able constraint on their ability to earn a rate of return on their investment in the railroad that equals or exceeds the cost of capital.

Id. (emphasis added).

In addition, requiring the use of predecessor cost rather than acquisition cost (when the latter is greater) for regulatory purposes would potentially harm the shipping public by deterring carriers from pursuing efficiency-enhancing acquisitions and restructuring transactions. For over half a century, federal railroad policy has strongly encouraged mergers and consolidations that enhance and rationalize the efficiency of the nation's rail network. See, e.g., United States v. ICC, 396 U.S. 491, 508-11 (1970); Penn-Central Merger & N&W Inclusion Cases, 389 U.S. 486, 492 (1968) (referring to "the congressional policy of encouraging consolidation of the Nation's railroads . . ."); County of Marin v. United States, 356 U.S. 412, 416-18 (1958); Lamoille Valley Railroad Co. v. ICC, 711 F.2d 295, 301 (D.C. Cir. 1983). A rule that disqualified acquisition cost from consideration in regulatory proceedings would create strong disincentives to such desirable transactions, with deleterious consequences for all rail shippers and the nation generally. Kalt RVS at 76.

Thus, the Board's rule requiring the use of acquisition cost for regulatory purposes is eminently sound; and any other rule (including use of predecessor cost) would undermine important regulatory policies.

4. The Shippers' "Fatal Circularity" Argument is Without Merit and Has Already Been Squarely Rejected by the Board.

The shippers do not address, much less contest, these policy grounds supporting the Board's decision to use acquisition cost, and to reject the use of predecessor cost, for regulatory purposes. Instead, the shippers' argument in support of the use of predecessor cost (and against acquisition cost) for regulatory purposes ultimately rests on an asserted analogy to traditional public utility regulation, and the claimed "fatal circularity" problem described in Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591, 601 (1944). According to the shippers, reliance on acquisition cost for rate regulatory purposes would violate fundamental tenets of public utility regulation because any increase in market value (as reflected by the purchase price of a recent transaction) would itself increase costs for regulatory purposes and thereby justify and permit an increase in rates, which in turn would increase the market value of the railroad and justify an increased purchase price, thus triggering a self-justifying escalation in otherwise unreasonable rate levels. To prevent parties from manipulating asset values (and rate levels) in this manner, traditional public

utility regulators have often required use of historic book value (predecessor cost) for regulatory purposes.[22]

Whatever the theoretical merits of this "fatal circularity" problem in heavily regulated public utilities, it has no legitimate application to the railroad industry today. The problem described in Hope Natural Gas and similar cases arises only when market value (as reflected in the purchase price of assets) is primarily determined by regulatory constraints rather than the competitive process. Ex Parte 483, supra, 6 I.C.C.2d at 941; RAPB, Railroad Accounting Principles: Final Report, Vol. II at 46-47 (September 1987); Kalt RVS at 71-72. As the Board has frequently observed, however, railroads with limited exceptions operate in markets that are subject to intense and effective competition.[23] Rail rates are established in accordance with demand and market conditions, and few are subject to maximum rate regulation at all. Ex Parte 483, supra, 6 I.C.C.2d at 941; Railroad Cost Recovery Procedures -- Productivity Adjustment, supra, 5 I.C.C.2d at 447; Coal Rate Guidelines, supra, 1 I.C.C.2d at 521-22. Where these conditions exist, the "fatal circularity" problem described in Hope Natural Gas does not arise. See also Kalt RVS at 71-73.[24]

For these reasons, both the RAPB and the Board have soundly rejected the Hope Natural Gas analogy on which the shippers' arguments in this case rest, and have concluded that acquisition cost is the superior measure of value for regulatory purposes in the rail industry. The RAPB explained:

> The use of acquisition (or GAAP) cost better represents the economic conditions facing the enterprise than does predecessor cost because a large share of the industry's revenues are determined by competitive markets rather

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[22] See, e.g., ACE, et al.-18 at 37-43, 46-48; ACE, et al.-18, Kahn/Dunbar VS at 16-17; NITL-7 at 26-27; GPU-02, Argument at 7-8; CE-05, Argument at 11-14.

[23] In the Staggers Rail Act of 1980, Congress declared its finding that "today, most transportation within the United States is competitive." Pub. L. No. 96-448, § 2, 94 Stat. 1896 (1980).

[24] The notion (suggested by the hypothetical example in ACE, et al.'s comments) that CSX and NS bid up the purchase price of Conrail to inflated levels in order to raise regulatory rate "ceilings" and justify higher rates is flatly preposterous. ACE, et al.-18 at 37-39. Even leaving to one side the facts that most rail traffic is competitive and that the Transaction would only increase competition, the argument overlooks the basic point that the Board must approve the Transaction (and the fairness of the purchase price). In reviewing prior railroad consolidations, the Board has always taken action to ensure that competition would not be adversely affected. It is unrealistic to assume under these circumstances that CSX and NS would have paid an otherwise excessive price to acquire Conrail in the belief that the Board would allow them to exploit transaction-related increases in market power. Whitehurst RVS at 5 n.15; Kalt RVS at 68-69.

than through the regulatory process. A substantial portion of the railroads' traffic is no longer subject to ICC maximum rate regulation because it falls below the jurisdictional threshold, is exempt, or moves under contract. By implication, when most rates are set by competition, the market values of assets are based primarily on competitive economic conditions and not on the regulatory process.

RAPB, Final Report, supra, Vol. II at 46. See also Ex Parte 483, supra, 6 I.C.C.2d at 941 ("[w]e are unpersuaded that the price paid for railroads is determined primarily by regulatory constraints . . .").

The shippers have offered no basis to question the validity of these consistent findings. Accordingly, their reliance on the claimed "fatal circularity" problem is misplaced, and their request for a condition requiring the use of predecessor cost for revenue adequacy and jurisdictional threshold purposes should be denied.

C. Any Change in the Board's Existing Precedent Regarding Use of Acquisition Cost Should Be Considered in Appropriate Rulemaking Proceedings.

Even if the Board's established precedent requiring the use of acquisition cost in revenue adequacy and jurisdictional threshold determinations were open to reconsideration (and it is not), this finance docket is not the proper place to do it. Reexamination of the Board's existing rule should be undertaken (if at all) only in an appropriate rulemaking proceeding, such as the annual revenue adequacy docket (where the Board's existing rule was developed), the ongoing URCS rulemaking, or an independent ex parte docket addressed to this issue.

A rulemaking proceeding would be the more appropriate forum to entertain requests to reconsider the Board's practice of using acquisition cost for regulatory purposes because the shippers' claims raise legal and policy issues of industry-wide significance, as to which a uniform rule is imperative. As the shippers acknowledge, so-called acquisition "premiums," in the sense in which they use the term, have been paid by railroads involved in a number of recent transactions (UP/CNW, BN/Santa Fe, UP/SP). In each case for which consolidated accounting has been implemented, the carriers accounted for those transactions with appropriate purchase accounting adjustments of the kind the shippers object to in this proceeding. See, e.g., ACE, et al.-18, Crowley VS at 31; Whitehurst RVS at 13. Many other transactions, in which acquisition cost was less than predecessor cost (and thus as to which the purchase price reflected a negative "premium"), have also been accounted for

using the Board's existing rule. See, e.g., Ex Parte 483, supra; note 14, supra (and cases cited therein); Whitehurst RVS at 13.[25]

As a result, the asset values on many railroads' books today reflect significant write-downs that, under the rule the shippers now advocate, are wrong and should be reversed. Similarly, if the shippers' proposal were adopted here, the purchase accounting write-ups in the asset values of certain carriers involved in recent transactions would also have to be reversed. Before the Board undertakes to revise its existing precedent, it should consider the shippers' claims in light of their impact on the entire rail industry and shipping public, and should afford all interested parties an opportunity to present their views on the matter.[26]

Adoption of the shippers' requested condition in this proceeding would be particularly inappropriate because it would subject CSX and NS -- after the fact, no less -- to accounting rules and maximum rate standards that would be different (and more onerous) than those that govern the rest of the rail industry. Rate determinations involving CSX and NS would be based on the predecessor cost of Conrail, while determinations involving all other railroads would be based on the acquisition cost of the rail assets comprising their systems. Such disparate treatment would destroy comparability among carriers in the reporting of their financial results,[27] and would result in artificially disparate and uneven results in revenue adequacy determinations and individual rate proceedings. In the particular circumstances of this case, it would also be grossly unfair to CSX and NS, which have already paid for Conrail in reliance on the Board's longstanding accounting rules and precedent requiring the use of acquisition cost for regulatory purposes.

Similarly situated carriers should not be subjected to radically different regulatory rules simply because they are involved in a rail consolidation transaction requiring

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[25] That, in fact, is precisely the situation with Conrail. As previously discussed, the asset values recorded on its books today reflect substantial purchase accounting write-downs that occurred at the time Conrail was created from the remnants of the Penn Central and other bankrupt railroads in the Northeast. Whitehurst RVS at 13 n.11.

[26] This approach would be consistent, for example, with the Board's recent consideration of the so-called "bottleneck" rate issue. Although the issue had arisen in several individual rate complaint cases, the Board initiated a consolidated proceeding inviting the general public to submit comments and evidence on the industry-wide legal and policy questions raised. STB Docket No. 41242, Central Power & Light Co. v. Southern Pacific Transportation Co. (served December 31, 1996), clarified (served April 30, 1997).

[27] As its name suggests, the purpose of the Board's USOA is to establish and maintain a uniform accounting system applicable to all railroads. The relief the shippers seek in this proceeding would destroy this uniformity for a category of transactions that has a significant effect on the railroads' accounts and financial statements.

Board approval. If the Board is to entertain the shippers' request to modify the existing rule on use of acquisition cost for regulatory purposes, it should do so in an appropriate rule-making proceeding in which a uniform, industry-wide rule could be developed and consistently applied.

D. There is No Basis on This Record For Departing From the Board's Precedent Regarding the Use of Acquisition Cost For Regulatory Purposes.

Even if the Board's precedent requiring the use of acquisition cost in revenue adequacy and jurisdictional threshold determinations were properly subject to reconsideration in this proceeding, the evidence in this case furnishes no basis for departing from the established rule. As explained below, the shippers' concerns regarding the amount of the purchase price paid for Conrail and its potential impact on rate levels and regulatory rate ceilings are unfounded, as they ignore the substantial -- and largely undisputed -- pro-competitive, efficiency-enhancing impacts of the Transaction. In any event, the shippers' proposed remedy would confer an inappropriate windfall on shippers.

1. The Shippers' Concerns Regarding the Amount of the Acquisition Cost of Conrail and Its Potential Impact on Rate Levels Are Entirely Groundless.

The thrust of the shippers' claims of competitive injury is that CSX and NS paid "too much" for Conrail and that, as a result of transaction-related increases in market power, they will have both the ability and need to impose unreasonable rate increases on "captive" shippers. None of these claims is sustained by the evidence, which demonstrates that no rail shippers will be subject to transaction-related competitive harm.

As a threshold matter, the fact that the purchase price for Conrail reflects a substantial increment over both the historical book value of Conrail's road property and equipment assets and the pre-transaction market value of Conrail's publicly traded stock raises no genuine competitive-impact concerns. Such "premiums" are a normal and thoroughly unremarkable phenomenon in corporate finance. Kalt RVS at 61; Whitehurst RVS at 5-6. A negotiated purchase price in excess of the historic book value of the acquired assets as shown on the seller's records is an ordinary occurrence, particularly in the case of long-lived assets such as those that comprise a large portion of a railroad's operating properties. As previously discussed, the historic book values (predecessor cost) bear little or

no relationship to the true current market value of the acquired assets. Kalt RVS at 74-75; Whitehurst RVS at 7-9.[28]

An acquisition "premium" measured by the difference between the purchase price and the pre-transaction market value of the acquired company's stock is also commonly witnessed in large corporate acquisitions. Kalt RVS at 61. The purchaser's willingness to pay such a "premium" to obtain control of the acquired firm's assets reflects the purchaser's anticipation that the acquired assets will be more valuable under its control due to increased merger-related efficiencies in the management and operation of the acquired assets, the combination of those assets with those of the purchaser, and similar transaction-related benefits. The payment of an acquisition "premium" is necessary to induce the current owners to transfer control, and to permit these efficiencies to be achieved. Id. at 61-62.

The size of an acquisition "premium" becomes a matter of potential competitive-impact concern only when it can be determined with confidence that the purchase price reflects the anticipation (and capitalization) of profits derivable from merger-related monopoly power. Kalt RVS at 62. Thus, the level of the purchase price is an appropriate subject of competitive-impact scrutiny only to the extent the proposed transaction would increase opportunities for the exercise of undue market power. Id.

Testifying for ACE, et al. and other coal shippers, Drs. Kahn and Dunbar readily agreed with this analysis. ACE, et al.-18, Kahn/Dunbar VS at 18-19. But, while claiming that the Transaction would have adverse competitive effects on solely served coal shippers, Kahn/Dunbar declared that they were "not in a position to assess the relative contribution" of anticipated merger-related efficiencies and what they referred to (without demonstration) as "increased monopoly power resulting from reductions in competition" to the overall "premium" paid for Conrail. Id. at 19.

In fact, the record evidence overwhelmingly supports the conclusion that the Transaction will not reduce competition, and that any so-called "premium" reflected in the purchase price of Conrail is attributable to anticipated efficiencies (including traffic gains) and other public benefits.

As discussed elsewhere in these comments, the Transaction is unprecedented in its preservation and expansion of rail competition. Among other things, the Transaction would:

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[28] For this reason, standard accounting textbooks contain statements like the following: "The valuations shown on the books of the seller will rarely, if ever, reflect current fair market value. Thus, they are not useful for establishing the valuation on the books of the purchaser." Davidson, Stickney & Weil, Financial Accounting: An Introduction to Concepts, Methods, & Uses 478 (2d ed. 1979) (emphasis added).

- Replace Conrail's 20-year rail domination of the Northeast with two strong, balanced and competitive rail systems;

- Introduce direct two-carrier competition in major commercial centers in the Northeast and Midwest, as well as in the coal fields served by the Monongahela Railway;

- Eliminate hundreds of routes involving "bottleneck" rail segments;

- Create new, efficient single-line service, and shorter, faster rail routes, for thousands of shipments; and

- Ensure preservation of existing competitive service at all "2-1" points.

Kalt RVS at 5-56, 65-68; CSX/NS-19, Vol. 2; see also Sections I & IV.[29] Arguments to the contrary by various shipper interests rest on specious attempts to contest the economic validity of the so-called "one-lump" theory and to show that shippers which will be solely served by a single railroad both before and after the Transaction will somehow suffer competitive harm, as well as other similarly untenable claims of competitive injury. See Kalt RVS at 20-56, Section V. Applicants have demonstrated that the Transaction will create no opportunities for increased exercise of market power nor will it result in any increased ability to impose unreasonable rate increases.[30]

Furthermore, there is also no basis for the shippers' claims that CSX and NS will need to raise rates (particularly for "captive" shippers) in order to pay for Conrail. The evidence submitted in the Application, and largely uncontested by commenting parties,

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[29] Ironically, ACE -- an ardent advocate of a condition excluding the so-called acquisition "premium" from consideration in revenue adequacy and jurisdictional threshold determinations -- is one of the major beneficiaries of the new competition introduced by the Transaction. Its solely served electric generating plants will enjoy direct two-carrier service by CSX and NS if the Transaction is approved.

[30] Oddly, a number of the shippers point to the possibility that the increased rail competition introduced as a result of the Transaction may result in rate reductions, and complain that these rate reductions will lower CSX and NS rates of return for revenue adequacy purposes and, as a result, make it less likely shippers will ever qualify for relief under the Board's revenue adequacy constraint. See, e.g., NITL-7 at 17-18. All other things being equal, a reduction in rate levels resulting from enhanced competition would lower the carriers' rates of return and, to this extent, move railroads farther away from revenue-adequate status. Because this effect results from competition-induced rate reductions, however, it is difficult to understand how shippers could claim to be harmed by such a result.

demonstrates that the Transaction will generate substantial cost efficiencies, incremental traffic and revenue growth and other benefits, which more than justify the entire purchase price paid by CSX and NS, and which would enable the two carriers to finance the acquisition of Conrail without increasing rates. See, e.g., CSX/NS-18, Vol. 1, at 19-20, 21; CSX/NS-18, Vol. 1, Goodwin VS at 362; CSX/NS-18, Vol. 1, Wolf VS at 490-94.[31]

These projected results are reflected in Applicants' pro forma financial statements, which no party has seriously challenged. The pro formas, which incorporate the impact of the acquisition cost of Conrail (including debt service) as well as merger-related efficiency and traffic gains, show that CSX and NS will be able to finance the acquisition of Conrail, and achieve net income benefits in the post-consummation "normal" year, without any overall rate increases. Whitehurst RVS at 17-19.[32] Significantly, these pro forma financial projections reflect only the anticipated impact of the Transaction, and do not take into account other factors -- such as traffic growth unrelated to the Transaction and continuing productivity improvements -- that would further relieve any upward pressure on rate levels. Id. at 18-19.[33]

The fact that the purchase price paid for Conrail does not, as the shippers claim, reflect expectations or opportunities for merger-related monopoly profits can also be

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[31] ACE, et al. pointedly note in their comments that they are not contesting the Application's projection of public benefits and incremental traffic gains. ACE, et al.-18 at 11. This concession fatally undermines the validity of their entire argument that the acquisition "premium" should be excluded from consideration in revenue adequacy and jurisdictional threshold determinations.

[32] Indeed, the projected financial results summarized in witness Crowley's own verified statement for ACE, et al. demonstrate precisely this fact: even taking into account the full acquisition cost of Conrail (and associated financing arrangements), CSX and NS will be able to finance the purchase price and achieve net income gains, without any assumed rate increases. ACE, et al.-18, Crowley VS at 26 & Table 5.

[33] Two utilities (CE and GPU) challenge on essentially the same grounds CSX's anticipated revenue gains from predicted intermodal truck-to-rail diversions. These utilities claim that CSX's diversion analysis is overly optimistic because it failed to account for motor carrier price cuts responsive to new intermodal service, used an overly favorable motor carrier operating ratio and employed a railroad revenue/cost ratio that produced excessive estimates of diversion revenues. CE-04, Argument at 21-25; GPU-02, Argument at 15-18. As demonstrated in the rebuttal testimony of Joseph Bryan, CSX's truck diversion witness, these claims do not withstand analysis. Bryan RVS. Indeed, the record evidence demonstrates that the truck diversion opportunities and intermodal traffic revenue growth available to Applicants are considerable, and may be larger than Mr. Bryan's conservative estimates. See Rutski RVS at 2-3; CSX/NS-19, Vol 2A, Gaskins VS at 88, 104-11; CSX/NS-19, Vol. 2A, Anderson VS at 290-307; CSX/NS-19, Vol. 2B, Finkbiner at 218-53.

demonstrated by comparing the so-called acquisition "premium" in an economic sense (the amount by which the cash purchase price exceeded the pre-transaction market value of Conrail's publicly traded stock) with the anticipated net cash flow benefits of the transaction. As Professor Kalt demonstrates in his testimony, the net present value of the transaction-related net cash flow benefits -- including cost savings, incremental traffic and revenue gains and other financial benefits of the transaction -- exceeds the stock-price "premium" by more than $1.7 billion. Kalt RVS at 64-65 & Fig. 8. This analysis assumes no overall rate increases. The evidence is thus clear that the purchase price paid for Conrail was amply justified, and does not reflect anticipated monopoly profits.

In sum, the Transaction will create neither an increased ability to impose unreasonable rate increases on shippers nor the need to do so. Concerns about the amount of the purchase price paid by CSX and NS to acquire Conrail are thus wholly unfounded.

2. The Shippers' Claim That the Use of Acquisition Cost Will Significantly Increase Regulatory Rate "Ceilings" Ignores the Impact of Projected Merger Efficiencies.

The shipper interests contend that the allegedly excessive acquisition cost of Conrail will increase not only rate levels, but rate regulatory ceilings. In support of this claim, several shippers have submitted testimony (sponsored primarily by Thomas D. Crowley), which purports to demonstrate that the use of acquisition cost for regulatory purposes would dramatically reduce CSX and NS rates of return for revenue adequacy purposes (thereby impairing the availability of relief under the revenue adequacy constraint on railroad rate levels) and dramatically increase CSX and NS URCS variable costs and resulting jurisdictional thresholds for hypothetical traffic movements (thereby eliminating or reducing the scope of the Board's jurisdiction to award relief for unreasonably high rail rates).[34]

This analysis of the impact of the acquisition cost of Conrail on revenue adequacy and jurisdictional threshold determinations is bogus for one simple but straightforward reason: it completely ignores the projected (and largely unquestioned) merger-related efficiencies, including operating cost savings, incremental traffic gains, improved service and other public benefits of the Transaction.[35] When these cost-reducing impacts are consid-

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[34] See ACE, et al.-18, Crowley VS at 25-39; GPU-02, Crowley VS; CE-05, Crowley VS; see also CEC-05, Harris VS at 17-19.

[35] The shippers have admitted in discovery responses that Mr. Crowley's jurisdictional threshold calculations excluded any consideration of the impact of merger efficiencies,

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ered, there is no valid support for the claim that the Transaction would significantly raise the level of applicable regulatory rate "ceilings," even assuming those "ceilings" had any practical meaning in constraining any particular rail rates.

The fallacy in Mr. Crowley's analysis can most easily be demonstrated by reference to his attempted restatement of the Board's revenue adequacy determinations to reflect both the acquisition of portions of Conrail by CSX and NS and the incorporation of the so-called acquisition "premium" (i.e., acquisition cost). See, e.g., ACE, et al.-18, Crowley VS at 33-36 & Ex. TDC-14. Mr. Crowley claims that, when acquisition cost (rather than predecessor cost) is used to compute the 1996 rates of return for the combined CSX/Conrail and NS/Conrail systems for revenue adequacy purposes, CSX/Conrail's return drops from 8.8 percent to 6.2 percent and NS/Conrail's return falls from 11.6 percent to 7.6 percent. Id. Even assuming such a reduction would somehow deprive shippers of otherwise available rate relief,[36] these figures tell only part of the story. Mr. Crowley's restatement reflects (albeit incorrectly) the impact of the acquisition cost of Conrail on

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[35](...continued)
incremental traffic gains or other beneficial impacts of the Transaction. See Interrogatory Response, ACE, et al.-20 at 21-22; Interrogatory Response, CD-09 at 12-13. This omission also infects Mr. Crowley's revenue adequacy calculations.

[36] The shippers' claims of potential rate-related competitive harm from the possible impact of acquisition cost on revenue adequacy findings are tenuous at best. Since the enactment of the revenue adequacy provisions of the statute in 1976, and the inclusion of the revenue adequacy constraint in the coal rate standards in 1985, no railroad rate has ever been found unreasonable, or rate relief granted, on the basis of a carrier's revenue inadequacy (while some rates have been found unreasonable, and relief awarded, despite the defendant carrier's highly revenue inadequate status). Revenue adequacy has not even been raised in any rate complaint case in many years. Accordingly, the Board has never addressed, or even been called upon to address, what relief might be available to a shipper challenging a rate charged by a railroad whose revenues exceed the long-run revenue-adequacy standard, particularly if that rate is otherwise reasonable under the predominant stand-alone cost test.

Under these circumstances, the contention that use of acquisition cost in computing revenue adequacy would harm shippers by depriving them of a meaningful and otherwise available regulatory remedy for excessive rates is simply unfathomable. Some coal shippers, in fact, have argued that the Board's revenue adequacy determinations serve no useful public purpose and should be discontinued. See, e.g., Statement of Professor Alfred E. Kahn and Report of Professor Jerome E. Haas on Railroad Revenue Adequacy Standards, National Economic Research Associates (February 1997). It ill-behooves coal shipper interests to argue in other (i.e., legislative) arenas that the revenue adequacy provisions are useless and should be repealed, while complaining here that they represent a vital (and threatened) source of rate protection for "captive" shippers.

depreciation expense and the net investment base (both of which have the effect of reducing the carriers' overall rate of return), but it entirely ignores the impact that merger efficiencies and transaction-related traffic gains would have in reducing operating expenses and increasing revenues (both of which would have the effect of raising the carriers' overall rates of return). Whitehurst RVS at 20-25.

When the net income benefits projected to result from the Transaction (as reported in the Application's unrebutted pro forma financial statements) are incorporated in Mr. Crowley's restatement of the Board's revenue adequacy determinations, the claimed adverse impact of the full acquisition cost of Conrail largely disappears. For the year 1995, the study year for purposes of the Application, adjustment of Mr. Crowley's results to reflect projected merger benefits (and correction of several technical and computational errors in his analysis) shows that CSX/Conrail's rate of return would increase from 6.6 percent to 7.4 percent, while NS/Conrail's return would remain level at 10.4 percent. Whitehurst RVS at 24. Imputing the same merger benefits to 1996 (the year analyzed by Mr. Crowley), the full effects of the Transaction -- including both the full acquisition cost and merger benefits -- would again increase CSX/Conrail's return (from 8.8 percent to 9.1 percent), while reducing NS/Conrail's return by a negligible amount (from 11.6 percent to 11.2 percent). Id.

The most relevant figure for purposes of assessing the overall impact of the Transaction on all CSX, NS and Conrail shippers is the composite rate of return for all three carriers. When the full projected impacts of the Transaction (including both the acquisition cost and merger benefits) are taken into account, the composite rate of return for the three railroads would increase from 8.5 percent to 9.0 percent in the "base" year 1995, and would hold steady at 10.2 percent in 1996. Whitehurst RVS at 24. In short, the full impact of the Transaction, including not only the so-called acquisition "premium" but also merger efficiencies and incremental traffic and revenue gains, would not materially impair the carriers' revenue adequacy status, but likely would improve it.

Mr. Crowley's claim that the inclusion of the acquisition "premium" in URCS variable cost analyses will dramatically increase the r/vc jurisdictional threshold for hypothetical coal movements suffers from the same fallacy. See, e.g., ACE, et al.-18, Crowley VS at 31-33 & Exs. TDC-12 & TDC-13. Mr. Crowley's re-stated URCS formulas for the combined CSX/Conrail and NS/Conrail systems attempt to reflect (albeit incorrectly) the impact of the Conrail acquisition cost and the associated purchase accounting adjustments to the carriers' books on variable return on investment costs and variable depreciation expense (both of which would have the effect of increasing system-average variable costs and the jurisdictional threshold for a particular movement). But he again wholly disregarded the impact of anticipated merger efficiencies and projected traffic gains on variable unit operating expenses (which would have the effect of reducing system-average variable costs and the jurisdictional threshold for a particular movement). Whitehurst RVS at 25-33. The precise impacts of the Transaction on URCS variable cost and jurisdictional threshold determinations, including indirect effects, could not be reliably measured based on the Application's

pro forma financial statements and the time and resources available for Applicants' rebuttal submission. It is clear, however, that Mr. Crowley's gerrymandered results significantly overstate the possible impact of the Transaction on the jurisdictional threshold levels for particular traffic movements. Id. at 31-33.[37]

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[37] Even so, the mere possibility that an increase in the r/vc jurisdictional threshold for a particular traffic movement could actually "harm" shippers by depriving them of an otherwise available rate regulatory remedy is highly dubious. The level of the jurisdictional threshold would affect the availability and scope of potential rate relief only under two narrow circumstances.

First, the availability of otherwise appropriate rate relief could be affected only if the challenged rate for a particular movement were above the applicable jurisdictional threshold before consideration of the impact of the Conrail acquisition cost on variable costs, and would fall below the threshold once acquisition cost is included in the variable cost analysis. It is highly questionable, and on this record purely conjectural, whether movements whose rates might now be hovering around the r/vc jurisdictional threshold level would be found unreasonable, or that any shipper would file a complaint challenging them.

Second, the level of the jurisdictional threshold could affect the scope of otherwise available rate relief only in those situations in which the maximum reasonable rate as determined under other applicable rate standards (such as the stand-alone cost test) would be fixed at a level below the jurisdictional threshold. See note 6, supra. The jurisdictional threshold has no impact on rate remedies when the maximum reasonable rate is fixed at a level above the threshold. Several shipper interests have asserted that the r/vc jurisdictional threshold is effectively the rate ceiling in coal rate cases because the maximum reasonable rate based on stand-alone costs is usually below the threshold (ACE, et al.-18 at 33-35; NITL-7 at 26), but this is simply not the case. Although stand-alone costs have been found to be below the jurisdictional threshold in one recent coal rate case (West Texas, supra), that has hardly been the norm. See, e.g., STB Docket No. 37809, McCarty Farms, Inc. v. Burlington Northern, Inc. (served August 20, 1997) (stand-alone costs exceeded jurisdictional threshold and found reasonable); Bituminous Coal -- Hiawatha, Utah to Moapa, Nevada, 10 I.C.C.2d 259 (1994) (same); Coal Trading Corp. v. Baltimore & Ohio Railroad Co., 6 I.C.C.2d 360 (1990) (same); cf. STB Docket No. 41185, Arizona Public Service Co. v. Atchison, Topeka & Santa Fe Railway Co. (served July 29, 1997) (finding that, because rate levels based on stand-alone costs during certain future periods of discounted cash flow analysis were below the jurisdictional threshold, the Board could offset the impact of the jurisdictional threshold in those future time periods by establishing maximum rates for other time periods -- including the current prescribed rate -- at a level below stand-alone costs).

At the very least, it cannot be presumed that stand-alone costs in unspecified future cases will ever or invariably be below the jurisdictional threshold. The shippers rely for this

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The shippers' claims that the impact of the acquisition "premium" on revenue adequacy and jurisdictional threshold rate "ceilings" are therefore unfounded or, at the least, significantly exaggerated, and afford no justification for departing from the established rule requiring the use of acquisition cost for regulatory purposes.

3. Exclusion of the Full Acquisition Cost From the Investment Base For Regulatory Purposes Would Create an Unwarranted Windfall to Shippers.

The condition requested by the shippers is not only unsupported and contrary to established precedent and sound regulatory policy; it also would result in a large, unjustified windfall to shippers.

Under the proposed condition, a substantial portion of the cost that CSX and NS incurred to acquire Conrail (the amount by which the acquisition cost exceeded the pre-transaction book value of Conrail's road property and equipment) would be excluded entirely from consideration in revenue adequacy and jurisdictional threshold determinations. Other impacts of the Transaction, including efficiencies and other public benefits, would not be excluded. Applicants have projected, and shippers in the main do not seriously dispute, that the Transaction will result in significant efficiencies, including reduced operating expenses and improved services. All shippers will benefit from these efficiencies, which will have the effect of reducing system-average variable operating expenses and resulting jurisdictional threshold levels for particular freight movements, and improving the carriers' rate of return for revenue adequacy purposes. Whitehurst RVS at 33-34.

If the proposed condition were adopted, shippers would enjoy these benefits of the Transaction, and their potential impact in reducing regulatory rate "ceilings," but they would not be required to shoulder any of the associated costs of the Transaction (i.e., the purchase price) that make those benefits possible. Whitehurst RVS at 33-34. If the shippers are right in claiming that consideration of the full acquisition cost of Conrail in revenue adequacy and jurisdictional threshold determinations would raise applicable rate "ceilings" and elicit unreasonable rate increases, then it must follow that excluding consideration of the full acquisition cost (as the shippers request) while at the same time allowing the effects of merger efficiencies to be reflected in these regulatory determinations would lower the rate

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[37](...continued)
assertion not on a discussion or analysis of actual stand-alone cost decisions by this agency, but instead on the deposition testimony of Applicants' witness Robert L. Sansom. Sansom Dep., Aug. 27, 1997, at 117-20. But, as these parties well know, Dr. Sansom is an expert on coal industry issues, not stand-alone costs, and has never submitted testimony on stand-alone cost or rate reasonableness issues.

"ceilings" and force the railroads to reduce rates. This would confer a wholly unwarranted rate windfall on shippers. If shippers are allowed to have the positive impact of anticipated merger efficiencies reflected in regulatory rate determinations (which no one disputes), there is no reason whatsoever why the investment costs that made those efficiencies possible should be excluded from consideration.

Thus, the shippers' predictions regarding the potential impact of the purchase price of Conrail on regulatory rate "ceilings" are disingenuous. They have manufactured predictions of massive increases in such "ceilings" only by ignoring cost-reducing effects of the Transaction that would offset the cost-increasing effects of the purchase price. As a remedy for this specious claim of "harm," the shippers then demand that the cost-increasing effects of the Transaction be excluded from consideration in rate cases, while enjoying all of the continuing (and very substantial) cost-reducing impacts. The shippers cannot have it both ways. The Board should therefore stay the course and adhere to its settled rule requiring the use of acquisition cost in revenue adequacy and jurisdictional threshold determinations.

II. THERE IS NO COMPETITIVE JUSTIFICATION FOR IMPOSING THE OTHER REQUESTED RATE REGULATORY CONDITIONS.

Several protesting shippers and shipper organizations (NITL, ACE, et al., CMA and their allies) have also requested various other types of regulatory rate conditions, including alteration of the established standards governing the regulation of maximum reasonable rate levels and imposition of arbitrary rate caps. There is not the slightest basis for these conditions. They are not even remotely addressed to any proven competitive injury traceable to the Transaction, but instead represent self-serving attempts to alter regulatory rules that shipper interests have long resisted (without success) in other proceedings, and to immunize shippers from the competitive process. Those attempts have no proper place in this proceeding.

A. Requests For Revision of the Basic Standards Governing Maximum Rate Complaints Should Be Denied.

In a transparent attempt to address their longstanding dissatisfaction with the Board's existing rate regulatory standards, ACE, et al. and NITL (and its allies) seek conditions that would significantly alter the Board's market dominance and rate reasonableness standards. These efforts to use a rail consolidation proceeding as a vehicle for effectuating major revisions in rate regulatory standards are unprecedented. There is no possible competitive-impact or other justification for these radical conditions.

