 796  
West Chester, PA 19381-0796  
(610) 692-9116

Attorneys for Portland & Western  
Railroad, Inc.

DATED: August 14, 1998



**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
STB FINANCE DOCKET NO. 33424**

**PORTLAND & WESTERN RAILROAD, INC.  
--ACQUISITION AND OPERATION EXEMPTION--  
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**

---

**REPLY TO PETITION FOR RECONSIDERATION**

Portland & Western Railroad, Inc. ("PNWR") files this reply to the petition for reconsideration filed by John D. Fitzgerald, for and on behalf of United Transportation Union, General Committee of Adjustment, with respect to the Board's decision served July 6, 1998 (the "Decision"). In the Decision, the Board, after opening a proceeding, refused to reject or revoke PNWR's exemption to acquire and operate the line in question.<sup>1</sup> The Board should now find that Mr. Fitzgerald's request for reconsideration is unfounded and should deny his petition.

**Procedural History**

This proceeding began on July 3, 1997, when PNWR filed a notice of exemption under 49 CFR §1150.41 to exempt its acquisition and operation of approximately 91.66 miles of tracks owned by The Burlington Northern and Santa Fe Railway Company ("BNSF"). The notice was filed to exempt PNWR's acquisition of the tracks and facilities comprising the line and a

---

<sup>1</sup> The Board also found that Mr. Fitzgerald's request for a stay had properly been denied.

permanent easement to operate the line. BNSF has since donated the underlying real estate to the State of Oregon.

Mr. Fitzgerald sought a stay (although not until after the notice had become effective), and sought to reject or revoke the notice. The Board ultimately instituted a proceeding in a decision served October 6, 1997, but found that there was no need for the submission of any additional evidence. Subsequently, in the Decision, the Board denied the request to reject or revoke the notice.

Mr. Fitzgerald has now filed a Petition for Reconsideration (the "Petition") alleging that new evidence and material error justify reconsideration of the Decision.

### **Argument**

Mr. Fitzgerald after failing to convince the Board to reject or revoke PNWR's lease and operation exemption, now seeks to have the Board reconsider the Decision. Under 49 CFR 1115.3(b), reconsideration of a Board decision may be granted only if there is a showing of new evidence, changed circumstances or material error. 49 CFR 1115.3(b)(1) and (3). The petition is required to *state in detail* the reasons for the requested relief. 49 CFR 1115.3(c) (emphasis added). Mr. Fitzgerald's petition is lacking in any detail and fails to establish either material error or new evidence as alleged. Accordingly, the Petition should be denied.

#### **I. Lack of New Evidence**

Mr. Fitzgerald points to the fact that the agreement was not submitted to the Board or to him until PNWR's Reply to the Petition to Revoke was filed on July 30, 1997. However, this was almost a full year prior to the Decision. Accordingly, the agreement and all of its terms were

before the Board, and the terms thereof do not constitute "new evidence."<sup>2</sup> If Mr. Fitzgerald felt the need to comment on the contents of the agreement, he surely could have asked the Board for authority to do so when the Board commenced this proceeding.

Furthermore, review of the acquisition agreement clearly indicates, contrary to Mr. Fitzgerald's assertions, that BNSF does *not* retain power to control the line or the operations of PNWR. In fact, BNSF no longer has any ownership interest in either the track materials which have been sold to PNWR, or in the underlying land which has been donated to the State of Oregon.<sup>3</sup>

Accordingly, there is no new evidence presented by this Petition.

## **II. No material error**

Mr. Fitzgerald also alleges that the Board has committed material error. Although not evident from the Petition, he apparently is claiming that the acquisition of an easement by a carrier does not fall within the scope of 49 USC §10902. However, this is not the case. As noted in the Decision, the terms "acquire" and "operate" have long been interpreted to include lesser interests than fee simple ownership, including easements and leases. Decision at 2-3. *Cf. Sacramento-Placerville Transportation Corridor Joint Powers Authority--Acquisition Exemption--Certain Assets of Southern Pacific Transportation Company*, STB Finance Docket No. 33046 (served Oct. 28, 1996) (an exclusive and perpetual rail freight easement is sufficient to fulfill

---

<sup>2</sup> The bill of sale, easement and certain pages of the agreement relating to offers to BNSF employees were provided to counsel for Mr. Fitzgerald on July 9, 1997, prior to the filing of Mr. Fitzgerald's original petition. See letter (without enclosures) attached as Exhibit A.

<sup>3</sup> BNSF does have a limited right to repurchase track materials if, and only if, PNWR offers them for sale.



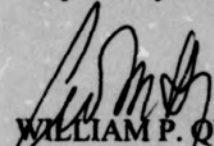
common carrier obligations). Mr. Fitzgerald has not cited any authority to the contrary. Therefore, the Board did not err in accepting PNWR's notice under 49 USC §10902.

Mr. Fitzgerald acknowledges that the matter of a stay is mooted by the Board's issuance of a final decision. Accordingly, PNWR is not responding to Mr. Fitzgerald's statements with respect to the stay.

### Conclusion

For all of the foregoing reasons, PNWR requests that the petition for reconsideration be denied.

Respectfully submitted,



WILLIAM P. QUINN  
ERIC M. HOCKY  
GOLLATZ, GRIFFIN & EWING, P.C.  
213 West Miner street  
P.O. Box 796  
West Chester, PA 19381-0796  
(610) 692-9116

Attorneys for Portland & Western  
Railroad, inc.

DATED: August 14, 1998



**CERTIFICATE OF SERVICE**

I hereby certify that on this date a copy of the foregoing Reply to Petition for Reconsideration was served on the following persons by U.S. mail, postage prepaid:

Gordon P. MacDougall, Esq.  
1025 Connecticut Avenue, N.W.  
Washington, DC 20036

Daniel R. Elliott, III, Esq.  
Assistant General Counsel  
United Transportation Union  
14600 Detroit Avenue  
Cleveland, OH 44107-4250

  
\_\_\_\_\_  
ERIC M. HOCKY

DATED: August 14, 1998

**EXHIBIT A**

\* \* \* COMMUNICATION RESULT REPORT ( JUL. 9.1997 4:24PM ) \* \* \*

FILE MODE	OPTION	ADDRESS (GROUP)	RESULT	PAGE
352 MEMORY TX		12024520531	OK	P. 10/10

## REASON FOR ERROR

E-1) HANG UP OR LINE FAIL  
E-3) NO ANSWERE-2) BUSY  
E-4) NO FACSIMILE CONNECTION**GOLLATZ, GRIFFIN & EWING, P.C.**  
ATTORNEYS AT LAW213 WEST MINER STREET  
POST OFFICE BOX 796  
WEST CHESTER, PA 19381-0796PHILADELPHIA OFFICE:  
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205 NORTH MONROE STREET  
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MEDIA, PA 19063  
(610) 565-6040

## \*\*\* TELECOPIER TRANSMITTAL FORM \*\*\*

Date: July 9, 1997

TO: Gordon P. MacDougall, Esq. 202-452-0531

FROM: Eric M. Hocky

THE ORIGINAL WILL NOT BE MAILED TO YOU.

NO. OF PAGES (INCLUDING THIS COVER SHEET): 10

MESSAGE:



GOLLATZ, GRIFFIN & EWING, P.C.  
ATTORNEYS AT LAW

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ERIC M. HOCKY

July 9, 1997

**By Fax**

Gordon P. MacDougall, Esq.  
1025 Connecticut Avenue, N.W.  
Washington, DC 20036

Re: Finance Docket No. 33424  
Portland & Western Railroad, Inc.  
--Acquisition and Operation Exemption--  
The Burlington Northern and Santa Fe Company

Dear Gordon:

As we discussed yesterday, the agreement between Portland & Western Railroad ("PNWR") and Burlington Northern and Santa Fe Railway ("BNSF") contains confidentiality provisions that the parties are not willing to waive. However, without waiving such provisions, the parties have authorized me to provide you with the following information:

1. Agreement, pages 23-24 (governing offers to BNSF employees)
2. Agreement, Exhibit A -- Rail Service Easement (without detailed description) (reflecting the extent of the operating easement)



Gordon P. MacDougall, Esq.

July 9, 1997

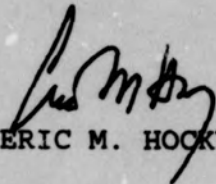
Page 2

3. Agreement, Exhibit B -- Bill of Sale (without detailed description) (reflecting the sale of the operating assets)

This letter will also confirm my advice to you that BNSF currently contemplates donating and conveying the land to the Oregon Department of Transportation.

I hope that this gives you sufficient information. If you need anything further, please let me know and I will see if I can provide it to you.

Very truly yours,



ERIC M. HOOKY

Enclosures

cc: Dennis W. Wilson, Esq. (by fax w/encl.)

STB FD-33388 8-17-98 D ID-190554

180554

**ARNOLD & PORTER**

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August 17, 1998

DENNIS G. LYONS  
(202) 942-5858

NEW YORK  
DENVER  
LOS ANGELES  
LONDON

**BY HAND DELIVERY (25 copies)**

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

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Office of the Secretary

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

Dear Secretary Williams:

Enclosed are an original and twenty-five (25) copies of CSX-161, "Response of Applicants CSX Corporation and CSX Transportation, Inc., To Petition of Providence & Worcester Railroad Company for A Stay Pending a Request for Judicial Review," for filing in the above-referenced docket.

Please note that a copy of this filing is also enclosed on a 3.5-inch diskette in WordPerfect 5.1 format.

Thank you for your assistance in this matter. Please contact me (202-942-5858) if you have any questions.

Kindly date stamp the enclosed additional copies of this letter and the Petition for Reconsideration at the time of filing and return them to our messenger.

Respectfully yours,

A handwritten signature in black ink, appearing to read "D. Lyons".

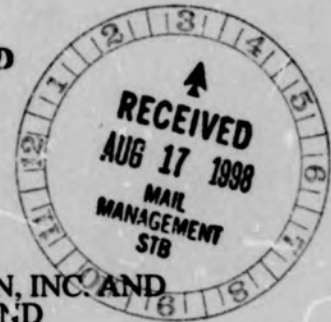
Dennis G. Lyons  
Counsel for CSX Corporation and CSX Transportation, Inc.

Enclosures  
cc: All Parties of Record

**CSX-161**

BEFORE THE  
**SURFACE TRANSPORTATION BOARD**

**Finance Docket No. 33388**



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

**RESPONSE OF APPLICANTS CSX CORPORATION  
AND CSX TRANSPORTATION, INC., TO PETITION OF  
PROVIDENCE AND WORCESTER RAILROAD  
COMPANY FOR A STAY PENDING A REQUEST FOR  
JUDICIAL REVIEW**

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(202) 429-3000

**Counsel for CSX Corporation  
and CSX Transportation, Inc.**

August 17, 1998



**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**FINANCE DOCKET NO. 33388**

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

---

**RESPONSE OF APPLICANTS CSX CORPORATION AND  
CSX TRANSPORTATION, INC., TO PETITION OF  
PROVIDENCE AND WORCESTER RAILROAD COMPANY  
FOR A STAY PENDING A REQUEST FOR JUDICIAL REVIEW**

---

Applicants CSX Corporation and CSX Transportation, Inc.<sup>1</sup> submit this response to the Petition of Providence and Worcester Railroad Company for a stay pending a request for judicial review (Undesignated).

The Petition apparently does not seek a stay generally of the effectiveness of the Board's Order permitting CSX and NS to control Conrail (and thus is not aimed at the "Control Date") nor a stay generally of the "Split" of Conrail's routes and other assets involving their separate operation by CSX and NS. Instead, it apparently seeks a stay only of that aspect of the "Split"

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<sup>1</sup> Collectively, "CSX." We refer to Norfolk Southern Corporation and Norfolk Southern Railway Company collectively as "NS" and to Conrail Inc. and Consolidated Rail Corporation collectively as "Conrail." Providence and Worcester Railroad Company will be referred to as "P&W" and the present Petition will be referred to as "Petition" and abbreviated as "Pet."

that relates to the so-called "New Haven Station." Exactly how that stay is to be effected is left to the imagination by P&W, but presumably it involves Conrail's remaining as the operator of the facilities constituting the New Haven Station. No operating plan is provided for the operation of these facilities by Conrail while CSX operates the rest of the Conrail line from New York City through Southern Connecticut and the other Conrail lines in New England.

It should be observed that "New Haven Station" is a somewhat misleading term. The definition of it in Appendix D to the Order of the Special Court in question, attached hereto as Appendix A, makes it plain that the term includes all of the rail properties of Conrail within the corporate limits of New Haven plus a portion of nearby Cedar Hill Yard. These are, in fact, the facilities at the end of Conrail's "Shore Line" from points within New York City running East through the various places on the Northern side of Long Island Sound and terminating in the New Haven area. Since calling the facilities a "Station" is somewhat misleading,<sup>2</sup> we will refer to them as the "New Haven Properties." They include, among other things, Conrail's steel and lumber reload operations serving New England and the Greater New York City vicinity. For its part, Cedar Hill Yard is owned by Conrail in fee simple and runs for about seven miles in the City and Town of New Haven and in the Town of North Haven. The New Haven Properties are also important since Conrail, through a haulage agreement, serves New Haven from the North from its line from Albany to Boston, through a haulage agreement over the freight rights of the Connecticut Southern Railroad on the Amtrak line from a point of interchange at Springfield, MA, to Conrail's Cedar Hill Yard, with interchange at New Haven to a Conrail local crew dedicated to serving New Haven industries.

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<sup>2</sup> In fact, the Order of the Special Court refers to "the terminal properties known as the New Haven Station." Pet. at 2 (emphasis supplied).

## DISCUSSION

The usual four-factor test for granting a stay enunciated on occasions too frequent to be itemized by the Board and its predecessor and by Courts of Appeals reviewing regulatory decisions by those and other federal administrative agencies embraces: (1) the likelihood of success of the petitioner on the merits; (2) the degree of irreparable harm to be sustained by the petitioner if the stay is not granted; (3) the damage to the other parties if a stay is granted; and (4) the public interest in granting or denying a stay. The Petition fails each and every one of these four factors.

1. Likelihood of Success on the Merits. The relief requested by P&W is that the present control and operation of the New Haven Properties is to be "frozen" pending an authoritative decision as to whether P&W is entitled to purchase them. Therefore, the Board must consider not only the chances of the reviewing court overturning the Board's decision and findings relating to the override of the Order of the Special Court, but the chances of P&W succeeding on the two issues which the Board felt that it should not or could not reach itself. Since it is the Board that is being asked for the stay, it necessarily must consider the likelihood of success on these issues even though it has not undertaken to decide them (and even though they may not be decided by the reviewing Court of Appeals, since its task is to review the Board's order).<sup>3</sup>

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<sup>3</sup> There may be other issues. P&W, for example, never filed a Responsive Application for the transfer of the line of railroad involved in the Properties. It apparently is arguing that that was unnecessary.

First of those issues is whether the Order of the Special Court applies at all to the Transaction. In connection with this, the Board should consider that the only construction of the Special Court's Order by a neutral party (apart from the Board) in terms of its applicability to the Transaction before the Board is that of the Federal Railroad Administration ("FRA"), which has indicated that the Transaction does not appear to fall within the terms of the Special Court's Order. See Letter of October 30, 1997, from S. Mark Lindsey, Chief Counsel of the FRA, to the General Counsel of F&W, Attachment to Broder V.S., CSX/NS-177, Vol.2A at 23. Mr. Lindsey states in the final paragraph of that letter the understanding of the FRA that the Transaction does not contemplate the sort of "withdraw[al] from, abandon[ment] or discontinu[ation] of service at New Haven Station" which is contemplated by the Order.<sup>4</sup> The Board stated its inclination to take the same view as the FRA. Decision No. 89 at 106 (first full paragraph, first sentence).

Second, the Board should consider the fact that in August 1997, for valuable consideration in the form of a Settlement Agreement, P&W agreed to give its "unconditional support for approval of the Application." CSX/NS-176, Vol. 1 at 100. The Application, of course, included a prayer for the same sort of override of impedances to the operation of Conrail's assets by CSX and NS as the Board ultimately ordered. While the Board did not consider the effect of this as a waiver or estoppel of P&W's rights, it appears to be a very clear one and the Board ought to take this into account in determining whether to grant a stay.

Third, finally, we come to a point which the Board did decide, and on which it was clearly correct. The core function of the Board's powers to override "all law" under

---

<sup>4</sup> The FRA was most conversant with the Transaction by that time; its parent organization had filed substantial comments on the Application on October 21, 1997. See Preliminary Comments of the United States Department of Transportation, DOT-3.



Section 11321, is to ensure that the operating assets proposed to be acquired by the successor in a rail combination transaction in fact devolve upon the successor. That is what the Board did here. Overriding the Order of the Special Court was, under Section 11321 "necessary" in two senses, at least, to permit CSX to "carry out the transaction" and "hold, maintain, and operate property" acquired through the Transaction. First, in the broad sense, since the Transaction contemplated the complete division of Conrail's assets among CSX, NS and the continuing Conrail, it was necessary to achieve that goal. Second, in a narrow and more restrictive sense, the override was necessary to meet the goal of vesting the operating rights possessed by line from points in New York City to New Haven; the facilities in New Haven itself and in the Cedar Hill Yard are an integral part of that line. They also are integral to Conrail's service to local New Haven industries from the North and West, on the Albany-Boston Line via the Connecticut Southern connection. The fact that they are "peripheral" in one sense, i.e., at the end of one or more lines or routes, does not affect the matter; every rail line or route has two termini, and the termini are often the most important parts, since they often involve major cities (as here) and interconnection with other railroads at yards (as here). They are, as the Special Court's Order says, "terminal properties." See Pet. at 2.

It cannot be contended that an Order of the Special Court does not fall within the purview of "all law" as set forth in Section 11321. The legislation establishing the Special Court does not contain any provision purporting to override Section 11321, and Congress has repeatedly reenacted Section 11321, most recently in 1995. If there were a conflict, under customary principles of statutory interpretation the latter enactment in 1995 would govern; the law establishing the Special Court was "all law" in 1995. Indeed, the reference to "all law" in Section 11321 should be viewed as dynamic, although that is not necessary here.

There is no substantial likelihood that P&W could jump all three of the hurdles just referred to and succeed ultimately in obtaining the New Haven Properties.

2. **There is No Showing of Irreparable Harm.** The Order of the Special Court was entered in 1982. P&W has done without the New Haven Properties for 16 years. Its need for them must be something short of urgent. P&W should be required to wait until it has demonstrated (which we believe it will not do) its rights to purchase the New Haven Properties before the plan approved by the Board is altered. That day will come only, if at all, after a full judicial review of the Board's Order of override and after a determination, by a court of competent jurisdiction, of the applicability of the Special Court Order to the Transaction in the first place, and after a determination of whether for a valuable consideration P&W has waived and surrendered its rights to purchase the New Haven Properties. The allegations of P&W that CSX will do something drastic and unpleasant to the New Haven Properties if permitted to operate them is pure speculation. Pet. at 7. There is nothing in the CSX operating plans to indicate that CSX's operation of the Properties would be significantly different from Conrail's. Indeed, many public authorities have urged an increase in service on the present Conrail New York City-New Haven line, and if that is economically feasible and justifiable, it will of course happen. The end of the line facilities of the New Haven Properties would be a part of that service. P&W does not and cannot complain of that

3. **Granting the Stay will Adversely Affect CSX.** This is obvious. Apparently what is contemplated by P&W's Petition is that the train movements and services on the New Haven Properties would be performed by Conrail rather than CSX. Of course, P&W has submitted no operating plan for how the Continuing Conrail will operate in New Haven. Conrail's only other railroading activities will be in the Shared Assets Areas. While arrangements of this sort are

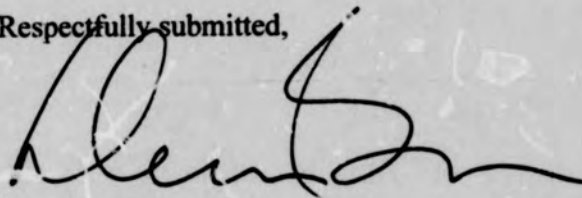
necessary and appropriate in a carefully planned Shared Assets Area, there is no conceivable basis for inserting the Continuing Conrail into a function which is best performed by the single carrier operating the rest of the line and involved in the rest of the joint movements with Connecticut Southern. The only consequence of this half-baked proposal is apt to be a degradation of service to the New Haven shippers.

4. *The Public Interest will be Adversely Affected.* While the proposed stay relates only to one line of the many Conrail lines being allocated in the Transaction, it does disturb the balance carefully crafted by CSX and NS and found to exist by the Board. Dec. No. 89 at 50. It, for no real purpose, will introduce a second operator -- Conrail -- into an area where there is no operational necessity for it. The only purpose of it asserted by P&W is to prevent CSX from engaging in alleged harmful and destructive activities which there is no showing that it is apt to engage in.

#### CONCLUSION

The Petition fails every factor in the test for the grant of a stay pending judicial resolution of a petition to review a decision of this Board, and should be denied.

Respectfully submitted,



**SAMUEL M. SIPE, JR.**  
**DAVID H. COBURN**  
Steptoe & Johnson LLP  
1330 Connecticut Ave., NW  
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**P. MICHAEL GIFTOS**  
**PAUL R. HITCHCOCK**  
CSX TRANSPORTATION, INC.  
500 Water Street  
Speed Code J-120  
Jacksonville, FL 32202  
(904) 359-3100

*Counsel for CSX Corporation and CSX  
Transportation, Inc*

August 17, 1998



**ATTACHMENT A**

**Agreement  
Registry No. 249 728**


**APPENDIX D**

**DESCRIPTION OF PROPERTIES  
COMPRISING THE NEW HAVEN STATION  
FOR PURPOSES OF PARAGRAPH 21**

Solely for purposes of paragraph 21 of this Order, "New Haven Station" shall mean (1) those rail properties of Conrail within the Corporate limits of New Haven, Connecticut (as those limits were defined on January 1, 1982) and (2) that portion of Cedar Hill Yard reasonably necessary to conduct operations of the P&W, together with the right (as among other freight railroads) to control dispatching functions in the immediate environs of the Yard and through all switches providing access thereto, such dispatching to be conducted without preference to the movements of any railroad using the Yard or portions thereof: provided, that, any rights to acquisition of properties in Cedar Hill Yard by P&W shall be without prejudice to the rights of Conrail to retain, or any of the rights of any operator of rail freight service in Central\_Connecticut to seek to acquire, remaining portions of the Yard to conduct such railroad's operations in the area.

**CERTIFICATE OF SERVICE**

I, Dennis G. Lyons, certify that on August 17, 1998, I have caused to be served a true and correct copy of the foregoing CSX-161, "Response of Applicants CSX Corporation and CSX Transportation, Inc., To Petition of Providence & Worcester Railroad Company for A Stay Pending a Request for Judicial Review," to all parties on the Service List in Finance Docket No. 33388, by first-class mail, postage prepaid, or by more expeditious means.



---

STB

FD-33388

8-15-02

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206048



Norfolk Southern Corporation  
1500 K Street, N.W., Suite 375  
Washington, D.C. 20005  
202/383-4166  
Direct: 202/383-4425  
Fax: 202/383-4018  
email: bmaestri@nscorp.com

206048

Bruno Maestri  
Vice President  
Public Affairs

August 15, 2002



By Hand Delivery – Original and 25 Copies

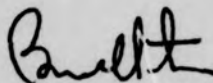
The Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, D.C. 20423

Re: STB Finance Docket No. 33388 (Service Date – July 23, 1998):  
CSX and NS – Control and Acquisition of Conrail; Certification of  
Norfolk Southern Compliance with Environmental Condition 8(A)

Dear Secretary Williams:

Enclosed please find twenty-five (25) hard copies and one electronic copy of Quarterly Report Number 16 for the subject environmental condition certifying compliance in accordance with STB Decision No. 89.

Yours very truly,

  
Bruno Maestri

Enclosure

cc: Victoria J. Rutson (5 copies)

ENTERED  
Office of Proceedings

AUG 15 2002

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Public Record



**SURFACE TRANSPORTATION BOARD  
STB FINANCE DOCKET NO. 33388**



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

**Decision 89, as Amended by Decision 96  
Appendix Q, Environmental Conditions  
III. Local or Site-Specific Environmental Conditions  
Condition 8(A): Highway/Rail At-Grade Crossings**

**Quarterly Report Number 16 for  
Norfolk Southern Corporation and  
Norfolk Southern Railway Company**

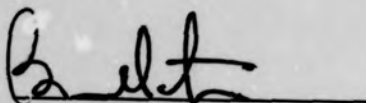
**August 15, 2002**

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Office of Proceedings  
AUG 15 2002  
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Public Record**

**CERTIFICATION OF COMPLIANCE**

In accordance with Environmental Condition 8(A) set forth in Appendix Q to Decision No. 89 of the Surface Transportation Board in Docket No. 33388, Norfolk Southern Corporation and Norfolk Southern Railway Company ("Norfolk Southern") hereby certify that Norfolk Southern remains in compliance with the requirements of Condition 8(A). Norfolk Southern has continued to address the remaining projects to be completed in accordance with Environmental Condition 8(A) and the Board's orders modifying that condition.

Certified by:

A handwritten signature in dark ink, appearing to read "B. Maestri", is written over a horizontal line.

Bruno Maestri  
Vice President  
Public Affairs

Date: August 15, 2002

STB

FD-33388

8-14-02

D

206041

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AUG 15 2002

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206041

WRITER'S E-MAIL ADDRESS  
csadler@sidley.com

August 14, 2002

**Hand Delivery -- Original and 25 Copies**

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



**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: Petition for Extension of Time for Completion of Compliance with Environmental Condition 8(A): York Road/SR 74, Mechanicsburg, Pennsylvania At-Grade Crossing**

Dear Secretary Williams:

Pursuant to Environmental Condition 8(A) of Appendix Q to Decision No. 89 in the above proceeding, the existing at-grade crossing at York Road/ SR 74 (592 290 T) in Mechanicsburg, Pennsylvania is to be improved by Norfolk Southern Corporation and Norfolk Southern Railway Company ("Norfolk Southern"). However, as Norfolk Southern explained in its August 17, 2001 request to the Board for an extension of the deadline for compliance with this requirement<sup>1</sup>, the Pennsylvania Department of Transportation ("PennDOT") determined that neither of the grade crossing improvement alternatives selected by the Board, i.e. four-quadrant gates or median barriers, would be appropriate for the York Road grade crossing due to the road configuration.

<sup>1</sup> In Appendix Q of Decision No. 89, served July 23, 1998, the Board established a deadline of August 22, 2000 for improvement of the York Road at-grade crossing under Environmental Condition 8(A). Subsequently, the Board extended the compliance date until August 22, 2001 in Decision No. 153, served May 31, 2000, and until August 22, 2002 in Decision No. 197, served August 22, 2001.



The Honorable Vernon A. Williams

August 14, 2002

Page 2

As noted in NS' August 17, 2001 request to the Board, PennDot informed Norfolk Southern that a formal review of crossing improvement issues for the York Road crossing would need to be completed by the Pennsylvania Public Utility Commission ("PPUC"). Following a field conference to assess the crossing improvement needs at York Road, PPUC would issue findings and an order.

A field conference was convened by PPUC approximately one year ago. The Commonwealth thereafter recommended alternate safety measures to be installed at the York Road grade crossing, subject to a formal finding by the Commonwealth and a negotiated agreement with Norfolk Southern providing for the installation of the alternate crossing improvements.

Further consideration of the preferred crossing improvements for the York Road at-grade crossing was subsequently undertaken by PPUC and Norfolk Southern. Upon conclusion of such discussions with PPUC, on December 17, 2001 Norfolk Southern filed an application with the PPUC seeking approval of crossing improvements to be installed at the York Road grade crossing consisting of new automatic flashing-light signals and short-arm gates.

A second field investigation and conference was convened by PPUC at the York Road at-grade crossing on April 19, 2002 to consider these crossing improvements. In addition to participation by PPUC and Norfolk Southern, representatives of the Pennsylvania Department of Transportation, GPU Energy, Sprint Long Distance and Comcast Cable Communications, Inc. attended the field conference. Although not in attendance, Monroe Township, Cumberland County, Teppco, United Water Pennsylvania, PPL Electric Utilities Corporation, Verizon Pennsylvania, Inc., Southern Middleton Township Municipal Authority, Monroe Township, Municipal Authority, Buckeye Pipeline Company and Columbia Gas Transmission were also informed about the field conference. A determination was made at the April 19, 2002 field conference that the preferred upgrade to the York Road at-grade crossing should consist of the installation by Norfolk Southern of new automatic flashing-light warning signals supplemented by short-arm gates on each approach in accordance with Part 8 of the Manual on Uniform Traffic Control Devices.

Thereafter, the PPUC issued a Secretarial Letter, dated May 21, 2002, in accordance with Section 2702 of the Public Utility Code ("PPUC Secretarial Letter"). A copy of the PPUC Secretarial Letter is enclosed. The PPUC Secretarial Letter approved Norfolk Southern's December 17, 2001 application for alteration of the York Road grade crossing. Norfolk Southern agreed, as stated in the PPUC Secretarial Letter, to bear the cost of design, construction and maintenance of the flashing lights and short-arm gates. In addition, Norfolk Southern agreed to maintain the rubber rail seal and railroad crossing surface at the grade crossing. While construction work is underway at the grade crossing, PPUC directed Norfolk Southern to establish and maintain any necessary highway and pedestrian traffic detours or traffic controls. The PPUC directed Norfolk Southern to submit a situation plan, a detailed circuit plan and a cost estimate for the crossing for review by interested parties and approval by

SIDLEY AUSTIN BROWN & WOOD LLP

WASHINGTON, D.C.

The Honorable Vernon A. Williams

August 14, 2002

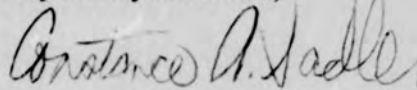
Page 3

the PPUC. Other installation and maintenance responsibilities at the grade crossing were agreed to be performed by the Pennsylvania Department of Transportation and Monroe Township. The PPUC established a December 31, 2003 deadline for completion of the alteration of the York Road at-grade crossing.

Norfolk Southern hereby requests an eight-month extension of the current August 22, 2002 deadline, or until April 30, 2003, for completion of the Environmental Condition 8(A) requirement for the York Road at-grade crossing. The requested additional time beyond August 22, 2002 is needed to provide for the installation of the improvements at the York Road at-grade crossing ordered by the Commonwealth in the PPUC Secretarial Letter. Norfolk Southern believes that the extension of time requested is reasonable and will be in the public interest by allowing time needed to complete the design and installation of the preferred alternate improvements to the York Road at-grade crossing.

For these reasons, we respectfully request that the time for completion of compliance with Environmental Condition 8(A) be extended until April 30, 2003 with respect to the NS York Road at-grade crossing in Mechanicsburg, Pennsylvania.

Respectfully submitted,



Constance A. Sadler

Counsel for Norfolk Southern Corporation  
and Norfolk Southern Railway Company

Enclosure

cc: Victoria J. Rutson, SEA  
Phillis Johnson-Ball, SEA





COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

May 21, 2002

A-00118496

**TO ALL PARTIES**

Application of Norfolk Southern Railway Company for approval of the alteration of the public crossing (DOT 592 290 T) where State Route 0074 crosses, at grade, a single track of railroad operated by Norfolk Southern Railway Company, in Monroe Township, Cumberland County.

**To Whom It May Concern:**

This matter is before the Commission by reason of an application filed December 17, 2001 by Norfolk Southern Railway Company seeking Commission approval for the alteration of the crossing where State Route 0074 crosses, at grade, (DOT 592 290 T) a single track of Norfolk Southern Railway Company, in Monroe Township, Cumberland County, by the installation of new automatically operated flashing-light railroad crossing warning signals with short-arm gates.

Upon receipt of the application, a field investigation and conference was held on April 19, 2002 at the site of the subject crossing. Representatives of the Pennsylvania Department of Transportation, Norfolk Southern Railway Company, GPU Energy, Sprint Long Distance and Comcast Cable Communications, Inc. were in attendance. Monroe Township, Cumberland County, Teppco, United Water Pennsylvania, PPL Electric Utilities Corporation, Verizon Pennsylvania, Inc., South Middleton Township Municipal Authority, Monroe Township Municipal Authority, Buckeye Pipeline Company and Columbia Gas Transmission were notified of the time and location of the conference but did not attend.

Presently, the crossing consists of a single track with an asphalt and rubber rail seal surface. The warning facilities at the crossing consist of antiquated automatically operated flashing-light railroad crossing warning signals with short-arm gates on each approach.

At the field conference, it was determined that Norfolk Southern Railway Company would install new automatically operated flashing-light railroad crossing warning signals with short-arm gates in accordance with Part 8 of the Manual on Uniform Traffic Control Devices.

Norfolk Southern Railway Company agrees to bear one hundred percent (100%) of all costs incurred in the design and construction of the subject alteration.

Norfolk Southern Railway Company agrees to maintain its facilities at the crossing including the rubber rail seal and the railroad crossing surface, as well as the automatically operated flashing-light railroad crossing warning signals with short-arm gates installed in accordance with this Secretarial Letter.

Pennsylvania Department of Transportation agrees to install and maintain highway-rail grade crossing advance warning signs, stop bars and pavement markings, where needed, on the highway approaches to the subject crossing.

Monroe Township agrees to maintain the active highway-rail grade crossing advance warning signal on the southeastern approach to the subject crossing.

Upon full consideration of the matters involved and inasmuch as no objection has been filed with the Commission, we find that a Secretarial Letter can be issued approving the instant application without a formal hearing.

The Commission issues this Secretarial Letter in accordance with Section 2702 of the Public Utility Code and finds that the alteration of the subject crossing is necessary and proper for the service, accommodation, convenience or safety of the public.

The application is approved as herein directed:

1. The crossing where S. R. 0074 crosses, at grade, a track of Norfolk Southern Railway Company, in Monroe Township, Cumberland County, be altered as herein directed.
2. Norfolk Southern Railway Company, at its sole cost and expense and prior to the start of construction, submit a situation plan, detailed circuit plan and a cost estimate for the subject crossing to each interested party for review and to the Commission for approval.
3. Norfolk Southern Railway Company, at its sole cost and expense, furnish all material and perform all work necessary to install new automatically operate flashing-light railroad crossing warning signals with short-arm gates on the highway approaches to the subject crossing, generally in accordance with the approved plan and in accordance with Part 8 of the Manual on Uniform Traffic Control Devices.
4. Norfolk Southern Railway Company, at the sole cost and expense of the Pennsylvania Department of Transportation, furnish all material and do all work necessary to establish and maintain any detours or traffic controls that maybe required to properly and safely accommodate highway and pedestrian traffic during the time the crossing is being altered.



5. Pennsylvania Department of Transportation, at its sole cost and expense, install highway-rail grade crossing advance warning signs, stop bars and pavement markings on the approaches to the crossing, in accordance with Part 8 of the Manual on Uniform Traffic Control Devices.

6. Any relocation of, changes in or removal of any adjacent structures, equipment or other facilities of any public utility other than Norfolk Southern Railway Company, which may be regarded as incidental to the alteration of the crossing be made by said public utility at its sole cost and expense and in such a manner as will not interfere with the alteration of the crossing; and such relocated or altered facilities thereafter be maintained by said public utility at its sole cost and expense.

7. Norfolk Southern Railway Company, notify all parties of record at least ten (10) days prior to performing any work in accordance with this Secretarial letter.

8. All parties involved herein cooperate fully with each other so that during the time the work is being performed vehicular and pedestrian traffic will not be endangered or unnecessarily inconvenienced and said requirements of each of the parties will be provided for and accommodated insofar as possible.

9. All work necessary to complete the alteration of the subject crossing be done in a manner satisfactory to this Commission, on or before December 31, 2003 and that on or before said date, Norfolk Southern Railway Company report to this Commission the date of actual completion of work.

10. Norfolk Southern Railway Company pay all compensation for damages due to the owners of any property taken, injured or destroyed by reason of the alteration of the subject crossing in accordance with this Secretarial Letter.

11. All costs which are to be reimbursed by the Department of Transportation consistent with this letter, shall be reimbursed pursuant to the provisions of 23 C.F.R. §§ 140.646. The aforesaid Federal reimbursement shall not supersede, delay or, in any manner, postpone the effect of any paragraph contained in this or any related Secretarial Letter or Order.

12. Upon completion of the alteration of the subject crossing, Norfolk Southern Railway Company, at its sole cost and expense, furnish all material and perform all work necessary thereafter to maintain its railroad facilities at the crossing, including the automatically operated flashing-light railroad crossing warning signals with short-arm gates and all appurtenant equipment, and in addition, maintain at all times in a smooth and satisfactory condition the rubber rail seal and the railroad crossing surface located between the rails and for a distance of twenty-four (24) inches beyond each rail.

13. Upon completion of the alteration of the crossing, the Pennsylvania Department of Transportation, at its sole cost and expense, furnish all material and do all work

necessary to maintain the highway approaches to the subject crossing to points twenty-four (24) inches beyond each rail and, in addition, maintain the highway-rail grade crossing advance warning signs, stop bars and pavement markings on the approaches to the subject crossing, all in accordance with this Secretarial Letter.

14. Upon completion of the alteration of the crossing, Monroe Township, at its sole cost and expense, furnish all material and do all work necessary to maintain the active highway-rail grade crossing advance warning signal on the southeastern approach to the subject crossing, all in accordance with this Secretarial Letter.

If you are dissatisfied with the resolution of this matter, you may, as set forth in 52 Pa. Code §5.44, file a petition with the Commission within ten (10) days of the date of this letter.

Very truly yours,

*James J. McNulty*  
James J. McNulty  
Secretary

STB

FD-33388

8-12-98

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ID-190586

OPPENHEIMER WOLFF DONNELLY & BAYH LLP

1350 Eye Street, N.W.  
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Saint Paul\*  
San Jose\*  
Washington, D.C.

