affordable for people," said Gibbons, who supports cutting fares as long as contributions from local jurisdictions don't increase as a result. "At some point in time, we have to ask if it's the best use of our money. It might not be."

In December 1994, officials of the fledgling rail line predicted that a $10 million expansion of service would boost round-trip daily ridership -- then about 4,000 -- by 45 percent by last June.

To the contrary, ridership plunged last summer. Although the Manassas line has partly recovered, the Fredericksburg segment has not and is now running 14 percent behind last year's mark.

VRE officials blame the drop-off on a host of problems, including track work that caused poor on-time performance, government downsizing that has reduced the commuter pool, and competition in the Fredericksburg-Washington corridor from newly expanded car-pool lanes on Interstate 95. Most recently, officials have said VRE's high fares, which average $4.29 for a one-way trip, and additional parking costs are driving riders away.

Rail officials say the problem can be overcome by slashing most fares by 20 percent, a move that would cost VRE $1.5 million annually unless the Commonwealth Transportation Board agrees to pitch in.

"The people who left us are not coming back," said VRE's operations director, Steve Roberts. "But if we cut fares, others will give us some consideration."

Leo J. Bevon, director of the Virginia Department of Rail and Public Transportation, shares Roberts's concern and his optimism.

"Everyone would have liked to have seen [ridership] grow faster, but I don't think it's any time for panic," Bevon said. "It's not like we built it and can't figure out why no one's riding. It's just a matter of fixing the problem."

Said Roberts: "The reason our numbers are less than they were a year ago is because people are making good decisions. It's cheaper to drive than take VRE. But that won't last forever."

VRE, he predicts, will experience a renaissance next year when construction begins on the interchange where interstates 95, 395 and 495 come together in Springfield -- the so-called "Mixing Bowl." That massive highway project is expected to take up to a dozen years to complete, stalling traffic and frustrating drivers.

Lawrence D. Hughes, Prince William's deputy county executive, gives VRE high marks for improving the quality of life for outer

4/27/97 WASHPOST B03

county commuters as well as providing transportation at a fraction of the cost of building new roads. Still, he said ridership declines are worrisome.

Concerns about flexibility, cost and convenience keep Joseph Czech off VRE. The acoustics engineer from Fairfax County tried riding the train six months ago during a no-cost-to-ride promotion but quickly decided it was easier to car-pool from his home to his job in Crystal City.

"It's easier and cheaper," Czech said. "Even the lower fares wouldn't make a difference for me."

Transportation officials, however, say the commuter line deserves more time to grow. As congestion on area highways increases, so will VRE's base of riders, they say.

Fairfax Supervisor Gerald W. Hyland (D-Mount Vernon), chairman of the VRE Operations Board, is optimistic. "We could not continue to sustain the ridership decrease that we've had," he said. "A year from now, you'll find the picture will be substantially changed for the better."

Although experts say heavy subsidies are common for commuter rail lines, VRE's high subsidy level has critics questioning whether the railroad is spending too much taxpayer money on too few riders.

Although riders plunk down an average of $4.29 a ride, VRE and the eight local jurisdictions that subsidize the railroad pay an additional $9.23 a trip.

"We're using hundreds of millions of dollars to provide a service to 4,000 of our most affluent citizens, and it's just not fair," said John J. Cramsey, a Woodbridge resident and former transportation analyst for the federal General Accounting Office. Cramsey is among the railroad's most outspoken detractors.

"VRE oversold this thing to a public that really didn't care. I think it's a big waste of money," Cramsey said. "They ought to sell it and start over" with other mass transit.

But Dan Foth, a commuter rail specialist with the American Public Transit Association, of which VRE is a member, said the young railway is a relative success compared with others across the country.

"If VRE died tomorrow, would there be a mass exodus from Stafford and Prince William? Would property values decline and drop? I don't think you'd see it immediately, but I think you'd see it over time," Foth said. "People thought Metro was a major boondoggle at first. Can you imagine the region without Metro today?"

4/27/97 WASHPOST B03

TABULAR OR GRAPHIC MATERIAL SET FORTH IN THIS DOCUMENT IS NOT DISPLAYABLE

CAPTION: Assistant Conductor William Boggs helps passengers disembark at the Woodbridge station of the troubled Virginia Railway Express.

---- INDEX REFERENCES ----

KEY WORDS: METRO

EDITION: FINAL

Word Count: 1061
4/27/97 WASHPOST B03
END OF DOCUMENT

Citation
4/28/97 WATIMES D3
4/28/97 Wash. Times (D.C.) D3
1997 WL 3670400

Found Document

Rank(R) 1 of 1

Database
WATIMES

Monday, April 28, 1997

D;BUSINESS TIMES

VRE plans to cut fares to fight ridership slide

Eric Fisher
THE WASHINGTON TIMES

Facing an 11 percent drop in passengers, Virginia Railway Express officials want to lower fares and create express routes from Fredericksburg to the District to entice commuters who are driving to work.

The VRE is eyeing the changes in response to two high-occupancy-vehicle lanes that opened in February on Interstate 95 in Prince William County. Officials say the HOV lanes have taken riders away from the commuter rail service.

The VRE last month averaged 7,140 riders per day, down 11 percent from March 1996. Ticket revenues for February totaled $600,000, down 14 percent from the monthly average in 1996.

"The two big complaints we hear are cost and time, so we're trying to address both concerns," said Corey Hill, a VRE spokesman.

The Commonwealth Transportation Board, which oversees the Northern Virginia rail line, will have to approve any changes before they can take effect.

VRE officials are proposing:

* Cutting fares either by 20 percent across the board or by $1 regardless of trip length. It now costs $6.70 to travel the entire route.

* Skipping three stops on two morning trains starting in Fredericksburg, cutting the trip to Union Station in the District by about 10 minutes. The stops skipped would be Brook in Stafford County, Rippon in Prince William County and Lorton in Fairfax County.

* Taking over pricing control for parking lots, with a plan of eliminating parking fees. Currently, lots are controlled by the individual counties, and rates vary widely.

4/28/97 WATIMES D3

* Sending an 8:20 a.m. train from Manassas to Washington a half-hour earlier.

The VRE began looking for ways to boost ridership at the request of the transportation board.

Before the board decides on any of the changes, public hearings will be held in May and June.

Although VRE officials view the changes as solutions to short-term problems, the earliest VRE could implement them is the fall.

"That's as fast as the process works," Mr. Hill said.

Rush-hour traffic on I-95, despite the new HOV lanes, is perpetually clogged. Some 350,000 cars enter the District from Virginia every day, making it clear that many commuters see driving as a better deal than a train ride that costs nearly $7 each way and takes more than an hour from Fredericksburg.

VRE officials said they remain convinced that the rail line's overall future is sound, particularly with major construction set to begin in two years at the "mixing bowl," the messy interchange near Springfield where the Capital Beltway and Interstates 95 and 395 meet.

"We think that in the long term the commuter rail is going to do fine," said Rick Taube, the VRE deputy director of operations.

Mr. Hill added that taking over the pricing of the parking lots could increase VRE expenses to a point where the railway would be eligible for an additional $500,000 in state aid.

Such money could boost a small marketing budget that currently allows only a World Wide Web site and a couple of radio campaigns each year.

"We're working on ways to make our presence better known," Mr. Hill said

TABULAR OR GRAPHIC MATERIAL SET FORTH IN THIS DOCUMENT IS NOT DISPLAYABLE

Photo, The Virginia Railway Express has had lots of empty seats on the Union Station-Fredericksburg line because of HOV lanes on Interstate 95., By Cliff Owen/The Washington Times

---- INDEX REFERENCES ----

EDITION: 2

JOINT REBUTTAL VERIFIED STATEMENT

OF

JAMES C. ROONEY

AND

T. STEPHEN O'CONNOR

Table of Contents:

Tables:

Attachments:

Joint Rebuttal Verified Statement
of
James C. Rooney and T. Stephen O'Connnor

My name is James Christopher Rooney. I am President of Vanness Company and a managing director of the Vanness Brackenridge Group, a joint-venture firm which provides transportation consulting services. My business address is 830-13 A1A North, Suite 204, Ponte Vedra Beach, Florida 32082.

The Vanness Brackenridge Group was organized in 1987 to engage in worldwide consulting concerning rail structuring and strategic planning issues for railroads, governments, and bilateral lending agencies such as the World Bank and the Interamerican Development Bank. The group is composed of professionals having extensive experience in railroad strategic planning backed by relevant skills in economics, operations planning, financial modeling, market analysis, organizational restructuring, and policy development.

I served as Associate Administrator for policy and later as Deputy Administrator of the Federal Railroad Administration from 1982 to 1987. In those capacities I was involved in formulating the Government's positions concerning rail industry laws, regulations, and mergers. Additionally, during that time I headed the USDOT technical support team for the sale of Conrail, as first proposed to Norfolk Southern, and, ultimately, by public offering. Thus, I became well aware of the attributes and issues surrounding Conrail's creation and disposition after its takeover and rehabilitation by the Government. I have also acted as a consultant and an expert witness in a number of proceedings including the proposed Santa Fe Industries control of the Southern Pacific Transportation Company, the Kansas City Southern Industries, Inc. inconsistent application to control the Southern Pacific. With relevance to the instant proceeding I served the Canadian National Railway (CN) as consultant for CN's examination of the earlier

prospective offering by Norfolk Southern Railway (NS) of market access and trackage segments belonging to Conrail and NS, prior to the filing of the joint application by the Applicants. Most recently, I assisted CN with the preparation of its Comments and Responsive Application which CN was contemplating prior to reaching agreement with Applicant CSX, whereupon a limited scope request was filed.

I hold a Bachelor of Arts degree from Dartmouth College with concentration in economics and a Master of Business Administration degree from the University of Chicago with concentration in finance and accounting. I am a Certified Financial Analyst and a member of principal national professional societies including the Institute of Chartered Financial Analysts, Association of Transportation Practitioners, Transportation Research Forum, and Railway Supply Group.

My name is T. Stephen O'Connor. I am President of the Brackenridge Group, specializing in public and freight surface transportation, managing director of the Vanness Brackenridge Group, a joint-venture firm which provides transportation consulting services. My business address is 301 Warren St., Suite 204, Baltimore, Maryland, 21230. I submit this statement to summarize my background and present my review of the methodologies and applications contained in the Four Cities Consortium submission regarding its Alternative Routing Plan.

I have over twenty-three years experience in transportation economics and operations including financial analysis, costing, economic forecasting, operations analysis, litigation support, and contract negotiations. I have worked directly with most railroads in North America as well as public state and local municipalities as to their traffic and transportation needs.

In respect of the instant proceeding, I began providing consulting services to CSX in 1986 and thus became familiar with the evolving operations and philosophy of the company. With respect to Conrail, I began my career in the early 1970's preparing the Final System Plan for Congress as a manager for the United States Railway Association, which created Conrail and I have remained, through assignments, generally familiar with its operation since that time.

Like Mr. Rooney, I have acted as a consultant and an expert witness in a number of proceedings including the proposed Santa Fe Industries control of Southern Pacific Transportation Company and the Kansas City Southern Industries inconsistent application for control of Southern Pacific. I have performed trackage rights and joint facility analyses and negotiations and provided formal representation before the Surface Transportation Board (successor to the Interstate Commerce Commission).

I hold a Bachelor of Science degree from the University of Maryland in Business Management and have Masters in Economics from the University of Baltimore.

I. Introduction and Summary

Our statement focuses on the Comments and Request for Conditions of the Cities of East Chicago, Hammond, Gary, and Whiting, (collectively, The Four Cities Consortium, hereinafter the FCC). The consortium was formed for the purpose of analyzing the regional effects of the Applicants' proposed post-acquisition operations, and recommending solutions to the adverse impacts identified. While agreeing that the proposed acquisition will have potential efficiency benefits for the carriers and for freight shippers, the FCC alleges, generally, that post-acquisition rail operations will have an adverse impact on transportation and public health and safety in their communities.

In particular the FCC notes that these four cities are crossed by a relatively large number of rail lines, including several major east-west arteries that have a large number of at-grade highway crossings with heavily used highways in downtown business districts. FCC alleges that the Applicants' plans to run more trains over certain of these lines will exacerbate existing vehicle traffic delays and accidents damaging the integrity of the highway transportation system, impose additional fuel cost, and cause environmental damage from emissions.

The FCC has retained economic consultants to estimate delays, and to estimate the economic impact of those delays. FCC's consultants have devised an Alternative Routing Plan which proposes to route some of the rail traffic away from "problem areas" (defined by FCC as line segments in their communities predicted to see the most delay) and onto other lines believed to offer less interference (i.e., highway overpasses and underpasses, again within defined corridor segments). FCC claims that the Alternative Routing Plan would deliver the full benefits of the Applicants' contemplated operating plans and cost less than the investment plans proposed by the Applicants.

The FCC has presented its complaints and Alternative Routing Plan in essentially two parts, both focused on the post acquisition operating plans of Applicant CSX. The first part relates to the additional trains moving over the CSX trackage (including the Conrail Porter Branch which CSX will operate) between Willow Creek, IN, where the CSX tracks from the East enter the Chicago area, and their destinations at various yard facilities within the Chicago Terminal.

The second relates to CSX's proposed operation of the former Pennsylvania Railroad line from near Cleveland to Chicago via Fort Wayne (the Fort Wayne Line), which CSX will refurbish as a bulk train route and alternate routing for all its trains. FCC opposes

the reopening of this out of service (but not abandoned) line and its grade crossings and suggests an alternate routing using segments of both the NS and Elgin, Joliet and Eastern (EJE) Railroads.

Our verified statement examines the complained-of operations of CSX and BOCT and the FCC's proposed "remedies." We take into account its method of calculating delays, *ergo* perceived harm, and the appropriateness of its Alternative Routing Plan(s) as a means of mitigating delay.

We conclude that FCC has made a number of substantial errors in predicting delays and that the Alternative Routing Plan is both ineffective and impractical.

CSX/BOCT Lines and the Porter Branch:

The CSX operating plan for trains between the East and the Chicago area follows the principle of avoiding wherever possible the need for opposing trains to "meet" and give way to one another or wait while another train does work at a particular location. The schedules and routings have been devised for a predominantly counterclockwise flow of trains inbound from Willow Creek, IN to Pine Jct. where the BOCT line to the west turns and the line to Rock Island Junction farther north commences. These form the northern two segments of a diamond shape (with a separate northward leg to Rock Island Jct.). See Attachment 1, Schematic Locator Map.

Trains exiting Chicago will generally continue in the counterclockwise direction using the BOCT tracks to reach Pine Jct. or IHB tracks to Gibson and Ivanhoe Interlockings and thence onto the Porter Branch via Tolleston to Willow Creek completing the southern two segments of the diamond. There are, of course, exceptions dictated by more direct train-specific routes.

FCC has associated vehicular delays and accidents with increased train movements mainly on two segments of the diamond. the segment of CSX/BOCT track from Willow Creek via Pine Jct. to Calumet Park IL and the segment of the Fort Wayne Line from Hobart. IN to Clarke Jct.

To remedy the delays, the FCC has proposed that CSX acquire and rehabilitate an out of service section of the IHB from Virginia Street to Chase Street in Gary -- a distance of about 2.1 miles. This line segment is elevated above street level in central Gary. This would be connected to the Porter Branch on the east and Ivanhoe Interlocking on the west. in effect elevating a portion of the existing parallel Ivanhoe-Porter Branch routing to Willow Creek. Having assumed these improvements. the Alternative Routing Plan recommends that 17 eastbound CSX/BOCT trains be rerouted over the elevated line.[1]

With respect to the issue of train interference with vehicular traffic. we have examined CSX's proposed schedules in detail and attempted to relate them to the FCC assertions. In subsequent sections we will describe more fully the following summary conclusions:

- The FCC calculations relating to train-caused delays on the Pine to Calumet Park BOCT segment appear to use a train speed assumption of 25 MPH (current FRA data for existing timetable speeds). whereas CSX has stated in responses to interrogatories that it plans to upgrade the BOCT segment to 40 MPH operation.[2] We replicated the FCC calculations using 40 MPH. and the predicted CSX/BOCT train-caused delays fell from

---

[1] See FCC-9, Burris VS at 14 and n.13.

[2] See C.D. Clayton letter to C.A. Mills, Oct. 3, 1997; FCC-9. Andrew VS, Table 1 at 5; and FCC workpaper FCCO198HC.

989 hours per day post-acquisition originally estimated by FCC to 385 (61 percent). The latter figure is to be compared with 517 current hours of delays for this segment as computed by FCC. Again, the improvement over the status quo is driven by CSX's post-acquisition capital improvement and the resulting increase in train speeds. Andrew VS, Table 1 at 5.

- Overall, from Willow Creek to Calumet Park, the recalculated CSX plan delays would be 444 hours and the FCC plan 527 hours respectively. The FCC plan would result in more delays than the CSX plan. Andrew VS, Table 1 at 5.
- We also made a detailed examination of proposed train schedules and a calculation of the hours during which trains would pass the CSX/BOCT segment of at-grade crossings. We concluded that a conservative maximum of only two additional trains will traverse the BOCT "problem" section during the 6 AM to 6 PM peak vehicular traffic window.
- FCC has proposed rerouting 17 unidentified eastbound trains from the CSX/BOCT tracks to the proposed alternative routing over IHB.[3] In reality, only eleven eastbound trains (those from Forest Hill, 59th Street and BRC) could feasibly be rerouted via IHB. Of those, all but Forest Hill (2 trains) would use the more efficient, shorter reverse routing on BRC through Rock Island Junction in preference to the IHB line.[4]

With respect to the investment program proposed by the FCC to create an Alternative Routing for the Porter Branch (which would be elevated under FCC's plan), we made a physical inspection of the IHB line which would have to be rehabilitated. We also

---

[3] See Burris VS at 14 n.13.

[4] See Attachment 2.

examined FCC's traffic delay assertions with respect to the Porter Branch. Our conclusions are summarized as follows:

- CSX's currently proposed schedules do not burden the Porter Branch with significantly more trains than currently use it, but do meet the operational requirements of the CSX's "counterclockwise plan." NS will be removing 9.6 average daily trains to the NS Chicago Line and to NS Kansas City run-throughs, so net CSX additions would amount to only 1.8 trains per day.
- The possibility of an elevated line is intriguing as a long-term alternative, and might be the focus of a joint relocation planning study. By observation, the physical condition of the infrastructure assets is very poor today. It would require significant repair and reconstruction. Thus, the investment programmed by FCC would be materially inadequate. This has unfavorable implications for the investment savings and rate of return requirements proposed by FCC.

Fort Wayne Line

With respect to the Fort Wayne Line, we will demonstrate that the FCC Alternative Routing Plan is neither operationally compatible with the Chicago operations envisioned by CSX, nor commercially viable, and because we believe the FCC erred in calculating Fort Wayne Line delays, its plan is unlikely to result in an improvement in regional highway transportation delays as asserted by FCC.