ACE, et al. seek a condition that would allow every solely served coal shipper that has raised competitive concerns about the Transaction to bring so-called "bottleneck" rate complaints. ACE, et al.-18 at 49-50; ACE, et al.-18, Kahn/Dunbar VS at 21-22. If adopted, this condition would allow these shippers to challenge and seek prescription of maximum reasonable rates applicable solely to the "bottleneck" portion of an interline through movement, without regard to the reasonableness of the through rate applicable to the entire movement.[38] The only basis offered for this relief, however, is these shippers' specious attack on the Board's established "one-lump" doctrine and their contention that vertical integration will harm competition. As explained elsewhere, the creation of new, efficient single-line routes will not reduce competition or otherwise cause any competitive harm to solely served coal shippers. See Section V; Kalt RVS at 20-56. The proposed condition thus does not remedy any transaction-related competitive injury, and should be denied on that ground alone.

In any event, ACE, et al.'s requested condition should be rejected as an attempted evasion of the Board's recent "Bottleneck" decision. In that case, the Board squarely held that shippers (with narrow exceptions) can obtain maximum rate relief only by demonstrating that the through rate applicable to the entire traffic movement in question is unreasonably high, and that separate rate challenges to the "bottleneck" segment of a through rate are precluded as a matter of law. STB Docket No. 41242, Central Power & Light Co. v. Southern Pacific Transportation Co. (served December 31, 1996), clarified (served April 30, 1997). Shippers may be dissatisfied with the Board's ruling, but that is no reason to give Applicants' shippers a blanket exemption from its effects. Under the "Bottleneck" holding, shippers are precluded from bringing "bottleneck" rate complaints regardless of the presence or absence of competitive origin alternatives. Thus, whether or not the Transaction here would reduce origin competition for solely served utility coal shippers (as ACE, et al. claim), there is no justification to excuse them from the legal requirements the Board has held to apply to all other similarly situated shippers.

NITL, by contrast, focuses its regulatory reform agenda on the Board's statutory market dominance standards. 49 U.S.C. § 10709. Joined by its allies (CPTA and FI), it seeks a condition that would impose on CSX and NS, for a minimum period of five years, a rule establishing an irrebuttable presumption of market dominance in every case in which a CSX or NS shipper exclusively served by only one railroad at either origin or destination challenges a rate that has been increased at a rate exceeding the RCAF-U index. Just for good measure, NITL (this time joined by Occidental Chemical Corporation) also

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[38] For example, a coal shipper whose plant were exclusively served by Conrail could, if the requested condition were imposed, bring a rate complaint seeking prescription of a local rate to apply between the destination and the nearest interchange point with another carrier that could provide alternative service from the same or a substitute coal source. The shipper would not have to challenge, and demonstrate the unreasonableness of, the applicable through rate for the entire movement between origin and destination.

seeks to shift the burden of proof on rate reasonableness issues from the complaining shipper to the railroad in every case in which the rate for a market dominant shipper has been increased by an amount exceeding the RCAF-U. NITL-7 at 42-48; Comments of Occidental Chemical Corporation (unnumbered), Orbegoso VS at 5.[39]

As in the case of ACE, et al., there is no competitive justification for NITL's request to re-write existing rate regulatory rules. See Sections V, XVI; Kalt RVS at 20-56; Harris RVS. Even so, however, the conditions it seeks are overbroad and unwarranted even with respect to the competitive harm it has alleged. There is no nexus between the claimed loss of competitive routing options about which NITL expresses concern and the remedy it proposes. NITL has offered no evidence even remotely supporting the assumption that, but for the Transaction, the vaguely identified shippers it claims would be adversely affected would in fact enjoy rate levels that tracked the RCAF-U (or RCAF-A) indices. Moreover, rate increases above the level of change in the RCAF-U (or RCAF-A) index could be entirely appropriate for particular shipments in light of changing costs and competitive market conditions, and provide no basis to presume market dominance, much less indicate a sufficient possibility of rate unreasonableness to justify shifting the burden of proof on that issue to the railroad.

At bottom, NITL's proposed condition is simply an effort to alter maximum rate standards to favor shippers. Its proposal to substitute an irrebuttable presumption of market dominance, for example, would effectively eliminate consideration of product and geographic competition in market dominance determinations, contrary to the Board's judicially approved standards. See Market Dominance Determinations & Consideration of Product Competition, 365 I.C.C. 118 (1981), aff'd sub nom. Western Coal Traffic League v. United States, 719 F.2d 772 (5th Cir. 1983) (en banc), cert. denied, 466 U.S. 953 (1984); Product & Geographic Competition, 2 I.C.C.2d 1 (1985).[40] NITL suggests that the presumption it proposes would result in "simplification" of qualitative market dominance determinations that, in its judgment, have become too complex and costly. NITL-7 at 47. "Simplification" is one of the consequences of eliminating defenses and removing the complainant's burden of proof in a rate complaint proceeding; another consequence is, in this case, arbitrary (and selective) re-regulation. NITL's claims regarding the complexity and

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[39] In separate comments, FI supports the NITL proposal but asks that the trigger for presuming market dominance and shifting the burden of proof on rate reasonableness should be rate increases exceeding the RCAF-A, rather than the RCAF-U. TFI-2.

[40] In addition, the proposed presumption would eliminate consideration of intermodal competition. NITL has offered no conceivable ground for presuming market dominance for shipments that are otherwise subject to effective intermodal competition -- the existence and effectiveness of which could not possibly be affected by the Transaction in this case.

cost of market dominance determinations are completely unfounded.[41] In any event, NITL's argument reveals that its proposed "remedy" has little or nothing to do with the Transaction at issue in this case, but much to do with its general dissatisfaction with the Board's maximum rate standards and, in particular, the statutory market dominance test.[42]

Because the conditions proposed by ACE, et al. and NITL to change existing standards governing maximum rate challenges are not addressed to any proven competitive harm resulting from the Transaction, they should be rejected.

B. Requests For Imposition of Arbitrary Rate Caps Should Be Denied.

ACE, et al., CMA and other shippers have further requested conditions that would impose arbitrary rate caps for variously defined categories of CSX and NS traffic at the level of the RCAF-A index. ACE, et al. would impose such relief, for a minimum period of five years, for all solely served CSX and NS shippers which have raised competitive concerns about the Transaction. ACE, et al.-18 at 49-50; ACE, et al.-18, Kahn/Dunbar VS at 22-23.[43] CMA, by contrast, would impose such relief, for an indefinite time period, for all shippers whose pre-merger traffic was served by Conrail on a single-line basis and would be served post-merger on a CSX/NS joint-line basis. CMA-10 at 36-38. Because (as the shippers well know) the RCAF-A index has often fallen as the result of improvements in railroad productivity, the proposed condition would likely grant the shipper beneficiaries mandated rate reductions.[44]

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[41] Contrary to NITL's claims, complaining shippers have had little difficulty complying with the market dominance standards in individual rate cases, and the Board (at the shippers' urgings) has adopted accelerated procedures for such cases. STB Docket No. 527, Expedited Procedures for Processing Rail Rate Reasonableness, Exemption & Revocation Proceedings (served October 1, 1996 & November 15, 1996).

[42] In a similar vein, Shell's witness declares his desire for a condition eliminating from consideration in market dominance determinations involving Applicants all evidence of effective competition except direct intramodal competition. SOC-3, Hall VS at 6. This request is made in a single sentence, without any attempted explanation or justification for such a radical change in applicable market dominance standards.

[43] ACE, et al. offer this proposed condition as an alternative to the other forms of relief they are seeking, including mandatory trackage rights conditions and authorization of "bottleneck" rate complaints.

[44] Shell and PPG Industries, Inc. also seek conditions imposing rate caps. Shell's proposal is to require that Applicants' rates on "new" traffic be limited to 180 percent of

(continued...)

Here as well, there is no plausible competitive-impact justification for these requested conditions. Neither the creation of new single-line service and vertical integration (which is the basis for ACE, et al.'s claim of harm) nor the conversion of existing single-line service to joint-line service (which is the basis of CMA's claim of harm) would result in any loss of competition or increased opportunity for the exercise of market power. See Sections IV & XVI; Kalt RVS at 20-5[illegible].

The request for imposition of arbitrary rate caps is also unwarranted for other reasons. The requested condition could be justified only if the shippers could show that, but for the claimed transaction-related competitive injury they have alleged, the affected shippers would have enjoyed rates at levels reflecting changes in the RCAF-A. No party has made -- or could make -- such a showing. Granting the relief sought by ACE, et al. and CMA, therefore, would confer rate relief unrelated to any even alleged competitive harm. Not surprisingly, the Board has previously rejected various types of rate cap conditions in rail merger proceedings. See, e.g., BN/Santa Fe at 40, 99; Santa Fe Southern Pacific Corp. -- Control -- Southern Pacific Transportation Co., 2 I.C.C.2d 709, 813-14 (1986), pet. to reopen denied, 3 I.C.C.2d 926 (1987). The same result is warranted here. The shippers' requested rate cap conditions should be denied.

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[44](...continued)
variable costs when market dominance has been established, and that rate increases on market dominant traffic be limited to the RCAF-A unless the increased rate is below the r/vc jurisdictional threshold. SOC-3, Hall VS at 6. For its part, PPG declares that "[r]ate increases should be capped" on "captive" traffic under an unspecified formula established by the Board. Comments of PPG Industries, Inc. (unnumbered), Petruccelli VS at 5. These parties offer no competitive or other justification for this relief.

APPENDIX B

AGREEMENT BETWEEN THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE, NORFOLK SOUTHERN, AND CSX

THIS SETTLEMENT AGREEMENT, made this 12th day of December, 1997, between and among, on the one hand, Norfolk Southern Corporation (NS) and CSX Corporation (CSX) on behalf of their rail carrier subsidiaries, and, on the other hand, the National Industrial Transportation League, an organization of affected rail users, (Organization).

WITNESSETH that

WHEREAS, NS and CSX have filed an application (Application) before the Surface Transportation Board (STB) in Finance Docket No. 33388, for authority to control and operate specified portions of Conrail, and

WHEREAS, the parties desire to record the terms on which the Organization and NS and CSX have agreed on certain matters, and the remaining conditions that the Organization may seek from the STB

NOW THEREFORE, for and in consideration of the mutual covenants contained herein, NS, CSX and Organization agree as follows:

1. Upon execution of this agreement, Organization shall file a statement withdrawing its request for conditions and supporting the transaction in all respects other than with respect to matters directly related to the conditions requested by Organization pertaining to rates summarized at page 6, Section III ("Post-Implementation Rate Conditions") of its October 21, 1997 Comments and Request for Conditions submitted to the STB. NS and CSX shall file with the STB a statement that they do not oppose action by the STB consistent with the terms of this agreement. Organization shall not take a position inconsistent with this agreement, except that Organization reserves the right to pursue the conditions requested pertaining to Post-Implementation Rate Conditions and NS and CSX reserve the right to oppose those proposed conditions. This agreement by Organization is not to be construed as expressing opposition to any condition or responsive or inconsistent application requested by any other party to this proceeding.

2. The terms of this agreement are set forth in Appendix A. Except as specified otherwise in this Agreement, defined terms have the same meaning they have in the Application.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their duly authorized representatives.

CSX
By: /s/ John Q. Anderson
Title: Executive Vice President
Date: December 11, 1997

NS
By: /s/ D.W. Seale
Title: Vice President - Merchandise Marketing
Date: December 12, 1997

NITL
By: /s/ Ed Emmett
Title: President
Date: December 12, 1997

I. Implementation and Oversight - Pre Closing Date

A. Council. NS and CSX will create on or before February 1, 1998, a Conrail Transaction Council (Council). The Council shall consist of representatives from NS and CSX, each Organization that has agreed to the terms of this Agreement and representatives of other organizations of affected rail users. The Council is intended to function as a forum for constructive dialogue. NS and CSX shall discuss the implementation process with the Council. The Council may present to NS and CSX mechanisms to identify and address any perceived obstacles to the effective and efficient implementation of the proposed transaction, and may convey to NS and CSX any particular concerns or recommendations with respect to implementation planning or the implementation process. NS and CSX shall endeavor to address such presentations, concerns or recommendations, and shall report to the Council on the actions taken with respect thereto or the reasons for taking different actions. The Council is not intended to supplant STB oversight of the transaction as set forth in Section II of this Appendix A.

B. Shared Asset Area (SAA) Summary Description of Operations. In order to facilitate a better understanding of the SAA's among the shipping public, NS and CSX shall provide to the Council no later than February 1, 1998 a summary description of how operations will be conducted in each SAA, i.e. Northern New Jersey, Philadelphia/Southern New Jersey and Detroit. The summary shall focus on the function and interrelationship of the various crews of each railroad, the dispatching controls and the effect of the SAA's on individual shippers with respect to concerns such as car ordering, car supply and car location.

C. Labor Implementing Agreements. NS and CSX will obtain the necessary labor implementing agreements prior to the Closing Date and will advise the STB when that has been accomplished. NS and CSX will, consistent with safe and efficient rail operations, implement the transaction as soon after Control Date as possible. If NS or CSX request the STB to initiate the labor implementing agreement process prior to the Control Date, Organization will support the request.

D. Management Information Systems. Prior to the Closing Date,

NS and CSX will advise the STB that management information systems designed to manage operations on the former Conrail system within the SAA's and interchanges between the NS/Conrail and CSX/Conrail systems, including necessary car tracking capabilities, are in place.

II. Implementation and Oversight - Post Closing Date

A. Oversight. The Board should require specific oversight of the implementation and effect of the transaction for a three-year period. This condition is not intended to limit the authority of the Board to continue oversight beyond the three-year period, or limit the right of any party, including the Organization, to request continued oversight if conditions at the end of the three year period warrant such a request.

B. Reports. As part of this continuing oversight, the Board should require quarterly reports from NS and CSX and should provide an opportunity for comment by shippers. NS, CSX and the Council shall jointly recommend to the Board objective, measurable standards to be used in such reports. The base for the standards, to the extent the information is readily available, shall be the standards on Conrail prior to the Control Date. In addition to the measurable standards, information in the quarterly reports may include:

a. status of implementation plans for operations in the SAA's;
b. status of labor implementing agreements;
c. status of integration of management information systems;
d. status of allocation of responsibility for performing Conrail transportation contracts; and
e. any other matters about which the Board or Council reasonably requests information.

C. Specification of Transportation Contract Movement Responsibilities. NS and CSX will cause Conrail transportation contracts to be allocated between their rail carrier subsidiaries and discharged in accordance with their terms subject to allocation and other terms of Section 2.2(c) of the Transaction Agreement between NS and CSX. If a shipper whose contract has been allocated pursuant to the "Percentage Division" of 50-50 provided for in such Section 2.2(c), is dissatisfied with the service it receives from the carrier performing the contract from specified origins to specified destinations, it may at any

time after six months from the Closing Date (after written notice to the carrier as to claimed operating or other deficiencies below the level at which Conrail provided performance of the contract, and an opportunity of thirty days to improve its performance and to cure those deficiencies going forward), submit the issues to expedited binding arbitration under an arbitration protocol for the selection of arbitrator(s) and the conduct of the arbitration to be developed by NS, CSX and Organization no later than July 1, 1998. with arbitration to be concluded within thirty days from the date the arbiter is selected. In that arbitration, the issue shall be whether there is just cause because of such deficiency in performance to have the responsibility for the performance of the contract (for the specified origin/destination pairs) transferred. In such arbitration the only remedy shall be, if such just cause appears, to order the transfer of such responsibility for performance to the other carrier. Such transfer shall be affected unless the transferee certifies that it is not operationally feasible for it to perform the service; provided, however, that unless otherwise agreed by NS, CSX and the shipper, such transfer shall not become effective for 30 days in order to allow NS and CSX to make the appropriate operating changes. Except for such transfer, such arbitration shall not address or affect in any way the rights, obligations or remedies of any party under the terms of such contract; and the award in such arbitration shall not be deemed to establish any facts with respect to the performance of such contract for any purpose other than the arbitration. No such transfer of responsibility shall affect the "50-50" Percentage Division of revenues and expenses with respect to the contract in question and the other contracts which are allocated pursuant to the "Percentage Division" in Section 2.2(c) of the Transaction Agreement. Notwithstanding the maintenance of the Percentage Division of 50-50, no reallocation of any other contract shall be made to equalize the responsibilities for performance of the contracts subject to the Percentage Division.

III. Other Conditions and Provisions

A. Transload and New Facilities within the SAA. During the term of the Shared Assets Operating Agreements, any new or existing facility within the three Shared Assets Areas (other than an "Operator Facility") shall be open to both NS and CSX, to the extent and as provided in those Agreements, including, without

limitation, Section 6 thereof. By way of example of the foregoing, the Agreements generally provide that: 1) both NS and CSX will have access to existing or new shipper owned facilities; 2) both NS and CSX will have the opportunity to invest in joint facilities in the Shared Assets Areas in order to gain access to such facilities, and 3) either NS or CSX may solely develop facilities that it will own or control (such as transloading facilities or automotive ramps) that will be accessed exclusively by the railroad that develops such facility.

B. Reciprocal Switching. NS or CSX, as the case may be, will cause any point at which Conrail now provides reciprocal switching to be kept open to reciprocal switching for ten years after the Closing Date.

C. Reciprocal Switching Rates. For a period of five years after the Closing Date, reciprocal switch charges between NS and CSX at the points referred to in the preceding paragraph will not exceed $250 per car, subject to annual RCAF-U adjustment, and at other points and/or with all other carriers will not exceed: (a) where no separate settlement is made between carriers, the existing rates subject to RCAF-U adjustment, or (b) where there are such settlements, the amount therein prescribed (not in excess of that provided for in (a)). The foregoing does not apply where NS and CSX have entered into agreements intended to address so-called 2-to-1 situations as set forth in the Application.

D. Gateways. NS and CSX anticipate that all major interchanges with other carriers will remain open as long as they are economically efficient.

E. Interline Service. This paragraph does not apply to a shipper who has an existing Conrail transportation contract if a more favorable treatment is provided under Section 2.2(c) of the Transaction Agreement. NS and CSX agree to take the following actions with respect to transportation services to Conrail shippers on routes (i.e. origin-destination pairs) over which at least fifty (50) cars were shipped in the calendar year prior to the Control Date in single line Conrail service (i.e. origin and destination served by Conrail) where that service will become joint line NS-CSX after the Closing Date. Upon request by the affected shipper, NS and CSX will, for a period of three years, (a) maintain the Conrail rate (subject to RCAF-U

increases); and (b) work with that shipper to provide fair and reasonable joint line service. If a shipper objects to the routing employed by NS and CSX, or to the point selected by them for interchange of its traffic, the disagreement over routing or interchange, or both, shall be submitted to binding arbitration under the procedures adopted by the STB in Ex Parte 560. The arbiter in such an arbitration shall determine whether the route employed by NS or CSX or the point of interchange selected by them, or both, satisfies the requirements of 49 U.S.C. §10705; and if it not, the arbiter may establish as the sole award in such arbitration, a different route or point of interchange for such traffic.

F. STB Approval. Except as provided in this paragraph, this agreement is not subject to STB approval and will be binding on the parties in the absence of STB approval except with respect to any provision disapproved by the STB or inconsistent with the STB's action on the Application. Notwithstanding the foregoing provision, the parties will ask the STB to approve the creation of the Council, the exchange of information, the process for addressing shipper implementation and service concerns hereunder and the allocation of transportation contracts under II(C). In the absence of such approval by the STB, NS and CSX shall not be obliged to take any action which in their sole judgment might create liability under the antitrust laws.

NITL News

THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE

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FOR IMMEDIATE RELEASE,
December 11, 1997

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NITL, Norfolk Southern, CSX Reach Partial Settlement

WASHINGTON, D.C.–In an effort to reassure shippers that the acquisition of the Conrail transaction will result in two functional, competitive railroads, Norfolk Southern and CSX have reached a settlement with The National Industrial Transportation League on many of the conditions the League had asked the Surface Transportation Board to put on the transaction before approving it.

The settlement was approved by a vote of the League's Railroad Transportation Committee. The committee vote was then ratified by the NITL board of directors. In announcing the agreement, League President Ed Emmett called it "a narrowing of differences." "From the beginning of this process, a majority of League members have indicated support for elimination of the Conrail monopoly and for creation of meaningful rail-to-rail competition. Given the serious problems which have flared in the West, however, shippers need to feel comfortable that Norfolk Southern and CSX can and will implement this transaction to the benefit of shippers. This settlement is a good faith effort on their part to address those concerns," he added. "The League opposed creation of a monopoly in parts of the western United States, so it is only logical that we should do everything possible to eliminate the monopoly in the Northeast," Mr. Emmett concluded.

Specific areas of concern addressed by the settlement are:

- Creation of a shipper advisory council to foster railroad/shipper communications
- Operations within Shared Asset Areas
- Timing of labor implementing agreements

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- Installation of management information systems, including car tracking capabilities
- STB oversight of Norfolk Southern and CSX after the transaction
- Detailed quarterly reports using measurable performance standards
- Specification of how shippers with Conrail contracts will be served and the establishment of a procedure for dissatisfied shippers to change railroads
- Clarification of competitive service for transload and new facilities within Shared Asset Areas
- Commitment that current Conrail reciprocal switching points will be kept open to reciprocal switching for at least 10 years
- Guarantee of maximum reciprocal switch charges of $250 subject to RCAF-U adjustment for a period of five years
- Rate protection and fair service options for interline shipments of current single-line Conrail shippers

Under the terms of the agreement, the League retains the right to pursue "post-implementation" rate conditions and the railroads have the right to oppose such conditions.

The complete agreement is available through the League office.

The National Industrial Transportation League, founded in 1907, is the only nationwide organization representing shippers of all sizes and commodities using all modes of transportation to move their goods in intrastate, interstate, and international commerce. Known as "The Shippers' Voice," the League is dedicated to representing shippers' viewpoints in legislative, regulatory, and judicial proceedings at all levels. The League also serves as a vital role by informing shippers of changes in policy and practice.

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APPENDIX C

SWITCHING AGREEMENT
Niagara Frontier Food Terminal
Buffalo, New York

THIS AGREEMENT, entered into this _____ day of _____, 1997, by and between NORFOLK SOUTHERN RAILWAY COMPANY, including its subsidiaries and affiliates, a Virginia corporation, hereinafter referred to as "NSR", CSX TRANSPORTATION, INC. a Virginia corporation, hereinafter referred to as "CSXT"; PENNSYLVANIA LINES LLC, a Delaware limited liability company, hereinafter referred to as "PRR" and NEW YORK CENTRAL LINES LLC, a Delaware limited liability company, hereinafter referred to as "NYC";

WITNESSETH:

WHEREAS, CSX Corporation ("CSX"), parent to CSXT, and Norfolk Southern Corporation ("NSC"), parent to NSR, have entered into a Transaction Agreement (the "Transaction Agreement") between themselves; CSXT, a wholly-owned subsidiary of CSX; NSR; Conrail, Inc. ("CRR"); Consolidated Railroad Corporation ("CRC"), a wholly-owned subsidiary of CRR; and CRR Holdings LLC; and

WHEREAS, CSX and NSC have indirectly acquired all the outstanding capital stock of CRR; and

WHEREAS, pursuant to the Transaction Agreement, certain assets of CRC have been allocated to NYC, which is a wholly-owned subsidiary of CRC, to be operated by CSXT under the terms of an Allocated Assets Operating Agreement (the "CSXT Operating Agreement") between NYC and CSXT; and

WHEREAS, pursuant to the Transaction Agreement, certain assets of CRC have been allocated to PRR, which is a wholly-owned subsidiary of CRC, to be operated by NSR under the terms of an Allocated Assets Operating Agreement (the "NSR Operating Agreement") between PRR and NSR; and

WHEREAS, CSXT will have rail access to the Food Terminal of Niagara Frontier Food Terminal, Inc. in the vicinity of Bailey Avenue and Clinton Street at Buffalo, New York, using lines owned by PRR and operated by NSR; and

WHEREAS, for operating efficiencies, the parties desire that NSR switch cars to and from the Food Terminal of Niagara Frontier Food Terminals, Inc. at Buffalo, New York for the accounts of CSXT and NSR;

NOW, THEREFORE, the parties hereto do mutually agree as follows:

SECTION 1. INDUSTRY SWITCHING

(a) NSR, acting as agent for CSXT, will perform switching of cars to and from the Food Terminal of Niagara Frontier Terminal, Inc. (all of the land, facilities and improvements being sometimes known as the Food Terminal Yard), hereinafter referred to as "Industry", located at or near Buffalo, New York, for the account of CSXT, and provide services as necessary to handle such traffic between said Industry, including existing and future rail served industries adjoining or adjacent to Industry, and mutually agreed upon trackage at Buffalo, New York. NSR will use its own crews and locomotives to perform said services.

(b) For revenue purposes, the CSXT cars switched under this Agreement shall remain in the account of CSXT, and NSR shall not be entitled to any line haul revenue for the handling of such cars, nor appear in any rates, routes or divisions pertaining to any cars in the account of CSXT, except as specified in Section 5 hereof.

(c) CSXT shall assume its own car hire expenses, and NSR shall assess and collect all related demurrage charges.

SECTION 2. DELIVERY AND RECEIPT OF CARS

(a) Cars handled under this Agreement shall be considered as having been delivered by one party to the other when placed on mutually agreed upon trackage designated for such deliveries, accompanied or preceded by the necessary data for forwarding and to insure delivery and acceptance by the designated representative of the receiving road.

(b) NSR and CSXT shall provide each other with suitable information (which may be transferred by paper documents, facsimiles, or electronic means, or by other means, as mutually agreed) necessary for the handling of cars switched under this Agreement, which will identify for each car:

(1) Car initial and number.

(2) Loaded or empty.

(3) Destination station and consignee on inbound movements.

(4) Origin and shipper as supplied by the shipper on outbound movements.

(5) All required hazardous materials information.

(6) Any other information as agreed between the parties to be necessary or convenient for the safe, efficient movements of cars switched under terms of this Agreement.

(c) NSR may make repairs to cars switched under terms of this Agreement as may be necessary for safe transit, and NSR may make adjustments to or transfers of lading from crippled, defective or overloaded cars, as in its determination may be necessary to safely move said cars. CSXT shall reimburse NSR its full cost for repairs, adjustments and lading transfers promptly upon receipt of billing therefor.

SECTION 3. INSPECTION

NSR shall not be responsible for making any mechanical inspection of cars in the account of CSXT switched to and from the Industry.

SECTION 4. INTERRUPTION, DELAY

In the event the use of trackage in performing the referenced switching services shall be interrupted or traffic delayed at any time from any cause, neither CSXT nor NSR shall have any claim against the other for liability of any kind from such interruption or delay.

SECTION 5. **COMPENSATION**

(a) CSXT shall pay NSR a mutually agreed upon rate for each loaded car handled by NSR for the account of CSXT to and from the Industry for the first six months from the effective date of this Agreement. After said six months, NSR and CSXT will jointly conduct a study to determine NSR's actual cost of handling cars in the account of CSXT to and from the Industry, and the agreed upon rate, hereinafter referred to as the "Current Charge", will be retroactive to the effective date of this Agreement.

(b) At the option of either CSXT or NSR, the Current Charge shall be open to renegotiation every five (5) years from the effective date of this Agreement. In the event the parties fail to reach agreement upon such renegotiation, such failure shall not constitute a breach of this Agreement and the parties shall continue to be bound by the terms of compensation provided in this Section 5 until the matter is settled or submitted to binding arbitration as provided in Section 8.

(c) The Current Charge shall be revised upward or downward each year, beginning with the bill rendered during the

first month of July following the effective date of this Agreement, to compensate for the increase or decrease in the cost of labor and material, including fuel, as reflected in the "Annual Indexes of Charge-Out Prices and Wage Rates (1977=100)", included in "AAR Railroad Cost Indexes" and supplements thereto, issued by the Association of American Railroads, hereinafter called "AAR". In making such determination, the final "Material prices, wage rates and supplements combined (including fuel)" indexes for the East District shall be used.

(d) The Current Charge shall be revised by calculating the percentage of increase or decrease in the index of the latest calendar year as related to the index for the previous calendar year and applying that percentage to the Current Charge.

(e) In the event the base for the "Annual Indexes of Chargeout Prices and Wage Rates" issued by the AAR shall be changed from the year 1977, appropriate revision shall be made. If the AAR or any successor organization discontinues the "Annual Indexes of Chargeout Prices and Wage Rates", an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto.

In the absence of agreement, the parties shall submit the matter to arbitration.

(f) NSR shall keep and maintain an accurate account of all loaded cars handled by it for the account of CSXT, and shall at the end of each month, render an itemized bill, computed in accordance with the provisions herein, to CSXT for payment.

(g) CSXT shall pay within thirty (30) days from receipt thereof, and any errors or omissions in such bills shall be adjusted in subsequent billing.

(h) The records of each party hereto, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other parties.

SECTION 6. **LIABILITY**

Except as provided in Subsections (n) and (o) below, the responsibility among the parties hereto for loss of, damage to, and destruction of any property whatsoever and injury to and death of any person or persons whomsoever, resulting from, arising out of, incidental to or occurring in connection with this Agreement, hereinafter referred to as a Loss, shall be

apportioned as follows without regard to consideration of fault or negligence:

(a) Whenever a Loss occurs with only one train operated by NSR being involved and such train is handling cars, empty or loaded, in only CSXT's account or cars in CSXT's account as well as cars in NSR's account; then each party agrees to assume and bear all liability, cost and expense for all cars, both empty and loaded, including lading, in its own account being handled in such train, and the parties hereto further agree that injury to or death of any person or persons whomsoever and loss, damage or destruction of all other property, including without limitation, the train(s), locomotive(s), equipment or trackage, so occurring shall be either: (i) borne solely by CSXT if the train is handling only CSXT cars, or (ii) borne solely by each party in proportion to the number of cars, both empty and loaded, which each party has in its own account in such train, if the train is handling cars in the accounts of both CSXT and NSR.

(b) Whenever a Loss occurs with more than one train operated by NSR being involved and any or all of such trains are handling only CSXT cars or CSXT cars as well as cars in NSR's account; then each party agrees to

assume and bear all liability, cost and expense for all cars, empty and loaded, including lading, in its own account handled in such trains, and the parties further agree that injury to or death of any person or persons whomsoever and loss, damage or destruction of all other property, including, without limitation, trains, locomotives, equipment or trackage, so occurring shall be borne as follows: total liability, cost and expense arising not otherwise borne separately by the parties as provided above shall be first equally divided by the number of trains involved and then (i) that portion of said liability, cost and expense apportioned to any train(s) which is (are) handling cars, both empty and loaded, only the account of CSXT shall be borne solely by CSXT, (ii) that portion of said liability, cost and expense apportioned to any train(s) which is (are) handling only NSR cars shall be borne solely by NSR, and (iii) that portion of said train(s) handling cars, both empty and loaded, in the accounts of both parties shall be shared and borne by each party in proportion to the number of cars, both empty and loaded, which each party has in its own account in each such train.

(c) Whenever a Loss occurs with the train(s) of NSR and another railroad or other company that is not a party to this Agreement being involved and any of such NSR

train(s) is (are) handling only CSXT cars, and/or CSXT cars as well as cars in NSR's account; then CSXT and NSR agree to assume and bear all liability, cost and expense for all cars, both empty and loaded, including lading, in its own account handled in the NSR train(s), and the parties further agree as between themselves that all other liability, cost and expense incurred by NSR as a result thereof shall be shared by both parties in proportion to the total number of cars, both empty and loaded, which each party has in its own account in the NSR trains so involved, excluding any cost and expense paid by said other railroad.

(d) Notwithstanding any of the foregoing provisions of this Section, when any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife and vegetation, occurs with one or more trains of NSR being involved, and any or all of such trains are handling only CSXT cars or CSXT cars as well as cars in NSR's account, then, as between themselves: (i) CSXT shall be solely responsible for any such damage or destruction to the environment which results solely from a substance which was being transported in the car or cars of, or in the account of CSXT, and from which there was a release; (ii) NSR

shall be solely responsible for any such damage or destruction to the environment which results solely from a substance which was being transported in the car or cars of NSR, and from which there was a release; and (iii) responsibility for any such damage or destruction to the environment which results from a substance in the cars of, or in cars in the account of, both CSXT and NSR from which there was a release shall be shared by both parties in proportion to the total number of cars which each party had in its accounts, containing the same substance and from which there was a release.

(e) In every case of death or injury suffered by an employee of CSXT or NSR, when compensation to such employee or employee's dependents is required to be paid under any present or future state or federal workmen's compensation, occupational disease, employers' liability or other law, and CSXT under provisions of this Agreement, is required to pay same or a portion of same in installments over a period of time, CSXT shall not be released from paying any such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.

(f) NSR agrees that it will, upon request from CSXT, institute or defend, in CSXT's name, any action relating to a claim for loss, damage, destruction, injury or death. CSXT agrees to indemnify NSR and save it harmless from any loss, costs, expenses and legal fees incurred by NSR instituting or defending any such action in its name, or on behalf of CSXT.

(g) Each party agrees to indemnify and save harmless the other parties hereto from and against all liabilities, costs and expenses which it has agreed to assume under this Section. Furthermore, each party agrees to indemnify and save harmless the other parties for any legal fees, arbitration expenses and awards or expenses incurred by the indemnifying party in connection with any liability, cost and expense assumed by the other parties in this Section.

(h) NSR shall notify CSXT of any accident, or incident which results in or could result in an action, claim, suit or demand against CSXT by NSR or any third party or which results in or could result in any indemnification or claim for indemnification by NSR against CSXT. Such notice shall include all available details with respect to time, place and circumstances and details of all investigations made.

(i) Locomotives shall be considered as performing switching service on behalf of CSXT when such locomotives are coupled to a train containing CSXT cars.

(j) Whenever circumstances require wrecking service or wrecking train service in connection with the switching subject of this Agreement, NSR shall perform such service as promptly as possible, and the cost thereof shall be borne as provided in this Section.

(k) Each party will investigate, adjust and defend all cargo related claim liability filed with it in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005, or in accordance with any applicable transportation contract filed pursuant to 49 U.S.C. Section 10709.

(l) All costs and expenses in connection with the investigation, adjustment and defense of any claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions set forth in this Agreement except that salaries or wages of full-time agents, full-time attorney's and other full-time employees of any party engaged directly or indirectly in such work shall be borne by such party.

(m) Excluding cargo related claim liability filed in accordance with 49 U.S.C. Section 11706 or 49 C.F.R. Section 1005, no party shall settle or compromise any claim, demand, suit or cause of action for which the other parties have any liability under this Agreement without the concurrence of such other parties if the consideration for such settlement or compromise exceeds Thirty-Five Thousand Dollars ($35,000).

