

STB

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18. Applicants object to this interrogatory on the basis that the term "relating to" is vague, ambiguous and overbroad. Applicants further object to this interrogatory as overbroad and imprecise to the extent that Ashtabula, Ohio is not a defined term. Without waiving any objection, and subject to the General Objections stated above, CSX and NS respond as follows:

NS: All projections of the total traffic of chemical products moved on east and west lines and north and south lines in and through Ashtabula, Ohio are contained in the Norfolk Southern CD ROM (NS-19-HC-00001). Subsequent to April 22, 1997, the CD ROM was supplemented by an additional CD ROM in a format that may be manipulated and sorted by use of a readily available computer program (NS-19-HC-00002).

CSX: See the Verified Statement of Howard Rosen, Volume 2A at page 154.

Interrogatory No. 19

Please identify any and all documents relating to routing and scheduling of trains in Ashtabula, Ohio post transaction.

19. Applicants object to this interrogatory as overbroad and imprecise on the basis that Ashtabula, Ohio is not a defined term. Applicants further object to this interrogatory on the basis that the term "relating to" is vague, ambiguous and overbroad. Without waiving any objection, and subject to the General Objections stated above, CSX and NS as follows:

CSX and NS projected train schedules may be found in Applicants' depository. See CSX 21 CO 009413-010044 and NS-21-CO-07358-09247.

Interrogatory No. 20

Describe the "total ground storage, throughput & tonnage capacity" at the Ashtabula Harbor facilities at Ashtabula, Ohio, and identify any documents relating thereto.

20. Applicants object to this interrogatory as overbroad and imprecise on the basis that Ashtabula, Ohio is not a defined term. Applicants further object to this interrogatory on the basis that the term "relating to" is vague, ambiguous and overbroad. Without waiving any objection, and subject to the General Objections stated above, CSX and NS respond as follows:

See Applicants' responses to Interrogatory No. 5 and Document Request No. 6 in CSX/NS-87, Applicants' Responses to BLE-5.

Interrogatory No. 21

Please describe the "ample competitive alternatives" referred to in James W. McClellan's Verified Statement (Volume 1 of the Application) available to ASHTA Chemicals, Inc. in Ashtabula, Ohio, and identify any plans or studies of the competitive alternatives available to ASHTA Chemicals, Inc. If no such plans or studies have been prepared or undertaken, please so indicate.

21. Applicants object to this request on the basis that the interrogatory mischaracterizes the Verified Statement of James W. McClellan. Without waiving any objection, and subject to the General Objections stated above, NS responds as follows:

The quoted reference is to the following sentence appearing on page 547 of Mr. McClellan's Verified Statement: "Lake coal customers will continue to have ample competitive alternative [CSX at Toledo; NS and CSX as Ashtabula; Bessemer and Lake Erie at Conneaut]." This statement speaks for itself. NS has not made any specific plans or studies of the competitive alternatives available to ASHTA Chemical, Inc. other than those described in the Application.

Interrogatory No. 22

Please identify any plans or studies undertaken to determine how the proposed allocation of Conrail line in Ashtabula, Ohio will affect the largest shippers in that area. If no such plans or studies have been prepared or undertaken, please so indicate.

22. Applicants object to this interrogatory as overbroad and imprecise on the basis that Ashtabula, Ohio is not a defined term. Applicants further object to this interrogatory on the basis that the term "largest shippers" is vague and ambiguous and susceptible to more than one meaning. Without waiving any objection, and subject to the General Objections stated above, CSX and NS respond as follows:

See response to Interrogatory Nos. 5 and 6.

Interrogatory No. 23

Please state whether or not you anticipate that ASHTA Chemicals, Inc.'s current freight rates will change over the next five years, describe the anticipated change, and identify any plans, studies, projections or proposals relating to any such rate adjustment.

23. Applicants object to this request on the basis that the term "relating to" is vague, ambiguous and overbroad. Applicants also object to this request on the basis that it seeks a business commitment to which requester is not entitled in the discovery process. Without waiving any objection, and subject to the General Objections stated below, CSX and NS respond as follows:

No such studies or projections have been made. At this time, Applicants do not know how freight rates will change in next five years.

Interrogatory No. 24

Please identify the annual revenues you have projected will be derived from travel via the rail routes in the Area.

24. Applicants object to this interrogatory on the basis that the term "derived from travel" is vague and ambiguous and susceptible to more than one meaning. Applicants object

to this request as overly broad. Without waiving any objection, and subject to the General Objections stated above, CSX and NS respond as follows:

No such information exists.

Interrogatory No. 25

Identify or project: A) the revenues you would generate if a reciprocal switching arrangement were entered into in the Area (other than at Ashtabula Harbor) for traffic moving out of the West Yard; B) the costs incurred for traffic via those routes; and, C) the ratio of revenues to cost and all circumstances relevant to any difference in those ratios.

25. Applicants object to this request in that it seeks information based on a hypothetical situation. Applicants object to this request to the extent that it seeks only information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Applicants object to this request on the basis that the term "all circumstances relevant" is vague and ambiguous and susceptible to more than one meaning. Without waiving any objection, and subject to the General Objections stated above, CSX and NS respond as follows:

See response to Interrogatory No. 24.

Interrogatory No. 26

Please state the capacity of any terminal facilities in the Area; the percentage of capacity at which these facilities are currently operating; and the percentage of capacity at which these facilities are projected to operate after the proposed merger. If any terminal facilities outside the Area will be impacted by reciprocal switching in the Area, please identify these facilities as well, and describe the impact which reciprocal switching in the Area will or might have on them.

26. Applicants object to the characterization of the proposed Transaction as a "proposed merger." Applicants object to the term "capacity of any terminal facilities in the Area" as vague, ambiguous and over broad. "Capacity" has many meanings and is subject to

a multitude of interpretations. Applicants will interpret "capacity" to mean the space available for cars within a defined boundary. "Terminal facilities" also has many meanings and is subject to a multitude of interpretations. Applicants will interpret "terminal facilities" to mean a location where cars are received, dispatched, classified, stored and switched. Without waiving any objection, and subject to the General Objections stated above, Applicants respond as follows:

CSX and NS: There is sufficient capacity to handle anticipated traffic. See CSX and NS Operating Plans, Volume 3A and 3B.

Conrail: Carson Yard has capacity for 300 cars and is currently operating at approximately 90% capacity. West Yard has capacity for 900 cars and is currently operating at approximately 80% capacity.

Interrogatory No. 25 [sic]

Please identify and explain any objections which you have now or may have in the future to competitive access or to the use of reciprocal switching in Ashtabula, Ohio.

25. Applicants object to this interrogatory on the basis that the term "competitive access" is vague and ambiguous and susceptible to more than one meaning. Applicants object to this request in that it seeks information that would be based on a hypothetical, future situation. Applicants further object to this interrogatory as overbroad and imprecise on the basis that Ashtabula, Ohio is not a defined term. Without waiving any objection, and subject to the General Objections stated above, CSX and NS respond as follows:

To the extent that this interrogatory seeks information regarding present objections, NS objects to competitive access or the use of reciprocal switching in Ashtabula, Ohio to the extent not encompassed in the Transaction Agreement, Volume 8B and 8C. The decision to

have a switching arrangement at Ashtabula Harbor was the culmination of an arms length bargaining process over the division of Conrail assets and was only one aspect of the negotiation of a complex plan to divide a major rail system consisting of thousands of miles of track and hundreds of rail facilities.

Interrogatory No. 26 [sic]

Please indicate whether there are or ever were any switching arrangements in the Area to which you are or ever were a party. Please identify any such switching arrangements; the location(s) thereof; the persons/parties involved; the volume of traffic handled by any such switches, and any documents relating thereto.

26. Applicants object to this interrogatory on the basis that the term "relating thereto" is overbroad, vague and ambiguous. Without waiving any objection, and subject to the General Objections stated above, Applicants respond as follows:

CSX: No

NS: No.

Conrail: Conrail does not perform reciprocal switching in Ashtabula. There is a joint facilities agreement between CSX and Conrail. Responsive documents have been placed in Applicants' depository. See response to Document Request No. 6 in CSX/NS 87, Applicants' Response to BLE-5.

Interrogatory No. 27

Please indicate whether there are any other persons who are requesting or have requested competitive access or reciprocal switching in the Area. Please identify any such persons, indicate whether each request has been or will be granted or denied, and identify the reasons for the grant or denial of such requests.

27. Applicants object to this request on the basis that the terms "any other person" and "competitive access" as both vague and ambiguous and susceptible to more than

one meaning. For purposes of this interrogatory, Applicants assume that the term "competitive access" is defined as the ability to reach or transport commodities to facilities in the Area. Applicants also object to this request on the basis to the extent it seeks a business commitment to which requester is not entitled in the discovery process. Without waiving any objection, and subject to the General Objections stated above, CSX and NS respond as follows:

No.

Interrogatory No. 28:

28. Please indicate whether during the past three years any complaints against you have been filed with the STB that relate to the rates that you charged or the quality of service that you provide in the area; in Ohio? Please identify and explain any such complaints; identify the persons responsible for making any such complaints, and any action which you have taken thereon.

28. Without waiving any objection, and subject to the General Objections stated above, Applicants respond as follows:

This information is available to requester from public sources.

Interrogatory No. 29:

Please indicate whether any proceedings/actions have been brought under Chapter 49 of the United States Code or the Staggers Act within the last three (3) years in which you were named as defendants. Please identify any such proceedings/actions.

29. Without waiving any objection, and subject to the General Objections stated above, Applicants respond as follows:

This information is available to requester from public sources.



**REQUEST FOR PRODUCTION OF DOCUMENTS**

**Document Request No. 1:**

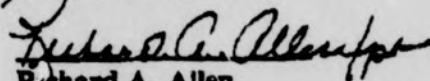
Please provide all documents identified in answer to the foregoing interrogatories.

1. Without waiving any objection, and subject to the General Objections stated above, Applicants respond as follows:

Other than the Application, and the documents referred to above that have already been placed in Applicants' depository, there are no additional responsive documents.

Respectfully submitted,

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James L. Howe III  
Robert J. Cooney  
George A. Aspatore  
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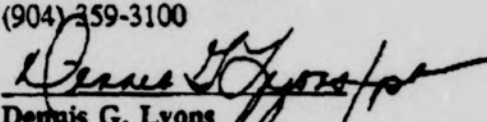
  
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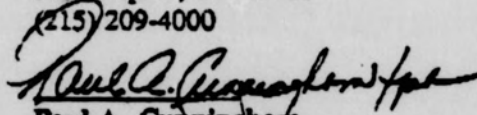
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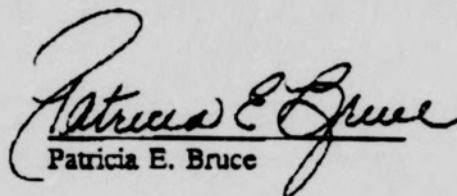


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**(202) 973-7600**  
**Counsel for Conrail Inc. and**  
**Consolidated Rail Corporation**

**Dated: October 8, 1997**

CERTIFICATE OF SERVICE

I, Patricia E. Bruce, certify that on October 8, 1997 I caused to be served by facsimile service, a true and correct copy of the foregoing CSX/NS-96, Applicants' Responses to ASHTA Chemicals Inc.'s First Set of Interrogatories to Applicants and Request for Production of Documents (ASHT-7) on all parties that have submitted to the Applicants a Request to be Placed on the Restricted Service List in STB Finance Docket No. 33388.

  
Patricia E. Bruce

Dated: October 8, 1997

STB

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10-21-97

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**DENNIS J. KUCINICH**

10TH DISTRICT, OHIO

1730 LONGWORTH OFFICE BUILDING  
WASHINGTON, D.C. 20515  
(202) 225-5871

14400 DETROIT AVENUE  
LAKEWOOD, OHIO 44107  
(216) 228-8850



**Congress of the United States  
House of Representatives**

182979

Committees:  
Government Oversight

Education  
and the  
Workforce



October 21, 1997

Ms. Linda J. Morgan  
Chairman  
Surface Transportation Board  
1925 K St. NW #820  
Washington, D.C. 20423

Dear Ms. Morgan:

RE: Finance Docket No. 33388

~~Columbiana~~

Dear Ms. Morgan:

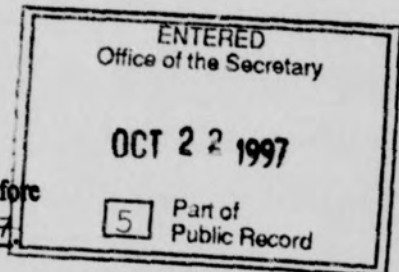
I certify that I have this day served copies of the attached Responsive Application upon all Parties of Record in this proceeding, by first class mail, as required by the Surface Transportation Board under 49 C.F.R. § 1104.12(a).

Sincerely,

Dennis J. Kucinich  
Member of Congress

DJK:mg

DISTRICT OF COLUMBIA  
Subscribed and sworn (or affirmed) to before  
me this 21<sup>ST</sup> day of OCTOBER 1997.



DAVID J. ROBINSON  
Notary Public  
District of Columbia  
My Commission Expires September 14, 2002

**DENNIS J. KUCINICH**  
10TH DISTRICT, OHIO

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**Congress of the United States**  
**House of Representatives**

**Committees:**  
Government Oversight  
Education  
and the  
Workforce

October 21, 1997



The Honorable Linda J. Morgan  
Chairman  
Surface Transportation Board  
1925 K St. NW #820  
Washington, D.C. 20423

RE: Finance Docket No. 33388  
~~Subnumber 74~~

Dear Ms. Morgan:

I, Dennis J. Kucinich, a Member of Congress representing Ohio's 10th district and as a Party of Record to this proceeding, hereby submit my Responsive Application to the Railroad Control Application for Finance Docket No. 33388 and declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Responsive Application. Executed on October 21, 1997.

Sincerely,

Dennis J. Kucinich  
Member of Congress

DJK.mg

DISTRICT OF COLUMBIA

Subscribed and sworn (or affirmed) to before  
me this 21st day of October 1997.

DAVID J. ROBINSON  
Notary Public  
District of Columbia  
My Commission Expires September 14, 2002

DAVID J. ROBINSON  
Notary Public  
District of Columbia  
My Commission Expires September 14, 2002



**Responsive Application**  
(Subnumber 74)

**October 21, 1997**

Filed with the  
Surface Transportation Board  
by  
**Congressman Dennis J. Kucinich**  
Ohio District 10



## **I. Executive Summary**

In June, 1997, CSX Corporation and Transportation, Inc. ("CSX") and Norfolk Southern Corporation and Railway Co. ("Norfolk Southern") filed a railroad control application with the Surface Transportation Board ("STB") to acquire control of Conrail Inc. and the Consolidated Rail Corporation (Finance Docket No. 33388).

As part of the merger application, Norfolk Southern proposed increasing freight traffic on the Cleveland-Lorain-Vermillion route from 13.5 trains per day to 37.8 trains per day, a near-tripling of the freight train traffic along that route. The Cleveland-Lorain-Vermillion route is currently owned in its entirety by Norfolk Southern and is used mostly for through cargo. As part of the application, Norfolk Southern will acquire the part of Conrail that also runs from Cleveland to Vermillion through the Berea terminal to the southwest of Cleveland. This route currently serves shippers in the Cleveland area. Currently, Conrail competes with CSX for shippers' business along the Cleveland-Berea axis and Conrail competes for shippers' business with Norfolk Southern between Vermillion and Berea.

The Berea junction is currently operated by Conrail. Under the merger proposal, CSX will control the Berea terminal. Understandably, Norfolk Southern would be hesitant to assent to a plan that requires its trains to be controlled in Berea by its chief competitor in the Cleveland area, CSX. However, Norfolk Southern's plan to avoid Berea by directing its traffic along the Cleveland-Lorain-Vermillion route will have anti-competitive effects for the Cleveland area and create severe safety problems in heavily populated areas of Cuyahoga County.

Norfolk Southern's plan to divert its freight traffic from the Cleveland-Berea-Vermillion line in favor of the Cleveland-Lorain-Vermillion route will frustrate the efforts of communities and regional planning authorities in the Cleveland area to institute a commuter rail system that would serve the transportation needs of the region. It may also have detrimental effects on other railroads in the region. Furthermore, the merger will result in a loss of jobs. Moreover, the merger will result in Cleveland-area shippers losing competition among carriers. Because of these economic effects of the merger that the STB must consider in making its decision on the merits of the merger, the STB should not approve the merger as proposed.

As an alternative to the merger as proposed, the STB should consider a plan to create an independent, neutral, dispassionate regional entity that would control freight and passenger rail in the Cleveland area. The new regional entity would serve shippers in the area, as well as the railroads serving shippers in the area. The entity would also serve the transportation needs of the region by allowing commuter rail traffic along railroad lines that are not suited for high-volume freight train traffic.

This independent neutral regional entity will be a model for intra-urban rail transportation in the 21st Century. Using the best competitive features of the air transportation system, this plan would use a dispatching system similar to the air traffic control systems of most modern airports.

It also incorporates the methods used by other deregulated utilities, such as the telephone industry.

A dispassionate regional operating entity for the Cleveland area will ensure that shippers within the intra-urban region will have competitive rail service in addition to the competitive truck service that they already enjoy. Without such an entity, service will be limited to carriers with both access to, and control of, the lines that those carriers own. Access will also be granted to one or more passenger rail companies willing to serve commuters in the Cleveland area. By granting control of the regional lines to a dispassionate independent entity, the best interests of all parties will be served.

**II. Congressman Dennis J. Kucinich, a party of record in the proposed merger, requests that the Surface Transportation Board either reject the merger application by Norfolk Southern and CSX for the acquisition of Conrail, or as an alternative, place conditions on the merger that would better meet the public interest standard required under the Interstate Commerce Commission Termination Act of 1995.**

Under § 11323(a)(3) of the Interstate Commerce Commission Termination Act of 1995 ("ICCTA"), the U.S. Surface Transportation Board ("STB") must approve and authorize any "[a]cquisition of control of a rail carrier by any number of rail carriers."<sup>1</sup> Section 11324 describes generally each of the issues the STB must consider in a proceeding involving such an acquisition:

In a proceeding under this section which involves the merger or control of at least two Class I railroads, as defined by the Board, the Board shall consider at least—

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

Section 11324© of the ICCTA mandates that the STB apply a public interest standard<sup>3</sup>

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<sup>1</sup> See 49 U.S.C. § 11323(a)(3).

<sup>2</sup> See 49 U.S.C. § 11324(b).

<sup>3</sup> Public interest, as applied to the STB's authorization to approve rail mergers, refers to the interest the public has in adequate and efficient rail transportation. See United States v.

and authorizes the STB to impose conditions on the transaction to alleviate any anti-competitive effects.<sup>4</sup> In the proposed transaction involving Norfolk Southern and CSX's acquisition of Conrail, the STB must apply a public interest standard and is authorized to impose conditions on the merger to alleviate anti-competitive effects.

In the proposed merger, there are effects that the STB needs to consider because they would have detrimental effects on the public interest. Among the effects of the proposed merger is the frustration of Cleveland-area interests in a commuter rail system that would include the west side of Cleveland and Cleveland's western suburbs of Lakewood, Rocky River, Bay Village, Westlake, and the suburbs and cities in Lorain County. The STB must also consider the effect of the merger on other local carriers such as the Wheeling & Lake Erie Railway Company ("WLE") or the Greater Cleveland Regional Transit Authority ("GCRTA"). Another effect that the STB must consider is that of the employees in the Cleveland area who would lose their jobs or whose jobs would be threatened. Still another effect that the STB must consider is the adverse effect on shippers in the Cleveland area. Each of these issues must be addressed to the satisfaction of the public interest standard that the STB is required to consider in §§ 11324(b) and 11324(c) or the merger should be denied.

Alternatively, a win-win proposal for the carriers, shippers, and consumers of the Cleveland area would be the establishment of: (1) a third party entity to operate the rail lines in the Cleveland area that currently carry rail cars for Norfolk Southern, CSX, and Conrail; and (2) an independent dispatching entity to control the flow of all freight and passenger traffic in and through Northeast Ohio. This proposal will alleviate the concerns of Norfolk Southern that led to its proposal to triple freight train traffic on the West Shore line through Cleveland, Lakewood, Rocky River, Bay Village, Westlake, and Lorain. This proposal will also alleviate the anti-competitive effects of leaving the shippers along the Cleveland-Berea axis to be serviced by only one carrier as currently proposed by Norfolk Southern in the Conrail application.

**III. The Conrail merger plan, as proposed, will have an adverse effect on the economic and competitiveness issues that the STB is statutorily required to consider when making its decision to authorize the plan.**

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Lowden, 308 U.S. 225, 230 (1939). In considering the public interest, the STB must consider the interest of carriers, shippers, and consumers, and weigh the competing interests where conflict arises. See Norfolk & W.R. Co. v. Detroit, T & I. R. Co., 360 I.C.C. 498 (1979).

<sup>4</sup> See 49 U.S.C. § 11324(c). "The Board shall approve and authorize a transaction under this section when it finds the transaction is consistent with the public interest. The Board may impose conditions governing the transaction, including the divestiture of parallel tracks or requiring the granting of trackage rights and access to other facilities. Any trackage rights and related conditions imposed to alleviate anti-competitive effects of the transaction shall provide for operating terms and compensation levels to ensure that the effects are alleviated." *Id.*

The proposed Conrail merger will have detrimental effects on the Cleveland area's economics and competitiveness. It will scuttle plans by local communities, regional planners, and passenger rail companies to provide needed commuter rail to residents of densely populated western suburbs. It will detract from the competitive choice between CSX and Conrail that local shippers currently enjoy. It will cost jobs in the Northeast Ohio area. And it fails to make use of other railroads in the area that could serve shippers and the public.

**A. Commuter rail will be threatened if the merger takes place as proposed.**

The Greater Cleveland Regional Transit Authority ("GCRTA"), the regional bus and rapid transit carrier for the Cleveland area, currently runs three rapid transit lines from Cleveland's east side to downtown Cleveland, the Blue and Green Lines from the eastern suburb of Shaker Heights, and the Red Line, originating in the eastern suburb of East Cleveland. The Red Line continues from downtown's Tower City to Cleveland Hopkins Airport at the southwestern edge of Cleveland. Plans are currently underway for a Red Line expansion to Berea. Beyond Berea, the population becomes less dense as the Conrail line heads west through Olmsted Falls, Olmsted Township, Lorain County, and points west that are served by that line. While the GCRTA Red Line serves the City of Cleveland as it heads through the west side, it turns to the south as it abuts the City of Lakewood on Cleveland's western edge to the north. Thus, the densely populated suburban areas to the west of downtown Cleveland, i.e., Lakewood, Rocky River, Bay Village, Westlake, Avon Lake, and Lorain, are not served by commuter rail.

Prior to Norfolk Southern's announcement in August of 1997 of its proposal to triple the freight train traffic along this line, Norfolk Southern had planned to abandon the West Shore tracks.<sup>5</sup> Abandonment would have made possible the use of the Cleveland-Lorain-Vermillion line for commuter rail, as proposed by the local communities and the GCRTA.

According to a 1989 study by the Northeast Ohio Areawide Coordinating Agency

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<sup>5</sup> See James F. McCarty, *Plan to triple train traffic have western suburbs steamed*, The Plain Dealer, August 8, 1997, at 1-A. As noted in the Plain Dealer report,

Norfolk Southern's plan is a change from the company's position in March [1997], when officials stated they might abandon the tracks through the western suburbs in favor of a Conrail line that runs through Berea. . . . Norfolk Southern's earlier plan had given hope to Regional Transit Authority officials that a commuter rail line might assume the space vacated by freight trains. But the railroad deemed a commuter rail line on its tracks unworkable under the new proposal, congested tracks and legal liabilities are among the reasons.

See id. at 11-A. See also Ken Prendergast, *Towns cringe as train firms' plan changes*, Lakewood Sun Post, August 7, 1997, at A1 (quoting Norfolk Southern vice president Patrick McCune: "[GC]RTA would have been an obvious successor, had we abandoned that line.")

("NOACA"), the Cleveland-Lorain-Vermillion line "still handles significant through traffic, but not nearly as much as on Conrail's parallel line," i.e., the Cleveland-Berea-Vermillion line which runs through the less densely populated areas identified above.<sup>6</sup> Even at the time of the NOACA report, Norfolk Southern had plans to abandon this line.<sup>7</sup>

The local communities generally want commuter rail, although not as an addition to freight traffic. In addition to any plans that the GCRTA may have to make use of the currently lesser-used Cleveland-Lorain-Vermillion line, the local communities would have the option of selecting another operator of the commuter line had Norfolk Southern maintained its position on the abandonment. By introducing additional choices of passenger carriers, there would have been cost savings in operations. Having a choice of operator would result in better marketing and responsiveness to community needs.

With Norfolk Southern's proposed acquisition of Conrail's Cleveland-Berea-Vermillion line, communities, commuters, and passenger rail operators will be best served if Norfolk Southern returns to its original plan of abandoning, or at least not increasing use of, the Cleveland-Lorain-Vermillion line. Norfolk Southern will be able to ship cargo to points west along its own Cleveland-Berea-Vermillion rail line through a less densely populated region, freeing up the northern trackage for passenger traffic. The merger application as proposed, however, fails to make use the Conrail line through the less densely populated, but instead proposes to triple the freight traffic through the more densely populated northern area.

The proposal has the additional economic effect of driving down housing prices in the affected area. Local realtors have complained that increasing the train traffic through the densely populated western suburbs are driving prospective home-buyers away.<sup>8</sup>

The proposal, therefore, has the effect of providing inadequate transportation to the public in the western suburbs of Cleveland and Lorain County, while simultaneously devaluing property.<sup>9</sup> As proposed, the merger application should be rejected.

**B. Pickups along the Western-Elmwood-Berea route will be reduced if the merger takes place as proposed.**

Shippers along the Cleveland-Berea axis will lose competition among carriers, and the

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<sup>6</sup> The Northeast Ohio Areawide Coordinating Agency, Rail Facilities Study 4-38 (1989).

<sup>7</sup> Id. at 10-1.

<sup>8</sup> See Letter from Paula Reed, Lucien & Associates, Inc., to Congressman Dennis Kucinich, September 26, 1997 (Attachment 1).

<sup>9</sup> See 49 U.S.C. § 11324(b)(1).

railroad industry serving those shippers will lose business if the merger is authorized by the STB as proposed. Many shippers are located in this industrial corridor currently served by both Conrail and CSX.

Among the shippers that will be harmed are the members of the Western-Elmwood-Berea Corporation ("WEBCO"). WEBCO is a twenty-three year old industrial based economic development corporation serving the interests of the shippers that would be detrimentally affected. Among the 40 members of WEBCO are chemical, paper, glass, paint and varnish, tool, battery, lighting, instrument, dairy, distilling, finishing, manufacturing, and warehouse companies. In her written statement to the Federal Railroad Administration ("FRA") at the FRA's hearing in Lakewood on September 21, 1997, WEBCO Executive Director Anita R. Brindza testified:

The WEBCO membership is opposed to any decision by the Surface Transportation Board that will divert freight traffic now being served by CONRAIL on the line that runs through the heart of the west side manufacturing district to the area of the airport and city of Berea. WEBCO does not support putting addition freight on the Westshore line that runs through the heart of residential neighborhoods in Cleveland and the west suburbs.

Receipt of raw materials and shipping of finished products by WEBCO members and other industrial plants is now virtually "*invisible*" to the residential population of Cleveland and its suburbs due to the availability of below grade or above grade track service that CONRAIL provides. Most residents remain unaware of the large machinery, paper products, chemical, steel, automotive components and other raw materials and finished products that are shipped weekly in and out of the west side via rail.

If companies were forced into making a decision to only ship via truck, surface traffic would quadruple. For every rail car that is now utilized, it would take three or four tractor trailers to service the company's needs. Quadrupling truck traffic exponentially increases the likelihood of accidents throughout our area.<sup>10</sup>

As indicated in the above statement, "the proposed transaction would have an adverse effect on competition among rail carriers in the affected region,"<sup>11</sup> i.e., the Cleveland area, if the merger were to be authorized by the STB as proposed. Therefore, the STB should reject the Conrail merger application, as proposed, because of its adverse effect on competition.

**C As a result of the merger, as proposed, the nation, and the Cleveland area in**

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<sup>10</sup> See Anita R. Brindza, Statement to the Federal Railroad Administration, September 21, 1997 (Attachment 2).

<sup>11</sup> See 49 U.S.C. § 11324(b)(5).

particular, will lose jobs.

**According to the merger application, the affected railroads will suffer a net loss of 2,654 jobs, many of which are positions designed to maintain safe railroad cars and track conditions.** These layoffs are system-wide. The consequences for the general public could be very serious considering the movement of hazardous material and nuclear waste by rail through the densely populated communities of Cleveland and the West Shore. Table 1 is a summary of anticipated layoffs by NS resulting from the proposed acquisition of Conrail.

These anticipated layoffs come after almost two decades of declining maintenance and safety personnel on railroads. For example between 1985 and 1995, Union Pacific doubled the ratio of its car shipments to workers from 85:1 to 170:1. Freight trains at one time were served by five or six people, but are now frequently staffed by one engineer and one conductor.<sup>12</sup>

Railroad employees are expected to work 12-hour shifts, take eight hours off, then return to work. But despite the 12-hour limit, the FRA recently found that Union Pacific routinely violates this limit, keeping workers on the job as long as 17 hours. Furthermore, rail workers can be called back to the job with little more than two hours notice. One NS engineer was quoted in *The Washington Monthly* as saying: "I've been forced to go out when I was so exhausted I hallucinated. I've seen things that weren't there, almost gone past signals I thought were one color when they were another."<sup>13</sup>

At the same time that railroads have significantly reduced staff, the Federal Railroad Administration (FRA) has reduced the number of safety inspectors due to budget cuts. Currently, there are 380 inspectors for over one million cars and 300,000 miles of track.<sup>14</sup> The General Accounting Office ("GAO") released a report in July, 1997 which found that the number of safety inspections conducted by FRA decreased by 23 percent, and fewer resources are allocated to responding to concerns about workplace injuries.

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<sup>12</sup> See Nurith C. Aizenman, "The Case for More Regulation," *The Washington Monthly*, October 1997, at 17.

<sup>13</sup> See *id.*

<sup>14</sup> See *id.* at 19.

**Table 1: MERGER-RELATED JOB LOSS<sup>15</sup>**

<b>JOB DESCRIPT.</b>	<b>NO. ABOLISHED</b>	<b>NO. CREATED</b>	<b>NET LOSS</b>
Boilermakers	5	5	0
Carmen	330	18	312
Clerical	834	4	830
Electricians	53	53	0
Engineers	245	457	-212
Laborers	46	14	32
Machinists	85	77	8
Trackmen	473	0	473
Nonagreement	1,170	8	1,162
Police	46	3	43
Supervisors	78	5	73
Sheet Metal Workers	37	9	28
Signalmen	25	10	15
Dispatchers	25	0	25
Trainmen	329	487	-158
Yardmasters	25	2	23
<b>TOTALS</b>	<b>3,806</b>	<b>1,152</b>	<b>2,654</b>

The decrease in safety inspections results from FRA instituting a new cooperative safety program in 1993. Rather than use violations and civil penalties against railroads for noncompliance with safety regulations, FRA has emphasized cooperative partnerships with other federal agencies, railroad management, labor unions, and the states.<sup>16</sup>

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<sup>15</sup> 3B Railroad Control Application 511-26

<sup>16</sup> See U.S. General Accounting Office, Rail Transportation: Federal Railroad Administration's New Approach to Railroad Safety, July 1997, at 4 [hereinafter "FRA's New Approach"].



Because railroad safety has improved greatly over the last three decades — due in large part to technological advances — GAO could not determine the effectiveness of FRA's program. However, it should be noted that "FRA has implemented its Safety Assurance and Compliance Program with 33 railroads. This method has improved the safety on many large railroads, *but Norfolk Southern Corporation has refused to participate until FRA substantiates safety problems at the railroad*" (emphasis added).<sup>17</sup> That a major railroad company would refuse to participate in a safety program instituted by the federal government does not bode well for the residents of Cleveland and the West Shore communities who rely upon the federal government as well as the railroad for their very safety.

Accidents at railroad crossings are the leading cause of deaths associated with the railroad industry; almost half of all rail-related deaths are caused by collisions of trains and vehicles at public crossings.<sup>18</sup> One thousand (1,000) people die each year as a result of grade-crossing accidents.<sup>19</sup> Ohio was among the top five states for having the highest number of rail crossing fatalities in the United States during 1991 through 1993, however, subsequent safety programs have led to a 75 percent decline in rail crossing accidents.<sup>20</sup>

Despite the decline, there are still approximately 100 fatalities at railroad crossings in Ohio annually. GAO recommends several strategies for reducing the number of grade crossing accidents, the most effective being to close them. Given the composition of the west side of Cleveland and West Shore communities — which are bisected by the Cleveland-Lorain-Vermilion line, with hospital and other emergency services on one side of the tracks and significant numbers of people on the other — this strategy is not viable. Another strategy recommended is to install lights and gates. But GAO notes: "However, lights and gates provide only a warning, not positive protection at a crossing."<sup>21</sup> A third strategy is to install four-quadrant gates with vehicle detectors, but these can cost upwards of \$1 million per crossing. With 27 crossing in Lakewood along 5.7 miles of track, this alternative is impractical. Therefore the increase in freight traffic represents an extreme safety hazard which cannot be reasonably mitigated.

As part of its decision-making process in the proposed merger, the STB must consider the

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<sup>17</sup> See *id.* at 5 (emphasis added).

<sup>18</sup> See Phyllis F. Scheinberg, U.S. General Accounting Office, Railroad Safety: DOT Faces Challenges in Improving Grade Crossing Safety, Track Inspection Standards, and Passenger Car Safety, April 1, 1996, at 1 [hereinafter "Scheinberg"].

<sup>19</sup> See FRA's New Approach, *supra* note 16, at 4.

<sup>20</sup> See U.S. General Accounting Office, Railroad Safety: Status of Efforts to Improve Railroad Crossing Safety, August 1995, at 16.

<sup>21</sup> See Scheinberg, *supra* note 18, at 3.

loss of jobs that will result from the merger.<sup>22</sup> The merger, as proposed not only has a significant impact on the Cleveland area, but the nation as a whole. In addition, the loss of jobs will have further effect on the safety of the railroads' operations, both in Northeast Ohio, and the nation. In considering the effect on jobs, and the effect that the job loss will have on safety, the STB should reject the merger application as proposed.

**D. The merger, as proposed, detrimentally fails to include other rail carriers in the area**

When the parties to the proposed merger filed their application with the STB, they failed to consider that other rail carriers could reduce much of the freight traffic that Norfolk Southern would otherwise run along the Cleveland-Lorain-Vermillion line in its proposed tripling of the freight train traffic. The Wheeling Lake Erie Railroad ("WLE") runs a rail line between Belleview, Ohio, and Canton, Ohio, as well as other points throughout the state of Ohio.

According to WLE's vice president Bill Callison, WLE has offered trackage rights to Norfolk Southern along the Belleview-Canton route.<sup>23</sup> That route connects with the Conrail route from Canton to Alliance and points east and northeast. At Belleview, the WLE line connects with Norfolk Southern's line to Toledo and points west.

When Norfolk Southern proposed to triple the freight traffic along the Cleveland-Lorain-Vermillion line, it failed to consider the option of using WLE's Belleview-Canton line to reroute a significant portion of its through traffic that does not need to be routed through Lorain, Cleveland, or Painesville. Use of the WLE line would help to relieve some of the detrimental effects to the Cleveland's western suburbs, including the elimination of commuter rail possibilities. The STB must consider Norfolk Southern's "failing to include other rail carriers in the area involved in the proposed transaction."<sup>24</sup> Therefore, the merger, as proposed, should be rejected.

**IV. As a condition of the merger, the STB should establish a neutral railroad operating company, apart from both Norfolk Southern and CSX.**

As an alternative to the merger as proposed, the STB should consider a plan to create an independent, neutral, dispassionate regional entity that would control freight and passenger rail in the Cleveland area. The new regional entity would serve shippers in the area, as well as the railroads serving shippers in the area. The entity would also serve the transportation needs of the

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<sup>22</sup> See 49 U.S.C. 11324(b)(4).

<sup>23</sup> Personal Correspondence between WLE's Bill Callison, and Martin Gelfand, of Congressman Dennis J. Kucinich's staff, October 20, 1997.

<sup>24</sup> See 49 U.S.C. 11324(b)(2).

region by allowing commuter rail traffic along railroad lines that are not suited for high-volume freight train traffic.

**A. Neutral Independent Carrier to Serve Cleveland Area.**

As a condition of the merger, the STB should establish an independent, third party entity, that would control the switching and signaling for trains running along all rail lines in the Cleveland area. The new regional railroad entity and the jointly owned tracks should be dispatched by an independent dispatcher, located in a new computerized train control center located in downtown Cleveland. This regional computerized dispatching center will be linked electronically and continuously with CSX and NS dispatching centers elsewhere in the country.

The independent dispatcher will expedite the passage of all passenger and freight trains in Northeast Ohio to avoid scheduling conflicts and any unnecessary delays for any railroad operating company. The Ohio Rail Development Commission, NS, CSX, Amtrak, GCRTA, and any other commuter train operating companies, will jointly establish schedules and priorities, a unified operating matrix for the region, and a rapid dispute-resolution mechanism with Federal Railroad Administration review to permit the centralized independent dispatcher to serve the best interests of all railroad companies.

**B. The independent regional entity will provide for a more competitive environment than will be available under the proposed merger without such an entity.**

The independent regional entity provides for a more competitive environment than the proposed Shared Asset Areas ("SAA") proposed for North Jersey, South Jersey, and Detroit, in the Conrail merger application.<sup>25</sup> The SAA scenario provides for a residual entity that will retain the name "Conrail" and will allow for shared assets in these regions currently serviced by Conrail, CSX, and Norfolk Southern.

SAAs would not be a viable alternative for the Cleveland area because of the significant potential for abuse under an SAA scenario as proposed in the CSX/NS application. Under the proposal, residues of Conrail will still exist for the purpose of controlling the dispatching, switching, and signaling for the proposed areas. The Conrail residue will be jointly controlled by both Norfolk Southern and CSX without any independent input or oversight, a hypothetical but enough of a possibility to evoke a "public interest" test.

The proposal is a ready-made scenario for price-fixing between the two railroads because the immunity from antitrust and other federal and state law under 49 U.S.C. §11321 protects the

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<sup>25</sup> See 3B Railroad Control Application 20-24, 390.

railroads from judicial recourse by shippers after the STB approves the SAAs.<sup>26</sup> In such a scenario, there could be a tacit understanding between the two railroad that Norfolk Southern will be the transporter in one area while CSX will be the transporter in another.

Both railroads may testify to their most honorable intentions before the STB during this decision-making process. However, it is essential that the STB consider that the railroads' professed intentions are but a snapshot in time. Once the STB makes its decision, shippers will have little recourse in the event that the railroads make decisions that have detrimental competitive effects that contradict the testimony that the railroads are making during this decision-making process.<sup>27</sup>

On the other hand, the STB itself, in rendering a decision about a merger or consolidation such as that which is proposed for Conrail, is not exempt from the antitrust and other laws the carriers will be exempt from once the STB decision is made.<sup>28</sup> The independent regional entity will allow for independent ownership of the rail lines in the heavily trafficked Cleveland area without interfering with the ownership of the railroads' production, competition, and service to shippers.<sup>29</sup>

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<sup>26</sup> See 49 U.S.C. § 11321(a), which reads, in pertinent part: "The authority of the [STB] under this subchapter is exclusive. A rail carrier or corporation participating in or resulting from a transaction approved by or exempted by the Board under this subchapter may carry out the transaction, own and operate property, and exercise control or franchises acquired through the transaction, without approval of a state authority. *A rail carrier, corporation, or person participating in that approved or exempted transaction is exempt from the antitrust laws and from all other law, including State and municipal law, as necessary to let that rail carrier, corporation, or person carry out the transaction, hold, maintain, and operate property, and exercise control or franchises acquired through the transaction.*" (Emphasis added). According to the U.S. Supreme Court, the exemption under § 11321(a) is "clear, broad, and unqualified. . . . By itself, the phrase 'all other law' indicates no limitation." Norfolk and Southern Rwy. Co. v. American Train Dispatchers' Ass'n, 499 U.S. 117, 128-29 (1991).