- In its calculations FCC has apparently assumed an operating speed of 10 MPH for a large part of the Fort Wayne Line (current FRA speed data based on out of service track exemption) despite the fact that Applicant CSX has stated that it plans to upgrade to 40 MPH operation. FCC's assumptions lead to a projected 443 hours of daily delays versus

only 83 hours if its Alternative Routing Plan were adopted (Andrew VS. Table 1 at 5), despite its 32 crossings with 150 thousand vehicles versus Fort Wayne's 27 crossings with 72 thousand daily vehicles.[5]

- Correcting the train speed reduces Fort Wayne delays to 39 hours (91 percent) to a level less than that computed by FCC for its Alternative Routing proposal. The economic impact is being reduced accordingly.
- Moreover, by rerouting trains, the FCC merely proposes to shift the burden of delays at grade crossings southward, i.e., to Van Loon and Hobart. The alternative NS line in this area has already been the subject of studies seeking its realignment on grounds of congestion and grade crossing accidents. In addition, today the NS line involved is congested.

The FCC's Alternative Routing Plan posits that 12-miles of the Fort Wayne Line need not be rehabilitated and numerous "closed" grade crossings need not be reopened if CSX were to route its bulk traffic over the NS line from Hobart to Van Loon, IN and thence over the Elgin, Joliet and Eastern Railroad (EJE) to the EJE's Kirk Yard, which serves the USX's Gary Steel Works and other steel works along the Lake Michigan shore. We have examined the appropriateness of the proposal in light of CSX's plans, and conclude that:

- FCC has wrongly inferred that the sole purpose of CSX's acquisition of the Fort Wayne Line is to serve the USX's Gary Works and other steel works along the lake shore, and has based the rationale for its Alternative Routing Plan on this inference.
- In fact, CSX's primary motives for acquiring the Fort Wayne Line are to divert all types of slower moving bulk trains from the main line (former B&O), improving the flow of

---

[5] See Attachment 3, USDOT Average Daily Traffic.

traffic on the former B&O, high speed line and to provide an alternative route for any train in case of emergency or congestion of the mainline.[6]

- Because the proposed EJE routing is located on bridges above the intersection of CSX, Conrail (NS), the Fort Wayne Line (CP501) and the CSX/BOCT at Pine Jct., it leaves trains on the Fort Wayne Line literally and figuratively "up in the air," greatly complicating access to the CSX mainline and to other connecting lines, negating the operational flexibility which was CSX's objective for acquiring the Fort Wayne Line, and frustrating operating plans across the CSX system. See Attachment 1, Schematic Locator map.
- The FCC's longer proposed rerouting would increase CSX's payments of private car mileage allowances and costs associated with shipper-owned equipment. The proposed route would also require more horsepower than the current route, thus CSX would need to add helper engines.[7]
- The need (1) to pay market-based trackage rights fees to both EJE and NS, (2) to negotiate time slots with not one, but two, additional railroads and (3) to move the trains with two additional dispatchers (NS and EJE) would remove the advantages of single line service efficiencies.

---

[6] CSX Operating Plan CSX/NS-20, Vol. 3A at 117 and 259.

[7] Elgin Joliet and Eastern Railroad uses 4 or 5 six axle SD38, low geared locomotives to surmount the grade from Ivanhoe to Pine Jct. on its line and descend at Kirk or vice versa, whereas the CSX or Fort Wayne Line will likely require maximum of three six axle units.

Summary

In summary, we believe that the FCC's failure to recognize CSX's improved operational factors, including speed and time of day of train operations, in its calculations of vehicle delays resulted in very substantial overstatement of the perceived delays and harm resulting from them. When the adjustments are taken into account on an equivalent basis it becomes clear that the Alternative Routing Plan(s) are not needed and overall do not accomplish any improvement. In fact, in the case of both the Pine Jct. to Calumet Park and Fort Wayne segments the Alternative Routing Plan is inferior to the CSX plan.

However, even supposing significantly reduced delays, the Alternative Routing Plan for the Fort Wayne Line, if adopted, would negate all benefits of the planned efficiencies and flexibility envisioned by CSX for that line, thus denying the benefits of the Transaction with respect to CSX's Chicago operations. Similarly, the Alternative Routing Plan for the CSX/BOCT segment could not be implemented as proposed because there are insufficient trains to justify it on those grounds alone and FCC has offered no plans for capital investments.

II. CSX's Operating Philosophy and Facilities at Chicago

The CSX operating plan for trains between the East and the Chicago area is governed by the principle of avoiding wherever possible the need for opposing trains to "meet" and give way to one another or to wait while another train does work at a particular location.

This coherent "counterclockwise policy" has been applied to produce schedules and routings in a predominantly counterclockwise flow of trains inbound from Willow Creek to Pine Jct. From Pine Jct., trains can proceed north to Rock Island Jct. and the Belt Railway or via the CSX/BOCT to Barr and IHB Blue Island Yards. This forms the northern two segments of a diamond shape (with a separate northward leg to Rock Island Jct.). See Schematic,

Attachment 1. Trains exiting Chicago will generally continue in the counterclockwise direction using the BOCT tracks to reach Pine Jct. or IHB tracks to Gibson and Ivanhoe Interlockings and thence onto the Porter Branch via Tolleston to Willow Creek completing the southern two segments of the diamond.

There will, of course, be exceptions dictated by more direct train-specific routes. Whenever possible, run-through trains between CSX and western connections will be assembled elsewhere and will take the most efficient routing through Chicago. And, for instance, auto, coal and some other trains routed to Gibson and other IHB yards will head into the Porter Branch directly, bypassing Pine Jct. and CSX/BOCT altogether.

As an example of routing improvements made possible by the lines obtained, the CSX coal delivered to Inland Steel Company is now routed via CP501 to CP502 thence to IHB (heading in wrong way) to the Michigan Avenue Yard where IHB completes the work. In the future this train will move Fort Wayne via Porter Branch direct to Ivanhoe to IHB and thence to Michigan Ave Yard. As previously noted, the Fort Wayne Line will serve as an alternate routing, intersecting both the BOCT at Clark Jct. and Porter Branch at Tolleston, and as a primary bulk train routing. CSX also expects to combine some crew districts among the CSX former B&O main line and the Fort Wayne Line [Fort Wayne - Garrett - Willard and Chicago Terminal] to achieve fluid operations between these lines.

Returning to the diamond analogy, we describe in subsequent sections the function of each of the track segments and the environment surrounding the segment. The purpose will be to demonstrate that the CSX Operating Plan preserves the traditional operating modes of these segments and does not radically change them to the detriment of public health and safety as FCC

implies. Referring to the Schematic Locator Map -- Attachment 1.1, we briefly summarize the role and environment of each of the lines in the FCC area:

- ***CSX main line Willow Creek to Pine Jct.:*** *Today CSX's principal entry line to Chicago from the East, this high speed line (which will be restored to two track 70 MPH operation between Greenwich OH and Pine Jct.) is characterized by wide, brush free right of way with excellent forward and side visibility and few grade crossings. From Millers (east Gary) to Pine Jct. the line is part of the broad transportation corridor including Conrail's Chicago Line (NS) and the EJE, and IHB Railroads. The line's role is to remain the principal east-west routing. As noted by FCC, this corridor will experience an increase in CSX traffic and a corresponding decrease in Conrail(NS) as a result of the division of Conrail lines, hence traffic, farther east.* <u>*See*</u> *Photo Exhibit at 1.*
- ***Pine Jct. to Rock Island Jct.:*** *The line is also part of the broad lake shore transportation corridor including Conrail's Chicago Line (NS) and the EJE, and IHB Railroads. Its CSX role in the future will be to reach BRC's Clearing Yard, CSX's Bedford Park intermodal yard, and CSX's proposed 59th Street intermodal facility as well.*
- ***Pine Jct. to Calumet Park Segment of BOCT:*** *Today this segment is the main east- west connector for CSX trains to BOCT facilities and the yards of IHB and BRC that it uses in the southwestern Chicago suburbs. Since CSX's plan is to continue to use the services of these railroads offering the best, most cost effective switching services, the line's role must continue. However, as we will show in subsequent sections, the effect of planned directional train routings, signaling and other improvements to raise speeds to 40 MPH and consideration of when (time of day) the trains pass here greatly ameliorates the situation hypothesized by FCC.* <u>*See*</u> *Photo Exhibit at 2.*

- ***Conrail Porter Branch (CSX will obtain Porter to Ivanhoe):*** *Today Conrail uses this signaled 40 MPH line in both directions to reach directly its affiliate IHB at Gibson Yard and to distribute traffic throughout the IHB network of connections from there. CSX's Operating Plan does not materially change the number of trains on the line (due to removal of 10 trains to NS' Conrail Chicago Line) but would change the predominant flow from westbound to eastbound, as described above.*

- ***CSX Rehabilitation of the Conrail Fort Wayne Line:*** *Today this line is out of service between Hobart, IN and Clark Jct. but used from Warsaw, IN eastward, as part of the NS' service route to Chicago. CSX will rehabilitate the line to a 40 MPH route for bulk trains and alternative routing for all trains between Cleveland to Chicago. There are 3 grade crossings between Tolleston and Pine Jct.; however for the southern half of the segment there are significant crossings between Tolleston and Hobart, IN. This former double track main line affords a broad right of way with good visibility and it should be noted that as recently as 1990 this line hosted 2 Amtrak trains and at least one local freight each day. CSX proposes 5 unscheduled (extra) bulk trains per day.*

III. Discussion of FCC's Delay Calculations

The main focus of FCC delay calculations was the BOCT segment from Pine Jct. to Calumet Park (FCC-9, Andrew VS, Table 1 at 5), accounting for 78% of FCC's current and 61% of alleged future vehicle delay hours.[8] The bulk of the remainder was ascribed to the Fort Wayne Line.

---

[8] In this table Andrew has included his calculation of imputed IHB train caused vehicle delays in his totals. Thus, for Pine Jct. to Calumet 516.9 / 663.9 equals 78%. We do not agree with IHB's inclusion, but use it in the context of the complained of delays here.

Actual vehicle delays, train speeds and other data were sampled during a one week period in September 1997 at 12 grade crossings. Seven of the crossings were on the BOCT segment and five were along the lake shore routes including (as one site) several streets in Whiting, IN. With respect to the Fort Wayne Line segment, 27 grade crossings were not directly measured for vehicle flows. Instead a vehicle delay model calibrated from the 12 crossings sampled was applied to the crossings not measured, using USDOT/FRA vehicle flows and FRA segment train speed data. The latter procedure was also used for all of the grade crossings on IHB, NS and EJE lines used in the Alternative Routing Plan analysis.

We were struck by anomalous delay results pertaining to the Fort Wayne Line. Here the proposed Alternative Routing using the NS and then EJE tracks shows a daily vehicle flow volume of 150 thousand across 32 crossings with train speeds of 30 to 45 MPH, whereas the Fort Wayne Line crosses 27 crossings with a total flow of only 72 thousand vehicles and CSX proposed train speeds of 40 MPH.[9] Andrew proposes 443 daily delay hours for the Fort Wayne and only 83 for the Alternative Route. Andrew VS, Table 1 at 5.

We discovered that Andrew used the FRA train speed data (Andrew VS, Table 1 at 5 n.1) and FCC Workpaper FCC0151HC-0153HC). This data is collected from the railroads and relates to the existing timetable speed of the track on which a graded scale of FRA track safety tolerances is calibrated for track inspectors to observe. For very low speeds (shortlines, sidings, infrequently used tracks) FRA assigns a class of exempted track, which Andrew no doubt picked up when he apparently assigned 10 MPH to the Fort Wayne Line, notwithstanding CSX's announced plans to upgrade to 40 MPH.

---

[9] See Attachment 3, USDOT Average Daily Traffic.

By the same token, Andrew appears to use existing FRA 25 MPH train speeds for the BOCT segment from Pine Jct. to Calumet Park (FCC Workpaper Documents FCC0198HC and FCC0151HC-0153HC), notwithstanding CSX's professed intention to upgrade this segment to 40 MPH operation (See, e.g., C.D. Clayton letter to C.A. Mills, Oct. 3, 1997), with predictable results for delays.

We replicated the delay calculations performed by Andrew for the two critical segments in question -- the Willow Creek to Calumet Park including the CSX/BOCT, and the Fort Wayne Line -- in order to test the effect (which should be proportional) of increasing train speed on reducing delay.[10] Summary data relating to this replication can be found in Attachment 3.

Table 1. -- Recalculated Delays for the Willow Creek and CSX/BOCT Segments (in hours of daily delay to vehicles):

Route/Segment	Current per GMA Table 1	Applicants Plan per GMA Table 1	Recalculated Using CSX's Proposed Speed[11].	Alt. Routing Plan per GMA Table 1
Willow Creek to Pine Jct. (CSX Mainline)	24.5	54.9	58.7	31.3
Pine Jct. to Calument Park (BOCT)	516.9	988.9	385.4	495.9
Total Willow Creek to Calumet Park	541.4	1043.8	444.1	527.2
Total Change in Delay for Segment		-599.7		

[10] FCC did not use the model conventionally used by FRA, FHWA, and STB. Nevertheless, although it was not possible to perfectly reproduce all the numbers in Andrew VS Table 1 using the formulae presented in Andrew's Attachment GMA-6 and the underlying data, very similar results were obtained using the same input variables as he used.

[11] Andrew also used FRA speeds for the Willow Creek to Pine Jct. segment, reflecting in this case passenger train limits. These were reduced to freight train speed, slightly increasing delays.

Conclusion with respect to the Willow Creek to Calumet Park segment:

As can be seen from the above table, adopting the speeds proposed by CSX very dramatically reduces the daily delay hours attributable to operations over the CSX/BOCT segment. Delays fall in direct relation to the speed improvements attributable to the CSX's acquisition related investments. In fact, the numbers suggest that even given an increase in traffic of six trains, the overall delays situation along the BOCT will actually be improved as a result of the capital improvements.

Table 2. -- Recalculated Delays for the Fort Wayne Line Segment (in hours of daily delay to vehicles):

Route/Segment	Current per GMA Table 1	Applicants Plan per GMA Table 1	Recalculated Using CSX's Proposed Speed	Alt. Routing Plan per GMA Table 1
Hobart-Tolleston-Pine Jct.	N/A	443.0	39.8	
Hobart-Van Loon-Pine Jct.	N/A			83.4
Total Change in Delay for Segment		-403.2		

As noted above, the anomalous results concerning the Fort Wayne Line were corrected with the increase in train speed from 10 MPH to 40 MPH. The Fort Wayne Line, which overall encounters fewer crossings and less than half the vehicle flow, should, and does, produce about half the expected delay of the Alternative Routing Plan, if operated at equivalent train speeds.

Calculation of Economic Impact:

In his verified statement, Burris converts the delay factors produced by Andrew to annual equivalents (multiplication of daily delays by 365) and uses these factors in his calculation of economic impact resulting from the delays (Burris VS at 9). These impacts result

from four factors: a) Lost productivity due to vehicles (occupants) waiting at grade crossings: b) Additional fuel consumption associated with cumulative delays; c) Atmospheric pollution from exhaust emissions during delays; and d) Increased rail/vehicle accidents related to increased train traffic. Burris VS at 17.

As can be seen from the nature of the above impacts, in all cases except rail/vehicle accidents the reduction in economic impacts should be directly proportional to the reduction in cumulative vehicle delays. As previously shown, the recalculated delays, therefore produce significant decreases from those claimed by FCC, and, in both cases, the FCC plans result in more delays and greater economic impact.

With respect to accidents, an important collateral consideration is the time of day when trains pass crossings. As demonstrated in the following section, a maximum of two additional trains will pass the CSX/BOCT segment in peak auto traffic hours (6 AM to 6 PM) as defined by FCC, consistent with the shift change patterns in this industrial area. As this is the densest area of crossings considered by FCC, it is clear that the problem envisioned by FCC is substantially ameliorated by much smaller off peak vehicle traffic flows, as shown in the FCC sample data.

IV. FCC's Proposed CSX/BOCT Remedy Does Not Account For Proposed CSX Train Schedules and Routings.

We examined CSX's train schedules and routings through Chicago in light of FCC's assertions that they would cause excessive delays to traffic, and we also examined the FCC's alternatives. Our focus in this exercise were those trains entering and exiting Chicago through Willow Creek and particularly those using the "problem segment" from Pine Jct. to

Calumet Park. All of these schedules are shown in Attachment 2 and the results of the analysis are summarized in the table which follows.

There are more total trains (53.8) than Attachment 13-5 to the CSX Operating Plan shows due to 4 CP trains through Porter which stay on Conrail until reaching CP501 where they enter CSX/BOCT tracks, thus don't pass "Deshler—Willow Creek" or "Willow Creek—Pine" on CSX segments. The other small absolute differences between the table and the Operating Plan are due to interim changes in the schedules, blanket calculation of train frequency, and rounding.

- New trains mean CSX (and CP) Willow Creek and Grand Rapids trains not in the base count of 1995 trains. Twenty-eight trains enter the calculations as such.
- The CP Rail Provisional Schedules (placeholders) and one Amtrak train each way using the CSX mainline are not counted. Amtrak does not enter the CSX/BOCT segment and would not cause the complained of delays in any case.
- Routing via Rock Island Junction means that trains continue along the lake shore transportation corridor line to a point beyond the municipal boundaries of the FCC and enter the Belt Railway of Chicago facilities there.
- Routing via Ivanhoe means that trains enter the Conrail (CSX) Porter Branch at Willow Creek (in the case of Grand Rapids trains, at Porter) and proceed on the Porter Branch to the Ivanhoe Interlocking where the IHB line to Gibson Yard commences. This is the same routing proposed as an alternate for 17 trains by the FCC.
- Thus, the remaining "existing" and 6.2 "new" trains pass the sampled seven grade crossings all of which lie on the CSX/BOCT routing. (There were 5.7 new trains per

CSX/NS-20, Vol. 3A Operating Plan Attachment 13-5, and FCC rounded up to 6 new trains upon which their incremental delay calculations were based).

Emphasis was placed on estimating the time of day trains would transit the CSX/BOCT segment versus routings over other segments unlikely to produce significant delays including the route north via Rock Island Jct. and the route using the IHB and Porter Branch via Ivanhoe Interlocking.

- Hour of day calculations are based on when trains enter or leave a yard plus or minus the time in transit to the segment Calumet Park or State Line Tower to Pine Jct., thus the hour in which they would be expected to be in the segment.
- It can be seen from the calculations that the number of "new" trains operating during the 6AM to 6PM peak vehicle traffic window (as defined by FCC) is only 12.2, half the number of new trains programmed.

Of these 12.2 new "daylight" trains:

- 3.2 will proceed along the shoreline transport corridor to Rock Island Junction without entering the CSX/BOCT tracks.
- 3.0 will use the Porter Branch to Ivanhoe and the IHB.
- Q135 and Q137, presently on the CSX/BOCT line, have been rerouted to Rock Island Junction in the new plan -- 1.6 daily trains.
- 3.8 additional existing trains will be rerouted via Ivanhoe to the Porter Branch.

Thus only 0.6 additional trains will be using the CSX/BOCT tracks during the 6AM to 6PM peak window, post-acquisition. For conservatism we say 2 additional trains to account for occasional train delays, etc. The following table summarizes the tabulations.