(n) Section 6, Subsections (a) through (m), shall apply only to the amount of Loss resulting from a single incident which is $25 million or less. Responsibility for Losses resulting from a single incident which exceed $25 million shall be allocated to the extent of such excess to CSXT and NSR in proportion to their respective fault or negligence in causing such Loss, subject to the following rules: (1) the total amount of Loss for which each party would otherwise be responsible under Section 6, Subsections (a) through (m), shall be determined, on a comparative percentage basis; (2) for each party, multiply $25 million by the comparative percentage determined for that party in Section 6(n)(1); (3) the Loss for which each party is responsible in excess of the amount determined in Section 6(n)(2) shall be allocated between CSXT and NSR

in proportion to their respective fault or negligence in causing the Loss. As used in this Section 6(n), the term "Loss" shall exclude consequential, indirect, incidental or other similar damage, injury or loss to either CSXT or NSR and claims for exemplary and punitive damages by any party hereto on its own behalf against another party hereto. By way of example, if a Loss from a single incident were $100 million, of which CSXT would be responsible for $80 million under Section 6, Subsections (a) through (m), and NSR would be responsible for $20 million under Section 6, Subsections (a) through (m), then CSXT would be responsible for $20 million and NSR would be responsible for $5 million of such Loss under Section 6(n)(1), and the remaining $75 million of Loss would be apportioned between CSXT and NSR in proportion to their respective fault or negligence in causing the Loss. Any dispute between or among the parties hereto in computing the comparative percentage, in determining their respective fault or negligence in causing the Loss or otherwise relating to their respective responsibilities for Loss arising out of, incidental to or occurring in connection with any such incident, including any Loss exceeding $25 million, shall be submitted for resolution by binding arbitration

pursuant to Section 8. The $25 million amount referred to in this Section 6(n) may be adjusted every five years following the date of this Agreement with the prior approval of all parties, which approval may be given or refused in sole discretion of each party.

(o) Each party shall assume and bear all responsibility for Loss caused by acts or omissions of any of its employees while under the influence of drugs or alcohol or by the intentional and criminal misconduct of any such employee and Section 6, Subsections (a) through (n), shall not apply to any such Loss.

SECTION 7. EMPLOYEE CLAIMS

Each party agrees to indemnify and hold harmless the other parties against any and all costs and payments, including benefits, allowances and arbitration, administrative and litigation expenses, arising out of claims or grievances made by or on behalf of its own employees, either pursuant to employee protective conditions imposed by a governmental agency as conditions for that agency's approval of this Agreement and operations hereunder, or pursuant to a collective bargaining agreement. It is the intention of the parties that each party shall bear the full costs of protection of its own employees under employee protective conditions which may be imposed, and of

grievances filed by its own employees arising under its collective bargaining agreements with its employees.

SECTION 8. ARBITRATION

Any irreconcilable dispute arising among the parties with respect to this Agreement shall be jointly submitted for binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator shall be final and conclusive upon the parties. Each party to the arbitration shall pay the compensations, costs, fees and expenses of its own witnesses, experts and counsel. The compensation, costs and expense of the arbitrator, if any, shall be borne equally by the parties. The arbitrator shall not have the power to award consequential or punitive damages or to determine violations of criminal or antitrust laws. Pending the award of the arbitrator, there shall be no interruption in the transaction of business under this Agreement, and all payments in respect thereto shall be made in the same manner as prior to the arising of the dispute until the matter in dispute shall have been fully determined by arbitration, and thereupon such payment or restitution shall be made as required by the decision of the arbitrator.

SECTION 9. **TERM AND TERMINATION**

(a) This Agreement shall take effect on the day and year first above written and continue in full force and effect for one twenty-five (25) year period and continue thereafter year to year until terminated by mutual consent of the parties hereto.

(b) The rights, benefits, duties and obligations running from or to NSR under this Agreement shall in all events expire (except liabilities incurred prior to termination) upon the earlier of (i) termination of this Agreement or (ii) termination of the NSR Operating Agreement (including any renewals thereof) and the rights, benefits, duties and obligations running from or to CSXT under this Agreement shall in all events expire (except liabilities incurred prior to termination) upon the earlier of (i) termination of this Agreement or (ii) termination of the CSXT Operating Agreement (including any renewals thereof); provided, however, that upon termination of the NSR Operating Agreement, the rights, benefits, duties and obligations running from or to NSR under this Agreement shall run from or to PRR and upon termination of the CSXT Operating Agreement, the rights, benefits, duties

and obligations running from or to CSXT under this Agreement shall run from or to NYC.

(c) Termination of this Agreement shall not relieve or release any party hereto from any obligation assumed or from any liability which may have arisen or been incurred by such party under the terms of this Agreement prior to the termination hereof.

SECTION 10. SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. No party hereto shall transfer or assign this Agreement, or any of its rights, interests, or obligations hereunder, to any person, firm or corporation without obtaining the prior written consent of the other parties.

SECTION 11. NOTICE

Any notice required or permitted to be given by one party to another under this Agreement shall be deemed given on the date sent by certified mail, or by such other means as the parties may mutually agree, and shall be addressed as follows:

(a) If to NSR:

Vice President Transportation & Mechanical
Norfolk Southern Railway Company
Three Commercial Place
Norfolk, Virginia 23510-2191

(b) If to CSXT:

Assistant Vice President - Joint Facilities
CSX Transportation, Inc. J200
500 Water Street
Jacksonville, Florida 32202

(c) If to PRR: (To Be Furnished)

(d) If to NYC: (To Be Furnished)

Any party may provide changes in the above addresses to the other parties by personal service or U.S. mail.

SECTION 12. GENERAL PROVISIONS

(a) This Agreement and each and every provision hereof are for the exclusive benefit of the parties hereto and not for the benefit of any other party. Nothing herein contained shall be taken as creating or increasing any right in any other party to recover by way of damages or otherwise against any of the parties hereto.

(b) All Section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

(c) This Agreement and the attachments annexed hereto and integrated herewith contains the entire agreement of the parties hereto and supersedes any and all oral understandings among the parties with respect to the subject matter hereof.

(d) No term or provisions of this Agreement may be changed, waived, discharged, or terminated except by an instrument in writing signed by all parties to this Agreement.

(e) All words, terms and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms, and phrases in the railroad industry.

SECTION 13. **CONFIDENTIALITY**

Except as provided by law or by rule, order, or regulation of any court or regulatory agency with jurisdiction over the subject matter of this Agreement or as may be necessary or appropriate for a party hereto to enforce its rights under this Agreement, during the term of this Agreement and during three (3) years after termination of this Agreement, the terms and provisions of this Agreement and all information to which access

is provided or obtained hereunder will be kept confidential and will not be disclosed by either CSXT or NSR to any party other than each party's respective parent corporation, subsidiaries and affiliates, and their respective directors, officers, agents, employees and attorneys, without the prior written approval of the other parties.

SECTION 14. INDEMNITY COVERAGE

As part of the consideration hereof, each party hereby agrees that all of its indemnity commitments in this Agreement in favor of the other parties shall also extend to and indemnify the parent corporation, the subsidiaries and affiliates of such other parties, and all of their respective directors, officers, agents and employees.

SECTION 15. FORCE MAJEURE

NSR shall not be responsible to CSXT for delays or failure to perform under this Agreement if such delays or failure to perform are covered by circumstances beyond its control, including, but not limited to, Acts of God, floods, storms, earthquakes, hurricanes, tornadoes, or other severe weather or climatic conditions, acts of public enemy, war, blockade, insurrection, vandalism or sabotage, fire, accident, wreck,

derailment, washout or explosion, strike, lockout or labor disputes experienced by the parties hereto, embargoes or AAR service orders; Federal Railroad Administration (FRA) orders, or governmental laws, orders or regulations.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

WITNESS

NORFOLK SOUTHERN RAILWAY COMPANY

_____

_____

_____
Title

WITNESS

CSX TRANSPORTATION, INC.

_____

_____
AVP - Joint Facilities

WITNESS

PENNSYLVANIA LINES LLC

_____

_____

_____
Title

WITNESS

NEW YORK CENTRAL LINES LLC

_____

_____

_____
Title

Niagara Frontier Food Term.

APPENDIX D

ABANDONMENTS

CSXT has received a request dated November 12, 1997 from the City of Georgetown, Illinois requesting the issuance of a Certificate or Notice of Interim Trail Use rather than an outright abandonment authorization in Docket No. AB-167 (Sub-No. 1181X), Consolidated Rail Corporation - Abandonment Exemption - In Edgar and Vermilion Counties, Illinois and Docket No. AB-55 (Sub-No. 551X), CSX Transportation, Inc. - Abandonment Exemption - In Edgar and Vermilion Counties, Illinois. The abandonment of the line of railroad involved in these proceedings is related to, and contingent upon, consummation of the proposed Transaction. If the approvals being sought in Finance Docket No. 33388, in Docket No. AB-167 (Sub-No. 1181X) and in Docket No. AB-55 (Sub-No. 551X) are granted by the Board, CSXT is willing to negotiate with the City of Georgetown pursuant to Section 8(d) of the National Trail System Act for the use of the right-of-way involved in these abandonment proceedings for interim trail use. A letter to this effect will be filed with the Board and served on the Mayor of the City of Georgetown on December 15, 1997.

CERTIFICATE OF SERVICE

Copies of Applicants' Rebuttal containing "Highly Confidential" material have been served this 15th day of December, 1997, by first-class mail, postage prepaid, or by a more expeditious manner of delivery on all counsel for parties designated by the Board as parties of record in Finance Docket No. 33388 who are entitled to review "Highly Confidential" material.

Copies of Applicants' Rebuttal as redacted for the public docket have today been served by first-class mail, postage prepaid, or by a more expeditious manner of delivery on all other person designated by the Board as parties of record in Finance Docket No. 33388.

Copies of Applicants' Rebuttal in both its "Highly Confidential" and public form have today been served by first-class mail, postage prepaid, or by a more expeditious method of delivery on:

Director of Operations
Antitrust Division
Suite 500
Department of Justice
Washington, D.C. 20530

Premerger Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
Washington, D.C. 20580

Joseph D. West

PUBLIC — REDACTED

184826

CSX/NS-177

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

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

RAILROAD CONTROL APPLICATION

APPLICANTS' REBUTTAL
VOLUME 2A OF 3
REBUTTAL VERIFIED STATEMENTS

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J. GARY LANE
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Counsel for Conrail Inc. and Consolidated Rail Corporation

December 1997

VOLUME 2

TABLE OF CONTENTS

PART B

Witness Statements

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* The Rebuttal Verified Statement of Gordon C. Rausser and Robin A. Cantor is submitted solely on behalf of Norfolk Southern, not on behalf of the Applicants jointly.

CONFIDENTIALITY CONVENTIONS

This document contains three classifications of material: highly confidential, confidential, and public. All highly confidential material appears between sets of three brackets in the highly confidential version. In the confidential and public versions, highly confidential material has been redacted, but the three brackets remain to identify the existence of this material.

Similarly, all confidential information appears between sets of two brackets in the highly confidential and confidential versions. In the public version, confidential material has been redacted, but the two brackets remain to identify the existence of this confidential material.

The following example helps illustrate what each volume will look like to the reader:

HIGHLY CONFIDENTIAL

The X railroad carries [[100]] tons of traffic from State A to State B each year. The traffic accounts for [[[$25 million]]] in annual revenue.

CONFIDENTIAL

The X railroad carries [[100]] tons of traffic from State A to State B each year. The traffic accounts for [[[ ]]] in annual revenue.

PUBLIC

The X railroad carries [[ ]] tons of traffic from State A to State B each year. The traffic accounts for [[[ ]]] in annual revenue.

REBUTTAL VERIFIED STATEMENT

OF

JOHN N. BOOTH, III

Director - Contracts/Joint Facilities - CSXT

My name is John N. Booth, III. I am Director - Contracts/Joint Facilities for CSX Transportation, Inc. (CSXT). I have held that position, or a similar position, since 1984 and have been employed by CSXT and its predecessor lines since 1977.

In connection with my responsibilities with respect to joint facilities contracts, I deal extensively with rights and operations of CSXT and B&OCT in the Chicago area, and those of other carriers, because much of the operations of CSXT and B&OCT and other railroads operating in Chicago are dependent on joint facilities arrangements.

The purposes of this verified statement are, first, to give some background concerning The Baltimore and Ohio Chicago Terminal Railroad Company (B&OCT), a wholly-owned subsidiary of CSXT; second, to recount the circumstances under which the B&OCT came to voluntarily grant trackage rights to Wisconsin Central (WC) over the B&OCT's Altenheim Subdivision, third, to describe certain negotiations that took place between B&OCT (and its parent CSXT) with WC over the possible purchase of the Altenheim Subdivision by WC between 1989 and 1992, and fourth, to make some general observations concerning the operations of B&OCT, Belt Railway of Chicago, Indiana Harbor Belt Railroad, and other railroads in the Chicago area.

I.

The B&OCT is a wholly-owned subsidiary of CSXT and, as its name suggests, at one time was a wholly-owned subsidiary of The Baltimore and Ohio Railroad Company, one of the predecessors of CSXT. B&OCT is controlled by CSXT. CSXT has never contended that the B&OCT is operated with the same degree of independence as the Indiana Harbor Belt Railroad (IHB) and the Belt Railway Company of Chicago (the Belt or the BRC) operate independently of their multiple owners. B&OCT, however, does have its own labor agreements, officers, books of account, and the like. It is separately incorporated as an Illinois corporation. With the exception of WC, the other railroads in Chicago have accepted it as a separate switching carrier that performs switching functions, and they do business with it as such. The B&OCT performs switching services to and from local industries as well as intermediate switching between railroads. Its most notable facility is Barr Yard.

II.

Prior to its start-up, WC approached CSXT and began to make arrangements for interchange of traffic with CSXT and B&OCT in Chicago. WC's President wrote to T. P. Schmidt of CSXT describing WC's planned operations in the attached letter of July 25, 1987. In that letter, WC sought trackage rights over a substantial portion of the B&OCT, including

over the Altenheim Subdivision. I was involved in the preparation of the trackage rights agreement when those rights were granted at the time of WC's start-up in October 1987.

These rights were very important to WC since it does not connect with other line-haul railroads in Chicago. The WC's line into Chicago ends with a head-on connection to B&OCT's line at Madison St., in Forest Part, IL. It is my understanding that WC also has connections in that vicinity to the IHB through the CP Rail (Soo) yard at Schiller Park, at which WC has certain operating rights.

The trackage rights sought by WC in 1987 over B&OCT's Altenheim Subdivision were clearly of great benefit to WC and were extremely valuable. With those trackage rights and other trackage rights B&OCT granted it, WC could reach the Clearing Yard of the BRC where it could deliver traffic to all owners of the BRC and other lines that interchange with the BRC - every major carrier and a number of smaller carriers. In addition, with those rights WC was able to connect to IC at 16th Street and to Conrail and CN/GTW in the vicinity of Brighton Park.

Without trackage rights over the Altenheim Subdivision, WC would have had only two bonafide alternatives to deliver traffic to carriers at Chicago and neither would have been nearly as attractive. It could have used B&OCT as an intermediate switch carrier to deliver WC traffic to carriers such as IC, Conrail, CN/GTW and others. Or, it could have sought trackage rights over the "McCook Line" between Franklin Park and points as far south as Blue Island Yard, as the July 25, 1987, letter suggested. I do not recall ever discussing trackage rights over that route with WC as we prepared the trackage rights agreements, but I am certain

that neither B&OCT nor WC would have favored that route over the one we agreed to. The McCook Line is very congested -- and has been for as long as I can remember. The number of trains that WC proposed to bring from its nearly two thousand mile network to Chicago could not have been readily accommodated on the McCook Line.[1] If B&OCT's motivation had been to try to force WC to use B&OCT as an intermediate switch carrier it would have declined to grant the trackage rights. If B&OCT had declined to grant the requested trackage rights WC would have been compelled to use either B&OCT or IHB as an intermediate switch carrier, and B&OCT would likely have been the preferred choice given the extensive delays WC would have encountered over the McCook Line. Furthermore, intermediate switch charges on either B&OCT or IHB would have greatly exceeded the trackage rights fees we charged WC.

By granting these rights to WC, B&OCT enabled WC to implement its operating strategy of delivering direct to many connections at Chicago. The route that B&OCT gave to WC helped enable it to grow its business rapidly, and relieved WC of any need to make the capital investment necessary to support yard operations in Chicago.

III.

WC's interest in purchasing the Altenheim Subdivision has not been triggered for the first time by the Conrail acquisition by CSX and NS. WC discussed with CSXT and B&OCT such a transaction starting in late 1989, as the attached materials demonstrate, but they could not

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1 Both B&OCT and IHB have the independent authority to grant trackage rights over this line. Somewhat later, WC acquired such rights from IHB.

agree on price. WCL made an apparent "best offer" from its standpoint in 1992; but that offer was not accepted. So ultimately, WC apparently felt that the value attached by B&OCT to the Altenheim Subdivision did not justify its purchase. No agreement was ever reached and to my knowledge neither party had raised the subject again until WC's filing in this case.

IV.

I would like to explain some technical aspects of railroad operation on a cooperative or joint basis, particularly in Chicago but also applicable elsewhere.

It would be wrong to conclude that there is a broad category of operations related to the interchange of cars at Chicago that can only be performed by the three (or four) carriers, the B&OCT, the BRC, the IHB, and possibly the Elgin, Joliet and Eastern Railway (EJE), commonly thought of as the "intermediate switching carriers."

An intermediate switching carrier may be understood to mean a carrier providing facilities or service, or both, to enable one line haul carrier to deliver cars to another line haul carrier with which the first does not connect. It is the responsibility of the delivering line haul carrier to get the cars to the next line haul carrier. If their tracks do not connect, the delivering carrier selects, and in effect retains as its agent, an intermediate switching carrier to perform the delivery. Any carrier, large or small, can perform intermediate switching service. In actual practice carriers seldom stand on their rights to select the intermediate carrier and instead negotiate a mutually acceptable interchange arrangement.

Industry switching (also sometimes known as reciprocal switching, or local switching) is often performed by a carrier serving a local industry customer. The carrier holds itself out in its common carrier tariff to perform these services, and is not a party to a joint rate. The carrier serving the industry places empty cars from, and delivers loaded cars to, the line haul carrier. A set of industry conventions relating to matters such as car hire responsibility and loss/damage liability govern the relationship. Typically, the line haul carrier pays the switch carrier's switching charge.

Cars can be interchanged between line haul carriers at interchange tracks which each reaches. This, of course, is accomplished without handling by any third carrier. Moreover, two trunk lines that do not connect can also accomplish delivery of cars between themselves by using overhead trackage rights over a third carrier (or more than one carrier) to reach a point of interchange. In the complex network of rail lines that comprise the Chicago Terminal all of these arrangements are used. Many of the trunk lines deliver directly to one another -- either where they connect directly or by using trackage rights over other carriers, large and small.

I have already described the B&OCT. The second intermediate switching carrier, the BRC, is currently owned by eight railroads and is operated independently by a separate management team. Conrail's 16-2/3% ownership interest will be transferred into the control of NS in the Conrail acquisition, giving NS a 25% share -- equal to that of CSX. The interests in the BRC, which has 12 shares of stock outstanding, before and after the Conrail transaction are as shown in the following table:

BRC Shares

	Pre-Conrail Transaction	Post-Conrail Transaction
CSX	3	3
NS	1	3
BNSF	2	2
Conrail	2	0
UP	1	1
CP/Soo	1	1
CN/GTW	1	1
IC	1	1

BRC receives trains for switching today from all owners and from a number of non-owners. All owners of the BRC (all the larger roads) are obligated to accept delivery of cars at the BRC's Clearing Yard, so any carrier that reaches BRC's Clearing Yard can deliver to any owner. For this reason, and because of the BRC's efficient hump operation there, BRC's Clearing Yard is a popular facility for interchange.

A third switching carrier, IHB, is considered an independent carrier, like BRC. I understand that 51% of its stock is owned by Conrail and the rest by CP/Soo. As to CSXT's interest in the IHB after the Conrail transaction, I understand that WC claims that it is concerned that "CSX, using its management of the IHB and ownership of B&OCT may direct traffic to Barr Yard currently being handled through direct interchange with Conrail . . . ." WC-10 at 7. My understanding has always been that in a movement between two line-haul carriers that do not connect the originating line-haul carrier has the responsibility to get cars to the terminating line-haul carrier; that the originating line-haul carrier can

select any intermediate carrier(s) that can accomplish delivery; and that the selected intermediate carrier is in effect the agent of the forwarding line-haul carrier. If CSXT chooses a particular intermediate carrier to forward traffic, CSXT pays it. If another carrier selects an intermediate road to deliver traffic to CSXT, the selecting carrier pays the fees. How CSXT could "direct" traffic to Barr Yard and cause another line-haul carrier to pay is beyond me.

Some consider EJE an "intermediate switch carrier" or at least a "switch carrier" if forced to label it according to its primary operating role. EJE does function in some ways more like IHB than like a trunk line.

Virtually all, if not all, carriers with lines in the Chicago area serve industries and perform industry switching. Many, including EJE, serve as a bridge between two other carriers either by permitting others to operate over their right of way, making yards available, or by performing intermediate switching service themselves.

I understand that Wisconsin Central has made certain statements about CSXT that are questionable. *First*, I understand that WC has said that CSXT has historically maintained that it has no presence in the Chicago Switching District. That statement is misleading. CSXT has maintained that it operates in the Chicago Terminal only via trackage rights and that it is not obligated to accept direct interchange of traffic from a carrier delivering cars to B&OCT. This issue was litigated quite some time ago and CSXT's predecessor prevailed.

Second, I understand that WC says that "the only means of reaching it [CSXT] for interchange purposes is through the B&OCT. Any carrier seeking to interchange with CSX in Chicago was thus faced with the imposition of a [sic] intermediate switching charge by B&OCT in order to reach CSX." That statement is false. As an owner of the Belt, CSXT accepts interchange from any carrier delivering to the BRC at Clearing Yard.

Third, WC attempts to portray certain mutually beneficial interchange arrangements that CSXT has with Western railroads as extortionate exercises of power over its connections. Over the years CSXT has entered into arrangements with carriers such as BN, ATSF, and C&NW to deliver cars destined to CSXT to the B&OCT at Barr Yard. Under these arrangements, if the Western carrier agreed to block the cars in ways that speeded their flow through Barr Yard (by eliminating the need to classify the cars) CSXT agreed to pay some or all of the B&OCT switch charge. These carriers had the option of delivering to the BRC or making other mutually beneficial arrangements. They chose the alternative which worked to their benefit -- they were not compelled to do so.

VERIFICATION

STATE OF FLORIDA)
) SS:
COUNTY OF DUVAL)

John N. Booth, III, being duly sworn, deposes and says that he has read the foregoing Statement, knows the contents thereof, and the same are true to the best of his knowledge, information and belief.

John N. Booth, III

STATE OF FLORIDA
COUNTY OF DUVAL

The foregoing instrument was acknowledged before me this 8th day of December, 1997 by John N. Booth, III, who is personally known to me and who did take an oath.

Jane S. Otrich

Notary Public
Commission Expires

JANE S. OTRICH
NOTARY PUBLIC, STATE OF FLORIDA
My commission expires Mar. 7, 1998
Commission No. CC 340589
Bonded thru Patterson - Becht Agency

Attachments to Rebuttal Verified Statement
of
John N. Booth, III

WISCONSIN CENTRAL LTD.
54 WEST HUBBARD STREET
CHICAGO, ILLINOIS 60610
(312) 527-0086

Bill Collins

July 25, 1987

Mr. T. P. Schmidt
General Manager Transportation Planning
CSX Transportation
500 Water Street
Jacksonville, Florida 32202

Dear Tom:

As you may be aware, Wisconsin Central has agreed to purchase approximately 1,980 miles of railroad from the Soo Line. I am attaching a map showing the lines involved. Our financing is now in place, and closing is scheduled for September 1.

As general information, WC will have annual revenues of about $93 million, will have 650 employees and operate a fleet of 80 locomotive units and 4,000 cars. We will be the largest of the new regional railroads. We anticipate handling approximately 145,000 loads per year.

WC will purchase SOO trackage to the junction with the BOCT at Forest Park, and will also connect with the McCook Line to Franklin Park. The SOO-BOCT agreement granting SOO trackage rights east of Forest Park will not be assigned to WC, and will remain in effect under its terms between SOO and BOCT.

We desire to make arrangements with the CSX system for interchange at Chicago, and also for trackage rights on the BOCT to effect interchange with other carriers in the Chicago Terminal. WC will not operate a yard at Chicago, but will operate with pre-blocked trains from its terminal at Fond du Lac, Wisconsin directly to and from the yards of the connecting carriers.

Regarding interchange with CSXT and BOCT, we propose to deliver and pull all traffic at Barr Yard. We will be in position to block deliveries if this will help your operation and expedite car movement. In exchange for us handling the traffic in both directions, we request that there be no trackage or switching charges.

Concerning trackage rights, we request overhead rights between Franklin Park and Blue Island, between Forest Park and Blue Island, and between Western Ave.

JUL 28 1987

Jct. and connection with the St. Charles Air Line at Union Avenue, with the right to connect with all lines. I suggest that charges be on a car mile basis, and hope you will be reasonable with us in this regard.

I am aware of your plans to single-track the Altenheim Subdivision, and believe we can operate on single track in this territory without major delay. Would you please send me a copy of your drawing showing the track and signal changes proposed.

From a traffic standpoint, CSXT will be a major connection of WC. Our lines connect end to end, so we anticipate a mutuality of interest on traffic matters. We are looking for a long-term close relationship in both marketing and operating areas.

We expect to file with the ICC in mid-August under Section 10901, and should make a seven day filing for trackage rights at the same time. I apologize for this short notice, but felt negotiations were premature until our financing was in place. We are in position to draft a trackage agreement quickly if we can reach general agreement on the terms. I ask your help in this respect.

I will be pleased to come to Jacksonville if it will expedite resolving these issues. I look forward to hearing from you, and appreciate your cooperation.

Sincerely,

E. A. Burkhardt
President

cc - Mr. R. E. Page
Division Manager
CSX Transportation
Riverdale, IL 60627

J. L. Bradshaw

FYI
Bill Higgins
December 18, 1980

Jacksonville, FL, December 4, 1980

Mr. A. B. Merritt, Jr - J350
Mr. J. A. Miller, Richmond, VA

RE: IL-114, **Altenheim Subdivision**, between Madison Avenue and Rockwell Street.

IL-113, **Blue Island Subidivision**, between Rockwell Street and Brighton Park Yard (14th Street).

IL-111, **Cicero Industrial Track**, between 48th Avenue Yard and 54th Avenue Yard.

The Wisconsin Central is interested in purchasing those portions of the Altenheim and Blue Island Subdivisions over which they presently have trackage rights. They also may be interested in purchasing the Cicero Industrial Track. Please furnish both the gross and net values for the land and track.

Altenheim Subdivision

Madison Ave. (Center Line)	-	Rockwell Street
V. S. 574+22.86		V. S. 213+36.5 (end of main track)
Milepost 37.00		Milepost 30.26

Valuation Map No. 138.1, Sheets 2, 3, 4

Blue Island Subdivision

Rockwell Street	-	Brighton Park Yard (14th St)
V.S. 189+37 = V.S. 198+24.3		V.S. 337+09
Milepost 29.84		Milepost 27.21

Valuation Map No. _____

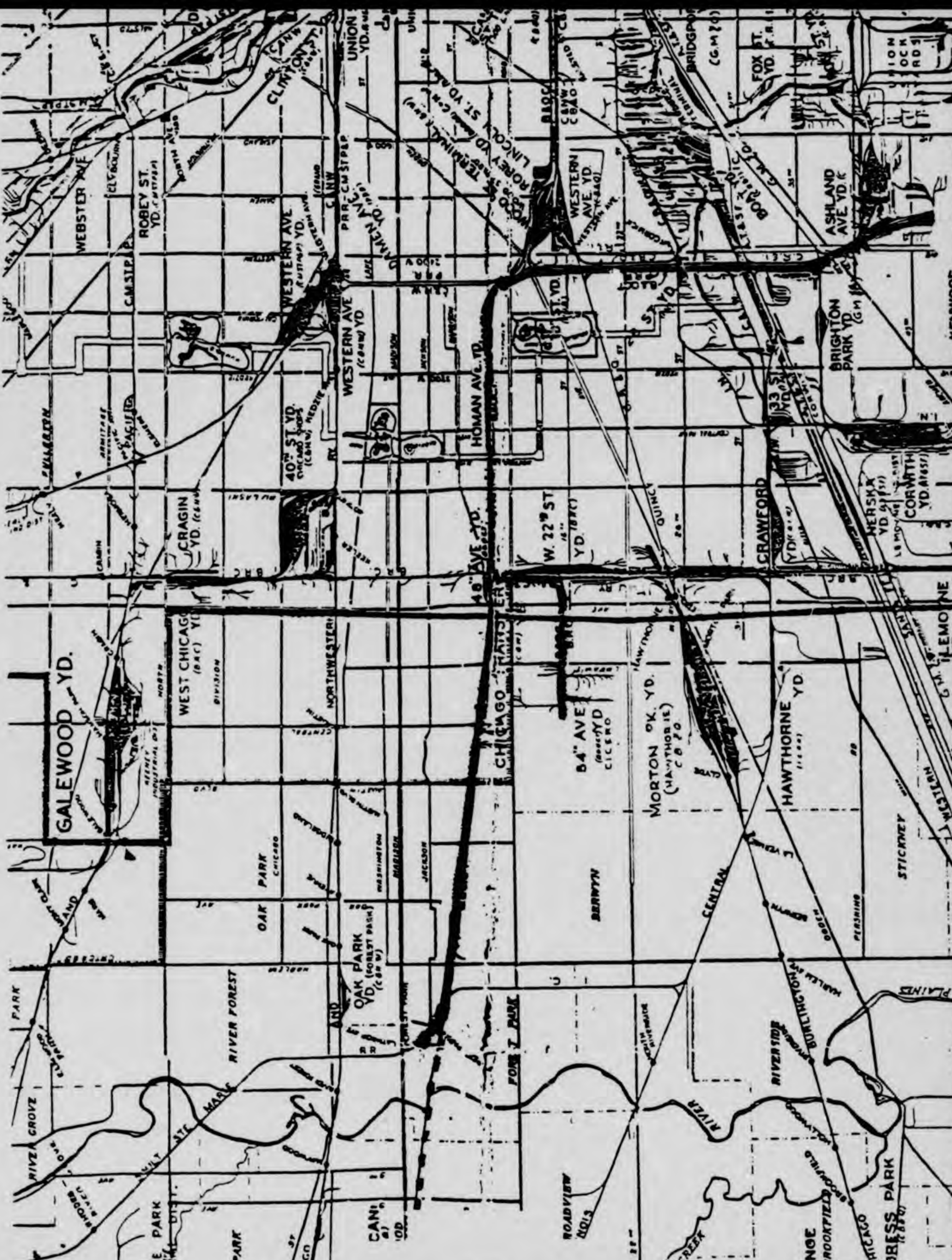
Cicero Industrial Track

Entire segment between:		
48th Avenue Yard	-	54th Avenue Yard

Valuation Map No. 138.2, Sheet 1

CDP
Ceceille D. Poole

cys:
Mr. J. T. Derwin - J200
Mr. G. S. Athanas, Chicago, IL
Mr. R. D. Kimicata, Chicago, IL - Reference our conversations concerning these cutpoints. Please confirm and furnish Map No. for the Blue Island Subdivision.
Ms. M. A. Scheler - J180
Mr. W. J. Higgins - J305


GALEWOOD YD.
WEST CHICAGO YD. (B&OC)
CRAGIN YD. (C&NW)
ROBEY ST. YD. (CMSTP&P)
WEBSTER AVE
40TH ST. YD. (CHICAGO SHOPS) (C&NW)
WESTERN AVE. YD.
WESTERN AVE (C&NW) YD
NORTHWESTERN
OAK PARK
OAK PARK YD. (FOREST PARK) (C&NW)
RIVER FOREST
HOMAN AVE. YD.
40TH AVE. YD.
CHICAGO
W. 22ND ST YD.
54TH AVE YD CICERO
MORTON PK. YD. (HAWTHORNE) C B & Q
HAWTHORNE YD.
CRAWFORD YD.
33 ST. YD.
BRIGHTON PARK YD.
ASHLAND AVE YD.
WESTERN AVE. YD.
CORWITH YD.
FOX ST. YD.
UNION YD.
CLINTON ST.
RIVERSIDE
BURLINGTON
BERWYN
STICKNEY
CENTRAL
RIVER
FOREST PARK
ROADVIEW
BROOKFIELD
LEMOYNE
WESTERN
KENWOOD
CHICAGO

CSX TRANSPORTATION

500 Water Street J200
Jacksonville, FL 32202
(904) 359-3574

James T. Derwin
Assistant Vice President
Asset Management

January 30, 1990

Mr. Edward A. Burkhardt
President
Wisconsin Central, Ltd.
P. O. Box 5062
Rosemont, IL 60017-5062

Dear Mr. Burkhardt:

When George Athanas and I met with you in your office in late November, 1989, the Altenheim Subdivision of the B&OCT was a major item of discussion. At that time you mentioned that the Wisconsin Central might be willing to make an offer to purchase all of the Altenheim Subdivision between Madison and Rockwell Streets, and a portion of the Blue Island Subdivision between Rockwell Street and Brighton Park. You suggested that Wisconsin Central might consider paying in the neighborhood of $2M to $3M for these approximately ten miles of line.

While we still are in the process of developing values, it now appears that, because of the complex nature of property in Chicago and the other demands being placed on our personnel working on this project, it will be a couple of months or so yet before we have an answer on value. However, we do know enough at this point to be able to tell you that in no case will CSXT's asking price be anything less than $6M. If this number is not within your acceptable range, would you kindly let us know, and we will redirect our efforts to other projects. If this lower range estimate is not an impediment to your following through to an eventual possible purchase, please let us know this, and we will press on with our analysis.