<sup>27</sup> See id. See also, id. at 119 ("A carrier in an approved consolidation 'is exempt from the antitrust laws.'" (quoting 49 U.S.C. § 11341(a), the forerunner to § 11321(a) of the ICCTA))

<sup>28</sup> See, e.g., McLean Trucking Co. v. United States 321 U.S. 67, 78 (1944) ("[I]t is admitted the Commission with propriety may approve a rail consolidation, otherwise prohibited by anti-trust laws, *in order to bring about needed or desirable improvement in services and economies in operation.*") (Emphasis added).

<sup>29</sup> This proposal is analogous to the deregulation of other utilities such as telephone service. In the past, the Bell System controlled both long-distance telephone service and the telephone lines used for local and long-distance calls. Under deregulation, independent regulated entities retain or will retain control over transmission and distribution of the services while

In the Conrail merger application, as proposed, the shippers in Cleveland between Downtown and Berea currently served by Conrail and CSX will likely be served by CSX only. Norfolk Southern will acquire a Conrail line from Downtown to Berea that runs west from Berea to Vermillion parallel to and south of the West Shore line, thus offering potential competition through Cleveland's south and west sides. However, Norfolk Southern's proposal to triple the freight traffic along the West Shore line is at the expense of shippers' access between Cleveland and Vermillion through Berea. The rationale for tripling the traffic through Lakewood, Rocky River, Bay Village, and Lorain, is that CSX will control the junction at Berea. Because CSX and Norfolk Southern are historic rivals, Norfolk Southern naturally does not want its cars threatened by its competitor's control through the Berea junction. Yet there is a way to stop the tripling of freight traffic through the west side while at the same time addressing Norfolk Southern's concerns.

The solution to Norfolk Southern's problem through Berea is for all the carriers through the Cleveland area to divest their interests in the rail lines as described below in favor of a neutral independent regional carrier. The neutral entity would control all dispatching, switching, and signaling from a Downtown Cleveland location, opening competitive access for all carriers to

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deregulated companies compete for production and service contracts. Thus, in the case of the phone companies, long-distance companies compete for the "product," or long distance service. Under this proposal, Norfolk Southern and CSX will continue to compete for shipping contracts. However, under this proposal, there will be little risk of conflicts between the carriers over the use of rail lines accessible to shippers that could impede competition as would be the case under the proposed merger conditions. With dispatching, switching, and signaling controlled by the neutral independent entity, conflicts over tracking rights by one carrier over lines owned by the other, will be eliminated.

Another model for this proposal is that used by the airline industry. For airlines, there is a documented set of rules for priority (operations) and cost allocation, (accounting in the railroad industry). The functional equivalent in the railroad industry, is a common set of operating rules is called the "General Operating Code of Rules". The "General Operating Code" is a set of rules, which are recognized as about the most generic of standard rules. There are derivatives of those base rules that are unique to a region and operating circumstances. Those derivative rules are slightly modified by the railroads implementing those them in a defined region, with all carriers (railroads) agreeing to subscribe to that set of rules, within that region. In the airline industry, the terminal operating enterprise may control one or more of several functions depending upon the physical conditions, the municipal airport management, and other circumstances: gate access and timing, ramp control, jetways, baggage handling systems and rolling stock, even terminal maintenance and concessions. Most airlines keep close control over interline baggage since it is mission-critical. Airline scheduling is highly formalized, so the daily routine is quite structured. The parallels are obvious, except that rail scheduling is a lot looser, both in concept and in practice. The more formalized the schedule, the easier it is to delegate operations control and dispatching to a third party under a set of rules for priority.

shippers in the Cleveland area.

The trains themselves, along with all shipping contracts, will be under the sole purview of the railroads, as selected by the shippers. Norfolk Southern, CSX, and other carriers, will be able to operate their trains along any track currently owned by Norfolk Southern, CSX, Conrail, or other railroad in the Cleveland area, subject to availability and necessity as determined by the independent entity. The regional entity will exist under articles of incorporation and bylaws that preclude its acting with prejudice for or against any railroad using its rail lines. Therefore, competition for the railroads' "product," will be retained for shippers in the Cleveland area. There will be no risk of railroads' anti-competitive abuse in the Cleveland area as there would be without judicial recourse under the SAA proposals for North Jersey, South Jersey, and Detroit.<sup>30</sup> Thus, the anti-competitive effect of Norfolk Southern diverting its freight traffic from the industrial areas of Cleveland to the residential areas of Lakewood and the other western suburbs would be eliminated by a neutral entity that would dispatch, switch, and signal with fairness as mandated by its articles of incorporation and bylaws.

### **C. Independent Regional Entity: Boundaries and Description**

A longstanding policy of U.S. railroads and the Federal Railroad Administration is to separate commuter traffic from freight traffic as much as possible. The Cleveland area has long been underserved with respect to commuter rail. Regional agencies such as the Northeast Ohio Areawide Coordinating Agency, and the Greater Cleveland Regional Transit Authority, as well as local communities and residents, have called for more commuter service along the region's existing rail lines.

The following boundaries and description of the independent regional rail entity is one that will set the stage for urban and suburban railroad service for the 21st Century. This description allows for an emulation of airline operations and control, as discussed above. It allows for separation of commuter and freight lines wherever possible.

Congress has given the STB, through the ICCTA, the authority to help build the railroad network of the 21st Century by emulating the best aspects of the airline industry's air traffic control system. The key to the airline industry's success is dispassionate and effective control that is fair and consistent in dealing with all carriers, whether serving shippers or passengers. The airline model can be easily transposed for the railroad industry where there are many natural conflicts due to line sharing. These conflicts can only be resolved through a dispassionate system such as the one outlined in this filing and described below. If implemented in the Cleveland area, this system will be a model for other cities and regions throughout the country.

#### **1. Selected rail lines with heavy freight traffic, ample grade separations, and little**

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<sup>30</sup> See 3B Railroad Control Application 20-24.

**commuter rail potential, should be jointly owned and accessed by Norfolk Southern and CSX for high-volume freight service if the merger is approved.**

Certain lines with heavy freight traffic, ample grade separations, and little potential for regional commuter rail use, should be jointly owned and accessed by Norfolk Southern and CSX if the STB approves of the Conrail merger. These lines are double- or triple-tracked, and in certain segments, quadruple-tracked. They are heavily used freight lines that are grade-separated from most highway and road crossings, and pass by most of the principal freight customers in Northeast Ohio. The customers along these lines deserve access to both railroads for competition purposes.

Except for the track that runs from Union Avenue in Cleveland to Hudson, Ohio, these tracks are of little regional interest other than customer service and competition. The track between Union Avenue and Hudson, however, is the best route for commuter rail between Cleveland and Akron.

The following Conrail lines should be jointly owned and accessed by Norfolk Southern and CSX if the STB approves the merger:

- a. The entire mainline from Berea, Ohio, to the Lakefront in downtown Cleveland, and Northeast to Madison/Perry in Lake County where there exists a connection between the Conrail line and the existing Norfolk Southern line to Buffalo.
- b. The mainline from the Lakefront southeast to Ravenna to the point where it intersects the CSX mainline. As noted above, there is a regional interest in using part of this line for commuter rail between Cleveland and Hudson.
- c. The Cleveland shortline from Collinwood Yard to Rockport Yard in Brookpark near the Cleveland Hopkins Airport.
- d. The Clark branch (former Cleveland Union Terminal) from Berea to West 25th, and the Flats in Cleveland to the point of intersection with the existing Norfolk Southern line.

**2. Selected rail lines with less direct access to shippers, ample grade crossings, and a promising potential for regional commuter traffic, should be divested by their current owners as term of the merger and turned over to an independent operating entity.**

There is strong interest in Northeast Ohio to begin using commuter rail between various heavily populated suburbs and downtown Cleveland's Tower City. Cleveland's suburbs have offices and industrial parks that employ many of Northeast Ohio's residents. Westlake, Solon, and Mentor, for example, are growing in the number of residential, commercial, and industrial

centers in all three directions radiating from downtown Cleveland.

All three of these suburbs, and many others, are crossed by rail lines in existence today. These are single tracked and run through the centers of these and other heavily populated areas. Very few freight customers are served along these lines.

Existing customers deserve competitive access between Norfolk Southern and CSX. Such access would not be possible under the current proposal. The Cleveland-Lorain-Vermilion lines can and should form the core of an important and necessary commuter rail system for Northeast Ohio. These lines must be placed on an independent dispassionate entity because Norfolk Southern and CSX have shown little, if any, concern for the local and regional commuter train interests.

The same regional railroad that would operate the freight services on the new independent rail entity could also operate the commuter trains or contract with a separate commuter train operator. This regional railroad, as chosen by the STB and the Federal Railroad Administration, could also be the independent dispatching entity for the jointly owned and accessed tracks listed in section I, above.

The former Cleveland Union Terminal right-of-way currently owned by the Greater Cleveland Regional Transit Authority (GCRTA) should be made part of this regional entity in order to permit inter-city passenger trains and regional commuter trains access to Tower City from the various main lines. The ownership of the Cleveland Union Terminal right-of-way by the regional entity would also permit an important and alternative freight crossing of the Cuyahoga River. This crossing, currently used only by the Windermere-Airport Rapid Transit line, is on a fixed high-level bridge and has a quadruple rail right-of-way that is not affected by ship traffic along the river. The other freight crossings use lift bridges over the Cuyahoga River. Competitive access could be deterred by heavy ship traffic on the river. Ownership of the quadruple track right-of-way will serve the public interest by allowing both freight and commuter traffic from all railroads east-west access when the lift bridges are blocked by river traffic.

The following railroad lines and property shall be placed into a separate railroad operating company, apart from Norfolk Southern and CSX:

- a. The existing Norfolk Southern Mainline from Bellevue, through Lorain, Lakewood, Cleveland, Euclid, and Painesville, to a point near Madison/Perry in Lake County, where there is a connection to the parallel Conrail line to Buffalo.
- b. The existing and entire Conrail Randall Secondary Line from East 40th (near Interstate 490) Southeast past Union Avenue, Solon, Geauga Lake and Sea World, to its endpoint in Portage County, just beyond the city of Aurora.
- c. The former Cleveland Union Terminal property (now owned by GCRTA



which has its lines running parallel to this property) from West 25th to the Cuyahoga River Viaduct, and from Tower City to East 40th near the GCRTA yards and Interstate 490, located within the City of Cleveland.

d. The former Cleveland Union Terminal property running parallel with the Norfolk Southern, GCRTA and Conrail shortline railroad properties from East 40th to Superior Avenue in Cleveland.

e. The air rights over Canal Road just south of Tower City, between the viaduct and former Cleveland Union Terminal property.

f. The CSX line from Lorain South to Elyria to the Norfolk Southern Mainline (ex-Conrail).

g. The existing CSX line in Summit and Stark Counties, running south from Akron to Canton, including access to the Canton station on the ex-Conrail (Pennsylvania) East-West mainline.

h. The entire rail line owned by the Summit County Port Authority (ex-Erie) from Portage County west to Akron via Ravenna and Kent.

i. The ex-Conrail line from Hudson to downtown Akron via Cuyahoga Falls.

j. All existing and future rights to, freight contracts with shippers and businesses located on or near these rail lines.

k. Norfolk Southern and CSX should be directed by the STB to fully cooperate in the addition of new connections from this new regional operating entity to their mainlines, and shall jointly maintain all existing rail connections in order to facilitate the transfer of freight cars.

## **V. Conclusion and Recommendations.**

The Surface Transportation Board ("STB") is required by statute to consider several factors before authorizing the merger proposed in the Conrail application under Docket No. 33388. These factors include: the effect of the merger on the adequacy of transportation to the public; whether the proposed merger would have an adverse effect on competition in the affected region or the national rail system; the interest of rail carrier employees affected by the proposed merger; and the effect on the public interest of failing to include other rail carriers in the area in

the proposed merger.<sup>31</sup> Section 11324(c) of the ICCTA mandates that the STB apply a public interest standard<sup>32</sup> and authorizes the STB to impose conditions on the transaction to alleviate any anti-competitive effects.<sup>33</sup> **The STB must consider these issues now and resolve them. If not, the railroads will be immune from judicial review of the anti-competitive effects of the merger and other federal, state, or local laws that might otherwise govern the railroads' operations.**<sup>34</sup>

In order to comply with its Congressional mandate and to protect the public interest from the anti-competitive effects of the merger, the STB should consider the following recommendations:

**1. The STB should reject the merger because it is anti-competitive.** Currently, shippers along the Cleveland-Berea axis are served by two railroads, Conrail and CSX. If Norfolk Southern and CSX proceed as proposed in the merger application, shippers along that axis will no longer have choice among rail carriers because Norfolk Southern will divert the service it is acquiring from Conrail in favor of the tracks it already owns along the Cleveland-Lorain-Vermillion route. The STB should reject the merger proposal because it limits shippers' choice of rail carriers and is therefore anti-competitive.

**2. The STB should reject the merger because it is detrimental to the railroad industry.** If shippers in the Cleveland area are limited to only one rail carrier, then the only alternative they will have is to hire freight truck carriers. If shippers hire trucks where trains would have been otherwise more appropriate, the railroad industry will be hurt. Moreover, air quality will suffer with the additional use of trucks where trains would have been otherwise more appropriate. Furthermore, the quality of life among residents who live on or near the roads that the trucks must use to reach the shippers will be hurt. Therefore, the STB should reject the merger proposal because it will hurt the railroad industry when shippers opt for truck service where rail service would have been otherwise more appropriate.

**3. The STB should reject the merger because it is inconsistent with needs of shippers in the Cleveland area.** Norfolk Southern's plan to triple the train traffic along the Cleveland-

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<sup>31</sup> See 49 U.S.C. § 11324(b).

<sup>32</sup> See United States v. Lowden, 308 U.S. 225, 230 (1939); Norfolk & W.R. Co. v. Detroit, T & I. R. Co., 360 I.C.C. 498 (1979).

<sup>33</sup> See 49 U.S.C. § 11324(c).

<sup>34</sup> See 49 U.S.C. § 11321(a); Norfolk & Western Railway Co. v. American Train Dispatchers' Ass'n, 499 U.S. 117, 119 (1991).

Lorain-Vermillion line is inconsistent with shippers' needs in Northeast Ohio because it diverts freight train traffic from shippers along the highly commercial and industrial Cleveland-Berea axis in favor of the densely residential suburbs along Cleveland's west shore. In considering the needs of shippers in the Cleveland area, the STB should reject the merger because it is inconsistent with shippers' need for rail service.

**4. The STB should reject the merger because it fails to include other area rail carriers.** In Norfolk Southern's proposal to triple freight train traffic along the Cleveland-Lorain-Vermillion line, it fails to consider that much of the through freight traffic can be diverted along WLE's Bellevue-Canton route. WLE can provide trackage rights to Norfolk Southern for freight that does not need to travel along the Cleveland-Lorain-Vermillion, or the Cleveland-Berea-Vermillion routes. Diversion of freight traffic along the Bellevue-Canton route will enhance the safety of affected areas, free up trackage for shippers along the Cleveland-Vermillion axes, and free up trackage for commuter rail. The STB should reject the application, as proposed, because it fails to consider other area railroads' ability to serve the area in a way that is competitive and in the public interest.

**5. The STB should reject the merger because it will result in lost jobs.** As a result of the merger, the affected railroads will suffer a net loss of 2,654 jobs. Many of these jobs are directly related to maintenance of the trains, tracks, safety. This job loss will be detrimental to the economy and will affect the safe and efficient operation of the affected railroads. Because of the heavy job loss and potential safety problems associated with the merger, the STB should reject the merger application.

**6. The STB should reject the merger because it frustrates Cleveland regional efforts to institute area-wide commuter rail.** Planners, communities, residents, and other interested parties have long planned for an area-wide passenger and commuter rail system to serve Northeast Ohio. These plans have been consistent with Norfolk Southern's plan to abandon, or limit, freight service along its Cleveland-Lorain-Vermillion rail line. The Cleveland-Lorain-Vermillion line is situated in the densely populated western suburbs of Cleveland and in other areas with little need for freight rail service. Freight service between Cleveland and Vermillion can better be served on the Conrail line that Norfolk Southern proposes to acquire. The Cleveland-Berea-Vermillion line is better equipped to handle heavy freight because of its multiple tracking. For through freight that need not be carried through Cleveland, Norfolk Southern can use the WLE line to Bellevue which connects to Norfolk Southern tracks to points west. Freight traffic along the Cleveland-Lorain-Vermillion line should be limited to freight needed by shippers along that line, freeing that line for commuter rail to serve the transportation needs of Northeast Ohio. Thus, the STB should find that the merger, as proposed, is inconsistent with the transportation needs of the Northeast Ohio region. The STB should reject the proposal.

**7. As an alternative to rejecting the merger altogether, the STB should consider requiring, as a term of the merger, the establishment of a neutral, independent, railroad**

**operating entity that would serve the Northeast Ohio area fairly and impartially.** The STB is authorized to set limitations upon the merger in order to serve the public interest. As a term of the merger, the STB should set up a third-party rail operating entity that would serve the Northeast Ohio area in a fair and impartial manner. The independent entity would use existing rail lines and control the dispatching, switching, and signaling, along all Northeast Ohio rail lines in a way that is fair to all carriers, promotes competition for shipping, and incorporates the transportation needs of the residents of Northeast Ohio. Operating in a manner that emulates the best qualities of the airline industry's air traffic control systems and deregulation of other public service industries, the new regional entity would be a model for intra-city rail service for the 21st Century.

STPB

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WRITER'S DIRECT ACCESS

October 21, 1997

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D

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

Dear Secretary Williams:

On behalf of Millennium Petrochemicals, Inc., we are transmitting herewith an original and twenty-five (25) copies of Comments of Millennium Petrochemicals, Inc. A 3½x5" floppy diskette containing the text of the Comments will be forwarded to the Board under separate cover.

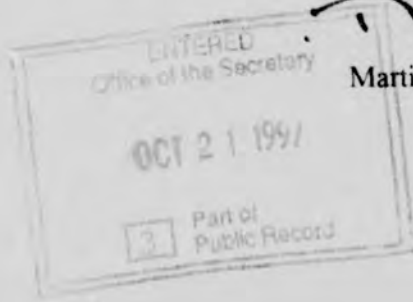
We certify herewith to making service on October 21, 1997, by hand delivery upon Applicants' counsel, and by first-class mail, postage prepaid, upon all parties to the Board's service list in this proceeding.

Kindly receipt a copy of the Comments to evidence the filing of this document.

Very truly yours,

*Martin W. Bercovici*

Martin W. Bercovici



Enclosures



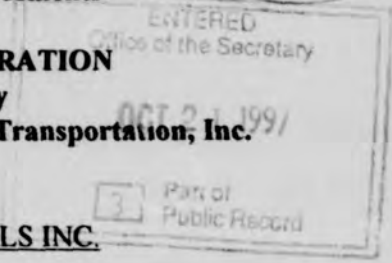
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MPI-2

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**Finance Docket No. 33388**

**CSX CORPORATION and CSX TRANSPORTATION, INC.  
NORFOLK SOUTHERN CORP. and NORFOLK  
SOUTHERN RY. CO.  
— Control and Operating Leases/Agreements —  
CONRAIL, INC. and  
CONSOLIDATED RAIL CORPORATION  
Transfer of Railroad line by  
Norfolk Southern Railway Company to CSX Transportation, Inc.**



**COMMENTS OF  
MILLENNIUM PETROCHEMICALS INC.**

Millennium Petrochemicals Inc. (formerly known as Quantum Chemical Corporation) ("Millennium"), thanks the Board for the opportunity to participate in this proceeding and to comment on the joint Railroad Control Application of the CSX Corporation ("CSXC"), CSX Transportation, Inc. ("CSXT"), Norfolk Southern Corporation ("NSC"), Norfolk Southern Railway Company ("NSR"), Conrail Inc. ("CRR") and Consolidated Rail Corporation ("CRC") for acquisition of control by CSX and NSC of Conrail and for the division of the use and operation of Conrail's assets between them<sup>1</sup>. Millennium's review of the proposed transaction raises two issues which it believes the Board should consider in its deliberations. In the event the Board decides to authorize the proposed transaction, Millennium proposes a condition which it believes must be imposed upon the transaction in order to maintain the status quo and prevent undue hardship which would otherwise result in or around the North Jersey Shared Asset Area.

<sup>1</sup> CSXC and CSXT are hereinafter collectively referred to as "CSX," NSC and NSR are collectively referred to as "NS" and CRR and CRC as "Conrail." CSXC, CSXT, NSC, NSR, CRR and CRC are also collectively referred to as the "Applicants."

**I. Introduction**

**A. Statement of Interest**

Millennium is a major international chemical company, with leading market positions in a broad range of commodity, industrial, performance and specialty petrochemicals. With major manufacturing facilities in La Porte, Texas, Port Arthur, Texas, Chocolate Bayou, Texas, Morris, Illinois and Clinton, Iowa, Millennium manufactures olefins, polymers and acetyls.<sup>2</sup> From minor manufacturing facilities in Crockett, Texas, Heath, Ohio and Fairport Harbor, Ohio Millennium produces specialty polymers for the wire and cable industry and polymer color concentrates. Ethanol is manufactured at Millennium's Tuscola, Illinois facility and denatured at Millennium's plants in Anaheim, California and Newark, New Jersey. Millennium maintains a distribution network built around five regional distribution centers located in Gary, Indiana; Baytown, Texas; Ackerman, Georgia; FINDERNE, New Jersey; and San Bernardino, California. Each Millennium manufacturing facility ships the majority of its products in bulk by rail, and each regional distribution center receives nearly all of its inventory via rail. Millennium ships an annual average of 23,000 rail cars from all facilities. During 1996 Millennium shipped 2,652 rail cars via CSX, 2,697 rail cars via Conrail and 2,357 rail cars via NS.

Millennium is an active member of, *inter alia*, the Chemical Manufacturers Association ("CMA"), the Society for the Plastics Industry ("SPI") and the National Industrial Transportation League ("NITL").

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<sup>2</sup> Olefin products include ethylene, propylene and hydrocarbon-rich by-product streams; polymer products include high density polyethylene, low density polyethylene, linear low density polyethylene and polypropylene; acetyl products include vinyl acetate monomer, acetic acid, methanol and synthetic ethanol.





**B. Purpose of Millennium's Comments**

While Millennium has been active with the CMA, SPI and NITL in formulating comments relevant to general issues affecting the chemical and the plastics industries, Millennium wishes to make the following comment to the Board in its own right on issues of a more narrower scope and to give the Board an impression of how the proposed change of control and allocation of Conrail's operations and assets will affect a large shipper of bulk commodities like Millennium.

**II. Comments**

**A. Summary**

Millennium wishes to bring to the Board's attention two issues .

The first issue is whether the proposed transaction will produce the benefits which the applicants have stated in their application and whether such benefits will actually inure to the shippers presently served by Conrail.

The second issue is the significant negative impact which the proposed allocation of Conrail's operations and assets between the CSX and NS will have upon Millennium's distribution network in the mid-Atlantic and New England regions of the United States.

In the event that the Board decides to authorize the transaction, Millennium proposes a condition which it believes the Board should impose upon its authorization which will ameliorate or mitigate any adverse impact upon Millennium.

**B. Issues**

**1. Whether the Proposed Transaction will produce the stated benefits.**

In their application, the Applicants stated that the purpose of the proposed transaction is "to create two strong networks of broad and comparable scope that will compete vigorously to

provide service throughout the eastern United States." Finance Docket No. 33388, CSX/NS-18, vol. 1, p. 12. To accomplish this purpose, NS and CSX propose the dismantling of Conrail and the allocation of Conrail's operations and assets amongst themselves, excepting for three distinct "Shared Assets Areas" where a severely contracted Conrail will provide service on an equal basis to both the NS and CSX. The benefits of this proposed dismemberment of Conrail are better service, operating savings and other cost reductions and near-term and long-term growth, as well as nearly \$1 billion dollars in quantified public cost savings. *Id.*, 12-13.

In general, Millennium sees the proposed transaction as a solution in search of a problem.<sup>3</sup> Unlike other recent mergers, none of the Applicants is in imminent danger of collapse or insolvency. All three railroads are operating in a robust and profitable manner. Nor is there a groundswell of discontent from the shipping public which might be considered a mandate for this change in rail service. That folksy maxim, "If it ain't broke, don't fix it," seems to apply squarely to the application now before the Board.

The applicants argue that the public interest justification for the proposed transaction will be creation of new single-line service, efficiencies of expanded networks and the development of more direct routes, all totaling "quantified benefits" of *nearly* \$1 billion per year. *Id.*, 16. However, such public interest justifications do not appear to apply to high volume shippers, such as bulk chemical shippers. Few shippers of bulk chemicals would benefit from the new single line service because very little chemical traffic currently originates or terminates on either the NS or CSX. Instead, the majority of chemical traffic originates on western railroads and interchanges with Conrail at either the St. Louis or Chicago gateways. Substituting either NS or CSX for

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<sup>3</sup> Were it more cynical, Millennium might view the proposed transaction as an attempt by two large competitors to remove a perennial competitive thorn from their sides and to create an oligopoly for rail service in the eastern United States.

Conrail in the typical chemical movement accomplishes neither single line movements nor a reduction in the number of interline interchanges. In fact, the proposed transaction may actually increase the number of interchanges for a particular movement.<sup>4</sup> As for expanded networks, an overlaying of the route maps of the Applicants before the transaction and after the transaction shows the only networks which will expand are the respective networks of the CSX and NS. And all of that growth is from allocation of Conrail's routes. There is little, if any, penetration of CSX competition into NS's current territory, and vice versa. Since most shippers of bulk chemicals do not presently originate or terminate the bulk of their shipments on either the CSX or NS, little would be gained by expanding either network. Finally, new routings on the CSX or NS would, again, have little demonstrated effect upon or benefit to bulk chemical shippers.

Millennium is skeptical as to the nearly \$1 billion per year in public cost savings<sup>5</sup> which the Applicants claim will be achieved by the proposed transaction. Applicants count as public cost savings such items as highway construction and maintenance savings due to load diversion from trucks, lower shipper rates due to increased competition and reduced shipper logistic costs. While the Applicants support these cost savings with impressive verified statements, graphs and charts, one fact is inescapable. These cost savings are theoretical.

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<sup>4</sup> Millennium currently has customers served by Conrail which, under the proposed transaction, will be on a Conrail line allocated to either NS or CSX, but will have switching yards serving that customer allocated to the other railroad. Such a situation would result in the rail car being interchanged from the western railroad to either CSX or NS, then interchanged again to the switching railroad. For example, see Verified Statement of Rocque Dameo, Sr. A reduction in the number of interchanges is a significant assumption in the Applicants' calculation of the benefit which will result from the proposed transaction.

<sup>5</sup> This "nearly \$1 billion" is the sum of \$471.4 million in "quantified public cost savings" from the NS/Conrail integration and \$424.1 million in "quantified public cost savings" from the CSX/Conrail integration. Verified Statement of William E. Ingram, CSX/NS-18, vol. 1, p. 591; Verified Statement of Joseph P. Kalt, vol. 2A, p. 51, fig. 6.

Millennium reminds the Board that in the last major railroad it considered, the Applicants likewise claimed significant costs benefits due to increased competition, reduced shipper logistic costs and reduced rates. However, the implementation of that merger has actually resulted in a near crisis in rail service west of the Mississippi River. Costs to the shipping public have increased in its first year.<sup>6</sup> New routings have been slow to materialize. Transit times have mushroomed. Commodity loads have moved from rail to truck. Were the Applicants required in this application to adhere to the same standards of disclosure which the securities laws impose upon issuers of securities, there would be numerous disclaimers regarding the forward-looking nature of their statements and projections, the immense risk involved in this transaction and the possibility of unforeseeable events which could cause the transaction to fail. Millennium implores the Board to not be swayed by the chimera of cost savings put forth by the Applicants, to look to the real world in which shippers must ship commodities and the experience of prior mergers and to not authorize this rending of a functioning eastern rail system based on theories rather than facts. The United States can ill afford to have both halves of its rail network mired in congestion and chaos.

**2. Significant Negative Impact Upon Millennium.**

Millennium is extremely concerned about the impact which the proposed transaction will have upon its northeast RDC and its distribution network for the mid-Atlantic and New England regions. Specifically, it is concerned about the allocation of the Conrail assets serving the Millennium RDC at Finderne, New Jersey and the exclusion of that location from the nearby

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<sup>6</sup> See "A Big Railroad Merger Goes Terribly Awry in a Very Short Time", Wall Street Journal October 2, 1997 at A13. Millennium is currently experiencing approximately \$200,000 per month in additional shipping costs and costs due to reduced or idle operating rates as a result of the UP/SP merger. Fin. Docket 32760 (Sub-21), MPI-2.

North Jersey Shared Asset Area ("SAA"). See, Exhibit G to the Transaction Agreement, CSX/NS 18, vol. 8C, p. 71.

Presently, Millennium ships approximately 700 rail cars from its manufacturing facilities in Texas, Illinois and Iowa to its RDC in Finderne, New Jersey.<sup>7</sup> Verified Statement of Rocque Dameo, Sr. at 1. This RDC is a crucial part of Millennium's distribution strategy for the mid-Atlantic and New England regions. The RDC is located on the New Jersey Transit ("NJT") Raritan Valley Line. *Id.* It is the western-most industry served by Conrail utilizing its operating rights over that line. *Id.* At the RDC, all the polyethylene in the rail cars is transloaded either for shipment in bulk hopper trucks or transfer to the packaging line. Because of operational constraints at the RDC<sup>8</sup>, the efficient and dependable switching of rail cars from marshaling yards and storage tracks to and from the RDC is crucial for the efficient and cost effective distribution of polyethylene to customers. Currently, Conrail provides both the line haul and switching of rail cars destined for the RDC. The marshaling of rail cars for switching to and from the RDC is out of Conrail's Manville Yard on the Lehigh Line. Dameo VS at 2. Occasionally, Conrail stores rail cars destined for the RDC at its Croxton Yard or Elizabethport Yard when the Manville Yard is full. The RDC also maintains leased track at Bound Brook and South Plainfield on the Lehigh Line for transloading operations to accommodate overflow from the Finderne spurs. *Id.*

The Applicants propose to allocate the Conrail assets serving Millennium's RDC amongst three parties. Finderne and Croxton Yard will be allocated to NS. CSX/NS-18, vol. 3B, P. 196.

<sup>7</sup> Although Millennium considers its RDC to be in Finderne, Conrail actually serves the Dameo siding and Brockway Siding off its operating rights over the New Jersey Transit Raritan Valley Line. See, CSX/NS-18, Map showing allocation of Conrail lines and rights, vol. 3B.

<sup>8</sup> Some of these constraints are: switching operations limited to Tuesdays and Fridays and to the hours between 9:00 PM and 6:00 AM in order to avoid interference with NJT passenger service, limited number of rail car spots on-site, a rail yard split in two by the NJT main lines and a limited window for the scheduling of transloading operations. See Dameo VS at 1-3.

The Manville Yard and Elizabethport Yard will be allocated to CSX<sup>9</sup>. CSX/NS-18, vol. 3A, p. 227. Bound Brook and South Plainfield will be allocated to the North Jersey SAA.<sup>10</sup> No longer will one carrier provide both line hauling and switching of rail cars to the Finderne RDC or the various overflow locations for storage or transloading. Instead, the NS and CSX will have to coordinate and cooperate in order to switch rail cars into and out of Millennium's RDC. Yet, the Operating Plans of the CSX and NS fail to fully address how this cooperation and coordination will be accomplished.<sup>11</sup> Neither is it clear from the Operating Plans that there will be sufficient marshaling yard space for NS in the Manville Yard.<sup>12</sup> It is yet to be shown how switching service for Finderne will remain status quo, let alone be improved, by allocating Finderne to one railroad while allocating its switching yard to another railroad. Any benefits with respect to single line service, decreased interchanges and reduced logistics costs appear not to apply to traffic moving to and from Finderne. In fact, there appear to be great disadvantages for Finderne inherent in the proposed transaction and the proposed Operating Plans.

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<sup>9</sup> There is some contradiction between the Operating Plans of CSX and NS regarding the Manville Yard. The NS Operating Plan states that "Manville Yard will be operated by CSX." CSX/NS-18, vol. 3B, p. 199 (underlining in original). However, the CSX Operating Plan states that "Manville Yard will be operated by CSAO." CSX/NS-18, vol. 3A, p. 232 (underlining in original) ("CSAO" means Conrail Shared Asset Operation.).

<sup>10</sup> Under the proposed transaction, The North Jersey SAA ends at Bound Brook Station on the Raritan Valley Line, just six miles from the Dameo and Brockway sidings. There is no other commercial traffic west of these sidings. Since the Raritan Valley Line terminates west of Finderne, the only access to the Millennium RDC by CSX will be through the SAA. CSX/NS-18, Map showing allocation of Conrail lines and rights, vol. 8B. NS has been allocated the Conrail rights to operate over the NJT Raritan Line west of Bound Brook station.

<sup>11</sup> Both Operating Plans state that "NS will pick up ... traffic for the NJT Raritan Valley Line west of Bound Brook." CSX/NS-18, vol. 3A, 232; vol. 3B, 199. However, neither Operating Plan addresses how CSX traffic will be switched to Finderne, which is on the Raritan Valley Line west of Bound Brook.

<sup>12</sup> Both Operating Plans state that "CSX will make *sufficient* track space available to NS and CSAO for local operations." *Id.* (Emphasis added). Neither Operating Plan addresses how overflow from the Manville Yard will be handled, which Conrail presently sends to the Croxton Yard or Elizabethport Yard.

**C. Proposed Condition Upon the Transaction**

In the event that the Board decides to authorize the transaction, Millennium proposes that the Board order (i) the North Jersey Shared Asset Area be expanded to include Finderne and Manville Yard and (ii) the CSAO provide local switching as a condition imposed upon the transaction. Such a condition is necessary to ameliorate or mitigate the disadvantage which will be worked upon Millennium's RDC at Finderne under the proposed allocation of Conrail's operations and assets.

It is obvious that two carriers cannot provide the same level of switching service which one carrier is currently providing. Rail cars destined for Finderne, or the overflow tracks at Bound Brook or South Plainfield, currently do not require interchange between the line haul railroad and the local operations railroad, because they are the same. Dameo VS, 1-2. Yet, that will not necessarily be the case under the proposed transaction. For example, if CSX is the line haul railroad, it is not clear whether or not CSX will be able to deliver the rail car to Finderne or whether or not NS must deliver the rail car to Finderne. Conversely, if NS is the line haul railroad, it is not clear which railroad will switch the rail car from Manville Yard (where NS has access rights) to Finderne. If CSX must interchange the rail car with NS for local switching, will there be a switching charge imposed where none exists today? The limitations within which switching operations must be performed<sup>13</sup> will require a high degree of cooperation and coordination between two fierce competitors. The situation is rife with opportunities for miscommunications, mishandled or misdirected paperwork or favoritism. Each missed or delayed switch of rail cars into or out of the Millennium RDC cannot be easily made up. Dameo VS at 3.

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<sup>13</sup> See footnote 8.

The solution to this problem is equally obvious. It is baffling to Millennium how the boundary for the North Jersey SAA could have been drawn at Bound Brook on the Raritan Valley Line and completely miss the last industry presently served by Conrail on the Raritan Valley Line only six miles further west of that boundary. By extending the boundary of the North Jersey SAA to include Finderne and having the CSAO provide switching to Finderne from Manville Yard, the status quo will be preserved.

It would not be a stretch for the CSAO to provide switching service to Finderne. Under both Operating Plans, the CSAO is to provide switching for traffic to customers on the Lehigh Line east of Port Reading Junction from Manville Yard.<sup>14</sup> CSX/NS-18, vol. 3A, p. 232; vol. 3B, p. 131.

Such a condition would have a two-fold advantage over the Applicants' present Operating Plans. First, there would continue to be a single entity providing switching between Manville Yard and Finderne, Bound Brook and South Plainfield. Second, access to Finderne would be open to both the NS and CSX out of Manville Yard. Millennium believes that such a condition would address the anomalous situation of Finderne without starting the Applicants down a slippery slope with regard to boundaries of the SAAs, because the movement of the boundary would only be a mere six miles and there are no other industries on the Raritan Valley Line west of Finderne which might ask for similar treatment.

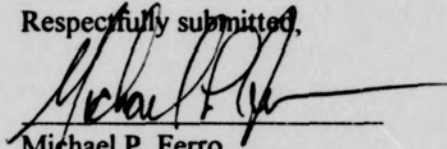
If the CSX and NS are serious about providing shippers with improved service, cost savings and more competitive options, then neither should object to this condition.

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<sup>14</sup> Port Reading Junction on the Lehigh Line is approximate due south from the Dameo and Brockway sidings on the Raritan Valley Line.



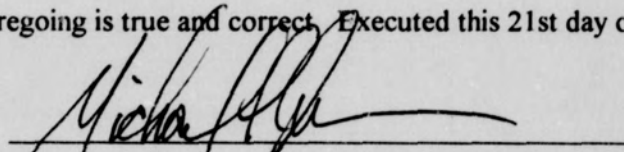
Respectfully submitted,



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**Of Counsel for Millennium Petrochemicals Inc.**

I declare under penalty of perjury that the foregoing is true and correct. Executed this 21st day of October, 1997 at Cincinnati, Ohio.

  
Michael P. Ferro, Attorney

**VERIFIED STATEMENT  
OF  
ROCQUE DAMEO, SR.**

My name is Rocque Dameo, Sr., and I am General Manager of Dameo RDC, LLC, and President of Dameo Trucking, both of which are located in Finderne, New Jersey. Dameo Trucking has provided transloading and bulk truck services for twenty years to Millennium Petrochemicals Inc. ("Millennium") and its predecessors for its polyethylene resin products. For the past two years, Dameo RDC has been Millennium's northeast regional distribution center ("RDC"). As Millennium's RDC, Dameo RDC provides transloading, packaging and warehousing services at its Finderne, New Jersey location and distributes Millennium's polyethylene products via motor freight in packages or in bulk throughout the mid-Atlantic and New England regions of the United States. Dependable and efficient rail service is essential to Dameo RDC's ability to provide RDC services to Millennium and, in turn, to Millennium's ability to provide polyethylene resin to its customers in the mid-Atlantic and New England regions in a reliable and cost effective manner. Throughout the relationship between Millennium and Dameo RDC and Dameo Trucking, Conrail has been the rail carrier providing service to the Finderne and satellite locations. During 1996, Dameo RDC handled 736 inbound rail cars for Millennium. At any given time, Dameo RDC will have between a maximum of 150 and a minimum of 70 rail cars at its various locations.

Dameo RDC's main operation is at Finderne, which is located on the New Jersey Transit Raritan Valley Line. The Raritan Valley Line terminates west of Finderne. Dameo RDC is the western-most industry served by Conrail on the Raritan Valley line. The two main lines of the Raritan Valley Line bisect the operation of Dameo RDC into north and south locations. The

north location is served by the Dameo spur off the westbound main line, and the south location is served by the Brockway spur off the eastbound main line. The Finderne operation can accommodate a total of 115 rail cars, which are split, more or less, evenly between the north (Dameo spur) and south (Brockway spur) locations.