Table 3. -- Summary Results of Peak / Non-Peak Train Schedule Analysis

All Scheduled Trains	Daily Frequency	6 Am to 6 PM Trains	Daily Frequency
Number New Daily Trains	28.2	Number New Daily Trains	12.2
Trains Using RIJct. Alternate	-8.0	Trains Using RIJct. Alternate	-3.2
Trains Using Ivanhoe Alternate	-6.2	Trains Using Ivanhoe Alternate	-3.0
Reroutes of Existing Trains	-7.8	Reroutes of Existing Trains	-5.4
Net New Trains on BOCT	6.2	Net New Trains on BOCT	0.6

FCC's Proposed Routings Are Not Compatible With Train Flow

FCC proposes rerouting an unidentified 17 eastbound trains from the CSX/BOCT tracks to the IHB proposed alternative routing.[12] In reality only eleven eastbound trains, those from Forest Hill, 59th Street and BRC, could feasibly be rerouted via IHB and those would require use of BOCT's Chicago Heights Subdivision or a backing move through Blue Island Interlocking -- not an ideal routing for scheduled trains. Moreover, for all but Forest Hill (2 trains), the more likely, shorter routing would be reverse routing on BRC through Rock Island Junction without using the IHB line in any event.

V. FCC's Proposed Fort Wayne Line Remedy is Incompatible with CSX's Chicago Operating Plans.

Proposed Alternative Fort Wayne Line Routing Greatly Complicates Interconnection with CSX Mainline and Other Lines To/From Pine (Clarke Jct.):

The FCC's Alternative Routing Plan posits that 12 miles of the Fort Wayne Line need not be rehabilitated and numerous "closed" grade crossings need not be reopened if CSX were to route its bulk traffic over the NS line from Hobart to Van Loon and thence over the EJE to EJE's Kirk Yard which serves the USX's Gary Steel Works and other steel works along the Lake Michigan shore. We have examined the appropriateness of the proposal in light of CSX's plans.

---

[12] See Burris VS at 14 n.13.

Inconsistent with statements in the CSX Operating Plan, we believe FCC has misperceived the purpose of CSX's acquisition of the Fort Wayne Line by inferring its only function would be to serve the USX's Gary Works and other steel works along the lake shore and has implicitly based the rationale for its Alternative Routing Plan on this inference. Burris VS at 8 and 16.

Service to these steel plants, important as it may be, is not the sole purpose for this line's acquisition. CSX already serves these plants directly or indirectly and proposes to move other bulk traffic over the Fort Wayne Line, including grain and other bulk commodity trains operating to and from multiple customers and connecting carriers throughout Chicago. CSX/NS-20, Vol. 3A at 117. Moreover, while EJE is the preferred carrier for USX's Gary Works, it is not the sole carrier and in some instances does not reach the other steel works along the lake shore.

In fact, CSX's primary motives for acquiring the Fort Wayne Line are: 1) to divert all types of slower moving bulk trains from the main line (former B&O), improving the flow of traffic on this latter, high speed line, which itself is being improved to 70 MPH double track between Greenwich, OH near Cleveland and Pine Jct. at a cost of over $100 million; 2) The Fort Wayne Line will be improved to 40 MPH operation (standard speed for CSX bulk trains) in those segments not already suitable for that speed and will provide a fully adequate alternate route for any train in case of emergency or congestion of the mainline. CSX/NS-20, Vol. 3A at 259.

FCC proposes to use the EJE (Route 3, Joliet - Gary Divisions) from Van Loon MP 3.5 to Gary MP 11.0, a distance of 7.5 miles. This important eastern end of EJE's belt around Chicago was elevated to avoid interference with the mainlines along the lake shore which

it crosses at a 90 degree angle to enter its own Kirk Yard. Thus, its physical location on bridges above the intersection of CSX, Conrail(NS), the Fort Wayne Line (CP501) and the CSX/BOCT at Pine Jct. greatly complicates access to the CSX mainline at Pine Jct. and to other connecting carriers including direct access to either the CSX/BOCT or Rock Island Jct. Through trains attempting to reconnect with the CSX mainline through CSX's Curtis Yard would have to pull almost across the bridges, reverse and make a backing move down the inclined connecting track to Curtis Yard, negotiate the yard, and pull north (west) onto the mainline. These movements are further complicated by the existence of gradients on both ends of the bridges.

Proposed Alternative Fort Wayne Line Routing Adds Costs and Potential Delays to CSX Trains

The proposed rerouting of bulk trains consisting of shipper owned/leased mileage based equipment would be adopting the longer right triangle mileage legs in lieu of the hypotenuse to make the service costlier. The proposed route would also require more horsepower than the current route, thus the need to add helper engines.[13] Assuming that CSX would have to pay market based trackage rights fees (and assuming they were granted) to not one, but two, additional railroads and negotiate time slots to move the trains with two additional dispatchers (NS and EJE), the advantages and efficiencies of single line service would be destroyed.

The following paragraphs show the increased costs attributable to market based trackage rights, and the required increased horsepower that we believe must be added to those proposed by the FCC for both the use of the EJE/NS lines as well as the IHB.

---

[13] Elgin Joliet and Eastern Railroad uses 4 or 5 six axle SD38, low geared locomotives to surmount the grade from Ivanhoe to Pine on its line and descend at Kirk or vice versa, whereas the CSX or Fort Wayne Line will likely require maximum of three six axle units.

FCC did not account for the level of power required to operate over the proposed EJE alternative route with its high line grade characteristics. To distribute traffic off the EJE to the steel mills and connections trains would require up to two units of "helper power" for both the ascending and descending movements. A conservative estimate of the incremental expense for locomotive ownership (assuming 1.5 units) and operating costs, including fuel, servicing and crews, $825,000 per annum.

FCC estimated a trackage fee for use of the EJE and NS tracks is also well below the market rates. Also FCC ignores any fee for incremental use of the IHB line under the Alternative Routing Plan. CSX would likely be charged a fee and credited with 25.5% of the proceeds due to its ownership position. The total increment over and above that cited by FCC could add another $1.0 to 2.0 million, with the range attributable to use of FCC's lower rate rising to the market rates.

Taking these charges into account, annual operating costs of FCC's proposed plan would increase from $16 million to $18 million, thus, exceeding Applicants' annual operating costs. See Burris VS, Table at 26.

VI. FCC's Alternative Routing Plan Proposed Purchase and Rehabilitation of the IHB Elevated Line Underestimates the Investment Needed.

The FCC has proposed that CSX acquire and rehabilitate an out of service section of the IHB from Virginia Street to Chase Street in Gary -- a distance of about 2.1 miles. This IHB segment, which is elevated above street level in central Gary, would be connected to the Porter Branch in the vicinity of Virginia Street in the east and these IHB tracks would be used to Ivanhoe in the west. Having assumed these improvements, the Alternative Routing Plan

attempts to justify them by recommending that 17 trains be rerouted eastbound over the elevated line and off of the CSX line.

There appear to be discrepancies between FCC's assumptions of the condition of the physical plant required for the Alternate Routing and its actual condition. For example, where it appears (but is not the case) that the IHB line continues as a mainline from Chase Street to Gibson Yard, in fact, the mainline is the Porter Branch and the IHB tracks beyond Gibson to the east are industrial service tracks or, in effect, two controlled sidings. Beyond Ivanhoe Interlocking eastward, these tracks would need to be brought from Class II to Class III condition to accomplish the proposed mission.

Physical Condition of the Elevated Line Is Poor:

We observed that the physical condition of the infrastructure assets is poor to very poor and could not in their present condition support heavy rail operations (including stack trains and bulk trains) for this line. See Photo Exhibit at 2. Of the existing rail/highway bridges, condition is poor to unusable on 65% of the bridges seen in Gary, although in some cases the problems may be limited to severely eroded support columns and decking. In addition, we observed 150-200 feet of old wooden trestles that would have to be filled in, and the track subgrade would have to completely replaced or replaced with small purpose built culverts where necessary. FCC witnesses Messrs. Heinzman and Dunn made no provision for bridge repairs in their capital needs estimates. FCC-9, Heinzman/Dunn VS at Exhibit GHL/RHD-2.

As observed by Heinzman and Dunn, track structure must be replaced on the entire line from Virginia Street to Chase Street. This rehabilitation should also include work on the IHB line from Chase Street to Ivanhoe, or a reconnection made to the Porter Branch west of Chase Street, as the former IHB Line is not in condition to accommodate 40 MPH operations.

No account of the cost of acquiring the land for either connection has been made. Thus, the investment programmed by FCC seems materially inadequate and this has unfavorable implications for the investment savings and rate of return improvements claimed by FCC.

Our recapitulation of additional investment needs is as follows:

Table 4. -- Investment Requirements

Investment Cost Parameters	Investment Element	Unit Cost	L.E. Peabody Estimate ($000)	Incremental Investment Cost
132 # rail, platform clean top off with 12 inches ballast, ties, OTM	2.1 track miles	$200 per track foot	1,116,776	1,100
Fill in 2 trestles and repair super and substructure 5 bridges	2 Trestles 5 Bridges	5@$9000 per track foot per 10 ft. section; 2 trestles@$2000 per 10 ft. section	none	441
Crossover west of Chase St. (or improve IHB track)	2 number 12 or higher turnouts and 250 ft. of track	$150,000 per turnout and $200 per track foot	none	800
Purchase and clearing of land	Purchase 3/4 a. occupied land and housing and 1/2 a. vacant commercial land	300,000 for occupied residential and $100,000 for vacant commercial	none	400
Total Incremental				**2,741**

Taking these adjustments into account, overall capital costs would increase and FCC's claimed capital offset savings ($6.56 million Applicants versus $1.56 million FCC) are reduced from $5 million to $2.26 million by or about half. Burris VS p. 26 and Exhibit PHB-6.

Verification

STATE OF FLORIDA }
}
}
COUNTY OF SAINT JOHNS }

James Christopher Rooney, being duly sworn, deposes and says that he has read the foregoing statement, knows the contents thereof and that the same are true and correct.

James C. Rooney

Sworn to and subscribed
before me this 8th day
of Dec., 1997.

Witness my hand and official seal.

Judith H. Adkins

WASHINGTON, D.C.)
) ss
)

VERIFICATION

T. Stephen O'Connor being duly sworn, deposes and says that he is qualified and authorized to submit this Rebuttal Verified Statement, and that he has read the foregoing statement, knows the contents thereof and that the same is true and correct.

T. Stephen O'Connor

Subscribed and sworn to before me by T. Stephen O'Connor this 9 day of December, 1997.

My Commission Expires:

IRENE LINTON
District of Columbia
My Commission Expires
November 30, 2000

EXHIBITS

Exhibit A: Photographs of Chicago Terminal Area

Page 1 Upper Left -- CSX Mainline at MP 239 illustrating clearance and visibility.

Upper Right -- EJE line on overpass at Pine (Clark Jct.) with Conrail tracks in foreground, CSX in background

Lower Right -- Looking down on Clarke Jct. from EJE bridge

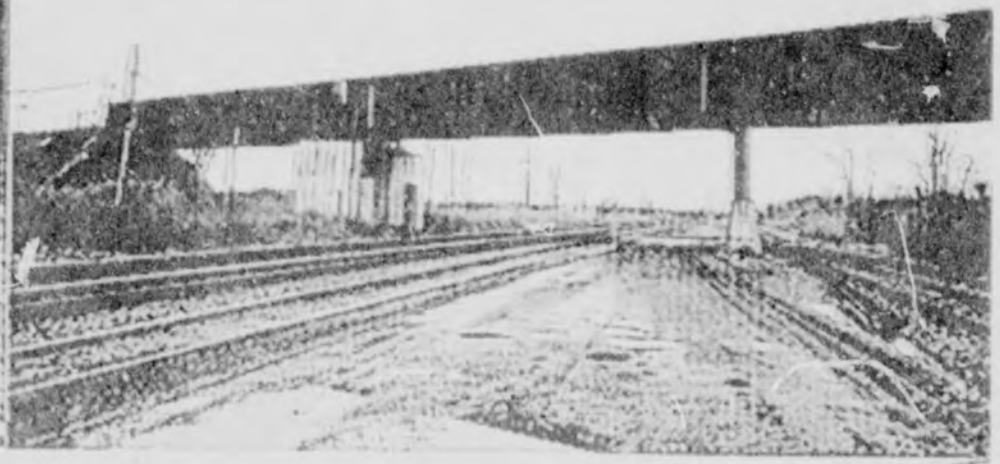
Lower Left -- EJE train (four SD32 locomotives) crossing overhead Fort Wayne Line at Pine (Clarke Jct.).

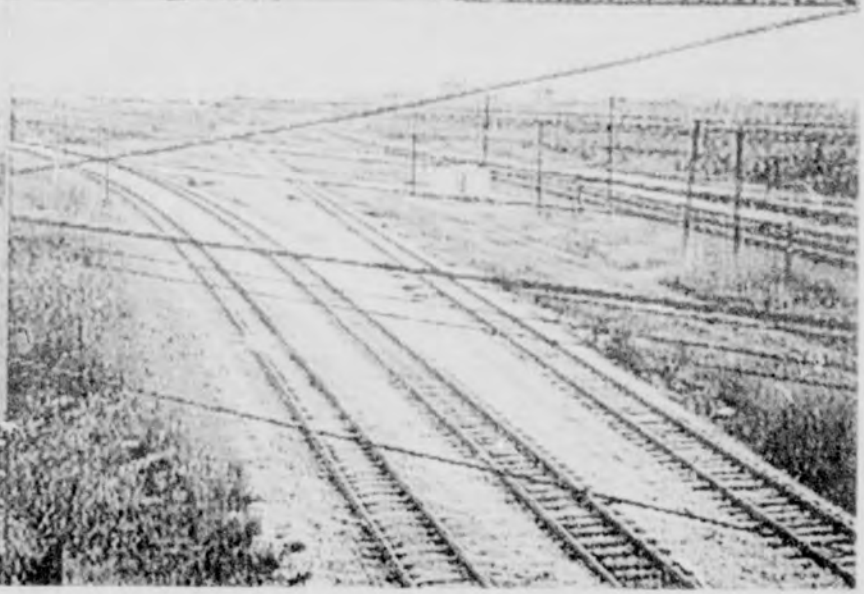
Page 2 Upper Left -- Eroded Bridge Column due to road salt - IHB Line - Broadway Ave. - Gary IN.

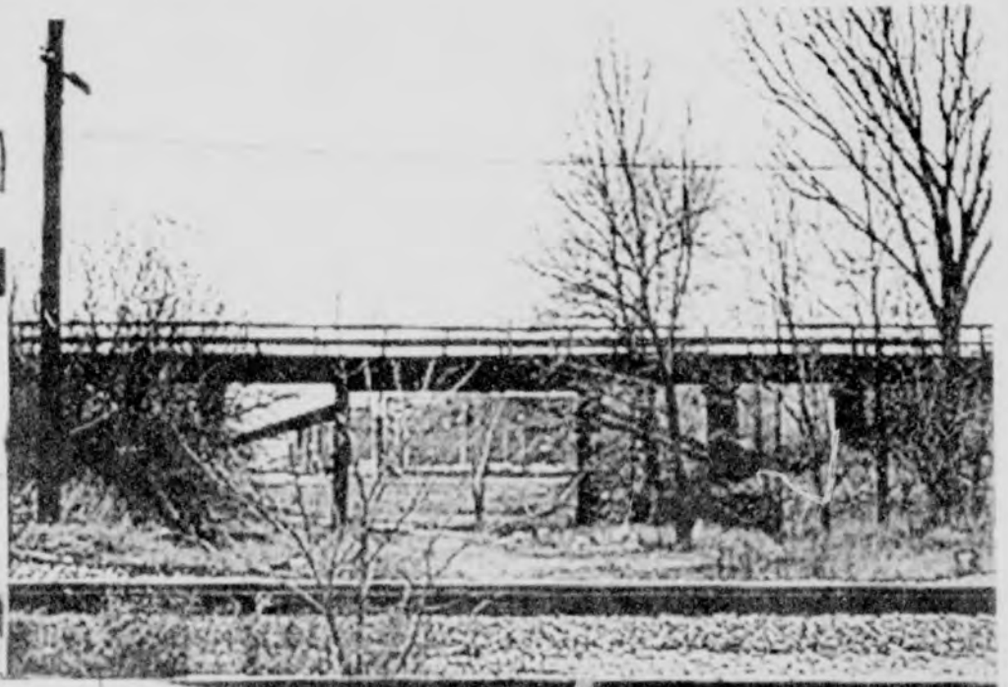
Upper Right -- Wooden Trestle requiring replacement - between Broadway and Jefferson Sts. - Gary IN

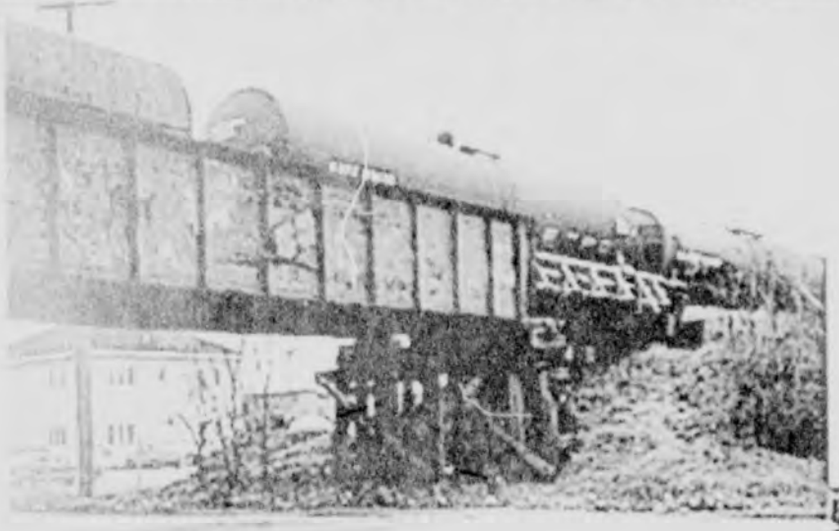
Lower Right -- CSX/BOCT / IHB crossing vicinity Kennedy Ave. and Chicago Ave. - East Chicago IN - showing track and visibility characteristics

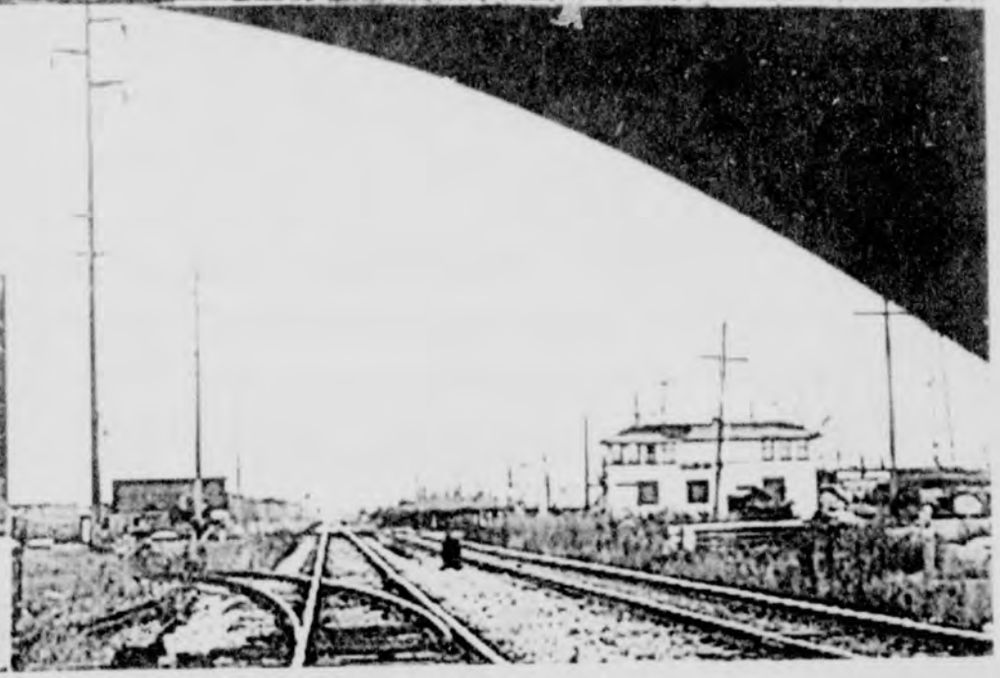
Lower Left -- Wooden columns and transition spans, no abutments- Chase St. Gary IN - IHB Line