It is our hope that the foregoing proves useful to you in your decision making process; and, we look forward to your reply.

Sincerely,

James Derwin

/smc

cy:
Mr. G. S. Athanas, DM, Chicago, IL

bcys:
Mr. J. N. Booth, III - J310
Ms. C. D. Poole - J200

CSX TRANSPORTATION

James T. Dervin
Assistant Vice President
Asset Management

500 Water Street J200
Jacksonville, FL 32202
(904) 359-3574

March 12, 1990

Mr. Edward A. Burkhardt
President
Wisconsin Central Ltd.
P. O. Box 5062
Rosemont, IL 60017-5062

Dear Mr. Burkhardt:

Please pardon the delay in this response to your letter of February 7th concerning Wisconsin Central's proposal to acquire the B&OCT trackage between Madison Street and Brighton Park, IL. February was a very heavy travel month; and, I compounded that problem by then taking a week's vacation.

As was mentioned in my letter of January 30th, we have determined that CSXT's asking price for the property of interest would be greater than $6M, perhaps significantly more. Certainly, knowledge of the physical condition of the property is an essential ingredient in making an informed decision; and, I suggest you arrange with George Athanas to make an on site inspection of the track and structures. It is CSXT's practice to sell lines "as is, where is" for continued railroad purposes, and, we would follow that precedent here as well. We do not see the Net Liquidation Value concept as particularly relevant in this transaction. Therefore, we must decline your request for access to real estate records.

We disagree with your assertion that this line holds little value as an assembled corridor. On the contrary, it is our sense that property in this area is quite valuable for many uses. In fact, there is potential for fiber optic cables and we already have sold rights for an underground aqueduct system. Additionally, in this particular case, CSXT believes the air rights over this corridor to be quite valuable, and any sale of this property would be contingent upon the reservation of these rights by CSXT.

Given CSXT's view of the situation, before we become engrossed in detail, it seems that you should advise us of the best price Wisconsin Central is prepared to pay for this line; in sum, what is its worth to Wisconsin Central. If that offer

is too far below CSXT's estimates of value then we both can turn our attention to other matters. Alternatively, if close, then we can press on to discuss the proposed transaction in more specific terms.

Kindly let me know how you wish to proceed.

Sincerely,

James Darwin

/smc

cy:
Mr. G. S. Athanas, Chicago, IL

bcys:
Mr. J. N. Booth, III - J310
Ms. C. D. Poole - J200

CSX TRANSPORTATION

500 Water Street J200
Jacksonville, FL 32202
(904) 359-3574

James T. Derwin
Assistant Vice President
Asset Management

April 25, 1990

Mr. Glenn J. Krebs
Vice President - Engineering
Wisconsin Central Ltd.
P.O. Box 5062
Rosemont, IL 60017-5062

Dear Mr. Krebs:

Kindly recall your letter of April 2nd concerning Wisconsin Central Ltd.'s continued interest in exploring the possible purchase of the B&OCT line between Madison Street (Forest Park) and Brighton Park, Illinois.

George Athanas and I had an opportunity to discuss your interest in this line at some length last week; and, George is agreeable to accommodating your request to inspect the physical property between Madison Street and Brighton Park. Please feel free to call George to make the necessary arrangements. Additionally, George will arrange to provide you with as much of the information you are requesting in items 1 through 4 as is available to him in Chicago. If he is unable to furnish some of the material, we will attempt to obtain it in Jacksonville and forward it to you.

We also will assume the responsibility of retrieving the traffic data requested for the two most recent calendar years. This will be furnished as promptly as possible, most probably the first or second week in May.

If we can be of any further assistance, or should you have any questions, please let me know.

Sincerely,

James Derwin

Fax To
J.T. Dermin
J.N. Barth

WISCONSIN CENTRAL LTD

OFFICE:
One O'Hare Centre
6250 North River Road
Rosemont, IL 60018
Tel. (708) 318-4600

MAILING ADDRESS:
P.O. Box 5062
Rosemont, IL 60017-5062

January 27, 1992

Personal

Mr. George S. Athanas
Division Manager
CSX Transportation
733 West 136th Street
Riverdale, IL 60627

Dear George:

I regret my delay in responding to you concerning our proposed purchase of the B&OCT line between Forest Park and Brighton Park. Our time always seems to run out before the work does.

Our conclusion is to offer you $5,000,000 cash for all B&OCT property between Forest Park and Western Avenue Jct. (including the Cicero Branch) and an undivided 50% interest in the line between Western Avenue Jct. and Brighton Park.

I consider this to be a very significant offer for 10 miles of railroad with little attractive on-line business. The line is worth less to us due to our use of the IHB McCook Line for the BRC traffic, and the prospect of diversion of much of the traffic we are still running over the B&OCT in the near future.

We are ready to negotiate a purchase agreement and progress the purchase to conclusion if you agree with the above.

I look forward to hearing from you.

Sincerely,

Edward A. Burkhardt
President

REBUTTAL VERIFIED STATEMENT
OF
JOSEPH G. B. BRYAN

I am Joseph G. B. Bryan. I am employed by Reebie Associates, a firm specializing in research assignments in matters pertaining to freight transportation and physical distribution. I have previously testified in this proceeding on behalf of CSX Transportation, Inc. ("CSX") (CSX/NS-19, Vol. 2A at 240 - 274). My credentials are described in my initial Verified Statement.

In my initial Verified Statement, I presented evidence concerning the intermodal truck-to-rail diversions that I predict will result from the proposed allocation to CSX of the use of Conrail lines. Specifically, I testified that a total of 321,600 annual truckloads would divert to CSX by the end of the three year period following the consummation of the proposed transaction, and that these truckloads would represent $158.1 million in new revenue for CSX. Id. at 241 and Ex. 1 at 257. My analysis, described in my initial Verified Statement, focused on new single-line intermodal services that would be available as a result of the transaction in four new single-line traffic corridors -- I-95, I-85, I-75 and the Memphis Corridor -- and on improved East-West intermodal services made possible by transaction-related efficiencies. Id. at 247-48. We applied a diversion model that considered the potentially divertable truck traffic in these corridors, service considerations, and the cost differences between truck and intermodal transportation services. Id. at 248. This same diversion model was utilized to assess potential truck diversions in the Union Pacific/Southern Pacific merger proceeding.

The purpose of this Rebuttal Statement is to respond to the comments of two utilities and the Transportation Committee of the Pennsylvania House of Representatives, which have challenged the results of our diversion analysis. I will address the utilities first.

The utilities are Consumers Energy Company (CE-04) and GPU Generation, Inc. (GPU-02). Both make identical arguments. These parties claim that the projections for new revenue from intermodal traffic are overstated, and that the costs of the acquisition will therefore be borne more heavily by "captive" shippers. I will not address these parties' contentions that they are captive or that there is a transaction-related revenue shortfall that must be closed. I understand that other witnesses will address these points. I will address the contention that the truck diversion revenue estimates are overstated.

The arguments of these parties essentially follow two broad lines:

- The projected diversions from highway transport are too high, in essence because the 93.5% motor carrier operating ratio applied in the analysis is perceived to be too favorable.
- The projected intermodal revenues are too high due to the use of a seemingly inflated railroad revenue:cost ratio.

I will address these contentions in turn.

The Predicted Highway Diversions Are Not Too High: CE and GPU argue that motor carriers will respond to new intermodal rail competition by lowering prices to meet the competition. As a result, they claim, CSX will not gain the traffic or revenues it predicts.

This argument reflects a lack of understanding of the intermodal market. Of course, some motor carriers will compete with intermodal services offered by CSX post-transaction, just as some motor carriers compete with CSX today. Partly for that reason, we have not predicted that CSX will capture all, or even close to all, of the traffic on any of the corridors that we studied. For the five corridors that we studied, we predict that CSX's new intermodal service will capture an estimated 9.6% of the available traffic, raising the total traffic handled by intermodal to just 30.1% of the volume in these corridors today. Over two-thirds of the traffic will remain on the highways.

CE's and GPU's assumption that all motor carriers view rail intermodal as a "competitor" as opposed to a "partner" for traffic is wrong. Increasingly, motor carriers are major users of intermodal services because they view such services as a cheaper and more efficient substitute for all-highway service. In fact, I understand that there is substantial motor carrier support for this transaction among motor carriers that use intermodal services. Driver shortages are one prominent factor that has compelled major truckload operators such as J.B.Hunt and Schneider to use intermodal services. For the multiple reasons that I outlined in my initial Verified Statement, the transaction will make intermodal services more attractive for these intermodal motor carrier users, as well as for other intermodal customers.

Further, when a motor carrier purchases intermodal services, it does not thereby "lose" that traffic, or the revenues it generates, to the railroad. In most cases, as far as the shipper or consignee is concerned, the motor carrier is the transporter and the party that receives the freight revenues. All the motor carrier has done is substitute linehaul rail service for linehaul highway service.

In addition, intermodal's cost advantage over all-highway service is no secret to motor carriers. For that reason, the intermodal market is not generally characterized by rail/motor carrier "price wars" of the type CE and GPU apparently envision. Motor carriers rely on service advantages (or niche services that they can offer) to retain their market share of long-haul traffic.

CE and GPU take issue with our use of a 93.5% motor carrier operating ratio in constructing the assumed motor carrier profit margin in our diversion analysis. See CSX/NS-19, Vol. 2A at 261. Their challenge to this assumption is misinformed. To begin with, the 93.5% ratio is based on the revenues and costs of the body of twelve motor carriers whose composite 1995 cost profile was actually used to produce the over-the-road costs in my diversion analysis. (A confidential workpaper that identifies these twelve carriers and their operating ratios is set forth in Volume 3.) These carriers generally were efficient, large carriers that specialize in the type of longer haul service that is subject to intermodal diversion. They were also carriers that had made available expense data that was sufficiently detailed for use in our diversion analysis. The largest truckload carriers in 1995 were included in our study wherever cost information was so sufficient.

CE and GPU note that a higher operating ratio (97%) was used by my colleague, Mr. Don Ainsworth, in determining assumed profit margin in the intermodal diversion analysis that was presented in support of the UP/SP application. As in my analysis in this proceeding, the ratio Mr. Ainsworth used was based on the body of carriers whose composite 1993 cost profile was actually employed by him to generate over-the-road costs in

the UP/SP analysis. Thus, the procedures followed in my analysis and in Mr. Ainsworth's analysis were in fact identical.

Further, the use of a 93.5% operating ratio was not only consistent with the characteristics of the representative sample of motor carriers that we used for our diversion analysis, but was a conservative choice. Low operating ratios result from efficiency and associated lower costs. Based on the Transportation Technical Services Blue Book of Trucking Companies (1996 to 1997 edition), long-haul general freight truckload carriers in 1995 as a whole operated at a 95.3% operating ratio, with average revenues per mile of $1.31 and costs of $1.25 per mile. By comparison, the more efficient body of carriers used in my analysis had average revenues per mile of $1.27 and costs of $1.19 -- both revenue yields and *costs* were lower than the entire carrier group to produce the better operating ratio of 93.5%. Consequently, while the higher operating ratio experienced by the entire carrier group could have been employed in our analysis, doing so would have meant that we would have applied higher motor carrier costs in our analysis. This, in turn, would have given CSX's intermodal product a greater cost advantage and produced a *greater* number of predicted diversions to intermodal service. Thus, the 93.5% operating ratio that we used was in fact a conservative choice.

CE and GPU suggest that an efficient carrier could accept a smaller profit margin (a higher operating ratio) in order to retain highway traffic. However, a carrier that has to respond this way typically is facing competitive disruptions in its operating network and already is losing cost efficiency. In other words, operating ratios and cost performance are related -- a higher ratio generally means higher costs. If the carrier has the option of

retaining the traffic at a lower cost base by substituting intermodal linehaul, this should seem preferable to reduced profit margins. In other words, as I noted above, the rational motor carrier will not choose to "compete" with intermodal service on a price basis, but rather will "partner" with the railroad by buying intermodal service and substituting it for the motor carrier's higher over-the-road costs. Again, the motor carrier is not losing this traffic to the railroad; it remains in control of the traffic and attains revenues from its transportation.

CE and GPU note that four motor carriers in the group of twelve carriers that we utilized in our analysis of motor carrier costs operated above the 93.5% average. However, one of these four is a prominent user of intermodal linehaul services, a second has since been bought out by another carrier in the group with a lower than average operating ratio, and a third is noteworthy in that its M-1 Report (the basis of the cost information used in our analysis) showed far less profitability than its Annual Report to the investor community. In 1995, this carrier's M-1 reported an operating ratio of 97.8%, compared to an 83.7% ratio recorded in the Annual Report, the difference apparently related to accounting for equipment investment. As to the fourth carrier, its operating ratio was 94.0%, just one half point over the average.

The Predicted Intermodal Revenues Are Not Too High: CE and GPU argue that we incorrectly, and without any sound basis, relied on a 130% average revenue to variable cost ratio in establishing a profit margin for the post-transaction CSX for intermodal traffic. They are wrong.

Our diversion analysis compared intermodal costs to over-the-road costs, both with a profit margin applied. For intermodal, this margin was a revenue:cost ratio of 130%

in headhaul lanes and 110% in backhaul lanes, yielding an average ratio of 121%. See CSX/NS-19, Vol. 2A at 261 and Bryan Dep., Aug. 13, 1997, at 134-135 (Vol. 3). Thus, CE and GPU have their facts wrong because we did not rely on a 130% ratio for all intermodal traffic.

The rail cost ratios we used reflect the consensus judgment of knowledgeable CSX and Conrail personnel (Bryan Dep., Aug. 13, 1997 at 128, Vol. 3) and thus fairly represent conditions in the Eastern U.S. The fact that the same ratios were used in the UP/SP diversion analysis is irrelevant -- the Eastern experience informed our judgment in this matter, not the experience of Western railroads.

There is yet another reason why the 130%/110% factors that we used were reasonable and appropriate. As explained in my initial Verified Statement, these revenue:cost ratios were used in determining the unit volume of diverted traffic. CSX/NS-19, Vol. 2A at 261-262. However, the revenue estimates that we then attached to the diverted volume to assess the revenues that post-transaction CSX would achieve from these diverted volumes were independently produced, using highly confidential information about Eastern U.S. intermodal prices made available by CSX and Conrail. These prices were averaged for each railroad and found to match, each having a value of [[[ ]]] cents per highway mile.

For the sake of keeping our estimates conservative, a lower value of [[[ ]]] cents was adopted for the purpose of assigning revenues to the predicted diversions. What is noteworthy here is that [[[

]]] Bryan Dep. Aug. 13, 1997, at 134-135 (Vol. 3). Thus, the

revenue:cost profile that we used to assess diversion volumes is firmly substantiated by the Eastern U.S. pricing experience. In our judgment this is a conclusive demonstration of the reasonableness of our rail profit margin assumptions, but one nonetheless ignored by CE and GPU.

Turning to the comments of the Transportation Committee of the Pennsylvania House of Representatives (PAHTC-2), the Committee states that "it is unconvinced that the applicants can generate projected revenue levels from the diversion of truck traffic." PAHTC-2 at 13. Noting that the diversion projections are based on assumptions that do not account for economic downturns or equipment availability changes, the Committee characterizes the transaction as "high risk" and pleads for Board oversight. Id.

PAHTC's concerns are not based on anything more than speculation. For all of the reasons set forth in my initial statement and here, I believe that our diversion predictions are conservative. It is true that we did not account for the possibility of business downturns, but Board rules do not require that we do so in connection with traffic projections. Nor would it be appropriate to do so because of the cyclical nature of business. It also bears note in this regard that the intermodal sector has achieved significant growth in the last several years, including since the 1995 base year for our study. The transaction will of course promote more growth in this area.

In sum, the projections for new revenue from intermodal traffic are realistic and achievable within the three year time frame. They result from the integration of the Conrail system into a unified eastern network that renders the intermodal product more potent in the market and generates benefits for the motor carrier community, the business

community, and the general public. Moreover, as demonstrated by the diversion analysis presented in the Verified Statement of Darius Gaskins, (CSX/NS-19, Vol. 2A at 109) our analysis presented a very conservative picture indeed.

VERIFICATION

Joseph G. B. Bryan, being duly sworn, deposes and says that he has read the foregoing statement and that the contents thereof are true and correct to the best of his knowledge and belief.

Joseph G. B. Bryan

Subscribed and sworn to before me the 3rd day of December, 1997.

Notary Public

JEAN R. THOMSON
Notary Public
My Commission Expires June 30, 1998

VERIFIED STATEMENT OF JONATHAN M. BRODER

I am Jonathan M. Broder and I am Associate General Counsel of Consolidated Rail Corporation (Conrail). The purpose of this verified statement is to authenticate and enter into the record in this proceeding a letter I received from S. Mark Lindsey, Chief Counsel for the Federal Railroad Administration (FRA). This letter, a true and correct copy of which is attached hereto, is in response to the Providence and Worcester Railroad Company's (P&W) letter to the FRA concerning their purported rights pursuant to Section 305(f) of the Regional Rail Reorganization Act of 1973. I further attest that Mr. Lindsey, in a phone conversation with me on November 5, confirmed that the word "now", found at the beginning of the fourth line from the bottom of the letter, is intended to be "not." The handwritten "not" is my correction of this typographical error.

This verified testimony is submitted in response to the P&W's comments in this proceeding.

Jonathan M. Broder

Sworn to and subscribed before me

this 12th day of November, 1997

Robert B. D'Zuro
Notary Public

My Commission expires:

NOTARIAL SEAL
ROBERT B. D'ZURO, Notary Public
City of Philadelphia, Phila. County
My Commission Expires Sept. 18, 2000

U.S. Department
of Transportation
**Federal Railroad
Administration**

400 Seventh St., S.W.
Washington, D.C. 20590

OCT 30 1997

Heidi J. Eddins, Esquire
General Counsel
Providence and Worcester Railroad Company
75 Hammond Street
Worcester, MA 01610

Dear Ms. Eddins:

This responds to your recent request to the Administrator seeking to reopen a Supplemental Transaction pursuant to Section 305(f) of the Regional Rail Reorganization Act of 1973, as amended. Following the receipt of your letter, Conrail responded on October 10, 1997 (a copy of which was provided to you).

Based upon our review of your request and Conrail's response, we do not believe that any action by the Federal Railroad Administration is warranted at this time. Of course, the Surface Transportation Board has exclusive administrative jurisdiction over the acquisition of Conrail. However, we do not believe that the pendency of that transaction in and of itself constitutes an election by Conrail to withdraw from, abandon or discontinue service at New Haven Station.

If the Surface Transportation Board ultimately orders or permits Conrail or a legal successor to withdraw from, abandon or discontinue service at New Haven Station (which we do now understand to be contemplated), the FRA will entertain a renewed request from the Providence and Worcester at that time. If you should submit such a renewed request, please address fully the issue of whether Conrail or a legal successor has elected or been ordered to withdraw from, abandon or discontinue service at New Haven Station.

Sincerely,

S. Mark Lindsey
Chief Counsel

cc: Jonathan M. Broder, Esquire
Associate General Counsel
Consolidated Rail Corporation

REBUTTAL VERIFIED STATEMENT OF
R. PAUL CAREY

My name is R. Paul Carey and I am General Manager-Contracts for Consolidated Rail Corporation ("Conrail"). I have served in this capacity for over five years. In December 1990 and throughout the year 1991 I held the position of General Manager-Route Optimization in which my primary responsibility was to define and act upon opportunities to improve Conrail's network asset utilization through restructured operations, line sales, abandonments and other initiatives. Prior to my appointment to that position, I was Conrail's General Manager-Albany Division, a position that I had held since 1988. I have served in the railroad industry for over 26 years and have previously offered testimony before the ICC and the Surface Transportation Board.

In this verified statement I will respond to certain issues raised in various Comments submitted in Finance Docket No. 33388, as follows:

1) Amtrak, for cooperation on higher speed service between Detroit and Chicago;

2) Metra, regarding its request to transfer control of a number of interlockers in Chicago to it;

3) Metro North Commuter Railroad, regarding its desire to purchase Conrail's Southern Tier Line between Suffern and Port Jervis;

4) Congressman Jerrold Nadler, proposing a freight route using existing passenger railroad tunnels through Manhattan;

5) New Jersey Transit ("NJT"), for cooperation on its proposed Light-rail Project over Conrail's Bordentown Secondary between Camden and Trenton, New Jersey;

6) Northeast Ohio Four County Regional Planning and Development Organization, requesting a grant of trackage rights to METRO Regional Transit Authority ("RTA") for the Hudson to Cleveland corridor;

7) Southeastern Pennsylvania Transportation Authority ("SEPTA"), requesting extension to its trackage rights agreement, Conrail relinquishment of dispatching control on Trenton Line and a proposal of light-rail service on Harrisburg and Morrisville Lines; and

8) Southern Tier West Regional Planning and Development Board, regarding the redeployment of assets for the New York Department of Transportation ("NYDOT").

1. Amtrak: Higher Speed Service between Detroit and Chicago

Notwithstanding various statements in the press concerning Amtrak's professed interest in higher speed passenger operations between Chicago and Detroit, Conrail has neither been asked by Amtrak, nor consented to, nor made any specific plans, nor developed any agreements with Amtrak that would permit higher speed passenger operations over the Conrail-owned portions of this route (i.e. Chicago-Porter and Kalamazoo-Detroit).

Should Amtrak introduce such plans to Conrail, Conrail would cooperate in negotiations with a view toward developing terms that would satisfactorily protect the integrity of present and future freight operations without shifting increased costs to Conrail.

2. Metra: Transfer of Control of Interlockers

Metra complains about delays experienced by its Southwest Service Corridor trains at four interlockers in Chicago, including the CP-518 interlocker controlled by Conrail, and suggests that the delays are attributable to the fact that the railroads controlling the interlockers

are biased in favor of their own trains and against Metra trains. Metra asks the Board to transfer control of the interlockers to it so that its trains will not be delayed.

It is worthy of note in this regard that at the Englewood interlocker controlled by Metra, Amtrak trains often are delayed. In November 1997, for example, Amtrak trains were delayed a total of 2 hours and 40 minutes at the interlocker. Carey Exhibit 1. Under federal law, Amtrak has dispatching priority. The delay to Amtrak's trains thus indicates that either Metra is not affording Amtrak the priority to which it is entitled by law, or that certain delays inevitably occur even in the absence of a bias in dispatching. Whichever the reason, I do not believe that transferring control of the interlockers to Metra would promote the smooth flow of traffic through Chicago.

3. Metro North Commuter Railroad: Purchase of Conrail's Southern Tier Line between Suffern and Port Jervis

In March 1997, I notified Donald N. Nelson, the President of Metro North Commuter Railroad Company ("MNCR") of Conrail's position at that time regarding the sale of the Southern Tier Line between Suffern and Port Jervis. Although Conrail and MNCR had conversations on several occasions prior to March 1997, Conrail at no time solicited offers for the sale of the Southern Tier Line between Suffern and Port Jervis, New York. There was no agreement, let alone any offer or acceptance from Conrail, for sale of this line segment. Conrail's position on the sale of the line segment has not changed since March 1997. To date, Conrail has not furthered any discussions with MNCR on a possible sale of this portion of the Southern Tier Line, and has no present plans to do so.

4. Congressman Jerrold Nadler: Freight route using existing passenger railroad tunnels through Manhattan

The Intervention Petition of Congressman Nadler and a number of his colleagues proposes a new freight route directly along the Northeast Corridor rail line, north and east from Newark, New Jersey using existing passenger railroad tunnels to and through Manhattan. From west to east, the line in question passes through the Bergen (Hudson) River Tunnels consisting of two single track "tubes" leading into Manhattan from the west through Penn Station in Manhattan, and continuing through the East River tubes to "Harold" interlocking, the point where the Amtrak and Long Island Railroad routes diverge in Long Island City, New York. Conrail has never operated freight trains between Newark and New Haven through Penn Station, nor has there ever been any business justification to even consider such a method of operation.

There are several operational and maintenance problems associated with using Penn Station and the tunnels for freight service. Even a limited operation through the tunnels entails the exposure to incur prohibitive costs for apportioned maintenance and other charges. The only time Amtrak can maintain the route through the tunnels and Penn Station is at night. The complexity of this infrastructure is enormous from any perspective whether for maintenance of trackage (there are dozens of "slip switches"), electric traction (catenary and third rail throughout), or signals (all the routes are signaled). Additionally, while limited in number, passenger trains do operate throughout the night. Thus, unlike most segments of the Northeast Corridor where multiple tracks and less complex maintenance allow a window for freight operations, this is just not the case throughout the tunnels and Penn Station complex.

Moreover, the Petition overlooks an early 1900's New York City ordinance prohibiting the use of any internal or external combustion locomotive in underground tunnels.[1] Thus, only electric locomotives would be permitted. Neither Conrail nor CSX or NS have any electric locomotives.

Clearances through this route are restricted (maximum permitted height is 14 feet 8 inches, limited to a profile only 3 feet wide at that height) so as to preclude the unrestricted operation of most conventional freight equipment or any RoadRailers™ as operated by Conrail's Triple Crown subsidiary. Amtrak's own RoadRailer™ equipment of the same design, along with its bilevel passenger equipment, does not clear for operation via this route.

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[1] "In October 1902, this body (the New York City Board of Aldermen) extended its blessing to the project (construction of Penn Station and the associated Hudson (North) and East River tunnels) on the condition that the railroad assure it that 'electricity or other approved power not involving combustion' would always be used as motive power." (parentheses added)

Michael Bezilla, "Electric Traction on the Pennsylvania Railroad 1895-1968", Page 18.
Pennsylvania State University Press, 1980"

In addition, Mr. Bezilla reprinted (at Page 24) a cross-sectional diagram (from the American Society of Civil Engineers) of one of the Hudson Tubes. This diagram was "as built", showing the third rail - but not the catenary - which was later added in the early 1930's as part of a conversion to alternating-current traction (the third rail, however, has been retained), and which has served to further constrict overhead clearances within the Tubes.

The basis of electric traction on this route was not limited to the above-cited action by the New York City Board of Aldermen. In response to events culminating in an accident in Manhattan on January 8, 1902, "New Yorkers petitioned their state legislature to take action to prevent a recurrence of the disaster. Bowing to citizen pressure, the legislators passed a law in 1903 which prohibited the use of steam locomotives south of the Harlem River after July 1, 1908." (Id., at 28). Diesel locomotives were not introduced until the 1920's (as experimental units), but the operating practice has been to treat operation of any combustion locomotive - steam or diesel - as prohibited.

Furthermore, Amtrak has necessarily observed a nominal train length limit of 18 cars (at a length of 85 feet per car) at and through Penn Station, so as to "clear" and not impede other "parallel" commuter and intercity passenger movements through the interlockings at each end of the Penn Station platforms. Any freight operation would be subject to the same length limitations and would therefore be impractical and inefficient.

At no time during my years at Amtrak (1971 to 1977) or at Conrail (1979 to the present) has a credible proposal ever surfaced to suggest either a benefit to be gained by using this route for freight operation, or that Amtrak, for its part, would lend its consent to such an undertaking. In addition, the limited capacities of Amtrak's route to and through Penn Station are rationed to reconcile maximum safe passenger utilization (intercity and commuter) with a maintenance program that ensures a state of adequate repair.

These and other factors explain why Conrail has never had reason to negotiate any operating protocols or details, including frequency of movement, time of day operations (or restrictions) and the like, for freight movement through the tunnels. The best use of this route has been, and is, for the movement of passengers. Informal expressions by Amtrak to consider or study (as opposed to act upon) proposals of this sort merely reflect the deference to the opinions of some public officials, upon whose support Amtrak depends.

5. New Jersey Transit ("NJT"): Light-rail Project over Conrail's Bordentown Secondary between Camden and Trenton, New Jersey

Conrail has had a balanced and amicable business relationship with NJT for many years. We have worked with NJT in the development of many of its new services, including its assumption of the Atlantic City services from Amtrak (which requires its use of Conrail's Delair Bridge), the extension of commuter service to Hackettstown NJ, and NJT's continued lease of Conrail's Boonton Line (the unused Conrail portion, pending completion of the NJT Montclair Connection). We have entered into an agreement with NJT that contemplates the eventual separation of our North Jersey through freight operations on the west side of the Palisades (via the Marion Connection) from a new light-rail passenger system that, when completed, will utilize the Conrail right-of-way between Bayonne, Hoboken, along the east side of the Palisades, through the Weehawken Tunnel and on to Secaucus.

It should be no surprise that Conrail and NJT have been successful in establishing and maintaining an environment of mutual cooperation. Conrail and NJT were the parties to the Transfer Agreement dated September 1, 1982, in which the parties specifically recognized the need to provide for, inter alia, NJT's future access to other, unspecified, Conrail rail lines. It is my position that the Transfer Agreement does not provide operating rights for non-railroad operations such as the light-rail plan proposed by NJT. The terms for access are set forth under the Trackage Rights Agreement, as prescribed in the Transfer Agreement. This right of access limits NJT's operations, however, to those which "*do not unreasonably interfere with freight service.*" [emphasis added] (see Transfer Agreement 2.07 (b)(i)). Conrail, for its part, is

similarly bound by a covenant that its access shall "not unreasonably interfere with commuter operations" over NJT's lines. (id., (b)(ii).)

The provisions of the Trackage Rights Agreement dated October 1, 1984 reinforce the governing principle that, with respect to NJT's use of additional Conrail rail lines, "*NJT's use shall not unreasonably interfere with Conrail's freight service.*" [emphasis added] (Trackage Rights Agreement, Sec. 2.04)

NJT has indicated in its Comments that it desires to appropriate Conrail's Bordentown Secondary Track for light-rail operations. This track, among others, was a candidate for sale by Conrail in 1996 to a shortline for continued freight operations, but no sale was consummated. At no time did Conrail promise to sell the Bordentown Secondary Track to NJT, or to any party acting on behalf of NJT. I am personally familiar with the circumstances surrounding that line sale. After noticing some 1996 press accounts touting a prospective NJT light-rail service over the Bordentown Secondary Track, I called Bill Herkner (NJT's Assistant General Manager, Special Projects and Contract Administration) to advise him that no proposal for such service on the line had been formally introduced to Conrail by NJT. In that conversation, I did note that some of NJT's consultants were seeking access to our property, and to this I had no objection, subject to the understanding this access was necessary for NJT to introduce any proposal for light-rail service to us at a later time.

Through the summer of 1997, I had no contact from NJT concerning the Bordentown Secondary Track, but I learned that NJT had initiated a meeting in August with NS and CSXT to introduce a proposed operating plan and its suggested terms for NJT to obtain control of the line. At a meeting in Mount Laurel, New Jersey on September 8, 1997, Frank Russo of NJT introduced the same plan to Conrail that was presented to NS and CSXT the prior month. At this meeting, Conrail explained to NJT the reasons why its operating plan was not acceptable. There was, therefore, no reason to discuss the proposed term sheet (prepared by its consultant) for NJT to acquire and control the line, and I said so at that September 8 meeting. Conrail's essential requirements for an acceptable NJT operation were set forth in my letter dated September 22, 1997 (Carey Exhibit 2) which confirmed the substance of our earlier meeting.

It is Conrail's position that the introduction of light-rail operations raises extraordinarily difficult operating issues affecting access for freight operations, since it is well-accepted practice throughout the rail industry that, for safety reasons, freight operations must be either physically separated (on separate track) or separated by scheduled "windows" from light-rail operations, with freight operations typically confined to limited hours of operation at night. NJT's plan for the Bordentown Secondary would reduce Conrail's freight window to a shorter time interval than is currently needed and used, and would preclude introduction of future new services. In our view this constitutes "unreasonable interference" with Conrail's ability to meet its freight service obligations.

There are alternatives available to NJT, including constructing dedicated light-rail tracks on the excess width of the right-of-way, which could be utilized to mitigate the impact of light-rail operations upon freight service (the right-of-way was at one time a double track for all but a short segment in Burlington, New Jersey). In keeping with our intention to cooperate with NJT on this project, Conrail met with NJT on November 7, 1997, which resulted in what Conrail believes was a productive review of the operating issues associated with NJT's proposal. This meeting was conducted with the express understanding that the matters discussed would be confidential and that we would be available for further meetings as warranted.

6. Northeast Ohio Four County Regional Planning and Development Organization - Hudson to Cleveland Trackage Rights

In determining whether to grant trackage rights to a commuter rail agency to operate over Conrail freight lines, Conrail looks to the feasibility of both freight and passenger operations over that line. If a determination is made that commuter operations will cause unreasonable interference with freight operations, Conrail will not grant trackage rights for the commuter operations.

The freight operations over the Conrail mainline between Hudson and Cleveland are dense, with a mixture of time-sensitive intermodal and manifest freight trains, some of which dwell on the Cleveland Line to pick up and set out blocks of cars at Motor Yard on a daily basis. From an operational standpoint, this double track route has limited flexibility due to its

Automatic Block Signal system (ABS) between CP Hudson and CP White, almost the entire route proposed for commuter service, which establishes a right-handed current of traffic and this limits the capacity of the line for movements "against the current" of traffic.

A commuter operation on this line would unduly interfere with existing freight operations by increasing the need to move traffic against the current and further would introduce morning and evening "windows" during which Conrail's use of its Cleveland Line would be further restrained. The importance of this route to Conrail has escalated with the completion of the double-stack Pennsylvania clearance route, of which this line is an integral part. Accordingly, Conrail does not foresee a basis for granting trackage rights to RTA on this line.

Conrail has never agreed, or been close to an agreement, to grant trackage rights between Hudson and Cleveland; in fact, Conrail has declined even to entertain granting such rights. Conrail has made this well-known to RTA, their consultants, the Northeast Ohio Four County Regional Planning & Development Organization, and other interested parties.

As recently as September 1997, I had conversations with Ron Tober, General Manager and Secretary Treasurer of the RTA in which we discussed his interest in two "demonstration" excursions over Conrail lines between Cleveland and Madison and/or Hudson, Ohio respectively. Conrail approved the request for a Cleveland to Madison demonstration excursion, but declined, with emphasis, the request for an excursion from Cleveland to Hudson. At that time, I noted that

there was no point in unduly raising expectations for a Hudson commuter service that neither party could then (or now) prudently foresee.