When the Finderne locations becomes full, Dameo RDC also transloads rail cars to bulk trucks from leased tracks at Bound Brook and South Plainfield on the Lehigh Line. Bound Brook is 6 miles east of Finderne and can accommodate 10 rail cars. South Plainfield is 10 miles east of Finderne and can accommodate 30 rail cars. Both Bound Brook and South Plainfield are drilled (i.e. switched) from the Manville Yard.

Rail cars consigned to Dameo RDC generally terminate at the Manville Yard, off the old Lehigh Line, and Reading Line where they are blocked for drill service. Occasionally, when the Manville Yard is full overflow rail cars will be sent to Conrail's Croxton Yard or Elizabethport Yard and will be drilled to Manville Yard when needed or as space is available. Because New Jersey Transit passenger trains have priority on the Raritan Valley Line, drill service to Finderne is performed on Tuesday and Friday nights between 9:00 PM and 6:00 am. There is no opportunity for a missed or delayed drill to be made up during the day while New Jersey Transit passenger service is operating. Drill service also has to be divided into two parts to serve the north and south locations from separate main line tracks. These switches are complicated by the fact that the switch engine must travel against the normal traffic flow on the main line at some point in the operation due to the orientation of the sidings and the switches for both spurs with respect to the main line. While it is possible for Conrail to drill both north and south locations in the same night,

what happens more times than not is for the north location to be drilled on Tuesday night and the south location to be drilled on Friday night.

It is my understanding that under the plan submitted by the Norfolk Southern Railway ("NS") and CSX Transportation ("CSX") in its application to the Surface Transportation Board the current service provided by Conrail, and the facilities used by Conrail to provide those services, to the Dameo RDC operation will be split amongst the NS, the CSX and a Shared Assets Area ("SAA"). Finderne (on the Raritan Valley Line) will be allocated to and served by the NS. Manville Yard (on the Lehigh Line), where rail cars are marshaled for drill service to Finderne, will be allocated to CSX. Bound Brook and South Plainfield (on the Lehigh Line) will be allocated to the SAA.

I foresee several problems with the proposed allocation of facilities which have the potential to adversely impact the operation of Dameo RDC and degrade the distribution of Millennium's polyethylene products to its customers in the mid-Atlantic and New England regions. First, rail cars in line haul on the CSX will need to be handed off to the NS for switching to Finderne. Presently, all rail cars destined for the Dameo RDC terminate at a Conrail yard and are switched to a Dameo RDC location by Conrail. With CSX handing off rail cars to NS, there is the potential for delay due to miscommunications, mishandled or misdirected paperwork or favoritism of NS line haul cars over CSX rail cars. Second, the NS has no comparable yard within the same proximity as the Manville Yard on the CSX for marshaling and drill service to Finderne, Bound Brook and South Plainfield. Currently, it is a six mile haul from Manville Yard to Finderne. There is some question as to NS' ability to provide comparable drill service from a yard further away, or the economic feasibility (and therefore attractiveness of the business to NS)

of providing drill service to FINDERNE from other than Manville Yard. Third, it may be cost prohibitive for NS to obtain access to Manville Yard for the purpose of providing drill service to FINDERNE due to fees imposed by CSX. Conversely, it may be cost prohibitive for CSX to provide drill service to FINDERNE from Manville Yard due to access fees imposed by NS. Fourth, it is uncertain how rail cars bound for the overflow tracks at Bound Brook or South Plainfield will be handled. Again, there will either be a hand-off involved or a fee due from the line haul carrier to the SAA entity. Dameo RDC at FINDERNE is the only customer handled through Manville Yard that is not part of the SAA. Finally, it is unclear how either NS or CSX will handle overflow when their marshaling yards become full. Currently, Conrail is able to divert overflow rail cars destined for the Dameo RDC to either the Croxton Yard or Elizabethport Yard.

The adverse impact of a change in drill service from the status quo upon Dameo RDC and Millennium's distribution network could be significant. Missed or delayed switches will disrupt the scheduling of transloading operations, result in increased handling costs, increase inventory levels and decrease equipment utilization rates. If service degradation is severe enough, Dameo RDC is at risk of losing the Millennium RDC, which is a substantial portion of Dameo RDC's total business.

It is my opinion that if the proposed allocation of the FINDERNE (including Dameo siding and Brockway siding), Manville Yard, Bound Brook, South Plainfield, Croxton Yard and Elizabethport Yard are allowed, drill service to the Dameo RDC locations will suffer. It is my further opinion that the only way to preserve the status quo would be to have one entity provide drill service to the Dameo RDC locations as is currently provided by Conrail.

VERIFICATION

COUNTY OF Somerset §  
STATE OF NEW JERSEY § SS  
§

Roque Dameo, Sr., being duly sworn, deposes and says that he has read the foregoing statement, knows the facts asserted there are true and that the same are true as stated.

Roque Dameo Sr.  
Roque Dameo, Sr.

Subscribed and sworn to before me this 17<sup>th</sup> day of October, 1997.

Bergenia D Krautler  
Notary Public

My commission expires: May 3 1999

STB

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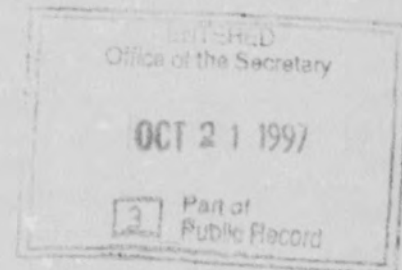
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BEFORE THE  
SURFACE TRANSPORTATION BOARD

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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



Redland-2

OPPOSITION, COMMENTS AND REQUESTS FOR  
PROTECTIVE CONDITIONS OF REDLAND OHIO, INC.

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Counsel for Redland Ohio, Inc.

DATED: October 21, 1997



BEFORE THE  
SURFACE TRANSPORTATION BOARD

-----  
Finance Docket No. 3388  
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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

**Redland-2**

OPPOSITION, COMMENTS AND REQUESTS FOR  
PROTECTIVE CONDITIONS OF REDLAND OHIO, INC.

I. INTRODUCTION

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

<sup>1</sup> CSXC and CSXT, collectively, will be referred to hereinafter as "CSX."

<sup>2</sup> NSC and NSR, collectively, will be referred to hereinafter as "NS."

<sup>3</sup> CRR and CRC, collectively, will be referred to hereinafter as "CR."

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

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

At present, Redland opposes the Application, and requests that it be denied. Governed by an excessively abbreviated procedural schedule, NS and CSX have extolled to the public the virtues of the Transaction in an unacceptably "broad brush" fashion. Unfortunately, Applicants have thus far failed to address the specific issues of greatest concern to those shippers (such as Redland) with whom they should be developing new business relationships, identifying new market opportunities, and developing future service and price strategies. At present

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<sup>4</sup> Hereinafter, CSX, CSXT, NSC, NS, CRR, and CR collectively will be referred to as "Applicants."

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

the proposed Transaction -- coupled with NS and CSX's reluctance to discuss potential business opportunities (the specific benefits) occasioned by consummation of the Transaction -- leaves Redland with far more questions than answers. Ultimately, Redland opposes this Transaction because: (1) Redland is virtually unable to effectively market its products in certain markets beyond middle to late 1998; (2) Redland cannot reasonably determine whether it would receive improved or deteriorated service after consummation of the Transaction; and (3) in some instances, CSX would impose avoidable operating inefficiencies upon certain existing Redland traffic routes.

Not only does Redland oppose the proposed Transaction as matters currently stand, but it is also gravely concerned about the future of Ohio's largest regional carrier, the Wheeling & Lake Erie Railway Company ("W&LE"). Unless the Applicants can provide new markets to W&LE, or unless the Board prescribes suitable conditions to assure the future viability of the W&LE, Redland believes that the proposed Transaction will be adverse to its interests and to the interests of many other Ohio-based shippers, and that the Application should therefore be denied.

## II. BACKGROUND

Redland is a rail-oriented shipper that manufactures lime and limestone products from its quarry and processing sites at Woodville and Millersville, Ohio. Together, these Redland locations process annually approximately 1.5 million tons of

lime, limestone, and aggregate products. Approximately 45% of this product is transported by rail.<sup>6</sup> Redland also receives inbound coal shipments destined to its Woodville facility. Today, Redland enjoys access to all three of the Applicant carriers -- CSX, NS and CR. As the map attached as Exhibit B demonstrates, Redland's Woodville facility connects directly with CR and is also served by a shortline carrier, the Northern Ohio & Western Railway, Ltd. ("NOW"). Via NOW connections, Redland's Millersville facility has connections to -- (1) CSX at Tiffin, OH; (2) CR at Woodville, OH; and (3) NS at Maple Grove, OH.<sup>7</sup>

Redland tenders only a modest amount of traffic to NS today. Instead, the vast majority of Redland's rail borne product is shipped pursuant to rates or rail service contracts negotiated with either CSX or CR. All of that will change dramatically if the Board approves the Transaction. The effective partition of CR's assets between CSX and NS will in some instances open new single-line (i.e., single line-haul carrier) "corridors" or "gateways," as the Applicants like to describe various marquee rail routes. In other cases, single-line service that Redland now enjoys will be lost, as rail routes that were once a part of a "unified" CR will be divided. In yet other cases, while "old" single-line routes will remain, "new"

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<sup>6</sup> See, "Verified Statement of David Chapman" (hereinafter, "Chapman V.S.") at page 1. (The Chapman V.S. is attached hereto as Exhibit A.)

<sup>7</sup> Because NOW serves Redland's Woodville facility, shipments from this location may also be routed to the Tiffin (CSXT) and Maple Grove (NS) interchanges.

(post-Transaction) single-line routes will also emerge which may or may not be preferable to those existing routes upon which shippers like Redland currently rely.

### III. SUMMARY OF REQUESTED RELIEF

For reasons set forth in detail below, Redland opposes the Transaction, and therefore requests that the Board deny the Application. In the event that the Board dismisses Redland's opposition and grants the Application, then, for reasons also set forth below, Redland requests the following relief:

1. Where, as a result of the Transaction, NOW will no longer be a necessary participant in the movement of Redland traffic to CSX, the Board must direct that -- (a) CSX is prohibited from insisting that Redland's Woodville traffic be handled by NOW; (b) CSX is required to provide direct switching services to Redland's Woodville facility; and (c) wherever permissible, CSX must arrange to terminate any contracts that require NOW to provide switching or other intermediate services between Redland's Woodville facility and the nearest CSX connection.
2. With respect to CR-Redland rail service contracts with terms extending beyond the consummation date of the Transaction, the Board must prohibit CSX from requiring Redland to route such traffic via Toledo (and CSX routes), where (a) to do so would result in joint CSX - NS service, and (b) an alternative NOW-NS route would be available.
3. The Board must direct Applicants to provide to W&LE, upon reasonable terms and conditions, either trackage or haulage rights over an existing NS line from Bellevue, OH, to the NOW interchange at Maple Grove, OH.

#### IV. REDLAND OPPOSES THE APPLICATION

On the basis of the information that Redland has received from the Applicants concerning the subject Transaction - - or, more to the point, the lack of such information -- Redland must oppose the Application and urge that it be denied. NS and CSX should be forging new partnerships with both existing and those "new" customers they will inherit if the Transaction is approved. In the case of Redland, and as will be shown, such partnerships have not yet materialized, and if they do not materialize soon, Redland will be unable to negotiate effectively with its customers.

The re-arrangement of service routes prompted by the consummation of this Transaction will usher three critical changes to the way Redland pursues its business. First, with the disappearance of CR, certain single-line CR routes now available to Redland will be divided between NS and CSX.<sup>8</sup> Second, CSX has indicated to Redland that it will no longer interchange traffic to and from Redland's facilities via Tiffin, OH, but will instead undertake all interchange from the north at Woodville (and thence via Toledo). (See, map attached as Exhibit C.) Third, due to its proposed operation of various lines currently operated by CR, NS -- now a comparatively minor participant in the movement of

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<sup>8</sup> While NS and CSX have proposed preserving existing contract rates for service over routes that will be split, this arrangement fails to adequately address the new long-term operating inefficiencies that two-carrier service will impose. This is a critical flaw in the Applicants' approach to this Transaction.

Redland traffic -- will be in a much stronger position to compete for a greater share of Redland's business.

A considerable portion of Redland's traffic is handled by CR and CSX pursuant to contracts that terminate (1) during the course of this proceeding, (2) upon consummation of the proposed Transaction, or (3) within the first year after the Transaction is consummated. This is due to the fact that approximately 95% of Redland's existing rail service contracts (or contract extensions) are negotiated for one or two year terms. Although one would expect that CSX and NS would be willing and able to negotiate prospective<sup>9</sup> new rail rates and/or service contracts with Redland to replace existing CR rates and contracts, they have not done so.<sup>10</sup> Instead, while Redland depends upon rail service contracts and prompt rate quotes to market its products effectively, NS and CSX both have been reluctant to discuss prospective (or "contingent") rates or contracts.<sup>11</sup>

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<sup>9</sup> Redland readily recognizes that, while it sees no impediment to NS and CSX negotiating prospective new contracts involving service intended to be provided over portions of CR's existing system, these contracts cannot become effective and enforceable unless and until such time as the Transaction is consummated.

<sup>10</sup> See, Chapman V.S. at 4.

<sup>11</sup> Of particular concern to Redland is that traffic currently handled by CR pursuant to service contracts that will expire within the next 12 to 14 months. On this traffic, CSX has effectively given Redland the "brush off," as evidenced by the attached letter (marked as Exhibit D). As a result, Redland traffic originating or terminating at CR-served points is in limbo -- NS is reluctant, and CSX appears totally unwilling, to negotiate prospective new contracts. CR will not agree to contracts with Redland for terms exceeding 12 months. Thus, as existing CR contracts expire, Redland may very easily lose the

Redland is deeply concerned about many other consequences of this Transaction which, at least until now, neither NS nor CSX has been able adequately to address. Of the three line-haul carriers to which it has access, Redland will be losing the one rail carrier that offered it the best rates and most reliable service -- CR.<sup>12</sup> With the loss of CR, Redland is exceedingly uncertain about the level of service CSX and NS will be able to provide post-Transaction. In light of the atrocious operating catastrophes erupting throughout the Union Pacific Railroad system, Redland is concerned that a much similar fate may await the Applicants. Redland has not received adequate assurances that NS or CSX will be able to -- (1) meet Redland's car supply requirements; (2) provide timely and reliably-scheduled service to and from Redland's Woodville and Millersville locations;<sup>13</sup> and (3) preserve the competitive rate structures that are currently in effect over many of the rail routes Redland utilizes (particularly on what are now single-line CR hauls).<sup>14</sup>

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opportunity to compete for the business it has in the past been able to secure.

<sup>12</sup> See, Chapman V.S. at 2.

<sup>13</sup> Many of Redland's customers are glass producers who rely on Redland to supply them with key production ingredients. These Redland customers are keenly sensitive to fluctuations in rail service, and are especially likely to shift to Redland competitors or to more expensive truck service if rail service is unreliable.

<sup>14</sup> Over the past several years, CR has proven to be the most cost-effective rail alternative available to Redland, while NS has consistently proven to offer the least competitive and



In large part, Redland's opposition of the Application is also due to the "chilling effect" that seems to have gripped the Applicants when it comes to negotiating rail service rates over those rail lines to be affected by the Transaction. As has been previously mentioned, much of Redland's rail traffic moves pursuant to one or two year contracts. In the case of traffic currently handled by CR, Redland has been frustrated in its efforts to secure new or contingent rates or contracts with CR, CSX, or NS. CR evidently has declined to negotiate any contract rates that would contain a term exceeding 12 months.<sup>15</sup> In the case of service to be provided post-Transaction over NS-operated former CR lines, NS has been far too slow to provide Redland with useful rate and price information. Finally, as the attached letter shows, CSX has effectively, and inappropriately, "brushed off" Redland's inquiries on this matter. See, Exhibit D.

V. REQUEST FOR PROTECTIVE CONDITION:  
CSX ROUTING OF REDLAND TRAFFIC VIA WOODVILLE

Among the more dismaying aspects of the Transaction is CSX's insistence upon imposing upon certain Redland traffic highly inefficient routing conditions. As the map attached as Exhibit B shows, Redland today must route Woodville traffic to CSX via a short line rail carrier connection -- NOW. NOW

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least attractive rates. With this Transaction, Redland is concerned that CR's favorable pricing structure will be supplanted by much higher NS rates.

<sup>15</sup> See, Chapman V.S. at 4.

provides thrice weekly service between Woodville and Tiffin, and, of course, the addition of the "switching" carrier (NOW) adds to the overall transportation cost Redland or its customers must incur. On the other hand, since CR currently serves Redland's Woodville facility directly (and daily), NOW is unnecessary for Redland-Woodville to CR traffic. After consummation of this Transaction, CSX would assume operations over the CR line to Woodville, and CSX would have direct access to Redland's Woodville facility just as CR does today.

Although, CSX and Redland would -- post Transaction -- enjoy a more favorable and efficient connection at Woodville, CSX insists that "traditional" CSX traffic (in this case, traffic moving pursuant to existing CSX-Redland rates and contracts listing NOW in the routing) must still be handled by NOW. At the very least, if CSX continues CR's current operating practices and provides daily service to Woodville, why should NOW have to handle this traffic at all, especially when this will unduly and artificially limit the level of service Redland can receive? At most, if CSX is able both to terminate the existing contracts listing NOW in the movement of Woodville traffic (CSX has not shown any inability to do this with Redland's consent) and to negotiate contingent contracts to take effect post-Transaction, then CSX is imposing an unnecessary and highly inefficient economic burden upon Redland by declining to do either.

If the Board should elect, despite Redland's opposition, to grant the Application, then Redland requests that

the Board, as a condition to consummation of the Transaction, prohibit CSX from requiring any Redland traffic from being switched or otherwise handled by NOW where there is no longer any need for NOW's intermediate services.

Redland has in place with CR several rate contracts which, by their terms, will or may extend beyond the proposed consummation date for the Transaction. These contracts afford Redland certain fixed rates for single-line CR service via Toledo, OH. These contracts are neither transferrable nor assignable without the express written consent of Redland or CR. As Redland understands the CR contracts, should it so elect, it may terminate these contracts upon consummation of the Transaction. CSX, however, insists that the contracts should be maintained, and cannot be terminated at Redland's election, even though CR will be endeavor to assign such contracts to either CSX or NS.

While this contract issue may not seem at first blush to be problematic, it turns out that CSX is insisting once again upon requiring the inefficient movement of Redland traffic. CSX reasons that -- (1) the CR contracts cannot be terminated by Redland upon consummation of the Transaction; and (2) since the CR contracts provide for routing via Woodville and Toledo, the contract traffic must continue to move via CSX to Toledo, even though the traffic is destined to points on CR that will be served by NS.<sup>16</sup> Redland quite reasonably notes that traffic from

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<sup>16</sup> See, Chapman V.S. at 3 and 4.

Woodville or Millersville intended for NS-served points need not be handled jointly by CSX and NS, as CSX seems to propose. Redland has access via NOW to NS, and Redland would prefer to explore the apparent efficiencies of "all-NS" routing.

CSX has no basis to insist that it must "take hostage" traffic that can be more efficiently handled via single-line NS routes. To that end, Redland requests that the Board require CSX to establish in this proceeding whether or not it can insist upon retaining for itself, and making subject to its own routing whims, traffic handled pursuant to the above-described CR contracts. If CSX cannot make an appropriate showing, then Redland requests that the Board -- (1) prohibit CSX from taking any actions designed to disregard the specific language of the subject CR contracts; and (2) prohibit CSX from requiring Redland to deliver to CSX at Woodville any and all traffic that would, in order to reach its intended destination, require subsequent interchange with NS.

VI. REQUEST FOR PROTECTIVE CONDITION:  
WHEELING & LAKE ERIE ACCESS TO REDLAND

Redland recognizes, as do so many Ohio-based shippers and the State of Ohio, that unless either (1) the Applicants take greater strides to preserve the W&LE, or (2) the Board grants conditions to W&LE sufficient to ensure its future viability, the proposed Transaction will not be in the best interests of Ohio. Having assessed the filings thus far submitted by the Applicants and W&LE, and based on conversations it has already undertaken

with W&LE, Redland is convinced that without access to additional markets not yet granted to it, W&LE would suffer financial collapse upon consummation of the Transaction. This is yet another reason why Redland cannot now support the Applicants.

Facing a drastic re-arrangement of the railroad map surrounding it, as well as the loss of one of its key rail carrier options (CR), Redland wishes to ensure that it has the opportunity to maximize its business opportunities by enlisting as many competitive rail options as possible. Thus, Redland is keenly concerned about the future of Ohio's largest regional carrier -- W&LE. Today, although effectively only 20 to 30 miles removed from the closest connection to W&LE at Bellevue, OH, Redland nonetheless envisions a future relationship with this carrier, especially since it would provide Redland with access to new customers in the Ohio market. As a step in the right direction, Redland strongly urges the Applicants to agree to extend to W&LE, on reasonable terms and conditions, either haulage or trackage rights (from Bellevue, OH to Maple Grove, OH) to access the NOW interchange at Maple Grove. If the Applicants refuse to make such accommodation, then Redland prays that the Board prescribe this relief.

#### VII. CONCLUSION

If the recent lessons out West are any indication, large class I rail carriers in too much of a hurry to implement the consolidation of connecting carriers harm both shippers and

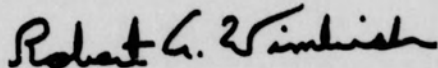
themselves. In the case back East, it appears that CSX and NS are, similarly, in far too much of a hurry to implement the division of CR to focus attention on the finer but equally important marketing aspects of the proposed Transaction. While the Transaction may ultimately bear fruit for shippers in many cases, NS and CSX's failure to adequately explore prospective or contingent contract and service relationships with Redland, as explained in some detail above, does Redland and its shippers an immediately-felt disservice. The consequence of NS and CSX's action (or inaction) in this instance is counter-productive, anti-competitive, not in the best interests of the shipping public, and for these reasons Redland presently cannot support the Applicants.

In addition, Redland objects to CSX's apparent efforts to force Redland to utilize inefficient service options to and from its Woodville facility, especially when such inefficiencies are wholly avoidable. Redland also objects to CSX's insistence on keeping for itself traffic moving under existing CR rate contracts that could be more efficiently handled by NS post-Transaction. CSX's position is not only objectionable, but, in the event that the Board grants the Application, it warrants the protective relief listed above in the event that the Board grants the Application.

Finally, Redland cannot support any rail Transaction that would threaten the continued viability of an independent W&LE. As explained above, Applicants have done far too little to

ensure W&LE's future, and it is up to them -- or the Board -- to take appropriate action to remedy this serious problem. Redland seeks to do business with W&LE, and while access to W&LE is clearly of worth to Redland, it is also merely a step in the right direction -- a gesture designed to ensure W&LE adequate revenue sources into the future.

Respectfully submitted,



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Counsel for Redland Ohio, Inc.

DATED: October 21, 1997

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VERIFIED STATEMENT  
OF  
DAVID CHAPMAN



My name is David Chapman. I am traffic supervisor for Redland Ohio, Inc. ("Redland"), a subsidiary of Redland Quarries, Inc. I am responsible for directing all transportation activities at Redland's plants in Woodville and Millersville, Ohio. I have over 20 years of experience in traffic management, and I am very well acquainted with railroads and railroad operations. Indeed, I devote much of my time negotiating service rates and contracts with rail carriers who transport Redland products.

I am authorized by Redland to submit this verified statement to address Redland's concerns arising from the proposed acquisition of Consolidated Rail Corporation ("Conrail") by CSX Transportation ("CSX") and the Norfolk Southern Corporation ("NS").<sup>1</sup> I am submitting this verified statement in connection with Redland's October 21, 1997 filing before the Surface Transportation Board ("Board"), in order to express with some particularity, why Redland has concluded that it must at this time oppose the Transaction.

Redland is a supplier of lime and limestone products to the steel, glass, and fiberglass industries. Redland annually produces about 1.5 million tons of lime, limestone, and aggregate products, and of this, approximately 45% is transported by rail. Redland ships its products to such points as Cleburne, TX; Baldwin, FL; Mt. Holly Springs, PA; Baltimore, MD; Port St. Joe, FL; and Weirton, WV. Today, Redland is served directly by two rail common carriers -- Conrail (at Woodville, OH) and the Northern Ohio and Western Railroad ("NOW"). Thanks to the connecting services NOW provides, Redland's facilities at Woodville and Millersville have access to CSX at Tiffin, OH, and to NS at Maple Grove, OH.

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<sup>1</sup> I will refer to the subject acquisition hereinafter as the "Transaction."





Verified Statement of  
David Chapman (continued)

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After CSX, NS, and Conrail filed the Application covering the subject Transaction, I initiated contact with representatives of each of these carriers to assess the potential impact of the proposed Transaction upon Redland. It became immediately apparent to me that Redland would be losing the benefit of having three connecting line-haul carriers. More importantly, Redland would lose its most effective rail transportation partner -- Conrail. Redland is concerned about the potential loss of Conrail because Conrail continuously provides Redland with the most consistent transit times of any of our three originating class 1 carriers.

Unlike CSX and NS today, Conrail pre-blocks Redland's outbound cars which ensures dependable, scheduled departures from Conrail's nearby Toledo yard facility. Conrail's favorable handling of our traffic has enabled Redland to prove to its customers that Redland is a high, reliable raw material supplier. It is partially because of Redland's partnership with Conrail, that Redland has been successful in obtaining the business it has. Without the partnership and effective service Conrail provided (and without any assurances from either NS or CSX that they will provide service on equal terms and conditions as did Conrail), Redland is highly concerned about its competitive position.

CSX and NS intend to divide between themselves the Conrail system. That means that some Redland traffic moving via an all-Conrail route today may have to move via a joint CSX-NS routing tomorrow. I do not think that either NS or CSX would fool themselves into believing that such joint CSX-NS routings would prove to be as efficient or as cost effective as the single line (all-Conrail) service Redland enjoys today.

Here is an example of traffic moving via an "all Conrail" route today that could be subjected to a less efficient two line-haul carrier move post-Transaction. Redland currently has in place with Conrail a rail service contract governing the



Verified Statement of  
David Chapman (continued)

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Fax: (419) 849-3589



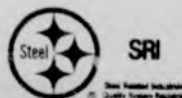
movement of limestone from Redland's Woodville facility to Mount Holly Springs, PA. Redland has secured this traffic because Conrail rates and single-carrier service are competitive. Unfortunately, the route over which this traffic currently traverses will be split after the Transaction. CSX would serve the origination point, but NS would serve Mount Holly Springs. However, after the Transaction, Redland would still have what is effectively a single line haul move available for this traffic via NS at Maple Grove, OH, provided CSX would permit such a routing.

Although an "all NS" routing to Mount Holly Springs clearly would be preferable to a less efficient two line-haul carrier move, CSX insists that the traffic must move via CSX at Woodville. I do not understand why CSX would insist upon subjecting this traffic to such avoidable routing inefficiencies, especially where CSX has never assured Redland that it can meet or improve upon the average transit times this business now enjoys.<sup>2</sup> CSX's position does not address Redland's concerns, nor is CSX's position anything other than a grab for traffic that it should recognize ought to be handled by an obviously better routing via NS.

In order to remain competitive and effectively market its products, Redland must be able quickly to ascertain applicable rail rates, and it must be able to negotiate suitable rail services contracts. Redland must also be able to secure an adequate supply of rail cars to fulfill its obligations to its

---

<sup>2</sup> Time after time, CSX fails to meet their service schedules and obligations on Redland traffic. Such failures occur in both the originating move of our traffic at Tiffin, OH, as well as at major terminals and yards throughout their system. As a result, I highly suspect that the traffic currently handled by Conrail will suffer slower transit times in the hands of CSX. CSX has done nothing to assuage my concerns in this regard.



ACCREDITED BY  
THE DUTCH  
COUNCIL FOR  
CERTIFICATION

Verified Statement of  
David Chapman (continued)

**Redland Ohio Inc.**

659 Anderson Road  
P.O. Box 128  
Woodville, Ohio 43469-0128  
(419) 849-2321  
(800) 445-3930  
Fax: (419) 849-3589



customers.<sup>3</sup> Concerning these issues, I have contacted representatives of CSX and to negotiate prospective (or "contingency") contracts involving rail services over what are now Conrail-owned lines. Redland understands that such rates or contracts are prospective only, and would not take effect until the Transaction is consummated. While NS has not proven wholly unwilling to discuss such rates or contracts, it seems reluctant to offer contingency rate quotations at this time. CSX, on the other hand, insists that they cannot discuss contingency contracts or rates, and they claim that NS should not be doing so with us either. Neither NS nor CSX has bothered to address my inquiries concerning post-Transaction car supply or projected transit times for Redland traffic.

I have contacted Conrail personnel to discuss renewed contracts and rates since I understand that NS and CSX have established a policy of honoring those contracts that they would inherit from Conrail post-Transaction. The problem is, Conrail will not negotiate with me any rates or service contracts that would have a term exceeding one year. Another problem is that Conrail serves Redland via a connection at Woodville, OH, and today routes all traffic through its Toledo yard. As mentioned above, it appears that whether or not a CSX routing post-Transaction would be preferable to an NS routing -- and there would be cases where an all NS routing would make far more sense -- CSX seems intent on hording traffic moving pursuant to existing Conrail-Redland contracts. Thus, even assuming Redland

---

<sup>3</sup> Due to the manufacturing processes Redland uses, Redland's receipt of inbound empty cars is as important as is the prompt handling of outbound loads. Once again, Conrail is the most effective of the three class 1 carriers serving Redland. Comparatively speaking, on both inbound empties and outbound loads, Conrail consistently provides Redland with prompt and efficient service via their Stanley Yard facility in the Toledo area.



Verified Statement of  
David Chapman (continued)

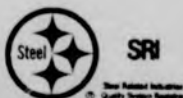
**Redland Ohio Inc.**  
659 Anderson Road  
P.O. Box 128  
Woodville, Ohio 43469-0128  
(419) 849-2321  
(800) 445-3930  
Fax: (419) 849-3589



negotiated new contracts with Conrail, it appears that either Redland would want to terminate the contracts upon consummation of the Transaction or it would have to permit CSX to keep the contracts "hostage" to potentially less efficient routings.

Finally, I have contacted NS on several occasions to discuss whether NS would agree to grant the Wheeling & Lake Erie Railway Company ("W&LE") trackage or haulage rights from Bellevue, OH to Maple Grove, OH. I am concerned that W&LE will not survive post-Transaction without access to new revenue sources, and I have been able to identify new Redland traffic opportunities that would be destined to points located on the W&LE. Although I believe my request is quite reasonable, NS has thus far resisted this proposal to protect the W&LE. Redland believes that by such actions, NS is ignoring very realistic and highly unintrusive proposals designed to protect W&LE from the revenue losses that NS itself has admitted W&LE will suffer.

Because NS and CSX have either resisted or flatly refused to discuss with me contingent rates or contracts, and because CSX insists upon subjecting existing Conrail traffic to inefficient routings post-Transaction, Redland opposes the Transaction. Redland must also oppose the Transaction because NS and CSX have failed to provide Redland with sufficient information and assurances that Redland's car supply and transit time needs will be met in the future. Redland opposes the Transaction because it believes that CSX and NS have failed to adequately assure that the W&LE will remain an independent, viable, and competitive rail carrier post-Transaction.



VERIFICATION

COUNTY OF Sandusky )  
STATE OF OHIO ) SS:

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

*David Chapman*  
David Chapman  
Traffic Supervisor -  
Redland Ohio, Inc.

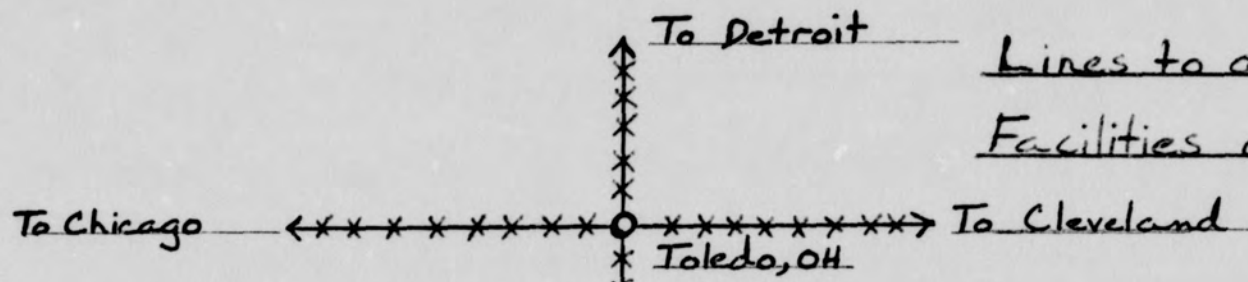
Subscribed and sworn to before me on this 17<sup>th</sup> day of October, 1997.

*Janice H. Little*  
Notary Public  
JANICE H. LITTLE  
NOTARY PUBLIC, STATE OF OHIO  
MY COMMISSION EXPIRES FEB. 2, 1998

My Commission Expires:

*February 2, 1998*

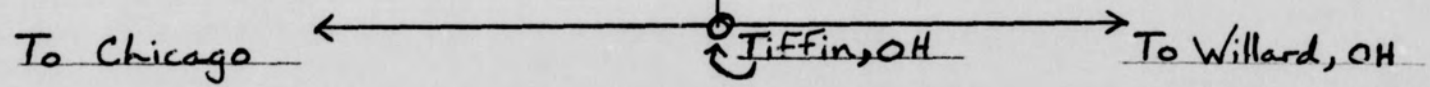
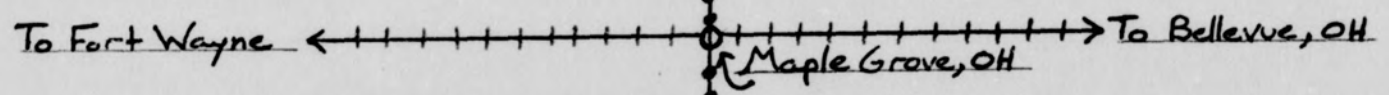
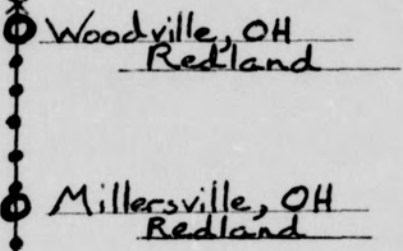
Lines to and From Redland  
Facilities as of 10/21/97



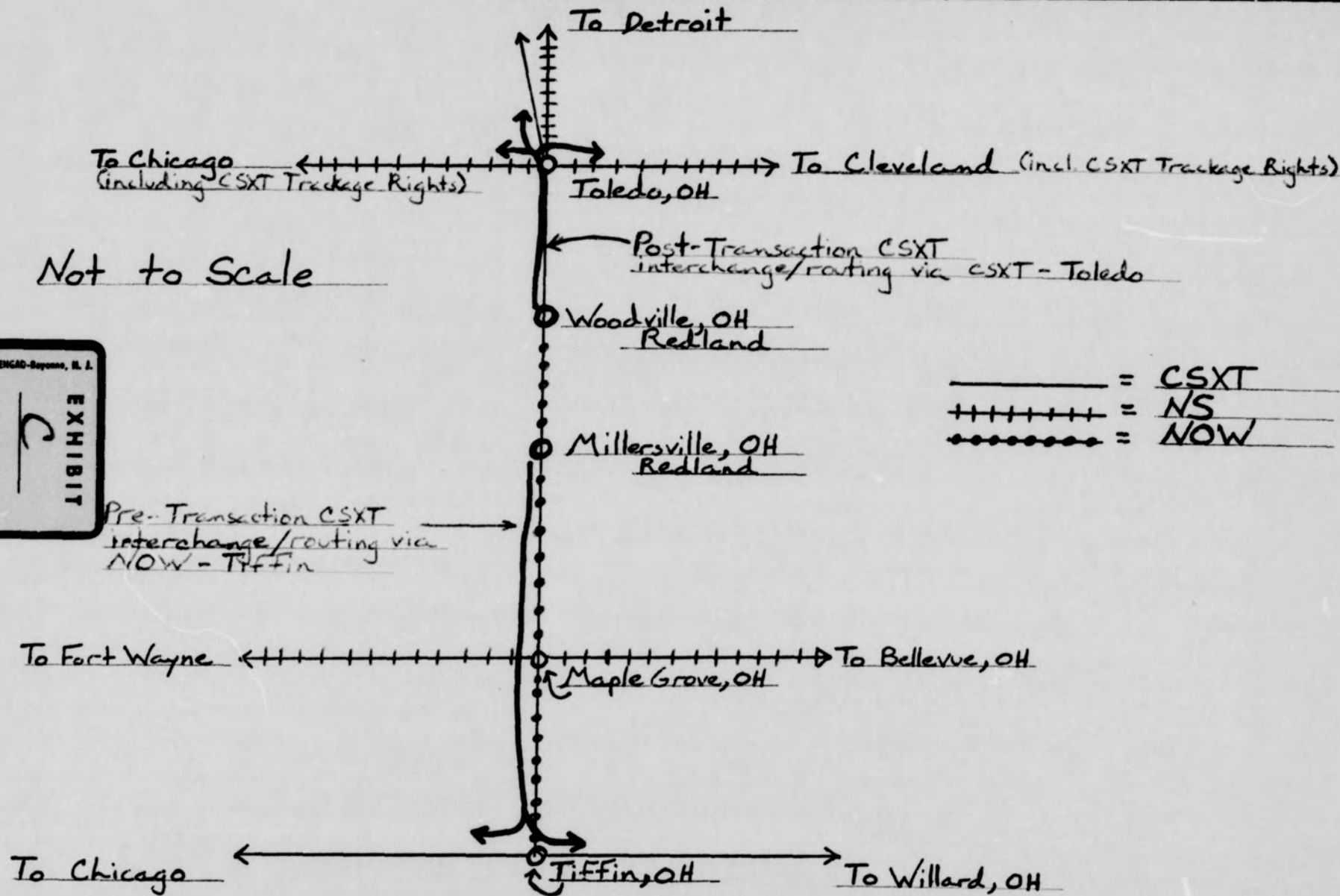
Not to Scale



- xxxxxx = Conrail
- \_\_\_\_\_ = CSXT
- ++++++ = NS
- = NOW



# CSXT and NS Service to Redland Post-Transaction



Not to Scale

PENGAD-Beynon, R. J.  
EXHIBIT  
C

———— = CSXT  
- - - - - = NS  
..... = NOW

ATTN: KEITH O'BRIEN

Livonia, Michigan  
September 30, 1997

Mr. Dave Chapman  
Redland Ohio  
Woodville, OH

Dear Dave,

This is response to our phone conversation this morning regarding contingency contracts for CR business CSXT plans to inherit from CR, predicated on numerous conditions, namely, the successful acquisition of CR.

CSXT senior management has become concerned that such activity might run a legal risk of exerting "undue control prior to acquisition". Accordingly, CSXT sales and marketing personnel have been asked to refrain from this activity immediately.

There is likelihood that CSXT will grant CR pricing authority through December, 1998, which will help somewhat

Our senior management is of the opinion NS will adhere to the same policy.

Also, we are asked to keep an eye out for any evidence that NS is, in fact, not adhering to this policy and advise management of any concrete examples.

Sincerely,

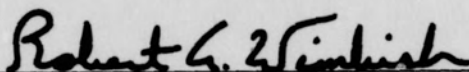
Rich Rose  
CSXT





CERTIFICATE OF SERVICE

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

  
\_\_\_\_\_  
Robert A. Wimbish

STB

EP-573

10-21-97

D

182953

182953

ORIGINAL

LAW OFFICES

REA, CROSS & AUCHINCLOSS

SUITE 420

1920 N STREET, N.W.

WASHINGTON, D. C. 20036

(202) 785-3700

FACSIMILE: (202) 659-4934

THOMAS M. AUCHINCLOSS, JR.  
LEO C. FRANEY  
JOHN D. HEFFNER  
KEITH G. O'BRIEN  
BRYCE REA, JR.  
BRIAN L. TROLANO  
ROBERT A. WIMBISH



October 21, 1997

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

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

TLCPA-3: Notice of Appearance of Robert A.  
Wimbish for Toledo-Lucas County Port  
Authority

Dear Secretary Williams:

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

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

Counsel for Toledo-Lucas County Port Authority

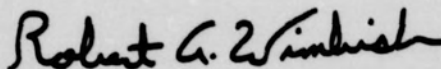
In keeping with the nature of this request, I hereby  
certify that I have submitted a copy of this letter to the  
Primary Applicants, ALJ Jacob Leventhal, and to all parties of

Vernon A. Williams  
October 21, 1997  
Page Two

record via U.S. mail, first class postage prepaid, or more expeditious delivery.