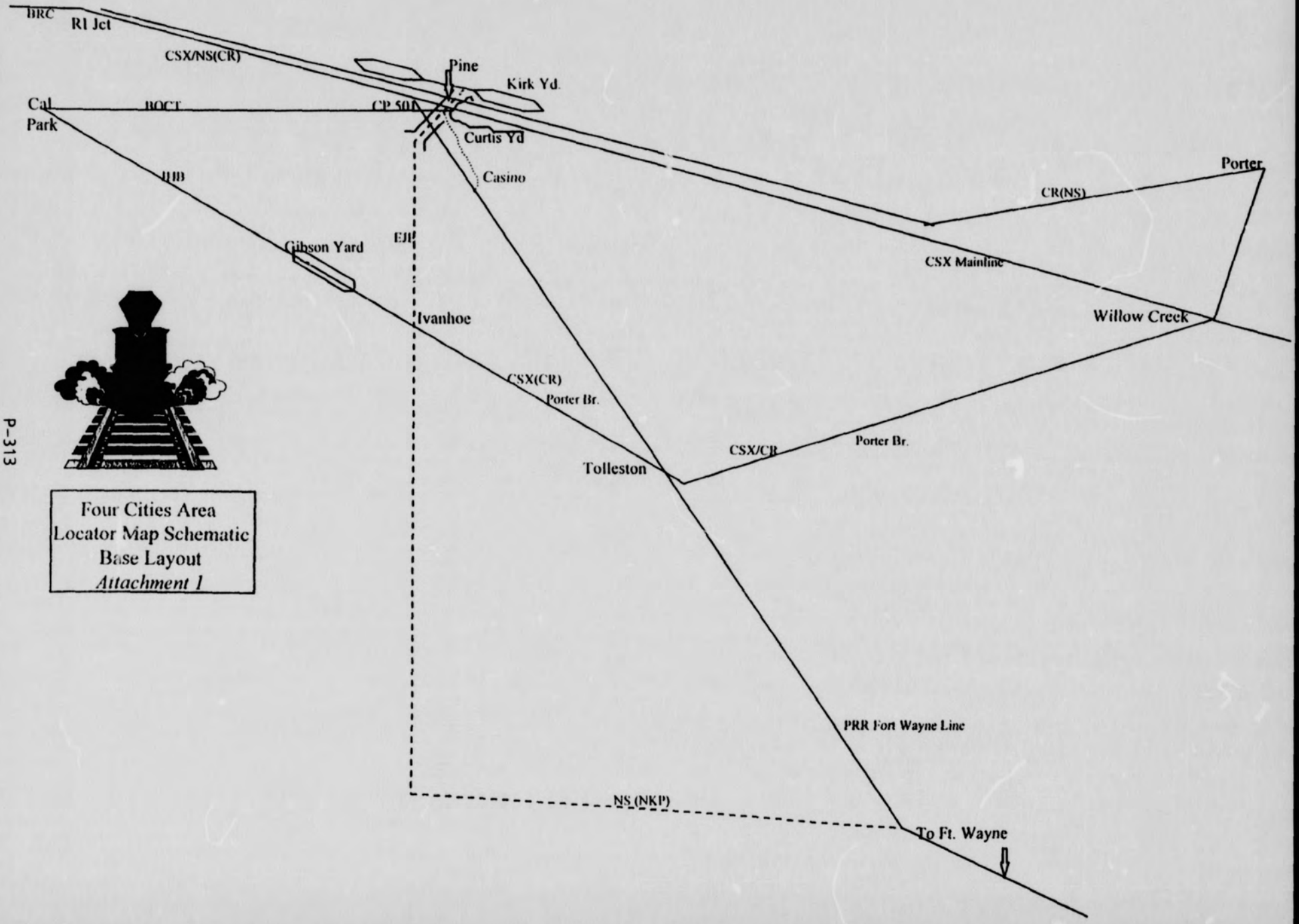




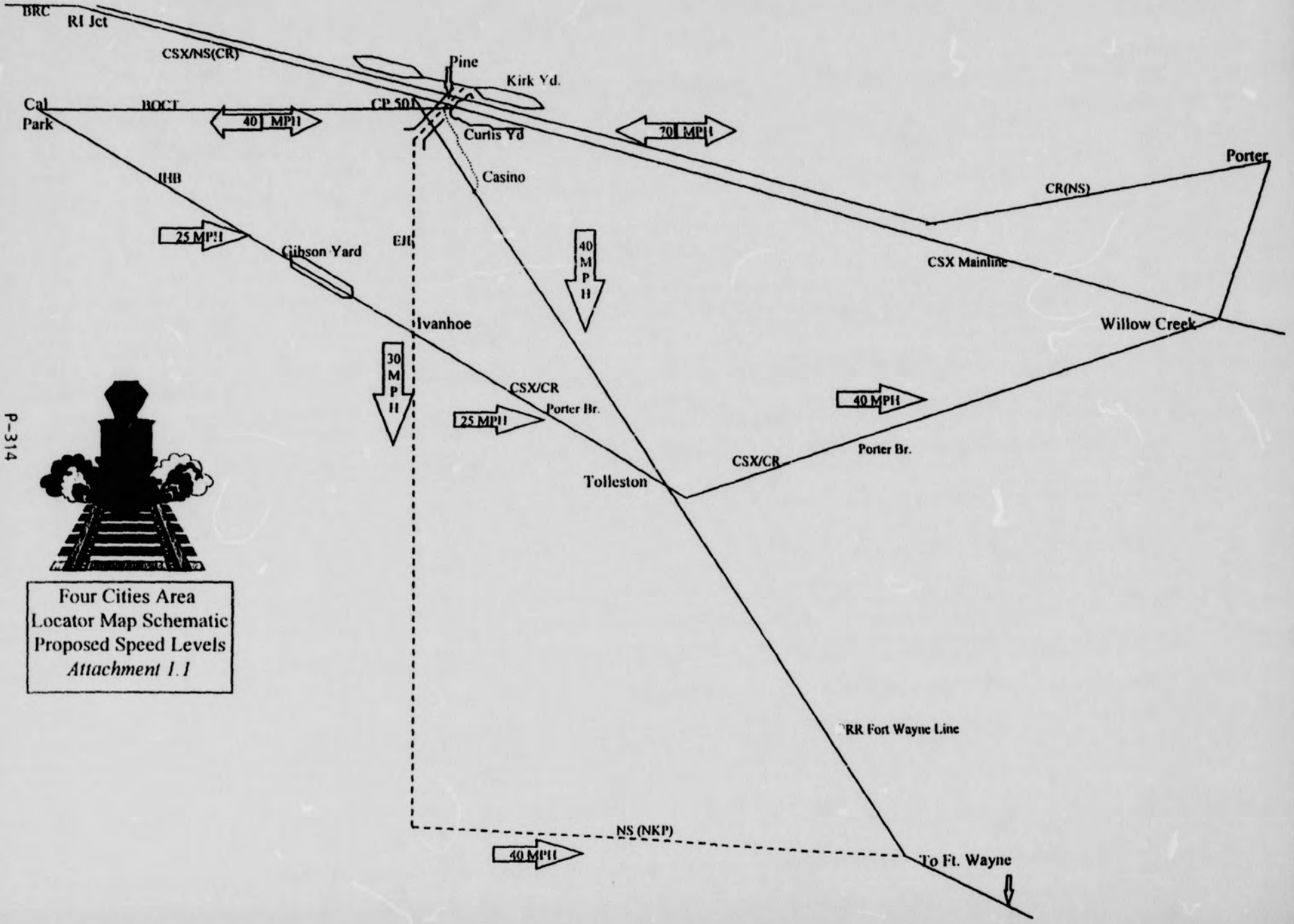




ATTACHMENTS



Four Cities Area
Locator Map Schematic
Base Layout
Attachment 1



P-314

Four Cities Area
Locator Map Schematic
Proposed Speed Levels
Attachment 1.1

Attachment 2

CHICAGO< -- >EAST MOVEMENTS (ORIGINATING/TERMINATING) PASSING THROUGH FOUR CITIES

SYMBOL	TYPE	?					NEWFOLD	ARRIV.	+/-	EST. SI	SI	ROUTING	PEAK	PEAK	PEAK	PEAK	ORIGIN	DESTINATION
	TRAIN	DAYS	OLD >RIJC	OLD HVAN	NEW >RIJC	NEW HVAN	SYMBOL	LEAVE YARD	TRANSIT TIME	SEGMENT HOUR	PEAK HOUR	VIA	OLD >RIJC	OLD HVAN	NEW >RIJC	NEW HVAN		
CSX TRAINS							CRC TRAIN?											
Q110	IM	0.8	0	0	0	0	NEW/TV10B	500	100	600	NO	WC/BOCT	0	0	0	0	CHIC FOREST	BOSTON
Q109	IM	0.8	0	0	0	0	NEW/TV7	900	-100	800	YES	WC/BOCT	0	0	0	0	BOSTON	CHIC FOREST
Q112	IM	0.8	0	0	0	0	NEW/TV14	950	100	1050	YES	WC/BOCT	0	0	0	0	CHI 59TH	BOSTON
Q113	IM	0.8	0	0	0	0	NEW/TV13	730	-100	630	YES	WC/BOCT	0	0	0	0	BOSTON	CHIC FOREST
Q114	IM	0.8	0	0	0	0	NEW/TV24	2200	100	2300	NO	WC/BOCT	0	0	0	0	CHIC FOREST	BOSTON
Q117	IM	0.8	0	0	0.8	0	NEW	415	-100	315	NO	WC/RIJCT	0	0	0	0	BOSTON	CHIC 59TH
Q118	IM	0.8	0	0	0	0	NEW	330	100	430	NO	WC/BOCT	0	0	0	0	CHIC 59TH	WORCESMA
Q119	IM	0.8	0	0	0.8	0	NEW/TV9	1100	-100	1000	YES	WC/RIJCT	0	0	0.8	0	WORCESMA	CHIC 59TH
Q138	IM	0.8	0	0	0	0	Q138	300	100	400	NO	WC/BOCT	0	0	0	0	CHI BEDF	BALTO
Q137	IM	0.8	0.8	0	0	0	Q137	1045	-100	945	YES	WC/RIJCT	0.8	0	0	0	BALTO	CHI BEDF
Q136	IM	0.8	0	0	0	0	Q136	2125	100	2225	NO	WC/BOCT	0	0	0	0	CHI 59TH	PHILI
Q135	IM	0.8	0.8	0	0	0	Q135	1045	-100	945	YES	WC/RIJCT	0.8	0	0	0	PHILI	CHI 59TH
Q146	IM	0.8	0	0	0	0	NEW/TV220	1600	100	1700	YES	WC/BOCT	0	0	0	0	CHI 59TH	COLUMBOH
Q147	IM	0.8	0	0	0.8	0	NEW/TV221	1000	-100	900	YES	WC/RIJCT	0	0	0.8	0	COLUMBOH	59 TH
Q156	IM	0.8	0	0	0.8	0	NEW/TV204	1830	100	1930	NO	WC/RIJCT	0	0	0	0	CHIC 59TH	KEARNEY
Q157	IM	0.8	0	0	0.8	0	NEW/TV263	330	-100	230	NO	WC/RIJCT	0	0	0	0	KEARNEY	CHIC 59TH
Q160	IM	0.8	0	0	0	0	NEW/TV12	2345	100	2445	NO	WC/BOCT	0	0	0	0	CHIC BEDF	NO BERGEN
Q161	IM	0.8	0	0	0	0	NEW/TVLA	500	-100	400	NO	WC/BOCT	0	0	0	0	NO BERGEN	CHIC BEDF
Q162	IM	0.8	0	0	0	0	NEW	2315	100	15	NO	WC/BOCT	0	0	0	0	CHIC BEDF	EXPRESSRL
Q163	IM	0.8	0	0	0.8	0	NEW	600	-100	500	NO	WC/RIJCT	0	0	0	0	EXPRESSRL	CHI BEDF
Q164	IM	0.8	0	0	0.8	0	NEW/TV200	200	100	300	NO	WC/RIJCT	0	0	0	0	CHI 59TH	KEARNEY
Q165	IM	0.8	0	0	0.8	0	NEW/TV201	1200	-100	1100	YES	WC/RIJCT	0	0	0.8	0	KEARNEY	CHI 59TH
Q166	IM	0.8	0	0	0	0	NEW/TV10	230	100	330	NO	WC/BOCT	0	0	0	0	CHI BEDF	NO BERGEN
Q167	IM	0.8	0	0	0.8	0	NEW/TV11	600	-100	500	NO	WC/RIJCT	0	0	0	0	NO BERGEN	CHI BEDF
Q168	IM	0.8	0	0	0	0	NEW	630	100	730	YES	WC/BOCT	0	0	0	0	CHI BEDF	NO BERGEN
Q169	IM	0.8	0	0	0.8	0	NEW	1000	-100	900	YES	WC/RIJCT	0	0	0.8	0	NO BERGEN	CHI BEDF
246	AUT	0.8	0	0.8	0	0	246	830	-100	730	YES	WC/IVAN	0	0.8	0	0	MARYSVOH	CHI GIBSON
288	AUT	0.8	0	0.8	0	0	288	145	100	245	NO	WC/IVAN	0	0	0	0	IHB BLUE IS	MARYSVOH
223	AUT	0.8	0	0.8	0	0	223	1745	-100	1645	YES	WC/IVAN	0	0.8	0	0	WILMDEL	CHI GIBSON
227	AUT	0.8	0	0.8	0	0	227	1830	100	1930	NO	WC/IVAN	0	0	0	0	TOLWALBR	CHI GIBSON
241	AUT	0.8	0	0	0	0	241	900	-100	800	YES	WC/BOCT	0	0	0	0	DETROIT	NS-CALUMET
282	AUT	0.8	0	0	0	0	282	1730	100	1830	NO	WC/BOCT	0	0	0	0	CHI BRC	WILLARDOH
BBSE A		1	0	0	0	1	NEW	1421	100	1521	YES	WC/IVAN	0	0	0	1	BNCICERO	SELKIRKNY
BBSE B		0.4	0	0	0	0.4	NEW	206	100	306	NO	WC/IVAN	0	0	0	0	BNCICERO	SELKIRKNY
SEBB		1	0	0	0	0	NEW	1024	-200	824	YES	WC/BOCT	0	0	0	0	SELKIRKNY	BNCICERO
BUUP A		1	0	0	0	0	NEW	1702	-100	1602	YES	WC/BOCT	0	0	0	0	BUF THRU	CHI PROVISO
BUUP B		0.4	0	0	0	0	NEW	2317	-100	2217	NO	WC/BOCT	0	0	0	0	BUF THRU	CHI PROVISO
NPSE		1	0	0	0	1	NEW	2254	100	2354	NO	WC/IVAN	0	0	0	0	THRU	CHI PROVISO
CWCI		1	0	0	0	0	501	1600	100	1700	YES	WC/BOCT	0	0	0	0	BARR	CINCIQUEEN
CICW		1	0	0	0	0	500	1819	-100	1719	YES	WC/BOCT	0	0	0	0	CINCIQUEEN	CHI BARR
CIWER		1	0	0	0	0	691	1031	100	1131	YES	WC/BOCT	0	0	0	0	CHI BARR	ERWINTN
ERCW		1	0	0	0	0	690	1150	-100	1050	YES	WC/BOCT	0	0	0	0	ERWINTN	CHI BARR
CWTO A		1	0	0	0	0	509	2000	100	2100	NO	WC/BOCT	0	0	0	0	CHI BARR	TOLSTAN
TOCW		1	0	0	0	0	508	332	-100	232	NO	WC/BOCT	0	0	0	0	TOLSTAN	CHI BARR
CWTO B		0.4	0	0	0	0	508-2	800	100	900	YES	WC/BOCT	0	0	0	0	CHI BARR	TOLSTAN
IHCU A		1	0	1	0	0	384	745	100	845	YES	WC/IVAN	0	1	0	0	IHB BLUE IS	CUMBO
IHCU B		0.4	0	0.4	0	0	384-2	1445	100	1545	YES	WC/IVAN	0	0.4	0	0	IHB BLUE IS	CUMBO
IHGR		1	0	0	0	0	336	2200	100	2300	NO	PORT/IVAN	0	0	0	0	IHB BLUE IS	GRAPIDS
GRCW		1	0	0	0	0	327	427	-100	1327	YES	WC/BOCT	0	0	0	0	GRAPIDS	CHI BARR
IHSE		1	0	0	0	1	NEW	1000	100	1100	YES	WC/IVAN	0	0	0	1	IHB BLUE IS	SELKNY
SEBR		1	0	0	0	0	NEW	529	-100	429	NO	WC/RIJC	0	0	0	0	SELKNY	CLEARING
IHTO		1	0	0	0	1	NEW	400	100	500	NO	WC/IVAN	0	0	0	0	IHB BLUE IS	TOLSTAN
TOIH		1	0	0	0	1	NEW	1502	-100	1402	YES	WC/IVAN	0	0	0	1	TOLSTAN	IHB BLUE IS
WLCW		1	0	0	0	0	NEW	2224	-100	2124	NO	WC/BOCT	0	0	0	0	WILLARDO	CHI BARR
WLIH		0.8	0	0	0	0.8	NEW	209	-100	109	NO	WC/IVAN	0	0	0	0	WILLARDO	IHB BLUE IS
X500 CP TRAINS		0.8	0	0	0	0	X500	1945	100	2045	NO	WC/PORTR	0	0	0	0	IHB BLUE IS	MONTREAL
X501		1	0	0	0	0	X501	1330	-100	1230	YES	WC/PORTR	0	0	0	0	MONTREAL	BENSENV
X502		1	0	0	0	0	X502	45	100	145	NO	WC/PORTR	0	0	0	0	BENSENV	MONTREAL
X503		1	0	0	0	0	X503	30	-100	-70	NO	WC/PORTR	0	0	0	0	MONTREAL	SCHILLERPK
X504		0.8	0	0.8	0	0	X504	2200	100	2300	NO	WC/IVAN	0	0	0	0	CHI GIBSON	MONTREAL
X505		0.8	0	0.8	0	0	X505	1200	-100	1100	YES	WC/IVAN	0	0.8	0	0	MONTREAL	IHB BLUE IS
X511		0.8	0.8	0	0	0	X511	1630	-100	1730	YES	WC/RIJCT	0.8	0	0	0	TORONTO	BENSENV
X512		0.8	0	0	0	0	X512	745	100	845	YES	WC/BOCT	0	0	0	0	BENSENV	TORONTO
X514		0.8	0	0	0	0	X514	545	100	645	YES	WC/BOCT	0	0	0	0	BENSENV	MONTREAL
X517							PROVISIONAL SCHE		-100	-100		WC/RIJCT					MONTREAL	BENSENV
X530							PROVISIONAL SCHE		100	100		WC/BOCT					BENSENV	MONTREAL
X531							PROVISIONAL SCHE		-100	-100		WC/RIJCT					MONTREAL	BENSENV
X532							PROVISIONAL SCHE		100	100		WC/IVAN					SCHILLERPK	MONTREAL
X533							PROVISIONAL SCHE		-100	-100		WC/RIJCT					MONTREAL	SCHILLERPK
X534							PROVISIONAL SCHE		100	100		WC/IVAN					IHB BLUE IS	MONTREAL
X535							PROVISIONAL SCHE		-100	-100		WC/IVAN					MONTREAL	IHB BLUE IS
X747							PROVISIONAL SCHE		-100	-100		WC/IVAN					TORONTO	IHB GIBSON
TOTAL		53.8	2.4	6.2	1.8	6.2							2.4	3.8	3.2	3.0		