August 12, 1998

**VIA HAND DELIVERY**

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

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

Dear Secretary Williams:

By this letter, New Jersey Department of Transportation/New Jersey Transit Corporation ("NJDOT/NJTC") seeks correction of certain minor factual errors and seeks modification of an environmental condition contained in Decision No. 89, served July 23, 1998.

1. On pages 25-27 of Decision No. 89, in describing NYC-Allocated Assets and PRR-Allocated Assets, the Decision refers to routes originating or terminating at "NJ Terminal", "North NJ Terminal" and "North Jersey Terminal." The Decision should be clarified to reflect that these references do not include the two mile segment of NJT-owned railroad between West End, New Jersey and Hoboken, New Jersey because Conrail does not have rights over that segment.

2. On page 26 of Decision No. 89, in the section describing PRR-Allocated Assets, the following modifications and/or clarifications should be made to the description of route "(1) NJ Terminal to Crestline" (change indicated in bold and explanation for change indicated in parentheses):

(a) North NJ Terminal to Allentown, PA via **Bound Brook/Port Reading Jct./Royce**

(Somerville is part of the NJT Morristown Valley Line and is included in the segment described in subpart (i) of this section)

(c) **Summit, NJ to Denville, NJ (TR)**

(Conrail does not have rights between Orange and Summit)

\* Known as Oppenheimer Wolff & Donnelly LLP

† Known as Oppenheimer Wolff & Donnelly (Illinois).



**(d) Dover to Netcong (TR); Netcong to Rockport**

(Conrail has trackage rights over the segment between Dover and Netcong. Conrail owns the line between Netcong and Rockport)

**(g) Roseville Avenue to NJ Terminal (TR)**

(Conrail does not have rights over the segment between Orange and Roseville Avenue)

**(i) Bound Brook to High Bridge, NJ (TR)**

(Conrail does not have rights over the segment between High Bridge and Ludlow)<sup>1</sup>

3. NJDOT/NJTC seeks modification of environmental condition 4(A)<sup>2</sup>, as described in Appendix Q of Decision No. 89, to include the following additional line segments: N-064 (Ridgewood Jct, NJ to Suffern, NY) and N-050 (Croton, NJ to Ridgewood Jct, NJ).

Environmental condition 4(A) was imposed on those line segments which would become "key routes" following the merger. The Final Environmental Impact Statement (FEIS), based on AAR standards, defines "key routes" as rail line segments which carry 10,000 or more annual carloads of hazardous materials. The Section on Environmental Analysis (SEA) used data supplied by the applicants in order to determine whether condition 4(A) would be applied to specific line segments

The line segments between Buffalo, NY and Suffern, NY (part of Conrail's Southern Tier Line) have been designated "key routes" and subjected to environmental condition 4(A) based on data supplied by the applicants indicating that between 16,000 and 18,000 annual carloads of hazardous material would traverse each of those segments following the merger. Dec. 89, App. Q, p. 386-87; FEIS, Vol. 6D, Att. T-1, p. 16 of 25. However, the condition was not applied to the segments between Suffern, NY and Croton, NJ (N-64 and N-50) because the data supplied by the applicants indicates that zero annual carloads of hazardous material would traverse those segments. FEIS, Vol. 6D, Att. T-1, p. 16 of 25.

There appears to be a major discrepancy in the data pertaining to the segments between Suffern and Croton. It is implausible that approximately 18,000 annual hazardous material carloads will traverse the Campbell Hall-Suffern segment (N-62) without any such carloads also traversing the segments between Suffern and Croton, NJ. Croton Yard and other facilities in New Jersey along the Suffern-Croton route are terminals for traffic between the New York/New Jersey metropolitan

<sup>1</sup> This segment is part of NJT's Raritan Valley Line. On page 31 of Decision No. 89, in subpart (1) of the section describing the shared assets areas (SAAs), the Decision describes the North Jersey SAA as encompassing "(c) the rights of Conrail on the New Jersey Transit Raritan line." Therefore, it appears that the segment between Bound Brook and High Bridge has been allocated to both PRR and the SAA.

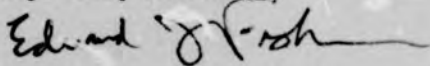
<sup>2</sup> The request for modification also includes those portions of conditions 4(B) and 5(A) which are applicable to "key routes." The entire set of conditions applicable to "key routes" will be referred to herein collectively as condition 4(A) for ease of reference.

area and Buffalo. It is our understanding that hazardous material currently moves over the Suffern-Croxtan route and the applicants expect an increase in freight traffic over this corridor. For example, the NS Operating Plan states that the "Southern Tier Route east of Buffalo is expected to see significant increases in consolidated system traffic...destined to Croxtan and other Newark area facilities." Application, Vol. 3B, p.115.

Based on the apparent inaccuracy in the data supplied by the applicants and used by SEA in the environmental review process, NJDOT/NJTC requests the extension of condition 4(A) to the line segments between Suffern, NY and Croxtan, NJ<sup>3</sup>. The extension of condition 4(A) is necessitated by safety concerns which are particularly important in the densely populated area between Suffern and Croxtan where NS freight trains and NJT commuter trains will both operate. The extension of condition 4(A) to the segments between Suffern and Croxtan will not significantly increase the burden on the applicants to comply with Decision 89. The condition currently applies to 44 other segments, including the segments connecting Buffalo and Suffern, and is based on industry standards. A more onerous condition relating to hazardous materials applies to 20 other segments which have been designated "major key routes." Unless it can be demonstrated that no significant hazardous material will move between Suffern and Croxtan following the merger, the public interest is best served by extension of the condition in the manner requested.

Please contact us if you have any questions or comments regarding this request.

Respectfully submitted,



Kevin M. Sheys

Edward J. Fishman

*Counsel for New Jersey Department of Transportation New Jersey Transit Corporation*

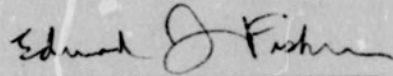
cc: All Parties of Record

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<sup>3</sup> For purposes of the environmental review process, the applicants identified only one line segment between Ridgewood Jct., NJ and Croxtan, NJ (N-64) and did not distinguish among the three alternative routes between these points. Pursuant to the merger, NS will acquire freight rights over NJT's Main Line between Ridgewood Jct. and Croxtan via Paterson Jct. and Passaic. NS will also have rights over the NJT Bergen County Line between Ridgewood Jct. and Croxtan via Rutherford. The third alternative route is along the Newark Branch from Paterson Jct. via Allwood and N. Newark to Croxtan. NJDOT/NJTC's request for the extension of condition 4(A) applies to each of these alternative routings between Suffern and Croxtan Yard.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 12th day of August, 1998, a copy of the foregoing was served by first class mail, postage prepaid, upon Administrative Law Judge Jacob Leventhal and all Parties of Record on the Service List.



---

Edward J. Fishman

STB

FD-33388

8-10-98

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ID-190443



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August 10, 1998

DENNIS G. LYONS  
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NEW YORK  
DENVER  
LOS ANGELES  
LONDON

**BY HAND DELIVERY (25 copies)**

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



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

Dear Secretary Williams:

Enclosed are an original and twenty-five (25) copies of the "Reply of Applicants CSX Corporation and CSX Transportation, Inc., To Petition to Stay of APL Limited," with the accompanying Verified Statement of Lester M. Passa (CSX-159) for filing in the above-referenced docket.

Please note that a copy of this filing is also enclosed on a 3.5-inch diskette in WordPerfect 5.1 format.

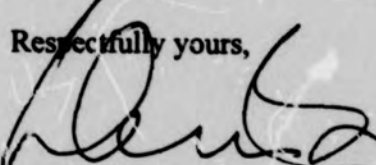
Thank you for your assistance in this matter. Please contact me (202-942-5858) if you have any questions.

Kindly date stamp the enclosed additional copies of this letter and the Response Brief at the time of filing and return them to our messenger.

ENTERED  
Office of the Secretary

Respectfully yours,

AUG 10 1998

  
Dennis G. Lyons  
Counsel for CSX Corporation and CSX Transportation, Inc.

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Public Record

Enclosures  
cc: All Parties of Record

190443

**CSX-159**

BEFORE THE  
**SURFACE TRANSPORTATION BOARD**

**Finance Docket No. 33388**



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

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**REPLY OF APPLICANTS CSX CORPORATION AND**  
**CSX TRANSPORTATION, INC. TO PETITION**  
**TO STAY OF APL LIMITED**

**MARK G. ARON**  
**PETER J. SHUDTZ**  
CSX Corporation  
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**P. MICHAEL GIFTOS**  
**PAUL R. HITCHCOCK**  
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**DENNIS G. LYONS**  
**HELENE T. KRASNOFF**  
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(202) 942-5000

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August 10, 1998

**CSX-159**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**ENTERED  
Office of the Secretary**

**FINANCE DOCKET NO. 33388**

**AUG 10 1998**

**Part of  
Public Record**

**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**

**REPLY OF APPLICANTS CSX CORPORATION AND  
CSX TRANSPORTATION, INC., TO PETITION TO  
STAY OF APL LIMITED**

Pursuant to 49 C.F.R. § 1115.3(f), Applicants CSX Corporation and CSX Transportation, Inc. (collectively, "CSX"), submit this Reply to the "Petition to Stay of APL Limited" (the "Petition") filed on July 31, 1998 (APL-26).<sup>1</sup> While the Petition "does not seek the stay of the effectiveness of Decision No. 89 insofar as it permits the joint control of Conrail" by CSX and NS (Pet. at 1 n.1), it does seek a stay of the "Split" of Conrail's routes between the two of them. It is the Split that will, as the Board found, reintroduce rail transportation competition into major areas where it has not existed for a generation, effect quantifiable savings of close to \$1 billion a year, and cause the substitution of environmentally superior rail transportation for over a million truck moves per year, saving fuel and wear and tear on the public highways, bringing transportation efficiencies and improving air quality and safety, and bringing other

<sup>1</sup> We refer to APL Limited as "APL," to Norfolk Southern Corporation and Norfolk Southern Railway Company collectively as "NS" and to Conrail Inc. and Consolidated Rail Corporation collectively as "Conrail." We abbreviate APL's Petition as "Pet." and refer to Decision No. 89 as "Dec."

environmental benefits. The requested stay will postpone these public benefits not simply during the Board's consideration of some sort of Petition for "Clarification" and/or "Reconsideration" of the Board's Decision No. 89, but thereafter, presumably unless a satisfactory response is given to APL by the Board, through "the completion of judicial review."<sup>2</sup> Pet. at 1.

### **PREFACE AND SUMMARY**

APL received 90% of what it asked for by way of conditions on the Transaction.

Nonetheless it seeks a stay pending Board consideration of its post-Decision petitions and for the entire course of judicial review (three or four years). The stay requested is of the "Split" of Conrail's routes, which is the event which will trigger all of the public benefits of the Transaction.

The Petition fails all tests for the grant of a stay. APL claims to seek "clarification" of a decision which is carefully crafted and perfectly clear in all pertinent respects, and it also attacks the basic underpinning of the Board's action, its power to override anti-assignment clauses under 49 U.S.C. § 11321. It shows no likelihood of success on the merits. APL's real concern is avoiding the difficulty of making a particular business decision under its existing contracts with Conrail. Having to make a business decision is not "irreparable injury." The agreements with Conrail with which APL has concerns have arbitration clauses providing remedies for any real disputes and the Board need not be involved with them. The enormity of the public harm (let

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<sup>2</sup> The "completion of judicial review" can take quite a bit of time. The *UP/SP* Transaction was authorized by a decision served August 12, 1996. Oral argument before the Court of Appeals on judicial review is currently scheduled 25 months later, on September 11, 1998. Docket, D.C. Cir., No. 96-1373. After that, of course, the "completion of judicial review" could involve not only the preparation and delivery of the opinion of the Court of Appeals, but petitions for rehearing and rehearing *en banc*, and then for certiorari from the United States Supreme Court. We note that APL has already sought to prolong the process of resolving its issues by seeking a twenty-day extension to file its Petitions with the Board. *See* APL-25.



alone the harm to CSX and NS) from a stay of the Split of Conrail would grossly outweigh any harm to APL, even if it had demonstrated any harm.

In addition to this Reply, CSX presents the Verified Statement of Lester M. Passa, President of CSX Intermodal, Inc., in response to some misleading remarks concerning that company contained in the Petition.

### **BACKGROUND**

APL originally looked favorably upon the Transaction which it now seeks to have stayed for what may be, according to its prayer for relief, a period of some years. APL's Response and Requests for Conditions, filed October 21, 1997, while opposing Section 2.2(c) of the Transaction Agreement and expressing some reservations about CSX due to its affiliation with CSX Intermodal, Inc. ("CSX Intermodal") and Sea-Land Service, Inc., looked forward to APL's having the benefits of two-carrier rail competition on a great number of the movements currently being operated by Conrail between city pairs where it was the sole single-line rail carrier. APL-4, Vol. 1, Rhein V.S. at 2. APL indicated that it was confident it could and would work with CSX despite its affiliation with CSX Intermodal: APL's President declared that APL was "not suggesting that we can't work with CSX. We can and we will." *Id.* at 6. At that time, APL knew, as was well known in the intermodal industry, that intermodal movements of CSX Transportation, Inc., were managed by CSX Intermodal, and APL had attended several meetings discussing the proposed joint Conrail acquisition with a "CSX" delegation consisting entirely of officers and employees of CSX Intermodal. Passa V.S. at 4; Rutski V.S., CSX/NS-177, Vol. 2B, 384-86.

While the rail transportation contract, or "Transportation Services Agreement" ("TSA"), which APL had entered into with Conrail effective June 1, 1988, was binding until May 31, 2004, APL did not want to wait until then to receive the benefits of rail competition between CSX and NS. The Application which CSX and NS filed with the Board, however, contemplated that all of the rail transportation contracts of Conrail would remain in full force and effect through their stipulated terms and would be performed pursuant to their established terms and conditions, except that the assignment clauses in those contracts were to be overridden to permit the succession of CSX and NS to Conrail. A detailed formula for the allocation of those contracts was contained in Section 2.2(c) of the Transaction Agreement. It provided, as far as the city-pair movements in the APL TSA were concerned, that transportation between certain of the city-pairs would be performed, as between CSX and NS by the one which could provide direct single-line service (if only one could); but as to those city-pairs where either carrier could provide that service, a group which included the busiest of the city-pairs, the Chicago to New York (Kearny, NJ) movement, there would be a 50-50 "pooling," with the operator to be determined by CSX and NS.<sup>3</sup>

APL, however, wanted immediate full competition between CSX and NS on those movements where competition would be possible, forthwith upon the Split. APL did not want to be confined by the Conrail contract when the "old" Conrail was gone; it wanted at once the "opportunity to engage in competitive negotiations" with NS and CSX. APL-4, Vol. 1, at 3. It did not want the old Conrail contract to continue; it wanted "new agreements with new

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<sup>3</sup> The process of allocation of the various Conrail rail transportation contracts and determination of the carrier performing the services in those cases where a "50-50" allocation is prescribed, is currently underway, under the auspices of the Protective Order amendment authorized by the Board's Decision No. 87, served June 11, 1998.

definitions of responsibilities." *Id.*, Rhein V.S. at 24. The effect of the CSX and NS Application's proposal, however, was, at least in APL's eyes, to postpone the competition that APL wanted until June 1, 2004. APL urged the Board, and apparently urged others to urge the Board, to disallow Section 2.2(c) and permit competition where there were actual competitive alternatives, to take place forthwith upon the Split, notwithstanding the Conrail contracts. APL-4 passim.

APL got approximately 90% of what it asked for. Instead of having to wait until June 1, 2004, for rail competition between the old Conrail noncompetitive points, it will get it, if it wants it, 181 days after the Split Date – presumably at some time during 1999, approximately 5 years earlier than the Applicants had proposed. Except for the 180-day delay, the sum and substance of what the Board did, for those Conrail contract shippers whose contracts had antiassignment clauses – as almost all of them, including APL, did – was to give them what they had asked for, except that it was delayed for a period of 180 days.

Having gotten substantially what it asked for, APL is still not happy. APL does not seem to be reverting to its original position that there should be no 180-day period and APL should be permitted to terminate its rail transportation contract forthwith upon the Split Date and negotiate new ones with CSX and NS.<sup>4</sup> Rather, APL wants to have an unspecified "clarification" or "reconsideration" effected as to what seems to be the very clear language of the Board's Decision, in order to spare APL from the consequences of exercising the right – to terminate the Conrail TSA – which APL asked for.

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<sup>4</sup> "We anticipate that both CSXT and NS will participate in our business in the future. New contracts will in each case be required . . . ." APL-4, Vol. 1, Rhein V.S. at 23.

The concerns of APL evidently revolve around a dollar-a-year lease it has on a major intermodal facility, covering 20 acres in South Kearny Yard,<sup>5</sup> approximately five miles from Manhattan, which was entered into on June 1, 1988, on the same day as the TSA with Conrail. In a provision which APL strove, unsuccessfully, to keep "Highly Confidential," the Lease provided that: "Lessor and Lessee, have entered into the TSA which is effective on the same date as this Lease. The terms and conditions of the TSA and this Lease are interdependent and each agreement is, in part, consideration for the other." CSX/NS-178, Vol. 3D at 333, Section 27.<sup>6</sup>

During the pendency of the case before the Board prior to its Decision, APL took the position that if it obtained the relief from Section 2.2(c) that it was requesting, it would not have to give up the dollar-a-year lease on the South Kearny facility. See Interrogatory Answers Nos. 1(a) and 1(c) propounded in CSX-106 and answered by APL in APL-9. But now that APL has received what it asked for, albeit postponed in enjoyment by 180 days, it now appears to APL that its position was flat wrong. It now admits: "The Lease terminates if APL terminates the TSA . . . ." Pet. at 3. APL's admission is well-supported by the text of the Lease. See CSX/NS-178, Vol. 3D at 333.

The Petition makes it plain that APL seeks to relieve itself from the obvious consequence of exercising the right that it sought. That consequence was that the cost of availing itself of new competitive reduced rates from CSX and NS prior to 2004 – which was the period when its transportation rates and its dollar-a-year lease were mutually binding under the

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<sup>5</sup> South Kearny Yard is allocated to "NYC," and by NYC to CSX, with, however the grant to NS of a right of access and service as to the facility presently leased to APL. See CSX/NS-25, Vol. 8B, at 85.

<sup>6</sup> The ALJ ordered that this language be reclassified as "public" by oral order of April 17, 1998, and on appeal by APL to the Board, that order was upheld in Decision No. 78, served May 8, 1998.



contractual arrangements with Conrail -- was that APL would have to pay the price of a renegotiation of the dollar-a-year Lease.

APL now says that unless the Board satisfactorily delivers it from this obviously fair result, and permits it to have its cake and eat it too, it wants a stay of the Split and an indefinite postponement, until the entire judicial review gauntlet is run, of the enormous public benefits flowing from the Transaction. In order to implement this, it will propose, evidently, some clarification of the Board's Order. But it also contends that the Board, essentially, has no power at all in the premises and cannot override transportation contract antiassignment clauses at all -- even subject to a termination remedy after a brief six-month period. Pet. at 5-6.<sup>7</sup> It also continues its protestations that it cannot deal with CSX because CSX Intermodal is CSX's affiliate -- despite the fact that it well knew of the affiliation and that CSX Intermodal would be involved in serving it, when APL looked forward positively to dealing with CSX on a competitive basis in its October 21, 1997, filing. APL-4, Vol. 1, Rhein V.S. at 6. See Passa V.S. at 4.

#### **A STAY IS NOT WARRANTED**

In deciding whether to grant a stay of administrative decisions, courts and agencies look to four factors: (i) likelihood of the movant's success on the merits; (ii) the existence of irreparable injury to the movant from not granting the stay; (iii) the existence of irreparable injury to other parties from granting the stay; and (iv) the effect on the public interest of granting or not granting the stay. See Washington Metro. Area Transit Comm'n v. Holiday Tours, Inc., 559 F2d 841, 843 (D.C. Cir. 1977); Virginia Petroleum Jobbers Ass'n v. Federal Power Comm'n.

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<sup>7</sup> The Board considered APL's position and rejected it in its Decision No. 89 at 74.

259 F.2d 921, 925 (D.C. Cir. 1958); see also Union Pac. Corp., Union Pac. R.R. Co., and Missouri Pac. R.R. Co. - Control and Merger - Southern Pac. Rail Corp., Southern Pac. Transp. Co., St. Louis Southwestern Ry. Co., SPCSL Corp., and the Denver and Rio Grande Western R.R. Co., Finance Docket No. 32760 ("UP/SP"), Decision No. 55 (served Sept. 27, 1996), 1996 WL 548246 at \*4 n.8; Burlington Northern Inc. and Burlington Northern R.R. Co. - Control and Merger - Santa Fe Pac. Corp. and the Atchison, Topeka and Santa Fe Ry. Co., Finance Docket No. 32549, Decision No. 39 (served Sept. 21, 1995), 1995 WL 555811 at \*3. A "balancing" test is usually applied; but since APL fails on all four factors, there is nothing to balance.

1. APL has shown no likelihood of prevailing on the merits. Somewhat inconsistently with its position that the Board cannot deal with rail transportation contracts at all, APL contends that it will succeed in "clarifying" the Board's Decision because the Board must "return shippers like APL to the same position they were in before the 180-day interim period" (Pet. at 5), which it says means that shippers must be affirmatively given "the right to select the carrier that will serve them at dual points without having to invoke their anti-assignment provisions and terminating their contracts." *Id.* (emphasis supplied). But the primary reliance of APL in its brief was on its antiassignment clause. See APL-18, Vol. 1 at 1-2, 10-18. Why APL changed its mind about antiassignment clauses, and what the basis for the quoted assertions may be, are not explained. The Board's ruling is clear: "before the 180-day interim period" all the shippers were bound to a single carrier, Conrail. Upon the "Split" Date, the antiassignment clauses are overridden for 180 days, and Section 2.2(c) allocations operate then. After the 180-day period, the shippers can invoke their antiassignment provisions, terminate and be free of their contracts, and be free of the Section 2.2(c) allocations. Ordering Para. 10, Dec. at 175 is the controlling test, and it makes this clear. While in the colloquial parts of its Decision in explaining the action

the Board took, the Board used slightly different language from the formal language in the its Order, none of the language suggests any different procedure from that ordered by the Board at page 175. The Board has so held in Decision No. 90, served August 7, 1998, at 1-2. None of the language of Decision No. 89 suggests that the Conrail contract shippers have the right to select carriers during their contract terms without terminating their contracts (apart, of course, from the provisions of Paragraph IIC of the NITL Settlement,<sup>8</sup> which APL does not bother to mention, since they do not give APL the right to negotiate lower rates while keeping the contract). So APL has demonstrated nothing to be "clarified."

Next, after saying that APL does not want to use its antiassignment provisions (Pet. at 5 para. (a)), APL says that the Decision must be "overturned," presumably either by the Board or in the years of proceedings before the "completion of judicial review" -- during all of which there will be a stay. This is, says APL, because the Board should not have overridden the antiassignment clauses at all, not even for 180 days. *Id.*, para. (b). APL seems to have a love-hate relationship with its antiassignment clause; it is reluctant if not terrified of using it, but does not want it diminished in the slightest by the Board. Of course, antiassignment clauses prohibit assignment; the entire Conrail Transaction prevents the existing Conrail from performing the contracts; so if the antiassignment clauses had not been overridden at least to some extent, the Transaction could not be effected at all. Termination of the contract would not have been the shippers' only remedy; they could have sought to stop the Transaction as a violation of their contracts. The Board was clearly correct in determining that its powers under 49 U.S.C. § 11321, the core of which is designed to vest successors in a Board-approved Transaction with the powers and assets of the predecessor carrier, enabled it to deal with the Conrail's rail

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<sup>8</sup> See CSX/NS-176, Vol. I, at 771, App. B at 4.

transportation contracts, as indeed it dealt with Southern Pacific Rail Transportation contracts in the UP/SP case (UP/SP, Decision No. 44, served Aug. 12, 1996, at 146), and with certain Union Pacific contracts in Joint Petition for Service Order, STB Service Order No. 1518, served Oct. 31, 1997. See Dec. at 74; Norfolk and Western Ry. Co. v. American Train Dispatchers Ass'n, 499 US. 117, 129-33 (1991).<sup>9</sup> There is no substantial likelihood that APL will succeed on the merits in having Decision No. 89 "overturned where the Board has overridden terms of the TSA."

2. APL will not suffer irreparable harm if the division of Conrail is not stayed. Here APL's presentation is so confused that it is difficult to reply to it. APL expresses concern about CSX Intermodal, a theme it has played throughout its case; yet it has always known that CSX Intermodal is the intermodal arm of CSX, as APL puts it, and APL has always shown, nonetheless, a desire to have the services of both NS and CSX available to it. How it will be harmed by the allocation under Section 2.2(c) for a period of only six months is not indicated, since APL "has made no decision at this time as to which carrier it would select." Pet. at 7 n.3. Either of CSX or NS is apparently acceptable.<sup>10</sup> APL says that it believes that it is entitled to choose its carrier on the 181<sup>st</sup> day without terminating its contract. It notes, quite correctly, that CSX believes the contrary.<sup>11</sup> However, if APL exercises its clear right of termination on the

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<sup>9</sup> See also the full text of 49 U.S.C. § 10709(c)(1), not just the portion quoted at Pet. at 5.

<sup>10</sup> "We can and we will [do business with CSX]." APL-4, Vol. 1, Rhein V.S. at 6.

<sup>11</sup> With, of course the exception of APL's use of Paragraph IIC of the NITL Settlement, which APL seems unwilling to use because NITL IIC will not help it to meet its objective of getting lower rates.



181<sup>st</sup> day, APL complains that "CSXT will be able to argue that, by terminating the TSA, APL has terminated the lease of the APL South Kearny Terminal." Pet. at 6-7.<sup>12</sup> Apparently, however, APL agrees with the proposition that if it terminates the TSA, the Lease terminates; it says: "The Lease terminates if APL terminates the TSA." Pet. at 3. The two are, after all, interdependent and each is consideration for the other; and, apparently APL agrees with CSX that the Lease itself provides for termination in such a case. In any event, it is not "irreparable harm" if a party is prevented from having its cake and eating it too – prevented from having lower transportation rates but still paying only a dollar a year for the rent of an enormously valuable piece of property.<sup>13</sup>

APL says that: "What APL now faces is an adversarial relationship with CSXT and CSXI, a circumstance which the TSA did not anticipate and therefore did not address." Pet. at 7. But if there is any "adversarial relationship" with CSXT and CSX Intermodal, it is not of their

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<sup>12</sup> If APL believes that that "argument" is wrong, it can take the matter to arbitration; there is an arbitration clause in each of the TSA and the Lease. See CSX/NS-178, Vol. 3D at 238-39, 342-43.

<sup>13</sup> APL complains that it will lose its capital investment in the improvements that it made on the South Kearny property if it exercises its option to terminate the Conrail contract. But more than ten years of its 16 year Lease have already run, and in all likelihood 11 years of the 16 will have run by "Day 181." The terms of the contract and the Lease were expressly made interdependent, and obviously for a purpose; the dollar-a-year Lease was inducement for APL to pay the stipulated transportation rates, and to give "volume commitments" (APL-4, Vol. 1, Rhein V.S. at 15) at those rates. If APL now wants to pay lower rates, the Lease obviously should be renegotiated, given the interdependency clause. APL contends that the real consideration for the free Lease was the improvements that APL made on the property. Pet. at 2, 7. Exactly how much of these improvements is not portable is not clear and if there is any dispute as to physical or legal removability of improvements at the end of the Lease – either at its stipulated term or by reason of prior termination – it is for arbitration.

There is no interdependency clause identifying these improvements as consideration for the Lease; and APL's President, Rhein, has acknowledged that substantial investments were made by Conrail throughout its system in anticipation of providing services to APL under the contract at the time of its inception in 1988. "Conrail has also made significant capital investments for handling APL's contractual volume commitments at Syracuse, Morrisville, Harrisburg and Beacon Park (Boston)." APL-4, Vol. 1, Rhein V.S. at 15. Will APL give the unamortized value of these improvements back to Conrail's successors if APL gets out of its contract?

making. CSX Transportation, Inc., and CSX Intermodal are anxious to deal with APL on a commercial basis to work out the details of providing service to APL under the Conrail contract or otherwise, and to resolve other issues on a business basis. They are prepared to meet with APL whenever APL sees fit to have a meeting.

In this connection, CSX notes that under Section 2.2(c) the performance of the Conrail rail transportation contracts to be allocated to CSX will be an allocation to CSX Transportation, Inc., not CSX Intermodal, and CSX Transportation, Inc., is competent to provide any and all of the transportation services to APL that may be allocated to it under the Conrail contract. However, the efficiency of the services to be performed would be promoted, and a wasteful reorganization of functions avoided, if CSX Intermodal took its usual role in the administration of those city-pair movements under APL's Conrail contract that may be allocated to CSX. The Board amended the Protective Order in this case at the Applicants' request, (Decision No. 87, served June 11, 1998), authorizing CSX and NS personnel to gain access to the Conrail transportation contracts and related information prior to the Control Date for certain limited purposes. The Board, besides limiting the purposes for which that pre-Control Date access was permitted, which of course excluded the actual performance of the contracts, provided at APL's request (APL-24) that the contracts and confidential information related to them not be shared with CSX Intermodal personnel. CSX has entered into mutually agreeable arrangements with APL to enforce that provision of the amended Protective Order (Para. 19(c)), as contemplated by Decision No. 87.

CSX notes its view that the entire Protective Order, insofar as it protects Conrail's confidential information from the Applicants CSX and NS, terminates on the Control Date, and that accordingly the "purpose" restrictions in Paragraph 19(b) of the amended Protective Order

and the "intercorporate disclosure" restrictions in Paragraph 19(c) will terminate upon the Control Date. CSX also notes that the Board did not impose any new or continuing protective conditions with respect to APL's concerns about CSX Intermodal (or indeed as to Sea-Land) in Decision No. 89, but simply referred to the fact that it had imposed conditions in the Amended Protective Order by Decision No. 87. See Dec. at 114.<sup>14</sup>

The Board has done no more than to give APL what it asked for, although 180 days later than it wanted it. If there is any controversy about the meaning of the Lease or of the TSA, there are arbitration procedures available to APL. APL's rights to seek a carrier change without terminating the TSA under NITL Agreement Paragraph IIC are preserved. Its rights of termination under the antiassignment clause are preserved, postponed only by 180 days. While it will not be able to renegotiate its transportation rates downward while keeping its dollar-a-year Lease, that appears to be no more than what it bargained for when it signed the Lease with Section 27 in it. APL's decision whether or not to terminate the Conrail contract, and APL's

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<sup>14</sup> Since these views may be controversial, CSX proposes to file, on or before August 12, 1998, a Petition for Clarification of Decisions Nos. 87 and 89 to confirm these views and to establish, in any event, that CSX Intermodal may have access, on a controlled basis, to the APL/Conrail contracts after the Control Date. CSX believes that the history of CSX Intermodal's dealings with its customers, a great many of whom "compete" with CSX Intermodal in the same ways that APL says that APL "competes" with CSX Intermodal, indicates that APL's concerns with respect to CSX Intermodal are baseless. See Passa V.S. at 2-5. However, in connection with that Petition for Clarification, CSX will be prepared to stipulate that no confidential information contained in or touching or concerning the APL/Conrail contracts shall at any time be made available to Sea-Land Service, Inc., or any of its subsidiaries, officers or employees, and that, from and after the Control Date, when the Protective Order terminates as to the access of NS and CSX to Conrail's confidential information, CSX Intermodal shall not use the confidential information contained in or relating to the Conrail contracts with APL for any purposes other than placing information about such contracts in its information systems, testing such systems, planning and preparation of operations under the contracts, and the performance of such contracts, and not for any other business, commercial or competitive purposes.



decision whether what might be gained in lower prices under its renegotiation might outweigh increased Lease costs may be difficult decisions, but having to make difficult business decisions is not "irreparable injury"; it is part of business life. There is no irreparable injury to APL.

3. *A stay will work enormous harms on CSX, NS and the public interest.* APL says that "[s]ince the public benefits of this transaction will not begin to accrue until after Conrail is divided, no member of the public will be harmed either." Pet. at 8. It is hard to fathom this assertion; it is the division of Conrail which the Petition seeks to have stayed, and that through "the completion of judicial review," which it would be fair to forecast will occur sometime in 2001 or 2002. While it is true that CSX and NS "have not announced when Day 1 will occur" (*id.*), it cannot be seriously asserted that APL thinks that Day One would occur, absent the stay that it asks for, in 2001 or 2002.

There is no more rationality in the argument that a stay for years and years would prevent "the inevitable operational problems" that will follow the interim 180-day period. *Id.* To be sure, CSX and NS contended for the full application of Section 2.2(c) throughout the length of the Conrail contracts, but they now propose to consummate the Transaction despite the Board's cutback. They requested antiassignment override to 180 days. They are committed to making every effort that the Split will be effected smoothly. "Differing interpretations of the Contract Condition" will not, as asserted by APL, cause "chaos." Pet. at 7-8. APL's notion that the Board's language is ambiguous is a private vision, induced by its own interests. APL has not offered any basis for its interpretation that it "believes that the Board's decision in fact allows APL to choose its carrier on the 181<sup>st</sup> Day without terminating its contract." Pet. at 6 (emphasis in original). Presumably other shippers will be able to interpret the plain and precise language of



the Board's Order (Dec. at 175, Ordering Para. No. 10); so-called "varied interpretations" will not cause any "chaos."

To say that a stay "will not harm CSXT or NS" (Pet. at 7) and that "[t]he public interest supports the stay" (Pet. at 8) is to indulge in hyperbole of such an extreme nature that it may surpass anything previously said by the protesting parties in this case. The harm to CSX and NS is plain; they will have paid good money for Conrail but will not be permitted to achieve the synergies and new traffic that they planned and which will justify their investments. The harm to the public interest is worse. The Board has found that the quantifiable public benefits of the Split of Conrail proposed by the Transaction will be close to a billion dollars a year. Dec. at 51, 130. It has found that the Transaction will bring "vigorous, balanced, and sustainable competition" to the East, ending a situation in which "Conrail faced no Class I rail competitor through much of its service area." *Id.* at 50. It has endorsed the estimate that an annual \$700 million in rail traffic will gain head-to-head railroad competition as a result of the Transaction, and that in other movements, "the nearby operations of two strong carriers will act to limit the market power" previously enjoyed by Conrail. *Id.* at 50 and n.77. It has found that CSX and NS will be in a position to "offer new and efficient single-line service in competition with motor carriers and with each other to thousands of shippers that received only joint-line service before." *Id.* at 51. It has found that there will be a "significant amount of traffic" diverted from the Nation's highways. *Id.* The projection that over a million truck trips would be diverted was endorsed by the Board, together with the favorable environmental results that will flow from that. *Id.*

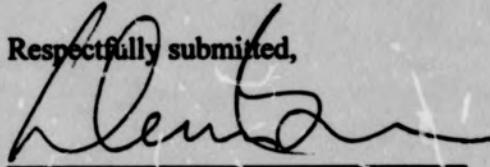
Putting off the realization of those benefits for three or four years, while a unitary and undivided Conrail is controlled by CSX and NS for that period of time, is clearly contrary to the public interest. The damage to the public interest, when weighed against the concern that a

single shipper may not be able to "have its cake and eat it too" in the form of lower rail rates and maintenance of its dollar-a-year lease in its last five years, is utterly disproportionate.

**CONCLUSION**

For the reasons stated, the Petition to Stay should be denied.

Respectfully submitted,



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Transportation, Inc.*

August 10, 1998

**CERTIFICATE OF SERVICE**

I, Dennis G. Lyons, certify that on August 10, 1998, I have caused to be served a true and correct copy of the foregoing CSX-159, "Reply of Applicants CSX Corporation and CSX Transportation, Inc., To Petition To Stay of APL Limited," and accompanying Verified Statement of Lester M. Passa, to all parties on the Service List in Finance Docket No. 33388, by first-class mail, postage prepaid, or by more expeditious means.

A handwritten signature in black ink, appearing to read "Dennis G. Lyons", is written over a horizontal line.

**VERIFIED STATEMENT OF  
LESTER M. PASSA**

My name is Lester M. Passa. I am President and Chief Executive Officer of CSX Intermodal, Inc. ("CSXI"). CSXI is a wholly owned subsidiary of CSX Corporation. I have held my position with CSXI since November 1997.

For most of the last ten years, I held a variety of management positions with Conrail. The positions that I held at Conrail were Director - Customer Service (1987 - 1990), Senior Director - Customer Services (1990 - 1991), Director - Intermodal Planning (1991-1993), Assistant Vice President - Strategic Planning (1993-1995), Vice President - Logistics and Corporate Strategy (1995 - 1997) and Senior Vice President - Automotive Service Group (through June 1997). I left Conrail in June 1997 to assume the position of Vice President - Commercial Integration of CSX Transportation, Inc., a position that I held before joining CSXI.

CSXI is the intermodal marketing arm for CSX Transportation, Inc. ("CSXT"). CSXI sells the intermodal rail services that are provided on trains operated by CSXT, operates intermodal terminals and provides motor carrier drayage services associated with intermodal rail service. CSXI also sells intermodal services on trains operated by railroads other than CSXT.

I offer this verified statement in response to the Petition for Stay filed by APL Limited ("APL"). In that Petition, APL claims that it will suffer irreparable injury if it is compelled to do business with CSXI because CSXI, as a competitor of APL, will take steps to injure or destroy APL's intermodal business, presumably by capturing from the underlying cargo interests the traffic that APL now transports for those entities. In that connection, APL argues that "If CSXI, in conjunction with CSXT, can divert APL's intermodal traffic, CSXT will have used the Board's merger process to significantly harm or even eliminate CSXI's largest competitor. The Board's decision gives CSXT the power to do this." APL Petition, p. 6. APL



also claims that it now faces, as a result of the acquisition of control of Conrail by CSX and NS, "an adversarial relationship with CSXT and CSXI, a circumstance which the [APL/Conrail Transportation Service Agreement] did not anticipate and therefore did not address." APL Petition, p. 7.