7. Southeastern Pennsylvania Transportation Authority ("SEPTA"): Trackage Rights Agreement Extension, Dispatching on Trenton Line and Light-rail Service on Harrisburg and Morrisville Lines

In my position as Conrail's General Manager-Contracts I am responsible for Conrail's contractual relationship with the Southeastern Pennsylvania Transportation Authority (SEPTA). Conrail believes its working relationship with SEPTA has been (and continues to be) mutually beneficial and cordial. Conrail and SEPTA have successfully maintained a balanced arms-length business relationship under the terms of the Transfer Agreement dated September 1, 1982 and the Trackage Rights Agreement dated October 1, 1990.

Subsequent to the filing of the Application for control of Conrail by CSX and NS, I participated in several discussions and meetings with SEPTA to address contractual and transitional issues, and although not every issue has been resolved, Conrail remains available to continue discussions with SEPTA. My understanding has been that these discussions are confidential, but to the extent necessary to reply to comments filed by SEPTA in this proceeding, I will address the issues SEPTA has raised.

I have had discussions with Bernard Cohen, SEPTA's newly appointed Assistant General Manager - Strategic Business and Ridership Development, in recent months regarding an

extension of the current Trackage Rights Agreement, but liability apportionment remains an unresolved issue and no agreement on an extension has been reached.

As to the question of surrendering to SEPTA rights to dispatching control of portions of Conrail's own Trenton Line, in a letter dated October 20, 1997, I advised Mr. Cohen that not only was Conrail unwilling to do so, but that such invasive action by SEPTA was unnecessary for a number of reasons. One reason was that another Assistant General Manager of SEPTA had proposed to Conrail in 1996 to separate passenger from freight operations on the Trenton Line. I arranged to meet with Mr. Cohen (and his associate) on October 13, 1997, to review the 1996 SEPTA plan with Mr. Cohen (who was not with SEPTA at that time).

SEPTA has also sought to establish terms for its prospective Cross County Metro and Schuylkill Valley projects, each of which is in a very preliminary stage of planning. We have been advised that either, or both, of these projects may involve the use of light-rail, as opposed to conventional commuter rail equipment. Our understanding is that SEPTA, unable to commit itself at this time, wishes to protect the option to introduce light-rail over these routes.

For the same reasons I have set forth in my reply to NJT's Trenton-Camden proposal for Conrail's Bordentown Secondary, I believe the operation of such services upon the Conrail Morrisville Line or Harrisburg Line (these are both vital main line arteries) could not be introduced without undue and unreasonable interference with present and future freight

operations. Nothing in the 1982 Transfer Agreement confers (or was intended to confer) upon SEPTA the right to introduce light-rail operations on Conrail lines, and SEPTA should not misconstrue Conrail's attendance at the Schuylkill Valley Metro meetings as evidence of tacit consent.

Finally, I find SEPTA's request for a condition pertaining to the Schuylkill Valley route (between Philadelphia and Reading, PA) to be curious. To the best of my knowledge, SEPTA's operating authority is presently limited to the so-called "five county" area of Pennsylvania, namely: Philadelphia, Montgomery, Bucks, Chester, and Delaware Counties. Since Reading is located in Berks County, and SEPTA has no operating authority in Berks County, it would appear that SEPTA may not have the authority to negotiate for rights for itself or any other party over the sixteen (16) miles of this route between the Montgomery County line and Reading, PA.

8. Southern Tier West Regional Planning and Development Board - Redeployment of Assets for New York Department of Transportation ("NYDOT")

In my capacities while serving at Albany and subsequently in Philadelphia, I have had extensive and direct personal involvement with representatives of the New York Department of Transportation (NYDOT) on many subjects of mutual interest.

I was an active participant in the negotiations with NYDOT that culminated in the Amendment and Extension of the Southern Tier Agreement dated December 13, 1990. I represented Conrail in the negotiations related to Article 3, which amended Section 2.2 of the so-

called Southern Tier Agreement dated October 12, 1982 (and amended June 18, 1987), and which incorporated specific reference to the TCS Wellsville Agreement dated December 6, 1979. The TCS Wellsville Agreement provided, among other things, for pole line repairs and signal system improvements between Hornell and Salamanca, NY.

The essence of the December 13, 1990 Agreement was the suspension of through-freight train service over the portion of Conrail's Meadville Line between Hornell, NY and Meadville, PA ("the Southern Tier Extension"). Therefore, there was no longer any purpose to retain the Traffic Control Signal System ("TCS") on the Meadville Line. Accordingly, the 1990 Agreement states: "On or before December 31, 1991, Railroad [Conrail] will submit for approval of the Commissioner [of New York Department of Transportation] a plan for the removal and reinstallation of State-owned materials elsewhere on the Southern Tier or for a project equivalent in value." During 1991, I initiated several conversations with NYDOT and proposed several initiatives, including relocation of Control Point bungalows to a new TCS project between River Junction and Hornell, or a TCS extension between Hornell and Waverly, NY. Both of these TCS projects were on the Conrail Southern Tier Line in New York. Conrail also proposed that NYDOT allow extensive rail, tie, and surfacing programs that we were planning for the Southern Tier Line to satisfy this provision. I remember one conversation, where I had gone so far as to propose that NYDOT consider offering these materials to the CP Rail System, which at the time was undertaking a major rehabilitation of its newly acquired D&H lines. All of these discussions took place in 1991.

NYDOT's representative responded that for unspecified "political reasons" the only acceptable plan for redeployment of these assets, notwithstanding the express language of the December 1990 Amendment (allowing redeployment to be anywhere on the Southern Tier), would be for these assets to be deployed (or another project of equivalent value to be undertaken) on the "Southern Tier WEST", that is, the Meadville Line west of Hornell. No investment elsewhere would be considered, irrespective of the language of the December 1990 Amendment. As a result, Conrail expended substantially over $10 million of its own capital funds on the Southern Tier Line (without contribution from NYDOT or others), and the materials from the 1979 Wellsville TCS project (as cited in Section 2.2 of the 1990 Agreement) that were reusable in 1990 have remained in place.

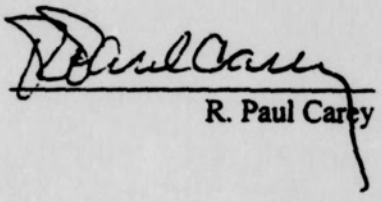
Conrail's actions since 1990 have not been inconsistent with either the 1979 Agreement or the 1990 Agreement. We have not abandoned any portion of the Meadville Line in New York. Instead, we entertained negotiations with the so-called Southern Tier West group over several years with a view toward a sale that would otherwise provide for continued operation of this part of the Meadville Line. Those negotiations did not reach a successful conclusion.

Finally, I would note that, within the past two years, I traveled to Albany to review a number of subjects with NYDOT, and had the pleasure of renewing contact with my counterpart in the 1990 negotiations. At the time of that meeting, the question of our interpretation of the 1990 Agreement was discussed and, without waiving our rights in this regard, continued on with an amicable discussion of the then-pending sale negotiations with the Southern Tier West group.

VERIFICATION

I, R. Paul Carey, verify under penalty of perjury that I am General Manager - Contracts Consolidated Rail Corporation, that I have read the foregoing document and know its contents, and that the same is true and correct to the best of my knowledge and belief.

Executed on December 8, 1997.



R. Paul Carey

AMTRAK TRAIN DELAYS
AT ENGLEWOOD - METRA HOLD
BY MINUTES

1997 NOV	29	30	350	351	352	353	354	355	364	365/7	370	371	40	41	48	49	50	51	TOTAL BY DATE
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TOTAL (BY TRAIN)	10	14	5	31	0	6	12	0	13	0	0	13	2	16	0	0	0	38	160

CONRAIL

Advance Copy via Fax to: 201 / 491 - 8229
Certified Mail - Return Receipt Requested
P 016 980 813

September 22, 1997

Mr. Frank M. Russo
Senior Director - New Rail Construction
New Jersey Transit
One Penn Plaza East
Newark, NJ 07105

Dear Mr. Russo:

This refers to your letter dated September 18, 1997 to Messrs. Reistrup (CSXT) and Ingram (NS), a copy of which was received by me this morning.

At the meeting in Mount Laurel on Monday, September 8, 1997, you were briefed upon the following MINIMUM operating requirements, for Conrail to lend further consideration to the proposed Burlington/Gloucester Light Rail Transit System:

1. Separate trackage for the Light Rail operation will be required, with grade-separated access protected for all freight customers.

2. No "windows" restricting freight operations over the Bordentown Secondary Track will be considered.

3. Conrail must retain control of all train dispatching with respect to the Bordentown Secondary Track.

Your letter alludes to discussions over approximately one year with certain individuals at Conrail, including Doug Greer, Bob Ryan, and Jim Hartman. None of these discussions has resulted in an operating plan that is acceptable to Conrail. As I pointed out to you on September 8, there is simply no point in discussing the terms of your August 7, 1997 draft Letter of Intent until and unless we first see an operating plan that meets our essential operating requirements.

Under these circumstances, we believe your stated intention to issue an RFP in January 1998 may be premature.

Very sincerely yours,

R. Paul Carey
General Manager - Contracts

Copy to:

Paul H. Reistrup
Vice President - Passenger Integration
CSX Transportation Corporation
1331 Pennsylvania Avenue., NW
Suite 560
Washington, DC 20004

J. Randall Evans
Vice President Acquisition Development
CSX Transportation Corporation
500 Water Street
Jacksonville, FL 32202

T. L. Ingram
General Manager
Norfolk Southern Corporation
185 Spring Street, SW
Atlanta, GA 30303

Bill Schaefer
Director Strategic Planning Department
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510-9207

REBUTTAL VERIFIED STATEMENT

OF

D. HAROLD DAVENPORT

I. BACKGROUND AND QUALIFICATIONS

My name is D. Harold Davenport. I am Manager of Service Design, Transportation Department, for Norfolk Southern Corporation. I have held this position since 1991. During the twenty-seven years that I have been employed at Norfolk Southern, I have held various positions including Assistant Manager of Operations Planning; Manager of Service and Scheduling, Marketing Department; and Manager of Service Control, Transportation Department. In these positions, I worked extensively with train operations, schedules and classifications. I hold a Bachelor of Science in Industrial Engineering from Virginia Polytechnic Institute, and a Master of Science in Transportation Technology from Northwestern University.

II. DISCUSSIONS WITH NEW JERSEY TRANSIT

I am familiar with the Norfolk Southern and CSX Operating Plans, as well as the Operating Plan for the North Jersey Shared Asset Area, filed in Finance Docket No. 33388. I have read the Comments and Requests for Conditions of New Jersey Department of Transportation and New Jersey Transit Corporation (NJT-8), and the Comments of New Jersey Department of Transportation and New Jersey Transit Corporation on North Jersey Shared Assets Operating Plan (NJT-12) also filed in that docket. NJT claims that unless the Surface Transportation Board imposes requested conditions, "the transactions contemplated

by the Primary Application will have an adverse impact on the adequacy of transportation to the public in New Jersey." NJT-8 at 7. NJT argues that Applicants have not attempted to adequately address freight-passenger conflicts that will allegedly occur as a result of the proposed transaction. Id. at 8.

As part of the on-going dialogue between Norfolk Southern and NJT, on September 4, 1997, I met with G.W. Herkner, Assistant General Manager - Contract Administration, New Jersey Transit, and D.C. Agrawal, Deputy General Manager - Rail Finance and Contracts, New Jersey Transit. At that time, I presented to Messrs. Herkner and Agrawal proposals for scheduling of Norfolk Southern freight trains over the Southern Tier between Port Jervis and Croxton and NK and CP Aldene. These proposed schedules and related documentation are attached as Attachment DHD-1-4. After reviewing these proposed schedules and documentation, Messrs. Herkner and Agrawal found that the proposed schedules for the operation of Norfolk Southern freight trains over NJT lines would not interfere with NJT's passenger operations. Subsequent to those discussions, I received no communication from Mr. Herkner or Mr. Agrawal that there had been a change in NJT's position regarding the proposed schedules.

VERIFICATION

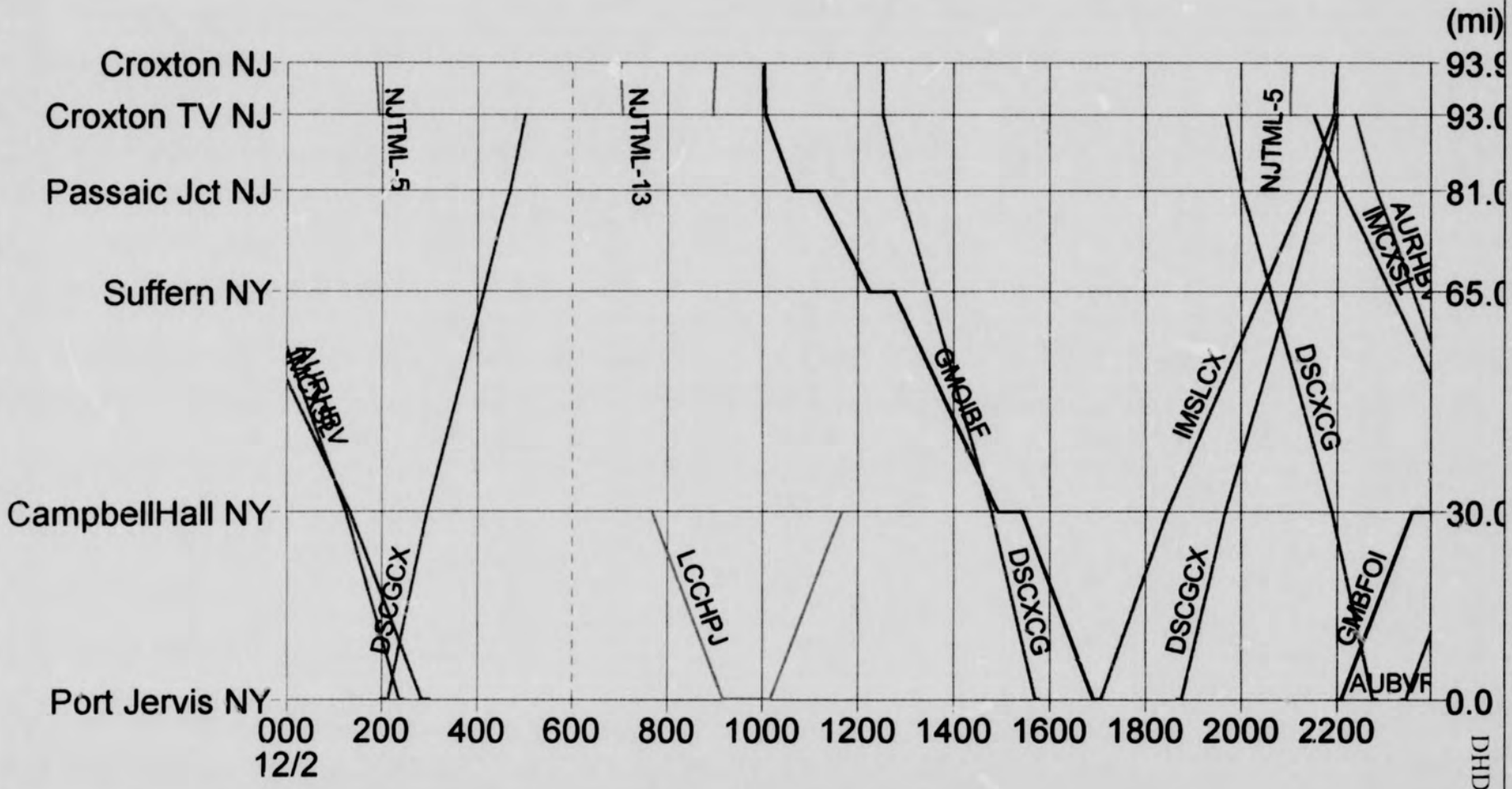
I, D. Harold Davenport, verify under penalty of perjury that I am Manager of Service Design, Transportation Department, Norfolk Southern Corporation, that I have read the foregoing document and know its contents, and that the same is true and correct to the best of my knowledge and belief.

Executed on December 9, 1997.

D. Harold Davenport

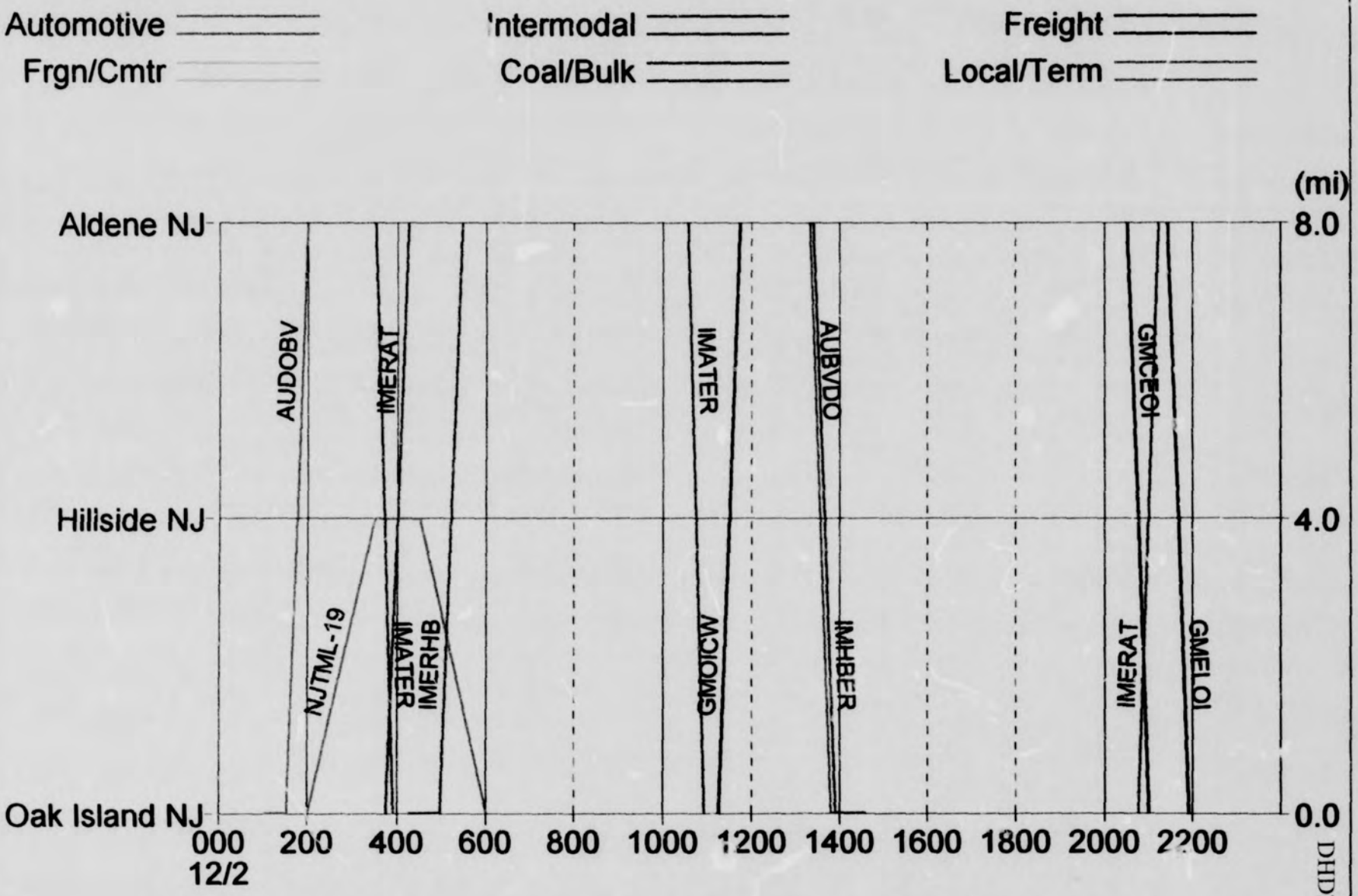
NS Trains on line from Port Jervis NY to Croxton NJ

Automotive
Frgn/Cmtr
Intermodal
Coal/Bulk
Freight
Local/Term



DHD1

NS Trains on line from Oak Island NJ to Aldene NJ



DHD2

Train Summary

Pt Jervis - Croxton

Train		Departs		Arrives		Operates
Category	**Automotive**					
AUBVRH(3)	Bellevue to Ridgefield ML	2000	0 Bellevue OH	512	2Ridgfield ML NJ	MTWRF
AURHBV(1)	Ridgfield To Bellevue	2200	0 Ridgfield ML NJ	2330	1Bellevue OH	MTWRF
Category	**Double Stack**					
DSCGCX(1)	CHICAGO - CROXTON	1900	0 Chgo 47-51St TV IL	2200	1Croxton TV NJ	SMTWRFSa
DSCGCX(2)	CHICAGO - CROXTON	200	0 CNW Global 1 IL	500	1Croxton TV NJ	SMTWRFSa
DSCXCG(1)	CROXTON - CHICAGO	1230	0 Croxton NJ	1530	1CNW Global 1 IL	SMTWRFSa
DSCXCG(2)	CROXTON - CHICAGO	1940	0 Croxton TV NJ	2130	1Chgo 47-51St TV IL	SMTWRFSa
Category	**Gen Merchandise**					
GMBFOI(1)	Buffalo to Oak Island	700	0 Buffalo Jct NY	545	1Oak Island NJ	STWRFSa
GMOIBF(1)	Oak Island to Buffalo	930	0 Oak Island NJ	800	1Buffalo Jct NY	SMTWRFSa
Category	**Intermodal**					
IMCXSL(1)	CROXTON - ST LOUIS	2130	0 Croxton TV NJ	315	3St Louis RH MO	SMTWRF
IMSLCX(1)	ST LOUIS - CROXTON TV	1800	0 St Louis RH MO	2200	2Croxton NJ	SMTWRFSa
Category	**Local/Transfer**					
LCCHPJ(1)	CampbellHall to Pt Jervis Tu	740	0 CampbellHall NY	1140	0CampbellHall NY	MTWRF
LCSUPA(1)	Suffern to Patterson Turn	900	0 Suffern NY	1400	0Suffern NY	MWF
Category	**New Jersey Term RR**					
NJTML-13(1)	Croxton to Carlstadt Turn	700	0 Croxton NJ	900	0Croxton NJ	MTWRF
NJTML-20(1)	Oak Island to Passaic Jct Tu	500	0 Oak Island NJ	830	0Oak Island NJ	W
NJTML-5(2)	Croxton to Erail Turn	2100	0 Croxton TV NJ	155	1Croxton TV NJ	SMTWRFSa

DHD3

Train Summary

Aldeen - Oak Island

Train		Departs		Arrives		Operates
Category	**Automotive**					
AUBVDO(1)	Bellevue to Doremus Ave M	1430	0 Bellevue OH	1430	1Doremus ML NJ	SMTWRFSa
AUDOBV(1)	Doremus Avenue to Bellevue	100	0 Doremus ML NJ	140	1Bellevue OH	SMTWRSa
Category	**Gen Merchandise**					
GMCEOI(1)	Conway to Oak Island	300	0 Conway East PA	2100	0Oak Island NJ	SMTWRFSa
GMELOI(1)	Elkhart to Oak Island	1230	0 Elkhart IN	2155	1Oak Island NJ	SMTWRFSa
GMOICW(1)	Oak Island to Conway	1115	0 Oak Island NJ	510	1Conway West PA	SMTWRFSa
Category	**Intermodal**					
IMATER(1)	ATLANTA - ERAIL	530	0 Atlanta RH GA	1130	1ERail TV NJ	SMTWRFSa
IMATER(2)	ATLANTA - ERAIL	2100	0 Atlanta RH GA	430	2ERail TV NJ	SMTWRFSa
IMERAT(1)	ERAIL - ATLANTA	300	0 ERail TV NJ	1425	1Atlanta RH GA	SMTWRFSa
IMERAT(2)	0CROXTON - ATLANTA	2000	0 ERail TV NJ	430	2Atlanta RH GA	SMTWRFSa
IMERHB(1)	ERAIL - HARRISBURG	330	0 ERail TV NJ	1151	0Harrisburg TV PA	SMTWRFSa
IMHBER(1)	HARRISBURG - ERAIL	700	0 Harrisburg TV PA	1521	0ERail TV NJ	SMTWRFSa
Category	**New Jersey Term RR**					
NJTML-19(1)	Oak Island to Hillside Turn	200	0 Oak Island NJ	600	0Oak Island NJ	MTWRF

DHD4

REBUTTAL VERIFIED STATEMENT

OF

STEVEN D. EISENACH

NS DIRECTOR - STRATEGIC PLANNING

I. INTRODUCTION AND QUALIFICATIONS

My name is Steven D. Eisenach, and I am Director, Strategic Planning for Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively Norfolk Southern or NS). In this position I chair Norfolk Southern's Route Management Team and am responsible for managing line analyses, providing recommendations, and executing management-approved courses of action regarding line abandonments, shortline sales or leases, coordination projects and line acquisitions. During my railroad career, I have assisted with or directly managed the disposition of over 6,000 miles of NS rail line through abandonment or transfer to short lines. I maintain a close working dialogue with state departments of transportation, connecting shortline and regional rail carriers, and other public entities and rail customers as necessary.

My tenure with Norfolk Southern began in 1980 when I was hired as a Research Assistant in Southern Railway System's Corporate Planning and Development Department. Since that time, I have held positions at Southern Railway and Norfolk Southern as Planning Analyst and Manager-Strategic Planning. Prior to my railroad employment, I was involved in public-sector rail planning in Wisconsin and Indiana.

I graduated summa cum laude from the University of Wisconsin-Oshkosh with a Bachelor of Science degree with a double major: Urban and Regional Planning and

Geography. I graduated with highest honors from Indiana University-Bloomington with a Master of Public Affairs degree, Transportation Planning concentration. I currently serve as a member of the Transportation Research Board's Committee on Local and Regional Rail Freight Transport (A1B10).

I am providing this statement to reply to select portions of comments filed with the STB by the State of Delaware Department of Transportation [undesignated], Congressman Jerrold Nadler, et al. [undesignated], the Rutgers Environmental Law Clinic on behalf of the Tri-State Transportation Campaign [undesignated] and The Elk River Railroad, Inc., [ELKR-2]. This statement is based on my knowledge of freight transportation in the United States in general, and of low-density rail line and shortline economics in particular.

II. DELAWARE DEPARTMENT OF TRANSPORTATION ("DDOT")

I will address DDOT's statement as it refers to Shortline Operations. Thomas Finkbiner will adress issues raised by The Port of Wilmington. There is only one shortline operating on the Delaware portion of the Delmarva Peninsula--the Maryland and Delaware Railroad ("MDDE"). The MDDE provides freight service over five disconnected lines, two operating solely in Delaware; three serving both Delaware and Maryland. All five MDDE lines directly connect with Conrail's Delmarva Secondary which will be controlled by NS.

DDOT requests that the STB's approval of the Transaction be conditioned on NS providing local access operating rights along the Delmarva Secondary to Delaware shortlines (obviously the MDDE) for the stated purpose of allowing the shortlines to connect and to add to their traffic base for improved viability. The STB should reject the request for local

access operating rights.

First, the Transaction has no negative impact on MDDE. MDDE will have the same number of Class I connections--one--that it has had since its beginning in the late 1970's and early 1980's.

Second, Conrail's Delmarva Secondary is relatively light density as noted below:

Table SDE-1

Segment	Traffic Density (MGTM)	Average Trains/ day
Newark-Harrington, DE	6.3	3.1
Harrington, DE-Pocomoke City, MD	1.6	1.2
Harrington-Indian River, DE	2.7	0.9

Source: CSX/NS-20, Vol. 3B, Figures D.6-1 and D.6-2.

This traffic is too light to split between two rail carriers if NS is to maintain revenue densities high enough to justify continued investment in the Delmarva Lines, which is our intention.

Third, the MDDE, by verified statement filed with the STB on October 21, 1997 supports the Transaction without any conditions. No shortline, on its own behalf, has requested the conditions requested by DDOT.

Finally, NS has agreed, subject to STB approval of the Transaction and subject to MDDE crews being NS operating rules qualified, to grant MDDE *overhead* trackage rights over certain Delmarva Lines. This grant will allow the MDDE to shuttle rolling stock from one line to another and provide it an opportunity to market traffic from one of its lines to

another (but not an opportunity to erode the CR/NS traffic base *along* the trackage rights as DDOT has requested). Normally, NS would not grant such extensive overhead trackage rights to a shortline due to safety and track capacity reasons, but the relatively light density of the Delmarva Lines makes it acceptable in this instance. This overhead trackage rights arrangement between NS and MDDE should not be made a condition of the STB's approval of the Transaction as it does not address any anti-competitive or other negative impacts, but simply reflects NS's willingness to assist the MDDE in becoming a stronger connecting shortline. This Transaction should not become a vehicle for universally connecting, through Board mandate, non-connected shortlines that came into existence separately.

For these reasons, the STB should deny DDOT's request to grant Delaware shortlines local access trackage rights on the Delmarva Lines.

III. TRI-STATE TRANSPORTATION CAMPAIGN ("Tri-State")

The gist of Tri-State's argument is that the region east of the Hudson River has had non-competitive rail service long enough, and the STB should use the Transaction as the impetus for improving the economic competitiveness of the New York City, New Haven and Boston metropolitan areas. This "east of the Hudson" argument, which is without merit, is addressed by others elsewhere. My response will address the policy and economic issues associated with Tri-State's request to force NS to provide rail service across the Hudson River to Long Island and the Bronx.

A. Car Float Operations: Tri-State argues that the STB should order one of three options with regard to car float operations across the Hudson River. I believe that at least

two of the three options should be denied. To my knowledge there is no regulatory precedent for Tri-State's first and second options: 1) order NS to file an application for a certificate of public convenience and necessity with the STB to operate additional, competitive car float service across the Hudson River, or 2) order NS to purchase the existing New York Cross Harbor Railroad Terminal Corporation ("NYCH") operation and invest capital to improve its operations.

It is no secret that many in the New York harbor area are dissatisfied with the current trans-Hudson float service provided by NYCH (see also Congressman Nadler, et al.'s comments). But NS strongly opposes any effort by other interests, regardless of the motive, to use the Transaction as an excuse to force the current car float provider out of business which is surely what would happen if the STB ordered NS to get into the car float business. Tri-State has provided no regulatory precedent or economic rationale to support ordering NS to get into the car float business.

NS currently provides no car float service anywhere on its system, has no desire to get into the car float business, is pleased that other entrepreneurs want to be in the car float business, will work with those car float operators as market conditions and opportunities warrant, and strongly opposes Tri-States' effort to force NS into the car float business. NS has a history of working cooperatively with car float operators. We have a supportive relationship with the Eastern Shore Railroad, Inc., which provides car float service between Norfolk (Little Creek) and Cape Charles, Virginia, and we use the NYCH, together with Conrail, for the transport of New York City municipal solid waste across the Hudson River to landfills in Virginia.

It is inappropriate for me to comment on Tri-State's third car float option--that the STB should investigate the level and quality of service provided by the NYCH. Although this is the most benign of the three options in terms of impact on NS, this appropriately should be addressed by the NYCH.

B. NS trackage rights to Bronx Oak Point and Hunts Point Market: Tri-State has petitioned the STB to order NS to provide direct train service to NYC's primary produce market. This should be rejected. First, this would require the STB to force the New York and Atlantic Railway Company ("NYA"), against its own interest, to grant NS trackage rights to Fresh Pond Jct., and CSXT (also against its own interest) to grant NS trackage rights from Fresh Pond Jct., to Oak Point and Hunts Point. This NS-Greenville-NYCH-65th Street-NYA-Fresh Pond Jct.-CSXT-Oak Point/Hunts Point routing, even with NS operating rights over all these segments, would be an extremely inefficient service route, would not provide the level of service necessary to win traffic away from trucks, and would unnecessarily duplicate *existing* freight rail/car float service that needs all the business it can get. Tri-State then acknowledges that its real interest is in getting NS to invest (probably millions) in larger vessels and upgraded float bridges, but only until a cross-Harbor rail tunnel is built (Tri-State will undoubtedly also want NS to share in the cost of that). In sum, Tri-State is asking the STB to order NS to invest in a *surrogate, interim and duplicative* service without the benefit of its own economic analysis and even if it makes no economic sense for NS to do so.

Second, the fact that the region east of the Hudson is very low density freight railroading today (Conrail operates only one train each day to/from the Bronx via its river

route to Albany, NY), is no reason to force another rail carrier into the market. CSXT and the Providence and Worchester Railroad Company ("PW"), have announced a marketing arrangement that will allow PW to develop traffic in association with the NYA (former Long Island Railroad freight operations), which provides freight service to Long Island. More investment--either public, private or public/private partnership--in transload facilities is required to make a dent in the huge truck market cited by Tri-State. A sure way to frustrate efforts to divert traffic from truck to rail is to have too many railroads chasing too little traffic. Tri-State's proposal will make it very difficult for any rail carrier to justify needed infrastructure investment. Tri-State has also provided no economic justification in support of an STB order to force NS to make those investments. Accordingly, this requested condition should be denied.

IV. THE ELK RIVER RAILROAD, INCORPORATED ("ELKR")

ELKR supports the West Virginia Association for Economic Development's request that the STB order NS to grant CSXT local trackage rights over the Conrail's West Virginia Secondary between Point Pleasant and Charleston, a distance of approximately 57 miles. ELKR would then have the STB order NS to allow ELKR to interchange with CSXT at Charleston which can only happen if the STB grants ELKR's additional request that NS be ordered to negotiate in good faith with ELKR to sell Conrail's 18-mile currently out-of-service Charleston to Falling Rock, WV line. Falling Rock is the southern terminus of a proposed 30-mile extension of ELKR over previously abandoned CSXT track, a project that ELKR has been working on since early 1992. The proposed track extension would connect

on the north with ELKR's existing 79-mile system which connects with CSXT at Gilmer and Burnesville Jct., WV.

To say that ELKR's demands are an egregious overreach of the STB control application process is an understatement. None of ELKR's demands can in any way be said to arise from any identifiable Transaction-related harm. Quite simply, no harm is being done to ELKR as a result of the Transaction, and these opportunistic demands should be rejected outright by the STB. ELKR connects today to the north with CSXT; it will continue to connect with CSXT after the Transaction. Those connections are not threatened in any way by the Transaction, and ELKR has not demonstrated any negative effects likely to result from the Transaction.