NUMBER OF EXISTING AND PLANNED SCHED	EX	53.8	(4 CP Port/Bensv)		
NUMBER OF EXISTING TRAINS		25.6	(4 CP Port/Bensv)	NUMBER OF EXISTING TRAINS OPERATING 6AM TO 6PM	15.0
NUMBER OF EXISTING TRAINS TO USE RIJCT ALTE		-1.6	Q135/137 rerouted	NUMBER OF EXISTING 6AM TO 6PM TRAINS TO USE RIJCT ALTERNATI	-1.6 Q135/137 rerouted
NUMBER OF EXISTING TRAINS TO USE IVANHOE A		-6.2	ALL TAKE	NUMBER OF EXISTING 6AM TO 6PM TRAINS TO USE IVANHOE ALTERN	-3.1 ALL TAKE
NUMBER OF NEW DAILY TRAINS (Weighted Avg. Fre		28.2		NUMBER OF NEW TRAINS OPERATING 6AM TO 6PM	12.2
NUMBER OF NEW TRAINS USING RIJCT ALTERNATI		-8.0		NUMBER OF NEW 6AM TO 6PM TRAINS USING RIJCT ALTERNATIVE	-3.2
NUMBER OF NEW TRAINS USING IVANHOE ALTER		-6.2		NUMBER OF NEW 6AM TO 6PM TRAINS USING IVANHOE ALTERNATIV	-3.0
REROUTES OF EXISTING TRAINS AS ABOVE		-7.8		REROUTES OF EXISTING TRAINS FROM ABOVE	-5.4
NET NEW TRAINS USING BOCT ALTERNATIVE (NE		6.2		NET NEW 6AM TO 6PM TRAINS USING BOCT (NEW MINUS REROUTED	0.6

FOOTNOTES

Source: Service Design CSXT. "New" means not an existing train at the time the base line counts were taken (1995)

Counts do not include 2 CSX Amtrak or 5 unit trains operating over refurbished Ft. Wayne line. Four CP Bensenville trains use CRC Porter to Pine

Many intermodal trains may be assumed to displace Conrail trains with the same destinations.

Attachment 3

ROUTE: APPLICANTS' CALUMET PARK TO PINE JUNCTION TO WILLOW CREEK [1]

					Per FCC			ICF Kaiser Calculations		
City	Road Crossed	USDOT AADT	Field ADT	RR	Current Delay Hours	Applicants' Delay Hours	FCC's Alternative Delay Hours	Current Delay Hours	Applicants' Delay Hours [2]	FCC's Alternative Delay Hours
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Gary	SR 12	14,820		CSX	68.258	130.517	65.455	-	54.490	-
East Chicago	Cline Av	3,000	-	CSX	9.109	17.458	8.775	-	7.399	-
East Chicago	SR 912	2,000	-	CSX	-	-	-	-		-
East Chicago	Cline Av/SR 912	500	-	CSX	2.277	4.364	2.188	-	1.823	-
East Chicago	***Euclid Av***	***7,500***	-	***CSX***	***34.544***	***68.051***	***33.125***	-	28.383	-
East Chicago	***Kennedy***	***7,325***	-	***CSX***	***33.738***	***64.510***	***32.352***	-	26.932	-
East Chicago	***Railroad Av***	***7,500***	-	***CSX***	***34.544***	***68.051***	***33.125***	-	28.383	-
East Chicago	Tod Av	2,000	-	CSX	9.109	17.458	8.755	-	7.291	-
East Chicago	***Indpls & SR20***	***13,650***	-	***CSX***	***62.869***	***120.213***	***60.287***	-	50.188	-
East Chicago	Baring Av	2,000	-	CSX	9.109	17.458	8.755	-	7.291	-
East Chicago	Magoun Av	2,000	-	CSX	9.109	17.458	8.755	-	7.291	-
East Chicago	***Columbia Av***	***15,000***	-	***CSX***	69.087	132.103	66.250	-	55.151	-
Whiting	Ash St	500	-	CSX	2.277	4.364	2.188	-	1.823	-
Hammond	Oak St Private	-	-	CSX	-	-	-	-		-
Hammond	***Calumet Av***	***17,600***	-	***CSX***	***81.062***	***155.001***	***77.733***	-	64.711	-
Hammond	Torrence Av	825	-	CSX	3.757	7.201	3.612	-	3.007	-
Hammond	Henry Av	250	-	CSX	1.139	2.182	1.094	-	0.911	-
Hammond	Johnson Av	250	-	CSX	1.139	2.182	1.094	-	0.911	-
Hammond	Cameron St	-	-	CSX	-	-	-	-		-
Hammond	Towle Av	-	-	CSX	-	-	-	-		-
East Chicago	Shetfield	8,030	-	CSX	36.372	70.093	35.152	-	0.032	-
East Chicago	***Front/117th Sts***	***3,000***	-	***CSX***	-	-	-	-		-
Hammond	***Hohman Av***	***10,500***	-	***CSX***	***48.091***	***92.062***	***46.169***	-	38.440	-
Hammond	Wabash	25	-	CSX	1.139	2.182	1.094	-	0.911	-
Calumet	Burnham Av	-	-	CSX	-	-	-	-		-
Calumet	Torrence Av	-	-	CSX	-	-	-	-		-
Calumet	Paxton Av	-	-	CSX	-	-	-	-		-
Calumet	I 94	-	-	CSX	-	-	-	-		-
SUBTOTALS for Calumet Park to Pine Junction					**516.928**	**992.909**	**495.957**		**385.347**	
Portage	Willow Creek	6,477	-	CSX	11.510	26.350	15.018	-	26.350	-
Gary	Private	-	-	CSX	-	-	-	-	-	-
Gary	SR 20	-	-	CSX	-	-	-	-	-	-
Gary	Tri State	-	-	CSX	-	-	-	-	-	-
Gary	***Countyline Rd***	***7,500***	-	***CSX***	***4.966***	***10.884***	***6.203***	-	***13.392***	-
Gary	Hobart Rd	3,000	-	CSX	1.986	4.354	2.481	-	5.357	-
Gary	Dunes Highway	-	-	CSX	-	-	-	-	-	-
Gary	Howard St	750	-	CSX	0.497	1.088	0.620	-	1.339	-
Gary	***Lake St***	***750***	-	***CSX***	***0.791***	***1.731***	***0.987***	-	***2.145***	-
Gary	Tennessee	-	-	CSX	-	-	-	-	-	-
Gary	Virginia	-	-	CSX	-	-	-	-	-	-
Gary	Broadway	-	-	CSX	-	-	-	-	-	-
Gary	Buchannon	-	-	CSX	-	-	-	-	-	-
Gary	***Clark Rd***	***7,250***	-	***CSX***	***4.801***	***10.521***	***5.996***	-	***10.119***	-
SUBTOTALS for Pine Junction to Willow Creek					**24.550**	**54.928**	**31.306**		**58.702**	
TOTALS for Route					**541.478**	**1047.836**	**527.263**		**444.049**	

/1 The intersections shown, except Front/117th Streets, were taken from those listed in "CRS_ACC.WK4." Although that intersection should have been originally listed, its delay hours value (28.529) was purposely omitted here to maintain equivalency. Intersections shown in bold & italics were evaluated in the traffic study.

/2 The FCC calculations from Pine Junction to Willow Creek have been recalculated to reflect the actual freight train timetable speed of 70 mph instead of 79 mph.

ROUTE: APPLICANTS' HOBART TO TOLLESTON TO CLARKE JUNCTION

					Per FCC Calculations			ICF Kaiser Calculations		
City	Road Crossed	USDOT AADT	Field ADT	RR	Current Delay Hours	Applicants' Delay Hours	FCC's Alternative Delay Hours	Current Delay Hours	Applicants' Delay Hours	FCC's Alternative Delay Hours
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Wheeler	Park Av	588	-	CR	-	0.3261	-	-	0.3261	-
Wheeler	Jones Rd/RT 625	1,304	-	CR	-	0.7231	-	-	0.7231	-
Porter	600N	1,896	-	CR	-	1.0514	-	-	1.0514	-
Hobart	County Line Rd	100		CR/NS	-	0.0555	-	-	0.0555	-
Hobart	Joliet	-	-	CR/NS	-	-	-	-	-	-
Hobart	Illinois Av	7,880	-	CR/NS	-	4.3699	-	-	4.3699	-
Hobart	Linda St	250	-	CR/NS	-	1.6611	-	-	0.1206	-
Hobart	Cleveland St	3,000	-	CR/NS	-	19.933	-	-	1.4472	-
Hobart	Lake Park	750	-	CR/NS	-	4.9833	-	-	0.3618	-
Hobart	Wisconsin St	750	-	CR/NS	-	5.0327	-	-	0.3651	-
Hobart	37th Av	-	-	-	-	-		-	-	-
Lake Station	Liverpool Rd	850	-	CR/NS	-	5.6477	-	-	0.4100	-
Gary	Martin Luther	750	-	CR/NS	-	5.0327	-	-	0.3651	-
Gary	Virginia St	750	-	CR/NS	-	4.9833	-	-	0.3618	-
Gary	21st St	3,000	-	CR/NS	-	19.933	-	-	1.4472	-
Gary	Broadway	17,890	-	CR/NS	-	120.0471	-	-	8.7096	-
Gary	Washington	3,000	-	CR/NS	-	19.933	-	-	1.4472	-
Gary	19th St	3,000	-	CR/NS	-	19.933	-	-	1.4472	-
Gary	Jackson St	250	-	CR/NS	-	1.6611	-	-	0.1206	-
Gary	17th St	750	-	CR/NS	-	4.9833	-	-	0.3618	-
Gary	Harrison St	750	-	CR/NS	-	4.9833	-	-	0.3618	-
Gary	15th St	3,300	-	CR/NS	-	21.9263	-	-	1.5919	-
Gary	13th St	3,000	-	CR/NS	-	19.933	-	-	1.4472	-
Gary	11th St	3,000	-	CR/NS	-	19.933	-	-	1.4472	-
Gary	Grant	3,600	-	CR/NS	-	23.9196	-	-	1.7366	-
Gary	10th Av	250	-	CR/NS	-	1.6611	-	-	0.1206	-
SUBTOTALS for Hobart to Tolleston:						**332.647**			**30.197**	
Gary	Taft St	3,000	-	CR	-	19.933	-	-	1.4472	-
Gary	5th Av	13,220	-	CR	-	88.7101	-	-	6.4361	-
Gary	4th Av	-	-	CR	-		-	-		-
Gary	Indiana Toll	-	-	CR	-		-	-		-
Gary	Clarke Rd	7,500	-	CR	-	1.7485	-	-	1.7485	-
SUBTOTALS for Tolleston to Clarke Junction						**110.392**			**9.6318**	
TOTALS for Route						**443.038**			**39.8285**	

REBUTTAL VERIFIED STATEMENT
OF
HOWARD A. ROSEN

My name is Howard A. Rosen. I am a Vice President of ALK Associates, Inc. I submitted a Verified Statement on behalf of CSX as part of the primary Application in this proceeding. My credentials are presented in that Statement.

CSX requested that I review the Responsive Application of New England Central Railroad (NECR), the Verified Statement of Mr. Dale Carlstrom submitted on behalf of NECR, NECR Responses to Interrogatories and documents produced by NECR. CSX requested that I focus my review on the traffic studies and claims concerning future NECR traffic that are presented in the Responsive Application and Mr. Carlstrom's Statement. This Statement presents the results and conclusions of my review.

Summary of Conclusions

In summary, the conclusions of my review are:

1. NECR has provided no foundation for its estimate of traffic losses due to the proposed transaction.

2. NECR has provided no foundation for its estimate of traffic gains if its requested conditions are approved.

3. NECR has failed to show why any of its customers would lose rail service if the proposed transaction is approved and its requested conditions are not.

4. NECR has failed to show how its requested conditions would enable it and the Connecticut Southern Railroad to achieve operating efficiencies.

5. NECR does not need approval of its requested conditions in order to offer its customers competitive routing options to Canadian Pacific (CP), Norfolk Southern (NS) and Guilford connections at or near Albany, NY.

6. NECR claims about the future expansion of CSX and NS services for lumber products into the Northeast and New England are not

consistent with its claims concerning the neutral and indifferent role of Conrail in the current marketplace.

In the remainder of this Statement, I provide the basis for each of these conclusions.

1. NECR has provided no foundation for its estimate of traffic losses due to the proposed transaction.

NECR estimates that it will lose approximately $8 million in revenue due to the proposed transaction. (NECR-4 at 4). In its discovery responses, NECR explains that it derived this amount from its forecasts of 1998 traffic volumes and management knowledge of traffic in New England and the Northeast. (NECR-6, Response to Interrogatory No. 14)(HAR-Exh. 1). However, NECR has provided no explanation of its method to develop these forecasts. It has failed to provide the details of its 1998 forecasts. It has failed to provide actual traffic and revenue information by customer for the years 1995 through 1997 that CSX requested in its discovery requests. Hence, CSX is unable to substantiate the traffic forecasts that are the underpinnings of NECR's estimate of losses due to the proposed transaction.

Further, NECR's method to identify the traffic within its forecasts that it would lose due to the proposed transaction is based on assumptions not supported within its application. NECR claims that it would lose all shipments of paper and wood products (STCC 24 and 26) to NECR customers and to customers of connecting shortlines that originate in Canada and that NECR receives from the Canadian National Railway (CN) at East Alburgh, VT. NECR claims that these losses would occur due to "CSX's and NS's access to producers in the South, their control of the New York and New Jersey area intermodal facilities and the advantages of single-line service. . . . The study further assumed that CSX and NS would establish distribution

centers on their newly acquired lines in the Northeast which would compete directly with NECR's customers." (NECR-6, Response to Interrogatory No. 14)(HAR-Exh. 1).

These assumptions incorporate several premises that are not established in the NECR application:

- that paper and wood products produced in the South are equivalent to or substitutes for the products produced in Canada;
- that products moved from the South into New York and New Jersey area intermodal facilities are likely to penetrate New England markets;
- that CSX and NS will be able to deliver products from the South, a considerably longer distance away from New England than Canadian sources, at a delivered price that will be attractive to New England customers;
- that distribution centers established by CSX and NS would materially change the competition in the markets in which NECR's customers currently operate; and,
- that New England consumers of paper and wood products would quickly and completely sever their longstanding relationships with Canadian producers and NECR-served distribution centers in favor of products produced in the South and transported by CSX and NS.

Furthermore, to the extent that the proposed transaction does permit paper and wood products produced in the South to be offered to New England consumers at lower prices, then these lower prices are a benefit of the proposed transaction for New England consumers.

In light of the absence of support for the development of the estimate of losses, and the unfounded assumptions allegedly used to develop the loss estimate, I do not find NECR's loss estimate to be credible.

2. NECR has provided no foundation for its estimate of traffic gains if its requested conditions are approved.

NECR estimates that it will gain approximately $7 million in revenue if its requested conditions are approved. NECR claims that most of this traffic will be overhead traffic originating in Canada and moving to New York. (NECR-4 at 8). NECR claims this traffic will earn it $5 million in annual gross revenues. (NECR-4, Carlstrom VS at 7). NECR also claims that it would be able to attract about 5,000 annual carloads, producing $2 million in annual gross revenues, moving to and from the Connecticut Southern Railroad (CSO). (NECR-4, Carlstrom VS at 7).

NECR has provided no explanation of its method to develop these estimates. They are based solely on "the general familiarity of NECR management with traffic moving to, from or through the New England area and traffic moving to New York which currently originates or could originate in Canada and which could move over the trackage rights lines." (NECR-6, Response to Interrogatory No. 18)(HAR-Exh. 1). NECR has not stated whether this traffic is currently moving by rail or by truck, or is not currently moving. NECR has not stated whether this traffic would be extended hauls on traffic already handled by NECR, or would be new traffic for NECR. NECR has provided no evidence that a current market exists for its proposed new services. It has provided no evidence that a potential market exists for its proposed new services. NECR has provided no detail on what its new service offerings would

be, and no evidence that shippers of the target traffic would find these offerings sufficiently attractive to in fact use them. It has provided no detail on the rules or guidelines it used to make the assessments that identify relevant traffic that could originate in Canada and that could use the trackage rights lines. Furthermore, NECR has no documents relating to the development of its traffic gain estimates. (NECR-6, Response to Document Request No. 17) (HAR-Exh. 1).

NECR's claim that most of the gained traffic will be moving to New York is not consistent with its requested conditions. NECR requests rights to operate into the Albany area and the New Jersey/New York Shared Assets Area (SAA) in order to interchange traffic with CSX and NS and other carriers. (NECR-4 at 3). NECR requests no rights to originate or terminate traffic in these areas. NECR requests no reciprocal switching arrangements with CSX or NS. Thus, it is not clear how NECR would actually deliver the traffic it would transport into New York.

In 1997, NECR will handle approximately 34,000 carloads that will generate $16.8 million in gross revenues (NECR-4, Carlstrom VS at 3). This suggests an average revenue per car of approximately $500. If the requested conditions are granted, NECR claims it will move 100 additional carloads per day originating in Canada that will generate $5 million in additional gross revenues. (NECR-4, Carlstrom VS at 7). Assuming 300 operating days per year, this claim represents 30,000 additional annual cars, an amount nearly equal to NECR's existing business for all commodities moving throughout North America. For traffic moving to New York, NECR service would be 1.5 to 2 times the distance of current NECR bridge service to Brattleboro, VT or Palmer, MA. However, $5 million for the movement of 30,000 cars suggests an average revenue per car of only $170 per car. NECR's claim that it will

provide twice the amount of service for double the number of cars at one-third the average revenue is clearly ridiculous.