APL's concerns about CSXT and CSXI working together following implementation of Decision No. 89 to divert its traffic and destroy its northeast business are unfounded, as is its concern that CSXT and CSXI will stand in an adversarial relationship with APL. To the contrary, I and other CSXI officials look forward to continuing to work with APL personnel over the coming months, as CSXI personnel have over the last several months. Our goal is to develop a solid business relationship built on the provision of excellent service to APL, and to be responsive to its operational and other requirements.

In this proceeding, APL has previously raised the identical concerns about being served by CSXI, its competitor, and CSXT that are set forth in its Petition for Stay. My colleague, Mr. Peter A. Rutski, Vice President, Business Planning, CSXI, responded to these concerns in detail in his December 8, 1997 Verified Statement submitted as part of CSXT's rebuttal submission in this proceeding. (CSX/NS-177, Vol. 2B, at HC-375-387). The Board has already considered APL's concerns arising out of CSXI's provision of service to it. In its July 23 decision in this proceeding (Decision No. 89), the Board found that APL's concerns about possible discrimination against it by CSXI were not well founded and did not warrant any type of special protections. Decision No. 89 at 113-114.

I do not intend here to restate the views expressed by Mr. Rutski concerning APL in his Statement, to which I subscribe in full. Several points, however, merit reiteration.

First, as Mr. Rutski observes, and as the Board accurately observed in Decision No. 89, the situation in which CSXI deals with other third party service providers, including

other international ocean shipping customers and other entities that offer service competitive to that offered by CSXI, is not unique. Decision No. 89 at 113; Rutski V.S. at HC-379-383. In the intermodal setting, providing service to one's competitors is hardly unusual. Every major railroad offers intermodal services in competition with entities that purchase intermodal services from those railroads - e.g., Conrail, UP and NS are each primary service providers to APL today, notwithstanding that both compete directly with APL for intermodal traffic. Further, CSXI regularly (and without any complaints about potential discrimination) provides service to several of its major motor carrier and intermodal marketing company ("IMC") competitors, including J.B. Hunt, Schneider, and the Hub Group. CSXI, as the Board correctly observes in Decision No. 89, also regularly deals with international ocean shipping companies - over 40% of its business is derived from international ocean shipping customers other than Sea-Land Service, Inc. Decision No. 89 at 113; Rutski V.S. at 18. CSXI could not well maintain this level of business for entities with which it or Sea-Land compete directly if it endeavored to undermine these customer/competitors or to divert their traffic to its own account, as APL fears. As the President and Chief Executive Officer of CSXI, I can unequivocally affirm to APL that this is simply not the way we do business. As Mr. Rutski stated, we recognize that APL is an attractive customer of intermodal services. APL will attain the full benefit of its contract with Conrail once the Transaction is implemented and will receive the same high level of service, interest, cooperation and energy from CSX Intermodal that we would provide to any major customer of its caliber.

Second, Mr. Rutski explains in some detail how we at CSXI have undertaken efforts to meet APL's operational and other needs. As he explains, APL will of course benefit from the larger rail network, and thus greater single-line reach, that CSXI will be able to offer in the Eastern U.S., in contrast to Conrail's smaller network. Transit times and equipment

utilization will improve for all customers, including APL. Further, APL will derive special benefits from substantial capital improvements to CSXT lines between New York and Chicago (including the double-tracking of the B&O Line between Chicago and Greenwich, OH and capacity improvements on the river line between Selkirk, NY and Northern New Jersey) and from the construction of the new intermodal terminal at 59<sup>th</sup> Street in Chicago, which will reduce interchange times for APL traffic transferred to/from Western Railroads.

In addition, Mr. Rutski describes a series of meetings held in the spring and summer of 1997 at which officials from CSXI (including Mr. Rutski, as well as CSXI's President; Assistant Vice President, Rail Contracts and Services; Assistant Vice President, International Sales; and Vice President, Sales) met with APL officials to discuss CSXI's plans for handling APL's traffic and to assess APL's service requirements. (Documents relating to these meetings and identifying the APL and CSXI participants were submitted to the Board in CSX's rebuttal submission and appear at CSX/NS-178, Vol. 3A at 298-316.) No CSXT officials attended these meetings.

APL has obviously been very well aware at all relevant times that it was speaking with CSXI officials, and that CSXI would be actively engaged in providing service to it in the case of CSXT movements. APL cannot now claim reason to be any more concerned about the Conrail Transaction, or CSXI's role in handling its traffic, than it did at the time that it made its initial submissions to the Board. As we have throughout the course of our dealings with APL, we have endeavored to understand APL's needs and to fashion as strong a business plan as possible to meet those needs. We will continue to do so after Day One, and remain confident that APL's traffic will be handled at least as well, if not more efficiently, by CSXI and CSXT than it has been by Conrail.

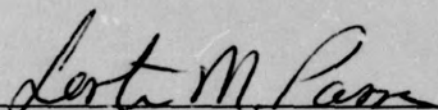
By virtue of APL's insistence that CSXI not have access to the APL/Conrail contract, as reflected in Board Order No. 87, neither I nor my colleagues at CSXI have seen an unredacted version of that contract. (APL had supplied us with a version several months ago, but all critical commercial terms were redacted from that copy.) We can provide service relating to APL's traffic whether or not we see the commercial terms of the APL/Conrail contract, but I am confident that providing us with an opportunity to see the contract would facilitate our commercial discussions with APL and, we believe, bring those discussions to a prompt resolution. We have raised this issue with APL on several occasions, but to date APL has been non-responsive, a position that appears inconsistent with its professed desire to enjoy enhanced competition in rail service. Indeed, given CSXI's role as the entity within the CSX family that markets intermodal services, it is anomalous for APL to favor retention of a prohibition against CSXI reviewing the APL/Conrail contract at this time while declaring a desire to consider using CSX.. (Sea-Land Service, Inc. does not need to be involved in handling APL's traffic and the prohibition imposed by Decision No. 87 on its ability to have access to the APL/Conrail contract raises none of the same issues.)

Finally, APL expresses concern in its Petition about the future of its lease of the APL South Kearny Terminal. APL's lease, and the relationship between that lease and its Transportation Service Agreement ("TSA") with Conrail, are commercial matters that are best left to the parties to address on a business basis. I remain hopeful that we can reach a commercial resolution of APL's concerns with respect to the lease. If not, the lease and the TSA contain arbitration provisions that can be triggered to resolve any disputes that may remain.



# VERIFICATION

I, Lester M. Passa, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement. Executed this 8th day of August, 1998.

  
Lester M. Passa

STB

FD-33388

8-10-98

D

ID-190446

LAW OFFICES

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JOHN V. EDWARDS

August 10, 1998

**VIA HAND DELIVERY**

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



ENTERED  
Office of the Secretary

AUG 11 1998

Part of  
Public Record

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

Dear Secretary Williams:

Enclosed are an original and twenty-five (25) copies of NS-70, the Reply of Applicant Norfolk Southern in Opposition to the Petition for Stay of APL Limited, for filing in the above-referenced docket. Also enclosed is a 3.5 inch disk containing the filing in WordPerfect 5.1 format.

Please contact the undersigned should you have any questions on this matter.

Sincerely,

Richard A. Allen  
John V. Edwards

Counsel for Norfolk Southern Corporation  
and Norfolk Southern Railway Company

Enclosure

cc: All Parties of Record

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



REPLY OF APPLICANT  
NORFOLK SOUTHERN  
IN OPPOSITION TO THE PETITION FOR  
STAY OF APL LIMITED

On July 23, 1998, the Surface Transportation Board ("Board") served Decision No. 89, approving with conditions the acquisition of control of Conrail<sup>1</sup> by Applicants NS<sup>2</sup> and CSX<sup>3</sup> as described in the primary application and subsequent pleadings filed in this proceeding (the "Transaction"). That decision will authorize NS and CSX to exercise control of Conrail on August 22, 1998 (the "Control Date") and to implement a transaction under which, at some future date referred to as the "Closing" or "Day One"), most of Conrail's routes and assets to be divided between and operated separately by NS and CSX.

On July 31, 1998, APL Limited ("APL") filed a petition for stay pursuant to 49 C.F.R. § 1115.3(f) asking the Board to stay the effectiveness of Decision No. 89 as to "Day One" pending the Board's reconsideration or clarification of that decision, or the completion of

<sup>1</sup> "Conrail" refers to Conrail Inc. and Consolidated Rail Corporation.

<sup>2</sup> "NS" refers to Norfolk Southern Corporation and Norfolk Southern Railway Company ("NSR").

<sup>3</sup> "CSX" refers to CSX Corporation and CSX Transportation, Inc. ("CSXT").  
"Applicants" collectively refer to NS and CSX.



judicial review. If granted, the requested stay would indefinitely delay implementation of a transaction hailed by the Board as a "procompetitive restructuring" that will result in substantial competitive, environmental and financial public benefits every year. Decision No. 89 at 50 - 51. The requested stay would indefinitely delay the reintroduction to many areas of the Eastern United States rail competition that has been missing such competition for decades.

NS understands that APL is dissatisfied with its post-Transaction options and we regret that. We prefer the unanimous endorsement of our shippers for the Transaction, but APL's dissatisfaction is no justification for the stay requested by APL, which, if granted, would seriously harm not only Applicants, but also the shipping public.

#### **APL'S STAY REQUEST**

In its application requesting approval of the Transaction, the Applicants asked the Board to permanently override antiassignment clauses in Conrail's transportation contracts, which would prevent the allocation of those contracts to NS or to CSX under Section 2.2(c) of their transaction agreement. The Board refused. Decision No. 89 at 73. Instead, in Decision No. 89, the Board found that a very limited override -- for 180 days from Day One -- is necessary to permit the implementation of the Transaction without the operational problems that would result from an implementation without the 180-day override period. After the 180-day period, a shipper will have an option not generally granted to shippers in rail consolidation proceedings. After the 180-day limited override period, a shipper can choose to continue to have its transportation contract performed by the carrier to which it was allocated, or it can choose to terminate that contract and begin negotiations with the carrier or carriers of its choice.

In its petition for stay, APL states that it will ask the Board to reconsider and reverse Decision No. 89 to eliminate the 180-day limited override period -- to "give shippers the right to select the carrier that will serve them at dual points [at Day One] without having to invoke their anti-assignment provisions and terminating their contracts since two railroads will be replacing the service of one railroad." The argument APL says it will advance in support of reconsideration is that the Board does not have the power to issue a decision under Section 11321 affecting intermodal transportation contracts without first revoking an exemption for intermodal transportation regulation. APL-26 at 5. If APL fails to convince the Board to eliminate the 180-day override period, APL says it will ask the Board to clarify Decision No. 89 in such a manner as to permit APL to change the railroad that will serve it at dual points after Day 180 without terminating its contract.<sup>4</sup>

## DISCUSSION

The standards for imposing a stay are well known to the Board. The Board and its predecessor the ICC have consistently applied the "Holiday Tours Test" in determining whether to issue a stay under Section 1115:

The standards governing disposition of a petition for stay are: (1) that there is a strong likelihood that the movant will prevail

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<sup>4</sup> APL-26 at 6. APL frames the issue as follows: "APL understands that CSXT is taking the position that the Board's decision provides that, 180 days after Day One, APL can select the railroad that will serve it at dual points only if APL exercises the anti-assignment clause in the TSA and terminates its current TSA. (APL, on the other hand, believes that the Board's decision in fact allows APL to choose its carrier on the 181<sup>st</sup> day without terminating its contract.)" Id. Of course, if APL is happy with its service and the carrier providing that service during the first 180 days, APL can choose to continue that service under its transportation services contract without change following Day 180. The only issue for APL then is whether it can change carriers but maintain its current transportation contract.

on the merits; (2) that the movant will suffer irreparable harm in the absence of a stay; (3) that other interested parties will not be substantially harmed; and (4) that the public interest supports the granting of the stay. Hilton v. Braulski, 481 U.S. 770, 776 (1987); Cuomo v. United States Nuclear Regulatory Comm'n, 772 F.2d 972, 974 (D.C. Cir. 1985) (Cuomo); Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977); Virginia Petroleum Jobbers Association v. FPC, 259 F.2d 921, 925 (D.C. Cir. 1958).

CSX Corporation -- Control -- Chessie System, Inc. and Seaboard Coast Line Industries, Inc., et al. (Arbitration Review), Finance Docket No. 28905 (Sub-No. 27), 1996 STB LEXIS 28 (served January 4, 1996) ("CSX Arbitration") at \*5 (footnote omitted).<sup>5</sup> The law is equally clear that "[t]he parties seeking a stay or injunctive relief carry the burden of persuasion on all of the elements required for extraordinary relief such as a stay." CSX Arbitration at id. (citing Canal Authority of Fla. V. Callaway, 489 F.2d 567, 573 (5<sup>th</sup> Cir. 1974)) (emphasis added).

APL has failed to demonstrate that it is entitled to a stay under any of the required showings. With respect to the merits of the Board's decision to override shipper's contracts for a limited 180-day period, the Board explained that the limited override period is needed to permit an orderly transition. APL has not demonstrated that the Board is likely to reverse this manifestly reasonable conclusion.

In addition, APL may request clarification of its rights after the end of the 180-day period -- that is, whether APL is permitted to change the railroad that will serve it at dual points after Day 180 without terminating its contract. This will very likely be clarified prior to the time the issue becomes relevant. The unlikely possibility that the Board would not have clarified its

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<sup>5</sup> See also, Burlington Northern Inc., et al. -- Control and Merger -- Santa Fe Pacific Corp., et al., Finance Docket No. 32549 ("BN/Santa Fe"), Decision No. 41, 1995 ICC LEXIS 249 (served September 21, 1995) at \*8 - \*10 (stay pending reconsideration); BN/Santa Fe Decision No. 39, 1995 ICC LEXIS 241 (served September 21, 1995) at \*19 - \*21 (stay pending reconsideration); Schneider Transport, 1995 ICC LEXIS at \*4.

decision by that time is certainly not a reason to put the implementation of the entire Transaction on hold until that one matter has been clarified for APL.

Most importantly, consideration of the respective harms that could flow from a stay requires that APL's request be denied. APL's allegation of irreparable harm rests on so many assumptions and is so temporally remote that it cannot form the basis for imposition of a stay certain to subject Applicants, the shipping public, and the public interest to so much harm.

APL's allegation of irreparable harm is simply too speculative to be credited. Although it rests on the assumption that CSX will be allocated APL's transportation contract, the allocation of Conrail's transportation contracts has not yet been made.

APL's allegation further rests on several assumptions concerning CSX intentionally undermining APL through poor performance of the APL contract.<sup>6</sup> NS understands that CSX will address this point directly in its separate response, but NS notes that the Board will have continuing oversight jurisdiction over this matter. Decision No. 89 at 17, n.27 and 161; see also, UP Voting Trust, 1995 ICC LEXIS at \*9 (petitioner for stay failed to demonstrate that ICC monitoring would be useless in addressing its concerns).

APL's allegation also rests on the prospect that APL will want to switch carriers through termination of its transportation contract at Day 181, and that the APL South Kearny Terminal lease would be placed at risk if it exercised its right to terminate.

NS understands that APL feels that its post-Transaction options are inadequate, but APL's concerns do not justify the imposition of a stay of the entire Transaction, particularly in

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<sup>6</sup> APL states that it fears that "CSX and its affiliates [could] create a situation in which APL cannot compete effectively" should CSX be allocated APL's transportation contract, and that this could damage APL's service in the northeast region, which would "impact the rest of its network and will result in a significant loss of revenue and competition." APL-26 at 6-7.



light of the certain and substantial harm to Applicants and the shipping public were a stay imposed.

The tremendous irreparable injury that a stay would cause to Applicants, the shipping public and the public interest has been ignored by APL has at least three dimensions -- financial, competitive and environmental.

A stay would impose a tremendous irreparable financial injury.<sup>7</sup> The Board has recognized that this Transaction, when implemented, will bring \$1 billion of public benefits annually, Decision No. 89 at 51, which would be delayed if the Board issued a stay. Further, Applicants would incur substantial costs related to the control and maintenance of Conrail during pendency of the stay, without being able to reap any offsetting benefit from the approved allocation and operation of Conrail.

A stay would impose a tremendous competitive injury. The Board has recognized that this Transaction, when implemented, will result in a "procompetitive restructuring of rail service throughout much of the Eastern United States," and "a substantial increase in rail-to-rail competition" throughout the Eastern United States. Id. If the Board imposes a stay, new and renewed rail competition will be delayed for over \$700 million of traffic in Northern New Jersey, Southern New Jersey/Philadelphia, Detroit, the area served by the former Monongahela Railroad, and Ashtabula Harbor.

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<sup>7</sup> See CSX Arbitration, 1996 STB LEXIS at 12 ("A stay would require operations in the proposed district to continue to be conducted as if separate railroads were still operating, and the carrier would never be able to recover what was lost in the interim."); BNSF Control, Decision No. 41, 1995 ICC LEXIS at \*10 ("Revenues and public benefits foregone could not be recovered after we lifted a stay. Therefore, the harm suffered by applicants and shippers who support the BN/Santa Fe merger would be considerable.").

Further, there is a very real concern that rail service and competition over the Conrail service territory could degrade during a stay period. Far from maintaining the status quo -- generally the aim of imposing a stay -- the APL requested stay would result in serious injury to rail service. See, Metropolitan Area Transit Commission v. Holiday Tours, Inc., 559 F.2d 841, 844 (D.C. Cir. 1977).

Finally, a stay would impose tremendous environmental injury. The Board has recognized that this Transaction, when implemented, "will take substantial numbers of trucks off the Nation's highways by permitting CSX and NS to compete more effectively with motor carrier service," and will have a substantial net environmental benefit in terms of reduced air pollution and highway traffic congestion. Decision No. 89 at 51.

When considered in light of the tremendous public and private injury certain to result from the imposition of a stay, and the uncertain nature of any possible injury to be suffered by APL if the stay is not imposed, it is obvious that APL's petition must be denied. The Board has found the Transaction, as conditioned, to be in the public interest and any stay of the implementation of the Transaction can only harm that public interest.<sup>8</sup>

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<sup>8</sup> "Forcing the carriers to delay realization of the economic benefits from the transaction, and preventing shippers from receiving the benefits of improved and expanded service, and increased competition, would not be consistent with the public interest." BNSF Control, Decision 41, 1995 ICC LEXIS at \*10. See also CSX Arbitration, 1996 STB LEXIS at \*12.

## CONCLUSION

Simply put, APL has failed to demonstrate that the Board should impose a stay. It has failed to demonstrate that it is entitled to a stay under any of the elements for either the petition for stay pending reconsideration or pending clarification. APL's concerns of harm in the absence of a stay are too uncertain to credit, and in requesting a stay APL has completely disregarded the substantial harm to shippers, the applicants and the public interest that would result.

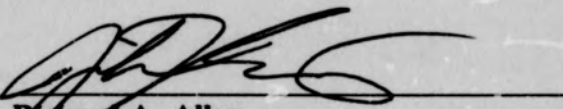
For all these reasons, APL's petition for stay must be denied.

Respectfully submitted,

**James C. Bishop, Jr.**  
**William C. Wooldridge**  
**J. Gary Lane**  
**Greg E. Summy**  
**George A. Aspatore**  
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*Counsel for Norfolk Southern Corporation  
and Norfolk Southern Railway Company*

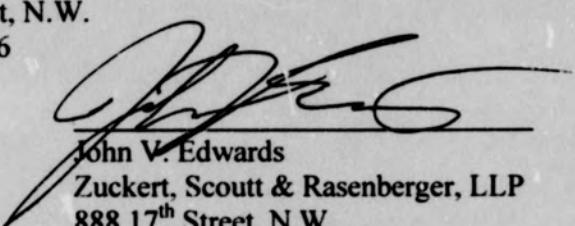


**Richard A. Allen**  
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CERTIFICATE OF SERVICE

I, John V. Edwards, certify that on this 10th day of August, 1998, I have served the foregoing NS-70, Reply of Applicant Norfolk Southern in Opposition to the Petition for Stay of APL Limited, on all parties of record by first class mail, postage pre-paid, or by more expeditious means, and by hand delivery on the following:

The Honorable Jacob Leventhal  
Administrative Law Judge  
Federal Energy Regulatory Commission  
Office of Hearings  
825 North Capitol Street, N.W.  
Washington, D.C. 20426



John V. Edwards  
Zuckert, Scoutt & Rasenberger, LLP  
888 17<sup>th</sup> Street, N.W.  
Suite 600  
Washington, D.C. 20006-3939

Dated: August 10, 1998



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8-4-98

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ID-190380

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190380

Direct Dial: 202-496-4906  
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August 4, 1998

**VIA HAND DELIVERY**

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

ENTERED  
Office of the Secretary

AUG 04 1998

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Public Record



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**Re: Finance Docket No. 33382, CSX Corporation and CSX Transportation, Inc.,  
Norfolk Southern Corporation and Norfolk Southern Railway Company --  
Control and Operating Leases/Agreements -- Conrail Inc. and Consolidated  
Rail Corporation -- Transfer of Railroad Line by Norfolk Southern Railway  
Company to CSX Transportation, Inc.**

Dear Secretary Williams:

By this letter, Livonia, Avon & Lakeville Railroad Corporation ("LAL") seeks correction of a minor factual error contained in the Decision No. 89, served July 23, 1998.

On page 25 of Decision No. 89, in a section identifying NYC-Allocated Assets, the Decision indicates that NYC will take over primary routes identified as "... (u) Mortimer, NY, to Avon, NY and (v) Rochester Branch, NY." These routes are no longer owned or operated by Conrail. LAL owns and operates the lines formerly owned by Conrail between Genesee Junction Yard in Chili, NY (milepost 361.59) and Mortimer, NY (track 227, parallel to and formerly part of Conrail's West Shore Branch); Mortimer, NY and Avon, NY (formerly Conrail's Mortimer Secondary); and Mortimer, NY and Henrietta, NY (formerly part of Conrail's Rochester Industrial Track). Responsive Application of Livonia, Avon & Lakeville Railroad Corporation, LAL-4, at 6, Exhibit 1; Rebuttal Verified Statement of William D. Burt, LAL-6, at 3.

Please contact me if you have any questions or comments regarding this request.

Respectfully submitted,

Kevin M. Sheys

cc: All Parties of Record

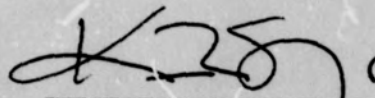
\*Oppenheimer, Wolff & Donnelly LLP \*Oppenheimer Wolff & Donnelly (Illinois)

◆WDC: 39886 v01 7/31/98

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San Jose\*  
Washington, D.C.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 4th day of August, 1998, a copy of the foregoing was served by first class mail, postage prepaid, upon Administrative Law Judge Jacob Leventhal and all Parties of Record on the Service List.

  
\_\_\_\_\_  
Kevin M. Sheys

STB

FD-33388

7-31-98

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**ARNOLD & PORTER**

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July 31, 1998

DENNIS G. LYONS  
(202) 942-5858

NEW YORK  
DENVER  
LOS ANGELES  
LONDON

**BY HAND DELIVERY**

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

ENTERED  
Office of the Secretary

AUG - 3 1998

Part of  
Public Record



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

Dear Secretary Williams:

Enclosed are an original and twenty-five (25) copies of the "Response of Applicants CSX Corporation and CSX Transportation, Inc., To Motion of APL Limited for 20-Day Extension of Time to File Petition For Clarification and/or Petition For Reconsideration" (CSX-158) for filing in the above-referenced docket.

Please note that a copy of this filing is also enclosed on a 3.5-inch diskette in WordPerfect 5.1 format.

Thank you for your assistance in this matter. Please contact me (202-942-5858) if you have any questions.

Kindly date stamp the enclosed additional copies of this letter and the Response Brief at the time of filing and return them to our messenger.

Respectfully yours,

Dennis G. Lyons  
Counsel for CSX Corporation and CSX Transportation, Inc.

Enclosures  
cc: All Parties of Record

140325

**CSX-158**

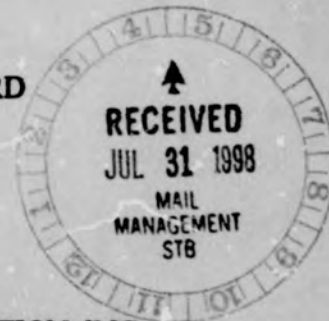
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**Office of the Secretary**

**AUG - 3 1998**

**Part of**  
**Public Record**

**BEFORE THE**  
**SURFACE TRANSPORTATION BOARD**

**FINANCE DOCKET NO. 33383**



**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**

**RESPONSE OF APPLICANTS CSX CORPORATION AND**  
**CSX TRANSPORTATION, INC., TO MOTION OF**  
**APL LIMITED FOR 26-DAY EXTENSION OF TIME**  
**TO FILE PETITION FOR CLARIFICATION AND/OR**  
**PETITION FOR RECONSIDERATION**

Applicants CSX Corporation and CSX Transportation, Inc. (collectively, "CSX"), hereby respond to APL-25, the Motion of APL Limited ("APL") for 20 Day Extension of Time to File Petition for Clarification and/or Petition for Reconsideration, dated July 29, 1998 (the "Motion").

The Motion seeks extra time within which to file a Petition for Clarification and/or Petition for Reconsideration of the Board's Decision No. 89, served July 23, 1998, apparently insofar as it relates to the Board's condition with respect to rail transportation contracts, Section 2.2(c) of the Transaction Agreement, and related matters.

The principal reason given why the time for filing the petition should be enlarged from August 12, 1995, when it would otherwise be due to September 1, 1998, is that "APL is attempting to discuss with Applicants whether they have the same understanding of Decision No. 89 as APL as it relates to the status of existing rail transportation contracts and, in particular, APL's contract, 181 days after Day 1." (Motion at 1.)

The Motion does not set forward exactly what APL's position is, and indeed, APL has not provided a written statement of its position to CSX or, to CSX's knowledge, to Norfolk Southern, except to the extent that the Motion might constitute one. There have been certain oral requests for views expressed by APL to personnel of CSX Intermodal, Inc.,<sup>1</sup> and to CSX's outside counsel. These have incidentally touched on the meaning of the Board's Condition but essentially have dealt with issues relating to what the consequences would be, under the Conrail rail transportation contract and certain other agreements between APL and Conrail related thereto, if APL were to exercise its option to exercise termination rights under the Condition. Those issues are not referred to in the Motion and, being essentially contract issues, do not appear to be within the purview of the Board.

In any event, CSX states that it sees no ambiguities in the Board's Condition. It views the governing text as Ordering Paragraph 10, on page 175 of the Decision, where a

---

<sup>1</sup> On the CSX side of the matter, the only businessman-to-businessman contacts, all of which have been initiated by APL, have been with CSX Intermodal, Inc. A statement of CSX's views on the interpretation of the Condition was furnished orally on July 29, 1998, by a senior officer of CSX Intermodal, Inc., to APL. This contact with CSX Intermodal, Inc., has been pursued by APL notwithstanding the fact that APL has expressed a reluctance to have its contract dealings handled by CSX Intermodal, Inc., resulting in the restrictions set forth in the Board's Order No. 87, amending the Protective Order in this case. Those restrictions extend to CSX Intermodal Inc., the exclusive provider of CSX's intermodal services, as well as to Sea-Land (as to Sea-Land alone, CSX interposed no objection to the restriction when the Board considered it.)

very precise statement is made. That statement is to the effect that a shipper having an antiassignment clause in its rail transportation contract, which APL clearly does, may, at the end of the 180-day period beginning on the Split Date, either elect to continue the contract until its expiration date under the terms of the existing contract and with the arrangements as to carrier (CSX/NS) as prevailed during the 180-day period, or to exercise termination rights under the contract, the exercise of such rights to be subject to giving a 30-day notice.

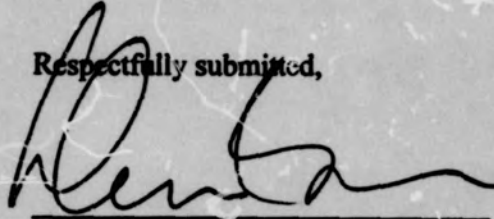
CSX believes that the formal statement of the Board's intention is in the Ordering Paragraph on page 175. However, while the other pages in the Decision mentioned by APL in the Motion (page 73, quoted by APL, pages 17, 56, 75 and 113), use somewhat different language in colloquially describing the Condition, CSX perceives nothing in the language on those pages that is designed to alter the terms of, or is contrary to, the Ordering Paragraph 10 on page 175.

While CSX notes that APL is not seeking to postpone the Control Date, and thereby postpone the realization of the substantial public benefits that will attend the Transaction once it goes through the stages of Control Date, intermediate period and "Split Date," a delay in processing the petitions for reconsideration might have other delaying consequences in connection with the interface between the Board's post-decision processes and the processes of the reviewing courts. The least of these might be postponement of the ultimate resolution of whatever issues are raised by those opposing or taking exception to the Transaction and the Board's Decision No. 89.



Accordingly, CSX submits that the Motion should be denied and whatever issues APL wishes to identify and bring forward be brought forward by petition filed by August 12, 1998.

Respectfully submitted,



**SAMUEL M. SIPE, JR.**  
**DAVID H. COLUM**  
Septre & Johnson LLP  
1330 Connecticut Ave., NW  
Washington, D.C. 20036-1795

**DENNIS G. LYONS**  
Arnold & Porter  
555 Twelfth Street, N.W.  
Washington, D.C. 20004-1202

**MARK G. ARON**  
**PETER J. SHUTZ**  
CSX Corporation  
One James Center  
901 East Cary Street  
Richmond, VA 23129  
(804) 782-1400

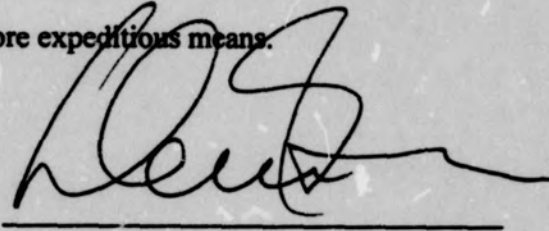
**P. MICHAEL GIFTOS**  
**PAUL R. HITCHCOCK**  
CSX TRANSPORTATION, INC.  
500 Water Street  
Speed Code J-120  
Jacksonville, FL 32202  
(904) 359-3100

*Counsel for CSX Corporation and CSX  
Transportation, Inc.*

July 21, 1998

**CERTIFICATE OF SERVICE**

I, Dennis G. Lyons, certify that on July 31, 1998, I have caused to be served a true and correct copy of the foregoing CSX-158, Response of Applicants CSX Corporation and CSX Transportation, Inc., To Motion of APL Limited for 20-Day Extension of Time to File Petition For Clarification and/or Petition For Reconsideration to all parties on the Service List in Finance Docket No. 33388, by first-class mail, postage prepaid, or by more expeditious means.



---

STB

FD

~~33388~~

7-29-98

D

190291

140291

**BALL JANIK LLP**

A T T O R N E Y S

1455 F STREET, NW, SUITE 225  
WASHINGTON, D.C. 20005

TELEPHONE 202-633-3307  
FACSIMILE 202-783-6347

LOUIS E. GITOMER  
OF COUNSEL  
(202) 466-6532

July 29, 1998

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

ENTERED  
Office of the Secretary

JUL 30 1998

Part of  
Public Record

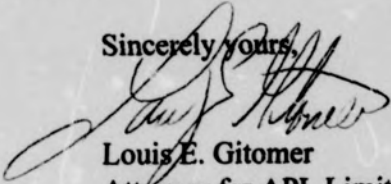
Re: STB Finance Docket No. 33388, CSX Corporation and CSX Transportation, Inc.,  
Norfolk Southern Corporation and Norfolk Southern Railway Company--Control  
and Operating Leases/Agreements--Conrail Inc. and Consolidated Rail  
Corporation

Dear Secretary Williams:

Enclosed are the original and 25 copies of the Motion of APL Limited. A 3.5-inch diskette with the file name apl.25 in Word 6.0 format is also enclosed.

Please time and date stamp the extra copy of this letter and pleading. Thank you for your assistance. If you have any questions, please call me.

Sincerely yours,

  
Louis E. Gitomer  
Attorney for APL Limited



190291  
**ORIGINAL**

APL-25

**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**

**MOTION OF APL LIMITED FOR 20 DAY EXTENSION OF TIME TO FILE  
PETITION FOR CLARIFICATION AND/OR PETITION FOR RECONSIDERATION**

**ENTERED  
Office of the Secretary**

**JUL 30 1998**

**Part of  
Public Record**

**Ann Fingarette Hasse  
APL Limited  
1111 Broadway  
Oakland, CA 94607-5500  
(510) 272-7284**

**Louis E. Gitomer  
BALL JANIK LLP  
1455 F Street, N.W., Suite 225  
Washington, D.C. 20005  
(202) 466-6532**

**Attorneys for:  
APL LIMITED**

**Dated: July 29, 1998**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**Finance Docket No. 33388**

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

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**MOTION OF APL LIMITED FOR 20 DAY EXTENSION OF TIME TO FILE  
PETITION FOR CLARIFICATION AND/OR PETITION FOR RECONSIDERATION**

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Pursuant to 49 CFR § 1115.3(e) APL Limited ("APL") seeks an extension of 20 days until September 1, 1998 to file a Petition for Clarification and/or a Petition for Reconsideration of Decision No. 89, which was served by the Surface Transportation Board (the "Board") on July 23, 1998.

APL continues to analyze Decision No. 89 in an attempt to determine its effect on APL's future relationship with CSX Transportation, Inc. ("CSXT"), and Norfolk Southern Railway Company ("NS"), both referred to as "Applicants." As part of its analysis, APL is attempting to discuss with Applicants whether they have the same understanding of Decision No. 89 as APL as it relates to the status of existing rail transportation contracts and, in particular, APL's contract, 181 days after Day 1. The results of these discussions will be very

important to APL in deciding whether to file a Petition for Clarification, a Petition for Reconsideration, both petitions, or neither.<sup>1</sup>

At its June 8, 1998 voting conference, the Board first announced, in general, the condition it would impose concerning existing rail transportation contracts. The specifics of the condition were set forth in Decision No. 89<sup>2</sup>. At page 73, the Board said:

Accordingly, we will limit our override of antiassignment and other similar clauses to a 6-month period following Day One. This will permit each of these carriers to compete for this traffic, where possible, after an initial adjustment period. After 180 days, if the contract has not expired already, the shipper may elect to continue the contract until its expiration under the same terms with the same carrier, or, without making any showing with regard to service, it may exercise any termination or renegotiation rights contained in the contract, provided the shipper has given 30 days' written notice to the carrier serving it. (footnote omitted)

The Board itself crafted this condition without any input or analysis from the parties. Having seen the language of the Board's contract condition, APL must now evaluate it in the context of the entire decision and determine the effect it will have on APL.

In addition, APL must analyze the impact of Section 2.2(c) on this condition as well as other aspects of Decision No. 89 which are pertinent to the issue of shipper contracts. An extension of 20 days will not cause harm to any party. APL is not seeking to postpone the control date, so Applicants will not have to await the outcome of any Board decision on this issue before consummating control.

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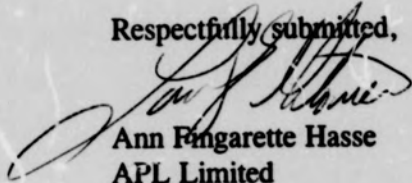
<sup>1</sup> As of this date, although it has been actively soliciting the opinions of both NS and CSXT regarding their understanding, APL has not yet received a definitive response from either of them.

<sup>2</sup> In APL's initial review of Decision No. 89, APL has identified at least several other sections of Decision No. 89 that refer to the contract condition that are not the same as the language on page 73. See *e.g.* pages 17, 56, 75, 113, and 175. APL may at a minimum ask the Board to clarify that pages 73 and 113 mean the same thing as to the APL contract.

### CONCLUSION

For the reasons set forth above, the Board should grant an extension of 20 days until September 1, 1998 for APL to file a Petition for Clarification and/or a Petition for Reconsideration of Decision No. 89.

Respectfully submitted,



Ann Pingarette Hasse  
APL Limited  
1111 Broadway  
Oakland, CA 94607-5500  
(510) 272-7284

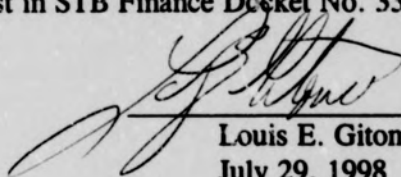
Louis E. Gitomer  
BALL JANIK LLP  
1455 F Street, N.W., Suite 225  
Washington, D.C. 20005  
(202) 466-6530

Attorneys for:  
APL LIMITED

Dated: July 29, 1998

### CERTIFICATE OF SERVICE

I hereby certify that I have caused the Motion of APL Limited in APL-25 to be served by hand on Applicants' representatives in this proceeding and by first class mail, postage pre-paid on all other parties on the service list in STB Finance Docket No. 33388.



Louis E. Gitomer  
July 29, 1998



STB

FD-33388

7-20-98

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ID-190095



# Ohio Rail Development Commission

50 West Broad Street, Suite 1510 • Columbus, Ohio 43215 • (614) 644-0306 phone • (614) 728-4520 fax

## FACSIMILE TRANSMISSION

DATE: JULY 20, 1998

TO: SECRETARY VERNON WILLIAMS  
ORGANIZATION: SURFACE TRANSPORTATION BOARD  
FAX NUMBER: 202-565-9003  
PHONE NUMBER:

# OF PAGES, INCLUDING THIS COVER SHEET:

2

FROM: BETH WILSON

PHONE: 614-728-9497

MESSAGE:

ENTERED  
Office of the Secretary

JUL 23 1998

Part of  
Public Record

Attached for consideration as appropriate in connection with clarification of the Board's written decision in F.D. 33388 are the views of ORDC concerning inclusion of regional rail carriers in regard to the single line to joint line relief adopted by the Board.

Copies are being provided to the Applicants by fax. All other parties of record will be served by regular U.S. Mail.

The original hard copy of this letter will be sent to you via regular U.S. Mail.