ELKR's claims of future harm are unsubstantiated and not related to the Transaction. ELKR claims it has been negotiating with Conrail for the sale of Conrail's line between Charleston and Falling Rock/Reamer, but ELKR has not demonstrated that either a sale agreement is in place or that negotiations were leading up to an agreement. ELKR hasn't even demonstrated that its 30-mile rebuild effort, which needs to be in place to connect with the Conrail line, will materialize. It has STB authority to rebuild the line, and it plans to rebuild the line, but this massive undertaking has been in the works for over five years. It would not be unreasonable to question whether the rebuild project will be successfully completed.

What ELKR is proposing should be addressed, if at all, outside of these proceedings, and NS is more than willing to do this. NS is willing to work with ELKR to evaluate the feasibility of establishing an NS interchange should ELKR's Hartland to Falling

Rock/Reamer rebuild project be completed, and we are willing to work with them to determine the best mix of ownership and rehabilitation responsibility for the line south of Falling Rock. But that should not be ordered as a part of this Transaction; NS would do that in any event as part of our on-going working relationship with connecting shortlines. NS particularly opposes being ordered to do what ELKR demands without having the benefit of assessing the profitability of the traffic ELKR proposes to haul south and the feasibility of NS independently restoring the out-of-service track to reach coal reserves in the area (the reason Conrail has not abandoned the line already).

Finally, it should be noted that on December 3, 1997, West Virginia Governor Cecil B. Underwood wrote to the Board to reaffirm that state's support for the Transaction and to rescind any previous objections or concerns raised by West Virginia or the West Virginia State Rail Authority, which has filed comments in support of ELKR's request for conditions.

For all the above reasons, ELKR's request for conditions should be denied.

IV. CONGRESSMAN JERROLD NADLER, ET AL: FREIGHT ROUTE USING EXISTING PASSENGER RAILROAD TUNNELS THROUGH MANHATTAN

R. Paul Carey's Rebuttal Verified Statement addresses the physical and scheduling problems associated with Congressman Nadler, et al.'s Intervention Petition proposing a new freight route directly along the Northeast Corridor rail line, north and east from Newark, New Jersey, using existing passenger railroad tunnels to and through Manhattan. I agree with his assessment that the best use of this route today is for the movement of passengers.

There is no reason to believe that special purpose equipment could not be

manufactured to clear the physical restrictions of the Hudson tunnels, but it is doubtful whether it would be economical to do so. Given the restrictive operating windows and train length obstacles, this service would not make a significant dent in trans-Hudson truck traffic. This proposed service would likely be an unnatural act with no public benefit. However, Norfolk Southern would consider participating in a public/private study designed to seek verifiable answers to these questions this issue.

VERIFICATION

Steven D. Eisenach makes oath and says that he is Director, Strategic Planning, Norfolk Southern Corporation, Norfolk, Virginia, that he is authorized to file and verify the foregoing rebuttal verified statement in STB Finance Docket No. 33388 on behalf of the applicants, that he has carefully examined all the statements in the foregoing verified statement, that he has knowledge of the facts and matters stated therein, and that all representations set forth therein are true and correct to the best of his knowledge, information and belief.

Steven D. Eisenach

COMMONWEALTH OF VIRGINIA

CITY OF NORFOLK

Subscribed and sworn to before me
This 4th day of December, 1997.

Notary Public

My commission expires MARCH 31, 1998.

REBUTTAL VERIFIED STATEMENT

OF

THOMAS L. FINKBINER

NORFOLK SOUTHERN VICE PRESIDENT-INTERMODAL

I. INTRODUCTION AND QUALIFICATIONS

My name is Thomas L. Finkbiner. I am Vice President-Intermodal for Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively "Norfolk Southern" or "NS"). I have previously submitted a verified statement in this proceeding that was included in Volume 2B of the primary application filed on June 23, 1997. My qualifications and experience are set forth in that statement.

I have been asked to submit this rebuttal verified statement to address the comments and concerns of several parties, particularly with regard to the comments of the Port Authority of New York and New Jersey (the "Port Authority") and intermodal matters.

II. COMMENTS OF THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

In this first section I address the Port Authority of New York and New Jersey's comments and criticisms, and the Port Authority's unreasonable call for divestiture by the Applicants of the Conrail assets in the North Jersey Shared Assets Area ("NJSAA"). Perhaps it is academic to respond to the Port's call for divestiture of terminal assets, since it does not include price, divestee, operating plan, labor impact, environmental assessment or

any other information which would permit me, as a business matter, to critique its feasibility. As a proposal, it is completely undefined.

For ease of reference, I first explain that the Port Authority's concerns relating to service by two line-haul carriers, NS and CSX, rather than by either one line-haul carrier or a terminal railroad company are unfounded.

I then explain why the Port Authority's allegation that it will lose "geographic" competition is based on two erroneous assumptions: 1) that the relevant market consists of only the Ports of Norfolk, Baltimore and New York/New Jersey; and 2) that rail carriers have the power to determine the relative competitive position of the ports they serve.

Two Carrier Service at the Port

At the outset, I am amazed that the Port Authority believes that it is better off being served by one carrier or a terminal railroad rather than by NS and CSX. If that belief is truly held, then the Port Authority has failed to consider the findings of its own consultants, Booz-Allen & Hamilton, that concluded that present rail service to the Port of New York/New Jersey lagged behind all North American ports, but that after the Transaction rail service to the Port of New York/New Jersey would be tied for first with the Port of Norfolk and "rail service should markedly improve from Conrail's current service level".[1/]

Booz-Allen also reported to the Port Authority that the transaction "will result in a substantial reduction in the current cost structure for rail service to [the Port of] New

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1/ Booz-Allen & Hamilton, Inc., A Strategic and Economic Analysis of Changes in Rail and Maritime Competition and Implications for New York/New Jersey Port Competitiveness, March, 1997, p. VI-11-12.

York/New Jersey," id. at p. VI-14, that "Cost reduction estimates show that New York/New Jersey will benefit the greatest among North Atlantic ports," id. at p. VI-16. Clearly the Port Authority had to ignore each of these findings in making the claims it makes.[2/]

Geographic Competition

The Port Authority argues that each of NS, CSX and Conrail concentrates investment and efforts at different ports, Norfolk (Hampton Roads), Baltimore and New York, respectively, that the three Applicants currently compete with each other at those respective ports, and that the ports benefit from their geographic competition. Borrone V.S. at 11. Apparently it believes that NS will attempt to divert discretionary container traffic to Norfolk, rather than make capacity investments to handle it at the Port of New York/New Jersey. Schmitz V.S. at 8.

Norfolk Southern has invested $5.8 billion in Conrail in no small part to acquire access to the Port of New York/New Jersey. It defies common sense to suppose that Norfolk Southern would now turn around and try to starve New York to feed Norfolk. I understand that Norfolk worries that traffic and new facilities will be focused on New York

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2/ I understand that Mr. Rutski will include in his rebuttal verified statement a letter the Chairman of the Port Authority sent to Conrail dated February 3, 1997, in which the Chairman observes 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.

as Norfolk Southern tries to recover its investment there. Neither New York's nor Norfolk s concerns are well founded. Norfolk Southern works to promote the natural advantages of each of its ports.

NS cannot favor Norfolk over the Port of New York/New Jersey, and will instead work with the Port Authority and its customers to develop all of the capacity and the traffic that the region can handle -- it is in NS' economic self interest to do so. Any traffic that should be moving through the Port of New York/New Jersey that NS would attempt to divert to Norfolk or another port through increased rates, diminished handling facilities or lack of service will be diverted to CSX. NS will make whatever capacity improvements are necessary to handle the traffic it can capture at the Port of New York/New Jersey because failure to do so will not result in diversion of that traffic to Norfolk, but will result in a loss of that traffic either to CSX at the Port of New York/New Jersey or to other ports such as Halifax or Montreal.

The Port Authority's argument that NS will attempt to divert traffic to the Port of Norfolk is based on three erroneous assumptions. First, the Port Authority fails to recognize that the Ports of Halifax and Montreal are as much competitors for North European/US traffic as are the Ports of New York/New Jersey, Baltimore and Norfolk. Second, the Port Authority over-estimates the influence a rail carrier serving a port has on the relative competitiveness of that port. Third, NS would not have purchased Conrail had it intended to divert this traffic.

The Ports of Halifax and Montreal have been positioning themselves as intermodal gateways to the Midwest US. Each has reached some level of success. Since 1993, the

volume of container throughput at the Port of Montreal has grown by 12.5%, and at the Port of Halifax the growth was 9.2%.[3/] In relevant market share the Ports of Halifax and Montreal have captured 6% and 38% respectively, of the market for containers moving between the North Atlantic ports and the Midwest US for the year 1995, and their share of the market has been increasing.[4/] With the opening of the Sarnia - Ontario - Port Huron, Michigan Tunnel by CN in 1995, Halifax has experienced a three-fold growth in traffic to the Midwest US between 1995 and 1996. Clearly, the market for discretionary container traffic extends beyond the New York to Virginia coastal region on which the Port Authority focuses.

The Port Authority also over-emphasizes the role railroads have with regard to the competitiveness of any particular port. Certainly level of rail service to a port is very significant in its ability to attract business. The Port Authority fails to discuss the importance of the combined ocean and land transit times to inland markets in establishing a port's competitive position in serving that inland market.

For example, with the opening of the Sarnia tunnel by CN, the Port of Halifax has become a stronger competitor for discretionary intermodal cargo moving to and from the Midwest US. The tunnel has reduced transit time from the Port of Halifax to Chicago by at least one day to 2.5 days. This is one day longer than transit times to Chicago from the Port

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3/ For the same time period, the growth at the Port of Norfolk was 13.2% and the growth at the Port of New York/New Jersey was at 4.8%.

4/ The other relative market shares were: the Port of New York/New Jersey - 19%; the Port of Baltimore - [ ]%; and the Port of Norfolk - 28%. Greater Halifax Partnership, The Greater Halifax Multi-Modal Transportation Study, November, 1996, p. III-8F.

of Norfolk and from the Port of New York/New Jersey. But one must also consider that the ocean transit times from Northern Europe to the Port of Halifax are one day less than to either of the other ports.

Any "geographic competition" that the Port of New York/New Jersey experiences today with regard to the Ports of Norfolk and Baltimore is not the result of NS sole-serving Norfolk, CSX concentrating on service to Baltimore[5/] and Conrail effectively sole-serving the Port of New York/New Jersey, as the Port Authority's witness alleges. Instead, it is a combination of the port's assets and marketing initiatives, its costs to the ocean carriers, its proximity to large local and regional truck-served markets, and ocean transit times as well as the service of the rail carriers at those ports that enable traffic to flow to midwestern markets, thus establishing a port's competitive position.

A clear example of port cost competitiveness is the new Port of Halifax incentive program which has reduced wharfage charges by 98% for container traffic to the Midwest United States. The Port of Halifax recognizes its relatively small local market and has sought to capture more discretionary container traffic (i.e. midwestern container traffic) through discounts. However, the Port of Halifax would seek to capitalize on any actions that NS might take to divert container cargoes from the Port of New York/New Jersey.

Had NS wished to attempt to divert traffic from the Port of New York/New Jersey, it would have pursued a far different strategy. Instead of vigorously pursuing Conrail, both before and after the CSX offer, and insisting that the port be accessible to NS through a

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5/ Although Schmitz suggests that CSX has attempted to divert traffic from the Port of New York/New Jersey to the Port of Baltimore through predatory pricing, [Cite], the Port of Baltimore has been losing market share since 1993. [Cite].

SAA, NS would have invested in its existing east-west routes that connect the Midwest with the Port of Norfolk. For example, the most direct route between Norfolk and the Midwest is not double-stack cleared, due to the major expense of enlarging the enroute tunnels. The Port of New York/New Jersey, by contrast, has three fully double-stack cleared routes to the midwest, and NS paid for the rights to use two of them in conjunction with service to the Port of New York/New Jersey. NS's objective is to use CR assets to increase tonnage through the Port of New York/New Jersey, not diminish it.

Operations and Capacity Constraints

An extended discussion as to the feasibility of operations and the expansion of operational capacity is not necessary here. Mr. Mohan and Mr. Orrison are submitting verified statements detailing how the carriers will operate efficiently in the NJSAA and addressing many of the concerns of the Port Authority in that regard and with regard to the capacity for expansion. As described in that statement, both CSX and NS plan to invest heavily in capital improvements both within the NJSAA and elsewhere in their respective systems[6/] in order to assure that each has the necessary facilities to compete effectively in the region. And I believe that operations will run smoothly. On this subject, suffice it to say that I fully agree with their statement in support of the NJSAA Operating Plan that:

6/ Of course, to properly develop and use capacity in the NJSAA, both CSX and NS have to develop the necessary facilities in other parts of their system to handle the traffic that will flow through the NJSAA. That is something that Conrail does today. A divested terminal company could not control capacity investment on NS and CSX post-transaction. This is only one of the reasons the Port Authority's divestiture proposal could do actual harm to the region's marketplace. Mr. Mohan discusses this further in his rebuttal verified statement.

> CSX and NS are as concerned about and as committed to developing efficient, effective customer-oriented plans within the NJSAA as are the Port of New York/New Jersey and other customers. CSX and NS are aware that if operating difficulties occur in the NJSAA, they could not only affect the NJSAA itself, but could negatively impact services across their respective networks. Therefore, it is clearly in their best interests to cooperate and coordinate the implementation of their respective Operating Plans to minimize problems in the NJSAA.

CSX/NS-119, Orrison and Mohan, J.V.S. at page 8.

Finally, I note that the Port Authority's call for divestiture does not seem to be shared by either of the two persons who submitted verified statements for the Port Authority's comments submitted on October 21, 1997 -- one of whom is its own Director of Port Commerce, Lillian C. Borrone. Far from advocating divestiture, Ms. Borrone recognizes the true benefits the proposed transaction can bring to the region, and expresses understandable concerns about investment and operations. She "reserve[s] judgment as to the relative merits of the proposed transaction" and promises to advise the Port Authority of her final opinion. Barrone V.S. at 17-18.

Similarly, Mr. Schmitz recognizes that the proposed transaction may bring "line-haul capacity expansions, network efficiencies which may bring lower line-haul unit costs, and reduced route circuity (and hopefully, transit time) in certain lanes. . . ." Schmitz V.S. at 12. Nevertheless, he argues that the Board must require the Applicants to provide a complete treatment of the planned operations and investments within the NJSAA and ensure that the planned operations will not impede the growth of commerce in the area, id. at 12-13, something the Applicants have already done.

Neither of the persons submitting verified statements for the Port Authority goes so far as to mention divestiture of the NJSAA Conrail assets to an independent terminal

company, let alone discusses how that resolution would address the concerns raised. Instead, it is the Applicants who have directly addressed the concerns raised. As demonstrated above and in the verified statements of Messrs. Mohan and Orrison, NS and CSX have both the ability and the incentive to invest in the region and operate in a way that will fully utilize the existing and future capacity of the Port of New York/New Jersey and the surrounding region.

III. PORT OF WILMINGTON

I understand that the Port of Wilmington is now served only by CR and will be served only by NS after the Transaction. The Port has expressed a desire to have CSX serve it as well. So there will be no change in Wilmington's competitive situation. It is in NS' interest to see that the Port of Wilmington thrives. NS has a good track record in helping to develop all the Atlantic coast and Gulf coast ports it serves and will serve, and will work with the Port of Wilmington to improve service, develop its traffic density, and open new markets. The Port of Wilmington will surely benefit by NS' expanded market reach that will be created as a result of this Transaction. The fact remains that the proposed Conrail transaction will not adversely affect the Port of Wilmington -- it is served solely by one Class I carrier now and that will not change.

IV. AMERICAN TRUCKING ASSOCIATIONS

American Trucking Associations ("ATA") makes the absurd allegation that NS gathers information about the identity of customers whose intermodal freight is tendered by a motor carrier in order to "back solicit" such freight. Frankly, I am shocked that ATA would

make such an allegation, and I note that they were unable to provide any substantiation with regard to the claim when asked to do so in discovery. [insert cite to response to ATA interrogatories]

Most of Norfolk Southern's intermodal business is provided on a "wholesale" basis to third parties such as Intermodal Marketing Companies ("IMCs"), stacktrain operators and motor carriers who in turn market services on a "retail" basis to shippers. As a matter of procedure, NS does obtain the identity of beneficial shippers of intermodal units tendered by third parties, a perfectly legitimate and common industry practice. NS has no plans to discontinue wholesaling intermodal services to third parties as a result of this transaction. ATA's unwarranted remarks should be disregarded.

V. J. B. HUNT

J. B. Hunt asks the Board to require NS and CSX to provide intermodal transportation services in conjunction with J. B. Hunt and other regulated motor carriers under terms and conditions which are no less favorable than the current contractual obligations of Conrail. I am certain that J. B. Hunt need not worry about the service it will receive from NS and CSX since NS and CSX will honor all existing Conrail contracts with J. B. Hunt.

VI. STATE OF MICHIGAN

I have reviewed the letter of support that Michigan Governor John Engler sent to Secretary Williams, dated October 3, 1997. In that letter Governor Engler asks CSX and NS

to "continue their participation in the development of a large intermodal freight terminal at the Junction/Livernois Yard currently owned by Conrail."

NS currently has sufficient intermodal facilities in the area, and does not anticipate any immediate expansion of intermodal capacity in Michigan. Should the need develop, however, NS is willing to explore the possibility of development of a terminal at Livernois Yard.

VII. STARK DEVELOPMENT BOARD

The purpose of this part of my testimony is to refute several statements made by the Stark Development Board (SDB-4) regarding the Neomodal Terminal intermodal facility in Stark County, Ohio, and joint Norfolk Southern-Wheeling & Lake Erie intermodal service.

A. NS Marketing Efforts and Rate Competitiveness

The Stark Development Board ("Stark") seems to say that NS is not now providing and after the Transaction will not provide competitive rates and service with schedules and reliability that match its other shipping choices. SDB-4, Stadelman VS at 4. Stark alleges that the Neomodal facilities, financial difficulties stem in part from a lack of commitment by NS and CSX to provide these competitive rates and service levels.

To the contrary, however, NS has provided and will continue to provide competitive rates and scheduling options for intermodal traffic from Neomodal. NS established rates and service levels between Stark and Chicago, IL and between Stark and Kansas City, MO,

which are in all cases competitive with CSX rates and, in many cases, competitive with motor carrier rates.

NS has also consistently provided marketing support for the Neomodal facility. NS has printed and distributed brochures describing NS' service to Neomodal in an effort to bring more traffic to the terminal. Additionally, NS' sales representative for the area in which Neomodal is located continues to serve Neomodal.

The fact is that NS has always provided Neomodal with competitive rates, efficient service, and marketing support and will continue to do so. It is simply false to allege that Neomodal's financial problems are the result of NS' lack of competitive service and support.

B. NS Involvement in Neomodal Planning

Joseph Stadelman served as a consultant to Stark County Development Board in developing the Neomodal Terminal project in Stark County, Ohio. He states that NS management was involved in ". . . technical and marketing discussions, the ground breaking, dedication and dozens of customer meetings . . . ." He further states that NS "insisted" that Neomodal be equipped with Elme cranes to accommodate projected J. B. Hunt traffic.

The fact of the matter is that NS was not involved in or even advised of the Neomodal project by W&LE or by the Stark Development Board. NS first became aware of the project in the Summer of 1995. A member of my staff called Reggie Thompson, W&LE Vice President of Marketing, to find out about the project and asked about W&LE's business plan. Mr. Thompson stated, "We don't have a plan. We are depending on NS, Conrail and CSX to bring the traffic." NS personnel followed up the call to Mr. Thompson with a site

visit on September 27, 1995, and found that the project was about 80 percent completed and that most of the work was done except for the paving and the erecting of cranes.

While visiting the site, Gregg Cronk, Manager Interline Marketing and Services for Norfolk Southern, talked with Stark Development's consultant, Joseph Stadelman. Mr. Stadelman informed Mr. Cronk that Neomodal had ordered three Mijack cranes. Mr. Stadelman stated that the Mijack cranes used a top and bottom pick which would be useful for bulk transfer. Mr. Cronk asked him if they had prepared for side pick loading, which was a new J. B. Hunt concept. Mr. Stadelman was unaware that such a concept even existed. Mr. Cronk was later informed that shortly after that conversation Mr. Stadelman ordered two Elme spreader devices which could be added as accessories to the Mijack cranes. Put in perspective, these Elme spreaders cost $40,000 each, or about $80,000 out of a $11-14 million project. This passing comment regarding Elme was NS' only involvement in the Neomodal Terminal Project. NS had absolutely nothing to do with the planning, construction or operation of this project.

Neomodal Terminal is located along W&LE's line. It is not located on or near NS or CSX lines. Because of its lack of proximity to NS or CSX lines, it is understandable why it never was directly served by NS or CSX. As noted above, W&LE or the Stark Development Board did not have a marketing plan for use of this facility. Intermodal operations were not the primary consideration in the planning for Neomodal Terminal. The Neomodal project was built to allow Fleming Foods, a Stark County company, to expand its facilities. To do so, Fleming Foods needed to relocate the W&LE main line. The Neomodal project allowed this to be accomplished by the use of ISTEA money. The

Neomodal Terminal was simply a byproduct of the Fleming expansion and not the result of a market need for intermodal service.

C. NS Service to Neomodal Over W&LE

Mr. Parsons, at page 7 of his verified statement, states that the Wheeling route was ". . . used for a brief period for NS double stack haulage traffic between Detroit and Norfolk via W&LE from Bellevue through Hagerstown. This haulage disappeared about the time the second phase of the merger was announced."

NS was, in fact, looking for a shorter intermodal route between Detroit and Norfolk but it turned out the NS-W&LE route was neither efficient nor cleared for double stack operations. Despite these limitations, NS inaugurated a test service with Wheeling from February 3, 1997, through April 13, 1997. W&LE suggested a 15 hour schedule over its portion of the route. NS suggested that it should allow 18 hours and we eventually settled on 16 hours. In the first month of operation, delays of 14, 18 and 24 hours on W&LE were routine. These delays were due to W&LE crew scheduling problems, W&LE operational problems, and a lack of sidings on W&LE's route. In the second month of the trial, some of W&LE's problems improved. The delays, however, did not, due to dispatching problems on CSX. In the just over two months test period, there were almost daily delays on the W&LE portion of the route. On April 13, 1997, service was suspended by NS because of continuing delays that were encountered, and the train returned to its previous longer, but less delay-prone, route.

Neomodal Terminal was not directly served by the Detroit-Norfolk intermodal train. As noted above, railroads require intermodal terminals to be located on or adjacent to their rail lines. Mr. Parsons' comment (p.36 of WLE-4) that use of Neomodal by NS and CSX would allow them to avoid construction of terminals elsewhere is not realistic.

VERIFICATION

Thomas L. Finkbiner, makes oath and says that he is Vice President Intermodal, Norfolk Southern Corporation, Norfolk, Virginia, that he is authorized to file and verify the foregoing rebuttal verified statement in STB Finance Docket No. 33388 on behalf of the applicants, that he has carefully examined all the statements in the foregoing verified statement, that he has knowledge of the facts and matters stated therein, and that all representations set forth therein are true and correct to the best of his knowledge, information and belief.

Thomas L. Finkbiner

COMMONWEALTH OF VIRGINIA

CITY OF NORFOLK

Subscribed and sworn to before me
This 4th day of December, 1997.

Notary Public

My commission expires: September 30, 2001

REBUTTAL VERIFIED STATEMENT
OF
NANCY S. FLEISCHMAN

My name is Nancy S. Fleischman, and I am Vice President of Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively "Norfolk Southern" or "NS"). My office is at Norfolk Southern's headquarters, Three Commercial Place, Norfolk, Virginia 23510. I began my railroad career in 1976 as an attorney in the Law Department of Southern Railway Company ("SR"). From 1976 until November 1993, I served in various capacities in the Law Departments of SR and Norfolk Southern. In November 1993, I was appointed Assistant Vice President - Strategic Planning of NS, and in that capacity, I participated in and directed various railroad coordination projects, including projects involving NS and Consolidated Rail Corporation ("Conrail"). I was appointed to my current position effective August 1, 1997. I received a bachelor of arts degree from Indiana University in 1969. In 1973, I earned a law degree from the University of Michigan.

I participated directly in the planning and implementation of the 1982 consolidation of SR and Norfolk and Western Railway Company ("N&W") and the formation of NS. I also served upon several study teams that from time to time considered a possible combination between NS and Conrail. As an officer in NS's Strategic Planning Department, I studied and became generally familiar with Conrail's business activities.

In my current position, I am responsible for coordinating NS's implementation of the Conrail transaction. This role includes supervising the progress of NS implementation teams and coordinating planning activities as necessary with my counterparts at CSX and Conrail.

The purpose of my statement is to explain the extraordinary effort underway at NS to

plan, prepare for and implement NS's proposed integration of Conrail operations, in the event it is approved by the Surface Transportation Board ("STB" or "Board"). I will describe the planning and implementation process at NS and the personnel and time that are and will continue to be dedicated to Conrail implementation.

OVERVIEW OF CONRAIL IMPLEMENTATION AT NS

Before describing in detail the Conrail implementation effort at NS, it is important to highlight the scope of the process and our objectives.

NS's planning for implementation of this transaction, as well as that of CSX, truly is extraordinary and, to my knowledge, unprecedented. At NS alone we have almost one hundred teams and subteams, some of them working virtually full time, planning every aspect of the transaction, including train operations, safety procedures, customer service, coordination and integration of NS and Conrail information systems, integration of payroll systems and personnel, and virtually every other business process involved in running and supporting railroad operations. Those teams will continue to develop and refine our plans during the next seven months up to the anticipated date of the Board's final decision. Even then their work will not stop; coordination of NS's current operations with those of Conrail will require continued planning and adjustment for months, and perhaps years, until they are fully integrated.

The enumeration of the various teams and the descriptions of their functions in the balance of this statement cannot begin to convey the intense level of activity underway at NS and the achievements those efforts already are producing. Having been closely involved with preparation for the N&W/SR consolidation in 1982, and having been an observer of other

consolidations since 1976, I can state confidently that both the quantity and quality of the NS implementation efforts for this Conrail transaction far exceed those in any previous consolidation with which I am familiar. I have similarly high expectations for the quality of the results of these efforts.

Contrary to possible perceptions, the intensity of our focus and efforts is not primarily in response to external pressure or events elsewhere. The main reason our efforts are unprecedented in scope and intensity is the early recognition by NS and CSX managements that this transaction presents unique challenges which, if not properly addressed, could have serious adverse consequences to both railroads as well as our customers. The top managements of both companies directed that major commitments of time and resources be made to ensure, if the transaction is approved, that the operations of Conrail will be allocated and integrated with those of NS and CSX with minimal disruption to service and to customers and no adverse safety impacts.

A second factor affecting the scope of our planning efforts is our realization that recent events in the West have turned a spotlight on our transaction. As discussed in the rebuttal verified statement of James W. McClellan, NS Vice President-Strategic Planning, we firmly believe that the service problems in the West are the result of circumstances completely different from those we will confront and that there is no basis for believing that we will have similar problems. Nevertheless, we know many customers are concerned, and it is incumbent upon us to make special efforts to allay those concerns. Although stemming from different circumstances, the problems in the West also provide valuable lessons to our implementation teams, who are carefully observing that situation.

In addition, we will have considerably more time to plan for implementation than was the case in other recent consolidations. Although we do not need a longer period for planning purposes and view the extended schedule as unnecessary, we will take full advantage of the time to refine our implementation plans. Also, as Mr. McClellan notes in his rebuttal statement, both NS and CSX were familiar with Conrail by the time the joint application was filed in this case, because both analyzed for years possible combinations involving Conrail.

Although the implementation planning process is far from complete, it already has yielded substantial dividends. For example, the joint NS/CSX equipment teams (freight cars, locomotives, and nonrevenue equipment) already completed an initial allocation of Conrail equipment based upon value and condition. The next step, to be completed early in 1998, will be to negotiate "swaps" of specific units or types of equipment between PRR and NYC. By completing this equipment allocation early in the planning process, NS and CSX will have time, if necessary, to arrange for alternative sources of specific equipment types to meet anticipated customer service needs.

NS IMPLEMENTATION PROCESS

The implementation planning process at NS began earlier this year, soon after NS and CSX entered into the April 8, 1997, letter agreement providing for joint acquisition of Conrail stock. In May, senior NS executives identified over a dozen "crossfunctional" projects and goals of major importance. By "crossfunctional" I mean a business process that directly affects, or requires input from, many NS departments.

A. NS Implementation Teams

Each such major crossfunctional issue was assigned to a team composed of NS employees from various departments. Those teams began meeting in May to identify implementation issues in customer billing, car movement systems, Shared Assets Areas ("SAAs") operations, equipment allocation, payroll systems and other accounting-related business processes. These and many other business processes involved in operating a railroad and supporting those operations are truly "interdepartmental," requiring input from across the corporation.

The Transaction Agreement, which was signed in June 1997, requires NS and CSX to establish various teams to allocate certain classes of Conrail assets (e.g., rolling stock, communications equipment, inventory, etc.) and to address various other joint NS/CSX issues. See, for example, Sections 2.2 and 2.6 of the Transaction Agreement dated June 10, 1997. After that Agreement was signed, NS organized additional crossfunctional planning teams to perform the necessary allocation work and conduct the other negotiations contemplated under the Transaction Agreement. The Transaction Agreement teams are joint with CSX.

In addition to the crossfunctional team approach, all NS division and department heads are encouraged to organize teams within their respective disciplines. These intradepartmental teams report directly to the respective department heads (usually Vice Presidents) and are charged with carrying out implementation projects and addressing issues that uniquely affect or involve a single department or functional area. These intradepartmental teams and groups, some large and some small, work independently on

specific projects of interest to their departments. Virtually every NS department has multiple teams or projects currently underway, many of which work regularly with their CSX counterparts.

Among the largest and most active of the divisional and departmental teams are full-time groups in the operations and information technology areas:

1. Operations Division. The NS Operations Division has assigned seven senior employees full-time to develop implementation plans for the actual operation of those Conrail lines that are to be operated by NS if the transaction is approved. That operating group is led by a General Manager who is familiar with the operation of NS's lines in the Midwest and Northeast. He reports to NS's Executive Vice President-Operations and is charged with becoming familiar with Conrail's operations and planning the integration of those operations with NS. Reporting to him are senior transportation, engineering and mechanical personnel whose full time job is to plann for smooth and safe integration of operations. These employees spend much of their time on Conrail to familiarize themselves with Conrail's practices and operating territory.

2. Information Technology. As in the case of the Operations Division, NS's Information Technology Department has assigned a full-time implementation team composed of six senior managers. This IT team is working with the various crossfunctional, divisional and departmental teams to prepare for the integration of Conrail's information systems with NS's.

The IT Department team has identified at least 64 separate business processes dependent upon information systems that will be affected by implementation of the Conrail transaction. Recognizing the importance of computer systems to the success of implementation, each IT business process team is assigned to work with one or more crossfunctional and departmental teams that "own" the business process to furnish the IT resources, support and planning needed. Exhibit A attached to my statement lists each of the 64 critical business processes we identified, the "owners" of the processes, and descriptions of the process teams' assignments. IT personnel interact directly with team members as

necessary to determine each team's systems requirements.

The implementation process at NS is designed to be flexible. As new issues or potential problem areas are identified, new teams are and will continue to be established to develop solutions. We have avoided a rigid structure; instead, as we get more information and learn more about Conrail, we adapt in part by establishing new teams and rearranging assignments and deadlines, all with a view to efficient problem solving.

As I already noted, our teams focus upon business processes. In many areas, multiple business processes are related and as those interrelationships become apparent, we rearrange teams and coordinate their assignments and membership as necessary. As a result, our teams' efforts are not hampered by artificial boundaries but are structured to respond effectively to business realities, new information and developments, and their increasing knowledge of Conrail.

The number of Conrail implementation teams at NS has grown steadily since May, and I expect that the number will continue to increase. Starting with a dozen or so teams, we now (in December) have forty-five "primary" teams. Each team is encouraged to break down its subject to the smallest working unit, so many groups have organized multiple "subteams" to deal with discrete issues that lend themselves to separate treatment. An example is our "Shared Assets Areas Team," the task of which is to plan every detail of future operations and related matters in the SAAs; the goal of this team is to assure that service in the SAAs is safe and efficient, with minimal service disruptions, beginning on the Closing Date. It is a crossfunctional team with members from Transportation, Accounting, Marketing, Engineering and other functional areas that also works closely with CSX's SAAs

team. Team members established five subteams to address specific issues involving (i) development of an accounting plan to apportion the costs of operations in the SAAs, (ii) scheduling and coordination of train operations in the SAAs, (iii) development of SAA operating systems, (iv) SAA staffing plans, and (v) realignment of dispatching within the SAAs. In all, we now have fifty subteams of the 45 primary teams.

Attached to my verified statement as Exhibit B is a current list of the 45 primary interdepartmental teams and their 50 subteams. Each primary team and subteam has a team leader and members representing two or more NS departments. In all, there are nearly 300 NS employees participating as crossfunctional team members (some individuals are members of more than one team).

We intentionally staffed most NS teams with "working level" personnel - those people who, for many years to come, will live and work with the planning decisions made today. This reflects our philosophy of reliance upon business process experts - those who actually must implement the transaction - not headquarters planners or consultants. We believe basic implementation planning should be done by those intimately familiar with each business process. The responsible staff and line employees will make the systems and operations that they are planning and developing work safely and smoothly in the future. They and their Conrail counterparts are the keys to successful integration and implementation.