Thank you for your attention.

Sincerely,



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

Counsel for Toledo-Lucas County  
Port Authority

cc: All parties of record

LAW OFFICES

REA, CROSS & AUCHINCLOSS

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BRIAN L. TROIANO  
ROBERT A. WIMBISH

DONALD E. CROSS (1923-1986)

October 21, 1997

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

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

TLCPA-3: Notice of Appearance of Robert A.  
Wimbish for Toledo-Lucas County Port  
Authority

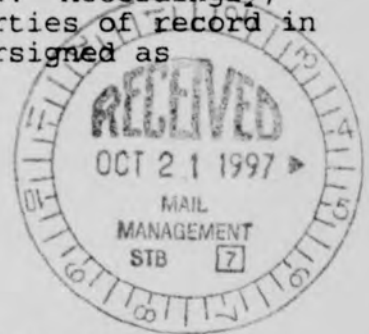
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Robert A. Wimbish  
FEA, CROSS & AUCHINCLOSS  
Suite 420  
1920 "N" Street  
Washington, D.C. 20036  
(202) 785-3700

Counsel for Toledo-Lucas County Port Authority

In keeping with the nature of this request, I hereby  
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Primary Applicants, ALJ Jacob Leventhal, and to all parties of

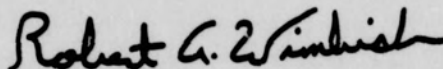


Vernon A. Williams  
October 21, 1997  
Page Two

record via U.S. mail, first class postage prepaid, or more expeditious delivery.

Thank you for your attention.

Sincerely,



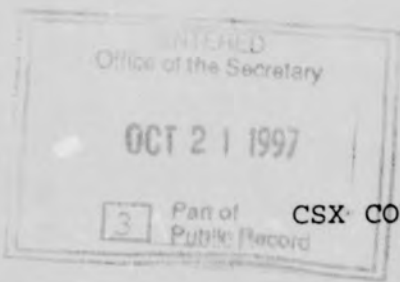
Robert A. Wimbish  
REA, CROSS & AUCHINCLOSS  
1920 "N" Street, N.W.  
Suite 420  
Washington, D.C. 20036  
(202) 785-3700

Counsel for Toledo-Lucas County  
Port Authority

cc: All parties of record

**TLCPA-4**

**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

**AND**

-----  
Finance Docket No. 33388 (Sub-No. 26)  
-----

CSX CORPORATION AND CSX TRANSPORTATION, INC.  
-- CONTROL --  
THE LAKEFRONT DOCK AND RAILROAD TERMINAL COMPANY

RAILROAD CONTROL APPLICATION

**AND**

-----  
Docket No. AB-290 (Sub-No. 197X)  
-----

NORFOLK AND WESTERN RAILWAY COMPANY  
-- ABANDONMENT --  
TOLEDO PIVOT BRIDGE IN LUCAS COUNTY, OHIO



**TLCPA-4**

REQUEST FOR PROTECTIVE CONDITIONS, OPPOSITION TO ABANDONMENT, AND  
COMMENTS OF THE TOLEDO-LUCAS COUNTY PORT AUTHORITY

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

Counsel for the Toledo-Lucas County  
Port Authority

DATED: October 21, 1997

BEFORE THE  
SURFACE TRANSPORTATION BOARD

-----  
Finance Docket No. 33388  
-----

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

**AND**

-----  
Finance Docket No. 33388 (Sub-No. 26)  
-----

CSX CORPORATION AND CSX TRANSPORTATION, INC.  
-- CONTROL --  
THE LAKEFRONT DOCK AND RAILROAD TERMINAL COMPANY

RAILROAD CONTROL APPLICATION

**AND**

-----  
Docket No. AB-290 (Sub-No. 197X)  
-----

NORFOLK AND WESTERN RAILWAY COMPANY  
-- ABANDONMENT --  
TOLEDO PIVOT BRIDGE IN LUCAS COUNTY, OHIO

**TLCPA-4**

REQUEST FOR PROTECTIVE CONDITIONS, OPPOSITION TO ABANDONMENT, AND  
COMMENTS OF THE TOLEDO-LUCAS COUNTY PORT AUTHORITY

I. INTRODUCTION

In a Decision served July 23, 1997, the Surface  
Transportation Board accepted for consideration the primary  
application (hereinafter, the "Application") and related filings



submitted by Applicants CSX Corporation ("CSXC"), CSX Transportation, Inc. ("CSXT")<sup>1</sup>, Norfolk Southern Corporation ("NSC"), Norfolk Southern Railway Company ("NSR")<sup>2</sup>, Conrail Inc. ("CRR"), and Consolidated Rail Corporation ("CRC")<sup>3</sup> for Board approval and authorization under 49 U.S.C. §§11321-25 for, as is relevant here -- (1) the acquisition by CSX and NS of control of CR; and (2) the division of assets owned by CR by and between CSX and NS.<sup>5</sup>

In its July 23rd Decision, the Board confirmed the procedural schedule previously prescribed for this proceeding. As pertinent here, the Board has required that all parties wishing to offer comments, protests, and requests for protective conditions, and any other opposition evidence and argument must make such filing(s) by October 21, 1997. In keeping with the Board's procedural schedule, The Toledo-Lucas County Port Authority ("TLCPA") hereby submits its comments and requests for

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<sup>1</sup> CSXC and CSXT, collectively, will be referred to hereinafter as "CSX."

<sup>2</sup> NSC and NSR, collectively, will be referred to hereinafter as "NS."

<sup>3</sup> CRR and CRC, collectively, will be referred to hereinafter as "CR."

<sup>4</sup> Hereinafter, CSX, CSXT, NSC, NS, CRR, and CR collectively and severally will be referred to as "Applicants."

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

protective conditions in response to Applicants' proposed Transaction.<sup>6</sup>

Applicants would have the Board believe that the proposed Transaction is in the best interests of shippers and communities throughout the eastern half of the United States. While Applicants may be correct that, in general, this Transaction will promote robust competition in various eastern corridors, the Applicants have failed adequately to address those instances where competition will be reduced. Once such instance where the Transaction promises anti-competitive consequences is at dock facilities in an around the Port of Toledo. Today, two strategically significant rail-to-water transfer facilities located at the Port of Toledo -- an iron ore ship-to-rail loading facility known as the Lakefront Dock and Railroad Terminal Company,<sup>7</sup> and a coal rail-to-ship loading facility known as Presque Isle<sup>8</sup> -- are jointly served by CSX and CR. However, CSX proposes to acquire full control of operations at the Toledo Docks, and this will leave these facilities as so-called "2 to 1" points served exclusively by CSX.

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<sup>6</sup> On July 27, 1997, TLCPA filed its Notice of Intent to Participate in this proceeding ("TLCPA-1"), and submitted on August 29, 1997, a Certificate of Service ("TLCPA-2"). Simultaneous with this filing, TLCPA is submitting as "TLCPA-3" a Notice of Appearance for TLCPA's designated Washington counsel.

<sup>7</sup> Hereinafter, the Lakefront Dock and Railroad Terminal Company will be referred to as "LD&RT."

<sup>8</sup> LD&RT and Presque Isle are adjacent dockside facilities that are commonly referred to as the "Toledo Docks." Hereinafter, TLCPA will refer to these facilities collectively as the "Toledo Docks."

In addition to its grave concerns regarding the loss of competitive service to the Toledo Docks, TLCPA opposes NS's proposed abandonment of the so-called "Toledo Pivot Bridge" across the Maumee River. TLCPA believes that NS has conveniently understated the operational significance of this bridge and that abandonment would be imprudent and anti-competitive.

## II. BACKGROUND

TLCPA is a public agency chartered under the laws of the State of Ohio. It is entrusted with a mandate to develop transportation facilities and infrastructure in the Toledo and northwestern region of Ohio. TLCPA owns the Port of Toledo, operates two airports in the Toledo area, and owns Central Union Plaza -- the passenger rail facility serving Toledo, OH.<sup>9</sup>

The Port of Toledo consists in part of the two adjacent and connecting LD&RT and Presque Isle facilities which together are known as the Toledo Docks. As is mentioned above, the Toledo Docks are rail-to-water and water-to-rail transfer facilities for two separate commodities -- coal (Presque Isle) and iron ore (LD&RT). In fact, 100% of the Toledo Docks' throughput consists of coal and iron ore. All of the coal and iron ore passing through the Toledo Docks is handled to or from these facilities

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<sup>9</sup> See, "Verified Statement of Robert E. Greenlese" -- attached hereto as Exhibit A -- at page 1. (Hereinafter, the "Verified Statement of Robert E. Greenlese" will be referred to as the "Greenlese V.S.")

via class 1 rail connections. Over the past five years Toledo Docks' coal and iron ore throughputs have been as follows:

<u>YEAR</u>	<u>Coal (tons)</u>	<u>Iron Ore (tons)</u>
1992	6,381,893	2,993,816
1993	5,348,283	3,214,445
1994	4,819,031	3,945,508
1995	4,757,682	4,581,393
1996	5,288,197	3,668,484 <sup>10</sup>

On average, assuming that a railcar can handle about 100 tons of coal or iron ore, and assuming further that the coal and iron ore passing through the Toledo Docks is handled in unit train movements of approximately 115 cars per train, then the Toledo Docks originate or terminate in the neighborhood of 463 coal trains and 320 iron ore trains annually.

Today, the LD&RT and Presque Isle facilities are open to both CSX and CR, but this was not always the case. Originally, the Chesapeake & Ohio Railway ("C&O") (a predecessor to CSX) owned and operated the Presque Isle facility. Presque Isle was, during the C&O days, used for the loading and unloading of coal and iron ore. LD&RT, on the other hand, was jointly owned and operated by the Baltimore & Ohio Railroad ("B&O") (another CSX predecessor) and the New York Central System ("NYC")

---

<sup>10</sup> See, Greenlese V.S. at 2.

(a predecessor to CR), and it too was operated as both a coal and iron ore terminal.

In 1964, TLCPA purchased Presque Isle, and entered into a long term-lease with C&O, enabling that carrier to continue service to Presque Isle.<sup>11</sup> Then, in 1980, Chessie System ("Chessie") (successor to the B&O and C&O), sought to consolidate operations at Presque Isle and LD&RT. Specifically, Chessie converted LD&RT into an "all-iron ore" ship unloading facility, while Presque Isle's docks became a ship loading terminal for coal only. In order to accomplish this conversion, CR was afforded equal access rights to Presque Isle. By this arrangement -- governed by a 1980 document entitled "Toledo Docks Operating Agreement" -- CR continued to have the use of both coal and iron ore terminal facilities at the Port of Toledo.<sup>12</sup>

Although not within the Toledo Docks facilities itself, NS currently owns a rail line in the vicinity of Toledo that could become a critical link for these lakeside properties. Specifically, NS owns and operates main line trackage in Lucas County which crosses the Maumee River on a structure known as the "Toledo Pivot Bridge." Today, approximately 4 to 6 daily trains traverse this bridge.<sup>13</sup> According to Docket No. AB-290 (Sub-No. 197X), NS intends to abandon the trackage on the Toledo Pivot

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<sup>11</sup> While TLCPA owns the Presque Isle terminal, it has no ownership interest in LD&RT.

<sup>12</sup> See, Greenlese V.S. at 1.

<sup>13</sup> See, Greenlese V.S. at 3.

Bridge, and re-route its trains to other lines over which NS will operate post-Transaction. As will be presented below, TLCPA questions whether or not NS is acting prudently in seeking to abandon this service over the Toledo Pivot Bridge, and whether its actions are designed to frustrate competing rail carrier access to Toledo.

### III. SUMMARY OF PROTECTIVE CONDITION RELIEF AND COMMENTS

Simply put, the Transaction contemplates that CSX will assume full ownership and control of the LD&RT and that, as a result, CSX will enjoy sole access to the Toledo Docks. This means that the Toledo Docks will become a "2 to 1" point, and that the Toledo Docks will be without the benefit of the competing rail service options it enjoys today.<sup>14</sup> This must be remedied. According to recent Board precedent, the Toledo Docks are entitled to competitive rail access relief. See, Finance Docket No. 32760, Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company -- Control and Merger -- Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and the Denver and Rio Grande Western Railroad Company (Decision No. 44), served August 12, 1996, at

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<sup>14</sup> While TLCPA acknowledges that CR has had a negligible presence at the Toledo Docks in recent years, CR has never relinquished or abandoned its rights to serve these facilities. Thus, even if CR is not currently a particularly successful competitor for Toledo Docks traffic, its mere presence is a competitive counterbalance to CSX.

pp. 121-124 (merger approved largely because merging parties introduced a competing carrier -- Burlington Northern Santa Fe -- to those points where a shipper or community would lose the benefit of dual rail carrier access); and Finance Docket No. 32549, Burlington Northern Inc., and Burlington Northern Railroad Company -- Control and Merger -- Santa Fe Pacific Corporation and the Atchison, Topeka and Santa Fe Railway Company (Decision No. 38), served August 23, 1995, at pp. 54-55 (competitive harm is very evident and subject to I.C.C./Board remedy "where the possible routing options on a rail-bound commodity drop from two originating or terminating railroads to one.")

In connection with the abandonment notice of exemption captioned as Docket No. B-290 (Sub-No. 197X), TLCPA urges the Board either to reject this filing because it is an inappropriate use of the exempt abandonment regulations or to deny it as contrary to the public interest.

Therefore, and for the reasons set forth more fully in the sections below, TLCPA requests the following relief:

1. The Board must require as a condition to approval of Finance Docket No. 33388 (Sub-No. 26), CSX Corporation and CSX Transportation, Inc. -- Control -- The Lakefront Dock and Railroad Terminal Company, that -- (a) the Wheeling & Lake Erie Railway Company ("W&LE") be provided trackage rights access to and in the Toledo Docks; (b) CSX be required to offer to W&LE equal access to the Toledo Dock facilities; and (3) trackage rights conveyed by Applicants to W&LE be established at rates ensuring competitive and viable access to the Toledo Docks.
2. Should W&LE prove unwilling or unable to provide service to the Toledo Docks upon a reasonable request for service, or if W&LE should abandon or otherwise relinquish its rights of access to the Toledo Docks,

then the Board must, upon appropriate request from TLCPA, reopen this proceeding. Upon such reopening, the Board shall, at TLCPA's election, direct either NS or another rail carrier of TLCPA's choosing to serve the Toledo Docks pursuant to the terms and conditions set forth in relief request no. 1, above.

3. The Board must reject or deny NS's notice of exemption docketed as Docket No. AB-290 (Sub-No. 197X), Norfolk and Western Railway Company -- Abandonment -- Toledo Pivot Bridge in Lucas County, Ohio. In the alternative, the Board must hold this abandonment proceeding in abeyance for at least one year following consummation of the Transaction -- and for additional time thereafter upon appropriate showing by interested parties -- so that NS can better demonstrate that eliminating the Bridge will not result in undue congestion on other Toledo through routes.

In this filing, TLCPA will also register its support for W&LE, and in particular W&LE's request for access to industries and potential connecting rail carriers in the vicinity of Toledo, OH.

In assessing the impacts of the proposed Transaction, and in preparing this filing, TLCPA has worked closely with the Toledo Metropolitan Area Council of Governments ("TMAC"). As can be seen from the attached verified statement of Mr. Greenlese, TLCPA is a member of TMAC.<sup>15</sup> The comments and requests for relief presented in this filing and in TMAC's submissions reflect the interests and concerns of both TMAC and TLCPA. Therefore, TLCPA strongly commends to the Board TMAC's concurrently filed submissions and evidence, which TLCPA understands will be captioned as "TMAC-1," "TMAC-2," and "TMAC-3."

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<sup>15</sup> See, Greenlese V.S. at 4.



IV.  
REQUESTS FOR PROTECTIVE CONDITIONS:  
W&LE EQUAL ACCESS TO TOLEDO DOCKS

In Finance Docket No. 33388 (Sub-No. 26), CSX Corporation and CSX Transportation, Inc. -- Control -- The Lakefront Dock and Railroad Terminal Company, CSX proposes to acquire CR's 50% ownership interest in the LD&RT, and thereby assume 100% stock ownership control of LD&RT. (CSX already possesses a 50% stock ownership interest in the LD&RT rail facility.) The transaction encompassed in Finance Docket 33388 (Sub-No. 26) would result in only one rail carrier [CSX] providing service to the Toledo Docks where today there are two rail carriers [CSX and CR] serving these same facilities. Applicants have made no arrangements of their own to rectify for obvious loss of competitive rail service alternatives that the Toledo Docks would suffer. Thus, the Toledo Docks would become a textbook 2-to-1 facility entitled to Board-imposed relief.

TLCPA has been discussing this issue with the W&LE, and TLCPA understands that W&LE will request, by way of a responsive application, the authority to access and serve the Toledo Docks, as well as access to other rail shippers and connecting carriers in the general vicinity of Toledo.<sup>16</sup> W&LE is an obvious and acceptable competitive alternative for the Toledo Docks, and

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<sup>16</sup> See, Greenlese V.S. at 3.

TLCPA supports W&LE as a suitable substitute for the loss of CR.<sup>17</sup>

Since W&LE has established its desire and has expressed its ability to serve the Toledo Docks, and since W&LE has confirmed with TLCPA that W&LE will request access to the Toledo Docks, TLCPA supports W&LE's responsive application. The fundamental issue to TLCPA is that the Toledo Docks have competitive rail access alternatives into the future. Therefore, in the event that W&LE proves unable or unwilling to provide service to the Toledo Docks, or should W&LE at some future date seek to abandon its rights to and from the Toledo Docks, then TLCPA requests that the Board permit the re-opening of this proceeding. If circumstances arise warranting such re-opening, the Board should take action to require that NS or another rail carrier designated by TLCPA be authorized to provide service to and from the Toledo Docks in lieu of W&LE.

#### V. OPPOSITION TO ABANDONMENT OF TOLEDO PIVOT BRIDGE

In Docket No. AB-290 (Sub-No. 197X), Norfolk and Western Railway Company -- Abandonment -- Toledo Pivot Bridge in

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<sup>17</sup> If the Application is approved, NS will serve three existing Lake Erie coal and iron ore dock facilities in Ohio -- Sandusky, OH; Ashtabula, OH; and Huron, OH. With this potential abundance of lakeside access for NS, TLCPA does not believe that NS would have much incentive to dilute its presence at these other facilities just for the purposes of also serving the Toledo Docks. Thus, TLCPA has concluded that NS would be a poor choice as a substitute for CR service at the Toledo Docks.

Lucas County, Ohio, the Norfolk and Western Railway Company,<sup>18</sup> a wholly owned subsidiary of NS, has submitted an abandonment notice of exemption to abandon the 0.2 miles of trackage that traverse the Toledo Pivot Bridge (hereinafter, "The Bridge"). Evidently, NS has concluded that it will no longer require use of the Bridge as it does today. Although it may ultimately be that NS will not need the Bridge, TLCPA has determined that other carriers will. Furthermore, TLCPA questions NS's decision to rely upon the notice of exemption procedures of 49 CFR §1152 to accomplish the intended abandonment.

Time may confirm that NS really does not need the Bridge, but other filings expected to be submitted to the Board will show that at least one other rail carrier will need it. TLCPA has conferred with W&LE, and has determined that W&LE will submit a variety of trackage rights requests in its responsive application. Among the requests TLCPA understands W&LE will submit to the Board are trackage rights access to shippers and rail carriers in the Toledo area. To efficiently operate to the new Toledo-area points W&LE intends to serve post-Transaction,<sup>19</sup> W&LE will require use of the Bridge.<sup>20</sup> Having assessed for

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<sup>18</sup> For the sake of convenience, the Norfolk and Western Railway Company hereinafter will also be referred to as "NS."

<sup>19</sup> See, Part VI below for a description of those Toledo area shippers and rail carriers to which W&LE will seek access.

<sup>20</sup> W&LE representatives, including W&LE's in-house counsel, have confirmed that if W&LE obtains the Toledo-area relief it intends to request in its responsive application, it will require the use of the Toledo Pivot Bridge. TLCPA further understands that, as a part of W&LE's October 21, 1997 filings,

itself the network of rail lines in and around Toledo, TLCPA has independently determined that the Bridge would serve as a portion of the most efficient route for W&LE access to shippers and connecting rail carriers in the Toledo area.<sup>21</sup> Indeed, TLCPA has concluded that alternative routes for W&LE access to various Toledo points would be so circuitous, inefficient and/or congested as to threaten W&LE's ability to compete at all in the Toledo market.<sup>22</sup>

TLCPA recognizes that the Bridge is a component of an existing NS through route. As mentioned above, the trains now running over the bridge will be transferred to other main lines in the Toledo area that are projected to experience significant traffic increases post-Transaction. (According to TMAC figures, approximately 90 daily trains traverse CR's Maumee River bridge. Even assuming this figure is high, there can be no dispute that this bridge crossing is projected to handle an additional 8 to 10 daily trains.) While NS appears confident that re-routing overhead traffic to the CR Maumee River bridge (4 miles to the

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W&LE will itself oppose the abandonment proposed in Docket No. AB-290 (Sub-No. 197X).

<sup>21</sup> See, Greenlese V.S. at 4 and 5.

<sup>22</sup> As it has with other aspects of this pleading, TLCPA has worked closely with TMAC -- of which TLCPA is a participating member -- to develop the case against NS's proposed abandonment of the Bridge. TLCPA has reviewed preliminary versions of TMAC's opposition to this abandonment, which will be filed as "TMAC-2," and fully supports the representations and conclusions contained in that filing. TLCPA refers the Board to TMAC-2 because that document contains an even more detailed analysis of the strategic significance of this Bridge and the complications that would arise if the abandonment is permitted. See, Greenlese V.S. at 4.

south) will not pose any problems to traffic fluidity, TLCPA is deeply concerned that the CR route via its southerly Maumee River crossing will actually face debilitating congestion in the near future. If such congestion should occur -- and the lessons of the Union Pacific - Southern Pacific merger demonstrate how easily they may -- NS will have forfeited an alternative route to ease traffic problems.<sup>23</sup>

Even if it does not handle what is technically "local" traffic (and TLCPA cannot think of a time when a 0.2 mile bridge generated local traffic), the line over the Bridge is anything but dormant. According to TLCPA, approximately 4 to 6 NS trains use this line daily -- 4 through freights and one NS yard transfer run in each direction between NS's Homestead Yard and Maumee, OH. While it may be that these trains can be re-routed to other lines, NS has nowhere established that the proposed re-routing would be neither unduly circuitous or inefficient.<sup>24</sup>

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<sup>23</sup> TLCPA has determined that, since the Bridge traverses a navigable waterway, NS may be required by law promptly to remove the Bridge upon consummation of abandonment. The Army Corps of Engineers would have to review and approve any future re-building of the Bridge if it is removed in the first place.

<sup>24</sup> In Futurex Industries, Inc. v. I.C.C., 897 F.2d 866, 872 (7th Cir. 1990), the 7th Circuit Court of Appeals employed the following test to assess a rail line abandonment:

When segmentation of transportation lines is involved, we consider whether the segmentation satisfies three conditions: (1) does the proposed segment have logical termini?; (2) does the segment have substantially independent utility?; and (3) will abandonment of the disputed segment foreclose alternate treatment of the remaining segments?

TLCPA submits that the proposed abandonment of the Bridge fails

Presumably, since only the Bridge itself is slated for abandonment, there must be shippers near the Bridge or it would be very likely that NS would abandon portions of the lines leading up to the Bridge as well. Either that, or NS is employing here a "surgical strike" strategy designed to ensure that the line connecting to the Bridge can no longer be used by anyone as a through route. Under these circumstances, TLCPA believes that the proposed abandonment fails to comport with the requirements of 49 CFR §1152, and it requests that the Board reject the notice of exemption and require NS to file an application for abandonment pursuant to 49 CFR §1152, Subpart C (Procedures Governing Notice, Applications, Financial Assistance, Acquisition for Public Use, and Trail Use) instead.

TLCPA urges that it would be imprudent to permit NS to abandon the Bridge at this time. Even assuming that the W&LE did not require Bridge access to reach its intended Toledo points, Toledo shippers (including the Toledo Docks) cannot be assured that the existing NS through route, of which the Bridge is a part, is unnecessary. TLCPA requests, at the very least, that this abandonment proceeding be held in abeyance for a period of one year following consummation of the Transaction -- and for additional time thereafter upon appropriate showing by interested parties -- so that NS can better demonstrate that eliminating the Bridge will not result in undue congestion on other Toledo through routes.

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the Futurex test.

## VI. COMMENTS -- SUPPORT FOR W&LE ACCESS TO TOLEDO AREA

As this pleading suggests throughout, TLCPA recognizes the need for a viable, independent, and competitive W&LE. In order for the Toledo Docks to have access to competitive rail service, TLCPA must have a W&LE that is ready, willing and able to provide that service. Thus, TLCPA knows that a healthy W&LE depends on more than mere access to the Toledo Docks. TLCPA believes strongly that the Applicants have done far too little to ensure that the W&LE can survive post-Transaction. It is for these reasons that TLCPA supports the W&LE and urges the Board to act favorably on the responsive application it will submit.

TLCPA anticipates that W&LE will, among other relief, request trackage rights access in the Toledo area to the following carriers and shippers: (a) the Ann Arbor Railroad, (b) the Canadian National Railway ("CN") at CN's Lang Yard in North Toledo, (c) the Indiana and Ohio Railroad, and (d) the British Petroleum coke facility at Toledo. These requests are of particular interest to TLCPA, and TLCPA supports these requests as constructive, pro-competitive and essential to assure not only the continued viability of W&LE but more specifically to ensure the preservation of competitive service to the Toledo Docks.

## VII. CONCLUSION

In the tide of potential sweeping changes in rail service east of the Mississippi, it is easy to identify general service corridors, highlight expanded single-carrier service

routes, or focus on the general cost savings presumed to result from consolidation. These are all things that the Applicants have done well enough. Unfortunately, and presumably in their haste, the Applicants have overlooked those instances where certain shippers, locations or facilities will lose the benefit of two competing rail carriers. The Toledo Docks at the Port of Toledo are one such instance where the anti-competitive consequences of the Transaction have been overlooked, and it is therefore incumbent upon either the Applicants or the Board to remedy the situation.

As a classic example of a "2-to-1" point there can be little dispute that the Toledo Docks are entitled to relief. Since the Applicants themselves have taken no initiative, TLCPA urges the Board to permit the W&LE to have access to the Toledo Docks. On a related note, TLCPA urges the Board not to permit abandonment of the Toledo Pivot Bridge, insofar as this Bridge -- (1) will be necessary to assure W&LE access to the greater Toledo area, and (2) represents a component of an existing NS through route that may be needed post-Transaction to alleviate congestion on other through routes. Finally, TLCPA urges favorable Board action on the responsive application W&LE has indicated it will file in this proceeding.

Specifically, and as was outlined above, TLCPA urges the Board to grant the following protective conditions in favor of the Toledo Docks:



1. The Board must require as a condition to approval of Finance Docket No. 33388 (Sub-No. 26), CSX Corporation and CSX Transportation, Inc. -- Control -- The Lakefront Dock and Railroad Terminal Company, that -- (a) the Wheeling & Lake Erie Railway Company ("W&LE") be provided trackage rights access to and in the Toledo Docks; (b) CSX be required to offer to W&LE equal access to the Toledo Dock facilities; and (3) trackage rights conveyed by Applicants to W&LE be established at rates ensuring competitive and viable access to the Toledo Docks.
2. Should W&LE prove unwilling or unable to provide service to the Toledo Docks upon a reasonable request for service, or if W&LE should abandon or otherwise relinquish its rights of access to the Toledo Docks, then the Board must, upon appropriate request from TLCPA, reopen this proceeding. Upon such reopening, the Board shall, at TLCPA's election, direct either NS or another rail carrier of TLCPA's choosing to serve the Toledo Docks pursuant to the terms and conditions set forth in relief request no. 1, above.
3. The Board must reject or deny NS's notice of exemption docketed as Docket No. AB-290 (Sub-No. 197X), Norfolk and Western Railway Company -- Abandonment -- Toledo Pivot Bridge in Lucas County, Ohio. In the alternative, the Board must hold this abandonment proceeding in abeyance for at least one year following consummation of the Transaction -- and for additional time thereafter upon appropriate showing by interested parties -- so that NS can better demonstrate that eliminating the Bridge will not result in undue congestion on other Toledo through routes.

The various shippers and communities of the State of Ohio are caught squarely in the middle of what promises to be revolutionary change in the rail industry. The Board is entrusted to ensure that these changes, if permitted at all, are executed carefully and in a manner consistent with the public interest. No community or shipper should pay the price for "progress" elsewhere, and the Board must both prescribe suitable remedies for those points (such as the Toledo Docks) where competition will be lost, and assume a thorough analysis of those

facilities that have not adequately been shown to be superfluous  
(such as the Toledo Pivot Bridge). TLCPA expects no less.

Respectfully submitted,

*Robert A. Wimbish*

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Counsel for the Toledo-Lucas County  
Port Authority

DATED: October 21, 1997



Verified Statement  
of  
Robert E. Greenlese

My name is Robert E. Greenlese. I am the Director of Surface Transportation and Logistics for the Toledo-Lucas County Port Authority ("TLCPA") located at 1 Maritime Plaza, Suite 700, Toledo, Ohio 43604. In my present position, which I have held for two years, I am responsible for all rail and highway-related infrastructure and development matters as related to the Port Authority's mission and operating area. Prior to this position, I was the Manager of Trade Development for TLCPA for three years. TLCPA is a public agency chartered under the laws of the State Of Ohio and whose mandate it is to develop transportation facilities and infrastructure in the Toledo and Northwestern Ohio region. TLCPA owns the general cargo facility as well as the coal transfer facility at the Port of Toledo, operates two airports in the Toledo area and owns the Central Union Plaza, the passenger rail facility serving Toledo, Ohio.

By way of background, in 1964 TLCPA purchased what was historically known as the Presque Isle dock facility from the C&O Railway ("C&O"), a predecessor to CSX. TLCPA then leased the facility backed to the C&O pursuant to a long-term lease arrangement. Under the lease terms, CSX currently pays TLCPA a fixed amount to cover retirement of revenue bonds which TLCPA sold to purchase the facility in the first place. CSX also pays a minimum rental amount of \$5,000 per year or a wharfage charge of \$.02 per ton of product handled over the wharves of the facility subject to a maximum of \$250,000 per year. In the year 2004, the wharfage charge increases to \$.03 per ton.

In 1980, another CSX predecessor, Chessie System ("Chessie"), sought to consolidate the Presque Isle facilities with the adjacent Lakefront Dock and Railroad Terminal Company ("LD&RT") facilities, such that Presque Isle would be converted into a Coal-only facility and LD&RT would become an iron ore-only facility. (Until then, both Presque Isle and LD&RT handled both coal and iron ore.) Since Conrail had access at that time to only the LD&RT facility (of which it is half-owner with CSX), the railroads established the "Toledo Docks Operating Agreement," which permitted Conrail equal access to both Presque Isle and the LD&RT terminals. (Presque Isle and the LD&RT facilities are typically referred to collectively as the "Toledo Docks.")

At that time (1980), Chessie established an entity called the Toledo Ore Railroad Company ("TORCO"), which manages the actual ship unloading and railcar loading operations and on-site storage space connecting to the LD&RT terminal. TORCO is, evidently, a separate venture from the LD&RT, even though the two



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companies have an obvious relationship. TLCPA assisted TORCO in completing the Toledo Docks consolidation program undertaken by Chessie by financing equipment purchases necessary to convert the LD&RT into an "iron ore-only" terminal. I understand that Conrail may use TORCO's services according to the same terms and conditions as does CSX today, and I would expect that any rail carrier that would replace Conrail at the Toledo Docks would have unrestricted access to the loading and unloading facilities located there in exactly the same manner as Conrail does today.

As I have mentioned, Conrail enjoys full access to the Toledo Docks by virtue of their 50% ownership in the LD&RT. Needless to say, the two-carrier service the Toledo Docks enjoy today is important to a facility such as this inasmuch as the business of the Toledo Docks is rail business. 100% of all business handled at the Toledo Docks is transported in one way or another by rail. On the coal side, all tonnage comes into Presque Isle via rail and is transferred to vessels. The reverse is true at LD&RT. All iron ore comes into the facility via vessels and is moved inland via rail. The amount of traffic is considerable. The following table shows the tonnage of coal and iron handled through the Toledo Docks for the past five years:

Year	Coal (tons)	Iron Ore (tons)
1992	6,381,893	2,993,816
1993	5,348,283	3,214,445
1994	4,819,031	3,945,508
1995	4,757,682	4,581,393
1996	5,288,197	3,668,484

Both commodities are handled in unit train movements of up to 115 cars per train. Using that number, and assuming 100 tons per car, coal averages about 463 trains per year into the facility and iron ore averages about 320 trains per year. To move this amount of tonnage annually via any other surface mode than rail would be impossible. Competitive rail access to the and TLCPA's economic interests as outlined above. Toledo Docks is vital to protecting the viability of the facility



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### Competitive Rail Access at Toledo Docks

I cannot stress enough how important it is that the Toledo Docks retain access to two rail carriers. Much of TLCPA's support for the consolidation leading to the "Toledo Docks Agreement" -- including our funding for TORCO equipment upgrades in 1980 -- was predicated on the understanding that it would help facilitate the interests of both Chessie and Conrail as well as improve the competitive position of the Toledo Docks vis-a-vis other Lake Erie ports. Admittedly, Conrail has not had much of a presence at the Toledo Docks in recent years. This is due to the fact that CSX was able to win away from Conrail iron ore traffic that Conrail had previously routed from the Toledo Docks. However, Conrail serves as an effective counterbalance to CSX, and their presence effectively ensures competitive rail rates to and from the Toledo Docks. Conrail continues from time to time to deliver coal to the Toledo Docks.

During the course of this Conrail acquisition proceeding, I have had numerous discussions with CSX officials regarding potential loss of rail competition at the Toledo Docks. My intention was to explore with them the possibility of installing a new rail carrier at the Toledo Docks to replace Conrail if the application is approved. Unfortunately, CSX did not think much of my request and indicated no desire to compensate for the loss of Conrail's competitive presence. I gathered from my discussions that CSX reasons that the Toledo Docks are already a single-carrier served facility, since CSX today provides virtually all of the service to and from these facilities.

I have been able to confirm with the Wheeling & Lake Erie Railway Company ("WLE") that they desire to obtain access to the Toledo Docks. TLCPA supports WLE in this objective. I understand that WLE will request the right to serve the Toledo Docks in a responsive application, and this, too, has the support of TLCPA.

### Preservation of the Toledo Pivot Bridge

The loss of the NS pivot bridge across the Maumee River at Toledo would bode very badly for the future. It is a vital component of the complicated maze of rail lines that comprise the Toledo terminal area. I have learned from recent conversations with NS personnel that NS moves up to four road trains a day over this bridge in addition to a round-trip "yard transfer" train. I



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understand that the bridge enables NS to connect their Homestead Yard in East Toledo with Ann Arbor Railroad ("AA") lines on the other side of the river. Through a trackage rights agreement with the AA, NS connects its Homestead Yard with its Detroit - St. Louis mainline at Milan, Michigan.

I wish to point out that TLCPA is certainly not alone in its opposition to abandonment of the pivot bridge. We are joined by, WLE, the Ohio Rail Development Commission, and the Toledo Metropolitan Area Council of Governments ("TMAC"). TLCPA is a member of TMAC, and I, as a member of the TMAC Railroad Task Force, have assisted in developing a comprehensive strategy concerning responses to locally-based consequences of the Conrail acquisition. I am aware that TMAC will submit its own opposition to the pivot bridge abandonment -- to be filed with the STB as "TMAC-2." I expect that the TMAC filing will offer a more fully-developed explanation of the current role of the bridge as well as its strategic significance to WLE and other carriers. I commend TMAC's filings to the STB, and urge that the STB carefully consider TMAC's evidence.

NS contends that if the Conrail acquisition is approved by the STB, they will no longer need the bridge. Specifically, NS has decided that the four daily road trains and the yard transfer run will be able to use an alternate route which NS will acquire from Conrail. The proposed arrangement will put additional traffic onto the existing Conrail bridge upriver from NS's pivot bridge. That will increase traffic over the Conrail route, and may pose congestion problems in the future.

I am deeply concerned that once the bridge is abandoned, it will be gone forever. The NS pivot bridge traverses the Maumee River -- a navigable waterway. On the basis of my experience with other abandoned rail bridges over the Maumee, I am certain that the Army Corps of Engineers will find the unused structure to be an impediment to waterway navigation and will ultimately require that this bridge be removed. Once removed, it would be exceedingly expensive to re-build, assuming in the first place that the Army Corps of Engineers permits construction (a highly unlikely proposition).

As I have mentioned above, TLCPA understands that WLE will seek trackage rights to access Toledo, including the Toledo Docks. I will state again that TLCPA strongly supports WLE's requests. Through discussions with WLE personnel, we have learned that, if WLE is to obtain the trackage rights it seeks in the Toledo area, such trackage rights would depend upon the preservation of the NS pivot bridge. This is because the bridge



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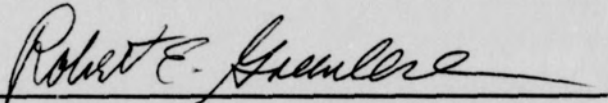
is absolutely essential to allow WLE an efficient connection with the AA as well as the Canadian National ("CN"). The bridge is also a part of a vital WLE connection to a newly announced Chrysler Jeep assembly plant in North Toledo.

According to recent conversations I have had with WLE personnel, NS has evidently indicated that they are willing to work with the WLE, the Ohio Rail Development Commission, and other public agencies (such as TLCPA) to protect the bridge. (Although it would appear that NS recognizes both WLE's potential need for the bridge and TLCPA's concerns, I am not aware of any action by NS to withdraw the abandonment filing.) We expect that WLE will request in its October 21, 1997 pleadings to request protection for the pivot bridge and oppose its abandonment. TLCPA regards the NS pivot bridge as essential to the future success of WLE. Thus, the pivot bridge must be preserved to both ensure WLE's future success as well as the success of the Toledo Docks.

VERIFICATION

STATE OF OHIO            )  
                                  ) ss:  
COUNTY OF LUCAS        )

Robert E. Greenlese, being duly sworn, deposes and says that he has read the foregoing statement, knows the facts asserted there are true and that the same are true as stated.



Robert E. Greenlese  
Director of Surface Transportation and Logistics

Subscribed and sworn to before me this 20th day of October, 1997.



Margaret J. Hutchinson  
Notary Public

My Commission Expires:



MARGARET J. HUTCHINSON  
Notary Public, State of Ohio  
Commission Expires 8-19-2002



CERTIFICATE OF SERVICE

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

Robert A. Wimbish

Robert A. Wimbish

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ORIGINAL

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

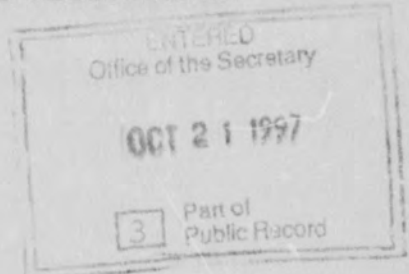


Comments of the  
Empire State Passengers Association

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Counsel for Empire State  
Passengers Association

Dated: October 21, 1997



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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Comments of the  
Empire State Passengers Association

Pursuant to the schedule adopted by the Surface Transportation Board ("the Board") on July 23, 1997, the Empire State Passengers Association ("ESPA") files its comments in the above-captioned proceeding.