If you have any questions, please do not hesitate to call either Executive Director Thomas M. O'Leary at 614-644-0313, or Beth Wilson at 614-728-9497.

Thank you for your prompt attention and kind assistance in this matter.



# Ohio Rail Development Commission

50 West Broad Street, Suite 1510 • Columbus, Ohio 43215 • (614) 644-0306 phone • (614) 728-4520 fax

July 20, 1998

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

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JUL 20 1998  
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MANAGEMENT  
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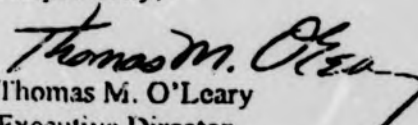
Re: Finance Docket No. 33388, CSX Corporation and CSX Transportation, Inc., Norfolk Southern corporation and Norfolk Southern Railway Company - Control and Operating Leases/Agreements - Conrail, Inc. and Consolidated Rail Corporation

Dear Mr. Williams:

As one of the Ohio agencies that has participated in the Conrail merger proceeding, the Ohio Rail Development Commission (ORDC) is aware that the Board has determined to extend to short line carriers the single-line to joint-line relief as set forth in the NIT League Agreement. Since ORDC is entrusted with public interest responsibilities in the areas of economic development and rail service related issues, that action by the Board is very much of interest to the Commission and to the Ohio constituents we serve.

ORDC is pleased that the Board recognized the reasons for extending single-line to joint-line relief in the NIT League Agreement to short lines. However, those same reasons apply in 1 to 2 situations which will be faced by regional rail carriers and the shippers they serve. We understand that the Board's forthcoming written decision will provide clarification as to the nature and extent of public interest conditions that will be applicable in connection with the grant of authority sought by Applicants. In the interest of economic stability and development in the Ohio Region, ORDC urges clarification that regional rail carriers and the shippers they serve are included within the single-line to joint-line relief adopted by the Board.

Respectfully,

  
Thomas M. O'Leary  
Executive Director  
Ohio Rail Development Commission

cc: All Parties of Record

TMO:baw



# Ohio Rail Development Commission

50 West Broad Street, Suite 1510 • Columbus, Ohio 43215 • (614) 644-0306 phone • (614) 728-4520 fax

## FACSIMILE TRANSMISSION

DATE: JULY 20, 1998

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Thank you for your prompt attention and kind assistance in this matter.

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JUL 20 1998  
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MANAGEMENT  
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# Ohio Rail Development Commission

50 West Broad Street, Suite 1510 • Columbus, Ohio 43215 • (614) 644-0306 phone • (614) 728-4520 fax

July 20, 1998

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

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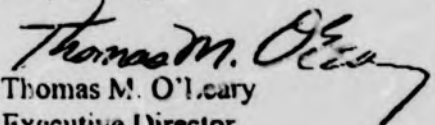
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ORDC is pleased that the Board recognized the reasons for extending single-line to joint-line relief in the NIT League Agreement to short lines. However, those same reasons apply in 1 to 2 situations which will be faced by regional rail carriers and the shippers they serve. We understand that the Board's forthcoming written decision will provide clarification as to the nature and extent of public interest conditions that will be applicable in connection with the grant of authority sought by Applicants. In the interest of economic stability and development in the Ohio Region, ORDC urges clarification that regional rail carriers and the shippers they serve are included within the single-line to joint-line relief adopted by the Board.

Respectfully,

  
Thomas M. O'Leary  
Executive Director  
Ohio Rail Development Commission

cc: All Parties of Record

TMO:baw

STB FD 33388

7-17-98 D

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**DONELAN, CLEARY, WOOD & MASER, P.C.**

ATTORNEYS AND COUNSELORS AT LAW

SUITE 750

1100 NEW YORK AVENUE, N.W.  
WASHINGTON, D.C. 20005 3934

OFFICE: (202) 371-9500

July 16, 1998

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

ENTERED  
Office of the Secretary

JUL 17 1998

Part of  
Public Record



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

Dear Secretary Williams:

Undersigned counsel for The National Industrial Transportation League ("League"), Norfolk Southern Corporation ("NS"), and CSX Corporation ("CSX") respectfully submits to the Board a letter-report on the activities to date of the Corrail Transaction Council ("Council"). As the Board is aware, the Council was formed as part of a Settlement Agreement between the League, NS and CSX dated December 12, 1997. Pursuant to the terms of that Settlement Agreement, the Council is to consist of representatives of NS, CSX and the League and "representatives of other organizations of affected rail users." The stated function of the Council is to "function as a forum for constructive dialogue." The Settlement Agreement specifically states that the Council is not intended to supplant STB oversight of the transaction.

As of the date of this letter, the Council has met five times, on March 3, 1998, April 15, 1998, May 14, 1998, June 9, 1998, and July 16, 1998. In the meeting immediately following the voting conference in the Conrail transaction, the members of the Council discussed the desirability of sending a brief report to the Board on the activities of the Council, particularly in view of the discussion of the Council at the oral argument and the voting conference. The purpose of this letter, therefore, is twofold. First, the members of the Council wish to inform the Board as to the formation and past and current activities of the Council, so that the Board is aware of these private-sector discussions. Second, the members of the Council wish to make the Board aware of plans (as required in the Settlement Agreement) for the Council's submittal to the Board of recommendations for public reporting of the process of implementation of the transaction in the form of "objective, measurable standards."

Formation and Membership of the Council

On January 30, 1998, NS, CSX and the League submitted to each other the names of their representatives for the Council. On February 4, 1998, the League hosted a

meeting of potentially interested shipper organizations in order to discuss the formation and future activities of the Council. As a result of that meeting, on February 11, 1998 a letter was sent to a wide variety of potentially interested organizations of affected rail users, inviting them to the first formal meeting of the Council on March 3, 1998. The list of organizations to which that letter was sent and a copy of the letter are attached as Appendix A. Since that time, invitations have been sent to potentially interested organizations of affected rail users prior to each meeting of the Council. The organizations who have attended one or more meetings of the Council since it first was formed is attached to this letter as Appendix B.

### Activities of the Council

As noted above, the Conrail Transaction Council has held five meetings. The minutes of the first four meetings, along with various handouts or reports distributed at or after each meeting, are attached as Appendix C.<sup>1</sup> As can be seen from the minutes of the meetings, a wide variety of matters have been discussed, including: development of objective, measurable standards to evaluate the impact of the transaction and act as an "early warning system" of impending problems; operations summaries of the Shared Asset Areas; status of implementation of the transaction; status of information systems development; plans for the distribution of Conrail rolling stock; status of the NS and CSX operating plans; status of labor implementing agreements; operations in the joint access areas; status of customer service operations; and NS and CSX assumption of Conrail contracts. Future agenda items currently include: car distribution; car management, crew management, and dispatching; and business during the interim period between assumption of control and the so-called "split date."

### Recommendations Concerning Objective, Measurable Standards To Monitor Implementation of the Transaction

As the Settlement Agreement between the League, NS, and CSX indicates, the Council, NS and CSX shall "jointly recommend to the Board objective, measurable standards" to be used in reporting to the Board on the implementation of the transaction during the oversight period. The Council initially discussed the matter of objective, measurable standards in its very first meeting, and subsequently appointed a task group to develop a draft of these standards. The Task Group has reported to the Council on its work on three occasions. In formulating its recommendations, the Task Force is currently developing weekly measurements which (1) will function as an early warning system; (2) are made in comparable formats on Conrail, CSX, and NS; and (3) are not burdensome for the carriers to produce. The Council hopes to bring this matter to a conclusion at its August meeting, with the hope of being able to transmit these recommendations to the Board shortly afterwards.

---

<sup>1</sup> Due to the volume of paper included in Appendix C, only the Board is being provided with a copy of this Appendix. However, any person wishing to obtain a copy of the enclosures in Appendix C may make a request to one of the undersigned, and a copy will be provided.



**DONELAN, CLEARY, WOOD & MASER, P.C.**

Letter to Secretary Vernon A. Williams

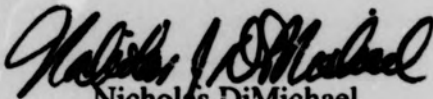
July 16, 1998

Page 3

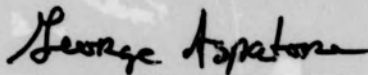
Finally, the Council would like to invite a representative of the staff of the Board to attend and audit future Council meetings. The next meeting will be held in Washington, D.C. on August 20, 1998, beginning at 10:00 A.M.

We hope that the above is helpful to the Board. A copy of this letter is being sent to all parties of record.

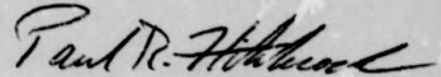
Respectfully submitted,



Nicholas DiMichael  
Donelan, Cleary Wood  
and Maser, P.C.  
1100 New York Ave. N.W.  
Washington, D.C. 20005



George Aspatore  
Norfolk Southern Corp.  
Three Commercial Place  
Norfolk, VA 23510



Paul Hitchcock  
CSX Corp.  
500 Water St  
Jacksonville, FL 32202

*Attorney for The National Attorney for Norfolk  
Industrial Transportation Southern Corporation  
League*

*Attorney for CSX  
Transportation, Inc.*

cc: All parties of record (w/enclosure Appendices A and B)

## **APPENDIX A**

**Rail User Organizations Invited to Participate in Conrail Transaction Council**

American Forest and Paper Association  
American Iron and Steel Institute  
American Automobile Manufacturers Association  
American Petroleum Institute  
American Soybean Association  
Chemical Manufacturers Association  
Distilled Spirits Council  
Edison Electric Institute  
The Fertilizer Institute  
Institute of Scrap Recycling Industries, Inc.  
Intermodal Association of North America  
International Mass Retailers Association  
National Grain and Feed Association  
National Lime Association  
National Mining Association  
National Stone Association  
The Society of the Plastics Industry, Inc.  
Steel Manufacturers Association  
Transportation Intermediaries Association  
U.S. Clay Producers Traffic Association



**THE  
NATIONAL  
INDUSTRIAL  
TRANSPORTATION  
LEAGUE**

**To: Potentially Interested Organizations**

**From: Ed Rastatter, Director of Policy**

**Subject: Conrail Transaction Council**

**Date: February 11, 1998**

The settlement agreement signed in December by Norfolk Southern Railroad, CSX, and the League provides for the creation of a Conrail Transaction Council, to be composed of representatives from the carriers, the League, and any other organization of affected rail users. The council is meant to be a forum for the two-way sharing of information, ideas, and shipper concerns about the transaction. It was spawned by fears that the service problems following the merger of the Union Pacific and Southern Pacific Railroads might be repeated in the Conrail acquisition. The agreement requires NS and CSX to discuss key milestones in the implementation of the transaction with the council and to respond to concerns raised by the council, especially with respect to early settlement of labor implementing agreements, development of management information systems, and objective, measurable standards for tracking the progress of implementation.

The League hosted an initial meeting of the Council on February 4, and invited more than a dozen rail user organizations. Those attending included representatives from the U.S. Clay Producers, American Iron and Steel Institute, Institute of Scrap Recycling Industries, Intermodal Association of North America, American Forest and Paper Association, National Grain and Food Association, and the Transportation Intermediaries Association.

The initial meeting was confined to discussion of the council's future agenda, additional potential members, and voting rules. Membership is open to any organization of affected rail users, and yours was mentioned as one that might be interested in joining the Council. Whether or not your organization supports the terms of the League's agreement with NS and CSX, we would like to invite your organization to discuss its possible participation in the Council. Each organization will be represented by one staff member and one member of the organization.

The first formal meeting is scheduled for the morning of March 3 at 10 AM, in Washington, D.C., at the law offices of Donelan, Cleary, Wood & Maser, at 1100 New York Ave., NW, Suite 750. It may last until mid-afternoon. Representatives of NS and CSX will be invited to attend.

Please fill out the form below and fax it to me at 703-524-5017 by COB February 27.

**Name:** \_\_\_\_\_

**Organization:** \_\_\_\_\_

**Phone:** \_\_\_\_\_ **Fax:** \_\_\_\_\_ **E-mail:** \_\_\_\_\_

☐ I will attend the March 3 meeting.

☐ The member from our organization will be \_\_\_\_\_ from \_\_\_\_\_.

☐ Though I cannot attend the March 3 meeting, my organization may still be interested in participating on the Council, and would like to be kept informed.

1700 North Meade Street, Suite 1000, Arlington, VA 22209-1604 • (703) 524-5011 • (703) 524-5017 (fax) • info@nitl.org (e-mail) • www.nitl.org (internet)

**My organization is not interested. Please remove us from your fax list.**

**Chairman:**  
June E. Youngs  
Vice President, Logistics  
Hesbro, Inc.

**First Vice Chairman:**  
Gary Mayer  
Manager, Transportation  
J.C. Penney Company, Inc.

**Second Vice Chairman:**  
Van L. Hayes, Jr.  
Manager, Transportation,  
Support Services  
Wesco Materials Company

**Third Vice Chairman:**  
William J. Burns  
Vice President,  
Transportation-OGC  
Cargill, Incorporated

**Treasurer:**  
Thomas R. Gault  
Manager, Trade and Logistics  
Allegheny Technology  
Incorporated

**President:**  
Edward M. Emmett



## **APPENDIX B**

**Organizations of Affected Rail Users**  
**Attending Conrail Transaction Council Meetings**

American Automobile Manufacturers Association  
American Forest and Paper Association  
American Iron and Steel Institute  
American Soybean Association  
Chemical Manufacturers Association  
Edison Electric Institute  
The Fertilizer Institute  
Intermodal Association of North America  
International Mass Retail Association  
Institute of Scrap Recycling Industries, Inc.  
National Grain and Feed Association  
The National Industrial Transportation League  
The Society of the Plastics Industry, Inc.  
Steel Manufacturers Association  
Transportation Intermediaries Association  
U.S. Clay Producers Traffic Association

**Railroads Attending Conrail Transaction Council Meetings**

CSX Corporation  
Consolidated Rail Corporation  
Norfolk Southern Corporation

CERTIFICATE OF SERVICE

I hereby certify that I have on this 16th day of July, 1998 served copies of the *foregoing Letter-Report on the activities to date of the Conrail Transaction Council* by first-class mail, postage prepaid, on all parties of record in the above captioned proceeding.

Shannon R. Harris  
Shannon R. Harris

## **APPENDIX C**



January 30, 1998

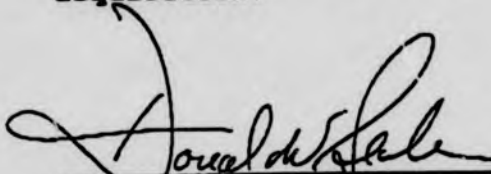
Mr. Edward M. Emmett  
President  
The National Industrial Transportation League  
1700 North Moore Street  
Arlington, Virginia

Dear Mr. Emmett:

As part of the December 12, 1997 Settlement Agreement between the League, Norfolk Southern Corporation and CSX Transportation, Inc., the carriers have agreed to establish a Conrail Transaction Council which is intended to function as a forum for constructive dialogue. NS and CSXT understand that, at the present time, the League has identified Mr. Edward Rastatter, the League's Director of Rail Policy, and Mr. Robert Evans, Corporate Manager, Rail Transportation, Occidental Chemical Corporation and Chairman of the League's Rail Transportation Committee, as members of the Council. We also understand that the League has contacted a number of potentially interested organizations of affected rail customers, which organizations are listed on the attachment to this letter, to discuss those organizations' potential participation on the Council. When the League advises NS and CSXT of the results of this meeting, invitations can be extended to these or other interested organizations in the near future. We expect that the first meeting of the Council will take place as soon as possible.

The NS member of the Council is Walt Trollinger, AVP-Markets Management, Norfolk Southern Corporation, Three Commercial Place, Norfolk, Virginia 23510, Telephone (757) 629-2720, Facsimile No. (757) 629-2849. The CSXT member of the Council is Chris Jenkins, VP-Chemical Marketing, CSX Transportation, Inc., 500 Water Street, J-880, Jacksonville, Florida 32202, Telephone (904) 359-1120, Facsimile No. (904) 359-1263. We look forward to the League's participation on the Council, as well as the participation of the other organizations, in order to address the concerns and recommendations of the shipper community regarding the Conrail acquisition.

Sincerely,

  
Donald W. Seale  
Vice President-Merchandise  
Marketing  
Norfolk Southern Corporation  
John Q. Anderson  
Executive Vice President-  
Sales and Marketing  
CSX Transportation, Inc.

**National Organizations Potentially Interested**  
**in Conrail Transaction Council**

U.S. Clay Producers Traffic Association  
The Fertiliser Institute  
Intermodal Association of North American  
Chemical Manufacturers Association  
The Society of the Plastics Industry, Inc.  
Institute of Scrap Recycling Industries, Inc.  
American Soybean Association  
National Mining Association  
National Grain and Feed Association  
Edison Electric Institute  
American Forest and Paper Association  
American Iron and Steel Institute  
National Lime Association

s:\staff\jcs\ammell,wh



THE  
NATIONAL  
INDUSTRIAL  
TRANSPORTATION  
LEAGUE

**Date: January 30, 1998**

**To: Potentially Interested Organizations**

**From: Ed Rastatter, Director of Policy**

**Subject: Conrail Transaction Council**

As you know, the League has signed a settlement agreement with both the Norfolk Southern and CSX railroads. One element of the agreement was the establishment of a Conrail Transaction Council for discussion of important issues relating to the operation of the merged railroads, by affected rail user organizations and the railroads themselves. A copy of the agreement is attached for your convenience.

Whether or not you or your organization support the terms of the League's agreement with NS and CSX, knowing of your interest in the acquisition, we would like to invite your organization to discuss its possible participation in the Council.

We have set up a meeting for February 4 at 10:00 a.m., in the conference room of the League's headquarters, 1700 North Moore Street, Suite 1900, Arlington VA (Rosslyn Metro building, also the location of Tivoli Restaurant). This meeting would discuss the participation of interested organizations, agenda, frequency of meetings, etc.

Please fill out the form below and fax it to me on 703-524-5017.

Name: \_\_\_\_\_

Organization: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ E-mail: \_\_\_\_\_

☐ I will/will not be able to attend the February 4 meeting

☐ Though I will not be able to attend the February 4 meeting, my organization may still be interested in participating on the Council, and would like to be kept informed.

1700 North Moore Street, Suite 1900, Arlington, VA 22209-1904 • (703) 524-5011 • (703) 524-5017 (fax) • info@niti.org (e-mail) • www.niti.org (internet)

Chairman  
June S. Youngs  
Vice President, Logistics  
Hasbro, Inc.

First Vice Chairman  
Gerry Mayer  
Manager, Transportation  
J.C. Penney Company, Inc.

Second Vice Chairman  
Van L. Hayes, Jr.  
Manager, Transportation,  
Support Services  
Advan-Metals Company

Third Vice Chairman  
William J. Burns  
Vice President,  
Transportation-CGD  
Carroll Incorporated

Treasurer  
Thomas R. Bakin  
Manager, Travel and Logistics  
Allegheny Teledyne,  
Incorporated

President  
Edward M. Emmett

**CONRAIL TRANSACTION COUNCIL  
MEETING  
MARCH 3, 1998  
WASHINGTON, D.C.**

**MINUTES**

The first meeting of the Conrail Transaction Council ("Council") was held beginning at 10:00 a.m. on March 3, 1998, in the offices of Donelan, Cleary, Wood and Maser, P.C., Washington D.C. After self-introductions by the attendees (see attached list), Mr. Robert Evans gave a short review of how the Council came to be, including the negotiation of the Settlement Agreement between the National Industrial Transportation League, the Norfolk Southern, and the CSX. Mr. Jenkins of CSX and Mr. Trollinger of Norfolk Southern indicated that they were looking forward to working with the members of the Council. A draft agenda had been distributed (see attached).

**Council's Organization**

The members of the Council began the substantive part of the meeting by discussing the Council's organization. It was indicated that membership would be held in the name of the association, with each association represented by two persons (except for IANA, which was granted three members), generally one person from the staff of the Association, plus one person from a member company. It was indicated by several persons that other interested groups should be able to join the Council, and Mr. Rastatter indicated that he would provide to the attendees a list of the groups that have been invited (attached). Discussion then centered upon whether some mechanism should be developed to restrict membership and/or voting privileges after some period of time in order to avoid "Monday-morning quarterbacking." After further discussion it was agreed that membership by a organization qualifying under the Settlement Agreement would be completely unrestricted through the May 1998 meeting of the Council, after which date the members of the Council then existing would vote on whether or not to permit a latecomer to join as a full member of the Council. However, meetings of the Council would still be open to any organization qualifying under the Settlement Agreement, even if the organization did not become an official voting member of the Council.

Several of the shipper members of the Council indicated that Conrail itself should attend Council meetings, although it was agreed that if Conrail's presence was not needed in a particular meeting then there would be no requirement for Conrail representatives to attend. However, it was felt that the presumption should be that a Conrail representative should ordinarily attend meetings of the Council, both to provide information to members of the Council as well as to be able to hear from shipper members of the Council as to their views and concerns.



After some discussion, a motion was made, seconded, and approved unanimously, that each member organization on the Council should have one vote (except that the Intermodal Association of North America, which should have two), and that questions would be decided by a majority of votes of those organizations present and voting.

Members of the Council then discussed the February 27, 1998 draft of the "Proposed Mission Statement" of the Council. A few clarifications were suggested, and Mr. DiMichael agreed to revise the document, and send out a revised draft for comment and approval at the next meeting of the Council. A revised draft is attached to these minutes. As part of this discussion, a question arose as to the scope of the Council's inquiry. After brief discussion it was agreed that the matter for the Council's consideration is the whole merger transaction, and not just the Shared Asset Areas or some other part of the transaction. This means that even matters that are not within Conrail's service territory, such as how operations or equipment outside of that territory may affect any aspect of the implementation of the transaction, is within the Council's purview.

Finally, discussion took place as to the election of officers of the Council. By motions made and seconded, and approved by the members of the Council, Mr. Robert Evans, a representative of the National Industrial Transportation League, was voted as Chairman of the Council; Ms. Joanne Casey, a representative from the Intermodal Association of North America, was voted Vice Chairman of the Council, and Mr. Robert Voltmann, a representative from the Transportation Intermediaries Association, was voted recording secretary.

#### Objective Measurable Standards

Discussion then ensued concerning the matter of "objective measurable standards" as set forth on the agenda. Discussion began with a review of the information now being provided by the Union Pacific Railroad in the oversight of its merger transaction. A variety of topics were discussed concerning such matters as: objective statistics on EDI; appropriate benchmarks; the need for both aggregated and certain disaggregated data, such as corridors, yards, certain commodity sectors such as intermodal and coal, etc.; the usefulness of utilizing, if possible, data that is already being collected by the carriers; the status and plans for current Conrail data systems; etc. Mr. Richard Kimball of the Norfolk Southern discussed in some detail the current "morning report" of Norfolk Southern, and described the statistics used by Norfolk Southern management in evaluating the status of the railroad. Mr. Aspatore and Mr. Prince commented upon the possible differences between information that was meant to provide an "early warning" of system troubles versus information that was intended to show the "quality of service."

After some further discussion, it was finally agreed that the shipper representatives of the Council will send to Mr. Rastatter their ideas as to what information should be provided, and Mr. Rastatter will send this information to NS and CSX by March 16, 1998. The railroads will get a draft report back to him by March 20, and the railroads will make a proposal for the next meeting of the Council as to what measurements they believe should be adopted.

**Page Three**

Discussion then ensued concerning dates and times for the next meeting. It was agreed that the next meeting of the Council will be held on April 15, 1998 at 10:00 a.m. in Washington, D.C. and would focus on three matters: (a) the status of implementation of the transaction (which was to be an recurring matter for each Council meeting); (b) the content of objective measurable standards; and, (c) operations in the Shared Asset Areas.

**Status of Implementation**

The railroad representatives on the Council briefly reported on the status of implementation, basically indicating that implementation is about where the railroads planned it to be. They discussed the various areas that were the subject of transition teams at each railroad. Discussion ensued regarding various topics, including environmental issues raised at the STB, the status of labor implementing agreements, and the status of the Closing Date.

**Shared Asset Area Operations Summary**

The carrier representatives discussed the development of the Shared Asset Area Operations Summary, a draft of which was distributed at the meeting. The railroads indicated that this was written for a traffic manager who may not have time to examine the complete application, but who desires some information as to how the various SAAs will be operated. The carriers asked that comments be supplied to them (via Mr. Rastatter), who will compile them and forward them to the carriers for finalizing the Summary. Mr. Aspatore indicated that he would check as to whether the Summary could be provided on disk, so that individual organizations might distribute the Summary to their members.

\*\*\*\*\*

The meeting adjourned at approximately 2:30 P.M.

## **CONRAIL TRANSACTION COUNCIL PROPOSED MISSION STATEMENT**

**Council Mission.** The agreement signed by Norfolk Southern, CSX, and the National Industrial Transportation League provides for the creation of a Conrail Transaction Council, to be composed of representatives from the carriers, the League, and any other organization of affected rail users. The Council is meant to be an additional forum for constructive dialogue and for the two-way sharing of ideas, information, and concerns about the transaction. The agreement requires NS and CSX to discuss the implementation of the transaction with the Council and to respond to concerns raised by the Council.

Although the actions of the Council will not have any legal force and effect, a recommendation to the carriers composed of representatives of the carriers' customers will carry a special weight. The Council is not designed to supplant STB oversight of the transaction, but to act as a valuable addition to that oversight, since it can be more flexible and act more quickly than the Board, given the formal procedures mandated by the Administrative Procedures Act under which the Board operates.

**Council Agenda.** The agenda of the Council will include a discussion of issues crucial to successful implementation of the entire transaction, including but not limited to: operating plans for the Shared Asset Areas; early securement of labor implementing agreements; timely development of management information systems; provision of equipment and investment necessary to the successful operations; development, jointly with NS and CSX, of "objective, measurable standards" to be recommended to the Board to use in reporting the progress of implementation of the transaction; and other areas dealing with implementation of the transaction and review of rail operations in the areas affected by the transaction, both before and after the closing date. The Council is not to discuss any commercial terms between the carriers and their customers. To assist in its deliberations, the Council may request information from other parties who may be involved in or affected by rail operations that are the subject of the Conrail Transaction but who are not themselves members of the Council.

**Organization and Voting.** The Council's membership is open to any organization of affected rail users. It is not open to individual companies, except insofar as they are designated by a member organization as a representative of the organization on the Council. It is envisioned that, ordinarily, each member organization will be represented by a staff member and one member of the organization. Decisions of the Council will be made on the basis of simple majority votes by these members present and voting.

At that point, Mr. Rastatter raised the issue of the filing by the Illinois Central in Ex Parte 575, particularly the matter of the closing of efficient gateways. It was agreed that this would be discussed in more detail in the June meeting, in the context of the development of the operating plan. Mr. Trollinger indicated that specific discussions had been ongoing with the IC, and that certain agreements had been reached with the IC. Mr. Jenkins of CSX indicated that the IC had been concerned about any closure of the Effingham gateway and the movement of traffic to New Orleans.

Finally, Ms. Casey indicated that American Association of Port Authorities, and particularly the Port of Philadelphia, had indicated to her their desire to become involved in the Council. After discussion, there was general consensus that ports do not constitute "rail users," and would not therefore be permitted to join the Council as members. This would not preclude a port, however, from attending a Council meeting as an invited guest or observer.

The meeting was adjourned at 2:20 pm.



# NITL MEETING SIGN-IN SHEET

Meeting CONRAIL TRANSACTION COUNCIL  
 Location WASHINGTON, DC

Date: 3-3-98

Name	Company	Phone	Fax	E-Mail
ED ROSTATTER	NITL	703-524-5011	703-524-5017	ROSTATTER@NITL.org
BOB ENNS	OXY CHEM	972-404-3505	972-404-3251	ROBERT.L. - KANSAS OXY
NICK DiMICHAEL	NITL (counsel)	202-371-8500	202-371-8800	n.dimichael@dcumc
CHRIS JENKINS	CSX	904-359-1129	904-359-3310	
BRIAN AXELL	IMRA	703-841-2300	703-841-1184	baxell@imra.org
TARA S. MINARDI	AISI	202-452-7198	202-463-6573	TMinardi@skel.org
Grant P. Schneider	Rouge Steel	313-337-3808	313-845-8186	GSCHNEID@RougeSteel.Com
MICHAEL MATTIA	ISR1	202-662-8515	202-626-0915	MMATTIA@Compuserve.Com
GERALD W. FAUTH III	U.S. Clay Producers	703-549-6161	703-549-6162	GFAUTH@AOL.com
Bob Bergman	UPS	202-675-3354	202-675-4230	bbergman@corpnail.ups.com
Ted Prince	"K" Line America	804-935-3241	804-935-3210	tprince@k-line.com

[illegible]

**CONRAIL TRANSACTION COUNCIL  
MEETING  
April 15, 1998  
WASHINGTON, D.C.**

**MINUTES**

The second meeting of the Conrail Transaction Council ("Council") began at 10:00 a.m. on April 15, 1998, in the offices of the American Iron and Steel Institute., Washington, D.C. After self-introductions by the attendees (see attached list), Mr. Robert Evans gave a short review of the agenda. Mr. Jenkins of CSX and Mr. Trollinger of Norfolk Southern also gave brief introductory remarks. A draft agenda had been distributed (see attached). The minutes of the March 31 meeting were approved. The draft Mission Statement attached to the minutes was also approved.

**Presentation and Discussion of Shared Asset Area Summary**

The first substantive item on the agenda was an overhead presentation by NS and CSX of operations in the Shared Asset Areas. The carriers emphasized that CSAO, the entity operating the SAAs, will essentially be a neutral class I switching railroad, owned 50/50 by NS and CSX, with existing Conrail dispatchers and crews that know the territory. Shippers will deal directly with either NS or CSX, depending on which carrier takes up their particular traffic, rather than the SAA operator.

Mr. Prince of K Lines asked a series of questions concerning the complexity of splitting one railroad operation in these areas into two, and how commuter passenger operations would be integrated into freight operations. NS/CSX stated it wasn't that complex, and freight operations would be separated. Mr. Prince also asked about freight claims and security forces in the SAAs since about two-thirds of all Conrail claims were in the SAAs, especially high in intermodal and automotive freight. The railroads said security would be adequate. Regarding a question about HM handling, the railroads said each carrier has its own procedures. And the "best practices" team will decide on a single standard.

In response to a question on weight restrictions by Mr. Hiser, the railroads were unaware of any changes.

NS and CSX agreed to supply disks of the summary document and 25 copies of the color slide presentation to Ed Rastatter who will distribute them.

**Development of Objective, Measurable Standards**

The second substantive item on the agenda was the development of objective, measurable standards to evaluate implementation of the transaction. The carriers began the discussion by handing out "CSXT/NS Proposed Measurements," a proposal that set forth a number of

measurements, their definition and their use. This led to a long and wide-ranging discussion.

Questions were raised about the "Proposed Measurements" with respect to issues involving data for the Shared Asset Areas; data regarding electronic data processing; the overall generality of the approach; data regarding particular traffic segments, particularly intermodal; data regarding operations in key corridors, terminal areas or individual yards; data regarding transit times or on-time delivery denoting quality of service to shippers; the kind and quality of "benchmarking" (use of a "good day" or an average of several months prior to the acquisition); and other areas.

After lengthy discussion, a plan evolved to have Chairman Evans appoint a small group to evaluate the issue in detail, and to report back to the Council. It was agreed that this committee would report to the next meeting of the Council in May, but that a final proposal for the Council's evaluation would probably not be ready then. A final proposal for transmission to the STB would have to be ready at least by the time that the Board voted on whether the transaction should be approved.

#### **Status of Implementation**

The carriers reported on the status of implementation of the transaction. The carriers indicated that the schedule was proceeding smoothly at the STB. They also reported that the UTU and the BLE had withdrawn their earlier opposition to the transaction, and that the carriers had concluded implementing agreements with two small unions. On the systems side, the carriers were testing operating and administrative systems, waybill data, and other data streams. Administrative systems to support pricing were being developed, as well as contingency planning. During the summer, information technology (IT) personnel from the railroads will be visiting major customers to inform them of IT changes customers must make.

#### **Environmental Issues**

The carriers reported that they were not accepting the City of Cleveland's proposed solution to the problems in the city. No major breakthroughs were expected in the near future. The carriers noted that they expected that the Board's Section on Environmental Analysis ("SEA") to recommend a variety of measures to mitigate impact on the human and natural environment.

#### **Other Matters**

A brief discussion took place on the status of the distribution of Conrail rolling stock. It was agreed that this issue would be addressed in more detail in a later meeting.

#### **Next Meeting and Future Topics**

The May meeting was scheduled for May 14 (at Edison Electric Institute, 701 Pennsylvania Ave., NW). It was agreed, after discussion, that the May meeting would focus on the distribution of Conrail rolling stock, and the status of systems development. A brief report from the working group on development of objective, measurable standards was also expected.

The June meeting, set for June 9, would focus on objective, measurable standards, the development of the operating plan, and joint access areas (Monongahela coal region and Ashtabula docks).



At that point, Mr. Rastatter raised the issue of the filing by the Illinois Central in Ex Parte 575, particularly the matter of the closing of efficient gateways. It was agreed that this would be discussed in more detail in the June meeting, in the context of the development of the operating plan. Mr. Trollinger indicated that specific discussions had been ongoing with the IC, and that certain agreements had been reached with the IC. Mr. Jenkins of CSX indicated that the IC had been concerned about any closure of the Effingham gateway and the movement of traffic to New Orleans.

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The meeting was adjourned at 2:20 pm.

Name	Company	Phone	Fax	E-Mail
Grant R. Schneider	Rouge Steel	313-337-3808	313-845-8186	RougeSteel.com, GSchneid
GERARD W. FAUTH III	G. W. FAUTH & ASSOC. INC. U.S. CLAY PRODUCERS	(703) 544-6161	(703) 544-6162	GFAUTH@aol.com
JONI CASEY	IANA	301-982-3460	301-982-4815	IANA6INTERNET.ORG
Theodore Prince	KAM	804-327-5525	804-751-2812	TedPrince@aol.com
MIKE MATTIA	ISRI	202-667-8515	202-626-0915	MMATTIA@Comp-pave.com
DONALD CASEY	TFI	202-675-8250	202-675-8123	DCASEY@TFI.ORG
George Aspetoro	NS	757-629-2657	757-533-4872	
David Barrett	Natl Grain Feed Assoc.	202-289-0873	202-289-5188	dbarrett@ngfa.org
David B. Hershey	AFMA	202-463-2594	202-463-5180	David.Hershey@afma.org
JOHN R. SMITH	WESTVACO	804-327-6430	804-327-6427	JRSMITH@WestVaco
WALT Trollinger	NS	757-629-2720	757-629-2849	
Julie Waddell	AAMA	202-326-5512	202-326-5560	waddella@cinercom.com

04/15/98 09:13

0005/005

# NITL MEETING SIGN-IN SHEET

Meeting COORAIL TRANSPORTATION COUNCIL

Date: 4-15-98

Location AISI

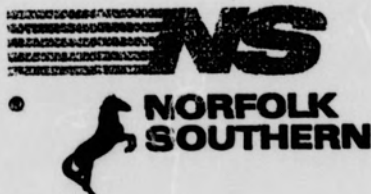
Name	Company	Phone	Fax	E-Mail
<u>ED RASTATTGA</u>	<u>NITL</u>	<u>703-524-5011</u>	<u>703-524-5317</u>	<u>RASTATTGA@NITL.ORG</u>
<u>BOB EVANS</u>	<u>ORX CHEN (NITL)</u>	<u>972-404-3505</u>	<u>972-404-3251</u>	<u>LBEST-LIEN@ORX.COM</u>
<u>NICK DiMICHAEL</u>	<u>DANLOWY CRAY (NITL)</u>	<u>202-371-9500</u>	<u>202-371-0900</u>	<u>ndimichael@dcum.com</u>
<u>PAUL HITCHCOCK</u>	<u>CSX TRANSPORTATION</u>	<u>904-359-1192</u>	<u>904-366-2902</u>	<u>Paul.Hitchcock@csx.com</u>
<u>Chris Jenkins</u>	<u>CSXT</u>	<u>904-359-1121</u>	<u>904-359-3340</u>	<u>Chris.Jenkins@csx.com</u>
<u>ED JENKINS</u>	<u>CSXT</u>	<u>904-366-4632</u>	<u>904-359-2314</u>	<u>ED.JENKINS@CSX.COM</u>
<u>DANNY PRICE</u>	<u>CSXT</u>	<u>904-366-4684</u>	<u>904-359-1705</u>	<u>DANNY-PRICE@CSX.COM</u>
<u>Lynn Hiser</u>	<u>A.E. Staley Mfg Co (NIPRA)</u>	<u>219-421-2759</u>	<u>217-421-2628</u>	<u>LAHiser@AEstaley.com</u>
<u>Dick Kimball</u>	<u>Norfolk Southern</u>	<u>404-527-1730</u>	<u>404-527-3185</u>	<u>RLKimball@NScorp.com</u>
<u>Fred Ehlers</u>	<u>Norfolk Southern</u>	<u>404/524-7289</u>	<u>404/524-1806</u>	<u>FMEhlers@NScorp.com</u>
<u>TARA S. MINARDI</u>	<u>AISI</u>	<u>202-452-7198</u>	<u>202-463-6573</u>	<u>TMinardi@stee'.org</u>

*Jim LeBlond*

# Shared Assets Area Operations

# DRAFT

**An Interim Report of CSX and Norfolk Southern Plans  
For Operations in the Shared Assets Areas**





## **PREFACE**

As part of the proposed acquisition of control of Conrail by CSX Corporation and Norfolk Southern Corporation, it was necessary to develop competitive but integrated operations in three key areas: North Jersey, South Jersey/Philadelphia and Detroit. This report is a summary of the proposed Shared Assets Areas (SAA) operations.

The presentation provides information regarding the general scheme of operations, relationships of various crew assignments, dispatch and control mechanisms, and customer service procedures. Summary information regarding SAA management and supervision, and considerable detail on proposed facility use is also included in this report.