Finally, in addition to the teams shown on Exhibit B, NS employees also participate in the following "steering committees." These groups either serve a Conrail oversight role or participate directly in addressing issues involved in the STB proceeding. I and other senior NS management personnel serve upon or lead each of them. The current steering

committees are:

- **Safety Implementation Committee** (prepares safety integration and implementation plans and addresses safety issues)
- **Coordinating Committee** (assists in coordination of planning processes, information flow and resources between NS, CSX and Conrail)
- **Monitoring Committee** (monitors Conrail's performance during the voting trust period)
- **Mitigation Committee** (develops proposals to mitigate environmental concerns)
- **Other Railroads Liaison Committee** (negotiates settlements with and addresses issues involving or affecting other railroads)
- **Training Policy Committee** (plans and makes available resources for training to carry out all implementation plans)

B. Communication and Quality Assurance

We consider it essential to keep all NS and Conrail employees, not just the team members, informed about our implementation progress. With the assistance of my staff, NS's Public Relations Department distributes a weekly "Implementation Update" which includes brief summaries of developments in the STB proceeding, matters relating to implementation planning and other information, including items on Conrail's history. The "Implementation Update" is disseminated widely at Conrail as well as NS. Communication to employees is critical to ensure that we get the team effort required during the transition period. By means of the "Implementation Update," e-mail bulletin boards, videos and other communications, NS emphasizes and gains commitment to our implementation goals of safety, avoidance of service disruptions and deliberate speed.

NS is relying upon the experience and knowledge of Conrail personnel, working

jointly with NS personnel, to implement the transaction. NS alone plans to offer jobs to about 11,000 Conrail employees, the same people who operate the properties today and who know the territory, service patterns and customers. NS's teams meet with and actively seek the views and recommendations of their Conrail counterparts. Consistent with Conrail's continuing independence and its ongoing need to offer high quality service, NS people are gaining valuable practical knowledge about Conrail and relying upon Conrail people.

An important part of our implementation planning is a "peer review" process, in which Conrail personnel -- again, consistent with their independence -- critique the work and plans of NS teams. It is important that our plans be carefully scrutinized by people knowledgeable about Conrail's properties and operations, namely, Conrail's own employees. Their ideas and suggestions are important to us, and team members are in regular contact with their counterparts at Conrail. NS Transportation and Payroll personnel already participated in the peer review process, and we expect other teams and departments to follow suit.

Everyone at NS is keenly aware of the safety and service issues raised by some commenters in this proceeding. In one sense, we are frustrated by the apparent assumption that difficulties encountered in the West will inevitably be repeated in our proposed acquisition of Conrail operations. Not only are the two situations very different (as Mr. McClellan notes in his rebuttal statement), we are and have been embarked on what I believe is one of the most intensive planning efforts ever undertaken in the industry. NS, CSX and Conrail are committed to a deliberate implementation process to ensure both safety and success.

I already mentioned our Safety Implementation Steering Committee, headed by a senior NS officer directly responsible for safety and environmental matters. To assist us with safety implementation planning, that team has engaged DuPont's Safety and Environmental Management Services group. In 1987 and 1988, DuPont helped to enhance NS's safety processes and programs. Because DuPont's experience in the safety and environmental areas significantly benefited us before, we engaged them again, this time to review and critique our safety implementation plans relating to the SAAs and NS's own proposed operations on Conrail lines.

C. Management of NS's Implementation Process

Demonstrating NS's commitment to successful implementation planning, NS named a five-person staff with full-time responsibility for coordinating the overall Conrail implementation and the work of our Conrail implementation teams. As the Vice President in charge of that group, I report directly to NS's Chairman, President and Chief Executive Officer. I am assisted full-time by an assistant vice president, a director, a manager and a staff assistant. Our efforts are directed almost exclusively to coordinating and managing the Conrail implementation process. In that connection, I serve on the joint NS/CSX/Conrail Coordinating and Monitoring Committees and frequently discuss with my counterparts and others at CSX and Conrail issues of common interest, insofar as that is appropriate at this time.

My principal assignment is to administer and coordinate the activities of the crossfunctional teams and steering committees, to monitor their progress, to ensure that they

have the resources and corporate support that they need, and to bridge any gaps between them and the divisional, departmental and IT business process teams. To assist in the management of NS's implementation program, we engaged the firm of KPMG Peat Marwick LLP ("KPMG"). KPMG is familiar with project management techniques and will help us to manage and track team progress. Working with KPMG, we will develop the "critical path" for Conrail implementation, identifying issues and decisions that affect multiple teams and the ultimate result. We also will identify obstacles to the attainment of our implementation objectives and recommend steps to overcome them. With nearly a hundred crossfunctional teams, we need a way to ensure that the progress of one team that depends on results from another is not impeded by the other team's difficulties. KPMG provides us with the management tools to assure that schedules will be met and NS's implementation goals will be achieved as planned.

D. Conclusion

NS's implementation efforts reflect an enormous commitment of time by NS employees, and quite properly so, given the importance of this transaction to Conrail, NS, our customers, and the communities we serve. For many people, as in the case of my staff members and the Operations Division and IT Department staff dedicated to the project, the job is full-time. Although we do not keep detailed records of the time spent on Conrail implementation, I estimate that our approximately 300 members of crossfunctional teams have averaged about 3 hours per day working on the planning process (a very conservative estimate, in my judgment) since July. Assuming an average month of 20 work days, this

would mean our crossfunctional teams already invested almost 90,000 man-hours in Conrail implementation through November. This estimate only takes into account our crossfunctional teams - it does not include the time and effort spent by members of our divisional and departmental teams or my staff and others working full-time on Conrail implementation matters.

As I stated at the outset, the magnitude of our Conrail implementation effort is unprecedented for NS. Our approach emphasizes focus upon business issues and processes, "working level" planning by those who will actually implement the transaction and flexibility in response to new information. We are convinced that this planning will pay off and result in a smooth, safe and successful integration of NS and Conrail people, operations and systems.

VERIFICATION

I, Nancy S. Fleischman, verify under penalty of perjury that I am Vice President of Norfolk Southern Corporation, that I have read the foregoing document and know its contents, and that the same is true and correct to the best of my knowledge and belief.

Executed on Dec 10, 1997.

Nancy S. Fleischman

Nancy S. Fleischman

EXHIBIT A

NS BUSINESS PROCESS GROUPS

	Business Process	Crossfunctional Team or Dept. ("Owner")	PURPOSE Develop or integrate systems to do the following:
1.	Cost	Cost Dept.	Application of system operating costs to individual shipments for the purpose of measuring historical or prospective profitability (e.g., fuel costs, labor, etc.)
2.	Price Administration	Customer Billing Team	Enter, maintain and publish and/or distribute prices including service, divisions and conditions. Includes effective and expiration terms.
3.	Transportation Waybilling -Entry/Edits/Update	Customer Billing Team	BOL receipt and input of EDI 417/426 and customer orders. Validation of BOL information using reference files. Enrich transportation waybill with transportation data (cycle open and close). Also includes weight update process.
4.	Transportation Waybilling - Rating	Customer Billing Team	Estimate/ recognition of revenue. Apply rates (but not divisions) to the 417 waybill.
5.	Reference Files	Customer Billing Team	Customer/ Patron Code, Station, Route and STCC master file maintenance and keeping file current.
6.	Revenue Waybilling	Customer Billing Team	Revenue Accounting editing and correction or accounting and billing purposes. Enhancement of waybilling for billing purposes (i.e., patron code, billing information). Application of divisions. Daily summary of accounts.
7.	Demurrage	Customer Billing Team	Edit and bill demurrage bills
8.	Divisions	Customer Billing Team	Apply divisions to interline waybills (portion of revenue to which each road in the route is entitled) and monitor settlements of revenue.
9.	Contract Refunds	Revenue Accounting/ Contract Compliance Depts	Maintenance and processing of refunds associated with specific business.
10.	Freight Billing	Customer Billing Team	Creation of invoice in various formats.
11.	Accounts Receivable	Customer Billing Team	Creation of the receivable record, application of cash for monies applied, collection processes for delinquent or disputed bills.
12.	Settle Interline Waybills (ISS)	Customer Billing Team	Settle interline waybills via ISS process
13.	Other Revenue Processes	Revenue Accounting Dept.	Month end corporate accounting requirements, overcharge claim, switch accounting, haulage billing.

	Business Process	Crossfunctional Team or Dept. ("Owner")	PURPOSE Develop or integrate systems to do the following:
14.	Revenue Analysis	Revenue Accounting Dept.	Accrual and revenue booking process performed on a monthly basis and projection of future earnings (forecasting and analysis).
15.	Revenue History	Revenue Accounting Dept.	Historical revenue, booking, settlement and collection information stored for 3 years
16.	Joint Facilities	Transportation Dept.	The operation, accounting and administration for existing Administration shared facilities, including interline and short-line agreements.
17.	Yard Terminal	Car Movement Team	Develop new TSR (Train Service Register), maintain train Operations schedule & blocking book. Maintain ABC car classification and ITMS. Establish ISA's (Interline Service Agreements) and support ISM.
18.	Train Operations	Car Movement Team	The ordering and managing of trains. Includes: Train II messaging, Train assignments, High and Wide clearance, Train Consists/makeup, haulage, Trip plan, and track layout maintenance. Also includes decision-making process regarding Annulments and extras
19.	Dispatching	Transportation Dept.	Realignment, allocation and division of CR dispatching systems.
20.	Crew Management	Crew Management/ T&E Payroll Team	Includes the calling of T & E crews, handling end of trip tie-up, and entry of T&E crew claims for payroll
21.	Other Transportation	Car Movement Team	Includes transportation planning, train costing and morning report preparation.
22.	Trailer Repair Billing	Transportation Dept.	Capture and reporting of information for repairs made to private and railroad trailers, providing billing information as necessary.
23.	Operating Rules	Transportation Dept.	Maintain operating rules and related compliance records and reporting.
24.	Locomotive	Car Movement Team	Locomotive power planning and utilization
25.	Service Design	Car Movement Team	Creation and maintenance of operational information including: Capacity planning and modeling, train blocking (pre blocking), train schedules, power assignments, performance measures.

	Business Process	Crossfunctional Team or Dept. ("Owner")	PURPOSE Develop or integrate systems to do the following:
26.	Car Management	Transportation Dept.	Repositioning of empty cars, including car orders, pool assignments, record rights, home route and car service directions. Also includes empty waybilling for system, foreign, private, and hazmat empties.
27.	Yard Clerical Operations	Car Movement Team	The reporting, within the yard, of car inventory, movement, train arrivals, departures, industry work orders and interchange reporting. Includes the execution of work orders and generation of switch lists
28.	Hub/Ramp Management	Car Movement Team	The management of Intermodal facilities including ingate, (Intermodal) outgate, loading, grounding, parking & equipment (chassis, trailers, containers), inspections, leases, customer notification and load planning.
29.	Auto Terminal	Transportation Dept.	The operation of Auto Terminal facilities including: Inbound, Management outbound, mixing, Vehicle Inventory Management and vehicle damage.
30.	Coal Operations	Transportation Dept.	1)Permitting and management of industrial and domestic coal moves; 2)Permitting and scheduling of export coal movements; 3)Empty coal car distribution. CR: Management of Unit Trains including: Train booking, scheduling empty sets repositioning, weights (WIM), and Reloading.
31.	Purchasing	Procurement Team	Provide materials and contract services when needed, where needed at a cost effective price.
32.	Material Asset Control	Procurement Team	Maintain and monitor inventory, (material), keeping inventory at acceptable levels and turns; provide for the disposition of obsolete, unused or non-functional material, equipment, and other assets.
33.	Accounts payable	Procurement Team	Process payments to providers of materials and services (except payroll) in a manner which meets the terms of the invoice/contract and which is most beneficial to the corporation.
34.	Loss and Damage	Transportation Dept.	A process to eliminate the loss of or damage to freight of Prevention customers. Monitor and authorize payments for damage claims
35.	Corporate Accounting	Accounting Dept	Accumulate, verify the integrity of and report financial data and reports to both internal and external customers of the corporation.

	Business Process	Crossfunctional Team or Dept. ("Owner")	PURPOSE Develop or integrate systems to do the following:
36.	Mechanical (Car)	Transportation Dept.	Provide support necessary to maintain rolling stock and facilities in satisfactory condition to meet operational performance and safety standards (CARS, Car Repair Billing, Bad Order System, Intercept)
37.	Mechanical	Locomotive Team	Provide support necessary to maintain locomotives and (Locomotive) facilities in satisfactory condition to meet operational performance and safety standards. Includes required inspections and reportings.
38.	Casualty Claims	Law Department	Provide for the tracking and payments of claims and litigation due to injury/death on company property or right of way.
39.	Payroll	Crew Management/ T&E Payroll Team Non-T&E Payroll Team Gross-to-Net Team	Process gathers detail work data for employees, edits, calculates gross pay and pays employee. Separate process handles T&E, Non-T&E and miscellaneous types of special pay.
40.	Capital Accounting	Capital Accounting - Fixed Assets Team	Handles fixed asset records for roadway equipment, rolling stock and property controlled by the corporation. The D&B Fixed Asset software is used to record assets, asset value, improvements, depreciation, and retirements of equipment and produces interfaces into the General Ledger.
41.	Misc. Receivables / Payables	Expense Accounting - Misc. Billing	Processes and summarizes records for payments or collections from non freight sources.
42.	Budget	Budget Dept.	Processes provide ability for departments to project budget goals for the next year. Monthly reporting provides historical comparison of corporate performance (actual dollars) against budgeted and is used by management as a decision making tool.
43.	Public Relations	Public Relations Dept.	Functions to provide communications to relay information from the corporation to customers, public media, governmental agencies, as well as employees.
44.	Human Resources	Personnel Dept	Processes provide administration of systems used in (Personnel, Benefits, connection with hiring, training, compensation, benefits, Medical) medical needs and testing; pension activities related to employees and dependents.
45.	Labor Relations	Labor Relations Dept.	Administration of agreement employee function with contract negotiations, implementation and maintenance.
46.	Corporate Secretary	Corporate Secretary	Maintain corporate records for the corporation and subsidiary stock records as reported by transfer agents.

	Business Process	Crossfunctional Team or Dept. ("Owner")	PURPOSE Develop or integrate systems to do the following:
47.	Taxation	Taxation Dept.	Corporate data bases to accumulate data to formalize strategies to accurately report corporate profits and losses while maintaining corporate tax liabilities. Monthly and annual tax returns are prepared for corporate and governmental purposes.
48.	Treasurers Office	Treasurer's Office	Handle monetary assets of the corporation by investing in long and short term investments, handling the transfer of money to corporate banking accounts, and handling the funding of bank accounts used to pay customers, employees and others by various payable processes.
49.	Coal (Marketing)	Coal Marketing Dept.	Works with foreign and domestic business interests as potential buyers of coal; historical database information is used to determine the cost of transporting coal from origin to destination, to establish a price for the shipment of coal, and to maintain a contract with the customer for the shipment of coal or related commodities.
50.	Environmental & Safety	Transportation Dept.	Reporting injuries and illnesses to ensure compliance with FRA regulations and to provide management with current safety statistics. Monitor and document environmental issues: record safety issues and reports to both internal and external customers. (Operation Life Saver)Engineer Classification.
51.	Engineering	Engineering Dept.	Data storage and management processes involving engineering data and engineering department involvement in other areas, including track and structure characteristics, maintenance history, mileposts and physical network description, load clearance process, required traffic density handoff from the NS car mileaging and car movement systems.
52.	IT Infrastructure	Information Technology Dept.	Data Center, Network, LAN/WAN, Hardware, software, data bases, files, help desks. Everything in IT except application development, BAMS, and DRM.
53.	Real Estate	Real Estate Dept.	Storage of property deeds, leases and legal documents using imaging.
54.	Customer Service	Car Movement Team	Provides accurate and timely information to transportation Center customers in response to and in anticipation of customer needs.
55.	Merchandise Marketing	Marketing Dept.	Make contact with potential customers, maintain contact with current customers. Sell the railroad as the preferred method of shipping merchandise; using historical information, determine the cost of transporting, establish a price for the shipment and maintain contracts and prices.

	Business Process	Crossfunctional Team or Dept. ("Owner")	PURPOSE Develop or integrate systems to do the following:
56.	Intermodal Marketing	Intermodal Dept.	Make contact with potential customers, maintain contact with current customers. Sell the railroad as the a timely cost effective alternative to trucks. Using historical information, determine the cost of transporting, establish a price for the shipment and maintain contracts and prices.
57.	Car Accounting	Car Movement Team Rolling Stock Team	All car accounting processes for RR owned and private line equipment.
58.	Traffic History	Marketing Dept.	Collection of information about car movements including origin, destination, commodity, weight rate. Used to determine traffic trends.
59.	Police	Transportation Dept.	To provide for the general safety of our employees, customers, and general public, to enforce the law and protect the customer's lading and our company's assets and interests.
60.	Executive Information Systems	IT Department	Maintain and update systems providing direct executive access to key corporate information.
61.	Statistical Reporting	Car Movement Team	Maintain reliable, timely statistical reporting to internal customers (management) and external agencies (federal and state regulatory agencies) as well as the investment community
62.	Net Ton Miles	Revenue Accounting Dept.	Allocation of Revenue per ton mile across the railroad
63.	Shared Asset Areas	Shared Assets Team	Provide seamless transportation service for the customer-selected carrier within the jointly served commercial areas comprising North Jersey, Philadelphia/South Jersey and Detroit.
64.	Physical Network Database	Information Technology Dept.	Develop a physical network image of the consolidated system lines and associated transportation attributes to facilitate traffic flow modeling and planning.

EXHIBIT B

Norfolk Southern Corporation
Conrail Implementation Planning Teams

Team	Primary Team	Subteam	Team Size	Planning Purpose
1	Consolidation of Interline Settlements		8	Plan for collection of NS portion of Conrail's interline settlements.
2	Customer Billing		14	To generate a correct NS invoice for traffic formerly freight billed by Conrail and minimize customer disruption and dissatisfaction.
3		Accounts Receivable Subteam	3	Upgrade A/R systems. A/R balance accrued between Control and Closing Dates.
4		Accrual Subteam	4	Ensure transactions occurring at former CR locations are captured by NS in order to generate accurate customer bills.
5		Master Files Subteam	1	Incorporate electronic data on CR stations, customers and routes into appropriate NS electronic databases containing similar information.
6		Price/Rate Capture Subteam	4	Ensure that data on CR prices and rates are captured by NS systems in order to accurately calculate customer bills.
7		Waybill Capture Subteam	4	Ensure waybills can be created at former CR locations using NS's waybilling system.
8		Demurrage Subteam	1	Ensure NS is able to bill former CR customers for demurrage charges after close date
9	Fixed Asset Conversion		6	To identify all Conrail assets comprising the Allocated Assets and track them in a fixed assets system.
10	G/L and Transitional Consolidation		9	To consolidate transactions processed by Conrail during transition into NS financial records.
11	Integration of Revenue Estimation		7	To verify that reserve accounts are properly funded and include Conrail data in the revenue estimation processes.
12	Interline Settlement System		5	To integrate the Conrail and NS ISS processes thereby properly handling all inbound/outbound message controls, dispute resolutions, reporting statistics and transition issues.

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Team	Primary Team	Subteam	Team Size	Planning Purpose
13	Miscellaneous Billing		14	To integrate all bills currently produced by Conrail's Non-Revenue, Insourcing, Rent, and Scrap Billing systems into NS's Miscellaneous Billing System
14	Payroll - Crew Management/T&E		12	To assure compliance with implementing labor agreements for crew management and payroll, accurate and timely payments to employees, consolidation of Conrail crew management and payroll functions with NS.
15	Payroll - Gross to Net		15	To assure accurate and timely payments to employees, accurate and timely tax and deduction payments to vendors, accurate processing of employee benefits, consolidation of information technology systems.
16	Payroll - Non-T&E		13	To pay non-T&E employees accurately and timely.
17	Contracts - Non-Transportation		4	To allocate non-transportation contracts according to the Transaction Agreement.
18		Joint Facility Subteam	2	Division of Conrail's joint facility contracts between NS, CSX and SAAs.
19		Real Estate Subteam	1	Division of Conrail's non-transportation real estate contracts between NS, CSX and SAAs.
20		Purchase Contracts Subteam	4	Identification and analysis of long-term purchasing contracts to determine potential NS responsibilities.
21	Contracts - Transportation		11	To allocate performance of transportation contracts: single line to party serves the local station(s), Shared Assets Areas to the most logical provider (e.g. less circuitous route).
22	Conveyancing (Property Transfer)		9	To plan for the transfer and conveyance to PRR of real and personal property by appropriate documentation.
23	Corporate Memorabilia		2	To assure compliance with Transaction Agreement detailing allocation of Conrail corporate memorabilia (e.g. art, antiques, artifacts).
24	Integration of Short Lines		5	To integrate the shortline accounting process of NS and Conrail. Capture switching fees and handling lines.

Team	Primary Team	Subteam	Team Size	Planning Purpose
25	Procurement			To integrate purchasing, inventory and accounts payable processes and systems, and to assure compliance with Transaction Agreement Sections 2.2(a), 2.2(h) and 2.7.
26		Equipment Needs and Installation Subteam	7	To have in place and usable all computer related hardware, software and network communications needed by personnel to accomplish their assigned duties for the Accounts Payable process.
27		Vendor Master Subteam	9	To produce a consolidated vendor master file for disbursements as of and after the Control Date.
28		Inventory System Subteam	11	To produce a consolidated material inventory as of and after the Control Date
29		Purchasing Card Subteam	9	Distribute NS purchasing cards to former Conrail employees with purchasing responsibilities.
30		Control Date Inventory Subteam	4	Coordinate inventories with CSX at or near Control Date in accordance with sections 2.2(h) and 2.7 of the Transaction Agreement.
31		Purchasing Subteam	15	To convert Conrail's purchasing processes and systems to NS's.
32		Accounts Payable Consolidation Subteam	11	To produce an Accounts Payable system
33		Training Subteam	11	To provide training to Conrail employees responsible for procurement activity.
34		Computer Hardware Subteam	3	To identify and negotiate division of all unallocated computer hardware.
35		FF&E Allocation Subteam	4	Coordinate inventories with CSX at or near Control Date in accordance with Transaction Agreement.
36	PRR Books & Records		3	To assure compliance with Transaction Agreement providing that company books and records be allocated appropriately between NS and CSX allowing for access as necessary.
37	Route management		6	To bring PRR routes in NS route management system by developing a common monitoring system, developing a common data and information base, and developing a single set of policies and procedures.

Team	Primary Team	Subteam	Team Size	Planning Purpose
38	Continuing Conrail Management		1	To assure compliance with Transaction Agreement, Section 2.4(e), plan staffing of Continuing CRC Management, and coordinate future employment between CSX, NS and Conrail.
39	Shared Assets Areas		23	To assure the smooth transition to the Shared Assets Areas (SAAs) safely and with minimal service disruption.
40		Accounting Plan Subteam	7	To establish an agreed upon accounting plan for the SAAs with CSX that apportions the cost of operations based on usage and to effectively and efficiently implement that plan as soon as possible after Control Date.
41		CSAO Operations Integration Subteam	7	To assure an effective transition allowing the operation of trains to and from NS and CSX on a scheduled basis so that congestion is minimized and crew and asset utilization is optimized.
42		Operating Systems Subteam	8	To establish an operating system that supports an environment that meets customer needs by providing information to all parties in a safe, efficient, accurate and cost-effective manner.
43		Organization Subteam	5	To establish organization chart, job descriptions and staffing plans for SAA operations.
44		Train Dispatch Office Partition Subteam	6	To rearrange the territories assigned to each Conrail dispatch desk, thereby allowing partitioning of the desks among NS, CSXT & CSAO.
45	System Support Operations		2	Plan and manage the operation and disposition of SSO facilities.
46	Software Allocation		5	To assure compliance with Transaction Agreement, Section 2.2(i), regarding allocation of Conrail software.
47	Buffalo -- CP Draw Interlocking		3	To assure compliance with Section 8.18 of Transaction Agreement to examine the CP-Draw drawbridge and interlocking in Buffalo and to investigate ways to minimize conflicting traffic flows.
48	Car Movement			To provide an integrated NS transportation system to support all aspects of rail and intermodal operations and maintain acceptable levels of customer satisfaction, Train II reporting, equipment utilization and car hire accounting.
49		Car Accounting Subteam	1	Plan for collecting car hire information on Closing Date.

Team	Primary Team	Subteam	Team Size	Planning Purpose
50		Car Inventory/Reporting/ Consisting (TYES/CYO) Subteam	8	Planning to incorporate Ashtabula Coal Piers business process into NS systems; modification and integration of PRR into TYES/CYO TYES roll-out to PRR Allocated Assets.
51		Communications Subteam	1	Develop communication plan of hardware & communications to support SIMS & TYES. Implement LAN/Communications at each Conrail location to support TYES & SIMS. Provide dual access for Conrail and NS data.
52		Cost Systems Subteam	1	Design system for collection of cost systems information -- enhancement of CR WSAC track costing model, capture of T10X payable expenses and testing of costing data capture and reporting.
53		Data Conversion/ Interface Subteam	9	Develop plan to integrate Conrail data in NS system. Modify NS train symbol for 3rd digit. Review/expand databases.
54		NCSC (National Customer Service Center) Subteam	1	Plan for completion and functioning of NCSC at Closing Date
55		Physical Network, ABC/TSR Subteam	7	Create NS/CR schedules database; Convert CR schedules to NS TSR; Prep ABC for NS operating plans; TSR & ABC systems tested and operational at Closing Date.
56		SIMS Integration Subteam (Intermodal)	4	Customer profiles, contracts and commitments entered into SIMS for new properties. Trailer exchange agreements/TIAs negotiated. Training. Roll out of SIMS on PRR Allocated Assets.
57		Statistical Reports Subteam	3	Plan for collection of statistical reporting information on Closing Date
58	Communications IT Transition		4	Network interconnections - re-directing leased circuit connections to permit post-Closing Date operations (including radio licenses)
59	Operations Integration/ Service Commitment		12	To assure an effective transition from Conrail operating practices to NS's train schedules, blocking, local and yard networks on the routes to be operated by NS, thereby integrating the two systems safely and with minimal service disruption.
60		Control Center/ Blue Room Subteam	3	Integrate NS control center policies and procedures with CR "blue room" policies and procedures.
61		Dispatching Subteam	2	Assign and transfer Conrail dispatching activities, facilities and personnel between NS, CSX and the CR SAAs.

Team	Primary Team	Subteam	Team Size	Planning Purpose
62		NCSC -- Customer Interface Subteam	3	Ensure information vital to CR customers is integrated with NS systems in the NCSC to provide customers with timely and accurate information.
63	Passenger policies			To assure NS's ability to operate freight services when needed to meet customer demands at a cost that makes NS competitive through reasonable passenger policies and accommodation with passenger entities.
64		Amtrak Northeast Corridor	8	Plan arrangements relating to freight movements on the NEC.
65		Metro-North	6	Plan arrangements relating to freight movements on the lines owned or used by Metro-North.
66		New Jersey Transit/New Jersey DOT	5	Plan arrangements relating to freight movements on lines owned or used by NJT.
67		Southeastern Pennsylvania Transportation Authority	6	Plan arrangements relating to freight movements on lines owned or used by SEPTA.
68		VRE	5	Plan and negotiate arrangements with VRE
69	Toledo - Vickers Interlocking		3	To assure compliance with Section 8.18 of Transaction Agreement to examine the Vickers crossing in Toledo, OH and to investigate ways of minimizing conflicting traffic flows.
70	CSXT work at Altoona		1	To assure compliance with and performance of Section 2.4 (b) of Transaction Agreement providing NS will make available to CSX certain services and functions at Altoona.
71	CSXT work at Hollidaysburg		1	To assure compliance with and performance of Section 2.4 (b) of Transaction Agreement providing NS will make available to CSX certain services and functions at Hollidaysburg.
72	Freight Car Fleet			To allocate Conrail rolling stock between NS and CSX and consolidate car hire administration.
73		Boxcars Subteam	6	To allocate Conrail box cars between NS and CSX.
74		Car Hire Administration Subteam	4	To assure accurate and timely car hire administration on new system.

Team	Primary Team	Subteam	Team Size	Planning Purpose
75		Merchandise (other) Subteam	8	To allocate certain Conrail rolling stock between NS and CSX.
76		Multi-levels Subteam	5	To allocate Conrail multi-levels between NS and CSX.
77		Open Top Hoppers Subteam	6	To allocate Conrail open top hoppers between NS and CSX.
78		Non-revenue Equipment Subteam	5	To allocate Conrail non-revenue freight cars between NS and CSX.
79		Intermodal Subteam	4	To allocate Conrail intermodal equipment between NS and CSX.
80	Locomotive Fleet		10	To allocate Conrail locomotives between NS and CSX, handle related matters (e.g. renumbering, division of locomotive radios), and oversee internal administrative matters pertaining to locomotive operation so as to accomplish a smooth operational transition.
81	Non-Revenue Equipment		5	To allocate Conrail non-revenue equipment between NS and CSX.
82		Roadway Equipment Subteam	3	To allocate Conrail maintenance-of-way and other Work Equipment
83		Vehicle Assignment Subteam	3	To allocate Conrail highway vehicles
84	Employee Communications		6	To design and implement an employee communication program that promotes trust, teamwork and shared goals and responsibilities among NS and Conrail employees.
85	HR - Pension & Other Welfare Benefits		1	To ensure a smooth transition of post-retirement benefit plan payments, eligibility and responsibility, including funding and management of plan assets.
86	Recruiting/Hiring		1	To assess and project future management and workforce needs at NS and Continuing Conrail and to fill those positions from Conrail and outside hiring as appropriate.
87	Medical		1	To ensure that NS and regulatory medical policies, programs and procedures are extended to the new CR operations to ensure adequate compliance and benefit levels.

Team	Primary Team	Subteam	Team Size	Planning Purpose
88	Conrail Costing		7	To integrate Conrail locations into cost development, interactive costing, historic profitability, and freight car utilization systems and procedures.
89	Conrail Insurance		2	To review and integrate Conrail insurance program and NS insurance program, developing a comprehensive insurance program for NS and the SAAs.
90	Insourcing		7	To develop methodology for handling insourcing on NS
91	Milepost Identification of Conrail Lines		6	To assign milepost identification for Conrail lines (PRR Allocated Assets) which can be incorporated into various NS systems that use mileposts.
92	Equipment Lease Management System		12	Develop and implement a computerized lease management system for leased equipment.
93	Training Policy		4	Training steering committee to ensure ample resources available for training and training accounted for in all implementation plans to ensure a safe and efficient transition.
94	Signals		3	To create a signals maintenance organization.
95	IT Architecture		12	26 joint (CR/CSX/NS) projects underway to identify and define IT infrastructure requirements for the transition period.
	Total Number of NS Employees Engaged in Conrail Implementation Team Activity (excluding duplications)		301	

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REBUTTAL VERIFIED STATEMENT

OF

JOHN WILLIAM FOX, JR.

NS VICE PRESIDENT - COAL MARKETING

My name is John William Fox, Jr. I am Vice President Coal Marketing of Norfolk Southern Corporation. I am the same John William Fox who submitted the Verified Statement found at page 261 of Volume 2B of the Application (CSX/NS-19). My employment history and qualifications are set forth in that Verified Statement.

The purpose of this statement is to describe the efforts that NS, in particular, and the Applicants, in general, have undertaken to reach negotiated, commercially reasonable agreements to satisfy the concerns of a number of parties interested in this Transaction, and to discuss specifically claims raised by Eighty-Four Mining Company and the United States Department of Justice.

First, it is important to note that, with respect specifically to coal shippers and customers, the Transaction that the Applicants have proposed is overwhelmingly pro-competitive, bringing additional economical supply choices to the vast majority of coal receivers and broadened single-line market reach to eastern coal producers. Tellingly, many of the coal/utility commentors themselves acknowledge the tremendous competitive benefits the Transaction will bring, only then to argue that they should receive benefits identical to those they claim will be realized by their competitors.

It is the firm view of Norfolk Southern that concerns expressed by coal shippers and utilities -- who are, after all, our customers or potential customers -- can and should be addressed and resolved, wherever possible, through market-based negotiation and agreement. Resolving issues based on good faith business negotiations is, in my view, far preferable to the more adversarial process of seeking imposition of regulatory conditions or requirements.

In fact, in this proceeding itself, we have addressed through mutually satisfactory commercial arrangements a number of concerns expressed by current Conrail customers. For example, we have gained the support of Conrail's largest utility customer, Pennsylvania Power & Light Company, all of whose plants will be served solely by NS following the Transaction. We achieved this result at the bargaining table, where we were able to arrive at a resolution satisfactory to both NS and PP&L.

We also have achieved a satisfactory commercial solution with respect to concerns raised by Weirton Steel Company, a major coke and iron ore customer of Conrail which, under the Transaction, will be served solely by NS.

Additionally, we have reached an agreement with Delmarva Power and Light Company that demonstrates our commitment to working with our customers to resolve their concerns and shows how accommodations reached through business negotiations can benefit both the railroad and the customer. Under the agreement, Delmarva, which has two plants in Delaware that will be solely served by NS following the Transaction, will be able to continue to economically access coal originating on CSX. A similar arrangement with the Ohio Valley Coal Company, a coal producer that will be located on the NS system post-Transaction, will allow that company to continue to economically market its coal even though

it will ship coal to CSX customers via NS-CSX joint-line service, as opposed to its current Conrail single-line service. Both Delmarva and Ohio Valley Coal now support the proposed Transaction.

To the extent that other coal/utility parties have any concerns about the control Transaction, NS remains eager to discuss those concerns in a business environment in an effort to reach accommodations that are mutually agreeable and commercially beneficial. The agreements reached to date demonstrate that commitment.

Because NS believes that business negotiation is the best way to address various parties' concerns and reach commercially rational and reasonable accommodations in response to them, we also believe, correspondingly, that imposing administratively-mandated conditions is not an ideal mechanism for resolving commercial concerns, and we believe that all such requests must be carefully scrutinized by the Board. Although the universe of issues that can be addressed through business negotiation is limitless, it is my understanding that the universe of concerns that are properly the subject of STB-imposed conditions is much narrower and are limited to remedying anticompetitive effects caused by the Transaction. While NS is, and will continue to be, willing to discuss any and all commercial concerns of our customers and potential customers, the facts demonstrate that the various coal/utility parties that have asked the Board to impose mandatory conditions unrelated to the effects of the Transaction. I will turn now to addressing briefly the contentions raised by two parties in particular, Eighty-Four Mining Company and the U.S. Department of Justice, to explain why the mandatory administrative relief they seek from the Board is not justified.