Established in 1980, ESPA is an unincorporated association of volunteers dedicated to improving and expanding Amtrak, mass transit, and bus service in New York State. ESPA supports Amtrak and other rail passenger service as an alternative to automobile and air transportation. Rail passenger service is recognized nationally and internationally as the safe, energy efficient, environmentally sound mode of transportation. ESPA has decided to participate in this merger proceeding to ensure that the Board hears and considers the views of rail passengers in determining whether or not to approve the

acquisition and partition of Consolidated Rail Corporation ("Conrail") by CSX Transportation ("CSX") and Norfolk Southern Corporation ("NS"). ESPA's limits its remarks here to the impact that CSX's acquisition of Conrail lines will have on passenger service in New York State, particularly Amtrak service. ESPA takes no position on issues involving competitive freight service or on NS' acquisition of Conrail lines in New York State or elsewhere.

By way of background, Conrail has historically had a hostile attitude toward rail passenger improvements thwarting even simple requests such as stopping existing Amtrak passenger trains in communities located along the Empire Corridor. Two of CSX's predecessor railroads -- the Seaboard Coast Line Railroad and the Chessie System -- generally took a cooperative attitude towards Amtrak and rail passenger service. In light of a number of remarks by CSX's Chairman, ESPA has cause to worry that his company's recent anti-Amtrak bias will adversely affect the quantity and quality of rail passenger service operated in New York State, particularly along Amtrak's "Empire Corridor" linking New York City to Albany, Buffalo, and Niagara Falls upon consummation of this transaction. Accordingly, absent strong and convincing assurances by CSX that it will work cooperatively with Amtrak and the New York State Department of Transportation ("NYSDOT") and local governments along the route in providing reliable, convenient rail passenger service, ESPA requests that

the Board condition any order approving the application of NS and CSX for control and operation of Conrail on the following:

1. A clear corporate commitment by CSX to provide on time (90% on time) Amtrak service in accordance with the incentive contracts executed between Amtrak and Conrail which CSX will assume as well as its existing incentive contract with Amtrak.

2. A corporate commitment on the part of CSX to work with Amtrak, NYSDOT, and the on line communities to provide improved and expanded Amtrak service on the Empire Corridor. That commitment will include cooperation on, among other things, higher speed (90 mph) service, additional frequencies and/or the flexibility to add additional seasonal, weekend, or special trains, and additional station stops. With respect to 90 mph. service west of Hoffmans, NY, ESPA asks the Board to impose as a condition that CSX be required to enter into an agreement with NYSDOT similar to the one executed in 1986 between NS and NYSDOT. ESPA does not expect CSX or any other freight railroad to finance improvements solely required for passenger service. Rather ESPA requests that CSX work cooperatively with agencies such as Amtrak, NYSDOT, and local governments in New York which will fund these improvements and with Amtrak or Metro North Commuter Railroad ("Metro North") which will operate the passenger service.

3. Finally, because of a history of past problems on these matters, for the Board to exercise continuing oversight over this merger for at least five years to ensure that interested parties

have a forum for resolving merger related disputes over passenger service issues.

PASSENGER SERVICE  
IN NEW YORK STATE

Before presenting its comments, ESPA believes that a short description of New York State's rail passenger service and passenger facilities would be useful. Today New York enjoys a substantial network of "intercity" passenger service<sup>1</sup> provided by Amtrak radiating out of New York as well as an elaborate commuter rail network for the New York/Newark (NJ) Metropolitan Area. In fact, one third of all Amtrak passengers originate or terminate in the State of New York. Amtrak provides an intercity rail passenger service network radiating out of New York City on two principal corridors. To the North, The Northeast Corridor links New York with Boston and Springfield, MA, and Vermont via New Haven, CT. To the South, The Northeast Corridor extends from New York to Philadelphia and Washington, with some runs diverging at Philadelphia to Harrisburg, PA, or western Pennsylvania, and some runs through Washington continuing onto Richmond and Newport News, VA. The Northeast Corridor is the most heavily used rail line in the country with a dense mixture of high speed (up to 125 mph) Amtrak trains, commuter trains, and some freight trains. Aside from Amtrak's fast, frequent short haul trains, a number of other Amtrak medium daylight and overnight long distance trains

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<sup>1</sup> Defined as rail passenger transportation, except commuter rail passenger transportation. 49 U.S.C. 24103(6).

traverse all or part of The Northeast Corridor to points in western Pennsylvania, the Carolinas, Florida, Chicago, and New Orleans. Amtrak owns, maintains, and dispatches The Northeast Corridor. Those freight railroads whose trains traverse the corridor do so as tenants of Amtrak. The Northeast Corridor is outside the scope of these comments.

Amtrak also operates a second high density corridor in New York State known as the "Empire Corridor"<sup>2</sup> which is the focus of ESPA's comments. The Empire Corridor extends from Penn Station along the Hudson River to Albany-Rensselaer,<sup>3</sup> with some trains continuing on to Rutland, VT, Buffalo and Niagara Falls, NY, Montreal and Toronto, Canada. In addition, Amtrak operates an east-west long distance train known as the Lake Shore Limited over the Empire Corridor. The Lake Shore links Boston and New York with Chicago operating via Albany-Rensselaer,<sup>4</sup> Buffalo, and Cleveland. The Lake Shore is said to be one of Amtrak's two or three single busiest passenger trains in terms of "on off" passenger counts. The Empire Corridor has been Amtrak's 3rd busiest corridor with its 10 daily roundtrips handling over 1.1 million passengers per year.

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<sup>2</sup> Train service operated by Amtrak on the Empire Corridor is known as the "Empire Service."

<sup>3</sup> Amtrak's Albany station is physically located in the city of Rensselaer across the Hudson River from downtown Albany.

<sup>4</sup> The Boston and New York sections split at Albany-Rensselaer.



While four distinct commuter rail networks<sup>5</sup> serve New York, only those services operated by Metro North bear mention here. Metro North's Hudson Division trains share the same tracks as Amtrak's "Empire Service" between Spuyten Duyvil (where the line splits to serve Amtrak's Penn Station terminus and Metro North's Grand Central Terminal) and Poughkeepsie, a distance of 68 miles.

The Empire Corridor's two operating segments -- New York to Hoffmans (West of Schenectady) and Hoffmans to Buffalo<sup>6</sup> - - have two vastly different sets of characteristics. New York to Hoffmans is for the most part a high speed (FRA class 5 and 6 track standards with speeds of up to 110 mph depending upon local conditions), high density, primarily passenger (Amtrak with Metro North commuter trains to Poughkeepsie) Railroad. Between New York and Rensselaer, this route has at least two tracks and up to four tracks and sees only a modest amount of freight traffic.

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<sup>5</sup> The Long Island Rail Road and New Jersey Transit operate service from points on Long Island and central and southern New Jersey into Penn Station. New Jersey Transit also operates service from northern New Jersey and adjacent New York State points into Hoboken, NJ, with water and rail transit connections into New York. Finally, Metro North operates service from Grand Central Terminal north on the Hudson Division to Croton and Poughkeepsie, on the Harlem Division to Brewster and Dover Plains, and east on the New Haven Division ("Northeast Corridor") to New Haven, New Canaan, Danbury, and Waterbury, CT.

<sup>6</sup> One daily Empire Service train continues from Buffalo through to Toronto, Canada, through Niagara Falls. One additional daily and one additional quad weekly train continue west of Buffalo to Niagara Falls.

The New York to Poughkeepsie segment is publicly owned<sup>7</sup> and Amtrak leases a short segment of the Poughkeepsie-Albany trackage from that line's owner, Conrail. Amtrak owns or leases some of the trackage between Rensselaer and Hoffmans. West of Hoffmans where Conrail's freight mainline from Selkirk Yard merges with the passenger route, the Empire Corridor becomes a high density double track route with some sidings or short multiple track segments. Owned by Conrail, this segment of the Empire Corridor is one of the busiest freight routes in the East. Aside from three to four daily Amtrak roundtrips per day, this line sees about 40 to 50 daily freight trains. Conrail has designated this line as FRA class 4 track with freight trains operated at 60 mph. and passenger trains operated at speeds between 70 and 79 mph., depending upon curvature and local speed restrictions. Should this merger be approved and consummated, this segment of railroad will become a major artery for CSX.

Prior to the Penn Central merger and subsequent creation of Conrail in 1976, the Empire Corridor formed the core of the main line of the New York Central System ("NYC"). As ESPA witness Michael R. Weinman has testified in his Affidavit attached to these comments, the Empire Corridor had at one time been a four track railroad between New York City and Chicago. The route assumed its present configuration in the late 1950's

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<sup>7</sup> Technically, Metro North's corporate parent the Metropolitan Transportation Authority has a long term lease with American Premier Underwriters, the corporate successor to the Penn Central Transportation Company, which owns the line.

and early 1960's when NYC management installed centralized traffic control and replaced four unidirectional tracks with two tracks signalled for use in either direction. The NYC operated the entire New York-Buffalo route as a high speed freight and passenger railroad with a top passenger speed of 85 mph. west of Syracuse and a top speed of 79 east of that point. West of Albany, the NYC operated three times as many passenger trains in the 1960's as Amtrak operates today and provided fast punctual passenger service despite a very heavy freight density. Conrail's inability to replicate the service the NYC provided suggests that the company has lost the incentive to maintain and dispatch a high speed railroad. As Mr. Weinman's statement shows, Conrail's monopoly position no longer warranted competition of the basis of speed and Conrail generally slowed all rail traffic.

THE PASSENGER GOALS OF  
THE FINAL SYSTEM PLAN

Throughout their joint application the CSX and NS maintain that granting their request to control and operate Conrail's lines will merely achieve the goals originally sought to be accomplished under the Regional Rail Reorganization Act (the "3R Act")<sup>8</sup> and the U.S. Railway Association's Final System Plan (hereinafter "the FSP"). In Section 206 of that law Congress identified a whole series of goals for rail freight and

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<sup>8</sup> 45 U.S.C. 701.

passenger service for the Northeastern part of the country. As relevant here, section 206 calls for:

- \* Efficient movement of both passengers and freight in the Region in a manner consistent with safe operation.
- \* Identification of all short to medium distance corridors in densely populated areas in which major upgrading of rail lines for high-speed passenger operation would return substantial public benefits.

In presenting its vision for passenger service in the Region, USRA adopted the goals of section 206. Among other things, USRA prepared a comprehensive list of 16 short to medium distance corridors outside The Northeast Corridor which it deemed to be worthy of frequent Amtrak service. Vol. I, FSP at 43-44, copy attached as Exhibit A. Significantly, USRA identified both the New York-Albany and Albany-Buffalo segments of the Empire Corridor as well as the Buffalo-Detroit and Buffalo-Cleveland extensions of that corridor as routes with passenger service potential. USRA also recognized the need for passenger train priority over freight service and for incentive contracts between Amtrak and the freight railroads that own the tracks it uses. Obviously, USRA's planners, some of whom are now associated with the planning for this Conrail acquisition, believed a high speed passenger network was compatible with high quality freight services. Finally, USRA acknowledged the need for a board to resolve disputes between freight and passenger users on high density routes such as The Northeast Corridor. Vol. I, FSP at 40, 43.

During the intervening years between 1974 and the present, Congress has repeatedly recognized the need for Amtrak corridor services outside The Northeast Corridor including the need for higher speed services and for better coordination between freight and passenger services. 49 U.S.C. 24101, 24308, 24702, and 26101. In its 1994 revision of the federal laws authorizing Amtrak, Congress went so far as to direct the Secretary of Transportation to identify five corridors which should be upgraded for "high speed"<sup>9</sup> service. 45 U.S.C. 26101. In 1994, the Secretary specifically identified the entire "Empire Corridor" as one of his choices for high speed service pursuant to section 3 of the Intercity Rail Infrastructure Investment Act of 1995. The Rail Passenger Service Act amendments of 1994 contain numerous reminders of Congress' desire that Amtrak provide higher operating speeds (average speeds of at least 60 mph),<sup>10</sup> punctual service, and passenger train priority. 49 U.S.C. 24101, 24308, and 24702. There should be no doubt that Congress intended for Amtrak to provide a punctual, reliable, and auto (if not air) competitive service in select corridors including the "Empire Corridor" and that it expects the Board to

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<sup>9</sup> Defined as rail service reaching sustained speeds of more than 125 mph. 45 U.S.C. 831(n).

<sup>10</sup> In order for a passenger railroad to meet or exceed the 60 mph. average speed standard, the train must operate at a top speed that exceeds the average speed by at least 20 mph. Hence 79 mph. is the minimally acceptable top speed required to meet the Congressional goal.

interpret the public interest standard in considering this merger to protect passenger service issues.

#### COMMENTS

Before addressing some of ESPA's specific concerns, ESPA offers some general observations about both Conrail and CSX as "partners" with Amtrak in the provision of passenger service. First, outside The Northeast Corridor and a handful of other routes, Amtrak depends upon various freight railroads to provide it with access to tracks, yards, signals, and other facilities necessary for it to provide passenger service. While it is the public perception that Amtrak "operates" the service (by providing rolling stock, locomotives, and train crews), the fact is that the freight railroads provide and maintain fixed facilities and dispatch freight and passenger trains moving over the line and have an extensive say in the outcome. These freight railroads literally have the ability to "make or break" the quantity and quality of Amtrak service provided over their line.

In preparing these comments, "ESPA propounded a limited amount of discovery to both Conrail and CSX. The responses obtained were significant, primarily because of the attitude they revealed rather than the information obtained. For example, Conrail in responding to ESPA's second interrogatory stated, "Conrail objects the request as being vague and ambiguous with respect to 'Conrail's operation of Amtrak's Empire Corridor trains' and unduly broad...[i]t is Amtrak, not Conrail, that

'operates' Amtrak trains over the Empire Corridor, by providing power and crews." See Conrail discovery response submitted here as Exhibit B.

Similarly, CSX in responding to ESPA interrogatories 13 and 15 demonstrates a glib, cavalier, evasive attitude. Perhaps CSX hopes that by providing Amtrak with a minimally acceptable level of service, it will some day "dry up and blow away." It is this attitude which gives rail passenger proponents cause for concern when major passenger corridors are entrusted to a railroad that lacks a clear commitment to cooperate with Amtrak.

In several recent major regulatory decisions, the Board through its Chairman Linda Morgan has revealed a tension between the agency's regulatory role and its preference for parties before it to rely on the "market place" for solutions to their problems. On several occasions Chairman Morgan has stated that the agency is a "court of last resort" and will exercise its regulatory authority only where there is no other forum or mechanism available to resolve issues. In a proceeding such as the instant transaction, the agency has a clear obligation to decide whether or not to grant Applicants' joint merger request according to a generalized public interest standard. While the Board's role as to the Applicants and their application is clear, the role of the Board in disposing of numerous requests by others is more amorphous. It is with regard to these other issues that the Board has stated its preference that parties use negotiations

and even other legal remedies instead of the administrative process to resolve differences.

Earlier in these comments, ESPA raised several issues affecting rail passenger service. We believe that changes in traffic flows and line ownership occasioned by the merger may adversely affect these passenger issues. While Amtrak admittedly has certain contractual and statutory remedies available to it outside the merger process to protect its rights, aggressive Board action is still required here despite these remedies. For example, while Amtrak has incentive contracts<sup>11</sup> with both Conrail and CSX, these two railroads have some of the poorest on time rates of all of the railroads over whose tracks Amtrak operates. Moreover, the fact that Amtrak has received poor performance from Conrail and CSX under these incentive contracts would lead one to conclude that this "market place" solution is inadequate. Although Amtrak possesses several statutory remedies under (the Act) to prevent poor freight railroad performance and has occasionally used them, the existence of these remedies still appears insufficient to persuade some freight railroads to provide the best level of service possible. Finally, none of these statutory and contractual remedies are available to state agencies, local authorities, and passengers. Accordingly, ESPA must conclude that the Board must step in and use its power as the trustee of the public interest to prescribe appropriate

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<sup>11</sup> These contracts reward those carriers with an excellent on time rate and penalize those whose service is unreliable.



relief to ensure that CSXT will upon its acquisition and operation of certain Conrail's New York lines will provide the highest quality service possible.

In the beginning of this presentation, ESPA identified four issues of great concern to it and its members. They are as follows.

#### SERVICE RELIABILITY

Service reliability is probably the single most important issue for ESPA. In view of the chronic delays now occurring over parts of the merged Union Pacific-Southern Pacific System -- some of which have plagued Amtrak trains -- ESPA's concern is warranted. Historically, Amtrak had serious problems operating its Empire Service passenger trains over Conrail's New York-Buffalo line. In fact, Amtrak's Lake Shore Limited, its overnight train between New York/Boston and Chicago, has had such a legendary record for tardiness that passengers called it the "Late Shore Limited." In surveys taken by Amtrak, passengers have identified train punctuality and reliability as the single most important issue warranting improvement. Amtrak's present management has been so concerned about punctuality problems on the Empire Corridor that it made a point of holding regular meetings with Conrail dispatchers located at Selkirk. The results of these efforts were dramatic. Except for the Lake Shore, whose punctuality can be affected by connecting western trains, the on time rate for Empire Service trains has

substantially improved from an average of about 78% in 1995 to the present average of 85% in 1997.

While many different factors can affect passenger service reliability and punctuality,<sup>12</sup> freight train interference, signal and dispatching problems, and track related slow orders and maintenance frequently delay Amtrak trains. Despite CSX's assurances that it does not expect its projected modest increases in freight traffic over the Empire Corridor to adversely affect Amtrak service,<sup>13</sup> its past reliability record on other routes should be a matter of public concern. CSX's stated policy<sup>14</sup> of giving passenger trains priority over freight along with its incentive contract with Amtrak -- intended to reward punctual performance and penalize poor service -- appears to have little impact in providing Amtrak with reliable service. Finally, CSX makes no effort to conceal its intention to move Conrail's dispatching function from Selkirk, NY, to Jacksonville, FL, and to eliminate the local "trouble desks" that Conrail keeps. CSX Operating Plan at 67. Numerous safety related problems experienced by the Union Pacific Railroad and CSX<sup>15</sup>

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<sup>12</sup> Causes of delays can include Amtrak related causes such as the boarding of crowded trains, equipment malfunctions, and delayed connections. Customs related delays are a serious problem for the New York-Montreal and New York-Toronto trains.

<sup>13</sup> Operating Plan at 170-3.

<sup>14</sup> CSX Operating Plan at 171-2.

<sup>15</sup> A recent news story tells of a collision between Amtrak's Silver Star and a truck at a grade crossing in Georgia. Due to confusion at CSX's Jacksonville facility, CSX's dispatcher failed to notify the Amtrak engineer of the obstruction on the

suggest that the Board and the Federal Railroad Administration should oppose these changes.

#### HIGHER SPEEDS

ESPA strongly believes that once CSX's restores the Empire Corridor trackage between Hoffmans and Buffalo to an FRA class 5 track standard, CSX should permit Amtrak to operate its passenger trains at 90 mph, instead of the 79 mph. speeds proposed.<sup>16</sup> In so doing, ESPA recognizes that federal law prohibits passenger trains from operating over 90 mph. without a supplementary signal system.<sup>17</sup> ESPA does not expect CSX to pay for such supplementary equipment. It merely expects CSX to cooperate with a public agency such as NYSDOT which would install and maintain that system. ESPA also recognizes that CSX's freight operations would likely benefit from the installation of that system without having to bear the additional expenses associated with it.

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tracks.

<sup>16</sup> CSX's Operating Plan states that it will restore 79 mph. operating speeds "where possible." CSX Operating Plan at 173. However, CSX's response to ESPA's interrogatory on this subject does not shed any light on the meaning of the phrase "where possible." A copy of its answer is attached as Exhibit C. The Board should ask CSX to explain where 79 mph. speeds are "not possible."

<sup>17</sup> Traditionally, either cab signals or automatic train stop were required for passenger speeds faster than 79 mph. FRA appears likely to permit passenger train operations over 79 mph. with a new technology known as positive train separation.

CSX's offer to restore the Empire Corridor to FRA class 5 track standards "where possible" does not represent some great gesture on its part. Rather it reflects good railroad operating practices which CSX itself employs on its own mainline between Richmond, VA, and Jacksonville, FL. When Conrail had restored the Hoffmans-Buffalo line after acquiring it, NYSDOT contributed funding to assist Conrail with upgrading the line to class 5 track standards. Conrail maintained that line to that standard until it decided to let the line deteriorate to class 4 track standards between 1995 and 1996. To the best of ESPA's knowledge, Conrail reclassified the line as class 4 track without the required FRA approval.<sup>18</sup> As the Conrail employee timetable attached here as Exhibit D demonstrates, Conrail lowered Amtrak's top speed over many portions of the Empire Corridor. While that downgrading did not result in any schedule changes, it still represented a degradation of service in terms of poorer ride quality and by making it more difficult for late trains to recover lost time.

No one has suggested that the superimposition of 90 mph. Amtrak service on a heavily used freight line is technically unfeasible. For many years before the establishment of Amtrak in 1971, private railroads throughout the eastern and Midwestern United States routinely ran slower freight trains on the same tracks with 90 or even 100 mph. passenger trains. Weinman Affidavit. Moreover, Canada's passenger railroad [VIA RAIL]

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<sup>18</sup> 49 U.S.C. 24309.

operates a corridor passenger service at speeds of up to 90-95 mph. without cab signals over several Canadian National owned freight routes radiating out of Toronto. Canadian railroads use the same types of equipment and engineering standards as their American counterparts. Finally, the States of California and Washington are looking at massive passenger upgrading projects on two heavily used freight routes - Oakland to Bakersfield and Portland to Seattle to Vancouver (Canada) - of the Burlington Northern Santa Fe Railroad. The Oakland to Bakersfield route is fairly straight and there are no present plans to increase speeds over the present 79 mph. However, the line is single track and handles substantial freight and Amtrak service (4 passenger roundtrips daily). In the case of the Washington State Corridor, top speeds would initially be held to 79 mph.; however, curves would be more highly superelevated<sup>19</sup> than is the standard freight railroad practice and special tilt body rolling stock able to take curves more quickly than conventional equipment would be employed.

In the 1980's in response to a request from NYSDOT, NS agreed to operate Amtrak at speeds of up to 90 mph. over the Hoffmans-Buffalo portion of the Empire Corridor provided that it was successful in acquiring Conrail and NYSDOT funded the

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<sup>19</sup> Superelevation involves banking on curves such that one rail is higher than the other with the result that a passenger train can negotiate a curve faster than it could without that banking. Unfortunately, superelevation causes the lower rail to wear more quickly than the upper rail resulting in additional maintenance expenses.

required improvements. See agreement between NS and NYSDOT attached as Exhibit E. ESPA requests that CSX be required to enter into a similar agreement with NYSDOT as a condition of this merger.

In discovery, ESPA asked CSX what concrete steps is it committed to make to make to cooperate in raising Amtrak speeds over 79 mph. should public funding be available for higher speed service. CSX initially responded by characterizing ESPA's inquiry as "vague," "ambiguous," and "calling for speculation." It then added that it "will evaluate any proposals to make public funding available for improvements to increase Amtrak operating speeds...in the context and with reference to the specifics as they may be presented."<sup>20</sup>

#### FREQUENCY INCREASES AND FLEXIBILITY

Although Amtrak currently provides frequent service between Rensselaer and New York City (10 daily roundtrips with additional service on Fridays), its service is far more limited West of Schenectady (3 daily roundtrips, 4 roundtrips, Thursday through Monday). It operates no daylight service between Buffalo and Cleveland, a serious omission from any plan for passenger service in Western New York and contrary to the FSP's recommendations. While Conrail has been fairly cooperative with

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<sup>20</sup> CSX's response is attached as Exhibit F.

Amtrak and NYSDOT on adding frequencies, ESPA lacks the same level of confidence with CSX.<sup>21</sup>

There is no physical or operational impediment to adding a modest additional level of Amtrak service west of Hoffmans. CSX itself has indicated the line has adequate, if not substantial capacity to handle additional.<sup>22</sup> Furthermore, as ESPA witness Weinman testimony demonstrates, the NYC operated more trains -- both freight and passenger -- at higher speeds than Conrail and Amtrak today handle and CSX predicts that it and Amtrak will run on the Hoffmans-Buffalo line. See, Weinman Affidavit.

#### ADDITIONAL STATIONS

The location of some additional stations in New York State has been a continual bone of contention between, on the one hand, ESPA and certain affected communities and, on the other, Conrail. Over the past ten years the communities of Lyons, NY, (located between Rochester and Syracuse) and Dunkirk, NY, (located between Buffalo and Cleveland) have asked Amtrak to stop in their cities. Amtrak has researched the market potential for these communities and concluded that there is potential ridership. However, Amtrak cannot begin service until the affected city restores its station and obtains Conrail's consent.

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<sup>21</sup> In particular, opposition from both CSX and NS prevented Amtrak from adding service to Atlanta for the 1996 Olympics.

<sup>22</sup> CSX Operating Plan at 172-3.

In both cases the city contacted Conrail to secure its cooperation in establishing a station stop. In each case, Conrail initially refused, then recanted and began to cooperate, only to renew its objections or find new obstacles after each city had obtained funding or made progress on its end. To date, neither city has obtained Amtrak service. In discovery, ESPA asked CSX as to its intentions. CSX responded that it would "evaluate in good faith any such proposals to the extent that such proposals are endorsed by an authoritative agency, in the context and with reference to the specifics as they may be presented." ESPA is amazed that after 10 years of evaluation and debate by and between Conrail and on line communities, CSX would insist that a request by a duly constituted city government needs to be second guessed by "an authoritative agency." CSX's interrogatory response and copies of the correspondence between Conrail and the cities of Lyons and Dunkirk are attached as Exhibits C and F hereto.

#### CONCLUSION AND REQUEST FOR CONDITIONS

In conclusion, ESPA requests that the Board condition any decision approving the acquisition of control and partition of Conrail by CSX and NS on the following:

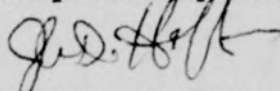
1. A clear corporate commitment by CSX to provide on time (90% on time) Amtrak service in accordance with the incentive contracts executed between Amtrak and Conrail which CSX will assume as well as its existing incentive contract with Amtrak.



2. A corporate commitment on the part of CSX to work with Amtrak, NYSDOT, and the on line communities to provide improved and expanded Amtrak service on the Empire Corridor. That commitment will include cooperation on, among other things, higher speed (90 mph) service, additional frequencies and/or the flexibility to add additional seasonal, weekend, or special trains, and additional station stops. With respect to 90 mph. service west of Hoffmans, NY, ESPA asks the Board to impose as a condition that CSX be required to enter into an agreement with NYSDOT similar to the one executed in 1986 between NS and NYSDOT.

3. For the Board to exercise continuing oversight over this merger for at least five years to ensure that interested parties have a forum for resolving merger related disputes over passenger service issues.

Respectfully submitted,



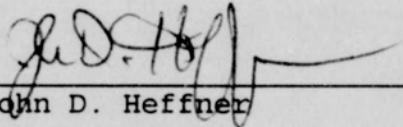
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Counsel for Empire State  
Passengers Association

Dated: October 21, 1997

CERTIFICATE OF SERVICE

I hereby certify that I have this 21st day of October, 1997, served the foregoing document upon all parties of record in this proceeding by mailing a copy thereof, properly addressed with postage prepaid.

  
\_\_\_\_\_  
John D. Heffner

# ***PTSI Transportation***

*Psgr. Transportation Specialists, Inc.*

## AFFIDAVIT OF MICHAEL R. WEINMAN CTC (continued)

With the growth of Conrail's freight traffic, and the relative absence of alternative carriers on routes from the New York City area to the west, passenger train operations on shared routes were largely slowed, restricted in growth of services offered, or at best, held back from tapping substantial latent traffic potential.

After the division of Conrail between CSX Transportation and Norfolk Southern, it is likely that CSX Transportation will find that it must continue to exert upward pressure on both the operating speeds and the capacity of the former New York Central main line, in order to remain competitive. Further, it will likely have to consider an advanced signal or equivalent system to maintain the excellent safety record under this increasing traffic.

The competitive situation is such that both the Norfolk Southern route (combining portions of the former New York Central west of Cleveland OH and the former Pennsylvania Railroad and Lehigh Valley and reading routes east thereof) and the interstate highway system (two major interstate highways compete directly with the former New York Central east of Buffalo) offer considerable advantages. I considered it likely that CSX Transportation recognizes that better and faster track, perhaps up to FRA Class V, will be a real asset in its competitive arsenal, and that increased capacity, through added main and controlled siding trackage, and more facile interlockings and signal systems, will be necessary as well. It is disappointing that a clear plan for such improvements has not yet been identified by CSX Transportation, as this will be essential to its long term success. Ultimately, adequately resourced plans which accommodate growth in the ability to handle both freight and passenger traffic, at higher speeds, and with uncompromised safety, will prove vital to the economy of the northeastern United States, and to prime participants in the mobility of that economy, such as CSX Transportation. There is, in this respect, no divergence between the general goals of the Empire State Passenger Association and CSX Transportation.

It is hoped that the intended restoration and improvement of utility of this route will enable the capacity throughput and speed of all traffic using the line to equal or exceed that experienced prior to the Penn Central merger in 1968. It is further hoped that the planned improvements, plus sophisticated operations planning and dispatching techniques, will permit the accommodation of the forecast increase in freight traffic, and at least a modest increase in passenger traffic, without no diminution of the speed and reliability of either.



Michael R. Weinman CTC

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## AFFIDAVIT OF MICHAEL R. WEINMAN CTC

My name is Michael R. Weinman. I am President of ***PTSI Transportation***, a 25 year old management consultancy with a strong discipline in railway passenger service and operations. I have three degrees with major or emphasis on passenger transportation, and serve as a member of the Board of Directors of the American Association of Railroad Superintendents and as a member of the Amtrak Customer Advisory Committee. In 1967, I was employed by the New York Central Railroad, becoming instrumental in that year in the formation of Empire Service, a high frequency daylight corridor style railway passenger service. I was later employed by Penn central Transportation Company and Amtrak, as a passenger operating officer, prior to forming my own company, which is now known as Passenger Transportation Specialists, Inc. dba ***PTSI Transportation***.

The primary rail route between New York City, Albany, Syracuse, Rochester and Buffalo, with westward extension to Chicago and other midwestern cities, is the former main line of the New York Central Railroad. Prior to 1900, tests were conducted on this route in excess of 110 mph, and it gained a reputation as a high capacity, high speed, water level route for both freight and passenger transportation. Equipped with a now-removed intermittent inductive train stop system which permitted trains to operate in excess of 79 mph, the entire route was, however, downsized in the mid 1950 era, when four tracks signalled in one direction each were replaced with two tracks signalled for movements in either direction. However, passenger train operations at speeds up to 85 mph were permitted on some portions up to the Penn Central era. Numerous studies identified the feasibility of higher speed operation, and a test was operated on New York Central in Ohio at speeds of about 186 mph.

Immediately prior to the Penn Central merger, the previous pattern of largely long distance overnight sleeping car trains was replaced with a memory-schedule corridor style operation known as Empire Service, which commenced December 3, 1967. After the merger, however, inattention to the passenger service, and the financial pressures, particularly after bankruptcy, saw a diminution in the quality, ridership, speed, and revenues of Empire Service. However, the creation of Conrail in 1976 led to upgrading of what became known as the "Chicago Line", and, using a combination of federal and railroad funds, the utility of the railroad was restored to a previous high level. Indeed, the railroad was probably never in quite so good shape, although its capacity was severely tested by the growth in freight traffic, and the fact that it remained essentially a two track route. In conjunction with Amtrak and state programs, certain portions, notably between the northern end of Metro-North Railroad territory and a point just west of Albany were equipped with cab signalling and automatic speed control, which, for passenger trains, permitted a speed of between 90 mph and 110 mph.

Post-It <sup>®</sup> Fax Note	7671	Date	10/21	# of Pages	1
To	JOHN HEFFNER		From	MIKE WEINMAN	
Co./Dept.		Co.			
Phone #		Phone #			
Fax #	202 654 4934		Fax #		

10-21-1997 10:44AM FROM REA. CROSS & RUCHINGL

VERIFICATION

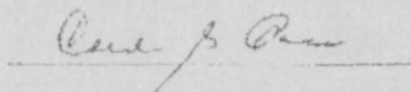
STATE OF Pennsylvania )  
 COUNTY OF Allegheny ) SS:

Michael R. Weinman, being duly sworn, deposes and says that he has read the foregoing statement, knows the facts asserted there are true and that the same are true as stated.



Subscribed and sworn to before me this 21<sup>st</sup> day of October, 1997.

Notary Public of Pennsylvania



My Commission expires:



**Operation of the Northeast Corridor**

Full operational control of Northeast Corridor traffic now performed by PC should be vested with Amtrak. Amtrak should be responsible for all signalling, dispatching and maintenance in the Corridor. ConRail should provide operating crews, maintenance personnel and line management support under contract to the extent requested and required by Amtrak. Amtrak also should be designated as the single operating entity responsible for coordinating freight and passenger services in accordance with section 601(d)(4) of the Act. The Federal Railroad Administration has recommended the formation of an independent "Dispute Board" to reconcile major differences between intercity, commuter and freight users.

To implement high-speed passenger service, ConRail should continue negotiating with the Chessie System for purchase, lease or trackage rights on the parallel B&O line between Washington and Philadelphia. The ultimate price for these facilities has not been agreed to, but discussions are proceeding within the following framework:

- ConRail will acquire property or trackage rights over the present RDG/LV line between Philadelphia and Newark, N.J., for freight operations.
- ConRail should acquire property or trackage rights over Chessie's line between Philadelphia and Washington, D.C.
- ConRail should not assume the acquisition and improvement costs of the Chessie property, to the extent that such costs exceed those which would be incurred by ConRail in acquiring and rehabilitating the PC route for freight service.

Use of the Chessie route between Philadelphia and Washington appears to be the most effective means to implement the high-speed rail passenger program. As discussions regarding acquisition or use of this line are not complete and because extensive physical improvements will be necessary, the rerouting of through freight trains between Philadelphia and Washington may take a number of years to accomplish. This, however, should not delay implementation of high-speed Corridor passenger services.

Since ConRail will have rights to RDG/LV tracks at the time of conveyance and because only limited physical improvements are required, the rerouting of through freight trains between Philadelphia and Newark can be achieved fairly rapidly. Shifting freight trains from this, the most congested portion of the Corridor, will allow plant improvements to be made on the passenger line with minimum disruption to intercity and commuter passenger service.

Alternative engineering plans have been developed for continued use of the PC right-of-way between Philadelphia and Washington which would enable the goals

of the Corridor improvement program to be achieved even if discussions with Chessie are not successfully completed by the date of conveyance.

**Other Amtrak Services**

In the PSP, USRA identified a number of short to medium distance corridors where upgrading for passenger service might return substantial benefits. These corridors are listed in Table 1 and, with minor revisions from the map shown at p. 305 of the PSP, displayed as an integrated corridor network in Figure 2. The recommendations are purely advisory; USRA believes Amtrak should have the final responsibility for determining routes to be operated. Additional routes or higher service levels may also result from state-sponsored programs, such as those proposed by New York. With these same qualifications, USRA reaffirms as its final recommendations pursuant to section 206(a)(7) of the Act the routes shown in Table 1 and Figure 2.

TABLE 1.—Summary of recommended Corridor services

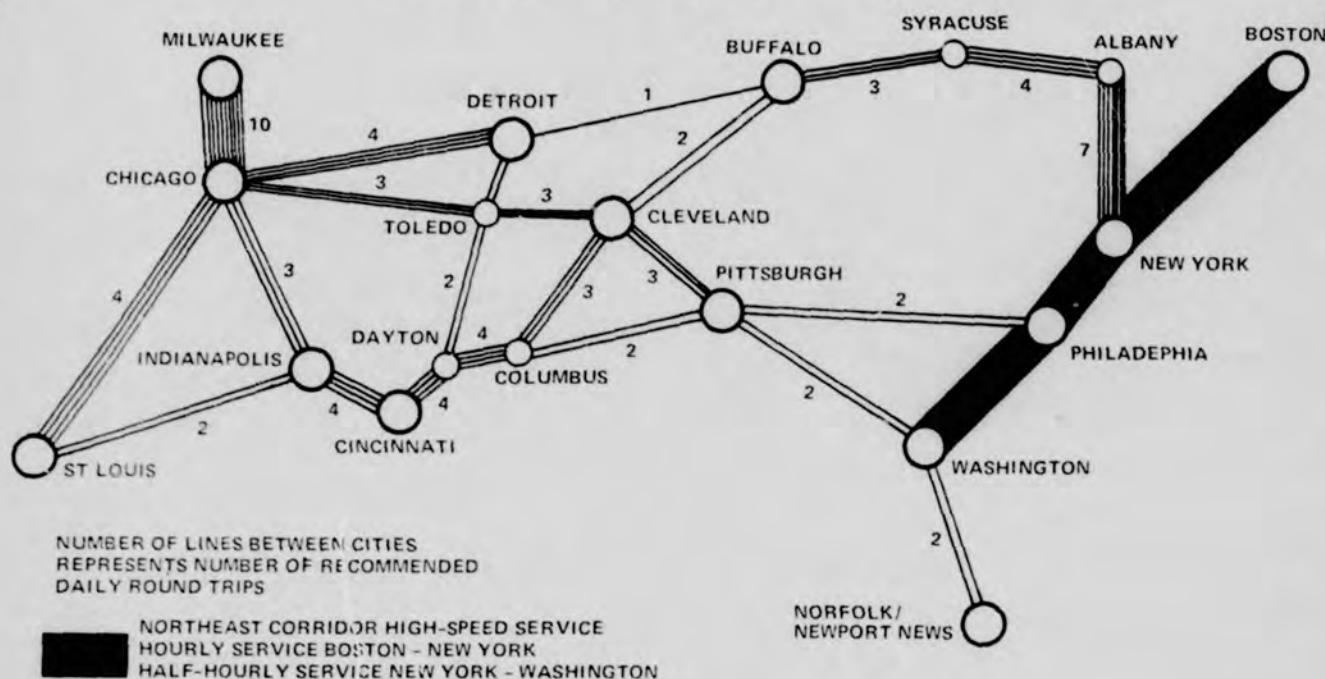
Chicago to Milwaukee	Cleveland to Cincinnati
New York to Buffalo	<u>Cleveland to Buffalo</u>
Chicago to St. Louis	Philadelphia to Pittsburgh
Chicago to Detroit	Washington to Pittsburgh
Detroit to Cincinnati	Washington to Norfolk
Pittsburgh to Indianapolis	Detroit to Buffalo
Chicago to Cincinnati	Cleveland to Chicago
Cleveland to Pittsburgh	Indianapolis to St. Louis

A major concern in the restructuring process was the protection of existing passenger service patterns. Amtrak passenger services outside the Northeast Corridor will continue to operate over present routes, with minor exceptions. The problem plaguing these services today is the poor condition of track and roadbed.

Since most of Amtrak's routes correspond to ConRail's main line freight routes, the cost of rehabilitating these lines to the level needed for freight operations should be borne by ConRail. In addition, based on the results of USRA-Amtrak discussions, ConRail should agree to assume the costs of rehabilitating certain limited lines to a level above that needed for ConRail freight service but vital to Amtrak passenger service, for example, the line from Cincinnati to Indianapolis. This line is important for Amtrak's Chicago-Cincinnati trains but is not planned as a principal freight route.