Section I of the report provides a summary of the SAA concept. For those who prefer more detail, Section II provides information on SAA organization and centralized functions, as well as on individual area operations.

Those who prefer still more detail should refer to the NS and CSX Operating Plans, the Joint Supplemental Operating Plan for the North Jersey SAA, and finally to the Safety Integration Plan for the Shared Assets Areas, all of which have been filed with the Surface Transportation Board.

CSX Corporation

Norfolk Southern Corporation

February, 1998

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## **Shared Assets Area Operation**

### ***I. SAA Concept Overview***

This section briefly reviews the scope, ownership, management and operational concept of the Shared Assets Areas (SAAs). A narrative summary of the SAA concept then follows. SAA plans are a work in progress and therefore, while this summary reflects how CSX and NS currently intend to operate within the SAAs, there may be changes in some of the details as the planning process goes forward. This summary describes SAA operations as they are expected to be handled if the STB approves the transaction and after CSX and NS begin separate operations. As used in this summary, "Conrail" refers to Conrail as it exists currently and up to the date CSX and NS begin separate operations; after that date, it is referred to as "CSAO" (Conrail's Shared Assets Operations) or as "Continuing Conrail."

In recognition of the need for detailed advance planning regarding the SAAs, CSX and NS jointly announced on February 11, 1998, the appointment of three individuals who will fill key managerial posts with Continuing Conrail if the proposed transaction is approved. The text of the joint CSX-NS announcement is included in Appendix A. Additional appointments are expected in the near future.

**A. Introduction**

There are three Shared Assets Areas: North Jersey, South Jersey / Philadelphia and Detroit. Customers located on SAA lines may choose either CSX or NS as their line haul carrier as they negotiate new transportation arrangements.

Continuing Conrail will own most of the rail lines and facilities within the SAAs and will perform needed switching services in the SAAs. CSAO will provide switching and certain other services within the SAAs, but will issue neither revenue billing nor switching charges to customers. CSAO's cost of operation will be reimbursed by CSX and NS and will be handled through billing arrangements between CSAO and the two operating carriers, CSX and NS. Customers will be billed for rail services rendered by either CSX or NS as appropriate.



**B. Scope**

The Shared Assets Areas include those portions of North Jersey, South Jersey, Philadelphia and Detroit, generally on Conrail lines, defined in the application and reviewed in this summary. Exhibit 1 illustrates the relationship of the SAAs to the new expanded route structures of NS and CSX.

Section II.B of this report provides detailed maps and descriptions for each of the three areas. In general, however,

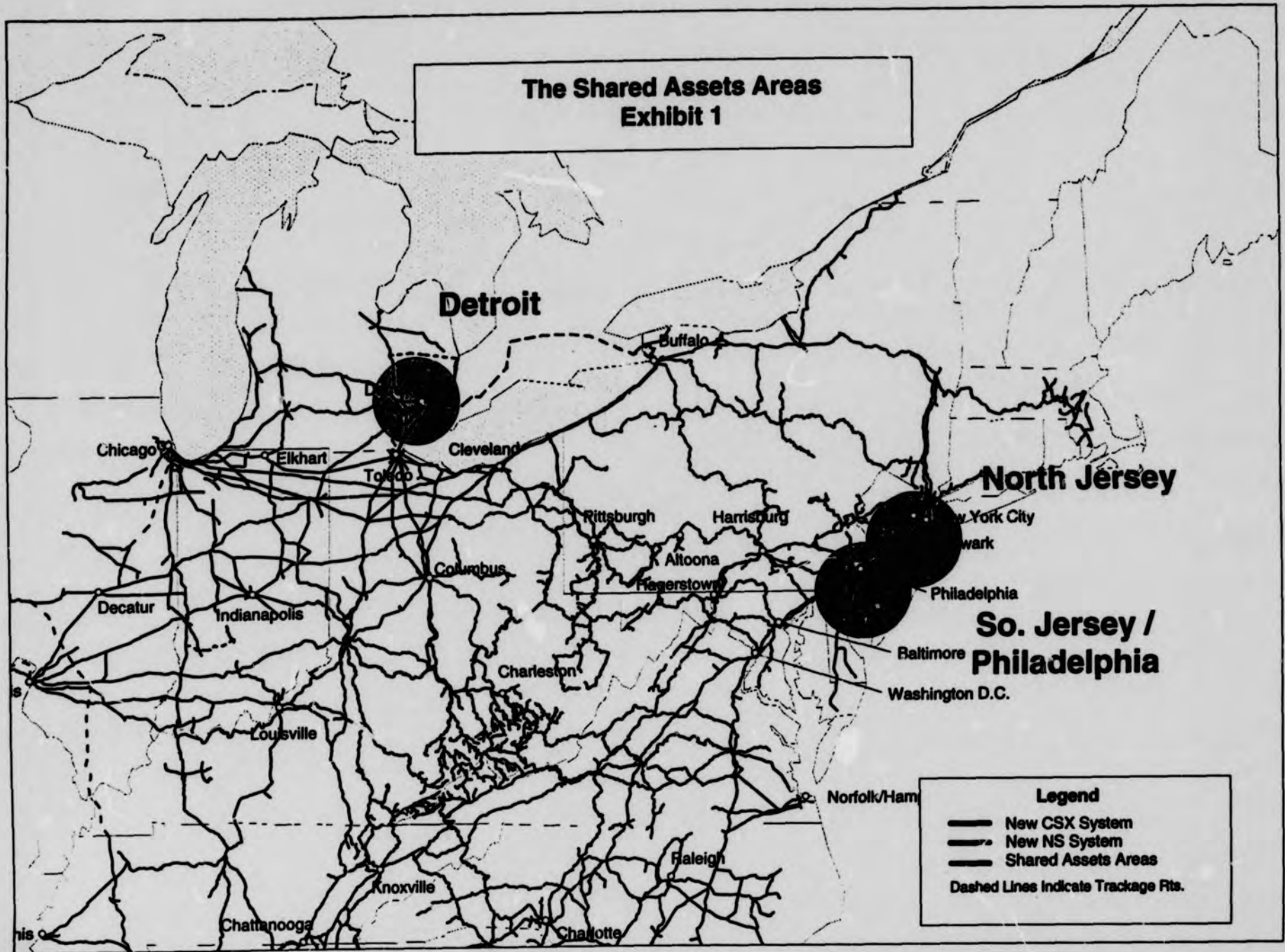
***The North Jersey SAA***

Includes 20 rail yards and 189 route miles of trackage centered around Newark, NJ. The NJSAA extends from the south end of Conrail's North Bergen Yard on the North to, but not including, Trenton, NJ on Amtrak's North East Corridor on the South, and to Port Reading Jct. on the West. Specified branch line operations and passenger lines on which Conrail currently enjoys freight trackage rights are also included in the NJSAA. The North Jersey SAA is shown in Exhibit 4.

***The South Jersey/Philadelphia SAA***

Includes nine rail yards and approximately 240 route miles of trackage extending generally north from Marcus Hook, PA to Trenton, NJ on Amtrak's NEC, including most Conrail "Philadelphia" stations and stations within the Philadelphia City limits, most Conrail trackage in South Jersey, and Conrail freight rights on Amtrak's NEC from Philadelphia (Zoo Tower) to and including Trenton. The SJSAA is bounded on the west by "Falls" (at the beginning of the Harrisburg Line in the Belmont area of Philadelphia). The South Jersey/Philadelphia Shared Assets Area is shown in Exhibit 7.

# **The Shared Assets Areas Exhibit 1**



### ***The Detroit SAA***

Includes eight rail yards and approximately 85 route miles of trackage from Trenton, MI (MP 20) to Utica, MI (end of track), including: the Terminal West Industrial Track to West Belt Jct., Terminal East Industrial Track, the Lincoln Secondary, the Junction Yard Secondary and Conrail's Michigan Line to "CP-Townline" (MP 7.4) and all other Conrail trackage within these boundaries. The Detroit Shared Assets Area is shown in Exhibit 9.

### **C. Ownership**

Continuing Conrail will remain as a corporation held privately, but equally, by CSX and NS, and will be used for several purposes, including provision of service in the Shared Assets Areas. The voting rights between CSX and NS in Conrail are split 50-50, although NS acquired 58% of Conrail's stock and has a 58% equity interest. Most assets within the Shared Assets Areas such as track, railroad facilities and some locomotives will be controlled by Conrail. Most locomotives used by Conrail will be supplied by CSX and NS. Freight cars will be provided by the line haul carriers.

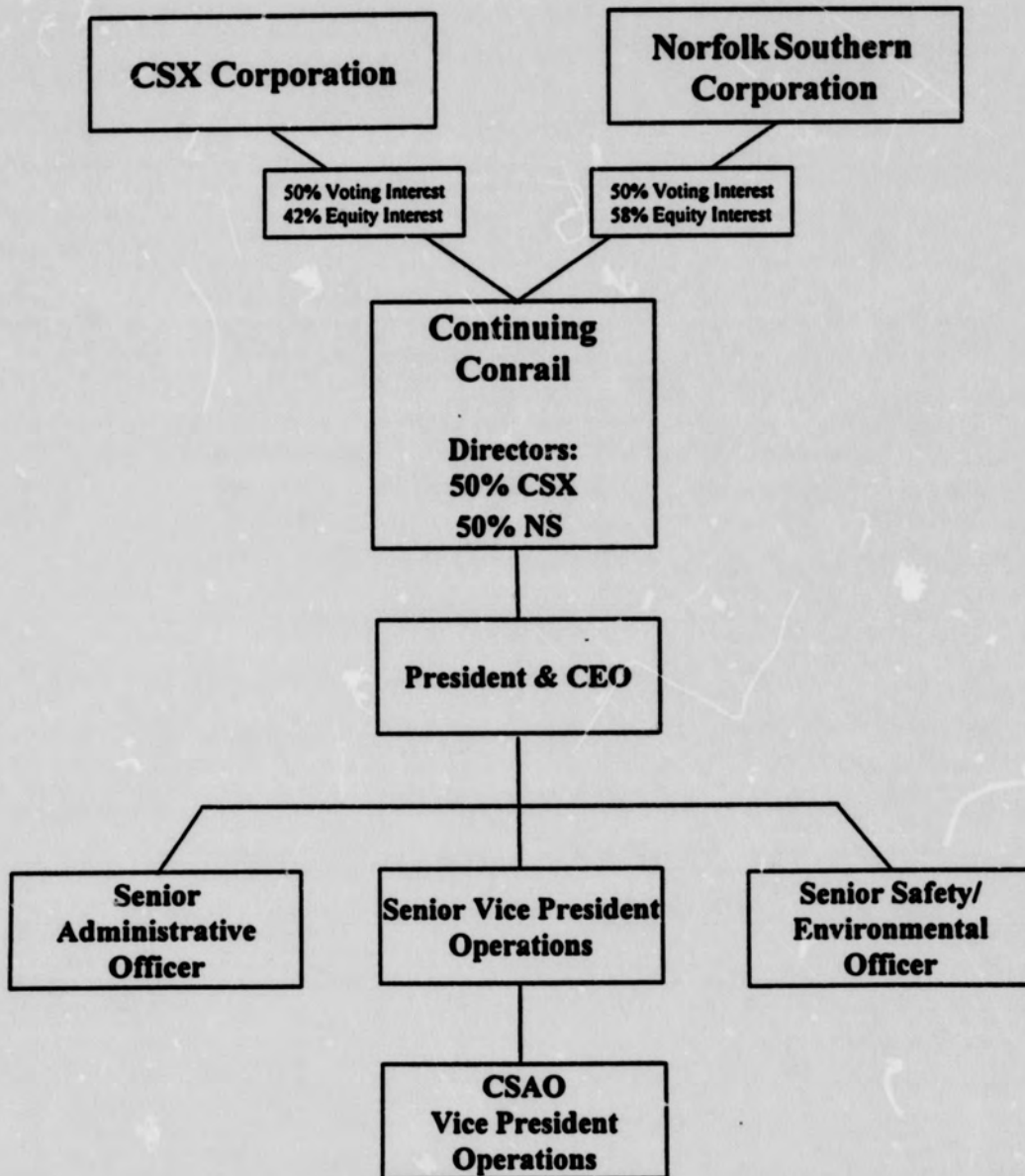
### **D. Management**

Each of the three Shared Assets Areas will be managed by Superintendents located at Oak Island for North Jersey, Mt. Laurel for South Jersey / Philadelphia, and North Yard - Detroit for the Detroit area. These three Superintendents will report to the Vice President-Operations. Central operating headquarters for CSAO will be Mt. Laurel, NJ, near Philadelphia, where the Vice President-Operations will also be headquartered. The Vice President-Operations will report to the Senior Vice President-Operations who will report to the President of

Continuing Conrail. The President of Continuing Conrail will, in turn, report to its Board of Directors, as shown on Exhibit 2. Continuing Conrail's Board of Directors will be accountable to its stockholders, CSX and NS.



## CSAO Corporate Organization Exhibit 2



**E. Concept of Operations in the SAAs**

***Line Haul Service***

Customers within the SAAs may choose either NS or CSX for their line haul transportation needs (except as required otherwise by existing Conrail transportation contracts). This will give the customer a choice of carriers, and will introduce direct rail competition where it does not exist today.

NS and CSX each will be able to operate its own trains directly to and from certain customers and facilities in the SAAs, under local movement guidelines. However, most industrial switching, train make-up and classification within the SAAs will be performed by CSAO on behalf of either NS or CSX.

***Switching Services***

CSAO will continue to provide switching service to customers and facilities in the Shared Assets Areas much as Conrail does today. CSAO switching will be neutral, neither favoring nor discriminating against CSX or NS. From an operating standpoint, this will continue to be the simplest and most efficient way to provide switching services. Much as Conrail does today, however, CSX and NS will be able to provide direct train service to certain facilities and customers in the SAAs without the need for switching. With few exceptions, train and engine movements within the SAAs will, however, be under the control of CSAO operating supervisors and dispatchers.

***Customer Service***

Today's customer service centers handle two primary types of work: agency functions (commercial) and operations support (operating). CSX and NS customer service centers are

located in Jacksonville, FL and Atlanta, GA, respectively. As is the case today, CSX's and NS's customer service centers will handle agency functions such as car orders, billing matters, car location monitoring and other services. These functions performed by Conrail's present Customer Service Center in Pittsburgh, PA will be transferred to CSX at Jacksonville and NS at Atlanta for activities involving line haul transportation.

For operational requests such as car placement and releases of cars for movement from locations *within the SAAs*, an SAA service center will be formed. To facilitate the transition, the SAA service center will initially be located in Pittsburgh and utilize experienced Conrail personnel. As systemwide customer service functions are consolidated with those of CSX and NS, the CSAO service center will be transferred to the CSAO operating headquarters at Mt. Laurel, NJ.

**F. Summary of Operations in the SAAs**

To summarize the SAA concept, each SAA will function as an extension of both the NS and CSX rail systems. Conrail will not hold itself out to provide service to customers in its own name, nor will it participate directly in rates, routes, transportation contracts or billing arrangements with shippers. All car movements handled by CSAO will be for the account of either NS or CSX.

Shippers seeking rail service to, from or within each SAA will make arrangements for transportation from origin to destination with NS or CSX. Operational information and instructions required for the movement of cars, and to monitor cars within the SAAs, will be conveyed electronically to CSAO personnel via direct real-time links with both NS and CSX data systems. CSAO will report actual location, spotting information and status changes for all NS or CSX cars to the applicable linehaul railroad's data system.

The CSAO data system is being designed to communicate only with the CSX and NS systems. Those systems, in turn, will provide the interface with customers, other railroads, car owners, the AAR, etc. to support data exchange requirements.

CSAO responsibilities will include local switching, train make-up and break-up, car classification and blocking services for NS and CSX within each of the SAAs. In addition, CSAO will be responsible for equipment servicing and light and running repairs, and for routine maintenance of track, communications and signal facilities in the SAAs. Each SAA will be managed by a Superintendent, who will also assign Trainmasters and Yardmasters as necessary to oversee operations within the various yards.

CSAO management will be responsible for locomotive maintenance operations. These operations will be under the jurisdiction of a CSAO supervisor and will include fueling,



servicing and running repairs to NS and CSX locomotives while at CSAO facilities. Freight car inspections and light and running repairs will be performed by personnel assigned to the various yards comprising the Shared Assets Areas, again under supervision of CSAO supervisors.

CSAO will be staffed and equipped to perform ongoing routine maintenance of track, bridges and structures within the SAAs. More substantial program work beyond routine maintenance will be provided by NS and CSX in accordance with applicable labor agreements and as indicated in the Operating Plans.

NS and CSX each will operate road trains into, out of, and through each SAA with their own equipment and crews. In addition, NS and CSX will be permitted to operate with their own crews to any customer-operated facility or to any rail facility (unless it is one of the few allocated to the exclusive use of the other carrier) within an SAA, subject to the local movement guidelines that will be established pursuant to the applicable Shared Assets Area operating agreement.

With minor exceptions (identified in the Operating Plans), all NS and CSX train movements within the SAAs will be subject to the direction and control of a CSAO dispatcher. In areas that are not dispatched (e.g., yard or industrial tracks), NS and CSX train movements will be under the direction of the designated CSAO supervisor in charge. NS and CSX employees operating within each SAA will be subject to all applicable SAA operating rules and regulations. Many NS, CSX and CSAO train movements will be over lines that are also used by passenger operators. Where these lines are under the direction and control of the involved passenger agency's dispatchers, no dispatching control changes are anticipated.

Other railroads (e.g., Canadian Pacific Railway and short-line carriers) may also operate over particular line segments within the SAAs, pursuant to existing trackage rights agreements

and interchange arrangements. Train movements by such other railroads within the SAAs will be subject to the direction and control of the CSAO dispatcher.

Teams consisting of NS and CSX personnel are in the process of developing integrated operating plans for each of the three SAAs. A detailed plan for operations in the North Jersey SAA has already been completed and submitted to the STB for review. (See Application, Vol. 3 Supplement, CSX/NS-119 at pages 16-166.)

The anticipated CSAO operations in all three SAAs are based, to a large degree, on Conrail's current operations. Those operations will be adjusted to the extent necessary to reflect the competitive service options to be offered by NS and CSX to, from and via the SAAs. Accordingly, changes from Conrail's current operations will primarily involve additional blocking by CSAO to facilitate the division of cars between NS and CSX, and to provide for improved transportation services. Other minor changes are necessitated by (i) the relocation of certain local freight assignments to either NS, CSX or CSAO-controlled facilities and (ii) the redirection of some traffic currently handled by those local assignments or handled via terminals that will become exclusive NS or CSX facilities.

***Stated briefly, within these Shared Assets Areas, this new operating arrangement will permit:***

- Customer choice of either NS or CSX routings, price, service and equipment in an extensive number of origin-destination markets.
- Simple, direct business transaction contact with the line haul carriers, NS and CSX.
- Train make-up, break-up and terminal switching service by a single efficient entity, minimizing duplication in congested geographic areas.
- Continued and new run-through train services to and from points within the Shared Assets Areas, as highlighted in the Operating Plan.

## **II. Shared Assets Area Operations**

### **A. Organization and Centralized S. Functions**

This section explains in more detail organization of the SAA and, in particular, elements of "centralized operations" common to all three of the Shared Assets Areas.

#### ***Organization***

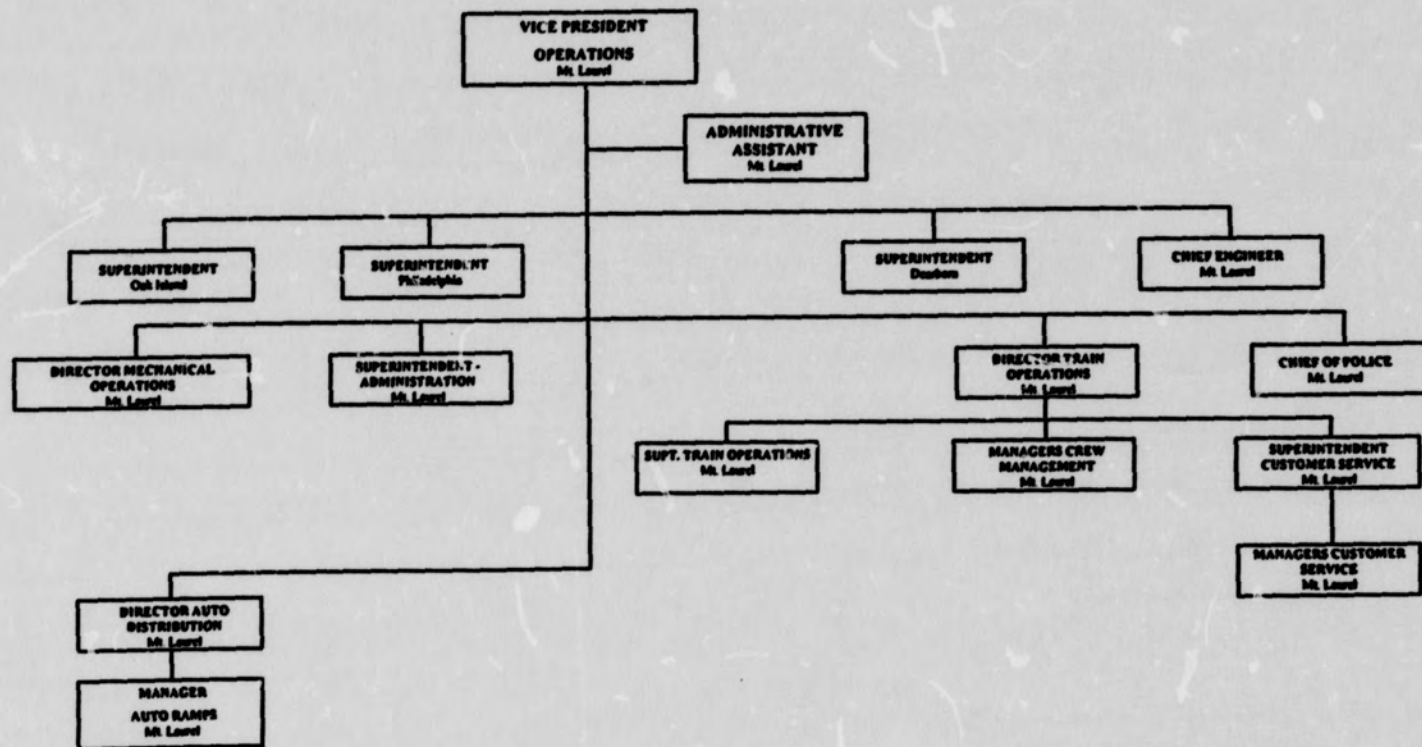
CSAO general organization, leadership, and supporting centralized functions will be headquartered in Mt. Laurel, NJ, near Philadelphia. The CSAO organization will be directed by a Senior Vice President-Operations.

The SAA operating organization will be staffed in a manner similar to most major railroad companies operating today. There will be key officers directing all phases of SAA operation, including field operations, switching services, train operations, train dispatching, right of way maintenance, and safety and environmental matters.

A tentative organization chart for the Shared Assets Areas is shown on Exhibit 3.

# CSAO Organization

## Exhibit 3





***Most of the operating functions listed will be managed just as they are on any major railroad.***

Two of the functions most important to effective CSAO operations and most asked about by customers, are ***train dispatching and SAA Customer Service***. Plans for these two functional areas are summarized as follows:

**Train Dispatching**

Train dispatching functions will be centralized in Mt. Laurel. Dispatching districts will be changed to align with new SAA boundaries. In general, consolidation of CSAO dispatching function for SAA lines will be accomplished in the following manner:

- (i) Conrail's current Branch Line Dispatcher at Mt. Laurel will become the CSAO dispatcher for the North Jersey SAA. Certain Secondary lines, which are currently handled by the Conrail Branch Line Dispatcher, but which will not be part of the CSAO, will be removed from this dispatcher's jurisdiction and transferred to NS dispatching assignments. Conversely, other Conrail line segments, which will be part of the CSAO, will be added to the Branch Line Dispatcher's territory. The CSAO dispatcher will also dispatch the CSX allocated line between North Bergen Yard and CP-5 (Ridgefield Heights). As a result, the current Conrail Branch Line Dispatcher at Mt. Laurel will control all CSAO trackage in the North Jersey SAA.
- (ii) Conrail's current Philadelphia Dispatcher (who is also located in Mt. Laurel) will become the CSAO dispatcher for the South Jersey/Philadelphia SAA. This will be accomplished by adding control of certain line segments to this dispatcher's area of responsibility and removing others which will not be part of this SAA.
- (iii) Dispatching of the Detroit SAA will initially remain in the Dearborn, MI office.

When these steps are completed, the Mt. Laurel office will house two of the three CSAO desks, and the Dearborn office will house the third. The CSAO Detroit dispatcher's desk may eventually be relocated in connection with the planned future relocation of dispatching desks for Conrail lines allocated to NS and CSX.

As a result of these changes, train operations in the SAAs will be under the supervision and control of three dedicated CSAO dispatching desks. CSAO dispatchers will not have any responsibility for train movements outside the SAAs, with the exception noted in (i) above. The removal of non-SAA line segments may, in certain instances (e.g., Detroit), result in a reduction in the geographic territory for which CSAO dispatchers will be responsible. Overall staffing of CSAO dispatching functions will be at a level equivalent to current Conrail staffing. It is intended that CSAO dispatcher positions will be filled from the ranks of current Conrail dispatchers, so that CSAO dispatchers will be familiar with their respective territories prior to commencement of separate operations.

Importantly, all trains and engines operating over trackage dispatched by CSAO will be subject to CSAO supervision and direction, irrespective of railroad ownership. Thus trains of NS, CSX, and Continuing Conrail will be under common operating rules and control.

#### SAA Customer Service

Customers should notice little change in the way services are provided on shipments to, from, or through the SAAs. Car orders will be placed with CSX and NS personnel and CSX and NS employees will prepare waybills for these shipments. Waybilling for CSX traffic in CSAO territory will be performed at CSX's Jacksonville facility; waybilling for NS traffic will be done

in Atlanta. CSX and NS will control their own shipments, with CSAO performing switching, dispatching, and other necessary functions. NS and CSX will provide timely data on trains planned or en route to the SAAs, and will supply waybill and other necessary information sufficiently in advance to allow CSAO to handle cars safely, perform all necessary services, and block or deliver cars correctly to customers. A very detailed plan has been developed to exchange train consist, hazardous materials and movement event information among CSX, NS and CSAO, in order to ensure a safe operating environment for the movement of trains within the SAAs.

Certain positions which currently support Conrail's customer service function in areas which will become part of the SAAs area will be retained beyond "Day 1" (the date CSX and NS begin separate operations). CSAO personnel will continue to perform the current "yard office" functions (such as reporting "place" and "pull" transactions, controlling inventory, and checking information on hazardous materials) presently performed by Conrail in the SAAs. Traffic on CSX and NS lines will be traced by CSX personnel in Jacksonville or NS personnel in Atlanta (as applicable), as is the practice today. It is expected that all car-tracing functions will be moved to Jacksonville and Atlanta respectively. Conrail's present work order and yard inventory systems are expected to remain in place at least for the near term. Conrail's present information systems are capable of handling the arrival, servicing, and departure of traffic in the three SAAs in the short term. NS and CSX are evaluating possible improvements in future years.

NS and CSX recognize that smooth and efficient Day 1 operations must be achieved. In pursuit of that end, CSX and NS intend to hire additional customer service center personnel, who will be trained and in place on Day 1. Current and prospective customer service personnel will undergo intensive training in handling shipments of hazardous materials.

***To summarize the SAA customer service concept;*** Customers will deal directly with NS' customer service center in Atlanta or CSX's customer service center in Jacksonville by phone (800 number), FAX or by EDI.

Transactions handled with these customer service centers will generally be "agency" matters, just as they are today, such as:

- Bill of lading entry
- Waybilling issues
- Car ordering
- Car supply
- Car location monitoring
- Accessorial Service billing
  - Demurrage
  - Detention
  - Switching Services

All commercial and contractual issues will be handled directly with NS or CSX marketing and sales representatives as appropriate.

Transactions handled with the Mt. Laurel SAA Customer Service Center (by 800 number, FAX or EDI) will generally be "yard office issues" *for the SAA territory*, such as:

- Switching Orders
- Car release for movement
- Empty car releases
- Car spotting instructions
- Other interactions with local operating personnel *(but details still under discussion)*



**B. Area Operations**

*This section provides an overview of operations in each of the three SAAs.*

*Included in the discussions for each area are:*

- An area map
- A schematic of each area, highlighting facility ownership
- A matrix explaining current and proposed facility use

The exhibits illustrate a number of important concepts applicable to the SAAs.

- The Shared Assets Areas of North Jersey, South Jersey/Philadelphia and Detroit are generally limited to defined Conrail territories. Facilities now owned and served by CSX and/or NS within the SAAs will continue to be served by those carriers unless otherwise noted.
- Within the defined SAA areas, most facilities will have common operating service through CSAO.

CSAO will provide switching service where it is practical and efficient to do so. This would be the case for most individual industries, and all common facilities including large classification facilities such as Oak Island in North Jersey. With few exceptions, yard engine and local freight assignments in the SAAs will be provided by CSAO. The matrices for each SAA include those few facilities which are exceptions (see "Proposed Operator" column).

Importantly, however, to promote efficient operations, both NS and CSX have retained the right to operate certain of their through trains directly to and from their own exclusive facilities and many of the jointly served facilities. Solid trains of automobile parts or automobiles, bulk commodity trains, or intermodal trains would

be examples of traffic likely to be handled directly, without the need for switching service being provided by CSAO. Generally speaking, trains of NS and CSX will be able to operate from point to point on any line in the SAAs.

- Within the North Jersey and South Jersey/Philadelphia SAAs, certain facilities will be designated for exclusive use by either CSX or NS.

Exclusive facilities were established where NS and CSX considered it important to have facilities under their direct control due to the highly service-sensitive nature of the traffic involved, and where each carrier could provide its own competitive facility, while sharing common facilities as well. For this reason, the intermodal facilities at Croxton (NS), North Bergen (CSX), South Kearny (non-APL) (CSX) and E-Rail (NS) in North Jersey have been assigned for exclusive use.

Exclusively allocated facilities were also established where NS and CSX felt it important for operating reasons. For example, in the Philadelphia area West Falls Yard was designated as an NS facility and Greenwich Yard as a CSX facility.

The Operating Plan filings, Volume 3A for CSX and Volume 3B for NS, provide additional detail on operations in the Shared Asset Areas. In addition, the supplement to Volume 3, "CSX/NS Operating Plan for the North Jersey Shared Assets Area and Supporting Statement", provides further detail on North Jersey operations. The section following outlines proposed operations in each of the three Shared Assets Areas.

## ***1. North Jersey***

### **The North Jersey SAA**

Includes 20 yards and 189 route miles of trackage centered around Newark, NJ. The NJSAA extends from the south end of Conrail's North Bergen Yard on the North to, but not including, Trenton, NJ on Amtrak's North East Corridor on the South, and to Port Reading Junction on the West. Branchline operations and passenger lines on which Conrail currently enjoys freight trackage rights (which are presently served from the Newark area) are also included in this SAA.

Exhibit 4 illustrates the NJSAA territory in map form and Exhibit 5 depicts the area and facilities in a schematic format and summarizes facility ownership.

A matrix, Exhibit 6, is provided which summarizes both current and proposed facility uses.

Highlights of NJSAA operations include the following:

#### ***General***

Management and supervision for the NJSAA will be provided by a Superintendent and staff headquartered at Oak Island Yard.

Dispatching for the NJSAA will be streamlined and consolidated under one set of dispatchers headquartered at Mt. Laurel. All rail traffic control within the area (unless presently dispatched by a passenger agency) will be under the direction of the NJSAA dispatcher, or the staff of the Superintendent. Dispatching details are explained on pages 14-15 of this document.

Locomotive and freight car facilities in the Oak Island area will be retained for running maintenance purposes.

Switching and local freight assignments will be substantially the same as those provided by Conrail today, with few exceptions.

New train services will be established between the NJSAA and other key points as summarized in NS' and CSX's supplemental operating plans.

Facility specific highlights include the following:

*Carload facilities*

The operational hub for carload traffic in the NJSAA will be Oak Island Yard. Oak Island is a hump yard consisting of eight receiving, seven forwarding and thirty classification tracks. Carload traffic to and from North Jersey that cannot be efficiently blocked for direct movement to specific areas of the NJSAA will be switched at Oak Island.

To accommodate the increases in business, the yard which currently operates only two shifts will be opened to full three shift humping operations.

The current yard crew complement will be augmented to support increased operations.

NS will offer new blocks and services between Oak Island and the Southeast and Midwest, as well as via Amtrak's Northeast Corridor.

CSX will also offer new services between Oak Island and (over CSX controlled lines and/or via Amtrak's Northeast Corridor) the Southeast and the Midwest.

The proposed services of both carriers are discussed in their primary and supplemental operating plans.

Satellite carload support yards such as Port Reading, Bayway, Browns and Port Newark Yards will continue to support operations on the Chemical Coast Secondary. These satellites will also be served by direct run through trains if traffic continues to warrant such operations.



NS would provide such services from Conway (Pittsburgh) and Allentown, while CSX would provide them from Selkirk, and other locations.

Smaller satellite yard areas such as Brills, Bayonne and Greenville would be supported from Oak Island, as is the case today.

#### *Intermodal Facilities*

North Bergen and South Kearny (non-APL) Intermodal facilities will be assigned for exclusive use by CSX.

Croxtan and E-Rail Intermodal facilities will be assigned for exclusive use by NS.

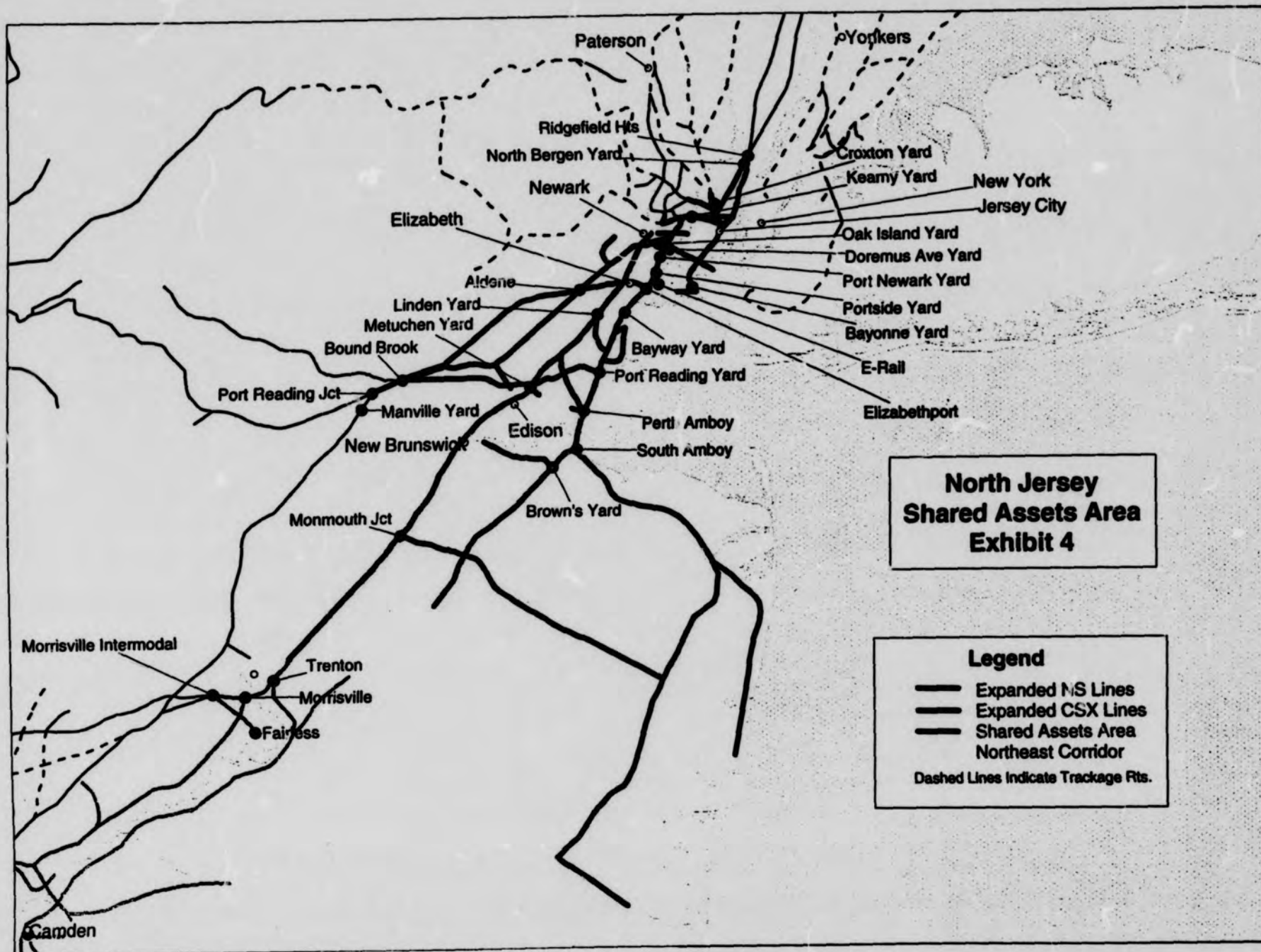
Dockside (ExpressRail) will be served jointly by CSX and NS, with CSAO providing necessary switching not already provided by the contractor that operates the facility.

APL at South Kearny will be jointly served.