Considering the absence of documentation of the method used to develop the estimated gains, the absence of evidence that there is traffic that would use expanded NECR services, the inconsistency between the traffic to be gained and the requested conditions, and the inconsistency between the estimated traffic volumes and revenues, NECR's estimated gains appear to be pure speculation.

3. NECR has failed to show why any of its customers would lose rail service if the proposed transaction is approved and its requested conditions are not.

The NECR system is a single, twisty, trunk line from East Alburgh, VT to New London, CT with one branch to Burlington, VT. Though NECR claims that its projected losses would "force NECR significantly to reduce service systemwide and to discontinue service altogether on the marginal sections of NECR's rail system" (NECR-4 at 4), NECR's Application does not identify any portions of its system that it would abandon if the proposed transaction is approved and its requested conditions are not. NECR's Application does not identify any portions of its system on which it would discontinue service if the proposed transaction is approved and its requested conditions are not.

III

]]] With this configuration of connections and customers, I believe NECR will operate its complete system post-transaction. Hence, NECR will be able to serve all its current and future customers.

NECR claims that some NECR customers will face an elimination or reduction in rail service. (NECR-4, Carlstrom VS at 6). In a work paper, NECR lists its customers projected to lose all rail service. (NECR 000438) (HAR-Exh. 5). [[[

]]] However, NECR has inverted cause and effect. These service reductions would not be due to NECR decisions *ex ante* to withdraw or curtail rail service. These changes would be NECR's response to reduced demand for NECR services by NECR's customers.

4. NECR has failed to show how its requested conditions would enable it and the Connecticut Southern Railroad to achieve operating efficiencies.

NECR claims that the requested trackage rights between Palmer, MA and West Springfield, MA will enable NECR and CSO to improve significantly their operating efficiencies. (NECR-4 at 5). However, NECR presents no explanation for how these efficiencies would be realized. It presents no evidence that the two railroads would be able to share locomotives, cars, crews, or other resources in ways that are not practical or feasible without the requested rights. In the absence of such evidence, NECR's efficiency claims can be considered only speculative.

5. NECR does not need approval of its requested conditions in order to offer its customers competitive routing options to Canadian Pacific (CP), Norfolk Southern (NS) and Guilford connections at or near Albany, NY.

NECR claims that, in the absence of its requested conditions, "CSXT will have strong incentive to favor its own routes by raising rates or reducing service for any traffic moving to the NSR destinations." (NECR-4 at 7). This claim mischaracterizes the competitive routing options that will exist if the proposed transaction is approved. NECR customers shipping to CSXT destinations will have the option of two-carrier NECR-CSXT service in place of three-carrier NECR-CR-CSXT service. This reduction in the number of carriers in the routing is a shipper benefit. NECR customers shipping to NS destinations will have the option of three-carrier NECR-Guilford-NS service in place of three-carrier NECR-CR-NS service. There is no route deterioration here. The Guilford route from its NECR junction at Brattleboro, VT to its CP and future NS junction at Mechanicville, NY is about 30 miles shorter than the

Conrail route from Palmer, MA to its CP and future NS junction at Albany, NY. Brattleboro is also more centrally located on the NECR system than Palmer. NECR claims that most of the traffic that would use its expanded services would be southbound traffic from Canada. For this traffic, the Guilford route via Brattleboro would also eliminate about 56 miles on NECR from Brattleboro to Palmer. Furthermore, NECR customers will continue to have the option to route traffic via NECR's northern CN gateway to and from CSXT and NS connections at Detroit, and a multitude of connections at Chicago.

In sum, the proposed transaction improves routing options for NECR customers shipping to and from CSXT destinations without reducing routing options to and from non-CSXT destinations.

6. NECR claims about the future expansion of CSX and NS services for lumber products into the Northeast and New England are not consistent with its claims concerning the neutral and indifferent role of Conrail in the current marketplace.

NECR claims that the proposed transaction will give CSXT and NS "significantly enhanced market power to the northeast to displace forest products moving into the northeast from Canada." (NECR-4, Carlstrom VS at 5). NECR also claims that in the current marketplace, Conrail offers a "neutral or indifferent gateway service" between NECR on the one hand and CSXT and NS on the other. (NECR-4 at 7). These claims are not consistent.

If Conrail has indeed provided a neutral or indifferent gateway service, then it is a fair corollary that Conrail has not been a barrier for forest products from the South to penetrate markets in the Northeast and New England. If this is true, then the proposed transaction represents no improvement in the access that products from the South will have to

northern markets. Assuming an efficient marketplace, products from the South have already established their best possible positions in northern markets. Thus, NECR fears of product displacements are unfounded.

In the alternative, if the proposed transaction does improve access to northern markets for products from the South, then the proposed transaction is removing a commercial barrier that is present in the current marketplace. The removal of this barrier will permit either greater product choices or lower product prices, or both, for consumers of forest products in the Northeast and New England. These are public benefits of the proposed transaction.

VERIFICATION

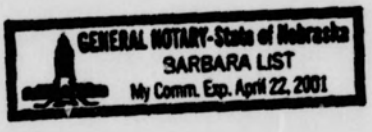
STATE OF Nebraska)
) ss.
COUNTY OF Douglas)

Howard A. Rosen, being duly sworn, deposes and says that he is Vice President of ALK Associates, Inc., that he is qualified and authorized to submit this Verified Statement, and that he has read the foregoing statement, knows the content thereof, and that the same is correct and true.

Howard A Rosen
Name

Subscribed and sworn to before me by HOWARD A. ROSEN this 9TH day of December, 1997.

Barbara List
Notary Public



NECR - 6

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 33388

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

STB FINANCE DOCKET NO. 33388 (SUB-NO. 75)

NEW ENGLAND CENTRAL RAILROAD, INC.
–TRACKAGE RIGHTS–
CSX TRANSPORTATION, INC.

RESPONSE OF NEW ENGLAND CENTRAL RAILROAD, INC., TO THE FIRST SET OF INTERROGATORIES AND REQUEST FOR DOCUMENTS OF CSX AND NORFOLK SOUTHERN

New England Central Railroad, Inc. ("NECR"), hereby responds to the First Set of Interrogatories and Requests for Production of Documents of CSX and NS[1] (CSX/NS-137), served November 7, 1997.

[1] "CSX" refers collectively to CSX Corporation and CSX Transportation, Inc., and "NS" refers collectively to Norfolk Southern Corporation and Norfolk Southern Railway Company.

HAR-Exh. 1

Response: See response to Interrogatory Nos. 9 and 10, and workpapers on file in NECR's depository. Documents responsive to this interrogatory will be placed in NECR's depository.

12. For each shipper identified in response to Interrogatory No. 9:

a. Have any of that shipper's shipments from any facility served by NECR ever moved by truck or any other mode of transportation not involving NECR during the years 1995, 1996, 1997 to your knowledge?

b. If the answer to the preceding subpart is "yes," identify separately with respect to each such facility the alternate transportation mode or modes by which such shipments moved.

Response: See response to Interrogatory No. 9. NECR is generally aware that many of the rail shippers located on the NECR use trucks to meet varying degrees of their transportation needs. NECR is unaware of any other alternate transportation mode used by these shippers. As to the shippers specifically identified in response to Interrogatory No. 9, the only alternative service these shippers have available, to the best of NECR's knowledge, is trucks.

13 State the volume of traffic that NECR contends it will lose if the Primary Application is approved without the conditions NECR requests:

a. In total; and

b. By shipper.

Response: See workpapers in NECR's depository.

14. Describe in detail how NECR calculated the $8 million estimate of annual revenue loss resulting from traffic diversions if the Proposed Transaction is approved, as reference on page 4 of the Responsive Application. The response should include, but not be limited to, a description of all assumptions used in the calculation, as well as a detailed explanation of the methodology employed.

Response: NECR's traffic diversion analysis was based on 1998 traffic projections for the NECR without the impact of the Proposed Transaction; testimony of Applicants' witnesses [e.g., Verified Statement of Joseph P. Kalt (CSX/NS-19, at 43), Verified Statement of Howard A. Rosen (CSX/NS-19, at 173-176), and Verified Statement of John Q. Anderson (CSX/NS-19, at 279-284)]; and the general knowledge of NECR management regarding traffic moving to, from and through the New England area specifically and the Northeast area in general.

The customers identified in the diversion study receive shipments of paper and wood products via NECR primarily from various Canadian origins. NECR handles the traffic from the Canadian border at East Alburgh to the individual customer location on the NECR. The customers, in turn, distribute the products throughout the New England and Northeast regions by truck. The study assumed that 100 percent of this interline traffic (STCC 24 and 26) would be diverted from NECR because of CSX's and NS's access to producers in the South, their control of the New York and New Jersey area intermodal facilities and the advantages of single-line service. The study also assumed that all paper and wood products traffic hauled by NECR for connecting shortlines would be diverted. The study further assumed that CSX and NS would establish distribution centers on their newly acquired lines in the Northeast which would compete directly with NECR's customers.

15. Identify all traffic to be operated over the line segments over which NECR seeks trackage rights, including but not limited to the number of trains, frequency, length in feet, number of cars, and commodities.

Response: NECR objects to this interrogatory to the extent it seeks "a description of all costs of providing the service" on the grounds that preparing a response would require an unduly burdensome and oppressive special study of countless hypothetical train movements. Without waiving this objection, NECR responds as follows:

NECR proposes to offer the shippers on its current rail system and those located on the lines of connecting rail carriers an efficient and economical rail switching service between NECR's rail lines and the gateways to which NECR seeks access. As with CRC today, NECR would have no reason to favor any of the connecting rail carriers and would offer the shippers comparable rate and service options to access the nearby gateways. NECR's costs of providing these services will depend on the nature of the traffic, the services requested, the volume of traffic tendered to NECR, and other factors. Other than the arrangement identified in response to Interrogatory No. 25, NECR has not worked out any interchange arrangements with any of the connecting carriers.

18. Describe in detail how NECR calculated the $7 million estimate of annual revenue gain resulting from traffic (sic) rights operations if the conditions requested by NECR are granted, as referenced on page 8 of the Responsive Application. The response should include but not be limited to a description of all assumptions used in the calculation, as well as a detailed explanation of the methodology employed.

Response: The $7 million estimate is based on the per car revenues NECR earns today and the general familiarity of NECR management with traffic moving to, from or through the New England area and traffic moving to New York which currently originates or could originate in Canada and which could move over the trackage rights lines.

c. No responsive documents exist.

d. NECR objects to this document request to the extent it seeks documents regarding privileged settlement negotiations between NECR and HRRC. Without waiving this objection, NECR responds as follows:

Non-privileged documents will be placed in NECR's depository.

16. Produce all agreements between NECR and CRC, including but not limited to agreements for switching, trackage rights interchange or haulage.

Response: NECR objects to this document request on the grounds that it is overbroad, unduly burdensome, and seeks information which is not relevant to any issue raised by NECR in these proceedings. NECR further objects to this document requests on the grounds that it seek confidential and sensitive commercial information, including information subject to disclosure restrictions imposed by contractual obligations with third parties. Without waiving these objections, NECR responds as follows:

Responsive documents, if any, will be placed in NECR's depository.

17. Produce all documents relating to NECR's estimate that it will generate $7 million in annual revenue if the conditions requested by NECR were granted, as stated on page 8 of the Responsive Application and page 7 of the Verified Statement of Dale Carlstrom.

Response: No responsive documents have been located.

18. Produce all documents relating to NECR's claim that if the Proposed Transaction is approved by the STB, "CSXT and NSR will be able to use their significantly enhanced market power to the northeast to displace forest products moving into the northeast from Canada," as stated on page 5 of the Verified Statement of Dale Carlstrom.

HAR-Exh. 1

HAR-Exhibit 2

[THIS PAGE INTENTIONALLY LEFT BLANK]

[THIS PAGE INTENTIONALLY LEFT BLANK]

[THIS PAGE INTENTIONALLY LEFT BLANK]

[THIS PAGE INTENTIONALLY LEFT BLANK]

[THIS PAGE INTENTIONALLY LEFT BLANK]

[THIS PAGE INTENTIONALLY LEFT BLANK]

[THIS PAGE INTENTIONALLY LEFT BLANK]

[THIS PAGE INTENTIONALLY LEFT BLANK]

[THIS PAGE INTENTIONALLY LEFT BLANK]

[THIS PAGE INTENTIONALLY LEFT BLANK]

[THIS PAGE INTENTIONALLY LEFT BLANK]

[THIS PAGE INTENTIONALLY LEFT BLANK]

[THIS PAGE INTENTIONALLY LEFT BLANK]

[THIS PAGE INTENTIONALLY LEFT BLANK]

[THIS PAGE INTENTIONALLY LEFT BLANK]

[THIS PAGE INTENTIONALLY LEFT BLANK]

[THIS PAGE INTENTIONALLY LEFT BLANK]

[THIS PAGE !NTENTIONALLY LEFT BLANK]

[THIS PAGE INTENTIONALLY LEFT BLANK]

[THIS PAGE INTENTIONALLY LEFT BLANK]

[THIS PAGE INTENTIONALLY LEFT BLANK]

HAR-Exhibit 3

[THIS PAGE INTENTIONALLY LEFT BLANK]

[THIS PAGE INTENTIONALLY LEFT BLANK]

[THIS PAGE INTENTIONALLY LEFT BLANK]

H.R. Exhibit 4

[THIS PAGE INTENTIONALLY LEFT BLANK]

HAR-Fxhibit 5

HAR-Exhibit 6

REBUTTAL VERIFIED STATEMENT
OF
PETER A. RUTSKI

My name is Peter A. Rutski. I am Vice President, Business Planning, CSX Intermodal ("CSXI"). I have held this position since 1995. My business address is 301 West Bay Street, Jacksonville, FL.

I hold a B.S. degree from the U.S. Coast Guard Academy (1965) and an M.B.A. from the Wharton School of Business (1971). I have been employed in the railroad industry since 1971. I began my career in the industry with the Southern Railway as its Manager-Pricing (1971 - 1976), the Rock Island as its Manager-Equipment Planning (1976 - 1978) and Conrail as its Director of Intermodal Marketing (1978 - 1984). I have worked with CSX in connection with intermodal traffic since 1985, serving as Assistant Vice President, Intermodal Sales, CSX Distribution Services (1985 - 1987), Assistant Vice President, Marketing, CSX Intermodal (1987 - 1989), Assistant Vice President, Lane Management (1989 - 1993) and Assistant Vice President, Operations Planning, CSX Intermodal between 1993 and 1995, after which time I assumed my current position.

CSXI is the intermodal marketing affiliate of CSX Transportation, Inc. Among other things, CSXI sells intermodal services on trains operated by CSXT and other rail carriers, operates intermodal terminals and provides drayage services.

This verified statement is offered in response to the statements of several parties that submitted comments or responsive applications concerning intermodal transportation. The parties whose comments I will address in this statement are: American Trucking Associations; APL Limited; Genesee Transportation Council; J.B. Hunt; NYK Lines; Port of New York and New Jersey; Stark Development Board; State of Michigan

Department of Transportation; State of New York/New York City Economic Development Corporation/Congressman Nadler, et al.; and Transportation Intermediaries Association.

The initial Verified Statement of John Q. Anderson, CSXT's Executive Vice President, Sales and Marketing set forth in significant detail the advantages that the Conrail transaction will bring to intermodal rail customers. See CSX/NS-19, Vol. 2A at 290-308. Enlarging the size of the CSXT rail network to include the Conrail lines that will be allocated for use by CSXT translates into a broader reach for CSXT system single-line rail service. Generally, such single-line service is an essential ingredient to our ability to compete effectively for all-highway carriage and to attract such freight to our intermodal network. The transaction also will result in reduced intermodal transit times on major traffic corridors (e.g., I-95 corridor between the Southeast U.S. to the Northeast U.S., and the Memphis Gateway corridor between Memphis, on the one hand, and the Mid Atlantic and Northeast, on the other), which will in turn open up opportunities for competitive intermodal service that do not exist today. In addition, intermodal transportation costs will be reduced, service frequency and reliability will improve and equipment will be more efficiently utilized.

We will also be investing in significant capital improvements to the intermodal network. These improvements, which include building a new intermodal terminal at 59th Street in Chicago to facilitate "steel-wheel" interchanges with Western railroads, and upgrading the B&O corridor between Chicago and Cleveland, are described in detail in the Operating Plan submitted with the Application (CSX/NS-20, Vol. 3A at 147-161).

As a result of these improved opportunities to transport intermodal freight, we believe that a significant amount of freight is likely to be diverted from highway carriage to

intermodal carriage, resulting in significant environmental and safety benefits. These expected truck-to-rail diversions, and the public benefits associated with them, are described at length in the Verified Statements of Joseph Bryan and Darius Gaskins submitted with the Application (CSX/NS-19, Vol. 2A at 88, 240) and in the Environmental Report submitted with the Application.

No party has seriously challenged the proposition that the transaction will improve intermodal service for shippers and attract large volumes of intermodal freight to an expanded CSX rail system. Nor has any party challenged the environmental or safety benefits associated with the diversion of freight from the highways to an intermodal network. In fact, over 250 intermodal shippers have voiced their support for the acquisition, including motor carriers (such as Yellow Freight, Landstar, and Dart), Intermodal Marketing Companies (such as Quality Intermodal, Hub, Mark VII, and Alliance Shippers) and ocean carriers (such as Hanjin Shipping Co., Ltd., NOL (USA) Inc., Crowley American Transport, Inc.).

Of those parties that filed comments by October 21, relatively few have raised issues pertaining to intermodal transportation, and none has raised an issue that would warrant the imposition of conditions. While each commentor has raised issues unique to its circumstances, the factor common to these parties is that they have viewed this proceeding as an opportunity to improve their situation over that which currently exists or to press a regulatory agenda that has little or nothing to do with this proceeding. I will address each of these comments.

American Trucking Associations. To my knowledge, the American Trucking Associations ("ATA") previously has not participated in a rail merger or acquisition proceeding. Its request for conditions in this proceeding is (ATA-6) surprising because ATA's motor carrier constituency will benefit from this transaction, as the testimony of well over 100 motor carriers in support of the transaction demonstrates. Many of the motor carriers will benefit because the larger CSX and NS rail networks that will result from the Conrail transaction will allow motor carriers an enhanced opportunity to use efficient intermodal services to move their freight over a long haul. As the cost of long-haul highway carriage increases and driver shortages continue, motor carriers are increasingly partnering with rail carriers to transport freight significant distances using intermodal services efficiently. Thus, in 1996, CSXI transported over 61,000 units for truckload and less-than-truckload motor carriers (excluding UPS), up over 30 percent from 1995 levels. CSXI expects that it will improve by at least 20 percent on 1996 levels during 1997, and that motor carrier use of intermodal services will increase over the foreseeable future.

Instead of applauding the partnerships that have developed between motor carriers and railroads, ATA has requested that a series of onerous conditions be placed on the Conrail transaction. I will next address each of these proposed conditions and show why each should be rejected.