Except for several routes discussed below, all lines required for Amtrak operations should be rehabilitated to a condition permitting the reliable operation of schedules comparable to those in effect on May 1, 1971, provided these lines were used for passenger service at that time, have been in continuous service since then and are incorporated for freight purposes in the ConRail System. Upon completion of the rehabilitation program, Amtrak will be able to operate passenger trains between end points on schedules at least equivalent to those of

FIGURE 2.—Proposed integrated passenger Corridor network



May 1971. The rehabilitation program, coupled with the policy of giving passenger trains priority over freight, should reduce the scheduled times of passenger trains on most routes in the Region. Ride quality also will be enhanced by the improved track structure. USRA anticipates that most of the rehabilitation program on Amtrak routes can be completed within 5 years.

The recommended ConRail route structure generally will meet Amtrak's requirements. There are several exceptions, however. Some line segments are not recommended for inclusion in the FSP because they are not viable for freight service. These dispositions will affect the routing of Amtrak's intercity service unless alternative arrangements are made. The routes affected are:

- Portions of the Philadelphia to Harrisburg line used by Amtrak's New York to Chicago, New York to Kansas City and Philadelphia to Harrisburg services,
- The line segment from Richmond, Indiana to Indianapolis which is currently used by Amtrak's New York to Kansas City service and
- The segment from Porter, Ind. to Kalamazoo, Mich. which is part of Amtrak's Chicago-Detroit and Chicago-Port Huron services.

USRA has worked closely with Amtrak to find reasonable alternatives. In the case of the Philadelphia-Harrisburg and Porter-Kalamazoo segments, Amtrak, states or other public agencies will be offered an option to purchase or to lease the lines should the Act be amended to permit these transactions. Alternatively, the line segments could remain with the estate and

Amtrak, states or other public agencies could acquire it from that entity. The Richmond-Indianapolis segment will not be used for passenger service because Amtrak is planning to reroute its New York-Kansas City trains via Dayton and Cincinnati on the Columbus-Indianapolis segment. With rehabilitated right-of-way, this diversion will not increase travel time.<sup>2</sup>

As a result of these arrangements, USRA believes that the needs of Amtrak's intercity rail passenger services will be met and that Amtrak's Board of Directors will approve the essential features of this arrangement.

Details of the legal property designations for intercity passenger service are found in Part II of this Report.

### Commuter Services

During the several months prior to the preparation of the Final System Plan, USRA staff met with officials of the various state, local and regional transportation authorities responsible for funding and operating commuter rail services in the Region. USRA's purpose was to explain the effect of the Act and the Association's Plan on their respective services. Throughout these discussions, USRA emphasized its desire to see a smooth transition and orderly continuation of commuter service after conveyance.

Following USRA's stated policies that there should be no cross-subsidization and that the dominant user of

<sup>2</sup> Pending rehabilitation of Cincinnati-Indianapolis, alternate routes (probably via Union City, Ind.) will be required.

HUDSON LINE—(Continued)

NOTE 9: In the application of system timetable special instruction 294-2 the following signals activated by slide protection:

Location			
North of MP 100.5	1069 S 1081 S	1082 S 1081 S	1082 N 1081N
South of MP 130.4	1181 N 1182 N 1211 S	1281 N & S 1282 N & S	1301 S 1302 S

Tracks are numbered East to West: 1-2 between MP 75.8 and CP 142  
Tracks are numbered North to South: Main 1-2 on Chicago Line at CP 142

RULES IN EFFECT

Between	No. 1 Track	No. 2 Track
DIVISION POST and CP 142	261/CSS	261/CSS

MAXIMUM SPEEDS

Between	No. 1 Track		No. 2 Track	
	Pass.	Fre.	Pass.	Fre.
MP 75.8 and MP 78.9	90	50	90	50
MP 78.9 and MP 87.7	95	50	95	50
MP 87.7 and MP 89.8	80	50	80	50
MP 89.8 and MP 92.6	90	50	90	50
MP 92.6 and MP 93.1	80	50	80	50
MP 93.1 and MP 114.1	80	50	90	50
MP 114.1 and MP 115.0	50	50	50	30
MP 115.0 and MP 119.4	90	50	90	50
MP 119.4 and MP 119.6	75	50	75	50
MP 119.6 and MP 121.5	90	50	90	50
MP 121.5 and MP 124.3	85	50	85	50
MP 124.3 and CP 141	110	50	110	50
CP 141 and CP 142	75	15	75	15

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HUDSON LINE—(Continued)

NOTES

- NOTE 1: In service for Southward movements only.
- NOTE 2: In service on No. 2 Track only.
- NOTE 3: CP 142 and Hancecoale Station located on Chicago Line.
- NOTE 4: In the application of Rule 121 Passenger Trains discharging passengers across tracks between their train and the station platform at Hancecoale will be protected against trains moving on tracks between their train and the station platform. The Train Dispatcher will be responsible for such protection.
- NOTE 5: Rule 121, Part C applies of ~~the application of Rule 121, Part C, if a passenger train is occupying the station, the approaching train must not pass the passenger train until permission is received from the Station Master, who will insure measures have been taken to insure passenger safety. If unable to contact the Station Master or crew of approaching train, train must not pass the passenger crossing until protection is provided on the ground by a member of the crew.~~
- NOTE 6: In the application of system timetable special instruction 294-2 the following signals activated by slide protection:

Location			
North of MP 104.8	1082 S 1081 S	1082 S 1081 S	1082 N 1081N
South of MP 100.4	1181 N 1182 N 1211 S	1281 N & S 1282 N & S	1301 S 1302 S

Tracks are numbered East to West: 1-2 between MP 75.8 and CP 142  
Tracks are numbered North to South: Main 1-2 on Chicago Line at CP 142

RULES IN EFFECT

Between	No. 1 Track	No. 2 Track
DIVISION POST and CP 142	261/CSS	261/CSS

MAXIMUM SPEEDS

Between	No. 1 Track		No. 2 Track	
	Pass.	Fre.	Pass.	Fre.
MP 75.8 and MP 78.6	90	50	90	50
MP 78.6 and MP 76.6	80	50	80	50
MP 76.6 and MP 78.8	90	50	90	50
MP 78.8 and MP 87.7	95	50	95	50
MP 87.7 and MP 89.8	80	50	80	50
MP 89.8 and MP 92.6	90	50	90	50
MP 92.6 and MP 93.1	80	50	80	50
MP 93.1 and MP 114.1	80	50	90	50
MP 114.1 and MP 115.0	50	50	50	30
MP 115.0 and MP 119.4	90	50	90	50
MP 119.4 and MP 119.6	75	50	75	50
MP 119.6 and MP 121.5	90	50	90	50
MP 121.5 and MP 124.3	85	50	85	50
MP 124.3 and CP 141	110	50	110	50
CP 141 and CP 142	75	15	75	15

JAN. 1996

CONRAIL  
POUGHKEEPSIE - ALBANY

A-21  
P02



Response

10. CSXT's proposed freight traffic increase on Conrail's Albany-Chicago line (between Hoffmans and Buffalo) will not adversely affect Amtrak service. See Section 8.1.2 of Volume 3A, pp.271-73.

Interrogatory No. 11:

11. Your Operating Plan (at pages 56 and 173) indicates that CSXT will perform track work to upgrade the New York State portion of the Albany-Chicago line to class 5 standards permitting 79 mph passenger operation where possible. Does this work include increases in superelevation of curves to improve passenger train ride quality and what is the specific work to be performed?

Response

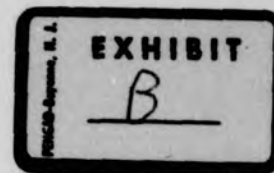
11. FRA Class 5 standards involve specific longitudinal and vertical alignment limits or tolerances that the track geometry must be within. Visual and automated testing of the track, including internal rail testing, would take into account the existing condition of the track and determine what necessary actions, if any, would be needed to meet FRA Class 5 standards.

Interrogatory No. 12:

12. Referring to Interrogatory No. 11 above, what specific actions will CSXT take to ensure that this rehabilitation work and the annual summer maintenance program will not adversely affect Amtrak service?

Response

12. CSXT has a cross-functional "Curfew Team" with representatives from many departments who plan and coordinate maintenance programs to ensure that the



Response:

Conrail objects to the information for years prior to 1995 as unduly broad waiver of any objection, and as stated above, Conrail responds

is

Conrail does not have time rate for Amtrak's Empire documents or information for placed in the depository.

on-

be

Interrogatory No. 2:

For Conrail's operation of Amtrak's Empire Corridor trains for 1995 and 1996 and for each month of 1997 to date, please provide a breakdown by per cent of the causes of delay for which Conrail was responsible including (a) freight interference (b) freight locomotive or equipment failure, (c) freight derailments, (d) signal failure, (e) poor track or slow orders, (f) maintenance of track, bridges and tunnels, right of way, and/or signals, (g) crew related freight train delays blocking line, (h) dispatcher delays other than indicated here and (i) other.

Response:

Conrail objects to the request as being vague and ambiguous with respect to "Conrail's operation of Amtrak's Empire Corridor trains" and unduly broad.

Without waiver of any objection, and subject to the general objections stated above, Conrail responds as follows:

It is Amtrak, not Conrail, that "operates" Amtrak trains over the Empire Corridor, by providing power and crews. Moreover, Conrail does not maintain records of causes of delay by percent by the categories listed. The request would require a special study which Conrail objects to performing.

906-2821

SUMMER, 1995

JAN, 1996

CHICAGO LINE--(Continued)

MAXIMUM SPEEDS--PASSENGER				
Between	Single Track	No. 1 Track	No. 2 Track	Other Tracks
CP-142 and CP-143		20	20	Main Trk 20
CP-143 and CP-144		15		Main Trk 15
CP-144 and LAJ	20			
LAJ and CP-145	25			
CP-145 and MP 145.2	30			
MP 145.2 and CP-146	30			
CP-146 and MP 149.0	30			
MP 149.0 and MP 150.3	100			
(Turbo Equip. Only)				
MP 149.0 and MP 156.3	110			
MP 156.3 and MP 158.0	80			
MP 158.0 and MP 159.5	55			
MP 159.5 and MP 159.9	30			
CP-160				MP to CP 80 15
MP 159.9 and MP 160.3	50			
MP 160.3 and MP 161.3	70			
MP 161.3 and MP 164.5	100			
MP 164.5 and MP 165.3	30			
MP 165.3 and CP-161	100			
CP-161 and MP 181.5		70	70	
MP 181.5 and MP 186.0	50	50	50	
MP 186.0 and MP 192.5	70	70	70	
MP 192.5 and MP 192.8	20	20	20	
MP 192.8 and MP 190.2	70	70	70	
MP 190.2 and MP 190.8	55	55	55	
MP 190.8 and MP 206.4	70	70	70	
MP 206.4 and MP 205.2	70	70	70	
MP 205.2 and MP 210.5	75	75	75	
MP 210.5 and MP 216.5	70	70	70	
MP 216.5 and MP 216.9	55	55	55	
MP 216.9 and MP 225.3	70	70	70	
MP 225.3 and MP 237.0	70	70	70	
MP 237.0 and MP 237.0	50	50	50	
MP 237.0 and MP 242.5	70	70	70	
MP 242.5 and MP 242.9	70	70	70	
MP 242.9 and MP 282.0	70	70	70	
MP 282.0 and MP 285.8	40	40	40	
MP 285.8 and MP 285.7	60	60	60	
MP 285.7 and MP 319.7	70	70	70	
(Over Geneva River Bridge)				
MP 319.7 and MP 320.0	40	40	40	
MP 320.0 and MP 320.0	70	70	70	
MP 320.0 and MP 830.0	70	70	70	
MP 320.0 and MP 334.0	70	70	70	
MP 334.0 and MP 334.0	55	55	55	
MP 334.0 and MP 243.4	70	70	70	
MP 243.4 and MP 352.0	75	75	75	
MP 352.0 and MP 351.0	65	65	65	
MP 351.0 and MP 350.9	70	70	70	
MP 350.9 and MP 350.9	55	55	55	
MP 350.9 and MP 358.9	70	70	70	
MP 358.9 and MP 370.0	60	60	60	
MP 370.0 and MP 372.2	50	50	50	
MP 372.2 and MP 435.4	70	70	70	
MP 435.4 and MP 435.9	45	45	45	
MP 435.9 and CP-437	50	50	50	
CP-437 and CP-2	30	30	30	
CP-2 and MP 8.2		70	70	No. 3 Trk 50
All Controlled Sidings:				CS 30
MP 285.0 and MP 285.8				
MP 285.0 between CP-283				
A CP-283				



CHICAGO LINE--(Continued)

MAXIMUM SPEEDS--PASSENGER				
Between	Single Track	No. 1 Track	No. 2 Track	Other Tracks
CP-142 and CP-143		20	20	Main Trk 20
CP-143 and CP-144		15		Main Trk 15
CP-144 and LAJ	20			
LAJ and CP-145	25			
CP-145 and MP 145.2	30			
MP 145.2 and CP-146	30			
CP-146 and MP 149.0	30			
MP 149.0 and MP 150.3	100			
(Turbo Equip. Only)				
MP 149.0 and MP 156.3	110			
MP 156.3 and MP 158.0	80			
MP 158.0 and MP 159.5	55			
MP 159.5 and MP 159.9	30			
CP-160				MP to CP 80 15
MP 159.9 and MP 160.3	50			
MP 160.3 and MP 161.3	70			
MP 161.3 and MP 164.5	100			
MP 164.5 and MP 165.3	30			
MP 165.3 and CP-161	100			
CP-161 and MP 181.5		70	70	
MP 181.5 and MP 186.0	50	50	50	
MP 186.0 and MP 192.5	70	70	70	
MP 192.5 and MP 192.8	20	20	20	
MP 192.8 and MP 190.2	70	70	70	
MP 190.2 and MP 190.8	55	55	55	
MP 190.8 and MP 206.4	70	70	70	
MP 206.4 and MP 205.2	70	70	70	
MP 205.2 and MP 210.5	75	75	75	
MP 210.5 and MP 216.5	70	70	70	
MP 216.5 and MP 216.9	55	55	55	
MP 216.9 and MP 225.3	70	70	70	
MP 225.3 and MP 237.0	70	70	70	
MP 237.0 and MP 237.0	50	50	50	
MP 237.0 and MP 242.5	70	70	70	
MP 242.5 and MP 242.9	70	70	70	
MP 242.9 and MP 282.0	70	70	70	
MP 282.0 and MP 285.8	40	40	40	
MP 285.8 and MP 285.7	60	60	60	
MP 285.7 and MP 319.7	70	70	70	
(Over Geneva River Bridge)				
MP 319.7 and MP 320.0	40	40	40	
MP 320.0 and MP 320.0	70	70	70	
MP 320.0 and MP 830.0	70	70	70	
MP 320.0 and MP 334.0	70	70	70	
MP 334.0 and MP 334.0	55	55	55	
MP 334.0 and MP 243.4	70	70	70	
MP 243.4 and MP 352.0	75	75	75	
MP 352.0 and MP 351.0	65	65	65	
MP 351.0 and MP 350.9	70	70	70	
MP 350.9 and MP 350.9	55	55	55	
MP 350.9 and MP 358.9	70	70	70	
MP 358.9 and MP 370.0	60	60	60	
MP 370.0 and MP 372.2	50	50	50	
MP 372.2 and MP 435.4	70	70	70	
MP 435.4 and MP 435.9	45	45	45	
MP 435.9 and CP-437	50	50	50	
CP-437 and CP-2	30	30	30	
CP-2 and MP 8.2		70	70	No. 3 Trk 50
All Controlled Sidings:				CS 30
MP 285.0 and MP 285.8				
MP 285.0 between CP-283				
A CP-283				

Albany - Buffalo  
Speeds were lowered on  
certain stretch between  
Auriferous and Utica  
due to reduction of  
curve super elevation  
E.B.

A-17

Post. # Fax Note 7671 Date 9/2/97

To JOHN HOFFNER From FRANK BARRY

Co./Dept Co. ESPA

Phone # 202-785-3700 Phone # 607-255-7774

Fax # 202-659-4934 Fax # 607-255-8562

(Continued)

# Legislature OKs new job, if grant

By **BOB WEIGAND**

*News Allegany Correspondent*

**BELMONT** — The Allegany County Legislature Monday agreed to hire a new family-violence prosecutor — if a federal grant comes through.

The grant, whose fate will be known later this month, would pay the salary of the new prosecutor, and the county would pay fringe benefits.

The prosecutor will handle only cases of violence against women, under the conditions of the grant from the federal Stop Violence Against Women

program. The money would come to the county through Accord Corp., a non-profit county corporation that oversees a variety of social service programs.

The state Division of Criminal Justice Services serves as the federal-to-county conduit.

The position will only exist so long as the salary is funded from outside the county, according to the resolution the Legislature adopted Monday.

That resolution does not establish the position or set a salary, said Chairman John Walchli, R-Walbyville. The Legislature would do that only on re-

ceipt of the grant, he said.

The county now has six district attorneys, one of whom is in drunken driving pro-

County Attorney James his office now handles most domestic violence caseload in that would become the new prosecutor.

Legislator Curtis Conroy cast the sole vote against the intent to hire the prosecutor, but did not explain his vote.

The county also agreed engineering study of the 1 resident's waste water treat-

*Buffalo News 3-11-97*

**DUNKIRK**

## Mayor seeks assurance from state on train stop

**DUNKIRK** -- Mayor Margaret Wuerstle has asked the state to ensure that the Lake Shore Limited train stop in the city is a condition of the Conrail merger approval.

Norfolk Southern Corp. and CSX Corp. have made bids to buy Conrail.

In testimony prepared for a state Department of Transportation hearing in Buffalo last week, Mayor Wuerstle said the city has been working for two years to locate the stop.

She cited petitions signed in 1995 and efforts to find funding and a plan acceptable to Conrail, which owns the station on Main and Third streets.

The latest problem the city faces is the location of a signal that was installed at the end of the platform. Moving the signal would cost more than \$100,000.

"We feel (the cost) is unfair since Conrail knew we had agreements to renovate the station and open it for passenger service prior to their relocation of these signals," she said.

The Lake Shore Limited travels from Boston and New York to Chicago without a stop in the 160 miles between Erie, Pa., and Buffalo. Consequently, the mayor said, Chautauque County is not served.

The city has federal and state grants that it could use to renovate the station for passengers.

"I strongly feel that the result of such a stop will have a positive impact on the economic and development aspect of our community and the surrounding region," she concluded.

**PRIZE POS**



Nicholas Pascuzzi, 4, shows his delight Monday afternoon after getting an autograph from Buffalo Blizzard soccer team captain Rudy Pikuzinski during a game.

**HAND**

## Board asked to clean

APPENDIX 1

Program and Work Schedule for Development  
of High Speed Rail From Hoffmans to Depew, New York

EXHIBIT

E

PROPOSED IMPROVEMENT PROGRAM

Upon NS' acquisition of or merger with RAILROAD, NS and STATE will develop and implement a program for enhancement of high speed rail passenger service on the Empire Corridor between Hoffmans and Depew, New York. Such a high speed rail passenger service improvement program shall include the following elements:

- A. Immediately as practicable where existing Class V (or other mutually agreed upon) standard track conditions, geometry, and signalling permit, RAILROAD will operate passenger trains at speeds up to 90 miles per hour on the mainline track between Hoffmans and Depew, subject to Section 2 of this Agreement. Any such passenger train operations shall be subject to any and all applicable Federal, state, and local laws and regulations. Such passenger trains shall be operated with intermittent cab signals or with modified intermittent cab signalling, full cab signalling, or other original devices, as needed to meet Federal requirements. Any such passenger train operations shall be conducted in a manner consistent with and shall be subject to the terms and conditions of the agreement dated April 1, 1976, between RAILROAD and Amtrak, as amended and modified.
- B. The following capital work will be performed by RAILROAD with RAILROAD forces or by contract at the option of RAILROAD and will be paid for by STATE:

1. Grade Crossings

All public crossings will be protected by flashing signals and gates and posted with "High Speed Train" signs. Crossing circuits will be extended and upgraded as necessary prior to the commencement of operations of any high speed passenger trains.

2. Curve Restrictions

A significant benefit to rail passenger operations can be realized by the elimination or reduction of curve restrictions that currently exist. A phased approach will be employed to address this matter. Curve restrictions may be reduced either by relocating the curves, by increasing underbalance limits, by increasing the superelevation, or by a combination of the three. A preliminary list of priority curves to be relocated within the existing RAILROAD right-of-way under Phase I is attached. In addition significant benefit may be realized by the relocation of other curves to a point beyond the existing RAILROAD right-of-way limits. These curves will be addressed in subsequent phases which will be advanced after the completion of an engineering study by the STATE.

3. Equipment

One important aspect in achieving improved passenger train performance is that of improved acceleration when accelerating to 90 mph or any other speed. It is understood that Amtrak has also recognized this fact and is beginning a program of replacing one power unit on each Turboliner with a Turmo XII unit. CORPORATION and RAILROAD agree to cooperate in this effort and if CORPORATION and RAILROAD are satisfied that such equipment can be operated safely and efficiently without undue interference with rail freight operations, CORPORATION and RAILROAD will allow all such passenger equipment to operate at speeds up to 90 miles per hour between Hoffmans and Depew, where track conditions permit.

C. Project Outcome

It will be the purpose of the program to be developed by STATE, CORPORATION, and RAILROAD to reduce rail passenger travel time between the Capital District and Western New York. Upon development and implementation of the program, it is anticipated that as different program items are completed interim travel time reductions will be made. The table below represents STATE's estimate of the total outcome upon completion of the program:

Existing Schedule Albany-Rensselaer - Niagara Falls

MINIMUM 5 hours 33 minutes

MAXIMUM 5 hours 53 minutes

Proposed Schedule Albany-Rensselaer - Niagara Falls

4 hours - 43 minutes\*

\* Estimates are based on 90 mph speed limit.  
Curve work at approximately 83 curve locations.  
Recovery time of 5.5 %.  
Turmo XII locomotion.  
Completion of rail improvement between Depew -  
Niagara Falls, NY, pursuant to D 000348 and D 139744.

APPENDIX 1  
 Preliminary List of Priority Curves  
 To Be Included In Phase I

Curves to be Modified

EXISTING	
MILE POST	POSTED SPEED
170.3	70
170.6	70
170.9	70
171.7	70
172.8	70
173.7	70
174.7	70
175.9	70
176.1	70
176.8	70
177.6	AMSTERDAM
177.6	70
178.6	70
179.0	70
180.2	70
180.7	70
181.5	50
181.8	50
182.0	50
182.3	50
182.7	50
185.7	79
186.2	79
188.4	79
189.0	79
190.7	79
191.4	79
192.1	79
192.5	50
193.8	79
194.3	79
194.6	79
196.5	79
197.4	79
198.3	60
199.4	60
199.9	79
200.3	79
201.5	79
202.1	79
202.6	79
205.4	70
208.6	79
210.9	70
211.4	70
211.7	70
212.1	70
213.4	70
215.4	70
215.7	70

EXISTING	
MILE POST	POSTED SPEED
216.4	70
216.6	55
216.9	70
217.0	70
217.3	70
217.9	70
218.8	70
218.9	70
220.6	70
221.7	70
221.9	70
223.5	70
224.4	70
224.9	70
226.7	79
228.3	79
230.5	79
233.1	79
234.6	79
235.7	79
236.6	79
237.0	60
237.2	60
237.5	UTICA
237.6	60
239.4	79
240.8	79
241.8	79
242.7	70
246.8	79
249.8	79
251.3	ROME
252.3	79
253.1	79
257.4	79
259.5	79
260.4	79
261.7	79
268.6	79
272.0	79
272.6	79
279.0	79
284.2	79
285.1	40
285.2	40
285.5	SYRACUSE
285.7	40
286.1	40
286.2	40
286.4	40

EXISTING	
MILE POST	POSTED SPEED
286.5	60
287.2	60
288.5	60
289.4	60
290.2	60
292.3	60
292.4	60
292.5	60
292.7	60
292.9	60
293.5	60
313.3	79
314.7	79
316.2	79
320.8	79
322.7	79
324.6	79
325.2	79
326.2	79
327.1	79
327.8	79
328.3	65
328.8	65
329.7	65
331.6	65
332.8	55
333.5	55
334.5	70
336.8	70
337.7	70
338.3	70
339.9	70
342.8	75
343.6	75
344.7	75
345.6	75
345.9	75
347.3	75
348.1	75
348.9	75
350.4	65
352.4	79
354.4	79
354.5	79
357.1	79
359.6	79
360.1	79
360.7	65
361.6	79
362.2	79

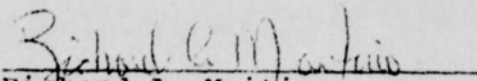
EXISTING	
MILE POST	POSTED SPEED
364.9	79
366.7	79
368.3	79
368.9	79
369.3	65
369.6	65
370.3	50
370.9	50
371.0	ROCHESTER
371.2	50
371.4	50
371.7	50
372.0	50
396.5	79
397.1	79
401.4	79
402.7	79
403.8	79
405.3	79
431.6	DEPEN

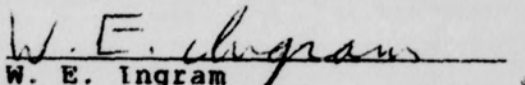


ACKNOWLEDGEMENT

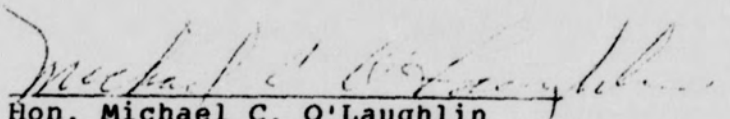
We the undersigned, representing the State of New York and the Norfolk Southern Corporation, do hereby acknowledge signing of the High Speed Rail Agreement and pledge to execute this program as quickly as possible.

Signed

  
Richard A. Maitino  
Director, Rail Financial  
Assistance Section  
State of New York

  
W. E. Ingram  
Director Corporate Planning  
Norfolk Southern Corporation

Witness

  
Hon. Michael C. O'Laughlin  
Mayor Niagara Falls

## APPENDIX 2

### Property to be Deeded to New York To Construct the Empire Passenger Line Connection To Penn Station

CORPORATION will cause RAILROAD to deliver to the STATE or its designee at a nominal cost, no later than 90 days after this Agreement takes effect, pursuant to Section 3 of this Agreement, all RAILROAD's right, title, and interest to portions of the property commonly known as the New York Central 30th Street Branch or the West Side Line, as described below and as generally portrayed on the attached map.

PROPERTY DESCRIPTION - "West Side Line," RAILROAD'S 30th Street Branch (formerly New York Central Railroad). The conveyance will be by quitclaim deed or other form of conveyance agreed upon by STATE, CORPORATION, and RAILROAD. As appropriate, CORPORATION will cause RAILROAD to seek release before or within a reasonable period after conveyance of all liens, encumbrances, or charges on the property, except for usually excepted encumbrances.

Southerly Boundary - North end of North Avenue Tunnel to Penn Station at West 33rd Street and 11th Avenue, valuation station 51 + 640 plus or minus.

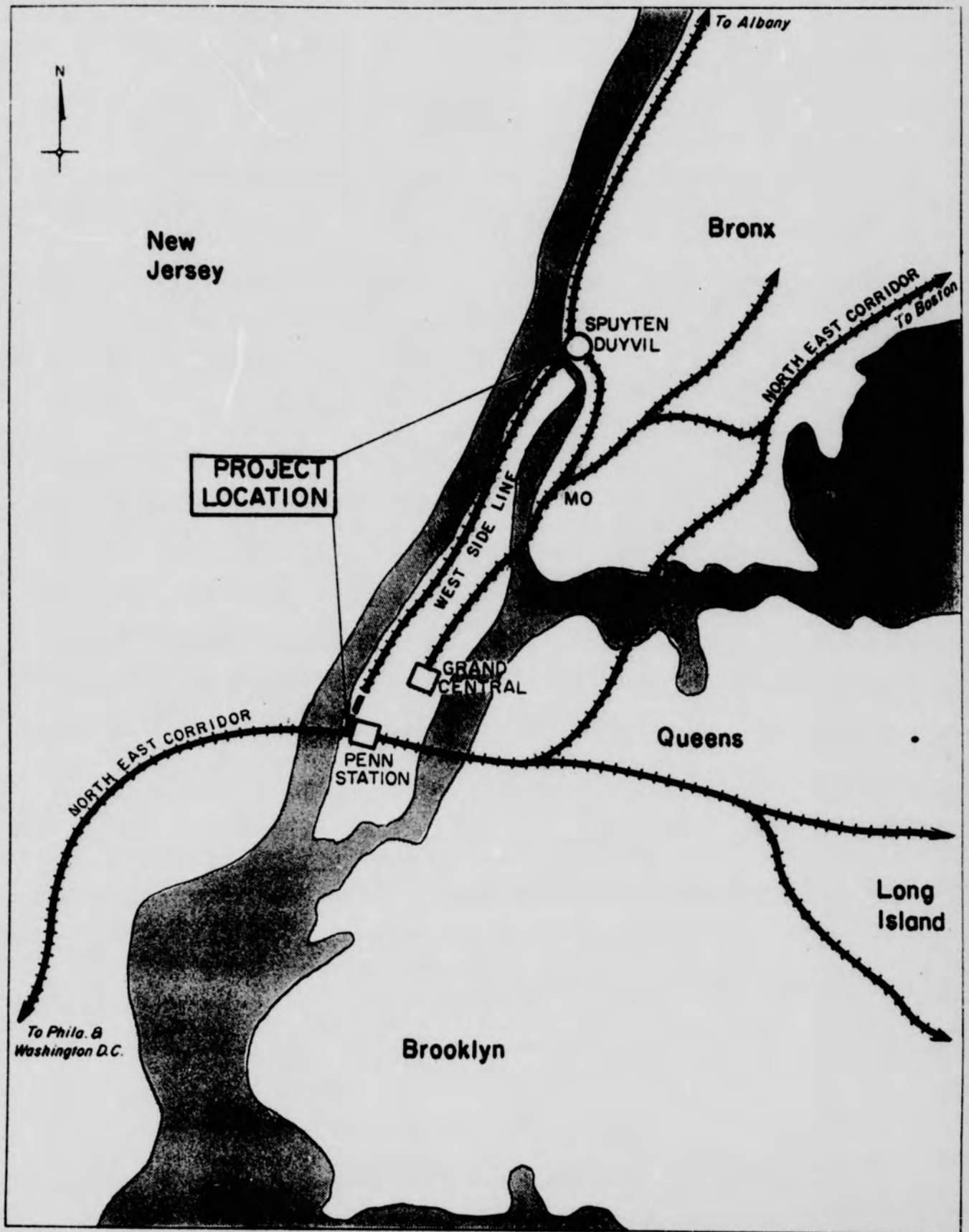
Northerly Boundary - Intersection with Metro North Commuter Railroad Hudson Line (formerly New York Central Railroad), valuation station 0 + 00 30th Street Branch - Hudson Line, valuation station 59 + 898.

All RAILROAD properties from Station 0 + 00 to (30th Street) Station 51 + 640 plus or minus (9.78 miles in length) are to be transferred including, but not limited to, Spuyten Duyvil Swing Bridge at Station 1 + 470 and the south leg of the Wye track at DV Tower.

Property and interest deeded to State shall include RAILROAD's easement through the 60th Street Yard area.

LABOR PROTECTION - STATE will use its best efforts to obtain, in STATE's agreement with Amtrak or any other entity with which STATE contracts to operate the West Side Line, a provision requiring said operator to reimburse CORPORATION or RAILROAD for any employee protection costs incurred by CORPORATION or RAILROAD as a result of abandonment and sale to STATE of the West Side Line.

APPENDIX 3 PROJECT LOCATION MAP



## APPENDIX 3

### Existing Agreements for High Speed Rail

#### A. Statement of Responsibility

Since 1976 the STATE has invested approximately \$100 million in upgrading track and signal facilities in New York to provide high speed rail service to the rail traveling public. Notwithstanding any provision of this or other agreements, CORPORATION agrees that upon CORPORATION's acquisition of or merger with RAILROAD, pursuant to Secretary of Transportation Elizabeth H. Dole's designation under the Northeast Rail Service Act of 1981, RAILROAD will continue to abide by the terms of the agreements listed below. CORPORATION also agrees at that time to join the STATE and the RAILROAD in additional studies to look for innovative methods to further reduce travel times, further increase operating speeds, increase the quality of service, improve on time performance, and generally improve rail passenger service on those projects already undertaken by RAILROAD.

#### List of Agreements

D140749	Croton-Harmon to Poughkeepsie dated July 15, 1980, and the Amendatory Agreement dated December 31, 1982.
D94666	Poughkeepsie to Hoffmans dated March 1, 1977, and Supplemental Agreement dated December 1, 1980.
D94282, D89658	Interlocking Improvements dated April 30, 1976, Supplemental Agreement dated August 1, 1980, Agreement dated September 30, 1974, and Supplemental Agreement #1 dated April 11, 1975.
D000348	Buffalo Terminal dated October 19, 1983.
D139744	Niagara Branch dated August 1, 1978.

CONRAIL



Post-It® Fax Note	7871	Date	9/8/97	Pages	10
To	JOHN HEFFNER	From	FRANK BARRY		
Co./Dept.		Co.	ESPA		
Phone #	202-785-3700	Phone #	607-255-7794		
Fax #	202-659-4934	Fax #	607-255-8562		

October 11, 1994

The Honorable Margaret A. Wuerstle  
Mayor, City of Dunkirk  
City Hall  
Dunkirk, NY 14048

Dear Mayor Wuerstle:

Last Spring, you requested that Conrail consider leasing the City of Dunkirk part of the former passenger station for a new Amtrak stop. After careful (and admittedly lengthy) review by Gerry Edwards in our Buffalo real estate office and General Manager Dick Hoover in Pittsburgh, we have concluded that we cannot spare the property. This building is heavily used as a Conrail crew reporting location and is also the headquarters for our maintenance department. We considered relocating Conrail personnel or offering other property for lease for the station, but neither alternative is realistic.

I do have some good news, however. Under Conrail's community enhancement program, Conrail will be funding replacement of the rubber crossing surface on Bennett Road. As I am sure you know, the rubber pads have failed and are coming loose. We will be placing the rubber with Ep-flex, a rubber runner that runs along the track. We are still hoping to do the work this fall.

I am available to respond to any questions you may have about our decision on leasing property for the station.

Very truly yours,  
*Mary W. Phillips*  
Mary W. Phillips  
Mgr. Community Relations  
(518) 767-6443

cc: R. L. Hoover  
P. E. Kane  
G. F. Edwards

**CONRAIL**

FEB 21 1995

February 17, 1995

The Honorable Margaret A. Wuerstle  
Mayor, City of Dunkirk  
City Hall  
Dunkirk, NY 14048

Dear Mayor Wuerstle:

At your request, Conrail has re-evaluated its position on your proposal for establishing Amtrak service at Dunkirk. In an effort to accommodate the community, we are willing to lease a portion of the Conrail maintenance building for a passenger station if certain conditions are met. These conditions are:

1. Conrail will retain the portion of the building now used by our maintenance forces, including the materials storage area, for Conrail purposes. The former ticket office and stairway to the platform on the other side of the cinder block wall will be made available for lease. The area immediately inside the main entrance will be shared.
2. All expenses associated with renovating the building will be borne by the City and/or Amtrak. As you know, extensive repairs are needed. Among other things, the former stairway to the platform has been sealed off, the ticketing area is in serious disrepair, and the building will need a new roof. In addition, if required by the Americans with Disability Act, the City and/or Amtrak will have to install a new elevator. The existing elevator has been sealed off, is in no condition to be re-opened and, in any event, is located in the portion of the building that will be retained by Conrail.
3. All expenses associated with extending and improving the condition of the platform will be borne by the City and Amtrak. While extensive track and platform work are not anticipated, Conrail, Amtrak and the City will need to discuss train operations in more detail.
4. Conrail employees will have permission to use the restrooms in the station and the City will arrange for parking for Conrail vehicles at the station.
5. The City will grant Conrail permission to remove a small brick tower located on the opposite side of the tracks. This building currently houses outdated communications equipment and is expected to be retired sometime in 1995 or 1996.

I hope these arrangements can meet both the City's needs and Conrail's. After reviewing this letter, please contact me and I will work on scheduling a meeting with Amtrak on the project.

Very truly yours,

*Mary B. Phillips*

Mary B. Phillips  
Mgr., Community Relations  
(518) 767-6443

cc: R. L. Hoover  
R. C. Carey  
P. E. Kane  
C. A. Roe  
G. F. Edwards  
Tom Chawluk, Amtrak

CONRAIL



May 16, 1996

Mr. Lawrence C. Witkowski  
Lawrence C. Witkowski, Architect  
28 Water Street  
Fredonia, NY 14063

Subject: Dunkirk, Chautauqua County, New York - Proposed restoration of passenger platform and station facilities, MP 40.3, Chicago Line, LC 3500, Albany Division WOH 44663 (File Location - CAR)

Dear Mr. Witkowski:

Reference is made to the discussions at the meeting of May 13, 1996 regarding a variety of unresolved issues related to the continued progression of arrangements for the restoration of passenger service at the subject location. While many of the issues have been outlined in prior correspondence, the meeting provided a good opportunity for discussion of those as well as some additional issues/items that became apparent as a result of our joint inspection of the existing facilities and conditions. As mentioned, each issue or item must be addressed to our satisfaction prior to the commencement of any work by the city's contractor.

The following summary of those issues and items is provided to both clarify the current status of those previously included in prior correspondence between our two offices and, in the case of newly identified issues and items, to provide a basis for the satisfactory resolution by your firm on behalf of the city. In each instance, we request that we be provided a written description of a response detailing how the resolution is to be accomplished. This comprehensive approach to addressing those items and issues which should include "revised" plans as appropriate (as opposed to a general resubmission of "revised" plans or specifications) is frankly a necessity and at the same time will greatly assist in our handling and review and, hence, the continued development of this proposal.

1. Amtrak Issues: The necessity of Amtrak operational and liability issues related to passenger operations was again stressed at the meeting. As of the date of the meeting, it was our understanding that Amtrak had not been in contact with Conrail's passenger services group on this matter. We again stress that all other project development issues hinge on arrangements with Amtrak being satisfactorily consummated.

*Amtrak has done.*

2. Construction Agreement: The general type of provisions to be included in this proposed agreement between Conrail and the City of Dunkirk were briefly summarized.



Mr. Lawrence C. Witkowski  
May 16, 1996  
Page 2

Those provisions will include an estimate of the total cost of work to be performed by Conrail or its agents as associated with this project and for which we would expect the city to fully reimburse Conrail. The development of this agreement is entirely contingent upon advice being provided to this office from Conrail's passenger services group as to the satisfactory resolution of the aforementioned Amtrak issues, all construction and plan review matters and, of course, our development of costs for our related work once all potential Conrail involvements have been clarified and defined. Again, we stress that no work may commence on Conrail property without the full execution of this agreement.

3. Real Estate Issues: The construction agreement will also include provisions indicating that all real estate issues involving Conrail must be consummated with the city and/or Amtrak or other parties before access to our property or work affecting our property, operations or facilities may be commenced by the city's contractor.

*Conrail has 12 employees @ the station. 7A-3:30 PM. 1 woman's restroom is in the main section. One more restroom is in the track section. NK reason they couldn't share. R. P. Davis*

4. Station Issues: Foremost among these is the resolution of the steps to be implemented to provide Conrail with separate and independent utility hookups (water, electric, sanitary) and heating services. In this regard and to facilitate the acceptance of those matters by the rest room areas, we would suggest that you provide a sketch showing a possible layout for two handicapped accessible rest rooms situated in the Conrail portion of the station immediately abutting similar facilities to be installed in the proposed city portion. We would then circulate this sketch for formal approval and input as to the impacts of such a proposal on the current usage of that area by Conrail personnel.

*This is a new...  
2/17/95  
says CR employee  
JFK V&A  
AT&T  
regarding*

The plans for the separation of the station must include the restoration of Conrail storage facilities removed as part of investigative work by your firm or its agents.