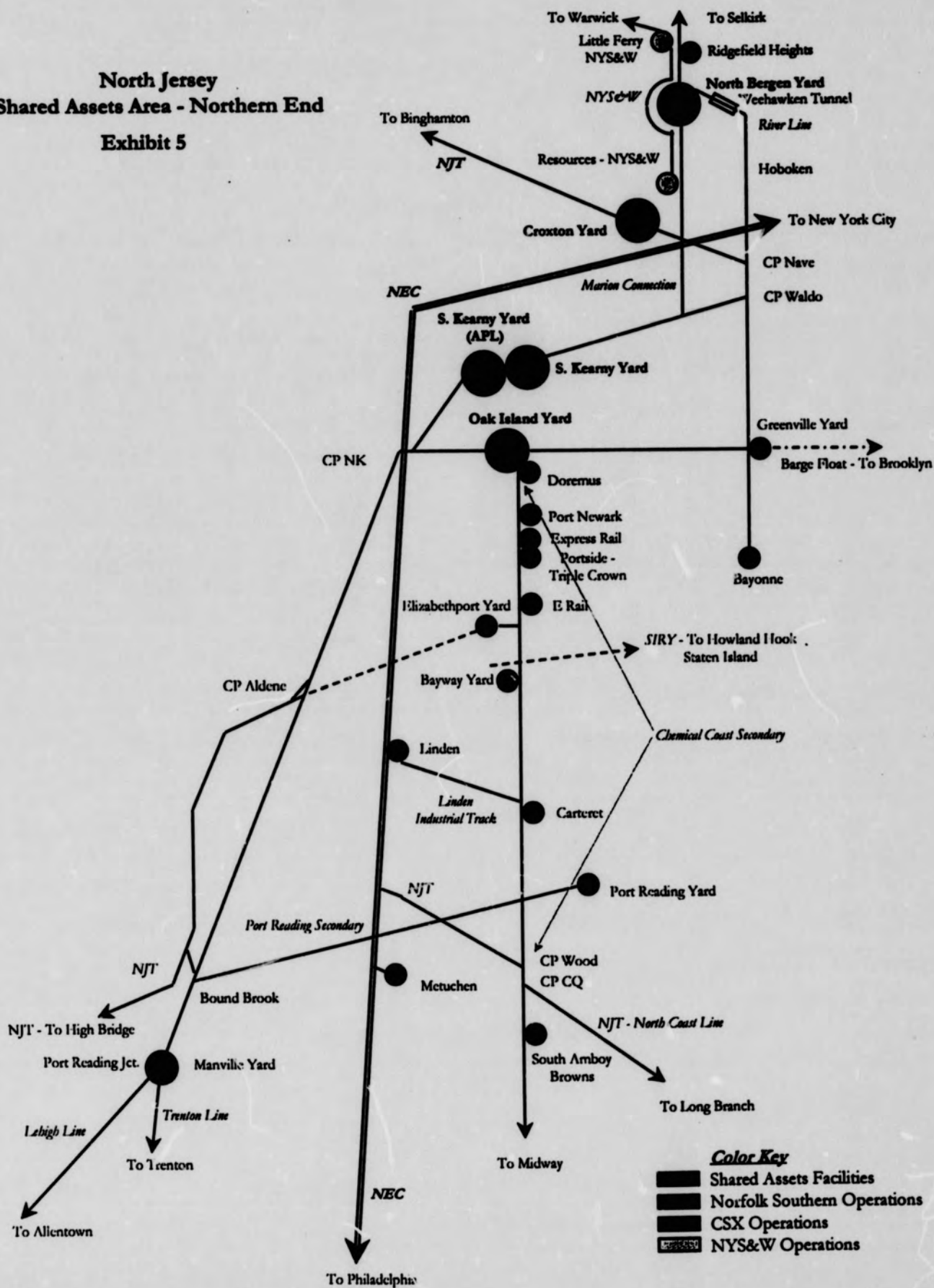
Triple Crown Services (TCS) will be provided from Portside Yard, as at present.

#### *Automotive Facilities*

General Motors at Linden, Ford at Metuchen and the Doremus Avenue facilities near Oak Island will be served directly by NS and CSX road trains. Switching requirements will be handled by CSAO. The same arrangements will also prevail at the Ridgefield Heights facility.



**North Jersey**  
**Shared Assets Area - Northern End**



# Terminal Operations in North Jersey

## Exhibit 6

Current Operation			Proposed Operation	
Yard or Facility	Current Operator	Current Facility Use	Proposed Operator	Proposed Facility Use
Oak Island	Conrail	Major classification yard	CSAO	Use will increase; will be operated a third shift
Doremus Ave (1 & 2)	Conrail	Two units, both for automobile unloading	CSAO	Same as at present
Greenville	Conrail	Industrial and interchange	CSAO	Same as at present
Port Newark	Conrail	Intermodal, automotive and carload	CSAO	Same as at present
Elizabethport	Conrail	Industrial and intermodal support	CSX	Two tracks will be assigned to NS to support E-Rail; CSAO will have access to sufficient tracks to serve local customers
Portside	Conrail TCS	Triple Crown Services RoadRailer® facility	CSAO and TCS	TCS will operate RoadRailer® operation
E-Rail	Conrail	Intermodal	NS	Expanded intermodal
Dockside (ExpressRail)	Private/ Conrail	Intermodal	Private/ CSAO	Same as at present
Bayway	Conrail	Storage for petrochemical industry	CSAO	Same as at present
Port Reading	Conrail	Secondary classification and support for petrochemical traffic, and other carload	CSAO	Same as at present
Brown's	Conrail	Industrial support for South Amboy area	CSAO	Same as at present
Manville	Conrail	Industrial support for the area, including Raritan Line	CSX	Same use, but NS and CSAO will have operating rights in this yard.
Linden	Conrail	Serves GM assembly plant. Auto loading ramp.	CSAO	Same as at present
Metuchen	Conrail	Serves Ford assembly plant and other industrial customers	CSAO	Same as at present
Croxtan	Conrail	Intermodal and bulk transfer	NS	Intermodal and NS Southern Tier Locals
South Kearny	Conrail	Carload support and intermodal	CSX	Same as at present, but used by CSX
South Kearny (APL)	Conrail	APL Intermodal	CSX and NS	APL jointly served by CSX and NS
Ridgefield Heights	Conrail	Automotive support	CSAO	Same as at present
North Bergen	Conrail	Intermodal and some local carload traffic	CSX	CSX Intermodal; Southern Tier locals to NS move to Croxtan
Bayonne (Mullery)	Conrail	Includes Mullery Yard. Industrial support principally for petrochemical industry	CSAO	Same as at present



## **2. *South Jersey/Philadelphia***

### **The South Jersey/Philadelphia SAA**

Includes approximately 240 route miles of trackage extending generally north from Marcus Hook, PA to Trenton, NJ on Amtrak's NEC, including most Conrail "Philadelphia" stations and stations within the Philadelphia City limits, all Conrail trackage in South Jersey, and Conrail freight rights on Amtrak's NEC from Philadelphia (Zoo Tower) to and including Trenton. The SJSAA is bounded on the west by CP Falls (at the beginning of the Harrisburg Line in the Belmont area of Philadelphia).

As with the preceding section covering North Jersey, Exhibit 6 shows the South Jersey/Philadelphia SAA in map form, while Exhibit 7 depicts the area and facilities in a schematic format. Exhibit 8 summarizes current and proposed uses and carrier service to each major facility in the SJSAA.

Highlights of SJSAA operations include the following:

#### ***General***

Management and supervision for the South Jersey/Philadelphia SAA will be provided by a Superintendent and staff headquartered at Mt. Laurel, NJ.

Dispatching for CSAO Line segments within the SJSAA will be consolidated at Mt. Laurel. With few exceptions (such as when presently dispatched by a passenger agency), rail traffic on CSAO line segments within the area will be under the direction of the SJSAA dispatcher, or the staff of the Superintendent.

The complement of yard engines and local freight assignments in the SJSAA will be sized to support the projected traffic.

New train services will be established between the SJSAA and other key points as summarized in NS' and CSX's operating plans.

Facility highlights for the SJSAA include the following:

*Greenwich Yard*

Will be assigned to CSX, but NS and CSAO will have access to tracks and areas used to support the movement of local freight, including Ameriport, and to support the movement of rail traffic to and from the Ore Pier.

*West Falls Yard*

Will be utilized by NS as a block swapping location for connection of cars to and from Greenwich Yard, Pavonia Yard and Midvale.

*Pavonia Yard*

Will become the major carload support facility for the South Jersey area and for Trenton. Switching service will be provided by CSAO, but both CSX and NS through freight assignments will operate directly in and out of Pavonia.

*Morrisville*

The carload yard at Morrisville will be served by CSAO. The intermodal facility at Morrisville will be served exclusively by NS and TCS.

Support yards at Stoney Creek, Midvale, Frankford Jct., Millville and Paulsboro will be served by CSAO.

CSX will construct a new and expanded intermodal facility at Greenwich Yard for its exclusive use.

New train services to and from the South Jersey/Philadelphia area are summarized in the operating plans of NS and CSX.

STB

FD

33388

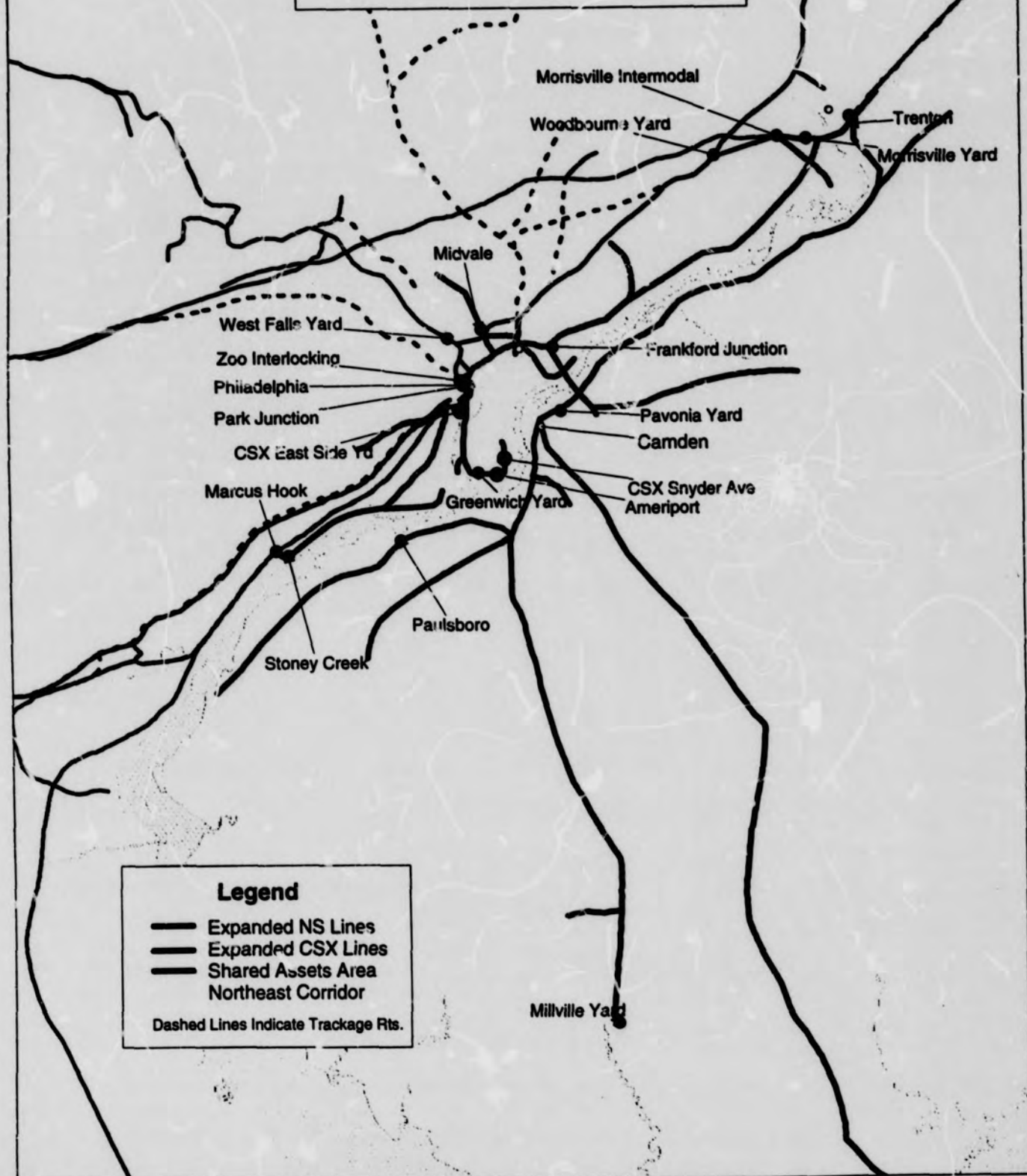
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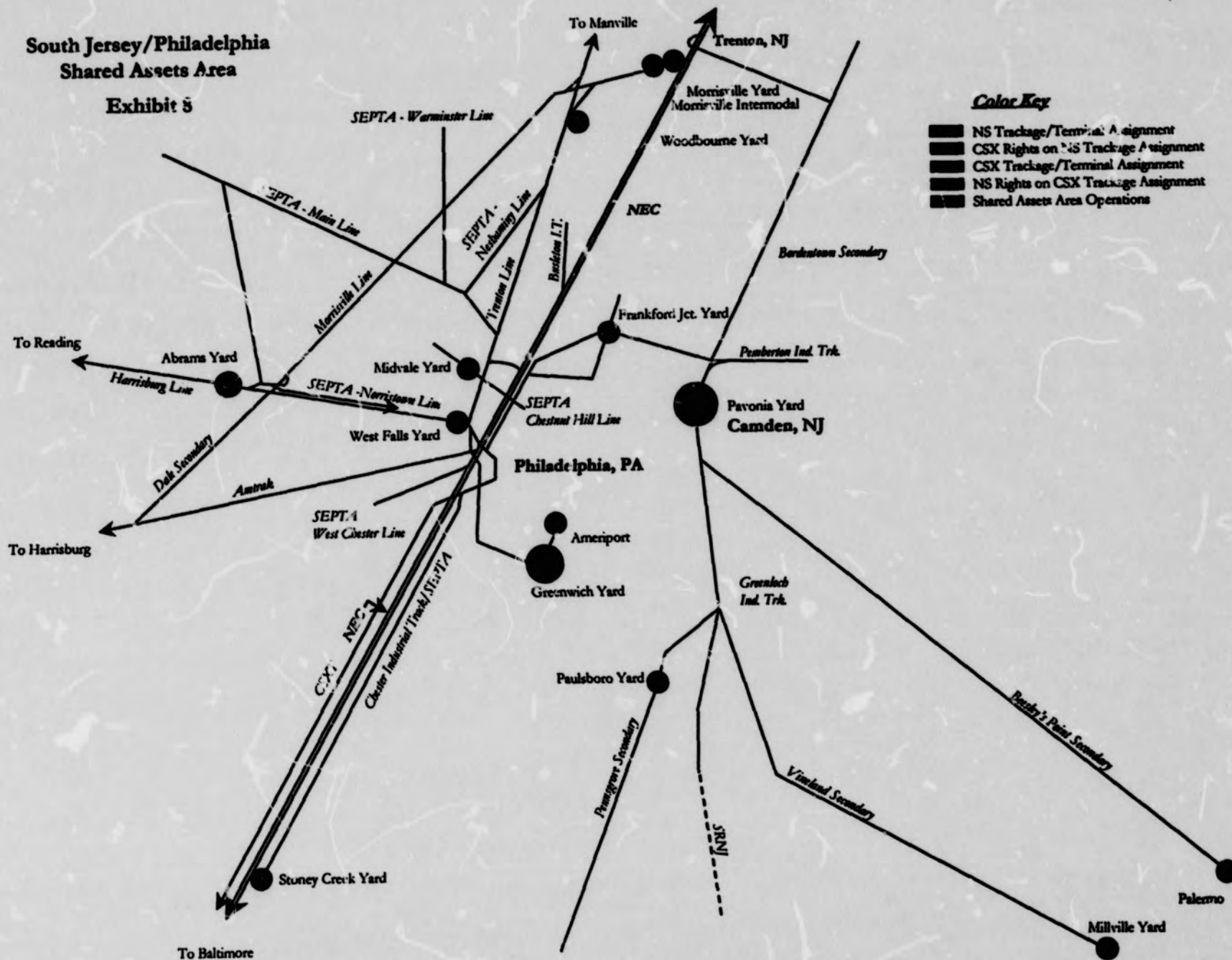
# **South Jersey/Philadelphia Shared Assets Area Exhibit 7**





# South Jersey/Philadelphia Shared Assets Area

## Exhibit 5



# Terminal Operations in South Jersey/Philadelphia Area

## Exhibit 9

Current Operation			Proposed Operation	
Yard or Facility	Current Operator	Current Facility Use	Proposed Operator	Proposed Facility Use
Morrisville	CR	Industrial support	CSAO	Same as at present
Morrisville Intermodal	CR	Intermodal	NS	NS intermodal
Greenwich	CR	Coal, ore, intermodal and industrial support	CSX	Except that NS and CSAO will have access to tracks and areas used to support the movement of local freight, including Ameriport, and to support the movement of rail traffic to and from the Ore Pier.
Stoney Creek	CR	Industrial support	CSAO	Same as at present
Midvale	CR	Industrial support for Chestnut Hill branch	CSAO	Same as at present
Frankford Jct.	CR	Industrial yard on the Delair Branch	CSAO	Same as at present
West Falls Yard	CR	Industrial support and block transfer	NS	Except that CSX and CSAO will be granted rights to base local trains, classify and assemble trains and switch railcars.
Pavonia	CR	In Camden, major support facility for Trenton and surrounding area	CSAO	Will become the focal point control center for CSAO
Millville	CR	Industrial support for the Vineland area	CSAO	Same as at present
Paulsboro	CR	On the Penns Grove secondary. Serves Woodbury	CSAO	Same as at present

### **3. Detroit**

#### **The Detroit Shared Asset Area**

Is comprised of 85 route miles of trackage from Trenton, MI (MP 20) to Utica, MI (end of track), including: Terminal West Industrial track to West Belt Jct., Terminal East Industrial Track, the Lincoln Secondary and Conrail's Michigan Line to "CP-Townline" (MP 7.4) and all other Conrail trackage within these boundaries.

Exhibit 10 shows the Detroit SAA in map form, while Exhibit 11 depicts the area and facilities in a schematic format. Exhibit 12 summarizes current and proposed uses and carrier service to each major facility in the Detroit SAA.

Area highlights are as follows:

#### ***General***

General Management and Supervision for the Detroit SAA will be provided by a Superintendent and staff headquartered at North Yard, Detroit.

Dispatching for the Detroit SAA will initially be retained at Conrail's present Dearborn Dispatch Facility. Eventually, these dispatching functions may be centralized with others at SAA headquarters in Mt. Laurel, NJ.

Rail traffic control of CSAO line segments within the Detroit SAA will be under the direction of the SAA dispatchers, or the staff of the Superintendent, except NS will dispatch Trenton to River Rouge Yard, and from River Rouge Yard to Townline via the Junction Yard Secondary, and CSX will dispatch the Lincoln Secondary.

The complement of yard engines and local freight assignments in the Detroit SAA would initially remain substantially the same as Conrail's present operation.

New train services would be established between the Detroit SAA and other key points as summarized in NS' and CSX' supplemental operating plans.

Detroit area facility highlights include:

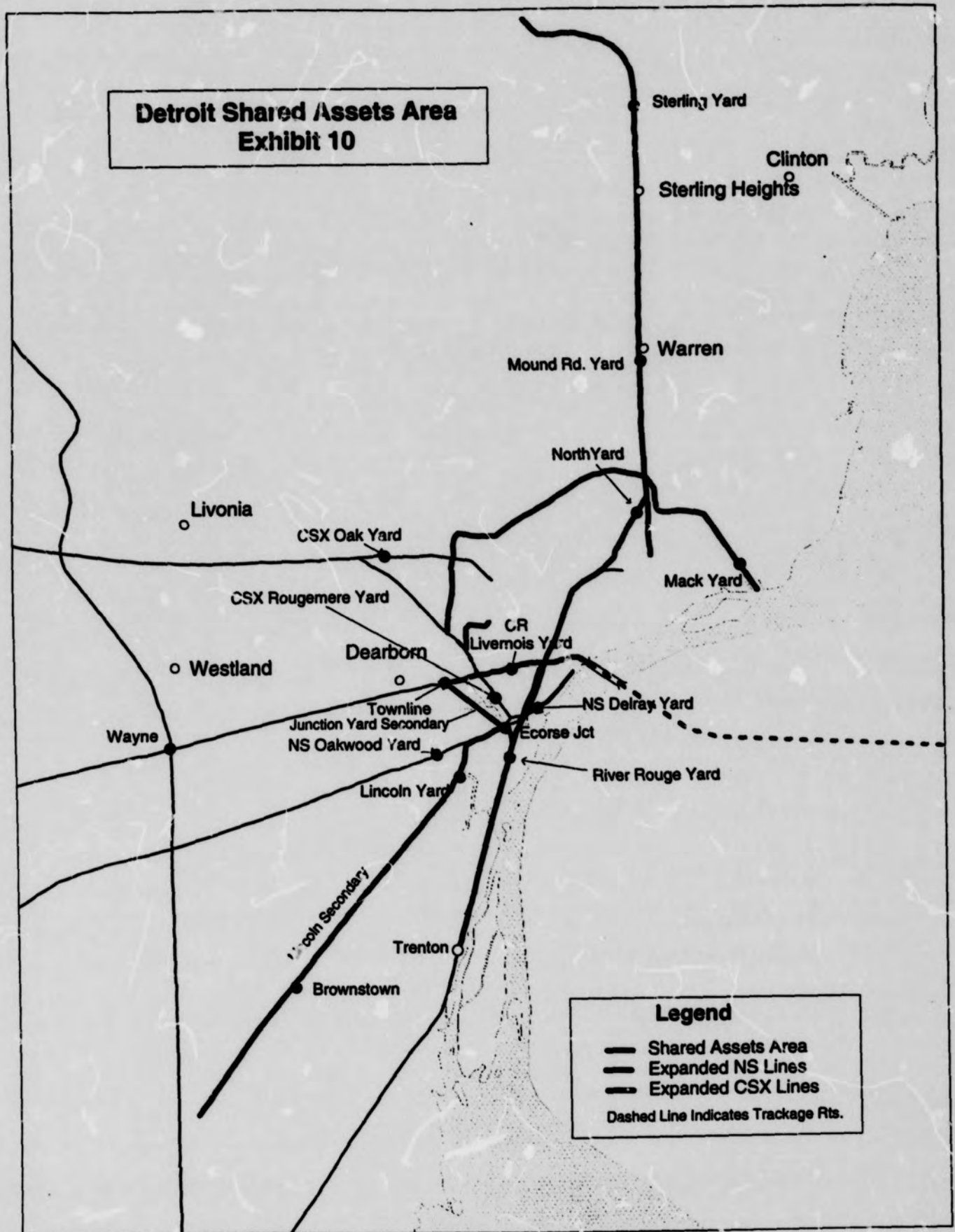
Present Detroit area NS and CSX facilities will continue to be served by their respective owners. Present traffic flows will be integrated with SAA traffic flows wherever possible to improve overall service.

Within the Detroit SAA, all major yard facilities will be switched and served by CSAO. NS and CSX will, however, each operate their own road crews and trains directly to the yards supporting area industry.

North Yard will become the focal point for CSAO operations in Detroit. The ability to operate through freight service directly to area yard facilities for switching by CSAO crews will mean that both CSX and NS through freight service can be provided to automotive and other customers along Conrail's Sterling Secondary served from North Yard, Mound Road, Mack or Sterling Yards. CSX will operate through trains over its current lines as well as over the Lincoln Secondary to reach the SAA.

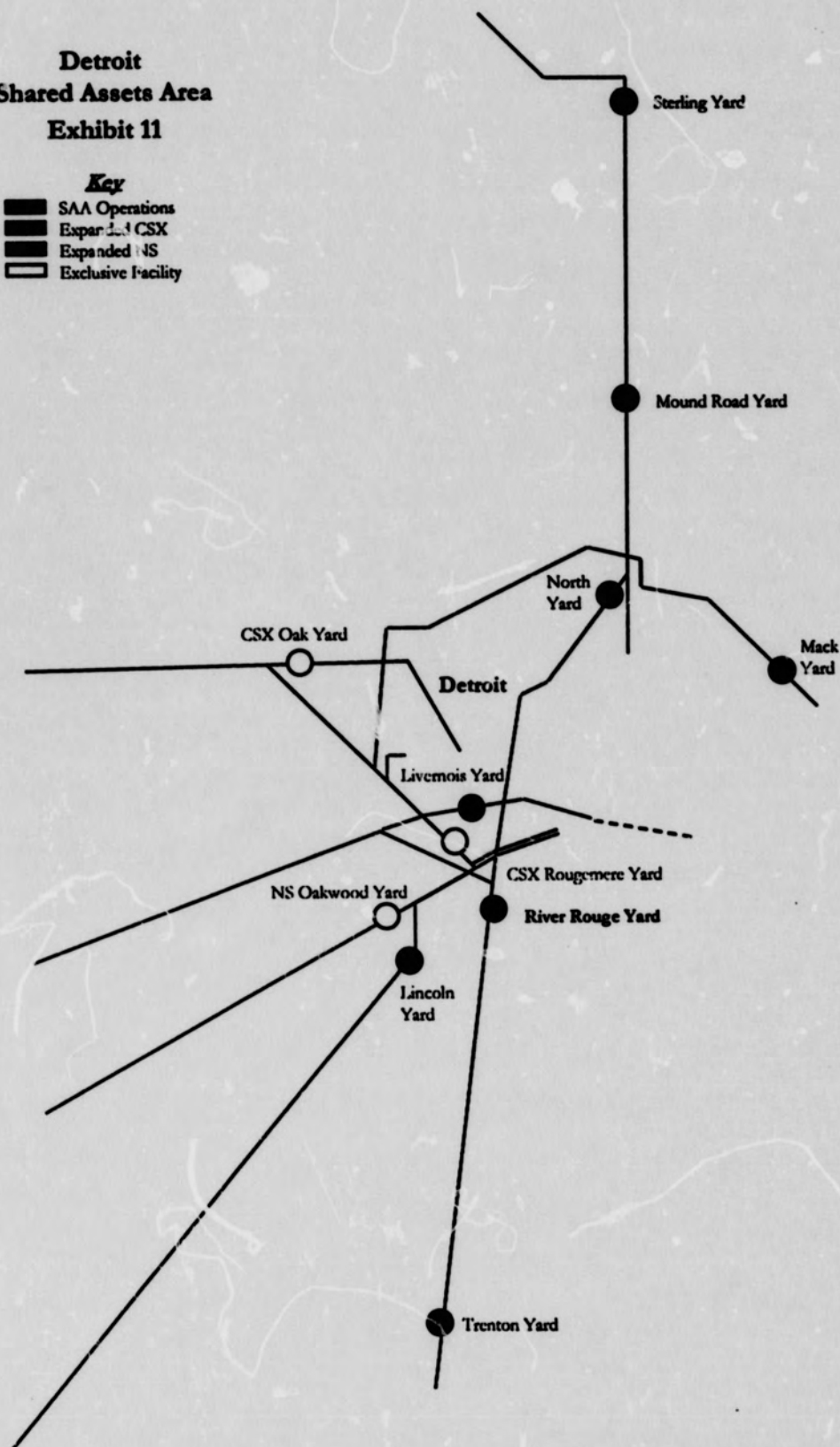


# **Detroit Shared Assets Area Exhibit 10**



**Detroit  
Shared Assets Area  
Exhibit 11**

**Key**  
■ SAA Operations  
■ Expanded CSX  
■ Expanded NS  
□ Exclusive Facility



# Terminal Operations in Detroit Area

## Exhibit 12

Current Operation			Proposed Operation	
Yard or facility	Current Operator	Current facility use	Proposed Operator	Proposed facility use
North	CR	Major classification facility. Also automotive	CSAO	Same as at present Focal point for Detroit CSAO
River Rouge	CR	Major industrial support facility	CSAO	Same as at present
Livernois	CR	Large industrial support yard with intermodal facility	CSAO	Same as at present
Sterling	CR	Large industrial support yard also automotive	CSAO	Same as at present
Mound Road	CR	Primarily Chrysler support	CSAO	Same as at present
Mack	CR	Industry support principally for Chrysler	CSAO	Same as at present
Lincoln	CR	Primarily supports Flexi-Flo and miscellaneous operations	CSAO	Same as at present
Trenton	CR	Support Trenton area	CSAO	Same as at present

## **Appendix A**

### **Joint CSX-NS Announcement**

**CONTACTS:**  
Thomas E. Hoppin  
CSX Corporation  
804-782-1450

Robert Fort  
Norfolk Southern  
757-629-2710

February 11, 1998

#### **Norfolk Southern and CSX Name Conrail Shared Assets Areas Personnel**

RICHMOND and NORFOLK, VA -- CSX Corporation (NYSE: CSX) and Norfolk Southern Corporation (NYSE: NSC) today named three individuals who will fill key managerial posts with Conrail Inc. if the companies' proposed transaction to operate Conrail is approved by the Surface Transportation Board. Approval of the transaction by federal regulators, now expected in August, would enable CSX and Norfolk Southern to exercise control over Conrail and appoint officers to manage Conrail's continuing operations.

The companies said that Timothy T. O'Toole would assume the position of president of the future Conrail. Donald N. Nelson and Ronald L. Batory would fill key Conrail operating posts responsible for managing the "Shared Assets Areas" - Conrail operations in New Jersey, Philadelphia and Detroit areas to be served by both CSX and NS.

O'Toole is currently senior vice president-Law and Government Affairs of Conrail. He will continue in that capacity until CSX and NS are authorized to control Conrail. He will lead Conrail planning for the smooth transition to the post-transaction operation of the Shared Assets Areas and other future Conrail functions.

O'Toole joined Conrail in 1980 as associate commerce counsel in the Law department. He served as assistant to the president, general attorney, senior general attorney, vice president and general counsel, vice president and treasurer and senior vice president-Finance and Administration before assuming his current position in 1997. O'Toole holds a Bachelor of Arts in literature from LaSalle University and earned a J.D. from the University of Pittsburgh School of Law.

Nelson will become senior vice president-Operations of the future Conrail and Batory its vice president-Operations. Until the STB approves the transaction, Nelson and Batory have been engaged by CSX and NS to work directly with O'Toole in planning the Shared Assets Areas operations. Both will have offices in the Philadelphia area.

Nelson currently is president of Metro-North Commuter Railroad in New York. He began his career as a brakeman on Burlington Northern and served in several positions for Central Railroad



of New Jersey and Conrail, including regional superintendent and general manager. Nelson was regional manager for the United States Railway Association and general manager for the Indiana Harbor Belt Railroad. He joined Metro-North in 1983 and served as executive vice president before assuming his present position in 1991. Nelson has a Bachelor of Arts in economics from the University of Washington.

Batory currently is president of The Belt Railway Company of Chicago. A 26-year railroader, he joined the Detroit, Toledo & Ironton Railroad Company as a traveling auditor in 1971. He later served with the Grand Trunk Western Railroad Company; the Chicago, Missouri and Western Railway; and Southern Pacific Transportation Company, where he was general manager. Batory was named to his current position in 1994. He holds a Bachelor of Arts in business administration and economics from Adrian College and a Master's degree in industrial management from Eastern Michigan University.

After STB approval of the Conrail transaction, Nelson and Batory will report directly to O'Toole. Until then, they will work closely with personnel at all three railroads to plan the post-transaction operation of the Shared Assets Areas. The Shared Assets Areas encompass three important markets - Detroit, northern New Jersey and the southern New Jersey/Philadelphia area - where rail customers will be served by both the CSX and NS rail systems.

"The appointment of these experienced and highly-regarded rail professionals will help insure that the Conrail transaction is a seamless one for the coal, merchandise and intermodal customers who will be served through the Shared Assets Areas," said NS Chairman, President and CEO David R. Goode.

CSX Chairman, President and CEO John W. Snow said, "O'Toole, Nelson and Batory will bring to the continuing Conrail a unique blend of experiences and skills that will be of great benefit to every constituency. We are pleased to have their commitment and look forward to working with them once we have STB approval."

Norfolk Southern is a Virginia-based holding company with headquarters in Norfolk, Va. It owns a major railroad, Norfolk Southern Railway Company, which operates more than 14,300 miles of road in 20 states primarily in the Southeast and Midwest, and the Province of Ontario, Canada. The corporation also owns North American Van Lines Inc. and Pocahontas Land Corporation, a natural resources company.

CSX Corporation, headquartered in Richmond, Va., is an international transportation company offering a variety of rail, container-shipping, intermodal, trucking, barge and contract logistics management services. The company's 18,000 route-mile system links 20 states to the East and Midwest.

**CONRAIL TRANSACTION COUNCIL  
MEETING  
MAY 14, 1998  
WASHINGTON, D.C.**

**MINUTES**

The third meeting of the Conrail Transaction Council ("Council") began at 10:00 a.m. on April 15, 1998, in the offices of the Edison Electric Institute., Washington, D.C. After self-introductions by the attendees (see attached list), Mr. Robert Evans gave a short review of the agenda. Mr. Jenkins of CSX and Mr. Trollinger of Norfolk Southern also gave brief introductory remarks and introduced Mr. Don Nelson of Conrail, who will be Chief Operating Officer of the North Jersey Shared Asset Area. A draft agenda had been distributed (see attached). The minutes of the April 15 meeting were approved.

Mr. Nelson gave a short presentation on the status of the Shared Asset Areas. He said his SAA is becoming a "real railroad," both the management team and non-supervisory work force are close to complete, and expects it to look like it did 15 years ago when he left it. He said the North Jersey SAA is the "tender spot" because Conrail had streamlined its operations drastically, and planning is concentrating on what to do there if there is a surge in business.

**Status of Systems Development**

Cindy Luman of CSX and Steve Renken of NS gave a presentation on the systems work. In their joint presentation they described the planning that has been underway since the first quarter of 1997 at the three railroads. Beginning in the summer the combined effort expanded to include a large part of the Conrail IT staff. Each business process necessary to support the safe, effective operation of the railroad was carefully reviewed by the joint teams of IT systems experts and business partners from all three roads to develop requirements that could be incorporated into Conrail's systems. The Conrail systems would continue to operate the railroad while feeding the necessary transportation events to the CSX and NS systems. Over the field roll-out period pieces of Conrail territory will be gradually converted to operations supported by the NS and CSX systems. The presenters stressed the extraordinary cooperation and amount of effort that had gone into planning this migration.

**Distribution of Conrail Rolling Stock**

Frank Onimus of CSX and Bill Wiles of NS outlined the procedures for separating the 55,000 car Conrail fleet. The allocation will be based on the 58%/42% split of Conrail, on the basis of car value, not the number of cars. Some cars will continue to be owned by Conrail, and will be leased to NS/CSX at fair market value. They noted that the allocation has no relationship to the

respective carriers' demand for cars, and there will be car trades between them. As for locomotives, because the 58/42 allocation does not take into account such factors as amount of traffic, weather, and terrain, locomotives will be split on the basis of the carriers' use in the SAAs, with 130 held back for operations in the SAAs.

#### **Development of Objective, Measurable Standards**

A small metrics working group had been formed at the previous meeting to pull together some recommendations for the Council. Made up of Mr. Ehlers of NS, Mr. Price of CSX, Bob Evans and Ed Rastatter of NITL, Joni Casey of IANA, and Mr. Heiser of A.E. Staley, the group had a telephone conference call and meeting prior to the May 14 Council meeting, and had discussed all the proposals for metrics that had been submitted previously, within the context of some parameters suggested by Mr. Evans concerning such things as informational value to shippers, value as an early warning signal of problems, and so forth. Messrs. Price and Ehlers gave a short report of the working group's recommendations, centering on car inventory, train speed by six types of trains (intermodal, coal and grain unit trains, automotive, and manifest trains), and car terminal dwell time at selected major terminal areas. Concerning "benchmarking" of "normal" pre-merger data, it was recommended that same period/prior year data be used when consistent data are available. The Council recommended that the NS/CSX representatives further refine the recommendations and present them at the June meeting.

#### **Status of Implementation**

Representatives from NS and CSX reported that plans were moving ahead for filling the 1,300 operator and 140 management positions, which should be complete by the end of May. They also said the Cleveland problem is easing but not yet complete. Double track construction is on schedule, and certain sections of it are already being used.

#### **Other Matters**

Bob Evans recounted some reports by NITL members concerning deteriorating rail service in certain areas, and a short discussion was held on current levels of service on both NS and CSX.

#### **Next Meeting and Future Topics**

The next meeting was scheduled for June 9 (at Association of American Railroads, 50 F Street, NW). Topics for the June 9 meeting are: status of operating plan development, including gateways; next meeting (date and place); joint access area - Monongahela; status of labor implementing agreements; development of objective, measurable standards to evaluate implementation of transaction; STB voting conference on June 8; and, other matters related to implementation of transaction.

The meeting was adjourned at 2:30 pm.