Proposed Equipment Safety Condition. ATA argues that the predicted diversion of approximately one million all-highway units to intermodal services offered by CSX and NS will result in serious safety concerns warranting Board consideration. These safety concerns arise because, according to ATA, the motor carrier involved in intermodal

transportation has no control over the maintenance and repair of intermodal equipment and "virtually no opportunity to inspect the railroad controlled equipment." ATA-6 at 3. ATA thus argues that Applicants should be required to "ensure the roadworthiness of all intermodal equipment prior to releasing the equipment to a motor carrier for highway use." Id. at 5. In other words, ATA is asking the Board to re-write the Federal Highway Safety Administration ("FHWA") rules governing motor vehicle safety at 49 C.F.R. Parts 390-396, and more specifically the portions of these rules that squarely place the responsibility for the inspection and repair of equipment on the motor carrier. See 49 C.F.R. § 396.1 (1996).

For several reasons this requested condition should be denied. If any regulatory proceeding is warranted on this issue, such a proceeding should be instituted by the FHWA, which is the agency that has promulgated the federal motor vehicle safety rules about which ATA is complaining. Those rules, particularly 49 C.F.R. § 396. squarely place the responsibility for operating safe equipment (including intermodal equipment) on public highways on the motor carrier, and have done so since at least 1979, when the current rules were adopted. If the rules are to be changed, it is FHWA that should so decide.

ATA apparently recognizes that FHWA is the proper forum in which to raise its concerns. On March 17, 1997, ATA and the ATA Intermodal Conference submitted to FHWA a Joint Petition for rulemaking to FHWA asking the agency to require parties that tender intermodal equipment to motor carriers to ensure the roadworthiness of that equipment. The arguments set forth in that petition (see Volume 3) were virtually identical to those presented by ATA here. On August 12, 1997, FHWA granted ATA's petition and has decided to publish an advance rulemaking notice on this matter. See Volume 3.

FHWA is clearly the correct forum to consider proposed amendments to its own rules. A proceeding before that agency would be informed by the views of all interested parties -- motor carriers (ATA and non-ATA members), major and shortline railroads, ocean carriers, terminal operators, equipment owners and other interested parties. ATA's own 1996 Intermodal Terminal Survey, on which it relies in its comments, recognizes that equipment roadworthiness "deserves more systematic examination by the intermodal industry -- carriers, equipment owners and terminal operators." By contrast, a proceeding before the Board involving the acquisition of control of one railroad by two other railroads is not the proper forum for re-writing the rules of another agency, particularly on matters that have nothing to do with this transaction.

The equipment safety issue that ATA raises is, in any event, a phony one. At intermodal terminals operated or controlled by CSXI, motor carriers are afforded ample time, space and opportunity to inspect equipment before it is placed on the highway by those carriers. Once the motor carrier driver takes custody of the equipment at an intermodal terminal, the responsibility properly rests with that carrier to ensure that it is in safe condition consistent with FHWA rules. CSXI provides the terminal space and the opportunity for the equipment to be inspected and provides the facilities for any repairs that may be required. It is CSXI's policy to pre-inspect all empty equipment prior to releasing it to a motor carrier to conduct its own inspection. If the motor carrier finds a problem with the pre-inspected equipment, CSXI either will repair it or replace it with another empty. If possible, CSXI will repair loaded equipment immediately upon notification. If extensive repairs are required, the unit will be taken out of service for repair and the motor carrier will

be notified when repairs are completed. Privately-owned equipment inspected and in need of repair will be repaired upon the authorization of the equipment owner and, if no authorization is obtained, the equipment is not released from the terminal. Also, no limits are placed on the amount of time that the driver can devote to inspecting the equipment to ensure the safety of its condition.

CSXI maintains its own on-terminal repair facilities at several locations and utilizes mobile repair units at other terminals. CSXI also maintains contractual relations with off-site, non-affiliated repair facilities to handle repairs that cannot be addressed by a mobile repair unit.

None of the processes concerning equipment safety will change as a consequence of the transaction. To the extent that more inspection lanes or other repair facilities are needed, CSXI will arrange for them. However, CSXI believes that its current facilities are fully capable of handling an increased workload and ATA offers no evidence to the contrary.

Finally, ATA does not discuss the fact that diversions of equipment from all-highway transport to intermodal rail transport will result in substantially enhanced highway safety. The safety benefits of these diversions are discussed in the Environmental Report submitted with the Application.

Proposed "Back-Solicitation" Condition. ATA next argues that a condition should be imposed prohibiting the practice of requiring motor carriers purchasing intermodal services from providing to the railroad the name of the motor carrier's customer. ATA argues that this practice opens the door to back-solicitation of these customers by railroads.

ATA does not argue that this request is related in any way to this transaction, and plainly it is not. Since 1993, CSXI has required, for all domestic business, that truckload motor carriers disclose the names of the parties on whose behalf they are tendering intermodal cargo. CSXI imposes the same requirement on Intermodal Marketing Companies ("IMCs") on whose behalf intermodal cargo is transported. The transaction will have no effect on this four-year-old practice and for that reason alone ATA's attempt to impose a condition here relating to that practice should be rejected.

CSXI requires the names of the underlying cargo interests because, like any other business, there is value in knowing which types of businesses utilize intermodal carriage. This knowledge helps CSXI direct its broad marketing efforts (e.g., trade magazine advertisements) appropriately. However, CSXI does not back-solicit freight from any motor carrier, and ATA offers no evidence that it ever has done so. In fact, ATA's responses to CSX's and NS' First Set of Interrogatories and Request for Production of Documents (Interrogatory Response, ATA-7) indicate that ATA is not aware of any such back-solicitation. See Volume 3.

ATA suggests the required disclosure of the names of its members' customers to CSXI or NS constitutes a violation of 49 U.S.C. § 14908, the statute governing the unlawful disclosure of information about cargo tendered to a carrier. This statute reaches disclosures made under circumstances where the "information may be used to the detriment of the shipper or consignee or may disclose improperly to a competitor the business transactions of the shipper or consignee." CSXI does not use the information attained from

its motor carrier partners in this prohibited way -- the information is kept confidential by CSXI and not disclosed to any other person.

Proposed "Anti-Discrimination Condition". ATA argues that a condition should be imposed prohibiting CSXT from discriminating against motor carriers with respect to prices and services. It suggests that CSXT may discriminate in favor of CSXI over competing motor carriers. Such discrimination, according to ATA, may occur in order to improve the use of rail equipment, attain "monopoly profits," or eliminate competition. ATA-6 at 12. This requested condition is, as with the other ATA conditions, unrelated to this transaction.

First, ATA misperceives CSXI's role. As I stated above, CSXI is the affiliate of CSXT that, among other things, markets intermodal services on trains operated by CSXT. Thus, if an intermodal customer wishes to transport freight on CSXT, it will deal with CSXI. The notion that CSXT could somehow discriminate in favor of CSXI thus does not comport with the relationship between these two entities.

Second, as I will discuss below, CSXI regularly transports freight for motor carrier competitors and with IMCs with which it competes. We retain good commercial relations with these customers, notwithstanding that they also are competitors. CSXI has a commercial interest in offering all prospective customers of intermodal services fair and reasonable rates -- the intermodal business is highly competitive and failure to provide fair and reasonable rates is simply bad business. In fact, ATA acknowledged in its discovery responses (Interrogatory Response, ATA-7) that it does not allege that any discrimination has

occurred, and that its concern relates strictly to possible future discrimination. See Volume 3.

In effect, ATA is asking for some sort of rate regulation for intermodal services, a notion that runs counter to the highly competitive world in which intermodal services are offered. The free market provides the "regulation" that ATA is asking the Board to impose, as the Interstate Commerce Commission recognized when it exempted intermodal transportation from regulation in 1981.

Proposed "Open Access" Condition. ATA asks the Board to impose a condition requiring "open access" to rail lines so that any rail operator could operate over any rail line. ATA offers few details of its vision of the future rail system, but whatever that design may be, it has again chosen the wrong proceeding to present its ideas. Were open access a viable idea warranting further study, such study would be appropriate in a proceeding that involves all interested parties, not a proceeding directed to the request of two railroads to acquire control of a third in the Eastern U.S.

In addition, open access by any rail operator to any rail line is an idea whose time plainly has not come -- and given the network of trackage rights, haulage rights, reciprocal switching and interchange agreements that already exists in the rail industry, the need for "open access" is unproven. I understand that neither rail shippers, shortlines nor any other party involved in rail transportation has raised the issue in this proceeding. Whatever ATA's motive for raising the issue here, it has clearly chosen the wrong proceeding and its request merits no further Board consideration here.

APL Limited ("APL"). APL, an ocean carrier, logistics company and reseller of stacktrain and other transportation services, is a major intermodal customer of Conrail. It is currently a party to a long-term transportation contract that was negotiated with Conrail in 1988. This contract expires on June 1, 2004.

In its Response and Request for Conditions (APL-4), APL acknowledges that it has been very satisfied with the service that Conrail has provided under the transportation contract. However, APL expresses several concerns about the post-transaction services that it will receive, particularly from CSXI/CSXT. These concerns are focused on the fact that CSXI competes with APL for intermodal surface transportation business and that Sea-Land, which is owned by CSX Corporation, also competes with APL as an ocean carrier. APL is apparently concerned that, because of this competitive situation, CSXI will not have sufficient incentive to work cooperatively with APL as Conrail has done, and may use its position as a transportation provider to undermine APL's business opportunities, offer second-rate service or even steal APL's customers. For that reason, among others, APL wants the right to renegotiate its transportation contract following the transaction. Specifically, it asks the Board to nullify Section 2.2(c) of the Transaction Agreement for all shippers, or at least for all intermodal shippers or, failing that, for APL alone.

By virtue of Section 2.2(c) of the Transaction Agreement, the contract that APL entered with Conrail will remain in effect until the contract expires. That section of the Transaction Agreement provides a means for allocating Conrail's existing transportation contracts between CSX and NS. With some simplification, I understand that Section 2.2(c) provides that (1) where either only CSX or only NS can provide single-line service under a

contract, the railroad that can provide such service will provide it and (2) where both can provide single-line service, performance of services required by the contracts will, as a totality, be divided equally between them. Section 2.2(c) further provides that there is a presumption against dividing a contract between a single origin and single destination between both carriers. These contracts will be allocated by agreement between CSX and NS or, if they involve multiple points, by allocating a portion of the contract to one carrier and another portion to the other.

I understand that APL's Section 2.2(c) arguments are addressed in detail in the Narrative that accompanies this rebuttal filing. Further, APL's operational concerns, set forth in the Verified Statements of Peter Baumhefner, Director of Stacktrain Operations for APL Land Transport Services, Inc., submitted with APL-4 and APL-8, will be addressed in the Rebuttal Verified Statement of John Orrison.

Here, I will address APL's contentions that it requires the right to negotiate a new contract because its competitor, CSXI, may be involved in providing service to it in place of Conrail. In my view, APL should not be entitled to renegotiate the long-term contract that it voluntarily entered with Conrail and Section 2.2(c) should stand.

At the outset, I want to assure APL that none of its fears are warranted. I am familiar with the nature of APL's high-quality services and with the importance to APL, and to any major user of intermodal services, of developing a cooperative relationship with a railroad. We intend, at CSXI, to commit our full energies to making APL as satisfied with our services as it claims to be satisfied with Conrail's services. In fact, our goal is to ensure

not only that APL receives at least the same level of service from CSXI as it receives today from Conrail, but wherever possible to provide improved service.

The Conrail transaction will allow us an opportunity to offer improved intermodal services. With expanded single-line services, we will be able to provide efficient intermodal services on a variety of new east-west and north-south traffic lanes (e.g., the I-95 corridor between Boston and Florida) and to improve transit times. As I noted above, larger rail networks, and increased traffic volumes, translate into a broader reach for intermodal services, offer opportunities for new routings and services and make intermodal services more competitive with all-highway service. Equipment utilization will also improve. Each of these transaction benefits will reach all of our intermodal customers, including APL.

APL will also benefit from important capital improvements that we are making to the CSXI/CSXT system to speed the flow of intermodal freight. These include a new $30 million state-of-the-art intermodal terminal now under construction in Chicago at 59th Street. From this facility, which will be completed in September 1998, CSXI will be able to improve "steel wheel" connections for APL traffic transferred to/from UP, and reduce interchange by up to two hours. In addition, APL will benefit from the over $200 million B&O double tracking project between Chicago and Greenwich that is now well advanced, and from the planned capacity improvements along the River Line between Selkirk and Northern New Jersey designed to alleviate congestion on that line. All of these and other improvements to the intermodal network are detailed in the Operating Plan filed last June as part of the Application. CSX/NS-20, Vol. 3A at 147-161.

The Verified Statement of APL President and CEO Timothy J. Rhein (APL-4) states that a strong, partner-based relationship has developed between APL and Conrail under the 15 year contract negotiated by APL. While I recognize that he is concerned that this relationship will not survive this transaction, I can assure him that CSXT and CSXI will respect APL's contract rights and continue to provide the level of service that APL deserves. Mr. Rhein and other APL witnesses frequently reiterate that APL has been very satisfied with its contractual relationship with Conrail. This transaction will not affect the contract terms under which that relationship has developed -- these terms will be honored (under Section 2.2(c)) in all respects by CSXT/CSXI and NS.

APL argues that it will not achieve competitive benefits that non-contract shippers with which it competes will achieve. However, APL has not identified any of these non-contract shippers or explained how this transaction will impair its competitive position in relation to those entities. In any event, APL will retain the protection offered by the most-favored-nation ("MFN") provision in its contract, which we will fully respect. Further, as APL observes repeatedly throughout its submission, it is a very large and sophisticated player in the intermodal transportation business. APL is well equipped to protect its ability to remain a high-quality provider of intermodal services, and we will work with it to that end.

I understand that APL has also asked the Board for a condition that would prohibit CSX or NS from discriminating in favor of an affiliated intermodal service provider or ocean carrier. In that regard, Mr. Rhein expresses concern about CSXT's affiliation with CSXI and Sea-Land. Mr. Alan C. Courtney, APL's Director of Customer Processes for the

Stacktrain Services Group of APL Land Transport Services, Inc., also expresses these same concerns about APL's fate being left in the hands of CSXI (APL-4).

Respectfully, these concerns are unfounded. As stated above, a non-discrimination condition is unnecessary because the marketplace ensures fair intermodal competition. In intermodal transportation, railroads regularly provide service to competitive rivals; competitors are often also partners. CSXT is not the only railroad that offers intermodal services in competition with entities that purchase intermodal services from it -- every major railroad, including Conrail, does so. Almost by definition, intermodalism involves using a competitor's services.

Mr. Courtney acknowledges that competitor/partner relationships are hardly unusual in the intermodal world:

> The result of all of this is that there are multiple levels of competition in the intermodal environment. Railroads compete with other railroads. Railroads compete with trucks. Over the road trucks compete with trucks utilizing rail intermodal service. Stacktrain operators compete with other stacktrain operators, with motor carriers and with rail carriers. IMCs [Intermodal Marketing Companies] compete with each other and with motor carriers.

APL-4, Courtney VS at 7.

Mr. Courtney proceeds to offer the following example of the web of partnership/competitive relationships that characterize the intermodal sector of the rail business:

> As an example, Beneficial Owner ABC has a shipment to make from X to Y. ABC can select between about ten IMCs to handle its business. Each of those IMCs is in turn leveraging the competition between APL, Burlington Northern and Santa Fe Railway Company, CSXI and Union Pacific Railroad Company's EMP program for rates, equipment and service to handle that business. The IMCs will play each of the railroads

> against each other and against APL. Shipper ABC can also select from among high-service motor carriers who can offer over-the-road trucking or from among the three or four motor carriers who compete for the business offering intermodal service. The motor carriers compete both among themselves and also with the IMCs. The IMCs both work with motor carriers offering substitute truck brokerage service and compete with the motor carriers.

APL-4, Courtney VS at 7-8.

Mr. Courtney might just as well have used an example involving CSXI. CSXI today works with, and provides services to, a large number of its competitors. These include transcontinental motor carriers (J.B. Hunt and Schneider) to which CSXI offers premium arrangements. CSXI's 1997 business for these competitors is up nearly 100 percent since 1995. CSXI also regularly provides service to IMCs with which it competes (such as the Hub Group) and steamship companies (such as Maersk), each of which also competes with Sea-Land.

CSXI's relationship with NYK Lines, an ocean carrier which also owns an intermodal reseller (GST) -- similar to the APL situation -- offers a further illustration of this point. NYK today transports freight from origins in Japan to the Toyota facility at Georgetown, KY, using the combined services of UP to St. Louis and CSXT to the CSXI terminal at Cincinnati, which is near Georgetown. NYK competes directly for these shipments with Sea-Land, which (at Chicago) uses the services of NS to transport its containers directly to Georgetown. For westbound intermodal freight from the Cincinnati/Georgetown area, NYK competes directly with CSXI, but chooses to purchase the transportation of its freight from CSXI. This situation -- NYK competing with Sea-Land for eastbound freight and with CSXI for westbound freight, while using CSXT's services for

both directions -- has existed for ten years, without any hint from NYK of a discrimination problem. There is no reason why a similar CSXI/APL relationship could not develop.

Mr. Rhein or Mr. Courtney might also have discussed how Conrail today provides intermodal services for APL's direct domestic competitors, such as J.B. Hunt and Schneider, as well as numerous international carriers, including Sea-Land, Maersk and K-Line. I understand that Conrail -- like the Western railroads that APL uses -- is also today marketing its own intermodal freight services in direct competition with APL. Conrail sells these competitive intermodal services through the same IMC network as APL. Examples include rail trailer services and EMP stack service.

The Conrail transaction would not change this partner/competitor relationship between APL and the railroads that service its freight. It would simply substitute CSXT/CSXI and NS for Conrail. Thus, I must respectfully differ with APL witness Baumhefner, who claims on page 14 of his Statement (APL-4) that APL cannot work with CSXI because CSXI is a competitor with APL's domestic stacktrain services. Conrail and UP, the primary service providers to APL today, are also competitive with APL in this same market and that has not stopped APL from developing its close working relationship with Conrail.

Mr. Rhein explains on pages 20-21 of his Statement that APL has been able to work with Conrail to transport the freight of so-called "Third Party International" or "TPI" traffic offered by ocean carriers with which APL competes. He states that while Conrail has offered APL favorable rates for this traffic, CSXI "would simply refuse, and go after the business itself." Id. at 21.

Mr. Rhein's discussion of TPI traffic further underscores the partner/competitor relationships that exist in the intermodal world -- the TPI's are APL ocean carrier competitors for which APL provides transportation services. This is little different from the APL/CSXI relationship that we would work hard to develop.

As to APL's concern that CSXI will attempt to steal APL's TPI traffic, I can assure APL that we will not attempt to do so. This is not the way we do business. CSXI regularly handles freight today for ocean carriers that also tender TPI freight to CSXI. For example, CSXI transports freight for Express Systems Intermodal ("ESI"), an affiliate of the ocean carrier Orient Overseas Container Lines ("OOCL"), as well as for TPI's whose traffic is controlled by ESI. CSXI also handles large volumes of TPI freight tendered to it by large IMCs such as NYK-owned GST, and Hub City, which tenders TPI traffic to CSXI through its HLX International affiliate. This TPI traffic handled by CSXI has grown dramatically over the past year, clear evidence that GST, Hub City, OOCL and other major providers of TPI traffic do not view CSXI as a commercial predator out to capture their TPI traffic.