We understand the construction of the new elevator and related machinery and structural alterations is now anticipated to be accomplished under Phase 2 of the overall station renovation project. Although this may actually occur, the design details will be subject to formal review and approval by Conrail as part of our current review process. Appropriate provisions must, of course, be incorporated into the plans for later construction access and all appurtenances must be within the areas of the station planned for lease to the city. No access to the planned Conrail areas of the station to perform this work at a later date will be permitted. Associated work, at the platform level, if done at a later date, may only be accomplished in accordance with the terms of the construction agreement with the city (or as amended) and only if fully coordinated with Conrail.

There exists the possibility that under our union agreements Conrail forces may be responsible for any utility or alteration work in the area of the station that is not to be

*City looking to move Conrail out of building as a possibility!  
RD*

Mr. Lawrence C. Witkowski  
May 16, 1996  
Page 3

leased to the city. We will more fully discuss this work the proper parties and advise as to our findings in this matter.

5. **Contractor Access:** The contractor may only access the track area or platform area with equipment via the northerly side of our right of way. This would best facilitate his staging of any work without impeding our use of the southerly access roadway. The route to this northerly site would likely be by way of a graded area leading westerly where apparently a former siding or track once existed. This route would include passing over SR 60 on a separate bridge not currently involving active rail operations. All arrangements to accomplish this would, of course, have to be fully coordinated with Conrail and no use would be allowed without the presence of Conrail flag personnel. The storage of equipment and materials immediately within this area will not be permitted.

6. **Contractor Procedures:** We remain concerned as to how it is anticipated the contractor will access the areas in the vicinity of the platform and perform his work in those areas. Not only must we be assured that the work as planned is feasible, but that it can and will be accomplished in a manner that does not impact Conrail or our facilities. It is equally essential that the prospective bidders fully understand the implications of performing the work in such a manner and bid the project accordingly.

7. **Platform Edge:** As contractor access, work duration and forming capabilities will be extremely limited for his completion for renovation work along the edges of the platform, it was suggested that consideration be given to utilizing some type of pre-formed platform edge or forming method more compatible with the frequency, the often minimal duration of work periods between the passage of trains and that will not compromise clearance requirements associated with train operations. All of the contractor's work will, of course, have to be performed under the direction of our project engineer and, at platform level, with Conrail flag personnel on site. No work will be permitted that might conflict with or impede train operations. It is essential that the contractor retained by the city fully understand the implications of working in concert with our personnel and without impact to our operations.

8. **Buried Cables/Polelines:** Your plans should include the location of all buried fiber optic facilities within our right of way. This can be accomplished through contact with the individual FOC companies. These facilities must be protected from damage at all times and, should any alterations be required, arrangements for such work directly with the FOC companies will be the responsibility of the contractor and/or the city. Conrail buried or aerial facilities must likewise be located and protected throughout the duration of the contractor's work. Any costs associated with this work to be performed by Conrail

Mr. Lawrence C. Witkowski  
 May 16, 1996  
 Page 4

forces would be included in our cost estimate. Upon receipt of the additional plans requested at the meeting, we will attempt to clarify these possible Conrail involvements.

9. Signal Preview: As a result of the site inspection during the meeting, it is apparent that the Conrail train signals located immediately easterly of the platform area will have to be raised, relocated and/or altered so as to continue to provide ample preview for trains approaching from the west. This was previously noted in prior correspondence, but with the recent work in the area, we believe such work is virtually a necessity. Again, we will more fully investigate this once we receive the additional plans and include appropriate provisions in our estimate. It should be clearly understood, however, that such work will likely be predicated on the existing signals remaining in service until replacements are operational and that such work is extremely labor intensive, hence, very costly. Obviously, no work to erect new platform structures may commence until signal preview is assured.

10. Trespasser Access: The possibility of local citizens and/or rail passengers attempting to either access the platform or cross over our property in the station/platform area was discussed. As the very existence of the planned passenger facilities will foster this unauthorized access or become a temptation for trespassers or vandals, it is essential that the overall project include provisions for fencing and signage to prevent this unauthorized access and to direct rail passengers to the proper route of access to the station and platform at train level. Particular attention must be given to the area along the northerly side of the right of way on both the east and west sides of the platform, the aforementioned proposed contractor access route, the alternate parking area west of SR 60 and to prevent individuals from attempting to access platform via the Conrail portion of the station or our parking area immediately east of the station. All fencing and signage would be the maintenance responsibility of the city.

11. Parking and Vehicular Access: The planned very small area in front of the planned Amtrak portion of the station (designated for handicapped parking) as well as vehicular access for rail passengers and Council personnel is not acceptable. After some lengthy discussion about various other configurations, it was generally agreed the city would seek the rights from the adjacent property owner to obtain a portion of his property along SR 60 in order to provide an increased area for non-Conrail vehicles to drop off or pick up passengers and to provide Conrail with a separate route of access to our property easterly of the station. Additional parking (with appropriate signage and pedestrian crosswalk access through the SR 60/Main Street intersection westerly of the station) would provide long term parking capacity for rail passengers. Revised plans detailing the new vehicular access schemes must be provided for our approval.

*Conrail moved  
 these signals  
 May 1996 on  
 a track at 1000  
 ft level. All  
 work are still in  
 case, Council wants  
 20,000 to move back  
 and contractor says  
 9,000. Only signal  
 track 1 will be a  
 station. City propose  
 transit type shelter  
 using stairwell  
 about 8' high  
 R.D.*

*City is offering  
 a strip of property  
 for Ontario and  
 would Conrail  
 employee parking.  
 R.D.*

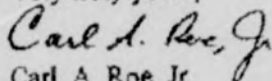
Mr. Lawrence C. Witkowski  
May 16, 1996  
Page 5

12. Project Schedule: Based on our conversations it is our understanding that it is anticipated that it will require approximately 90 days for the completion of all work depicted on the plans both at the platform level and to the station. Additionally, the latest projections are for this work to be completed by September of this year. The plans for the work, however, are not in a condition to be approved by Conrail nor are agreements involving Amtrak and Conrail or the city and Conrail in place at this time. Consequently and due to the numerous and significant issues and items that must first be successfully resolved (also see our prior letters) we foresee effectively no possibility of work actually commencing in June of this year or for a few months thereafter. Furthermore, the actual scheduling of Conrail work such as the relocation or alteration of our train signals may have a substantial impact on the scheduling of the contractors work in the platform area and staging of work for the station and adjacent parking areas may have a similar impact.

We certainly appreciate the opportunity to have met with you regarding this project and wish to thank the Mayor as she was able to take time from what we are sure was an otherwise busy schedule to attend a portion of the May 13, 1996 meeting. We likewise acknowledge much of the foregoing has been previously brought to your attention in our earlier correspondence, but this somewhat lengthy reiteration of those items (with some additional) is again deemed essential if this project is to develop in a positive fashion. Each of the items and issues mentioned in this and our prior letters is felt to be resolvable and, with the receipt of revised plans accompanied by written responses to each, we will continue to work with your firm and the city in the development of mutually acceptable project proposals.

We look forward to receiving your further advice in these matters.

Very truly yours,



Carl A. Roe, Jr.  
Principal Engineer - Public Improvements  
(215) 269-2922

## CONRAIL



September 19, 1996

Mr. Lawrence C. Witkowski  
Lawrence C. Witkowski, Architect  
28 Water Street  
Fredonia, NY 14063

Subject: Dunkirk, Chautauque County, New York - Proposed restoration of passenger platform and station facilities, MP 40.3, Chicago Line, LC 3500, Albany Division WQH 4-668 (File Location - CAR)

Dear Mr. Witkowski:

Reference is made to your August 16, 1996 submission of plans and specifications that apparently formed the basis for a rebidding of work proposed in connection with the subject project.

From a cursory review of the plans that accompanied your submission, we cannot determine what, if any, revisions were incorporated into the project since the prior submission or if the rebidding is strictly for other reasons. Further, it is not apparent that the issues outlined in our last letter of May 16, 1996 have been addressed nor, for that matter, have we received any written advice from your office in the interim as to how those issues would be handled. As discussed at the May 13, 1996 meeting and described in our letter of May 16, 1996, we requested that a written response detailing the treatment of those issues (including plans and other supporting documentation) be provided in conjunction with the continued development of this project. With that information we would then be in a position to perform a more detailed review and process that documentation for the appropriate formal approvals on behalf of Conrail.

Unfortunately, without that advice or even any interim contact as to how the issues have or will be addressed, we cannot take any action with respect to this submission and continue to await further advice in the manner and in relation to the issues as outlined in the aforementioned letter.

Post-it Fax Note	7671	Date	2/18/97	Order #	8
To	Margaret Wierzbicki	From	Carol Hanco		
Ext/Dept	0	Co.	U		
Phone #		Phone #	518-767-6113		
Fax #	716-346-2049	Fax #			

Mr. Lawrence C. Witkowski  
September 19, 1996  
Page 2

We continue to look forward to receiving your further advice in these matters.

Very truly yours,

*Carl A. Roe, Jr.*

Carl A. Roe, Jr.  
Principal Engineer - Public Improvements  
(215) 209-2922

Maui Givens later told  
me she was disturbed that  
Mr. Witkowski had not  
adequately addressed CR's  
Requirements and that  
she subsequently assigned  
her own staff to that  
task. FB

CONRAIL



Ross Cason

Car info

February 27, 1997

Bill  
2/27/97

The Honorable Arno Houghton  
U.S. House of Representatives  
Federal Building, Room 122  
Jamestown, New York 14701

Dear Congressman Houghton:

This is in further response to your correspondence dated February 14, 1997 on behalf of your constituent, the Honorable Margaret Wuerstle, relative to the Dunkirk passenger station.

I have spoken with Mr. Carl Roe, Conrail's Principle Engineer-Publ. Improvements, who is handling this project. Mr. Roe advises he is still awaiting a response to his May 16, 1996 letter to the Mayor wherein he commented on the plans proposed by Dunkirk's architect.

I am also advised that we are currently scheduled for a meeting of the parties sometime in March to address outstanding issues. I am confident that with the cooperation of all parties this project can move forward.

If I may be of further assistance, please feel free to contact me.

Sincerely,

*Arthur R. Oeslander*

Arthur R. Oeslander  
Assistant Vice President - Federal Affairs

This meeting was  
NEVER held. They (CR)  
cancelled it on 2 days  
notice until the  
Contract merger is  
resolved. FB

Lyons Amtrak Station Initiative  
- a brief history

June, 1990 - Village of Lyons Planning Board met with local government officials and an Amtrak representative. Task force to pursue station stop formed.

Jan. 1991 - Amtrak President W. Graham Claytor agrees to station stop if the local community supplies an adequate facility. Estimate: 10 passengers per train.

August, 1991 - Conrail agrees to allow a Lyons Amtrak stop on an interim basis without moving tracks. (Access to proposed site would necessitate crossing a seldom-used secondary track that goes to Corning.)

1992 - Senator Kehoe secured \$30,000 State grant. Wayne Co. Board of Supervisors pledged \$30,000. It was hoped that both the Village and Town of Lyons, who strongly backed the project, would also appropriate money and provide in-kind services as needed.

The DeWolf Partnership of Rochester donated over \$5000 in the form of architectural drawings and specifications that were submitted to Amtrak and Conrail.

1993 - Although Amtrak approved plans with some minor modifications, Conrail refused to allow any access to station site that necessitated crossing secondary track. Costs of moving that track had to be borne by the local community and were estimated to be about \$1 million.

1994 - Senator Mike Nozzolio secured a grant of \$250,000 for station construction. That amount, plus previously committed funding, would have allowed the secondary track to be protected with cross arms and flashing lights as well as provide for all other construction and related costs.

However, Conrail rejected the pedestrian crossing under all circumstances.

1995-96 - Efforts these last several years have focused on not losing previously secured funding and re-opening a dialogue with Amtrak officials. A proposal to site that station on Route 31 just West of Leach Road was rejected; Conrail wants the stop to be on the south Main Track.



Page Two

Overview - An Amtrak Station stop in Lyons was a good idea in 1990 and is a good idea now. This is the longest stretch of passenger rail in New York State without a station - almost 100 miles. The proposed site (where the original NY Central Station was) is very close to the intersection of Routes 14 and 31 and just 7 miles north of Thruway Exit 42. About midway between Rochester and Syracuse and just North of the center of the Finger Lakes. A station stop here would be virtually the only access to public transportation in the entire region.

Although Amtrak and the local community favor a station stop, Conrail (who owns the tracks) objects, for safety and liability concerns, to any passengers crossing a secondary track to access the station. Moving the switch and track several hundred yards to the East is possible and should satisfy their concerns, although the expense would have to be borne by the local community or the State.

In conclusion, the local community needs help in the following ways:

- 1) to facilitate in getting the principal parties to work together and come up with a realistic cost estimate of moving the tracks. Those parties are Conrail, Amtrak and NYS DOT.
- 2) to include the cost of moving the track in current DOT budget, and
- 3) to preserve previously appropriated funding...

National Railroad Passenger Corporation, 60 Massachusetts Avenue, N.E., V



*Lyons Station*

JAN 28 1991

348-08



Mr. Lewis M. Hoppe  
President  
Empire State Passengers  
Association  
1900 Quentin Road, E-16  
Brooklyn, New York 11229

RECEIVED

FEB - 5  
COMMERCIAL TR  
DIRECTOR

Dear Mr. Hoppe:

Thank you for your letter of December 4, 1990, concerning a stop at Lyons, New York. Please excuse the delay in responding.

Our Passenger Marketing Department has made a detailed review of a Lyons, New York stop. Estimating the impact of new station stops where the majority of the population is not in the city served but rather in surrounding communities involves a high degree of uncertainty. Under a favorable scenario, however, we believe that a Lyons station could generate up to 10 new passengers per train.

Based on his estimate, and acknowledging its tentative nature, we are prepared to implement an experimental stop at Lyons, provided that the local community supplies an adequate facility. With our extremely limited capital budget and the requirements to upgrade existing facilities, we cannot commit funds at this time for new stations. In addition, I should clarify that this would not include stopping the Lake Shore Limited at Lyons but only local Empire Service trains.

If the local community wishes to pursue this subject further, they should contact Tim Gillespie, Assistant Vice President, Public and Government Affairs, to coordinate the project.

I appreciate your suggestion on the issue. We await the response from the community.

Sincerely,

ORIGINAL SIGNED AND SENT BY

W. Graham Claytor, Jr.  
President

DEPT. OF TRANSPORTATION

RECEIVED

cc: T. Gillespie

FEB 7 1991

COMMERCIAL TRANSPORT  
POLICY & PROGRAM BUREAU

CONRAIL



August 1, 1991

Mr. Michael Santelli  
12 Pearl Street  
Lyons, New York 14489

Dear Mr. Santelli:

As we discussed, Conrail has agreed to allow an Amtrak stop to be established at Lyons on an interim basis without completion of normal track work. This concession is being made to permit Amtrak and the community to operate the station for an experimental test period. Before the start of the study, Amtrak, the county board, and Conrail will need to agree upon the duration of the experiment and the criteria upon which the Lyons stop will be evaluated.

The stop at Lyons must be limited to no more than three minutes. This is consistent with Amtrak stops at similar stations and will provide adequate time for passengers to board and detrain.

I will wait to hear from you about developing criteria for evaluating the Lyons station.

Very truly yours,

*J. C. Barthwell III*  
J. C. Barthwell, III *adk*

**CONRAIL**

August 31, 1992

Mr. J. L. Larson  
Asst. Vice President  
Operations and Planning  
National Railroad Passenger Corp.  
60 Massachusetts Avenue, N.E.  
Washington, DC 20002

Dear Mr. Larson:

With reference to your letter of June 17, concerning the design plan and other factors relative to location of an unstaffed Amtrak station to be located at Lyons, NY.

In order to accommodate Amtrak's request and eliminate the potential liability Conrail would incur from people crossing its property, i.e., Corning Secondary main track, on foot, Conrail will require that the Corning Secondary main track be retired from its present location in No. 2 main track CP-335, to a new interlocked location east of the proposed station site. This requirement will permit Conrail to retire the Corning Secondary track in the vicinity of the proposed station site, and provide the Amtrak patrons and their guests safe and proper access to the station, as well as permit the location of the parking area in close proximity to the station site, which Amtrak has requested. Attached is a sketch of the suggested modifications.

The proposed plan provides only a dimension of 5'-1" from the centerline of main track to the face of the platform. Conrail's standard plan No. 70051-E "Minimum Roadway Clearances" requires a dimension one eighth inch greater. (The sum of 32-7/8" plus 1/2 gage). This is a recurring dimensional problem with Amtrak platform plans, please arrange for future submittals to reflect a minimum dimension of 5'-1 1/8".

The design for the platform using concrete header or grade beam is not recommended. The general area around Lyons has a history of frost action during winter and the beam would have to adequately constrained to prevent it from moving into the clearance envelope. Further, the tile shown as the wearing surface would appear subject to dislodging by weather or traffic. In any event, the

CONSOLIDATED RAIL CORPORATION SIX PAGES

*file Lyons* *and [unclear]*

- 2 -

Mr. J. L. Larson

August 31, 1992

installation would be acceptable only using precast section as the necessary forming and placement next to a high density main line track would not be acceptable.

A fence must be placed along the opposite side of the northerly (No. 1) main track extending the length of the platform and at least 500 feet beyond each end to discourage individuals from crossing the main line tracks to or from the platform. This fence should be north of the MofW roadway along the tracks.

Please provide me with revisions to the present plans incorporating Conrail's requirements.

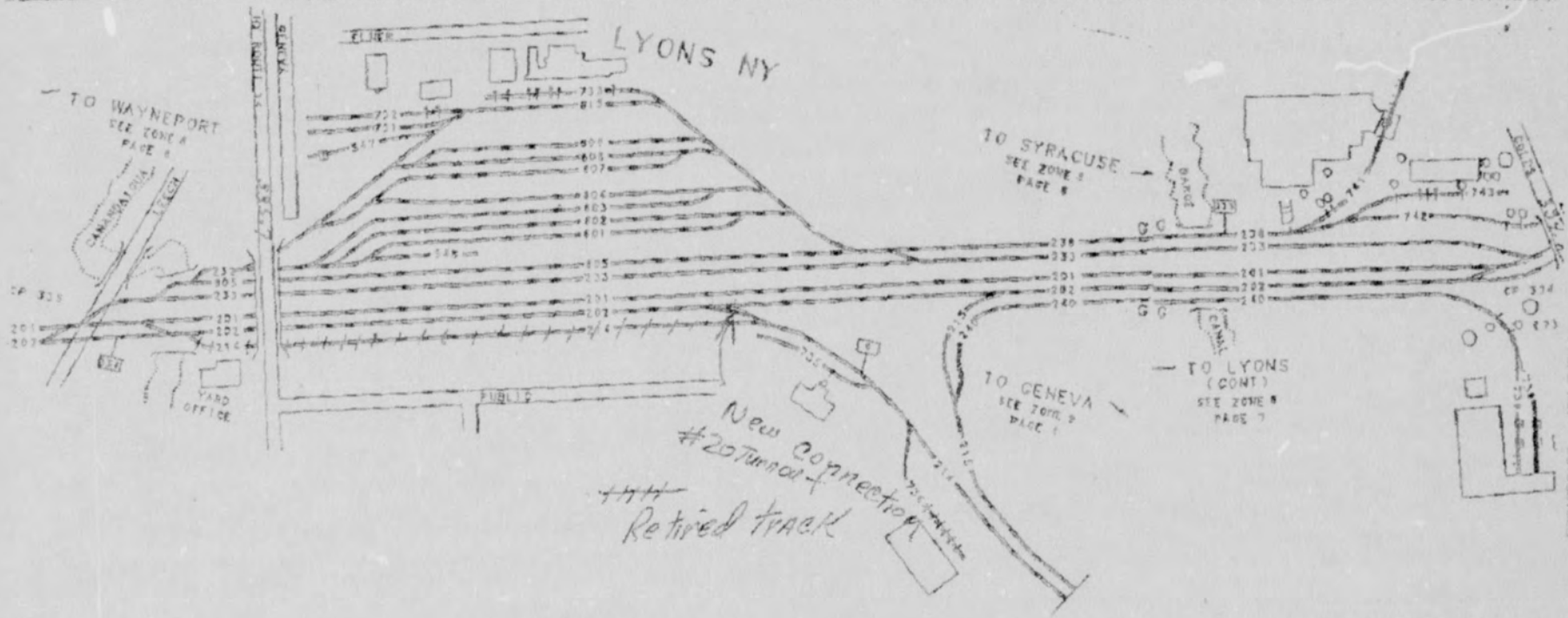
Sincerely,

(SGND.) W. F. WULFHORST

W. F. Wulfhorst  
NRPC Operations Officer  
Room 820

*248-08*

bc: R. A. Pyson - P-1740  
G. M. Williams - L-919  
R. E. Gratz - Selkirk  
M. J. Chewar - Selkirk  
J. D. Cossel - F-1200  
C. Barthwell - Selkirk  
S. W. Harvey - Syracuse  
A. R. Ouslander - Washington  
D. W. Ophardt - Selkirk



CONRAIL



February 1, 1994

Mr. A. T. Prentiss  
Director-Operations Planning  
National Railroad Passenger Corp.  
60 Massachusetts Avenue, N.E.  
Washington, DC 20002

Dear Mr. Prentiss:

With reference to your letter of August 9, 1991, requesting the installation of a pedestrian crossing, with flashing crossing protection lights, across Conrail's Corning Secondary Track, in order to access the proposed passenger station at Lyons, NY.

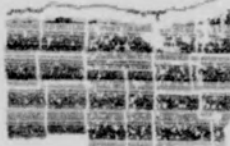
A pedestrian crossing across Conrail's Corning Secondary tracks is unsatisfactory, and not a substitute for the vehicular crossing, which was originally proposed.

Conrail's position continues to be that access to the proposed Lyons, NY passenger station must not cross Conrail trackage.

If another location cannot be found for the proposed passenger station, then the Corning Secondary must be relocated in the manner which I described in my letter of August 31, 1992 and the cost of the relocation financed by Amtrak or other agencies.

Sincerely,

*W. F. Wulfhorst*  
W. F. Wulfhorst  
NRPC Operations Officer



## wayne county planning board

May 3, 1994

The Honorable Alfonse D'Amato  
United States Senator  
520 Hart Office Building  
Washington, D.C. 20510

Dear Senator D'Amato:

In June of 1990, several concerned citizens from the Village of Lyons and other communities in Wayne County, along with representatives from the Empire State Passenger Association, convened at a local restaurant to conceive a plan of action for the establishment of a passenger rail station stop in Wayne County.

All present recognized the deficiency in public transportation apparent in the Finger Lakes Region. Perhaps this was most evidenced by the fact that at least 120 miles separated the train stations in Rochester and Syracuse. This represented the longest stretch of track in the state without passenger rail service.

Subsequent investigation revealed that the Village of Lyons would be the most appropriate place to site a passenger station stop. Amtrak concurred and agreed to establish an experimental stop in Lyons. Armed with a site, statistics and other relevant information, local officials embarked upon a campaign to raise the money needed for the design and construction of a station. Initial efforts were very successful, resulting in pledges from Wayne County and New York State through former Senator L. Paul Kohoe. Of the approximately \$100,000 needed to build a shelter and the required platform, nearly two-thirds of it was raised in short order.

Plans were developed and we began the long process of obtaining approval from Amtrak and Conrail. Amtrak approved our plans with only a few modifications necessary for compliance with the Americans with Disabilities Act. Plan approval met with lengthy and inexplicable delays from Conrail.

In order to establish a station stop in Lyons, we needed Conrail's permission to cross a freight spur to access the passenger trains. No one involved in this effort thought this would be an insurmountable problem because precedent already exists. In Bound Brook, New Jersey, passengers must cross a spur that connects Conrail's West Trenton Line with the NJT line in order to get from the platform to the train. This spur, as in Lyons, is active for freight. Since the Bound Brook Station is slated for an upgrade, liability associated with passengers crossing tracks to access trains does not seem to be an issue.



Conrail has assumed a nonnegotiable position with regard to the crossing of a freight spur in Lyons. Although we have offered to install warning lights and crossing gates to reduce liability, Conrail has rejected these plans. It seems the only acceptable alternatives to them are relocation of the spur at an estimated cost of \$1 million or relocation of our station site.

We are at a stalemate. We are frustrated and confused and in serious danger of losing a substantial amount of funding awarded to this project. In addition to contributions by Wayne County and former Senator Kehoe, the NYS Legislature approved a Special Rail Transportation Program which awarded Lyons \$250,000 to be used toward the establishment of the Amtrak passenger station. This would allow us to employ a contractor experienced in rail construction and free us from the cumbersome problems associated with severe cost constraints.

Every piece of the puzzle is in place, except one. Conrail has consistently demonstrated their unwillingness to consider our compromises. This passenger rail station is a key component to the overall plans for enhancement and revitalization of the Erie Canal Corridor and the entire Finger Lakes Region. We believe that we have offered more than adequate provisions for the safety of passengers boarding at the proposed Amtrak Station. It would be a tragedy if we could not see our plans become reality.

On behalf of all the people who have worked long and hard to establish this station in Lyons, we respectfully request your assistance in resolving this issue with Conrail. Your assistance in the past has always been appreciated. Please feel free to call us at your convenience if you would like to discuss this further. Thank you in advance for your help.

Sincerely,

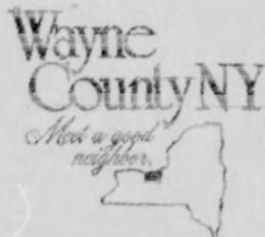
*Michael Santelli*

Michael Santelli  
Amtrak Coordinator

*Sharon T. Lilla*

Sharon T. Lilla  
Director of Planning

cc: Hon. Daniel P. Moynihan  
Hon. Michael P. Nozzolio  
Hon. Robert C. Oaks  
Frank Barry, ESPA  
James Fabino, Supervisor



Wayne Economic Development Corporation  
 16 William Street  
 Lyons, New York 14859-1144  
 Phone 315-946-5917  
 Fax 315-946-5918

Post-Net Fax Note	7671	Date	9/3/97	Page	10
To	John J. CANNON	From	FRANK BARRY		
Co. Dept.		Co.	ESPA		
Phone	202-785-3700	Phone	607-255-7791		
Fax	202-659-4934	Fax	607-255-8562		

October 8, 1996

The Honorable Michael P. Nozzolio  
 119 Fall St.  
 Seneca Falls, NY 13148

Re: Amtrak Station - Lyons, NY

Dear Senator Nozzolio:

I am enclosing a brief synopsis written by Mike Santelli of the Amtrak Station for Lyons project begun in 1992 and bolstered by yourself with a \$250,000 grant in 1994.

We are still trying to move this project forward. It looks like the best way would be to include moving the tracks and switch to the Corning branch in the proposed four-year Transportation Fund. This would eliminate the pedestrian crossing problem which seems to be Conrail's only objection. Conrail has not provided us with an estimate for relocation of this line and the associated signal work, but it could cost on the order of one million dollars.

We also need your help in maintaining the \$30,000 and \$250,000 grants approved in 1992 and 1994 respectively. Transportation projects seem to take a long time to bring to fruition; but we are still optimistic and these funds will be critical at that time.

Your assistance would be greatly appreciated. Mike Santelli or myself will be calling you shortly for your input.

Sincerely,

*Barbara*

Barbara Harper  
 Administrator

cc: Michael Santelli

related costs.

However, Conrail rejected the pedestrian crossing under all circumstances.

1995-96 - Efforts these last several years have focused on not losing previously secured funding and re-opening a dialogue with Amtrak officials. A proposal to site that station on Route 31 just West of Loch Road was rejected; Conrail wants the stop to be on the south Main Track.

STB

FD

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10-21-97

D

182949

2/2

East Lake Road  
Dunkirk, NY 14048  
October 20, 1994

Dear Bob,

Please find enclosed article that appeared in the Buffalo News on October 18th. A similar article was in the Dunkirk paper on October 15th.

Also enclosed are copies of the letters the Mayor of Dunkirk received from Conrail and her request for help on Conrail problems to U.S. Representative Amo Houghton. I met with the Mayor Wednesday afternoon.

Conrail appears to be adamant against AMTRAK service that exists and possible future enhancements. One half of the Dunkirk railroad facility is unused. The portion the City desires to use for AMTRAK is unused. Much of the money the City has for the work must be utilized in 1995. Other station sites in the City are not feasible due to heavily used sidings.

I'm asking for help from ESPA, from NARP, from AMTRAK. Please convey our needs to the meeting in Portland next week.

Sincerely,

Roy A. Davis  
Chautauque County Coordinator

cc: Frank Barry

# Conrail to allow Dunkirk to rent part of depot

By KYLE KUBERA  
OBSERVER Staff Writer

Persistence has paid off for the city of Dunkirk in its quest for an Amtrak passenger train stop.

Conrail officials Tuesday notified the city they have changed their minds and will allow the city to lease a portion of the former depot at the foot of Main and Third streets.

"It certainly is real positive news," Mayor Margaret Wuerstle said of the Conrail decision.

City officials had their earlier request for using the depot turned down by Conrail. But, a January visit by the railroad's officials evidently provided the impetus for the change of heart.

"Initially, I think they (Conrail) were making a decision without seeing the building and knowing what we wanted to do," the mayor said. "It appears that having them come down made all the difference in the world."

Mayor Wuerstle credited the change to the city's unwillingness to give up on the depot site, along with the assistance of the Empire Railroad Association and the community support for the project.

"It was a combination of a lot of people," the mayor said. "The city was persistent, the Empire Railroad Association helped a lot and the people sent a lot of letters of support every time this has come up."

Mary B. Phillips, Conrail's manager of community relations, notified the city of the decision and the conditions which need to be met for the lease to go through.

"In an effort to accommodate the community," she said in a let-

ter to the city, "we are willing to lease a portion of the Conrail maintenance building for a passenger station."

Five conditions, which the city had been proposing for the site, were listed in the letter.

"I think their requirements can be met," Mayor Wuerstle said. "They are everything we've been saying all along."

The city's next step will be to tackle Amtrak officials to see what is the status of a stop in Dunkirk. The passenger train company has previously told the city it is considering an additional run from Buffalo to Cleveland and would consider Dunkirk as a stop. They also have a passenger service that runs through the city in the early morning hours.

"I have kept in contact with the Empire Association and while they are very interested, there has been nothing new from Amtrak," the mayor said.

Both the mayor and city Planning and Community Development Director Shery Bower said a train stop would help boost Dunkirk's tourist and business trade.

"It certainly would help us," the mayor said. "It could be a real link to the waterfront, Fredonia State University College and other areas of Chautauque County."

Ms. Bower said, "Anything that gets people to stop in Dunkirk is positive."

"We are trying to generate activity in the city," the development director said. "This would tie in nicely with our overall waterfront master plan."

The Buffalo News/Wednesday, February 22, 1995

## Conrail to lease building for station

DUNKIRK — Conrail has agreed to lease part of a maintenance building to Amtrak for a passenger station, according to a letter received by Mayor Margaret Wuerstle on Tuesday.

She will now contact Amtrak to discuss the details. Conrail officials said Amtrak and the city will need to pay for rehabilitation of the building, which previously was a railroad passenger station, Conrail officials wrote. The city has \$125,000 available, including a \$62,500 state grant and the rest in federal funds.

Conrail would continue to use part of the building as its maintenance facility, according to the letter.

# EVENING OBSERVER

626th Year, Number 229

THURSDAY, SEPTEMBER 7, 1995

Dunkirk, Fredonia, N.Y. 35¢

## All aboard! Dunkirk gets Amtrak stop

By DOUG COY  
Observer Staff Writer

The cry of "all aboard" will soon be echoing through the former Penn Central Station in Dunkirk as the city has been added as an Amtrak passenger stop.

"We're getting our Amtrak stop," announced Mayor Margaret Wuersie to the OBSERVER Wednesday afternoon.

The mayor said she had just collected another batch of signatures and made her regular call to Amtrak officials. This time, they had an answer.

"They said they were going to go with

it," the mayor said.

The Lake Shore Limited, Amtrak's passenger line through Dunkirk, will begin stopping in the city on April 7. Amtrak officials said it was too late to add Dunkirk to the fall schedule.

According to Mayor Wuersie, the Dunkirk stop is being added on a one-year trial basis. Amtrak will check the usage figures at the end of that year and determine whether or not to continue the service.

"We have to see if the true ridership is there," said Marty Rush, product line manager for Amtrak.

He said the letter writing/petition campaign has strongly influenced Amtrak officials.

"Everybody at Amtrak is pretty impressed with the support for service Dunkirk has shown," Mr. Rush said.

Mayor Wuersie said the letters and petitions were the key.

"Amtrak said the demographics are not that strong, but the community and local support was overwhelming," she said. "Thank you to the thousands and thousands of people who signed petitions and those who sent letters."

More than 400 letters of support from local business and community leaders were sent to Amtrak officials as part of the most recent effort to get a passenger stop. In addition, petitions containing more than 8,000 signatures were submitted.

Several unsuccessful attempts to get a passenger stop in Dunkirk have been made over the last 20 years.

The main focus now, the mayor said, will be preparing the depot, located at Third and Main streets, for passenger service.

The city has received more than

\$125,000 in grants for the project. Mayor Wuersie said Amtrak will aid in the effort to get the station ready for operation.

A meeting with Amtrak officials to go over specific details will be held within the next few weeks, Mayor Wuersie said.

Mr. Rush said there are many operating issues and other details to be worked out.

"There are still quite a few questions to be resolved," he said.

At this time, Mr. Rush said Dunkirk is the only additional stop being considered on the Lake Shore Limited line, which runs from Chicago to New York City.

**Editorial****The OBSERVER's view**

# Amtrak stop worth some loud cheering

If there ever was a case of persistence paying off, it has to be in the joyous news that Amtrak will be making a stop in Dunkirk beginning in April. Congratulations to everyone in the city who helped to make it possible.

True, it's a trial period for one year and who knows what will happen after that. At least it's been achieved and now the long-run fate rests with the residents of the area. In the meantime, the depot will be renovated and there is cause for celebration. The time for the local stop will be announced after the spring Amtrak schedule is in place.

Considering the fact that Amtrak is eliminating runs and stops nationwide, it seemed to be a longshot that Dunkirk would be approved. In fact, it is the only additional stop being considered on the Lake Shore Limited line that runs from Chicago to New York City. Talk about winning the lottery!

There was a lot of hard work done by a lot of people, starting with Mayor Margaret Wuerstle, to convince Amtrak officials that the stop was worth considering. Some people spent hours just obtaining names for the petition drive. The rally in Washington Park was well organized and successful.

Impressive were the more than 400 letters of support from local business and community leaders that were forwarded to Amtrak officials. In addition, petitions bearing several thousand signatures were obtained by individuals on the street and at places like Wal-Mart, where a table was set up for weeks.

What makes it even more exciting is that several unsuccessful attempts to get a passenger stop in Dunkirk have been made over the past 20 years. Also, plenty of skeptics were proven wrong this time.

City officials were deservedly jubilant over the news. The entire council, other elected officials, administrators at Fredonia State University College, and most business leaders in the area had backed the effort.

Success of the venture will be determined in the future, but for now everyone who participated in this effort is entitled to toot their own horn a little bit.

# EVENING OBSERVER

113th Year Number 172

WEDNESDAY, JULY 12, 1995

Dunkirk - Fredonia, N.Y. 35¢

## Rally for Amtrak stop in Dunkirk draws 250

By DOUG COY  
OBSERVER Staff Writer

As about 250 people looked on, local and state officials voiced their support for an Amtrak passenger stop in Dunkirk during a rally held in Washington Park Tuesday evening.

"Today we are the closest we have ever been to seeing this project become reality," Mayor Margaret Wuerstle said.

The rally, which kicked off with a musical performance by Up with People, was held as a means of showing Amtrak officials there was community support for the rail stop.

"The support of this community sends a message to the decision makers," Amtrak representative Don Muscat said. "Obviously, it

has to be worthwhile for Amtrak and the community."

One selling point presented for a passenger stop in Dunkirk was the proximity of Fredonia State.

Fredonia Mayor Frank Pagano said the rail stop would give students an effective transportation option.

Fredonia State President Donald MacPhee made a strong pitch to Amtrak officials, stating rail travel would be an "attractive" option to college students.

"Should this happen, we will promote packages with railroad travel," he said.

Mr. MacPhee said on average students spend \$800 on transportation to Fredonia State.

He also cited the historic significance of the

railroad in the area, noting President Millard Fillmore and his cabinet once travel here by rail.

"This place deserves a direct link to the railroad," Mr. MacPhee said.

There was plenty of railroad nostalgia as well. A display set up by the Dunkirk Historical Museum showed photographs and artifacts of rail history in the city while Councilman John Woloszyn recalled travelling by train to see his first major league baseball game in Cleveland.

Local travel agent Mary Dean presented Amtrak with a letter stating the benefits they would receive through travel packages to New York City and Chicago from Dunkirk.

The Amtrak stop also drew support from



Rally smiles

OBSERVER Photo by Mike Kurtz

Dunkirk Mayor Margaret Wuerstle shakes hands with Amtrak representative Don Muscat during Tuesday's rally at Washington Park.

See AMTRAK, Page A2

## Amtrak

Continued from Page 1

state officials. Mayor Wuerstle read a letter of support from Gov. George Pataki and Sen. Jesse Brown (R-Bemus Point) was set hand to address Amtrak officials.

"The Chautauque County area is poised for dramatic growth," Sen. Brown said. "What we need now is for Amtrak to make some commitment."

According to Mr. Muscat, however, Dunkirk will have to wait a little while for that commitment.

He explained the company is going through a major reorganization right now. A number of offices will be involved in the decision, but Mr. Muscat said he has no idea when it will come.

Mr. Muscat will take back with him a portfolio containing about 400 letters of support. Mayor Wuerstle said 200 of the letters are new while the other 200 are from a previous effort to get a rail stop in Dunkirk.



## The OBSERVER's view

### MIXED SIGNALS

## Will new Amtrak stop finally come to Dunkirk?

Nearly 16 months ago, when it was announced that Dunkirk would be getting an Amtrak stop in the near future, the euphoria was difficult to beat.

Many years of hard work had paid off with persistence and diligence on the part of a number of exuberant citizens led by Mayor Margaret Wuerstle. In the late summer of 1995, the public was informed that Amtrak would be stopping in Dunkirk beginning in April (that's April of 1996). We passed that milestone eight months ago and no one can definitely say today when the stop will begin.

Some think that it will happen between April (there's that month again) and June of next year. Others believe it could take longer. Suffice to say, progress is moving at a snail's pace rather than the speed of the Lake Shore Limited.

A number of obstacles have been presented which have been "very discouraging and very frustrating" for Mayor Wuerstle and others working for success. "We're doing everything we can, every week," Mayor Wuerstle commented.

Amtrak is not the problem. They have been fully supportive. We wish we could say the same about Conrail but we can't.

Because they still use a section of the old depot for their area employees, Conrail has been less than cooperative about the renovation of that old facility. First it was the rest rooms there. Conrail wouldn't use the new, handicap accessible rest rooms that were being put in for passenger use in the early morning hours. Then there was an expensive signal (\$100,000) that Conrail installed near the platform. The city doesn't have \$100,000 to move the signal and hopes that an elevation of the signal would solve the problem. What next? Parking?

In the meantime, the city started looking at other possible locations including some on grade level where stairs or an elevator would not be necessary. (The city has received a waiver on an elevator at the depot for the one-year trial run.) A new site could prove cheaper than the renovation. Whatever the decision, Conrail's approval is still needed.

Amtrak, meanwhile, appears ready. The timetable they published in the spring had the Dunkirk stop with an asterisk.

The Buffalo-Erie stretch is almost 100 miles without a stop. There is no other section of the Lake Shore Limited that has such a long distance between stops. And the Erie stop might be somewhat shaky at this point.