# **Allocation of Conrail Rail Car Assets and Fleet Management Objectives**

**A Presentation to the NIT League  
Conrail Transaction Council**

**by**

**CSX Transportation**

**AND**

**Norfolk Southern Corporation**

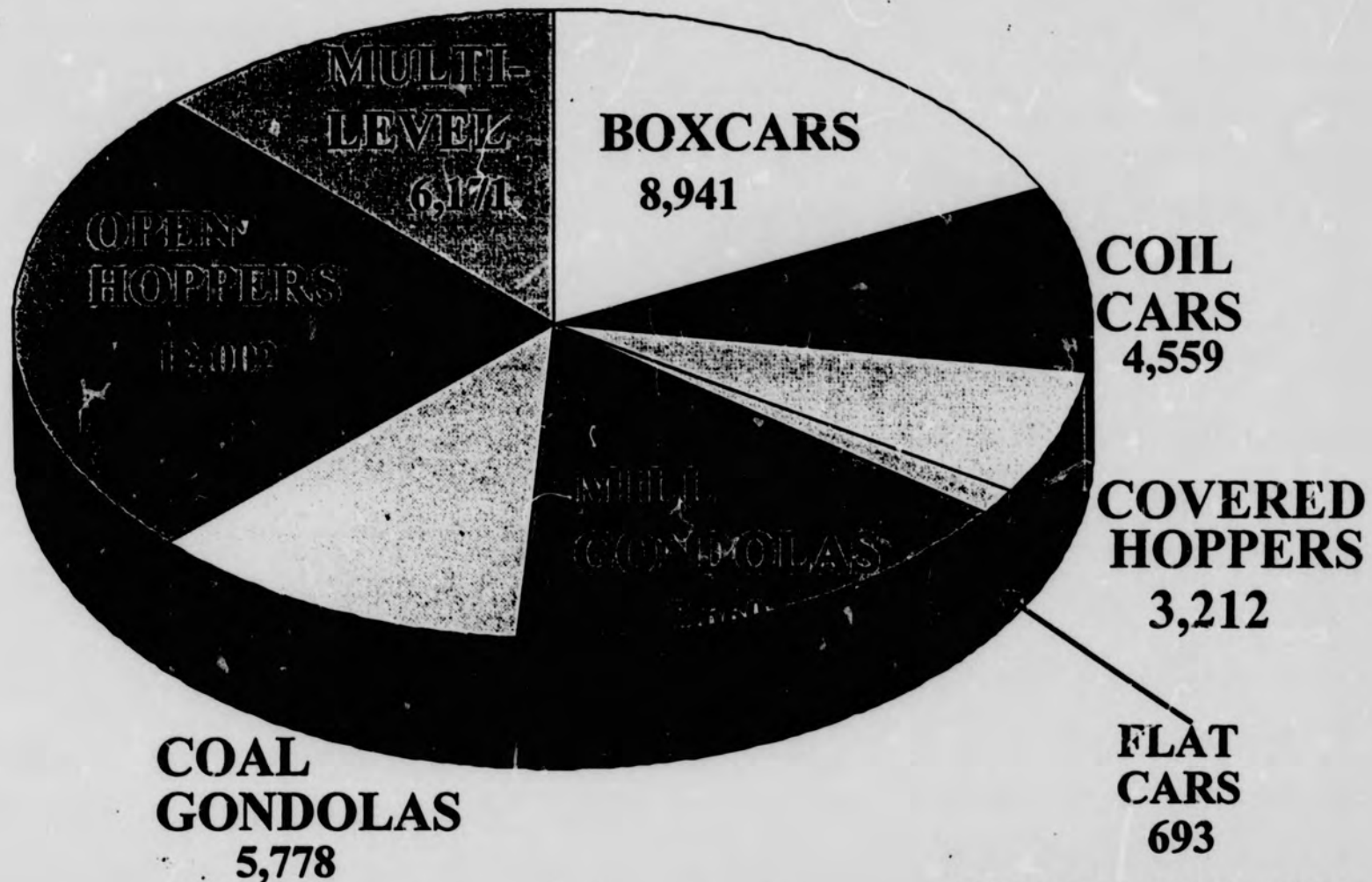
**Frank S. Onimus - CSX  
William A. Wiles - NS  
Washington, D.C.  
May 14, 1998**



# CONRAIL FLEET

+ 5,689 NON-REVENUE

**TOTAL: 54,769**



4/4/98 CONRAIL EDS

The Conrail transaction agreement called for CSXT and NS to allocate Conrail assets so to preserve a 42/58% valuation

- Assets will continue to be owned by Conrail.
- CSXT and NS will fully control the fleet which they are allocated.
- CSXT and NS designed the allocation methodology together to ensure that base value is preserved.
- CSXT and NS expect to trade cars in order to increase mutual value.

The allocation methodology recognized major factors which distinguish car value.

- Cartype - about 100 cartypes were created
- Ownership - owned, leased, sale or scrap candidate
- Condition - serviceable vs. Heavy Bad Order
- Age Category - 5 groupings which are linked to useful operating life

The entire Conrail fleet of roughly 55,000 cars was categorized by these factors:

CODE	KEY	DESCRIPTION	LEASE	SERVICEABLE					TOT	HEAVY BAD ORDER					TOT	TOTAL
				0	1	2	3	4		0	1	2	3	4		
E	211	MILL GONDOLAS W/HT ON RAIL OE250 LON L800 FT HOT LT 4 FT	LEA	L823AC				7	7					60	1	67
E	211	MILL GONDOLAS W/HT ON RAIL OE250 LON L800 FT HOT LT 4 FT	LEA	N088AC		1	1		2		5					14
E	211	MILL GONDOLAS W/HT ON RAIL OE250 LON L800 FT HOT LT 4 FT	LEA	N088BC		2			2							2
E	211	MILL GONDOLAS W/HT ON RAIL OE250 LON L800 FT HOT LT 4 FT	LEA	N088CC		4			4		2			1	3	7
E	211	MILL GONDOLAS W/HT ON RAIL OE250 LON L800 FT HOT LT 4 FT	LEA	N1107C				52	52					3	3	55
E	211	MILL GONDOLAS W/HT ON RAIL OE250 LON L800 FT HOT LT 4 FT	LEA	N182AC		6			6		7				7	13
E	211	MILL GONDOLAS W/HT ON RAIL OE250 LON L800 FT HOT LT 4 FT	LEA	N2208C				4	4							4
E	211	MILL GONDOLAS W/HT ON RAIL OE250 LON L800 FT HOT LT 4 FT	LEA	T		13	1	4	90	77	14	8		70	1	171
E	211	MILL GONDOLAS W/HT ON RAIL OE250 LON L800 FT HOT LT 4 FT	LKE											28		28
E	211	MILL GONDOLAS W/HT ON RAIL OE250 LON L800 FT HOT LT 4 FT	WHT					11								11
E	211	MILL GONDOLAS W/HT ON RAIL OE250 LON L800 FT HOT LT 4 FT	CD-T			13	1	4	112	130	14	8		110	1	284
E	212	MILL GONDOLAS W/HT ON RAIL OE250 LON L800 FT HOT 4-4 FT 8	OWN		237	1	1	85	1073	1387		1	14	138	153	1550
E	212	MILL GONDOLAS W/HT ON RAIL OE250 LON L800 FT HOT 4-4 FT 8	LEA	L882				1	1							1
E	212	MILL GONDOLAS W/HT ON RAIL OE250 LON L800 FT HOT 4-4 FT 8	LEA	L882AC				80	80							80
E	212	MILL GONDOLAS W/HT ON RAIL OE250 LON L800 FT HOT 4-4 FT 8	LEA	L882BC		1		113	114			3			3	117
E	212	MILL GONDOLAS W/HT ON RAIL OE250 LON L800 FT HOT 4-4 FT 8	LEA	L810AC				146	146				128		128	275
E	212	MILL GONDOLAS W/HT ON RAIL OE250 LON L800 FT HOT 4-4 FT 8	LEA	L823AC				3	3					1	1	4
E	212	MILL GONDOLAS W/HT ON RAIL OE250 LON L800 FT HOT 4-4 FT 8	LEA	N088AC		187	43		230		75	20			95	325
E	212	MILL GONDOLAS W/HT ON RAIL OE250 LON L800 FT HOT 4-4 FT 8	LEA	N088BC		88			88		27				27	93
E	212	MILL GONDOLAS W/HT ON RAIL OE250 LON L800 FT HOT 4-4 FT 8	LEA	N088CC		38	1		40		13				13	53
E	212	MILL GONDOLAS W/HT ON RAIL OE250 LON L800 FT HOT 4-4 FT 8	LEA	N118AC				4	4					1	1	5
E	212	MILL GONDOLAS W/HT ON RAIL OE250 LON L800 FT HOT 4-4 FT 8	LEA	N1107C				22	22							22
E	212	MILL GONDOLAS W/HT ON RAIL OE250 LON L800 FT HOT 4-4 FT 8	LEA	N182AC		55			55		4				4	59
E	212	MILL GONDOLAS W/HT ON RAIL OE250 LON L800 FT HOT 4-4 FT 8	LEA	N2208C				48	48							48
E	212	MILL GONDOLAS W/HT ON RAIL OE250 LON L800 FT HOT 4-4 FT 8	LEA	N2307C				36	36							36
E	212	MILL GONDOLAS W/HT ON RAIL OE250 LON L800 FT HOT 4-4 FT 8	LEA	N281AC		267			267		75				75	342
E	212	MILL GONDOLAS W/HT ON RAIL OE250 LON L800 FT HOT 4-4 FT 8	LEA	N281BC		88			88		12				12	84
E	212	MILL GONDOLAS W/HT ON RAIL OE250 LON L800 FT HOT 4-4 FT 8	LEA	N281CC		17			187		29				29	218
E	212	MILL GONDOLAS W/HT ON RAIL OE250 LON L800 FT HOT 4-4 FT 8	LEA	N881AC			38		38		12				12	50
E	212	MILL GONDOLAS W/HT ON RAIL OE250 LON L800 FT HOT 4-4 FT 8	LEA	T		888	82	222	211	1383	241	32	3	131	407	1780



CSX and NS were then allocated 42/58% of each cell with actual cars assigned through a random generator:

CODE	KEY	DESCRIPTION	LEASE	SERVICEABLE						TOT	HEAVY BAD ORDER						TOT	TOTAL
				0	1	2	3	4	5		0	1	2	3	4	5		
E	211	MILL GONDOLAS Wght ON RAIL GE250 LGH LE80 FT HGT LT 4 FT	LEA N2280C				2			2								2
E	211	MILL GONDOLAS Wght ON RAIL GE250 LGH LE80 FT HGT LT 4 FT	LKE												12		12	12
E	211	MILL GONDOLAS Wght ON RAIL GE250 LGH LE80 FT HGT LT 4 FT	WHT					5		5								5
E	212	MILL GONDOLAS Wght ON RAIL GE250 LGH LE80 FT HGT 4-4 FT 8	OWN	100			38	451		587				6	58		64	651
E	212	MILL GONDOLAS Wght ON RAIL GE250 LGH LE80 FT HGT 4-4 FT 8	LEA L592															
E	212	MILL GONDOLAS Wght ON RAIL GE250 LGH LE80 FT HGT 4-4 FT 8	LEA L592AC				25			25								25
E	212	MILL GONDOLAS Wght ON RAIL GE250 LGH LE80 FT HGT 4-4 FT 8	LEA L592BC				47			47				1			1	48
E	212	MILL GONDOLAS Wght ON RAIL GE250 LGH LE80 FT HGT 4-4 FT 8	LEA L610AC					61		61					54		54	115
E	212	MILL GONDOLAS Wght ON RAIL GE250 LGH LE80 FT HGT 4-4 FT 8	LEA L623AC					1		1								1
E	212	MILL GONDOLAS Wght ON RAIL GE250 LGH LE80 FT HGT 4-4 FT 8	LEA N088AC		79	18				97	32	8					40	135
E	212	MILL GONDOLAS Wght ON RAIL GE250 LGH LE80 FT HGT 4-4 FT 8	LEA N098BC		28					28	11						11	39
E	212	MILL GONDOLAS Wght ON RAIL GE250 LGH LE80 FT HGT 4-4 FT 8	LEA N098CC		16					16	5						5	21
E	212	MILL GONDOLAS Wght ON RAIL GE250 LGH LE80 FT HGT 4-4 FT 8	LEA N1194C					2		2								2

The fleet allocation summary is as follows:

<u>Cartype</u>	<u>Cars Allocated to NS</u>	<u>HBO</u>	<u>Serviceable</u>
Flatcars	406	154	252
Boxcars	5,188	510	4,678
Plain Gons	4,457	949	3,508
Equipped Gons	2,632	189	2,443
Covered Hoppers	1,865	376	1,489
Coal Gons	3,359	10	3,349
Coal Hoppers	6,846	1,358	5,488
Aggregate Hoppers	116	1	115
Intermodal Cars	32	-	32
Multi-Levels	3,587	-	3,587
<b>Total Revenue Fleet</b>	<b>28,488</b>	<b>3,547</b>	<b>24,941</b>
<b>Non-Revenue</b>	<b>3,305</b>	<b>913</b>	<b>2,392</b>
<b>Total Fleet</b>	<b>31,793</b>	<b>4,460</b>	<b>27,333</b>

The fleet allocation summary is as follows:

<u>Cartype</u>	<u>Cars Allocated to CSXT</u>	<u>HBO</u>	<u>Serviceable</u>
Flatcars	287	105	182
Boxcars	3,753	384	3,369
Plain Gons	3,212	666	2,546
Equipped Gons	1,927	140	1,787
Covered Hoppers	1,347	280	1,067
Coal Gons	2,419	9	2,410
Coal Hoppers	4,957	984	3,973
Aggregate Hoppers	83	-	83
Intermodal Cars	23	-	23
Multi-Levels	2,584	-	2,584
 Total Revenue Fleet	 20,592	 2,568	 18,024
 Non-Revenue	 2,384	 644	 1,740
 Total Fleet	 22,976	 3,212	 19,764

CSXT and NS will also consider other sources of Conrail car supply as fleet supplements are made.

- Leases which expire on Split Date.
- Per diem leases which go beyond Split Date.
- Railroad re-load agreements.
- Private cars.



The allocation process and fleet planning processes will improve fleet capacity and car quality.

- Conrail System fleet allocated to provide fair value.
- Trading process embraced to increase mutual value.
- Other forms of capacity identified and secured.
- Quality upgrades planned.
- Utilization improvements expected.
- Fleet re-marking begun for control and customer convenience.

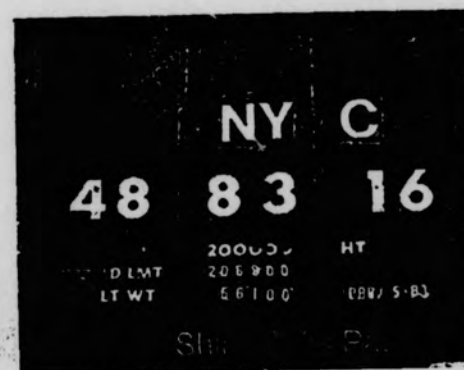
Fleet re-marking is essential to ensure a smooth transition.



Macedonia Oh.



Shire Oaks Pa.



Shire Oaks Pa.



Hollidaysburg Pa.  
First Reinitialed Car



Hollidaysburg Pa.  
First Reinitialed Car

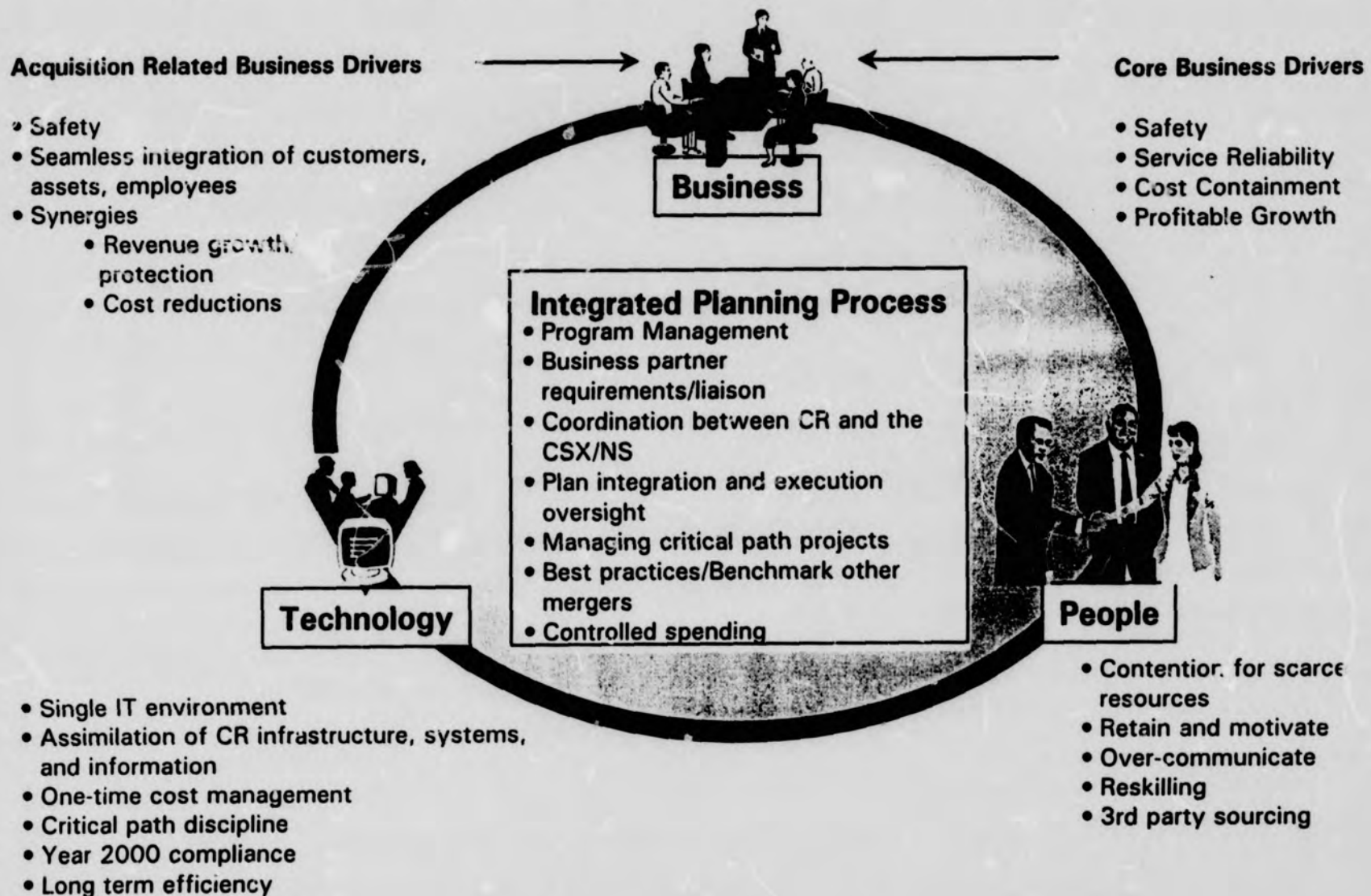


First New Quad Hopper

CHAS JENKINS

**CSX and NS  
Technology Acquisition Plan  
Update**

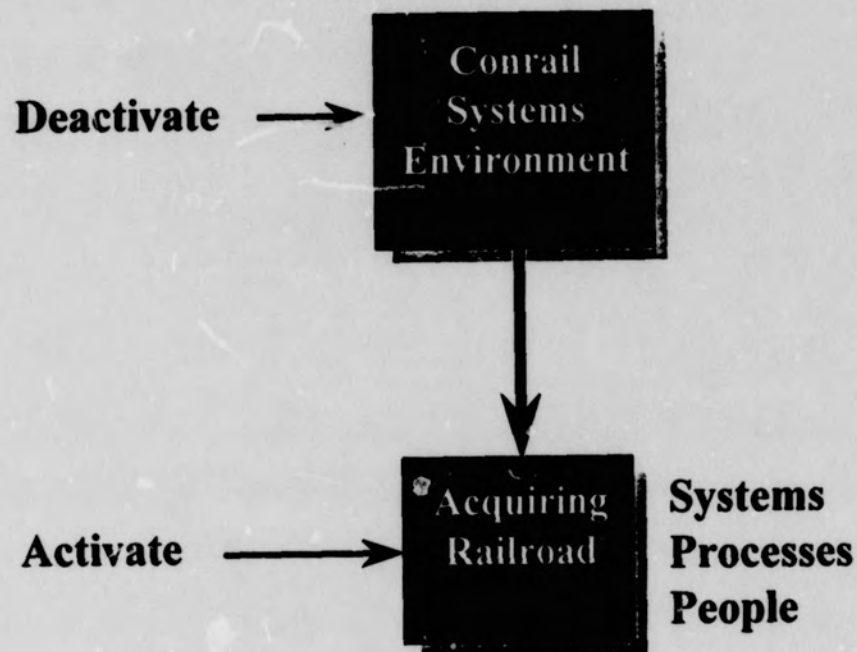
# Integrated planning process has been leveraged





# Splitting Conrail makes this a unique challenge

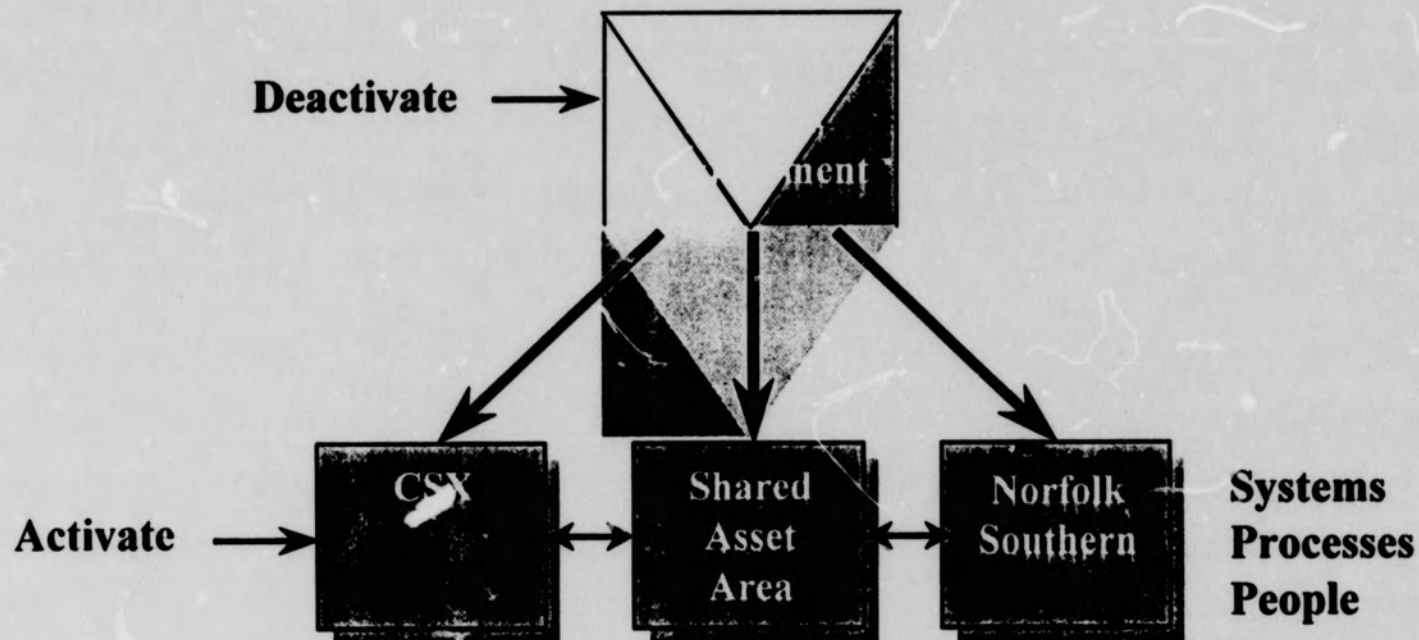
## Typical Acquisition



- Providing safe operations
- Ensuring seamless service
- Protecting vital customer information
- Implementing acquired operations
- Containing Cost

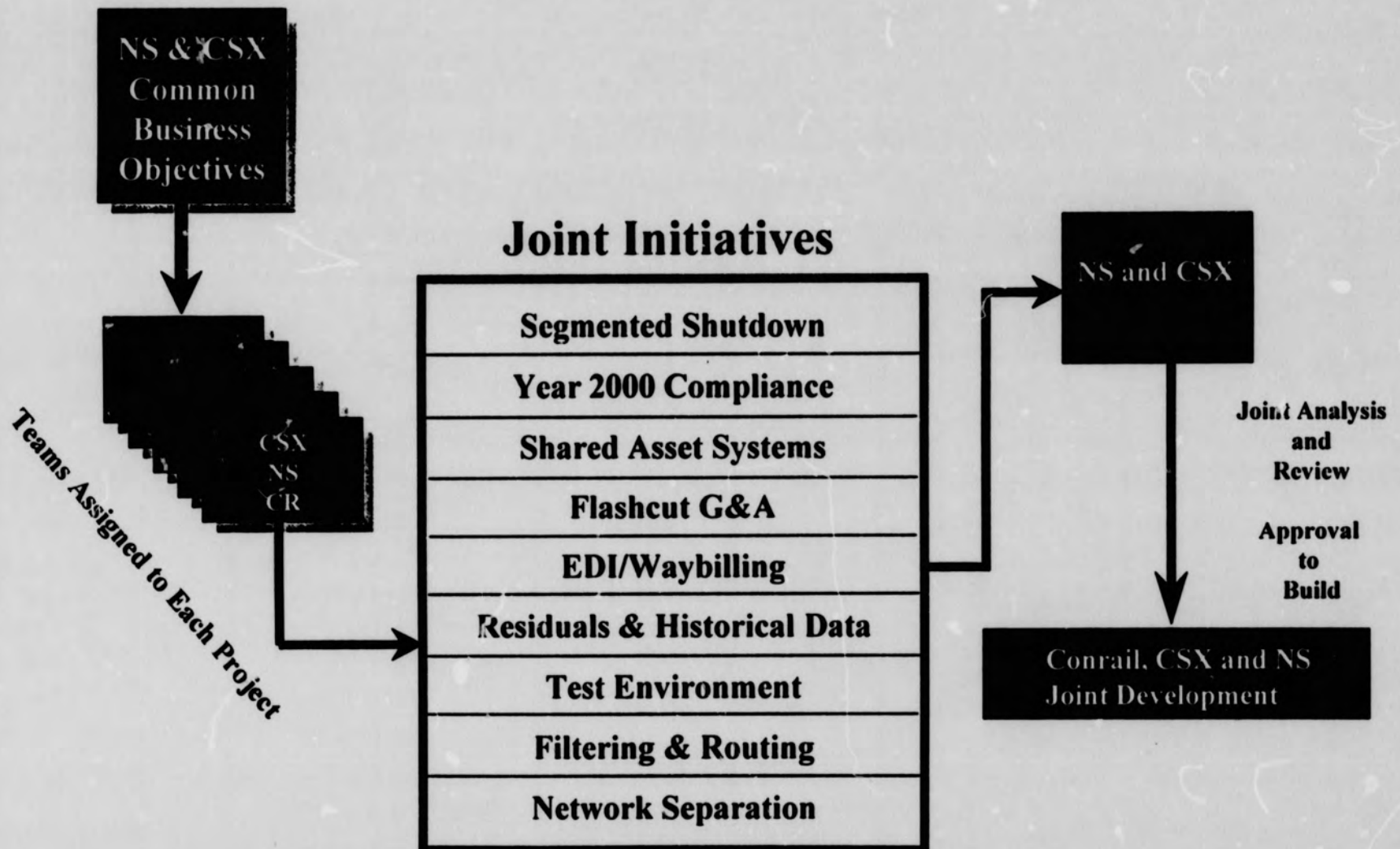
# Splitting Conrail makes this a unique challenge

## Conrail Acquisition

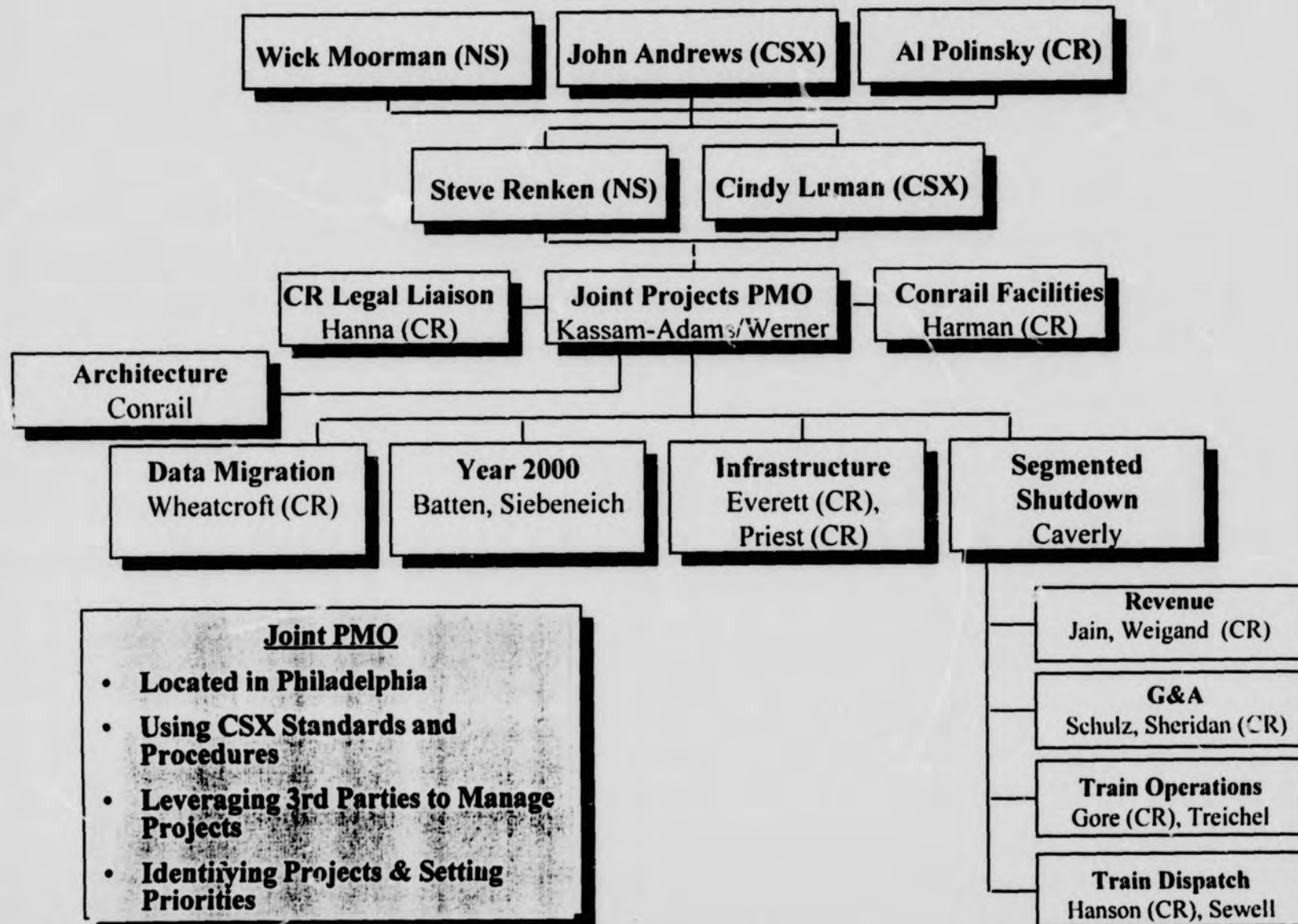


- Providing safe operations
- Ensuring seamless service
- Protecting vital customer information
- Implementing acquired operations
- Containing Cost

# Close coordination through joint initiatives is required



# Close Coordination Is Required With The Joint Program Office Teams





# Focus is on safely and efficiently delivering seamless service while achieving the planned synergies

Business Objective	IT Approach
<p>➤ <b>Safety</b></p> <ul style="list-style-type: none"> <li>• Ensure safe operations at all times</li> </ul>	<ul style="list-style-type: none"> <li>• Field operations, dispatch, signals, and crew management on Conrail systems</li> <li>• Manage Conrail rolling assets via the Conrail Network Control Center</li> <li>• Align with Safety Integration Plan</li> </ul>
<p>➤ <b>Seamless Service</b></p> <ul style="list-style-type: none"> <li>• Maintain customer service</li> </ul>	<ul style="list-style-type: none"> <li>• Single customer interface via CSX/NS               <ul style="list-style-type: none"> <li>• Customer service</li> <li>• Waybilling</li> <li>• Pricing, rating, and billing</li> </ul> </li> <li>• Integrated operating plan</li> <li>• Dock-to-Dock redundant tracking and tracing</li> <li>• Electronic commerce transitions to CSX/NS on Split Day               <ul style="list-style-type: none"> <li>• Customer electronic commerce pilots / testing</li> </ul> </li> <li>• Dual Command Centers / SWAT Team in place prior to Split Day</li> <li>• Pre-load Conrail data</li> </ul>

## Focus is on safely and efficiently delivering seamless service while achieving the planned synergies (continued)

Business Objective	IT Approach
<p>➤ <b>Synergies</b></p> <ul style="list-style-type: none"> <li>• Realize benefits from acquisition as planned</li> </ul>	<ul style="list-style-type: none"> <li>• On Split Day <ul style="list-style-type: none"> <li>• G &amp; A, HR/Payroll/Benefits, Revenue Management, and Mechanical/Engineering functions on CSX/NS</li> <li>• Pricing, rating, and billing through CSX/NS systems</li> <li>• Integrated asset management</li> </ul> </li> </ul>
<p>➤ <b>Integrated IT Environment</b></p> <ul style="list-style-type: none"> <li>• Lowest cost solution that most efficiently supports business processes</li> </ul>	<ul style="list-style-type: none"> <li>• CSX/NS systems target environment</li> <li>• Required infrastructure changes in place</li> <li>• Scalable for combined operations</li> <li>• Year 2000 compliant</li> <li>• Retirement of the Conrail environment</li> </ul>

# **Joint Project Status**

- Segmented Shutdown
- Conrail Year 2000

# **Segmented Shutdown/Flash Cut - Objectives**

## ***What is the Segmented Shutdown/Flash Cut?***

The Segmented Shutdown/Flash Cut defines the modifications to the Conrail technical environment to support the split day and Phased field rollout Business Strategies. It will ensure a seamless service delivery while concurrently creating the SAC environment and jointly expanding the CSX and NS systems to the new territories

## ***Objective:***

To implement the technical environment supporting the integration of Conrail into CSX and NS for split day Operations and Phased field rollout. Enable the retirement of the the Ccnrail IT environment at the end of the transition.