APL witness Robert Sappio focuses attention on the fact that Sea-Land, which is affiliated with CSXT, is a major competitor of APL. He claims that CSXI would discriminate in favor of Sea-Land to APL's detriment.

I can assure Mr. Sappio that if CSXI made it a practice to unreasonably disadvantage other ocean carriers, those carriers would take their business elsewhere. Approximately 40 percent of CSXI's intermodal business comes from international ocean shipping customers other than Sea-Land. As noted above, numerous carriers submitted letters of support for this proposed transaction with Conrail. Among those supporting the

transaction was NOL (USA) Inc., the American affiliate of APL's new parent company, Neptune Orient Lines. See CSX/NS-21, Vol. 4D at 555. The NOL (USA) support letter discussed the equipment efficiencies and the expanded intermodal opportunities that will result from the transaction.

CSXI's business derived from major ocean carriers has shown strong growth in recent months. During the first eleven months of 1997, the volumes tendered by ocean carriers is up dramatically and CSXI's overall international business is up 6 percent over 1996. This pattern of growth would not occur if the discrimination that concerns APL existed.

Mr. Rhein argues that administration of Conrail's contract with APL would become unworkable and pose antitrust concerns as a result of Section 2.2(c). APL-4, Rhein VS at 17-19. We would, however, work to ensure that the contract is properly and lawfully administered and are confident in our ability to do so, with APL's full cooperation.

As I have noted above, in providing service to APL if the transaction is approved, CSXI and CSXT would be bound by the terms of the Conrail contract. APL would attain the full benefit of its own bargain following any approval of the transaction. We recognize that APL is an attractive customer. Its account will receive at least the same levels of service, interest, cooperation and energy that it claims to have received from Conrail. We have consistently demonstrated our willingness to serve and work with customers of all types and to meet special service needs. It is in our interest to do so, just as it was in Conrail's interest to do so.

With respect to contract administration, Mr. Rhein questions how CSX and NS will price new services with respect to dual points, those served by both carriers. He also questions how we will administer the MFN provision in the APL contract. Of course, we have not seen the APL contract, which makes it difficult for me to comment on specifics. I can assure APL that we will work cooperatively with it and NS to address issues that may arise. We address transportation contract questions all the time, and are well-equipped to do so in APL's case. To the extent that MFN questions cannot be handled as they are by Conrail today (and for most APL traffic lanes, either CSX or NS will be allocated responsibility on the lane), the services of competent third party neutrals can be used to resolve any MFN issues on a basis that does not disclose confidential information improperly.

Each of the other contract administration concerns that Mr. Rhein raises at page 19 of his Statement merely restate APL's concern that CSXI will work to undermine APL's competitive abilities. The reality is that CSXI will work with APL to meet its needs, just as we work successfully with other intermodal providers today.

Mr. Courtney claims at page 13 of his Statement that CSX and NS have refused to talk with APL about services which would be delivered to it post-transaction. APL-4 at 131. In fact, we have met with APL officials on three separate occasions to discuss the Conrail transaction and the service that APL would receive if the transaction were approved.

At an April 16, 1997 meeting in Phoenix, I and a team of my colleagues (composed of CSXI's Assistant Vice President, Rail Contracts & Services; Assistant Vice

President, International Sales; and Vice President, Sales) met with a team of APL executives to undertake a detailed review of APL's concerns. We adhered to APL's agenda and discussed, among other matters, the services that CSXI could offer to APL post-transaction.

On May 6, I and several of my colleagues, including our service design officials, again met with a team of APL representatives in Chicago to review APL's operating philosophy and service requirements and to tour the relevant Chicago-area facilities of APL and CSX. Presently, as described by APL witness Peter Baumhefner, APL must "steel-wheel" solid blocked cars to Conrail's Ashland Avenue and deramp/ramp and "cross-town" mixed cars to/from Conrail's 47th Street and other intermodal facilities in the Chicago area. At our May 6 meeting, APL described in detail the service failures and costs that it presently experiences with missed connections at the Ashland Avenue and 47th Street facilities and how a combined Steel-Wheel/Lift-On/Off facility -- such as that which CSXI is constructing at 59th Street in Chicago -- would benefit APL. We provided APL officials, including Mr. Baumhefner, with a tour of the 59th Street property and described our plan for the combined facility. APL offered an enthusiastic endorsement of the concept behind the 59th Street facility, viewing the CSX proposal as a way to improve its service and reduce the cost and complexity of APL's Midwest operation. APL advised us at this meeting that on occasion it can take as long as 8-12 hours for train crews to perform interchange between Global I and Ashland Avenue. We explained to APL that transit times would be similar to those that it has at Ashland Avenue, but with a reduction in congestion and delay by virtue of the more advantageous location of the 59th Street facility.

At the same meeting, we advised APL that CSXI will have the capability to rework APL's stack cars at 59th Street to insure proper blocking and improve car utilization. This would also include reworking conventional cars to move loads to double-stack cars and vice-versa for connections, eliminating work now done by APL at UP's Global I terminal. Materials prepared in connection with our May 6 meeting are included in Volume 3.

Our team met with APL once again on June 25 at Jacksonville to review the status of the Board proceeding and to again review CSXI's proposed operations plan for APL. CSXI's operational plans outlined at the Chicago meeting were further described. CSXI also committed to APL that the Conrail "filet and toupee" operation at Syracuse was an integral part of our service plan and that it would be continued post-transaction. A description of CSXI's proposed service for APL was presented at that meeting and is included in Volume 3. We also described Section 2.2(c) to APL at the June 25 meeting and provided APL with a written description of that section of the Transaction Agreement, also included in Volume 3. In addition, we invited APL to a meeting of international customers in October, but APL chose not to attend that meeting.

APL witnesses also express concerns about the formulation of post-transaction train schedules. CSXI in fact has provided to APL detailed information about proposed train operations, and copies of proposed train schedules. We have not, however, heard back from APL with respect to these proposed schedules.

I believe that the primary objective of APL in its meetings with CSXI and in its filings with the Board is to improve the terms of its existing contract with Conrail. Although it has been CSXI's position to honor all terms of the existing Conrail contract and

to provide service equal to or better than that provided by Conrail. APL has not been satisfied with this position. APL has pressed CSXI for rate reductions, improved MFN protection and other apparent contract enhancements even before CSXI has had the opportunity to see and study the terms of the existing Conrail contract. Thus, when APL claims that the Applicants are refusing to talk with APL, what APL apparently really means is that we are refusing to discuss revisions or improvements to the Conrail contract. We have been talking to APL about their operating requirements, as the foregoing review of our discussions shows.

Mr. Rhein acknowledges our willingness to serve APL's needs when he states that it can remain a major player if CSXT handles its traffic. He states at page 6 of his Verified Statement that he is "not suggesting that we can't work with CSXT. We can and we will." Mr. Courtney likewise acknowledges at page 11 of his Statement that, "I do not mean to imply that CSXT could not be an effective service provider for APL."

I agree that we can, and will, work with APL to the mutual satisfaction of both parties pursuant to the terms of the Conrail contract and whatever terms might be negotiated at a later date once that contract expires or to address matters not covered by that contract. The intervention of the Board is not needed to permit a mutually beneficial commercial relationship to develop and flourish between our companies, a goal that I very much look forward to quickly achieving.

Genesee Transportation Council. This group of Rochester, NY area businesses and other entities asks for a condition in the form of a Board directive that we

reestablish an intermodal facility in the Rochester area that Conrail eliminated in 1992 in favor of facilities in Syracuse and Buffalo. The Board should reject this request.

Our first goal is to smoothly and seamlessly transition from Conrail to CSXI intermodal services on the Conrail lines allocated for its use by virtue of the proposed transaction. Once our intermodal services are fully implemented, we will explore new market growth opportunities aggressively. At that time, we will review market data that Genesee Transportation Council and other Rochester-area entities may have and explore the option of re-opening the Rochester terminal following an assessment of market demands and operating efficiencies. This is clearly a matter best left to the free market rather than Government regulation.

J.B. Hunt. This truckload motor carrier, through the statement of Mr. Paul R. Bergant, its Executive Vice President and General Counsel, asks the Board to require that CSX and NS provide intermodal transportation services to Hunt and other motor carriers under terms "which are no less favorable than the current contractual obligations of Conrail." Comments of J.B. Hunt, (unnumbered) at 2. Under the terms of the Transaction Agreement, CSX and NS will simply be assuming Conrail's obligations under contracts it has with motor carriers and others; the terms of the contracts will not change. Therefore, no condition is needed.

NYK Lines. NYK Lines (North America), Inc. has submitted a letter that supports several of the conditions requested by APL, including the proposed nullification of Section 2.2(c) and a condition that would prohibit discrimination in favor of CSXI or Sea-Land. NYK's arguments do not raise any issue that I have not already addressed above in

my response to APL. .NYK already has a strong relationship with CSXT and CSXI, as I have noted. We look forward to building on that relationship post-transaction.

Port of New York/New Jersey. The comments of the Port of New York and New Jersey ("PONY") (NYNJ-14) largely concern operational issues in the NJSAA. These matters are addressed extensively in the Rebuttal Verified Statement of CSX witness John Orrison. PONY's comments also raise certain commercial issues that I will address here.

The starting point for PONY's analysis of the Conrail transaction is that PONY may benefit if served by one railroad, as presently, rather than by two competing railroads. See NYNJ-14 at 3. Aside from the fact that this position is counter to fundamental business logic (one would normally expect businesses to favor competitive options), it is directly contrary to PONY's own long-standing support for competitive rail service at PONY. For example, incorporated in Volume 3 is a February 5, 1997 letter written by the Chairman of PONY to Conrail observing that since the creation of Conrail in 1976

> [a]n abiding Port Authority goal has been to secure effective and fully competitive Class I rail freight service for the bistate region to major interior markets. . . . Ensuring competitive rail freight service in the New York and New Jersey region will open access to markets to the benefit of producers, distributors, and consumers. On the other hand, this region's lack of competitive rail freight access would be detrimental to attaining desired economic and market share growth.

PONY will attain from the Conrail transaction each of the goals described by its Chairman, and more. It also will attain the benefit of direct access to two rail networks that are much larger than Conrail's system. Thus, New York area shippers will be offered

efficient single-line service to thousands of points to/from which such service is not now available.

One would therefore have expected PONY fully to support the Conrail transaction. I find it difficult to understand why PONY has not done so, but instead has chosen to criticize even the detailed NJSAA Operating Plan that CSX and NS have prepared at its request. This unfounded criticism suggests that PONY has decided to exploit this transaction as an opportunity to improve its competitive position even further by requiring CSX and NS to make capital investments in the North Jersey area beyond the significant investments already planned in the area by them.

Such investments are not needed for effective train operations, as demonstrated in the NJSAA Operating Plan and the Rebuttal Verified Statement of John Orrison. PONY's criticisms may in fact have more to do with its concerns that CSX and NS may favor other East Coast ports over PONY. In that regard, and despite its previous stand in favor of introducing competition into the New York/New Jersey area, PONY now contends that its shippers are competitive losers because Conrail's presence served as a competitive balance to CSX and NS rates at other East Coast ports with which PONY competes for import-export traffic.

The concern that CSX may favor other ports over New York is unwarranted. The competitive success or failure of a port is based on a series of factors, not the least of which are maritime economics (and the related decisions by ocean carriers to call at one port or another) and the natural advantages of a particular port's location relative to the markets served by the ocean carriers. PONY obviously has strong commercial and geographic appeal

to many ocean carriers, due largely to the size of the New York metropolitan market. It is these ocean carriers that will drive the selection of ports of call, not CSXI or CSXT. PONY's concerns about this transaction thus are misplaced.

Stark Development Board. Stark Development Board ("SDB") is a private, non-profit corporation organized to promote business interests in Stark County, Ohio. SDB also is the owner of an intermodal terminal that it constructed in 1994-96 with public and private funds. The terminal, known as the Neomodal Terminal, is located on the lines of the Wheeling & Lake Erie Railroad ("W&LE").

SDB argues (SDB-4) that the Conrail transaction has hurt the Neomodal Terminal's ability to retain business because "CSX and NS diverted their attentions to the divestiture of Conrail" and that as "a result of the Conrail divestiture, marketing, sales, reliable service and transit times suffered and Neomodal lost customers and the Terminal ramp up of lifts volume slowed." SDB-4 at 1. SDB also argues that Northeastern Ohio and Western Pennsylvania, the area serviced by the Neomodal Terminal, will see a decline from three Class I railroads to one (NS) after the transaction and that this too will hurt the Terminal. In addition, SDB witness Joseph Stadelman goes further, and argues that CSX and NS were involved in the development of the terminal in a manner "which bordered on inducement." SDB-4, Stadelman VS at 2.

SDB asks for a series of conditions that would require NS and CSX to "provide competitive pricing, schedules, market access and reliability" to Northeast Ohio shippers, work with W&LE to assure competitive rail rates, integrate the Neomodal Terminal into the NS and CSX systems, market that Terminal as if it were their own terminal, and

enter into long-term lift contracts with Neomodal to repay the public sector loans used to build the Terminal. Alternatively, with no further discussion or elucidation (and seemingly as an after-thought), SDB argues that CSX and NS should be required to purchase the Terminal at its fair market value and integrate it into their respective systems. (I understand that the Board has determined that SDB failed to meet the requirements of a responsive application and is therefore treating the SDB filing as comments.)

SDB's request is mirrored in the Responsive Application filed by W&LE (WLE-4), in which that party supports the SDB's requested conditions. The filing of the Ohio Attorney General, Ohio Rail Development Commission and Public Utilities Commission of Ohio ("State of Ohio") (OAG-4) also supports SDB's request. My reply will be directed to the contentions of these parties as they relate to the Neomodal Terminal.

The SDB, W&LE and State of Ohio arguments with respect to the Neomodal Terminal reflect that these parties view this transaction as a means of rescuing the Neomodal Terminal from financial problems that were fully foreseeable, and that have nothing to do with CSX or this transaction. A full appreciation of why the relief they seek is not appropriate in this proceeding -- and of why these filings represent the archetypal opportunistic attempt to attain some commercial advantage from this proceeding -- requires a fuller understanding of the genesis of the Neomodal Terminal than SDB or its supporters have provided in their filings. I will set the record straight here.

The reasons that Neomodal was built where it was built have nothing to do with any commercial determination by CSX or any Class I railroad that such a terminal was necessary or appropriate. Instead, the Neomodal Terminal was constructed as a result of

commercial factors extraneous to rail operation and marketing considerations, as is clear from facts that are found in the SDB filing. While SDB has not connected the dots so as to provide the full picture of Neomodal's genesis, I will do so next.

The impetus for the construction of the Neomodal Terminal derived from the announced 1993 decision of Fleming Foods, a major Stark County employer, to relocate from Stark County (and take important jobs with it) unless W&LE tracks running behind its facility were relocated to allow for expansion of the Fleming Foods facility. Thus, SDB President Stephen L. Paquette sponsored a statement, attached to his testimony, which recounts the following history of Neomodal:

> The Neomodal Terminal . . . was built to keep an established company, Fleming Foods, in Stark County and to promote future economic growth in the area and in Northeastern Ohio . . . . A major obstacle that confronted [Fleming's] plans was the existence of a main-line rail track owned by the [W&LE], which ran directly through Fleming's property proposed for their expansion . . . . In order to retain Fleming's operations, ODOT proposed to construct a new truck/rail intermodal terminal that would allow for the plant expansion and rail relocation.

SDB-4, Exhibit B to Paquette VS at 2. A December 30, 1993 ODOT Memorandum (OAG-699) explains: "In order to make the [Fleming Foods] track relocation loan program viable, the Ohio Department of Transportation suggested that an Intermodal Facility be constructed in addition to the track relocation as a way of providing a new revenue source to enhance the project and make it self-sufficient." A copy of this memorandum is set forth in Volume 3.

Contemporaneous news reports attached to the SDB filing confirm that the construction of Neomodal was related to the desire on the part of county officials to retain Fleming's jobs:

> [ODOT official] Platt said Stark County's intermodal facility was born in a discussion with state Sen. Scott Oelslager, R-Canton, who was looking for state help in an expansion by Fleming Foods Co. To expand, Fleming needed Wheeling & Lake Erie track moved. Oeslager suggested the state fund the relocation of the rail line and at the same time build the intermodal facility, Platt said. That is what the state has done.

"Teamwork Helps Stark Lure Freight Facility," The Repository, Nov. 17, 1993, at B-3. A June 19, 1995 Traffic World article, also attached to the SDB filing, reiterates the tie between the decision to build the terminal in Stark County and considerations relating to the retention of the Fleming Foods facility:

> The Stark facility grew out of a local firm's expansion plans. The Fleming Co., a national distributor of food products, wanted to extend its warehousing space. The problem was that the Wheeling & Lake Erie Railroad's main line to Cleveland was in the way. But neither organization was able to fund the line relocation. The prospect of Fleming relocating instead brought local development boards into the picture . . . . A common solution was found; the track relocation would become Phase One of the intermodal project.

"Facility Helps Put Intermodal On Regional Rail Map," Traffic World, June 19, 1995, at 30.

In short, Neomodal was not the product of careful or considered study of whether or not an intermodal facility made sense for Stark County, but instead resulted from economic decisions unrelated to rail transport efficiencies. This point is underscored by the acknowledgment in SDB's discovery responses that, "There were no formal marketing studies performed by third party experts prior to or after the decision to build the Terminal." Interrogatory Response, SDB-5 at 4. (See Volume 3). Neomodal was instead the by-product of a hasty series of decisions made in 1993 and 1994 by SDB officials to move the W&LE tracks in order to retain a local employer.

Neither CSXI nor CSXT ever was consulted at the time the project was initiated, or at the time construction began, about whether such a facility made good economic sense or about how much traffic could be generated from such a facility. SDB's discovery responses acknowledge that "SDB consciously did not involve any of the Class I carriers that connected with the Wheeling & Lake Erie Railway Company System ("W&LE") prior to requesting and obtaining funds under the Intermodal Surface Transportation Efficiency Act/Congestion Mitigation and Air Quality Act ("ISTEA/CMAQ") to build the Terminal on November 22, 1994." Interrogatory Response, SDB-5 at 1.

Only in early 1995, months after the initial decision had been made to build the Terminal, after the track relocation (Phase I) of the intermodal project had been completed and while construction of the Terminal was underway, was CSXI advised of the project. At that stage, W&LE asked to consult with CSXI as to the proper specifications for Neomodal so that the facility, once finished, would at least be properly designed for traffic interchanged with CSXT. These are the consultations to which Mr. Stadelman alludes at page 2 of his Verified Statement. His characterization of these 1995 consultations (reflected in Exhibit C to his Statement) as "inducement" in the development stage of Neomodal is unsupported -- how could CSX induce SDB to build a Terminal that was already fully funded and under construction before CSX was even approached about the project? W&LE witness Larry R. Parsons stretches Mr. Stadelman's testimony even further beyond the breaking point when he claims that, "NS and CSXT closely advised and consulted with Stark Development Board in placing the Terminal on the W&LE." WLE-4 at 36. CSXT never advised SDB to place the Terminal on the W&LE. The notion that such advice might have