In the spirit of the holiday season, it is time for Conrail to stop putting up roadblocks and to start cooperating with Dunkirk. After all, any business that is good for Amtrak is good for Conrail.

We want 1997 to be the year that passenger railroad service returns to Dunkirk, the city that built so many locomotives for such a long time.

Our editorial policy: Except for the OBSERVER's own editorials, the columns, letters and opinions that appear on this page do not necessarily represent the opinions of this newspaper.

## Sunday OBSERVER

James C. Austin - General Manager  
Keith Sheldon - Managing Editor

STB

FD

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10-21-97

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182748

# HOPKINS & SUTTER

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DETROIT OFFICE 2700 LIVERNON SUITE 220 TROY, MI 48063-1220



ROBERT P. VOM EIGEN  
(202) 835 8269

October 21, 1997

D

Vernon A. Williams, Secretary  
Office of the Secretary  
Case Control Branch  
ATTN: STB Finance Docket No. 33388  
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:

Enclosed are a.. original and twenty-five (25) copies of the **Public Version** of Metra's Position Statement and Request for Conditions on Behalf of Chicago Metra (METR-6) and accompanying Verified Statement (METR-7) for filing in the above-referenced proceeding. An additional copy is enclosed for file stamp and return with our messenger. Please note that a copy of this filing is also enclosed on a 3.5-inch diskette in WordPerfect 5.1 format. Because of time constraints the verification page of Mr. Stoner is a facsimile copy; we will file the original verification page as soon as we receive it from Mr. Stoner.

Sincerely,

*Robert P. vom Eigen*  
Robert P. vom Eigen

Enclosure

cc: The Honorable Jacob Leventhal  
All Parties of Record



**PUBLIC VERSION**

BEFORE THE  
SURFACE TRANSPORTATION BOARD  
Washington, D. C.

\_\_\_\_\_  
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/AGREEMENT --  
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

**POSITION STATEMENT AND REQUEST FOR CONDITIONS  
ON BEHALF OF  
CHICAGO METRA**

Communications with respect to this  
document should be addressed to:

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Counsel for Metra

Dated and filed:    October 21, 1997

BEFORE THE  
SURFACE TRANSPORTATION BOARD  
Washington, D. C.

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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/AGREEMENT --  
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

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**POSITION STATEMENT AND REQUEST FOR CONDITIONS  
ON BEHALF OF  
CHICAGO METRA**

---

The Commuter Rail Division of the Regional Transportation Authority of Northeast Illinois d/b/a "Metra", by its undersigned counsel, hereby submits its Statement of Position and Request for Conditions to the transaction proposed in this case. Metra is the commuter rail authority serving the Chicago metropolitan area, and it transports 270,000 passengers each business day in 700 trains serving 216 stations. As proposed, the NS/CSX acquisition of Conrail threatens Chicago commuter rail passengers with increased delays at key junctions along the Southwest Service Corridor. Therefore, Metra seeks the imposition of conditions to mitigate these impacts in the event this Board finds the rail consolidations proposed to be otherwise in the public interest. This Statement of Position is supported by the Verified Statement of

Mr. Vaughn L. Stoner, Chief Operations Officer of Metra. See, METR-7, Verified Statement of Vaughn L. Stoner (hereinafter "Stoner V.S.").

### **Conflicts at Key Interlockings Will Delay Metra Commuter Trains**

Applicants Operating Plans maintain that Metra will not be impacted by the transaction either through omission from a list of impacts to commuter operations, in the case of CSX,<sup>1</sup> or through direct assertion, in the case of NS.<sup>2</sup> By contrast, Mr. Stoner demonstrates that the current plans of NS and CSX, as described in the Application, underlying workpapers and responses to discovery, very definitely threaten Metra commuter operations in its Southwest Service Corridor, linking the Orland Park and adjacent suburban communities to downtown Chicago, with potential delays at already busy junction points or interlockings. Stoner V.S. at pp. 3-7. The source of this disparity in perceptions arises from the decision by Applicants to view commuter impacts solely from the perspective of whether train frequencies over lines shared with commuter authorities will increase. In fact, freight train frequencies will increase substantially over one section of the Southwest Corridor Service route.

However, conflicts between commuter and freight operations can also arise at interlockings. Mr. Stoner shows that interlockings at Forest Hill and Control Point 518 on the Southwest Service Corridor under the control of CSX and Conrail have been major sources of disruption of Metra's service. *Id.* at p. 3. These delays have occurred in the face of promises that Metra trains will receive "priority." In Mr. Stoner's words:

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<sup>1</sup>See, *Application*, Vol. 3A at pp. 175-180.

<sup>2</sup>See, *Application*, Vol. 3B at p. 306.

The policy of promising priority of passenger train operations in joint facility agreements with freight railroads is well established. The practice, notwithstanding these promises, is often quite different. The predecessors of NS and CSX promised the priority of passenger service in the 1914 agreement governing the Forest Hill Interlocker. Conrail promised in a 1989 letter agreement governing the CP 518 interlocker "...to give priority to METRA/N&W commuter trains operating through CP-518." *Yet, Forest Hill and CP 518 interlockings remain among the most serious locations of train delays on Metra's entire commuter network.* The dispatchers and controllers of these interlockings try to squeeze backed-up freight trains through these interlockings during periods of Metra operations, and Metra trains are directed to wait.

*Id.* at 7 (footnote omitted and emphasis added).

#### **Impacts of Transaction on Key Junctions in Metra's Southwest Corridor**

CSX and NS's plans for the Chicago terminal area will result in significant changes that threaten at least three interlockings, including the current choke point at Forest Hill, with even greater freight traffic volume and potential interference for Metra's commuter operations. Those interlockings affected by the transaction are shown on the map found at Tab A to Mr. Stoner's verified statement. They are: the Forest Hill interlocker at 75th Street controlled by CSX; the Chicago Ridge interlocker, located southwest of Forest Hill and controlled by IHB-BOCT; and the Belt Junction interlocker, located east of Forest Hill and controlled by the Belt Railway of Chicago ("BRC"). Metra seeks conditions that Applicants either transfer control of these interlockers to Metra, or, in the case of the Belt Junction interlocker, exercise their best efforts to see that BRC agrees to such a change in control.

In addition, Metra is concerned about the delays it currently experiences at CP-518 that is controlled by Conrail, but which will be operated by NS after the transaction. NS claims that train activity on its line through that interlocker will

decrease. *Application*, Vol. 3B, Figure D.6-1 at p. 463 and Applicants' Responses to Metra's First Set of Interrogatories (CSX/NS-108) at pp. 7-8 (See, Tab C to Stoner V.S.). Given the fluidity of operating plans as the date of implementation draws closer and thereafter, and given the problems experienced with Conrail to date at this location, Metra seeks a condition that requires NS to dispatch the CP-518 Interlocker in a manner that insures that no freight be given authority to proceed through the interlocker if there is a potential for delay to an approaching Metra train. Finally, Metra supports the imposition of an oversight condition requiring periodic reports to the Board and an opportunity for public comment to address problems unanticipated by the Application or not satisfactorily addressed by the conditions that the Board does impose.

The major problem for Metra operations is the Forest Hill interlocker. Both CSX and NS plan to increase traffic through this interlocker. NS will route 8.7 more trains per day between Belt Junction and the Forest Hill interlocker. See, Stoner V.S. at 5, and 6-7. CSX will operate additional intermodal and freight trains through the interlocker by virtue of its planned expansion of intermodal operations in the terminal area. Mr. Stoner discusses these projects at pages 5-6 of his statement. In addition, the magnitude of increased traffic at the planned 59th Street intermodal yard is disclosed in a Highly Confidential workpaper, CSX 21 HC 004233 - 004236, attached to the Highly Confidential version of this Statement of Position at Tab A.

This workpaper discloses that [ **REDACTED MATERIAL** ]

With added NS and CSX traffic between the Forest Hill and Belt Junction interlockers, conflicts are certain to develop between Metra commuter trains and freight trains at Belt Junction, as well. Mr. Stoner explains that at Belt Junction the two main lines of Metra and the two main lines of the BRC cross. Stoner V.S. at 7. Although the



increased traffic brought to this junction by this transaction could justify renewed consideration of a grade separation project at Belt Junction, Metra is seeking only a condition that requires CSX and NS to exercise their best efforts to obtain BRC's agreement to transfer control of that interlocking to Metra. Metra is prepared to assume the expense of such a shift in control and can be counted on to dispatch the traffic in a non-discriminatory way as among the freight carriers operating through the junction. If during the first year following the merger, BRC has not agreed to transfer control of the interlocker to Metra, then Applicants should be required to submit an alternative plan to eliminate interference between freight and commuter trains at this junction, including their commitment to fund their proportionate share based upon annual traffic volume of a grade separation project at Belt Junction.

The impacts of the transaction at Chicago Ridge Junction are less certain. Metra bases its request for a condition transferring control of this interlocker upon CSX workpapers that project increased train activity over the BOCT - IHB line running southeast from the west end of Clearing and Bedford Park Yards. Stoner V.S. at 5. Metra does not know from these documents what the anticipated volume of such movements would be, but is concerned that any increase could lead to further commuter delays.

Finally, Metra proposes that the Board impose a monitoring condition similar to that imposed in the UP/SP merger case. Stoner V.S. at 11. This condition would create a forum for addressing impacts not contemplated by the Application and for assessing the effectiveness of remedies ordered to address problems identified during these proceedings.

### **Summary of Conditions Sought by Metra**

Metra believes that the public interest requires that this Board condition approval of the NS/CSX acquisition of Conrail upon the following conditions:

- (1) Transfer control of the Forest Hill and Chicago Ridge Interlockers from CSX, or CSX controlled IHB, to Metra.
- (2) Require NS and CSX to exercise their best efforts to obtain BRC's agreement to transfer control of the Belt Junction Interlocker to Metra. However, if such agreement is not obtained within one year of the transaction, Applicants should be required to offer a plan to eliminate commuter train delays through construction of a grade separation at that point with their commitment to contribute towards that project in proportion to the traffic they each move through the interlocker.
- (3) NS must exercise control of CP 518 Interlocker so that no freight train is permitted to proceed through the interlocker if there is a potential for delay to an approaching Metra train.
- (4) For five years following the transaction, Applicants shall submit to the Board quarterly reports describing the implementation of plans to mitigate potential adverse impacts of the transaction, subject to Board review and public comment.

The benefits of the proposed transaction projected for CSX and NS should not, and cannot, consistent with the public interest, be obtained at the expense of Chicago area commuters. The increase of traffic at interlockings will result in increased commuter delays unless control of those interlockers is transferred to Metra. Promises

of "priority" have not and will not work. Stoner V.S. at 8-9. The foregoing conditions should be imposed in the public interest.

Respectfully submitted,

Michael Noland  
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547 West Jackson Boulevard  
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Counsel for Metra

Dated and filed:    October 21, 1997

**HIGHLY CONFIDENTIAL MATERIAL  
REDACTED**

**PUBLIC VERSION**

METR-7

BEFORE THE  
SURFACE TRANSPORTATION BOARD  
Washington, D. C.

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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/AGREEMENT --  
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

---

**VERIFIED STATEMENT OF  
VAUGHN L. STONER  
CHIEF OPERATIONS OFFICER, METRA**

---

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Counsel for Metra

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

---

**VERIFIED STATEMENT OF  
VAUGHN L. STONER  
CHIEF OPERATIONS OFFICER, METRA**

---

My name is Vaughn L. Stoner, and I am Chief Operations Officer for the Commuter Rail Division of the Regional Transportation Authority of Northeast Illinois d/b/a ("Metra"), and my business address is 547 West Jackson Boulevard, Chicago, Illinois 60610. I have worked in the railroad industry for 28 years with experience in both freight and commuter operations. As Chief Operations Officer, I am in charge of all operational activities at Metra. I oversee the Engineering, Mechanical, Transportation, Station Operations and Safety and Rules Departments of the commuter rail system which serves the six-county Chicago metropolitan area in Northeastern Illinois. Prior to joining Metra, I worked in various management positions for Chicago's Regional Transportation Authority, and the Chicago, Milwaukee, St. Paul and Pacific Railroad at Chicago, Bensenville, and Savanna, Illinois. I obtained a degree in civil engineering from the University of Wisconsin at Platteville.

The purpose of this statement is to describe the impacts which Metra believes this rail consolidation will have upon Metra's commuter operations, and the remedies which Metra believes are necessary to address these impacts. Metra believes that the major realignment of terminal operations in the City of Chicago contemplated by Applicants will disrupt certain commuter operations in Chicago, and cannot be permitted to proceed consistent with the public interest unless this Board imposes conditions that remedy these impacts.

### **Current Metra Operations**

Metra operates 700 train consists daily on nine rail lines consisting of over 1200 track miles. Metra transports 270,000 riders daily, boarding at 216 stations throughout the metropolitan area.

One of the lines over which Metra operates is the Southwest Service Corridor between Chicago Union Station in downtown Chicago and Orland Park, Illinois. A copy of this route is attached hereto at Tab A. Metra operates this service between Orland Park and 74th Street via trackage rights over the Norfolk Southern. From 74th Street the route proceeds on Metra owned lines to Union Station via the former Chicago & Western Indiana ("CWI") route. NS operates on trackage rights over Metra's line between 74th Street and 23rd Street.

The service is currently limited to 18 trains each weekday, nine in each direction, due in large part because of existing freight train interference at junctions along the

route.<sup>1</sup> According to a study by the Northeastern Illinois Planning Commission, the Southwest Service Corridor is located in a region that is projected to undergo one of the highest rates of household growth over the next 13 years. However, because of existing congestion and service delays, which make it Metra's least reliable service corridor, Metra will not meet the increased demand for commuter service unless or until current problems in service are resolved. Indeed, service delays have caused a loss of confidence in Metra's ability to commuters to and from work on schedule causing ridership to fall when all other indicators would indicate an increase in ridership.

The current problems over the Southwest Corridor emanate from two chokepoints: the CSX controlled Forest Hill/75th Street interlocking ("Forest Hill Interlocking"); and the Conrail interlocking near 40th Street and Metra's CWI line ("CP 518 Interlocking") that under Applicants' plan will be acquired by NS. In the past twelve months, Metra passengers have incurred 9240 man hours of delay at the Forest Hill Interlocker. During the same period at the CP 518 Interlocker, Metra passengers have suffered 3806 man hours of delay. Metra's schedules are well known to the CSX and Conrail dispatchers, yet they continually fail to keep freight trains out of these interlockings during these prearranged periods of commuter operations. Metra has made these problems known to CSX and Conrail, but they have failed to accord all Metra trains priority sufficient to permit Metra to offer reliable service to its customers.

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<sup>1</sup>Two trains each day move without passengers for purposes of repositioning equipment for a commuter run. Metra operates 16 revenue movements, but all 18 trains must adhere to exacting schedules.



Applicants' plans for Chicago will make matters worse at least at the Forest Hill interlocker, and their projected traffic increase could create two more chokepoints along the route.

### **Applicants' Plans for the Chicago Terminal**

The acquisition and reallocation of Conrail terminal area assets by Norfolk Southern and CSX will substantially impair existing service in the Southwest Service Corridor, and make growth of commuter service virtually impossible absent significant investment in grade separations. In addition, the massive realignment of operations in this terminal district may generate consequences for commuter operations in other service corridors which have not been forecast or identified by Applicants or Metra.

Several common threads run through the NS and CSX plans for the Chicago terminal area. They both plan to perform classification of trains for western connections east of Chicago to permit direct interchange to these carriers at Chicago or junctions to the south of Chicago, but they both project growth in intermodal traffic and attendant terminal activity within Chicago. They both also claim not to have any impact on Metra's commuter operation.

CSX does not even mention Metra. In its discussion of impacts on commuter operations at Volume 3A at pp. 175-80, CSX assumes that the only impacts are in those areas where either CSX operates over commuter owned trackage or where commuter authorities operate over CSX owned lines. At least on the face of CSX's plan, junctions with commuter operations are not considered.

NS apparently makes the same assumption. In its operating plan, at Volume 3B at pp. 305-306, describes Metra's operations over the Southwest Corridor as not

impacted by virtue of the fact that NS does not project freight traffic growth over the Orland Park to 74th Street line segment or the segment north of 74th Street where NS operates over Metra track. Not only does NS fail to consider the impacts of delays at junctions, the commuter portion of the Operating Plan is inaccurate because the train frequency chart in NS's Operating Plan (Vol. 3B at p. 469) describes an increase from 9.5 to 18.7 trains per day over the Calumet to Landers line segment, which includes the portion of the Southwest Corridor Service between Landers (west of 75th Street and the Forest Hill Interlocker) and Belt Junction (east of the Forest Hill Interlocker).

There will be significant changes within the Chicago terminal area resulting from this transaction. CSX has identified Chicago as one of four major intermodal centers which will be receiving major capital improvements. Of particular concern to Metra are the following projects: (1) construction of a new connection at the Forest Hill interlocker between the B&O line running north-south and parallel to Western Avenue and the Belt Railway of Chicago's ("BRC'S") line west to its Clearing Yard and CSX'S Bedford Park intermodal yard; (2) enlargement of the 75th Street intermodal yard just south of the interlocker; and (3) construction of a new intermodal yard at 59th Street, just north of the Forest Hill interlocker. In addition, increased train activity at the west end of BRC's Clearing Yard and CSX's Bedford Park intermodal yard will add traffic to the Baltimore & Ohio Chicago Terminal ("BOCT") Indiana Harbor Belt ("IHB") Line from the southeast. The increased activity at the west end of Clearing and Bedford Park yards apparently will generate more traffic on BOCT - IHB line which crosses the Southwest Service Corridor at Chicago Ridge interlocker. A description of the physical route involved in this latter movement is contained in confidential workpapers (#CSX 21 CO

001952, 1953 and 2851) are attached at Tab B to the Confidential version of this statement.

The new 59th Street intermodal yard, according to the Applicants' environmental report, will require 1630 truck trips daily to and from the facility. See, Environmental Report, Vol. 6B at pp. 126-127. The report does not describe the additional train activity, but it is likely to be significant. In addition, I am advised by counsel that a highly confidential document describes the magnitude of the anticipated 59th Street intermodal facility, and that it will be submitted separately under seal. This new facility will add to congestion at the Forest Hill interlocker located to the south, as will the expansion of the 75th Street Yard immediately adjacent to the interlocker. The construction of a connection in the northeast quadrant (and also possibly in the southwest quadrant) of the interlocker also indicates that CSX plans additional trains to and from Clearing Yard (located to the west of the interlocker) or to and from the new 59th Street intermodal yard (located to the north of the interlocker). In answers to Metra's interrogatories, CSX indicates that the company plans to expend \$2.1 million in modernization of the interlocker "...to permit dispatcher control from Jacksonville." CSX/NS-108, Responses to METR-4, at 16. See, Tab C. If this were CSX's plan, moving the dispatching of this interlocker to Jacksonville would make resolution of congestion problems created by this transaction at Forest Hill more difficult, not less. Fortunately, based upon discussions with CSX officials yesterday, the current CSX plan is not to move the control of the interlocker to Jacksonville. Nevertheless, the plan provides no basis for Metra to take comfort that its delay problems are going to be resolved voluntarily by CSX.

NS will assume control of most of Conrail's rail yards in Chicago, creating new traffic flows through the terminal area. One such flow is the increase in trains between NS's Calumet Yard to Landers intermodal yard from 9.5 trains per day to 18.2 trains per day, and gross ton miles increasing from 5.6 million to 13.8 million, described earlier. See, NS Operating Plan, Vol. 3B at pp. 470, 472.

These additional NS trains will add to the congestion at the Forest Hill interlocker. It is clear that between NS's increased train operations and CSX's new intermodal initiatives in this already congested area, increased commuter train delays, if not gridlock, is threatened.

These new NS trains between Landers and Calumet Yards will also cross another potential point of congestion at Belt Junction, located east of the Forest Hill interlocker. See, Tab A. Between Forest Hill and Belt Junction there are four main lines, two owned by Metra and two owned by BRC. At Belt Junction they cross. This interlocker has been a source of congestion problems in the past, and we have studied the potential for separating the grade crossing at this location, but have not proceeded with detailed plans because the freight carriers operating across these lines (including CSX, NS, UP, and BRC) have not expressed a desire to share the expense. Although it may be time, given the impact of this transaction on the line segments involved, to renew consideration of this project, Metra is proposing a less costly solution as a condition to this transaction at this time.

In addition to the increased activity to and from Landers Yard, NS plans to expand operations at Conrail's 47th Street Yard, just south of CP 518 interlocker. See,

Environmental Report, Vol.6B at pp. 127-28.<sup>2</sup> To the degree the increased traffic of 200 units per day at the yard results in increased train traffic to the north, CP 518 interlocker will be placed under additional pressure. NS contends that traffic through the interlocker will be reduced because it is part of the line segment between South Chicago to Ashland Avenue that according to the Operating Plan, Vol. 3B at p. 463, will experience a reduction in train activity. It is not clear, however, whether NS will be any more attentive to the priority of Metra's passenger trains than its predecessor.

### **Remedies for Congestion at Junction Points Along Southwest Service Corridor**

The policy of promising priority of passenger train operations in joint facility agreements with freight railroads is well established. The practice, notwithstanding these promises, is often quite different. The predecessors of NS and CSX promised the priority of passenger service in the 1914 agreement governing the Forest Hill Interlocker.<sup>3</sup> Conrail promised in a 1989 letter agreement governing the CP 518 interlocker "...to give priority to METRA/N&W commuter trains operating through CP-518." Yet, Forest Hill and CP 518 interlockings remain among the most serious locations of train delays on Metra's entire commuter network. The dispatchers and controllers of these interlockings try to squeeze backed-up freight trains through these interlockings during periods of Metra operations, and Metra trains are directed to wait.

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<sup>2</sup>In its responses to Metra interrogatories, NS cites its Operating Plan, Vol. 3B, Figure D.4-1, a page 454, for the proposition that activity at the 47th Street Yard will decrease 27.4%. This is an apparent reference to NS' present 47th Street Yard which will see a reduction in activity.

<sup>3</sup>Metra is not a party to this Agreement, and when it has raised objections to delays at the Forest Hill Interlocker, it has been told by CSX that it has no standing under the Agreement.

In response to a Metra interrogatory concerning policies, practices and instructions involving protection of existing priority of movement and dispatching granted to passenger rail operations, CSX responded that:

CSX has no written policy with respect to dispatching priority or resolution of scheduling conflicts or resolution of delay-related conflicts between or among trains. Scheduling and delay-related conflicts are handled on a case-by-case basis and by interaction between the Assistant Chief Dispatcher (ACD) and the Dispatcher responsible for the territory. Each conflict is unique and resolutions are based on the specific circumstances of each case.

CSX/NS-108 at 15 (See, Tab C). NS stated in response to the same interrogatory that,

Passenger trains are *generally* assigned a high priority by NS. \* \* \* Resolution of ... conflicts is handled on a case-by-case basis in close coordination with the affected parties. *Id. (emphasis added)*

Promises of priority with dispatching procedures calling for conflicts to be resolved on a case-by-case basis have not provided Metra or its commuter customers with satisfactory, delay-free operations through the interlockers. With the increasing activity at these interlockings caused by the acquisition of Conrail assets, I believe that Metra's delay problems will get worse on the Southwest Service Corridor.

Last week, in response to Metra interrogatories, CSX states that it "...will guarantee Metra commuter slots at the Forest Hill interlocking at 75th Street." CSX/NS-108 at 18 (See, Tab C). That may be a step in the right direction, but we cannot be sure what that means in terms of CSX's commitment to keep freight trains out of the interlocking during periods of commuter operations or what remedies Metra would have when the commitment is breached.

The only way for Metra to be certain that the commuter trains will not suffer delay resulting from freight train interference is for the Board to impose a condition

requiring that control of the Forest Hill Interlocker and the Chicago Ridge Interlocker be transferred to Metra. Metra also seek a condition that Applicants be required to vote their BRC stock and to otherwise exercise their best efforts to secure BRC corporate approval for a transfer of control to Metra of the Belt Junction interlocker. Based on the projection that traffic through CP-518 Interlocker will decrease, Metra requests that a condition be imposed to require NS to exercise control of the interlocker so that no freight train is permitted to proceed through the interlocker if there is a potential for delay to an approaching Metra train.

Metra, alone, can insure that freight trains are held to avoid interference with commuter service. Once those commuter trains have passed through the interlockers, the freight carriers operating through these interlockers can be assured that conflicts among their trains will be resolved without regard to commercial favoritism because Metra has no competitive axe to grind as may be the case with a freight railroad controlling the interlocker.

Control of the Belt Junction interlocker is currently in the hands of the BRC, which is owned by a number of carriers, but with CSX and NS controlling the largest portion of the stock. Metra's proposed condition would require that Applicants exercise their power over BRC corporate decisions to obtain a conveyance of control of this interlocker to Metra. This could result in benefits to BRC as well as to the other carriers operating through this interlocker. From recent discussions with CSX officials, I understand they are considering a possible consolidation of local dispatching between IHB, BOCT and BRC at Clearing Yard. Metra has recently constructed a state of the art Consolidated Control Facility with space to accommodate representatives from IHB, BOCT, CSX, BRC and NS. I believe that the best way to resolve problems of train

congestion in this terminal area would be for the dispatching to be conducted from the same location, permitting dispatching personnel from each carrier to clearly communicate with their counterparts and reach resolution of conflicts among trains of the same class and priority. Metra would assume one half of the financial responsibility for dispatching personnel (three shifts plus one relief dispatcher) who would control these interlockers subject to the requested conditions (Forest Hill and Chicago Ridge, as well as Belt Junction). This would result in a saving of more than \$150,000 annually for CSX and BRC.

However, if BRC has not agreed to transfer the dispatching of Belt Junction to Metra within one year of the transaction, Metra requests that the Board order NS and CSX to come forward with an alternative plan to eliminate commuter train delays through construction of a grade separation at that point with their commitment to contribute funds towards that project in proportion to the traffic they each move through the interlocker.

Finally, Metra seeks a monitoring condition similar to that imposed upon Applicants in the UP/SP merger case. Such a condition would require periodic status reports over the first five years after the transaction to ensure that if merger created impacts to lines not contemplated by the Operating Plans disrupt Metra operations, Metra can seek corrective relief in the context of an established procedure, without being burdened by the need to initiate its own separate proceeding.

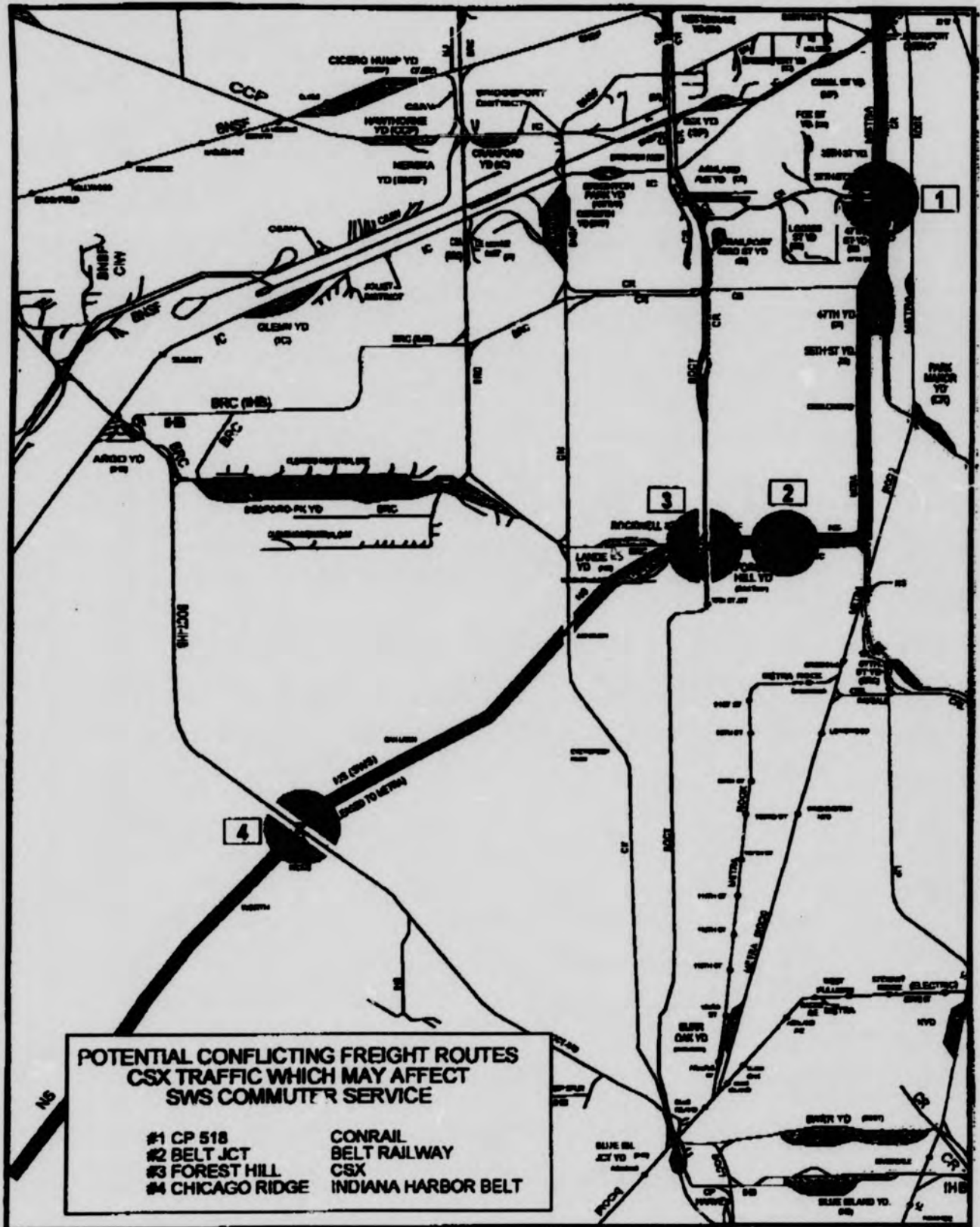
I believe that transfer of control of the described interlockers along the Southwest Service Corridor will avoid serious potential disruption the this important service to Chicago area residents. If I have underestimated the problem, and additional capacity improvements are needed to permit efficient commuter and freight operations, and if



the parties cannot reach agreement on those additional measures, the issue can be brought before the Board under the periodic monitoring condition which Metra seeks.

It is also my conviction that the imposition of these conditions will not prevent Applicants from achieving the benefits they project from the reorganization of terminal operations within Chicago. Indeed, with Metra's offer to consolidate local dispatching operations at its Consolidated Control Facility, all train operations could benefit.

TAB A



TAB B

**CONFIDENTIAL MATERIAL  
REDACTED**

TAB C

CSX/NS-108

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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

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**STB FINANCE DOCKET NO. 33388**

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**APPLICANTS' RESPONSES TO  
METRA'S FIRST SET OF INTERROGATORIES  
AND DOCUMENT REQUESTS TO APPLICANTS (METR-4)**

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Applicants<sup>1/</sup> hereby respond to the First Set of Interrogatories and Document Requests of the Commuter Rail Division of the regional Transportation Authority and the Northeast Illinois Regional Commuter Railroad Corporation, d/b/a/ Metra ("Metra" or "requester") (METR-4).

**GENERAL RESPONSES**

The following general responses are made with respect to all of the requests and interrogatories.

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<sup>1/</sup> "Applicants" refers collectively to CSX Corporation and CSX Transportation (collectively "CSX"), Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively "NS"), and Consolidated Rail Corporation and Conrail Inc. (collectively "Conrail").

A computer model known as the Line Occupancy Index underlies this process. CSX does not use a computer dispatching model.

(b) See response to Interrogatory No. 11(a).

(c) CSX has not applied the computer model to any of the Subject Lines and Facilities.

NS: (a) NS does not use any computer dispatching or line capacity model or simulation for any of its rail lines that are shared with commuter rail operations.

(b) See response to Interrogatory No. 11(a).

(c) See response to Interrogatory No. 11(a).

Conrail: See Conrail's Response to Interrogatory No. 26 in CSX/NS-82, Applicants' Responses to NJT-5.

#### Interrogatory No. 12

Identify any policies, practices, instructions of Applicants relating to: (a) train on-time performance; (b) dispatching priority; (c) resolution of scheduling conflicts between or among trains; (d) resolution of delay-related conflicts between or among trains, including but not limited to conflicts between or among different types, classes or priorities of trains; and (e) protection of existing priority of movement and dispatching granted to passenger rail operations.

12. Without waiving any objection, and subject to the General objections stated above, Applicants respond as follows:

CSX: (a) Train on-time performance is measured on a "yes or no" basis at certain checkpoints along all routes. The same on-time checkpoints are not used for all trains, although certain trains share common checkpoints. At each checkpoint, the scheduled operating time is compared to the actual time of day. Trains arriving at a checkpoint anywhere from one hour early to the exact scheduled time are deemed on time.



(b)-(c) CSX has no written policy with respect to dispatching priority or resolution of scheduling conflicts or resolution of delay-related conflicts between or among trains. Scheduling and delay-related conflicts are handled on a case-by-case basis and by interaction between the Assistant Chief Dispatcher (ACD) and the Dispatcher responsible for the territory. Each conflict is unique and resolutions are based on the specific circumstances of each case.

NS: Passenger trains are generally assigned a high priority by NS. Freight trains are prioritized on the basis of market and commercial considerations. Intermodal freight trains are often given a high priority. Resolution of the above-referenced conflicts is handled on a case-by-case basis in close coordination with the affected parties.

Conrail: (a) - (d) See Conrail's response to Interrogatory No. 27 in CSX/NS-82, Applicants' Responses to NJT-5.

(e) Conrail has around-the-clock supervision in the Dearborn Division Office where all decisions on dispatching of trains on the Subject Lines are managed.

Interrogatory No. 13

Identify all changes in dispatching priority that Applicants plan, project or have considered for implementation post-acquisition relating to the Subject Lines and Facilities.

13. Without waiving any objection, and subject to the General Objections stated above, Applicants respond as follows:

At this time, CSX and NS do not anticipate any changes to their policies concerning dispatching priority as a result of the Control Transaction. However, CSX is in the process of reviewing whether any changes to its existing policies concerning dispatching may be otherwise warranted.

**Interrogatory No. 14**

Identify all capital investments that Applicants plan, project, or have considered relating to any of the Subject Lines and Facilities, including but not limited to the time frame(s), dollar amount(s), means or source(s) of funding, and the reasons for expenditures for such investments.

14. Without waiving any objection, and subject to the General Objections stated above, Applicants respond as follows:

**CSX:** CSX plans, projects, or has considered the following capital investments relating to the Subject Lines and Facilities:

- 1) Northeast Connection at 75th Street. Appropriated for Expenditure # 17997. The combined cost of this project and the Interlocker Modernization at 75th Street project is \$2.1 million. The projected date of completion is undetermined.
- 2) Interlocker Modernization at 75th Street to permit dispatcher control from Jacksonville. Appropriated for Expenditure # 17997. The combined cost of this project and the Northeast Connection at 75th Street project is \$2.1 million. The projected date of completion is 11/30/97.
- 3) Southwest Connection at 75th Street. CSX has explored undertaking this project but has not committed to the project at this date.
- 4) Expansion at Forest Hills. The source of funding is an appropriation for transaction related improvements. The projected date of completion is 8/31/98. The cost is \$2 million.

**NS:** No such investments are planned by NS.

**Conrail:** Responsive documents, if any, will be placed Applicants' depository.

**Interrogatory No. 15**

Identify (a) any improvements that Applicants plan, project or have considered relating to any of the Subject Lines and Facilities; (b) the estimated or projected costs of such improvements, including but not limited to an estimate or projection of costs to Metra; and (c) any improvements that are required to provide adequate capacity for existing passenger rail operations and planned freight operations on the Subject Lines and Facilities.

15. Without waiving any objection and subject to the General Objections stated above, CSX and NS respond as follows:

See response to Interrogatory No. 14.

**Interrogatory No. 16**

Identify any charges, including but not limited to charges for capacity increases, that Applicants plan, propose or have considered relating to the operation by Metra of (a) existing or (b) additional passenger rail operations on the Subject Lines and Facilities.

16. Without waiving any objection, and subject to the General Objections set forth above, Applicants respond as follows:

Beyond any that may be provided for in current agreements with Metra, Applicants have not considered and do not plan any charges for capacity increases relating to the operation by Metra of existing or additional passenger rail operations on the Subject Lines and Facilities.

**Interrogatory No. 17**

With respect to the statement at page 137 of Volume 6A of the Application that "Moreover, existing commuter operations over CSX NS and Conrail lines, and CSX NS and Conrail freight service over lines owned by local commuter agencies, are governed by specific contracts between the carriers and the applicable agencies. Those contracts generally contain provisions that protect commuter service from freight operation interference. CSX and NS will continue to honor all commitments under those contracts": Identify (a) the specific contractual provisions in any such contracts involving Metra; (b) any plans, procedures, or other measures that CSX and NS intend to take to honor all such commitments.

17. Without waiving any objection, and subject to the General Objections stated above, CSX and NS respond as follows:

CSX: (a) The contract between CSX and Metra speaks for itself with respect to the matters addressed in this interrogatory. As the Application states, CSX intends to honor its contractual obligations.

(b) CSX will guarantee Metra commuter slots at the Forest Hill interlocking at 75th Street. In addition, CSX will permit Metra to access the Forest Hill interlocking at 75th Street for the purpose of installing snowblowers and/or melters on switches, to the extent that Metra agrees to pay for all costs relating to said snowblowers and melters. Alternatively, CSX will install for Metra snowblowers and melters on the switches at the Forest Hill interlocking at 75th Street, to the extent that Metra agrees to pay for all costs relating to said snowblowers and melters.

NS: (a) - (b) The contract between CSX and Metra speaks for itself with respect to the matters addressed in this interrogatory. As the Application stated, NS intends to honor its contractual obligations.

Interrogatory No. 18

Identify all persons who have been involved in, or have responsibility for, preparation of plans or projections relating to any of the Subject Lines and Facilities, including plans or projections relating to traffic flow, capacity, improvements, or capital investments.

18. Without waiving any objection, and subject to the General Objections stated above, CSX and NS respond as follows:

CSX: The person primarily responsible for plans or projections relating to operations over the Subject Lines is John W. Orrison.

**Verification**

State of Illinois                    )  
   )  
 City of Chicago                    )                    **ss:**

Vaughn L. Stoner, being duly sworn, deposes and says that he is qualified and authorized to file this Verified Statement, and that he has read the foregoing statement, knows the contents thereof, and that the same are true as stated to the best of his knowledge, information and belief.

*Vaughn L. Stoner*

**Vaughn L. Stoner**

Subscribed and sworn to  
 before me this 21<sup>ST</sup>  
 day of Oct, 1997.

*Margaret A. Griffin*  
 Notary Public



My commission expires:  
7/16/2001

**CERTIFICATE OF SERVICE**

I hereby certify that on October 21, 1997, a copy of the foregoing **Public Version** of Metra's Position Statement and Request for Conditions on Behalf of Chicago Metra (METR-6) and accompanying Verified Statement (METR-7), was served by hand delivery upon the following:

The Honorable Jacob Leventhal  
Administrative Law Judge  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Suite 11F  
Washington, D.C. 20426

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Skadden, Arps, Slate, Meagher  
& Flom L.L.P.  
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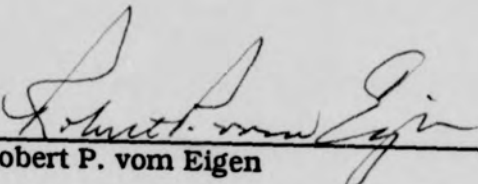
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Suite 600  
Washington, D.C. 20036

and by first class mail, postage pre-paid upon all other Parties of Record in this Proceeding.

  
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Robert P. vom Eigen