# Segmented Shutdown - Business Strategies

## *What is Being Done to Support:*

### **The Customer**

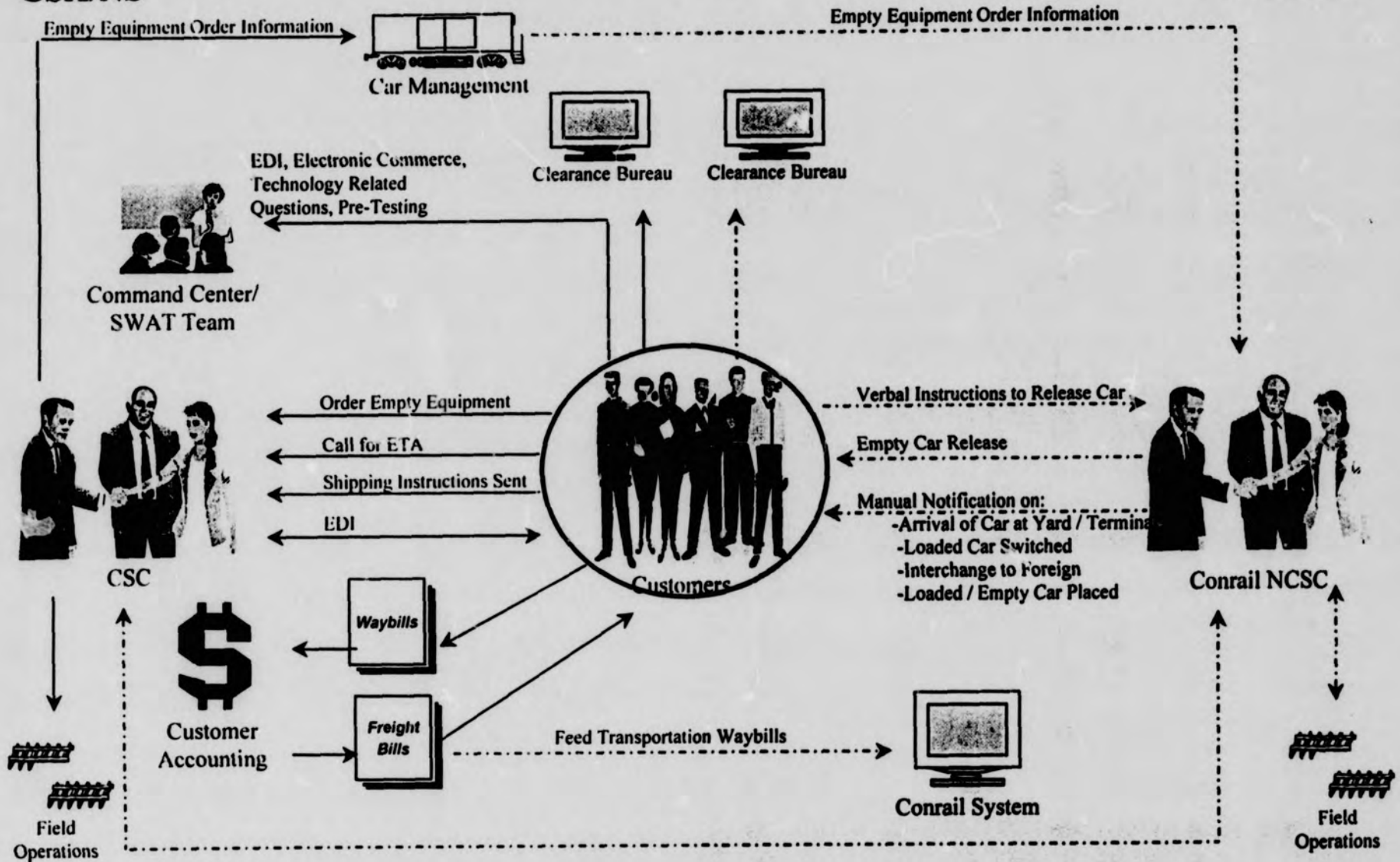
- CSX/NS will own the Customer on split day
- CSX/NS will generate waybills and pass to Conrail to drive Conrail transportation systems
- CSX/NS will produce Freight Bills
- Conrail will calculate Incidental Services and pass to CSX/NS for billing
- CSX/NS will handle Customer and Industry EDI
- The Command Center/SWAT Team will be available to customers for EDI, Electronic Commerce, and other technology related questions and pre-testing



# Customer Information Flow

CSX/NS

CONRAIL



- Eliminated During Roll-out

# Segmented Shutdown - Business Strategies

## *What is Being Done to Support:*



### **Car Management**

- CSX/NS systems will be used for planning and distribution on split day
- Conrail will handle car event reporting and pass to CSX/NS for tracking and tracing of assets
- CSX/NS will receive empty order requests and pass the information to Conrail
- CSX/NS will manage car classification and empty disposition which will be sent to Conrail for execution
- Conrail will handle Industrial Inventory and pass the information to CSX/NS
- CSX/NS will manage car scheduling and will pass route and classification information to Conrail for execution
- Conrail will rate incidental services and transmit to CSX/NS for billing
- Conrail will provide yard functions and switching and car arrival/departure reportings will be passed to CSX/NS

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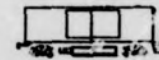
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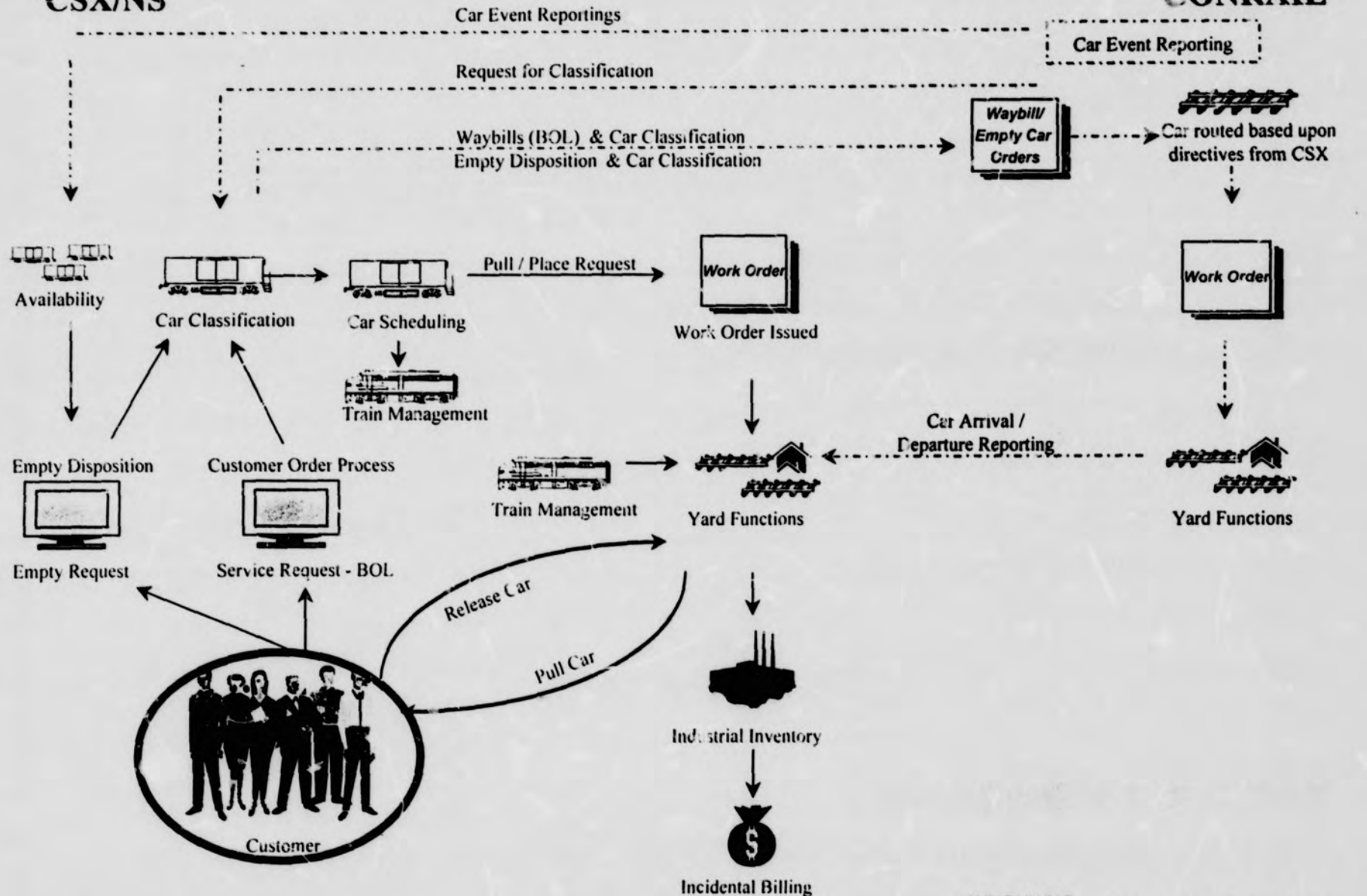


# Car Management Process Flow



**CONRAIL**

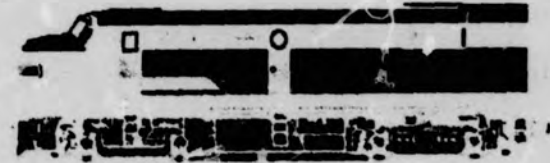
**CSX/NS**



- Eliminated During Roll-out

# Segmented Shutdown - Business Strategies

## *What is Being Done to Support:*



### **Train Management**

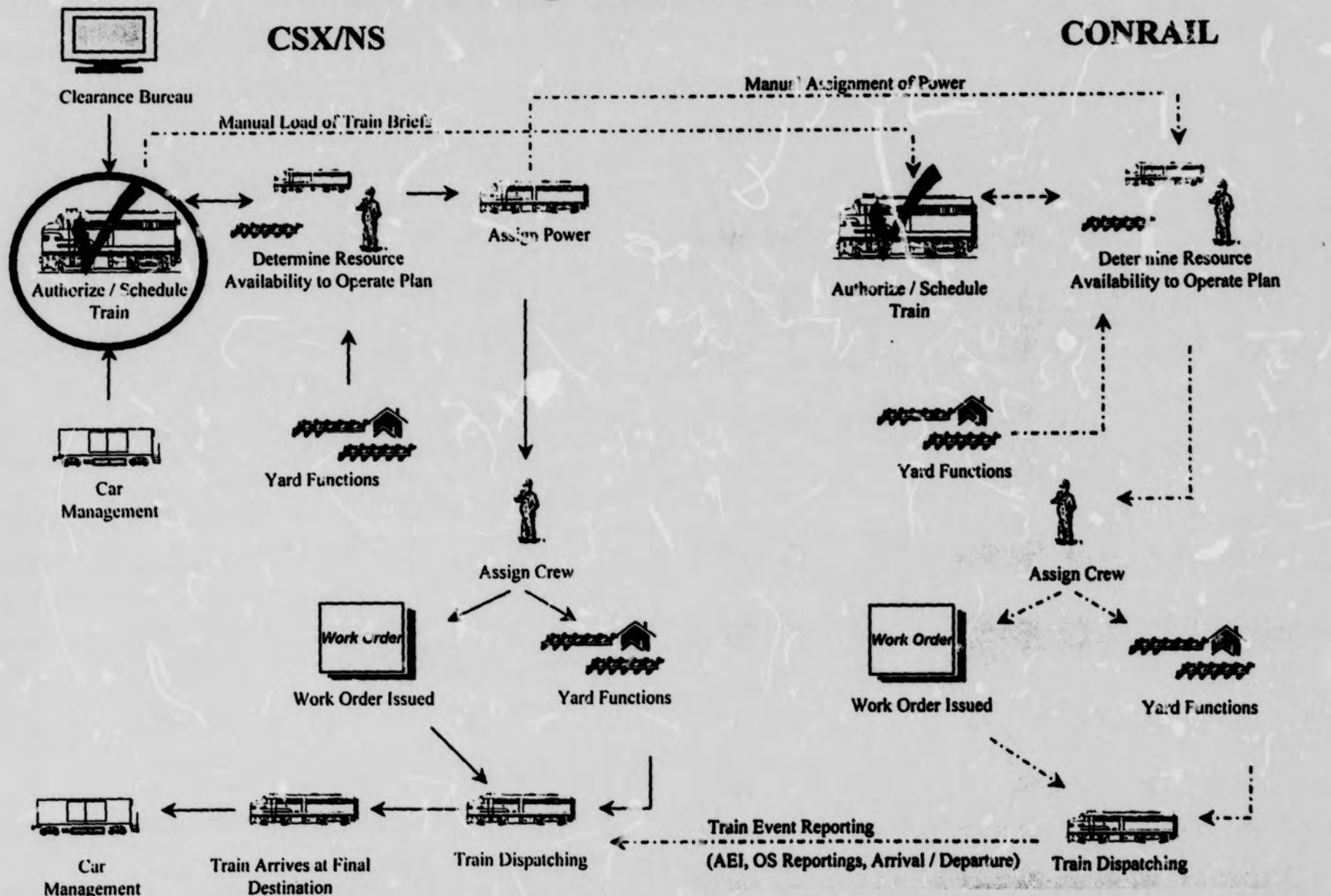
- CSX/NS systems will be used for planning split day
- CSX/NS will provide clearance on all trains and shipments and pass that information to Conrail
- Train and Locomotive events will be posted to the CSX/NS systems and available for tracking and tracing on split day
- Locomotive Management will be managed in Philadelphia and Jacksonville/Atlanta with locomotive assignments coordinated manually in Conrail and CSX/NS systems
- Conrail will dispatch trains in territories that have not been transitioned to CSX/NS as part of the field rollout
- Conrail will issue Work Orders in territories that have not been transitioned to CSX/NS as part of the field rollout
- Conrail will handle yard functions in territories that have not been transitioned to CSX/NS as part of the field rollout

# Train Management Process Flow



CSX/NS

CONRAIL



- Eliminated During Roll-out

# **Conrail Year 2000 Status**



# **Conrail Year 2000**

## **Objective**

- Protect the acquired Conrail Operations from date related system failures

## **Scope**

- The Conrail Transportation Operating Systems, Train Dispatching Systems, Demurrage System and the Conrail Data Center's Infrastructure and associated Systems

# **Conrail Year 2000**

## **Status**

- Conversion efforts are preceding on 3 Core Transportation systems:
  - Resource management
  - Train Management
  - Transportation & Reporting Inventory Management
- The Train Dispatching System, Demurrage System and Intermodal CATS systems have also been targeted for changes
- Reassessment of core systems is underway based on changes to field rollout
- Data Center Infrastructure and System upgrades are being evaluated
- Funding has been approved
- Impact assessment and work plans are being finalized
- Scheduled Completion is during the second quarter of 1999
- Project work is on schedule

# Joint Projects Summary

## Segmented Shutdown/Flash Cut Projects

Waybill Create	Yard Management
Customer Reporting	Industrial Inventory (Work Orders)
Supplemental Billing	Unit Trains
Demurrage	Automotive Terminal Operations
Intermodal Storage and Detention	Intermodal Terminal Operations
Service Request/Notification	Car Event Reporting - A/EI
Revenue Flash Cut	EOT Maintenance/Management
Carload Pricing	Train Dispatching-TRIMS Realignment
Reciprocal (Collectible) Switch	Clearance
Intermodal Pricing	Train OS Reporting
Customer Reference Files	Operating Plan/Train Schedules
Problem Resolution	Car Maintenance/UMI/ER/Car Loading
Haulage/Car Repair Billing	Car Event Reporting-Movement/Status
Costing Track Maintenance	Empty Distribution
AAR/Messaging Train II	Classification
Train Consist Management	Property Tax
Interline Receipt/Delivery	Locomotive Management
Locomotive Maintenance	Taxi and T&E Lodging
Records Management	General Ledger
Pensions	Medical Casualty
Police and Special Services	Warehouse Inventory
Crew Management	HRMS-Employee Profile
Non-Freight Billing	Fixed Asset Project Accounting
Corporate Financial Reporting	Accounts Payable
Operations Support	Car Account
Risk Management	Property Tax Compliance
Purchasing and Material Inventory	Treasury
Payroll Warehouse Control Systems	

## Infrastructure

Analysis of Data Warehouse	CSX/NS Communication's Node Leased Space
Enhancement of CRR Development Environment	Gateways into the CRR IP Network
IDNX Network Separation	MQ/BDI/Interactive 3270 Access Implementation
NS/CSX Location Communications Infrastructure Planning	Separation of FDI Network
SNA Data Network Separation	Unified Dialing Plan
Training links from NCSC to CSX and NS	Data Filtering and Routing

## Year 2000 Projects

Y2K CAD Compliance	Y2K Transportation Operations Systems
Y2K Train Dispatching	

# **Infrastructure Plan Status**

- **Dispatch**
- **Signals**
- **Communications**
- **Computer Operations**



# **What Technology Is Doing To Support:**

## **Dispatch**

- Train Dispatching for the Acquired CR Territories will be operated from the existing facilities
- CSX/NS's Operating Plan will be implemented on split day
- The complete office separation will occur during field rollout
- Train Dispatching desks will be realigned to support CSX, NS and SAC implementations after split day

# **What Technology Is Doing To Support:**



## **Signals**

- Centralized Management will be established on split day
- Design and Engineering Support functions will be consolidated on split day
- Existing CR Signal Help Desk functions will remain in place on split day
- Existing CR Signal Shop will remain in place on split day
- CR employees will participate in the Safety Certification and G&A systems training during field rollout
- Existing Signal Help Desk will be closed and consolidated at Signal Control Center during field rollout
- Existing Signal Shop will be closed and consolidated during field rollout

# **What Technology Is Doing To Support:**

## **Communications**



- Manage as one organization on the Split Day
- Establish geographic field districts integrating acquired properties
- CSX/NS and Conrail technician responsibilities remain the same on Control Date
- Conduct safety certification and operating rules training for Conrail staff
- Requests for services addressed to the CSX/NS Service Desk
- Troubles reported to the CSX/NS Network Control Center
- Continue to operate Conrail's radio repair shops after the Control Date
- Gradually consolidate radio repair into CSX/NS's shop to maintain stability
- Physically separate of Conrail's voice, data, and dispatch networks into CSX, NS, and SAC sub networks
- Install a high capacity, high speed data bridge between the Conrail and CSX/NS data centers

# **What Technology Is Doing To Support:**



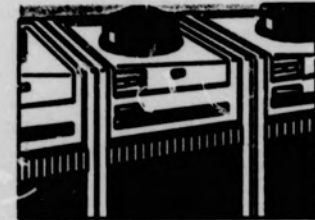
## **Communications**

- Realign Conrail radio frequencies for CSX, NS, and SAC usage to ensure safe and efficient rail operations
- Integrate CSX/NS and Conrail voice networks to provide seven digit dialing among CSX, NS, Conrail, and SAC offices and yards
- Existing Conrail 800 number will refer calls to appropriate CSX/NS 800 number, on split day
- Current Conrail Customer Service and Crew Calling 800 service will remain through June 1999



# **What Technology Is Doing To Support:**

## **Computer Operations**



- Capacity expansion in place on split day
- Conrail will continue to operate the Conrail Data Center on split day
- Test Environments will be available to test flash cut and field rollout systems before split day
- All Employees will have one e-mail address and mail box on split day
- Shutdown of CR Data Center will only occur after field rollout is complete

# **Application Plan Status**

- G&A
- Revenue Management
- Operations
- Intermodal

# **What Technology Is Doing To Support:**

## **General Office & Administration**

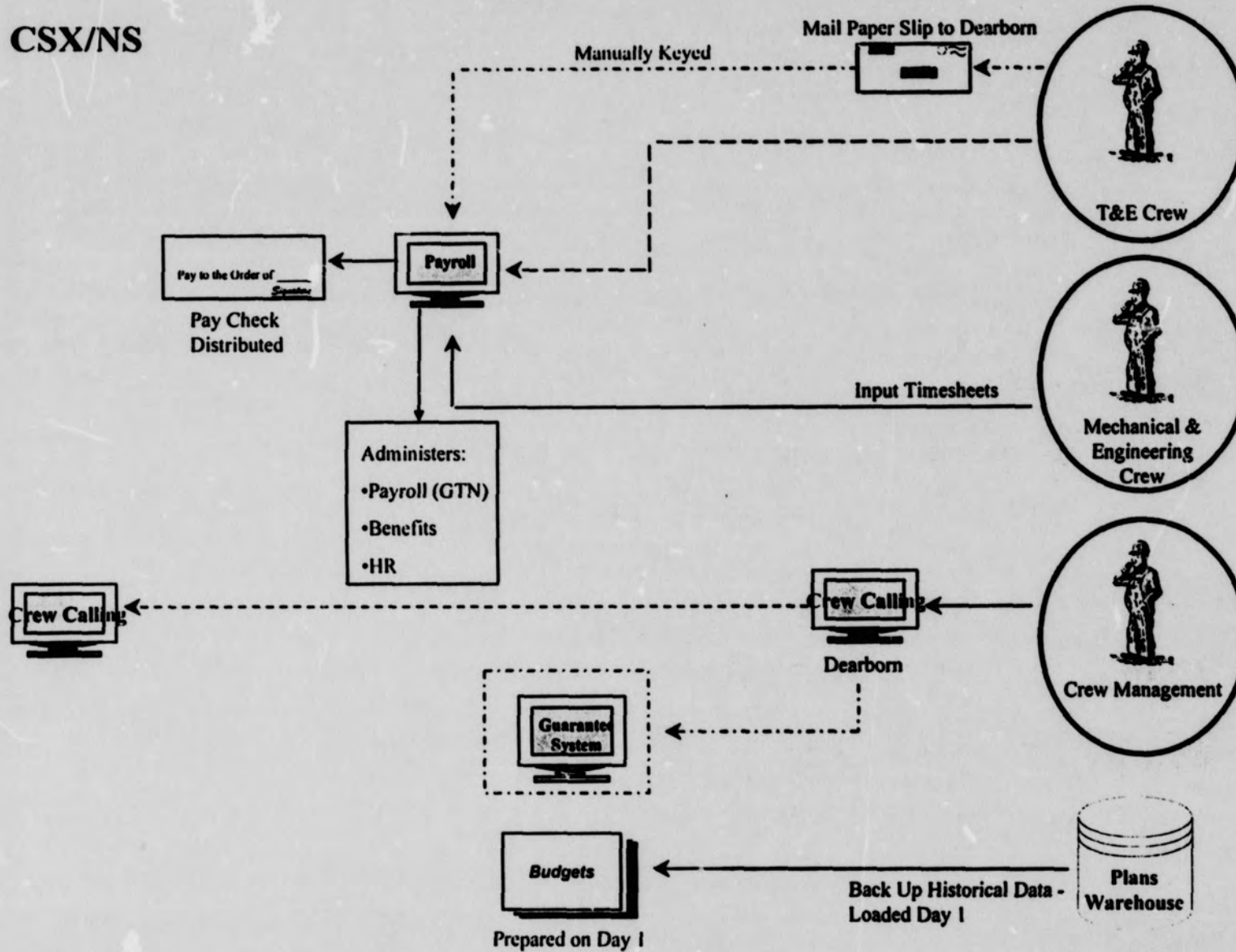


- G&A Systems will be flash cut on split day
- CSX/NS systems will replace Conrail Expenditures Billing, Property Accounting, Purchasing Materials, Budgets and Accounts Payables Systems on split day
- Field locations using G&A systems will either have equipment installed and be trained on the equipment or they will fax/e-mail information to CSX/NS for input into CSX/NS systems
- There will be residual processing in some of the major areas, excluding Budgets
- CSX/NS systems will replace Conrail's HR, Payroll, and Benefits systems on split day
- T&E will submit paper timesheets to Dearborn for input into the CSX/NS system on split day. CSX/NS payroll processes will be implemented during TECS rollout, which is a separate schedule from field rollout
- Non T&E employees will input their timesheets into CSX/NS Time-to-Gross payroll system on split day
- Crews will be called using the CR CAPS system on split day. Crew callers will be trained on CSX/NS system in a phased rollout

# G&A Process Flow

CSX/NS

CONRAIL



- Implemented During Roll-out
- Eliminated During Roll-out



# **What Technology Is Doing To Support:**



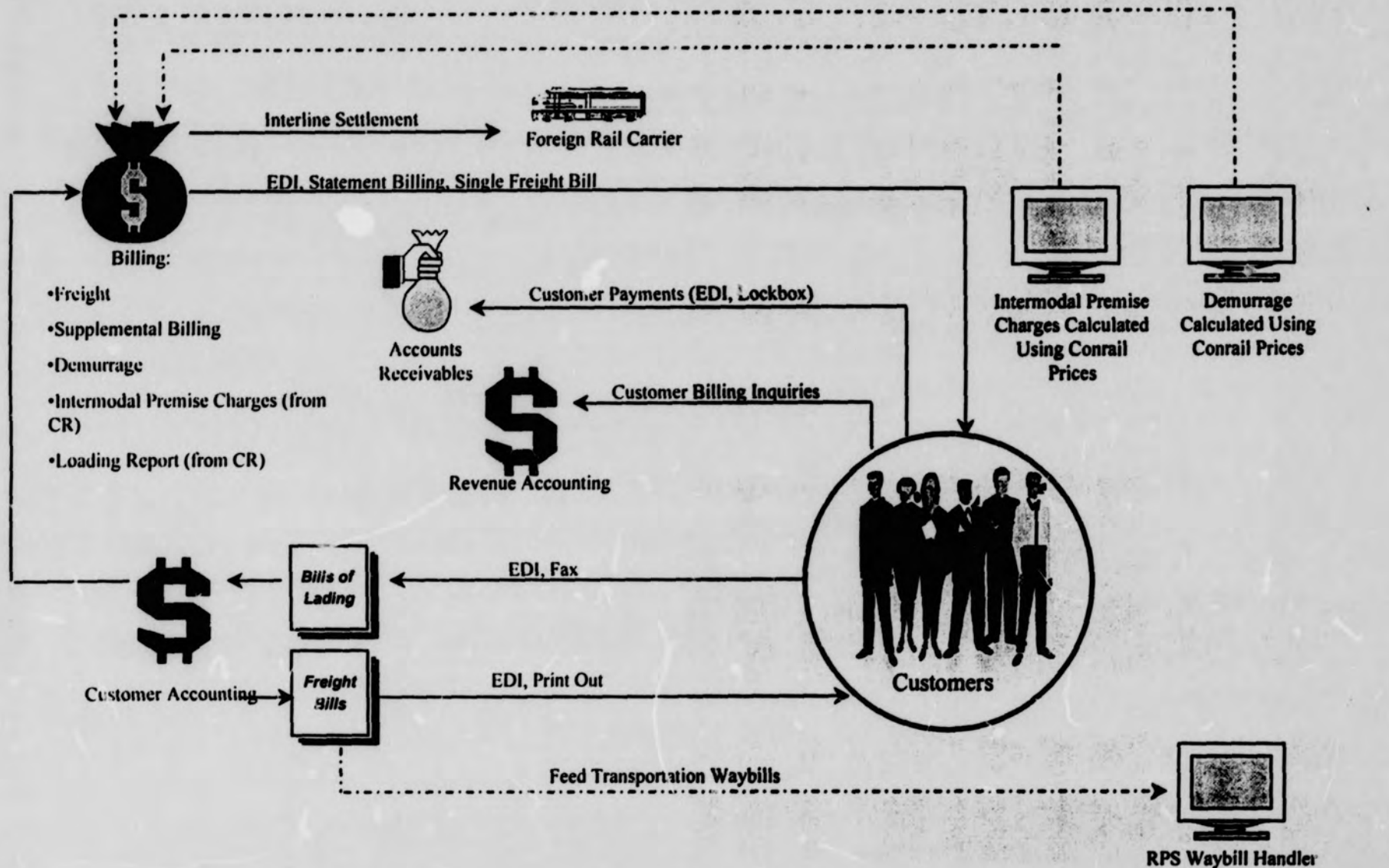
## **Revenue Management**

- All waybilling is in the CSX/NS system, on split day
- CSX/NS will become the source of billing for all previous CR traffic for freight, demurrage, and Intermodal premise charges, on split day
- CSX/NS will handle all customer billing disputes for traffic waybilled Day 1 or after, on split day
- Supplemental billing (excluding Demurrage) will be done in CSX/NS systems, on split day
- Data transfer for Demurrage billing from CR systems to CSX/NS freight bill, on split day
- System supporting Sales & Marketing will be flash cut on Split day
- All interchanges are reported CSX/NS, after field rollout
- Demurrage closings are performed in CSX/NS systems, after field rollout
- Pre Day 1 freight bills and residuals will be processed in the Conrail systems

# Revenue Management Process Flow

CSX/NS

CONRAIL



- Eliminated During Roll-out

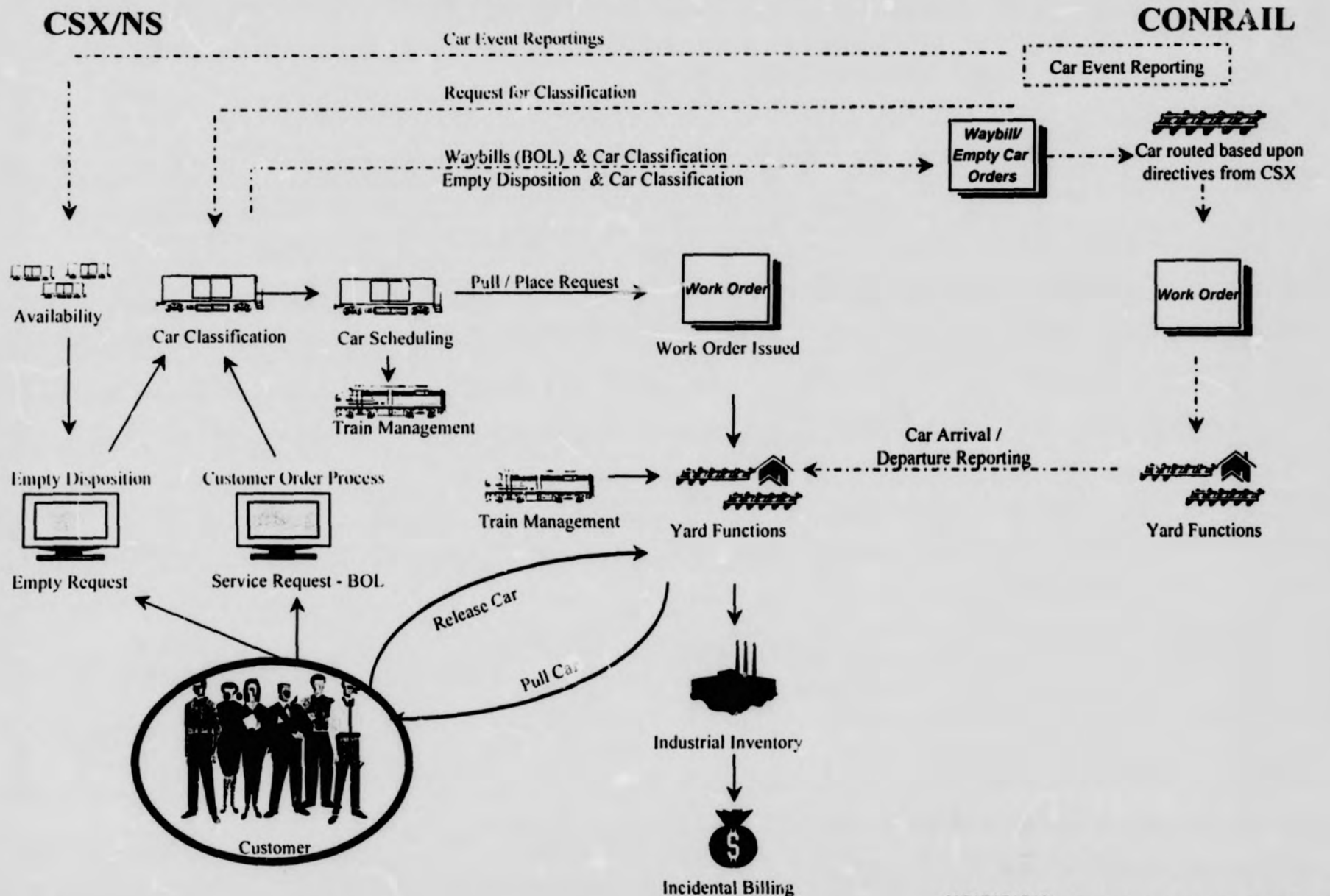
# What Technology Is Doing To Support:



## Operations - Car Management

- CSX/NS systems will be used for planning and distribution on split day
- Conrail will handle car event reporting and pass to CSX/NS for tracking and tracing of assets
- CSX/NS will receive empty order requests and pass the information to Conrail
- CSX/NS will manage car classification and empty disposition which will be sent to Conrail for execution
- Conrail will handle Industrial Inventory and pass the information to CSX/NS
- CSX/NS will manage car scheduling and will pass route and classification information to Conrail for execution
- Conrail will rate incidental services and transmit to CSX/NS for billing
- Conrail will provide yard functions and switching and car arrival/departure reportings will be passed to CSX/NS
- New crew management agreements will be in Conrail systems on split day

# Car Management Process Flow



- Eliminated During Roll-out



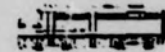
# What Technology Is Doing To Support



## Operations - Train Management

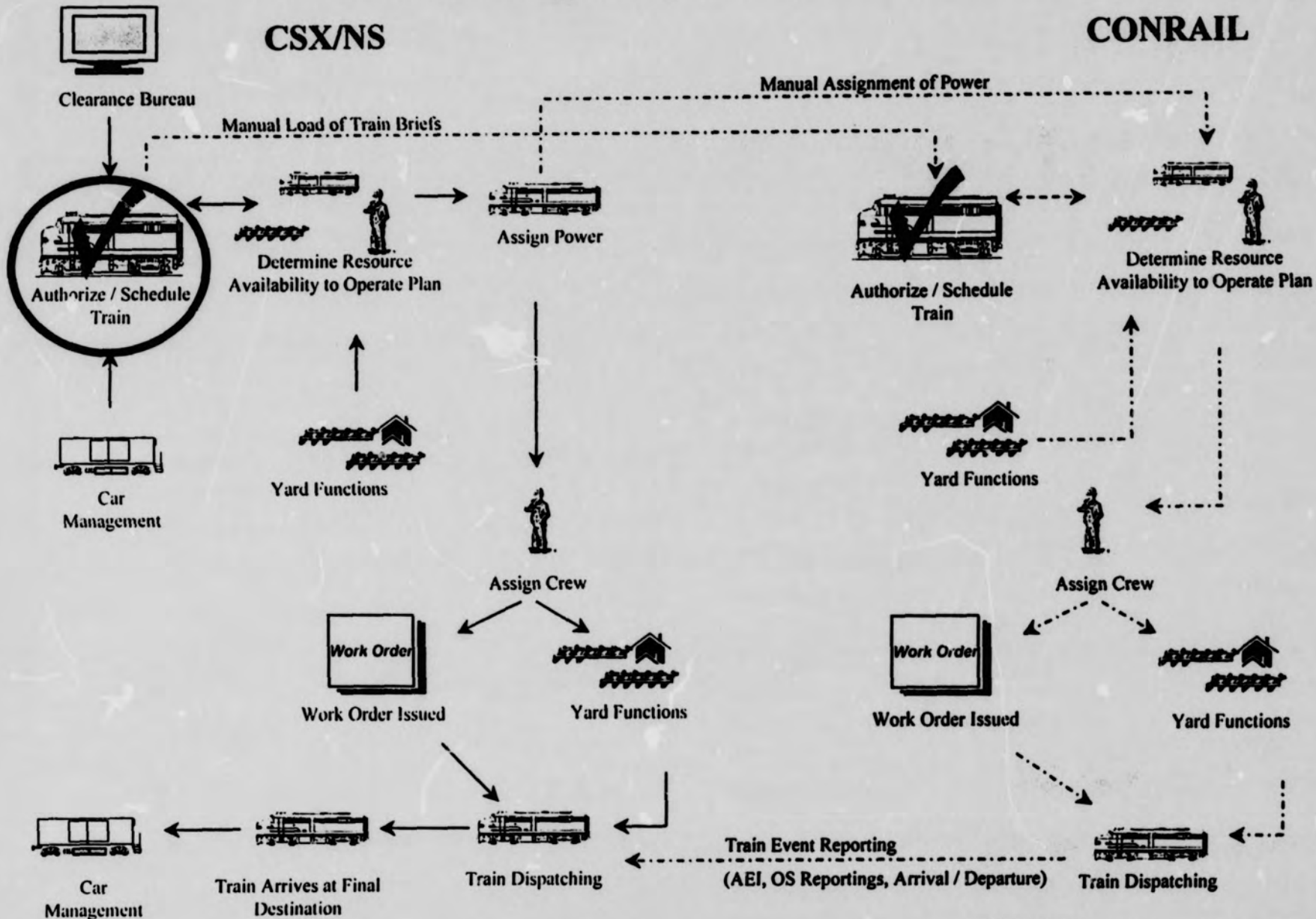
- CSX/NS systems will be used for planning split day
- CSX/NS will provide clearance on all trains and shipments and pass that information to Conrail
- Train and Locomotive events will be posted to the CSX/NS systems and available for tracking and tracing on split day
- Locomotive Management will be managed by CSX/NS with locomotive assignments coordinated manually in Conrail and CSX/NS systems
- Conrail will dispatch trains on territories that have not been transitioned to CSX/NS as part of the dispatcher rollout
- Conrail will issue Work Orders on territories that have not been transitioned to CSX/NS as part of the field rollout
- Conrail will handle yard functions on territories that have not been transitioned to CSX/NS as part of the field rollout
- On split day CSC/NS will have access to AAR "Last Move" and ETA information
- Conrail AEI site and tag encoder workstations will be integrated on split day

# Train Management Process Flow



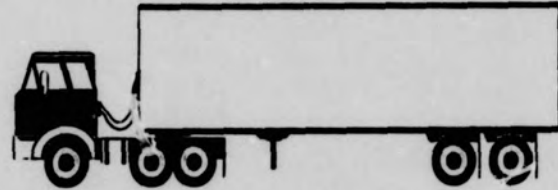
CSX/NS

CONRAIL



- Eliminated During Roll-out

# **What Technology Is Doing To Support:**



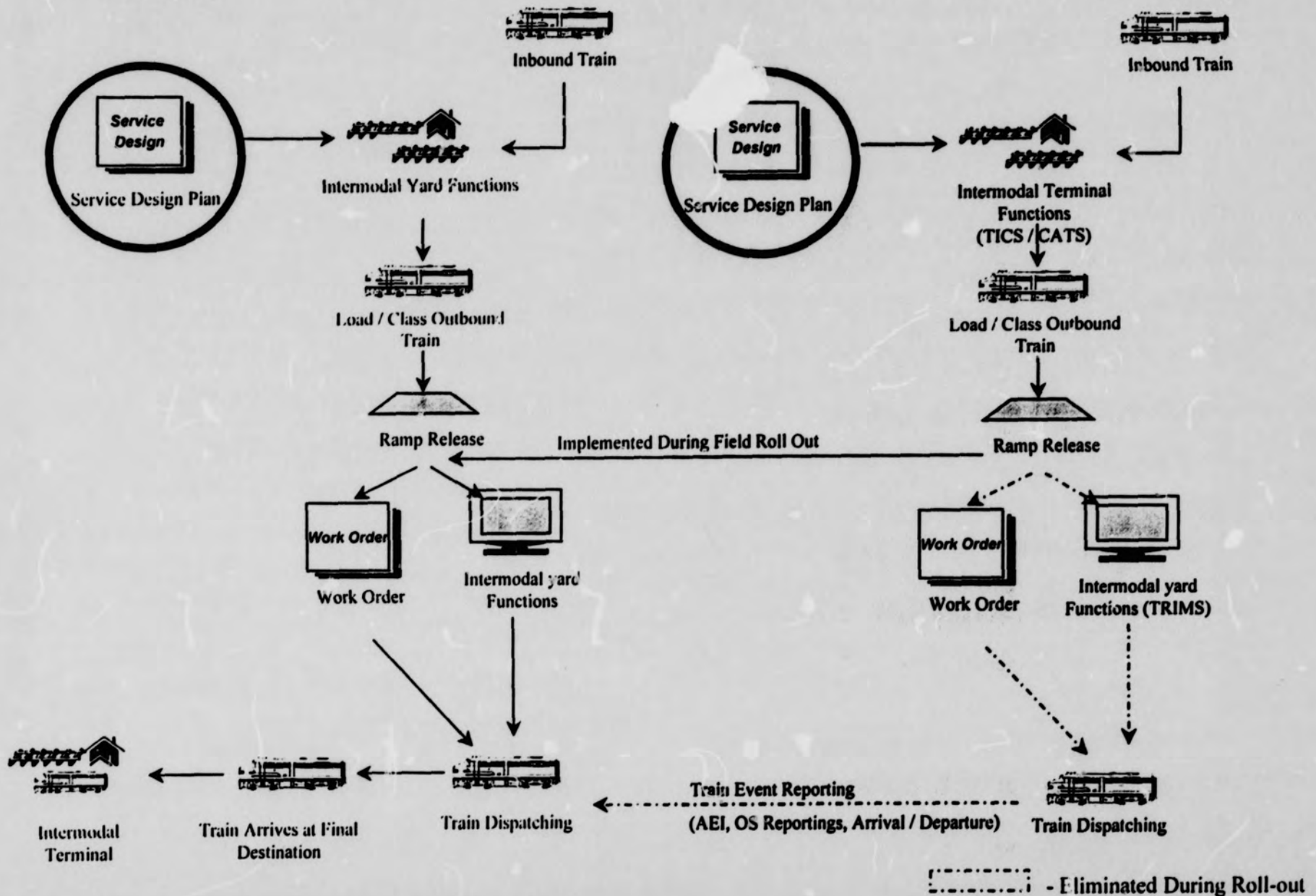
## **Intermodal**

- CR Terminal Systems will be used on split day and interfaced with CSX/NS Systems
- All waybills and billing will be created by CSX/NS systems
- CSX/NS G&A systems will be used on split day
- CR Customers will be serviced by CSX/NS Customer Service Centers
- CR Equipment Management/Reservations System will continued to be performed manually on split day
- Billable repairs to be handled by CSX/NS on split day
- CR Terminals will utilize CSX/NS systems on split day and will be transitioned to the CSX/NS systems during field rollout

# Intermodal Process Flow

CSX/NS

CONRAIL





# NITL MEETING SIGN-IN SHEET

Meeting CTC MTG 6-9-98 Date: \_\_\_\_\_  
 Location AAR

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