Eighty-Four Mining Company

Eighty-Four Mining Company (EFM) claims that it will suffer competitive harm because a number of mines on the former Monongahela Railway will be served by both NS and CSX post-Transaction, while EFM will be served only by NS. Several points about EFM's claims are worth noting.

First, Mine 84 is a 1-to-1 point. It is sole-served by Conrail now, and will be sole-served by NS post-Transaction. Moreover, it has always been sole-served. On the other hand, before 1992 (when the former Monongahela was acquired by Conrail), coal producers on the Mon enjoyed effective, direct access to Conrail, CSX, and the Pittsburgh & Lake Erie. The joint access by NS and CSX to the former Monongahela proposed in the Transaction thus represents a reintroduction of competition there.

Second, it should be clearly understood that, as the sole carrier serving Mine 84 following the Transaction, NS will have every economic and business incentive to ensure that EFM thrives and to pursue new business opportunities for Mine 84 coal. It makes neither good common sense nor good business sense to do any less. To put it bluntly, to allow Mine 84 to languish would, very simply, be contrary to NS' economic interest. Rather, it is in NS' interest to obtain as much business for EFM as possible. NS intends, therefore, to be very aggressive in pursuing business to locations now on Conrail that Mine 84 currently serves, and in developing new markets for Mine 84 coal through the expanded single-line reach of the NS system.

With respect to pricing, it is to be expected that the predominance of jointly-served producers in the Monongahela region will tend to set the market price for that coal; and, as I

stated in my deposition, NS generally establishes rate districts that include a group of mines in a particular geographic region. Although it is not possible, as I have testified, to predict whether EFM's rates will be exactly the same as those for jointly-served mines (nor, for that matter, is it necessarily the case that rates for all jointly-served mines will all be identical), it is not unreasonable to conclude that rates realized by EFM will be affected by the pressure of market forces established by the railroads' rates from jointly-served mines. That is so because to price Mine 84 out of the market, again, would not make good business sense or be in NS' economic interest.

EFM itself points out that the market for high quality Pittsburgh seam coal is expanding, and long term demand for EFM's coal should remain strong after Phase II of the 1990 Clean Air Act Amendments. EFM-7, Majcher VS at 10. Mr. Majcher also states that "a significant portion of the coal from Mine 84 may be sold as steam and metallurgical coal to non-utility domestic and international accounts." Finally, he also says that EFM has directed its marketing activities to a "diverse geographic customer base." All of those facts -- the expanding market for Pittsburgh seam coal, its non-utility uses, and EFM's geographically diverse marketing efforts -- make clear that EFM will benefit from gaining single-line access to points throughout the expanded NS system.

- The Transaction will enhance EFM's acknowledged goal of marketing its coal in geographically diverse areas, as the single-line reach of the new NS system will be far greater than that of the current Conrail system. EFM fails to recognize the benefit of the vast expansion of single line service that will be available to EFM on the NS system following consummation of the Transaction. But the fact is that EFM will have a far greater

single-line reach after the Transaction than before it. With regard to utilities, we estimate that the new utility market for Mine 84 coal on the current NS system will include, at a minimum, facilities in at least five states (Virginia, Ohio, Kentucky, Tennessee, and North Carolina) that in 1996 consumed a total of approximately 26 million tons of coal.

- As EFM notes, the demand for lower-sulfur, cleaner-burning coals is expected to continue to remain strong. As shown by EFM's own data (Majcher VS, Exhibit TMM_3), even among the mines with which EFM itself claims to most closely compete, the sulfur content of Mine 84 coal is among the lowest. This will increasingly work to the advantage of EFM in marketing its coal throughout the NS system as Phase II of the Clean Air Act Amendments of 1990 takes effect and sulfur dioxide emissions become more costly.

- EFM has not participated in the domestic or export metallurgical coal markets to any great extent in recent years, but in its filing states its intent to expand in these areas. Those efforts will be much more likely to meet with success following consummation of the proposed Transaction. NS has a strong presence in both of these markets; that presence will enable EFM to participate in supply blends and product packaging with other NS-served coal producers, and to benefit from NS systemwide transportation contracts. Transportation and blending services are often a critical component of the delivered coking coal product; EFM currently suffers a disadvantage in this regard, because Conrail has only a limited presence in the metallurgical coal market. Additionally, EFM will benefit from having access to NS in that NS more vigorously pursues the export metallurgical coal market than does Conrail.

- EFM will realize a competitive advantage post-Transaction by virtue of the fact that EFM is physically closer to virtually all of the coal markets on the new NS system

than the mines on the former Monongahela Railway. EFM will be closer to power plants on the NS system, as well as to lake destinations including Sandusky and Ashtabula, and ocean destinations such as Baltimore and Lambert's Point (Norfolk). This is a significant point because closer rate district proximity often can result in lower transportation costs.

- Even with respect to the current Conrail-served utility market that will be solely served by CSX post-Transaction, EFM will not necessarily be foreclosed from serving that market as it predicts. As my discussion above of various agreements that have been reached as part of this proceeding suggests, it is often possible to arrive at mutually satisfactory agreements that permit the economical movement of coal through joint-line service. Additionally, it should be noted that in 1996, NS handled some 20.6 million tons of interchanged utility and metallurgical coal traffic -- a significant 22% of the total domestic utility and metallurgical coal handled by NS that year.

Finally, two additional points should be made. First, EFM overstates its case when it claims that all of its direct competitors will receive joint access, while EFM alone will not. Even among Pittsburgh seam coals, a key characteristic -- sulfur content -- varies widely. By EFM's own calculation (in its Exhibit MTM_4), Pittsburgh seam coals range in sulfur content from a low of 1.95 lbs. S02/mmBtu to a high of 3.72 -- a tremendous variation. Additionally, because, as EFM itself admits (EFM-7, Majcher VS at 11) coal purchasers rely on competitive bidding among suppliers of coals with a variety of characteristics, Mine 84 directly competes for sales not only with mines on the former Monongahela Railway, but also with Pittsburgh seam coals that are primarily transported by barge, as well as with coal producers in, among other places, central Pennsylvania, central Appalachia, and Ohio. Coal

producers on current NS and CSX routes in those regions have competed effectively and prospered for years without having joint rail service.

Additionally, Mr. Morey points out at page 9 of his Verified Statement that coal from the Monongahela region has been able to "penetrate numerous markets that before had been dominated by coals from other regions." This further illustrates the point that producers in the Monongahela region compete not just amongst themselves in a fixed and limited "niche," but against producers of different types of coal in different regions, many of whom do not receive joint rail access. It is simply not the case that EFM is somehow being singled out for different treatment than every other coal producer with which it currently competes.

Second, EFM cites as evidence of the lack of market opportunity for EFM on Norfolk Southern the estimate in my Verified Statement that 12 million tons of coal traffic will move within the next several years between current NS lines and the Conrail lines that NS will operate post-Transaction. It should be noted that that tonnage represents a more than threefold increase from the 1996 level of less than 4 million tons. And, as my statement made clear, that was an initial, intentionally conservative, estimate; as I said then, the level of coal traffic moving between the current NS territory and the future NS portion of Conrail is expected to rise to even greater levels in later years.

U.S. Department of Justice

The Department of Justice raises, in part, a concern about the competitive position of PSI's Gibson plant. DOJ-1 at 9-10, and Woodward VS at 6-7, 14-15. DOJ's economic witness, Peter A. Woodward, asserts that the Gibson station has access to two rail carriers -

- NS, and Conrail (via trackage rights over NS) -- and that, following the acquisition, the Gibson plant effectively would become a 2-to-1 point because NS would acquire those Conrail trackage rights.

PSI will not be harmed by the Transaction. Indeed, it should be noted that PSI itself has not complained to the Board about the situation at the Gibson plant, nor, to the best of my knowledge, has it communicated any such concern to NS' Coal Marketing department.

Moreover, the Justice Department's facts are simply not correct. The fact is that although Conrail at one time had the trackage rights to which DOJ refers, those rights were canceled, at Conrail's request, more than a year ago. In Conrail's August 29, 1996 letter seeking termination of those trackage rights, Conrail noted that the trackage rights were no longer needed because Conrail was no longer handling coal traffic from the Amax Wabash mine to the Gibson plant. NS countersigned that letter, accepting Conrail's proposal to terminate the trackage rights, on October 24, 1996. (That letter is included in Vol. 3.) Therefore, DOJ's assertion that two-carrier competition for coal delivery to the Gibson plant is currently available is simply incorrect.

Additionally, PSI already has the ability economically to receive coal from CSX origins under a 1992 long-term, 20-year contract with NS.

VERIFICATION

I, John William Fox, Jr., verify under penalty of perjury that I am Vice President-Coal Marketing of Norfolk Southern Corporation, that I have read the foregoing document and know its contents, and that the same is true and correct to the best of my knowledge and belief.

Executed on December 9, 1997.

John William Fox, Jr.

REBUTTAL VERIFIED STATEMENT OF JOHN H. FRIEDMANN

My name is John H. Friedmann. I am a Director, Strategic Planning for Norfolk Southern. I joined Norfolk Southern in July of 1994 as a Manager, Strategic Planning and assumed my present position on September 1, 1997. I have degrees from Carnegie Mellon University and the University of Pennsylvania.

In this Verified Statement, I address operational issues raised by the filings of four parties: Wheeling and Lake Erie Railway Company, City of Cleveland, West Virginia State Rail Authority/West Virginia Association for Economic Development and Chicago Metra.

Wheeling and Lake Erie

The purpose of this portion of my statement is to discuss the operational feasibility of the conditions requested by the Wheeling and Lake Erie Railway Company (W&LE), and illustrate the operating problems, congestion and loss of public benefits that would be caused to Norfolk Southern and CSX if W&LE's requests were granted.

For purposes of clarity and ease of reference, I will discuss each of the conditions requested by W&LE in the order in which they are discussed in Mr. Steven W. Wait's verified statement, beginning on page 7. This list differs from the list in Larry Parsons' verified statement, and W&LE did not prepare an operating plan description for all of the items in this list, but Mr. Wait's list is generally the most comprehensive of the three lists.

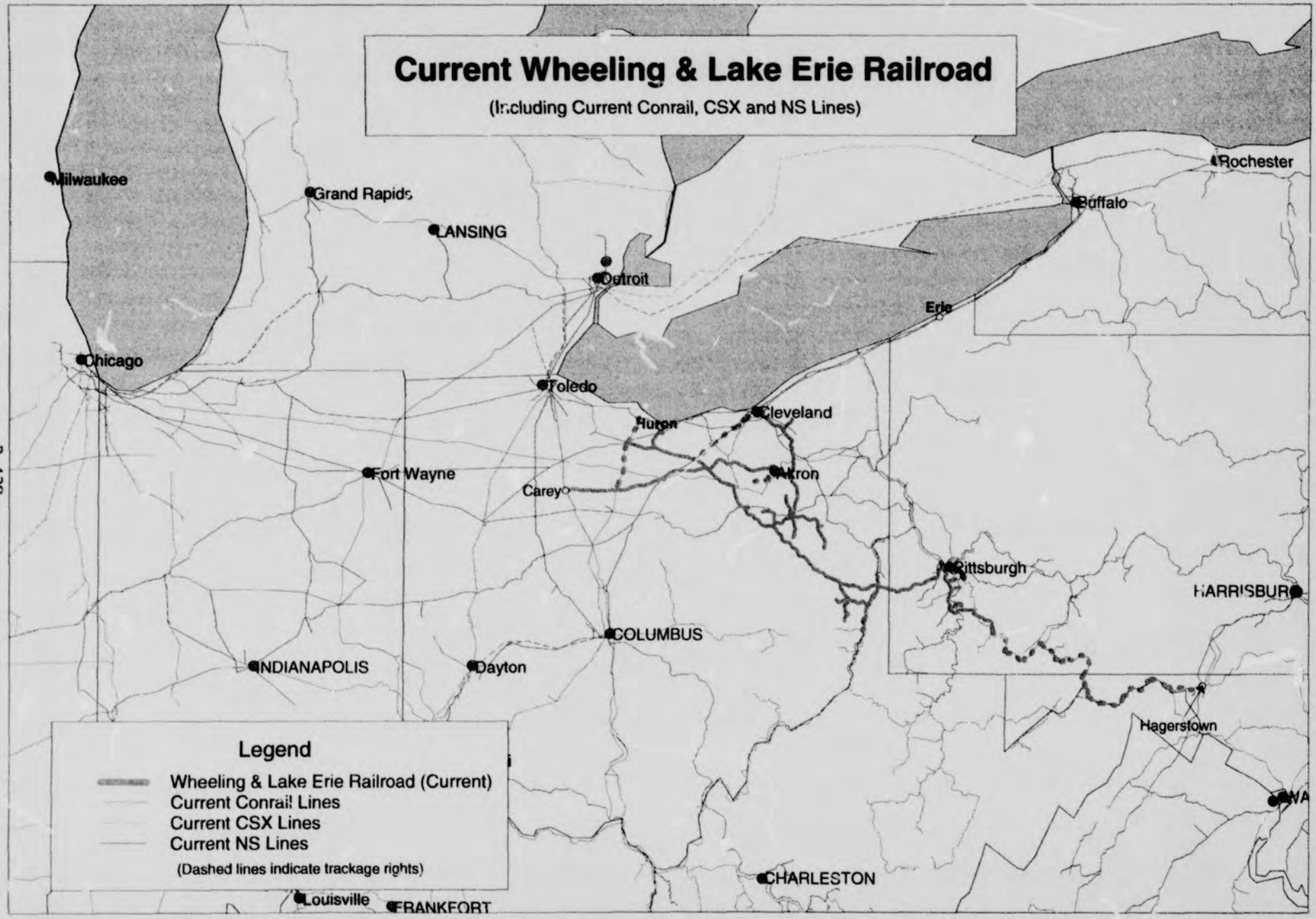
1. Haulage and Trackage Rights to Chicago

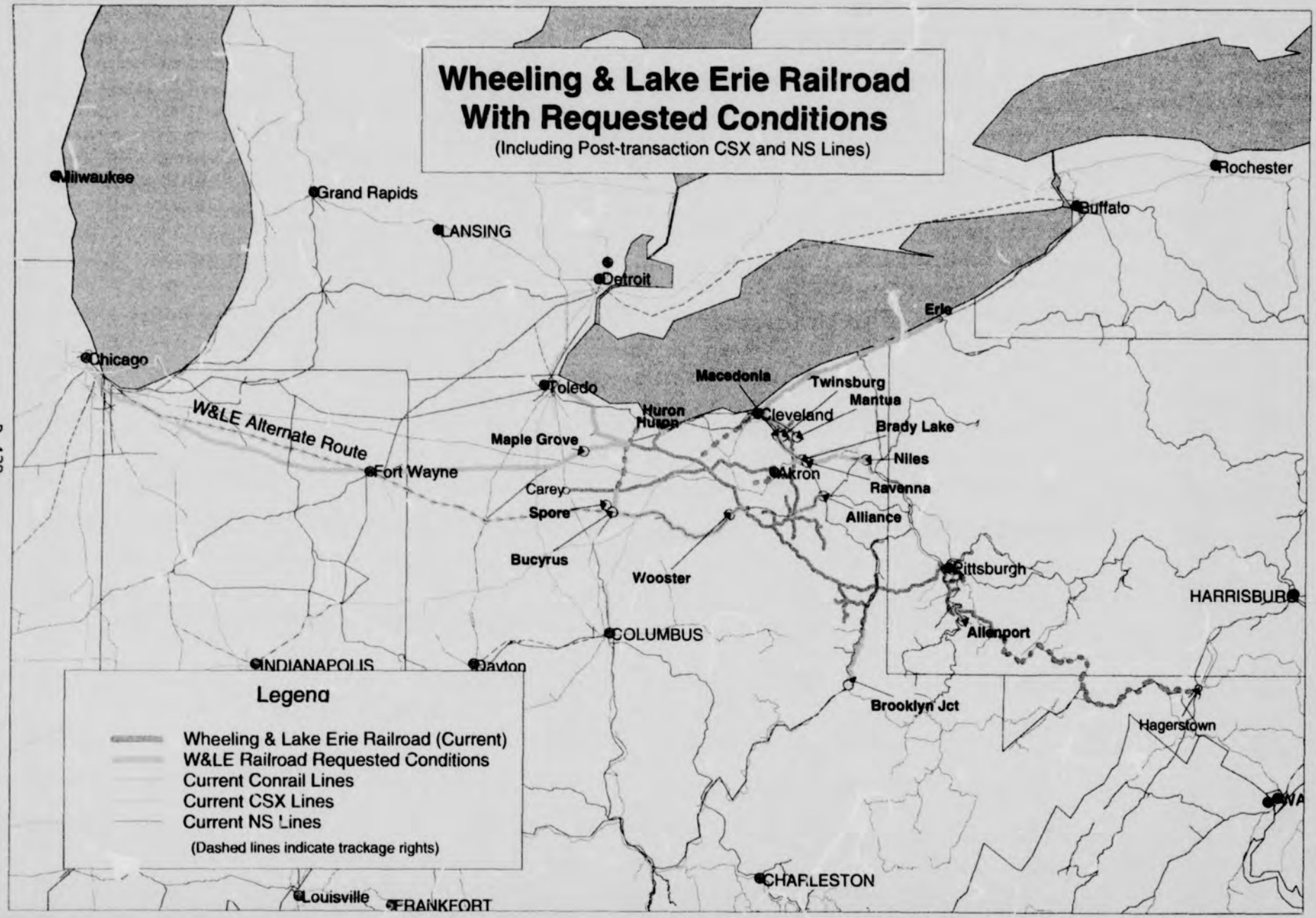
W&LE proposes haulage and trackage rights to Chicago, via two routes: the NS Fostoria and Chicago Districts, and the Conrail Fort Wayne Line, to be operated by NS and CSX.

Both the distance and the form of W&LE trackage rights cause operational difficulties.

The volumes W&LE wishes to take to Chicago would be diverted from both NS and CSX post-transaction, decreasing the size of, but not eliminating, any NS or CSX trains. Thus, the addition of the W&LE trains would provide a net increase in trains on both NS and CSX operated lines, increasing congestion on these lines without adding a transportation service of defined value.

W&LE's two sets of proposed trackage rights are approximately 350 miles each, totaling 700 miles. As shown on the attached map, each of these routes is itself 40% greater than the length of the main stem of the W&LE, and raise serious questions about the W&LE's ability to safely and effectively manage these rights. W&LE proposes to consume capacity on the busy NS line between Bellevue, Fort Wayne and Chicago, routes that comprise parts of both east-west and north-south mainlines, absent any request from a customer in this proceeding claiming such access is needed.


Current Wheeling & Lake Erie Railroad
(Including Current Conrail, CSX and NS Lines)
Milwaukee
Grand Rapids
LANSING
Detroit
Rochester
Buffalo
Erie
Chicago
Toledo
Huron
Cleveland
Fort Wayne
Carey
Akron
Pittsburgh
HARRISBURG
COLUMBUS
INDIANAPOLIS
Dayton
Hagerstown
CHARLESTON
Louisville
FRANKFORT
Legend
Wheeling & Lake Erie Railroad (Current)
Current Conrail Lines
Current CSX Lines
Current NS Lines
(Dashed lines indicate trackage rights)


Wheeling & Lake Erie Railroad
With Requested Conditions
(Including Post-transaction CSX and NS Lines)
Milwaukee
Grand Rapids
LANSING
Detroit
Rochester
Buffalo
Erie
Chicago
Toledo
Macedonia
Twinsburg
Mantua
Cleveland
Brady Lake
Huron
Huron
Maple Grove
W&LE Alternate Route
Fort Wayne
Akron
Niles
Ravenna
Carey
Spore
Alliance
Bucyrus
Wooster
Pittsburgh
HARRISBURG
Allenport
COLUMBUS
INDIANAPOLIS
Dayton
Brooklyn Jct
Hagerstown
CHARLESTON
Louisville
FRANKFORT
Legend
Wheeling & Lake Erie Railroad (Current)
W&LE Railroad Requested Conditions
Current Conrail Lines
Current CSX Lines
Current NS Lines
(Dashed lines indicate trackage rights)

For example, how will the W&LE be able to provide effective supervision of its crews more than 300 miles away from its current western reach, and more than 400 miles away from its headquarters? W&LE proposes a crew change point (and presumably a crew base) at Fort Wayne, 125 miles west of W&LE's western end in Bellevue, which raises similar questions about the training and supervision of those crews. Given that W&LE admits its employee injury rates are more than twice those of NS and 50% higher than those of CSX, the safety implications of W&LE's extended traffic rights operations must be questioned, especially given the distance these crews will be from W&LE "regular" operations. Allowing the W&LE an extension of this magnitude clearly interferes with NS's ability to deliver on its commitment of improved transit times and more efficient service on these routes.

These concerns are exacerbated by W&LE's demonstrated fragile financial condition. A railroad that paints itself in dire financial straits is likely unable to shoulder the additional financial burden of supporting an operation over 700 miles of new trackage rights (a length nearly equal to that of the W&LE system today) far from its traditional service territory. The additional fixed cost involved (mechanical support, crew bases, etc.) would add a substantial burden to a carrier that has not demonstrated the ability to support the overhead burden it is currently carrying.

John W. Orrison of CSX Transportation in his Rebuttal Verified Statement describes the difficulties W&LE movements and access would create within the Chicago terminal area.

Finally, W&LE's proposed entry to the Fort Wayne line at Orrville, Ohio, causes serious operating congestion on this mainline. As further discussed in Section 8 below, this move must be made in a time-consuming, zig-zag manner from one single track railroad. The congestion resulting from both the slow speed backing operation (due to the need to protect grade crossings per W&LE and NS operating rules) and the blockage of the single-track portion of the Fort Wayne line during the reverse move causes overall traffic flows in Ohio to be harmed, rather than helped, by this access.

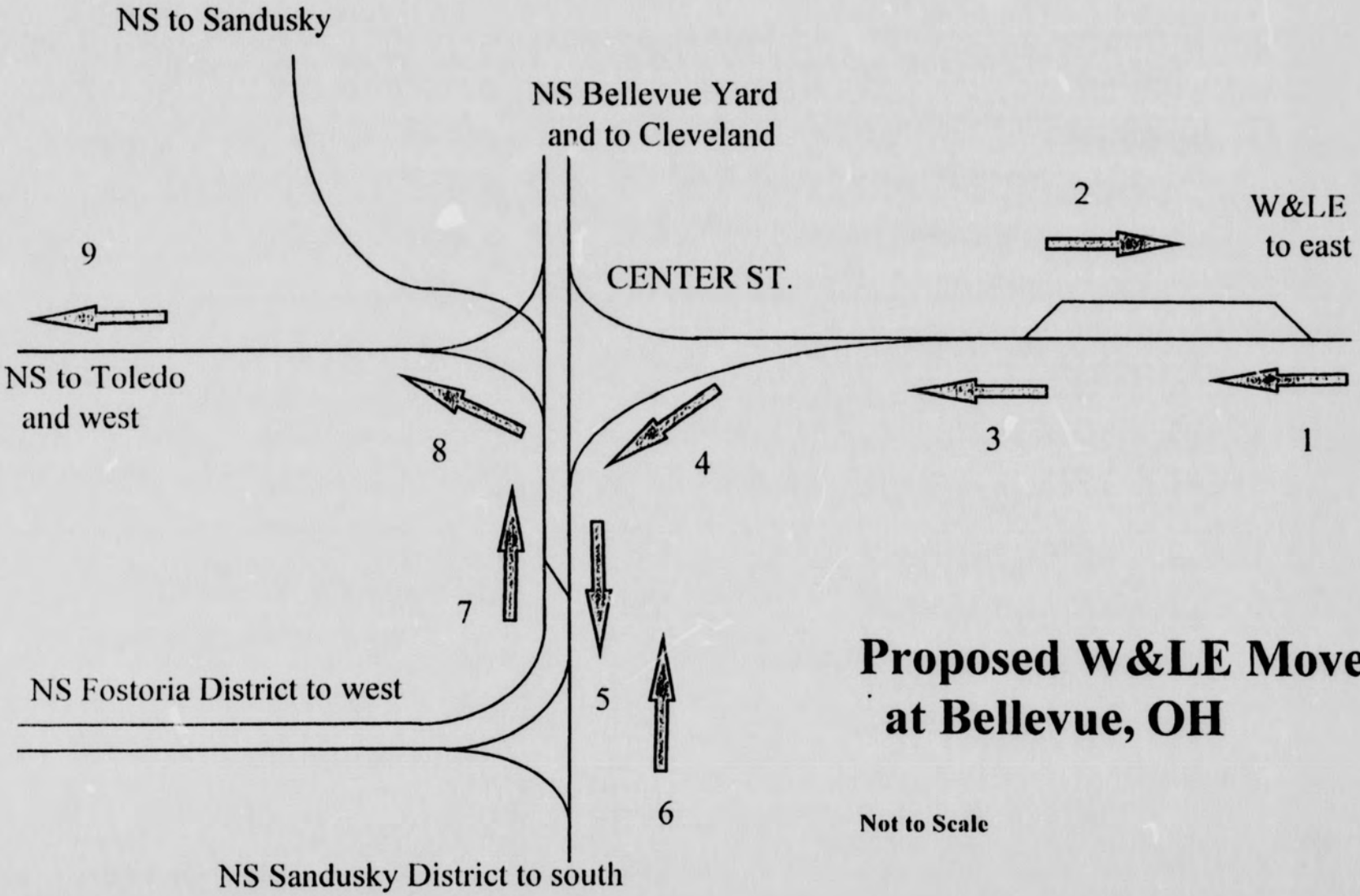
2. Haulage and Trackage Rights to Toledo, OH

W&LE seeks haulage and trackage rights over Norfolk Southern from Bellevue, OH to Toledo, OH. In Toledo, W&LE seeks connections with the Canadian National Railroad, Ann Arbor Railroad, and access to British Petroleum, and implies a request for access to port facilities at Toledo.

This proposed W&LE operation (Wait VS, P. 17) over NS would cause considerable operational difficulties, and would cause major congestion through NS's operational hub at Bellevue, OH.

W&LE proposes to reach Toledo by extending its current trackage rights from Bellevue, 52 miles to Toledo. However, there is no existing way to make a head-on move from the W&LE's route to Bellevue, on to Toledo.

To reach Toledo without a direct connection, W&LE proposes a complicated maneuver in Bellevue, shown on the following diagram. A westbound W&LE train would enter the Bellevue area, and stop at Yeomans siding, approximately 2 miles east of Bellevue



Proposed W&LE Moves at Bellevue, OH

Not to Scale

P–132

(1). At Yeomans, W&LE would use the siding to run the engines around the train (2). During this time, no other trains could enter or exit Bellevue using the W&LE line.

After the engines are placed on the rear of the train, and appropriate brake tests completed, W&LE proposes to back up to the west, and around the 2.6 mile Lake Shore Connection (4), until the train is on the NS Fostoria and Sandusky district mainline. The shoving move is limited by the 15 mph speed limit on the Lake Shore Connection, but would likely have to be done at 10 mph or slower due to the need to have an employee protect the seven grade crossings, only two of which have lights and only one of which has gates. W&LE does not indicate a plan to use cabooses, so a train crewmember would need to ride the rear car, ensure that the crossings are free of obstructions, and protect each crossing.

W&LE would need to continue to shove south (5) on the NS Sandusky District (5) at least another 0.7 miles plus the length of the train, across another three grade crossings, until the train is clear of the interlocking limits. After returning the employee who was protecting the backing move from rear of the train back to the head end, the W&LE train would finally be ready to proceed north/west on the NS Sandusky and Fostoria Districts (6), head around the connection towards Toledo (7), and begin the 52 mile trip to Toledo (8).

The same general maneuver would be completed in reverse order for an eastbound train from Toledo.

Because this 4 mile backup move must be made at low speed with several stops, NS operations through this critical junction will be frozen for at least one hour per W&LE move. During this backup move, Norfolk Southern's Bellevue hub would be cut off from all rail

access to and from the south and west, forcing the halt of traffic on NS's Bellevue - Fostoria and Bellevue - Columbus mainlines. These lines are projected to handle a total of 63 trains per day, post merger, including time-sensitive Triple-Crown, intermodal, and automotive movements. Norfolk Southern would have to lengthen schedules and incur additional costs, all to the detriment of the shipping public.

In addition, John W. Orrison of CSX Transportation in his Rebuttal Verified Statement describes the difficulties W&LE movements and access would create within the Toledo area.

These inefficiencies produce congestion, severely inconvenience customers, and produce costs out of proportion to any benefit that could be gained by W&LE access to Toledo.

3. Access to Erie, PA

CSX currently performs haulage service between a W&LE connection and a connection with the Buffalo and Pittsburgh Railroad (B&P) at New Castle, PA, for a move of fuel oil from W&LE to B&P.

Because of pending changes in the B&P's route structure, the CSX-B&P New Castle, PA interchange is no longer appropriate for this movement. CSX has agreed to change the haulage termination from a B&P junction at New Castle to a future CSX junction with the B&P's sister railroad, Allegheny and Eastern at Erie, PA.

Thus W&LE's request for haulage to Erie has been granted, and no regulatory action is required. W&LE's business is protected, and the B&P, who would be impacted by any

change in the movement, now supports the Conrail transaction

4. Ownership and operation of the Randall Secondary

W&LE seeks to "lease to own the Randall Secondary from Cleveland, MP 2.5 to Mantua, MP 27.5." (Wait VS, p. 8).

The Randall Secondary is a Conrail line that extends from Cleveland to Mantua, OH. It connects with the Conrail Cleveland Line to be operated by NS, and the Randall Secondary which will also be operated by NS post-transaction.

W&LE currently does not connect with the Randall Secondary, but W&LE indicates it may make a connection to the Randall Secondary near 93rd Street in Cleveland.

W&LE provides no discussion or explanation of the Randall Secondary in its operating plan (Wait VS, p. 15), so it is difficult to fully evaluate the proposal. However, even assuming that W&LE's local service is comparable to that of Conrail, shippers on the branch would suffer.

All of the cars that move today on the branch in Conrail single line service, and the cars that will receive new single-line service post-transaction (to/from current NS points) will lose that single-line service if divestiture of the branch is forced. This is the likely reason that none of the shippers on the Randall Secondary have supported W&LE's application to purchase the line. Given the lack of customer support, and the lack of any compelling reason put forward by W&LE to force divestiture of the line, the Board should deny this request.

5. Ownership and operation of the NS Huron Branch

W&LE proposes to "lease to own and operate the Huron Branch..." (Wait VS, p. 8)

The Huron Branch is a current NS line from Shinrock, OH, approximately 4.4 miles to Huron, OH, on the shore of Lake Erie. NS provides local service to shippers on the Huron Branch, who shipped 5673 cars in 1996.

W&LE currently has overhead, but not local, trackage rights on the NS Huron Branch, and leases the Huron Dock, for the purpose of moving ore off Lake Erie to Wheeling Pittsburgh Steel, which is served by W&LE. These items were not included in the original sale of track and rights to W&LE in 1990, but were concessions granted by NS in 1994 to help W&LE generate badly-needed additional revenue.

W&LE provides no operating plan or explanation for its proposed ownership of the Huron Branch, so it is difficult to fully evaluate the proposal. However, even assuming that W&LE's local service is comparable to that of NS, NS shippers on the branch would suffer.

Currently, 19.4% of the 5673 year 1996 cars on the branch move in single line NS service. An additional 20%, or 1111 cars stand to gain the benefit of single-line service to Conrail points that would be served by NS. Post-Conrail, 39% of the Huron Branch traffic would move in single-line service.

In contrast, none of the 1996 NS Huron Branch traffic was interchanged to or from W&LE. Thus, W&LE could offer no single-line service for current NS Huron Branch traffic, producing no obvious benefit for anyone except W&LE. Even worse, W&LE would cause all current and potential single-line traffic to become joint line (W&LE-NS), producing

harm instead of public benefits.

The degradation of service to on-line shippers should W&LE service be forced upon them is the likely reason there has been no shipper support for W&LE's proposal to assume service on the line. Denying these shippers the potential of improved service, just because a third-party regional carrier seeks to increase its business level is unjustified.

6. Haulage and trackage rights on CSX from Benwood to Brooklyn Junction

This affects the operations of CSX and is addressed by John W. Orrison in his Rebuttal Verified Statement.

7. NS Trackage Rights on W&LE from Bellevue to Orrville and Canton, OH

Evidently as a means to generate an income stream, W&LE proposes that NS use the W&LE between Bellevue and Orrville, OH with a possible extension to Canton, OH.

While this route could have some future value to NS, current conditions on the route make the Bellevue - Orrville route unsuitable for current NS usage. Overall congestion would worsen, not improve, if NS were forced to use the W&LE route.

As background, the W&LE route is parallel to two major east-west routes through Ohio that will be part of the expanded NS system.

First is Conrail route from Alliance, through Cleveland and Oak Harbor, to Toledo, OH. This high capacity route is fully signaled and entirely double track It is a high-speed, 60 mph route that will generally see stable but dense traffic east of Cleveland, and major decreases in traffic west of Cleveland.

Second is the NS/Conrail route from Alliance, through Bucyrus and Bellevue, with connecting routes west to Toledo and Chicago. This high-capacity route is fully signaled, and ranges from 31% to 65% double-track. An additional line from Bellevue to Cleveland and east is also part of the NS east/west route system, and is 33% double-track. These routes also have 60 mph maximum speed limits.

By contrast, the W&LE route from Bellevue to Orrville has serious disadvantages.

First, the route has very few sidings. There are no sidings, and (thus no place for trains to meet) in the 29 miles between Orrville and Brighton, OH. Combined with the single track portion of the Conrail route east of Orrville, this results in a section of railroad 42 miles long with no place to meet trains. In mainline situations, this distance should be 10 or 15 miles between sidings, not 42 miles.

During a field inspection of the W&LE line, a westbound train was observed delayed at Orrville for several hours, unable to proceed due to an opposing train on the Brighton - Orrville segment. Similar types of delays were experienced first hand by Norfolk Southern in 1996, when NS attempted to shorten the Detroit - Norfolk routing of intermodal/multilevel trains 227 and 228 by routing those trains over W&LE between Bellevue and Connellsville, PA. The performance of these trains was so erratic and the travel times so unreliable that the trains were forced to return to their longer NS-only route after only six weeks.

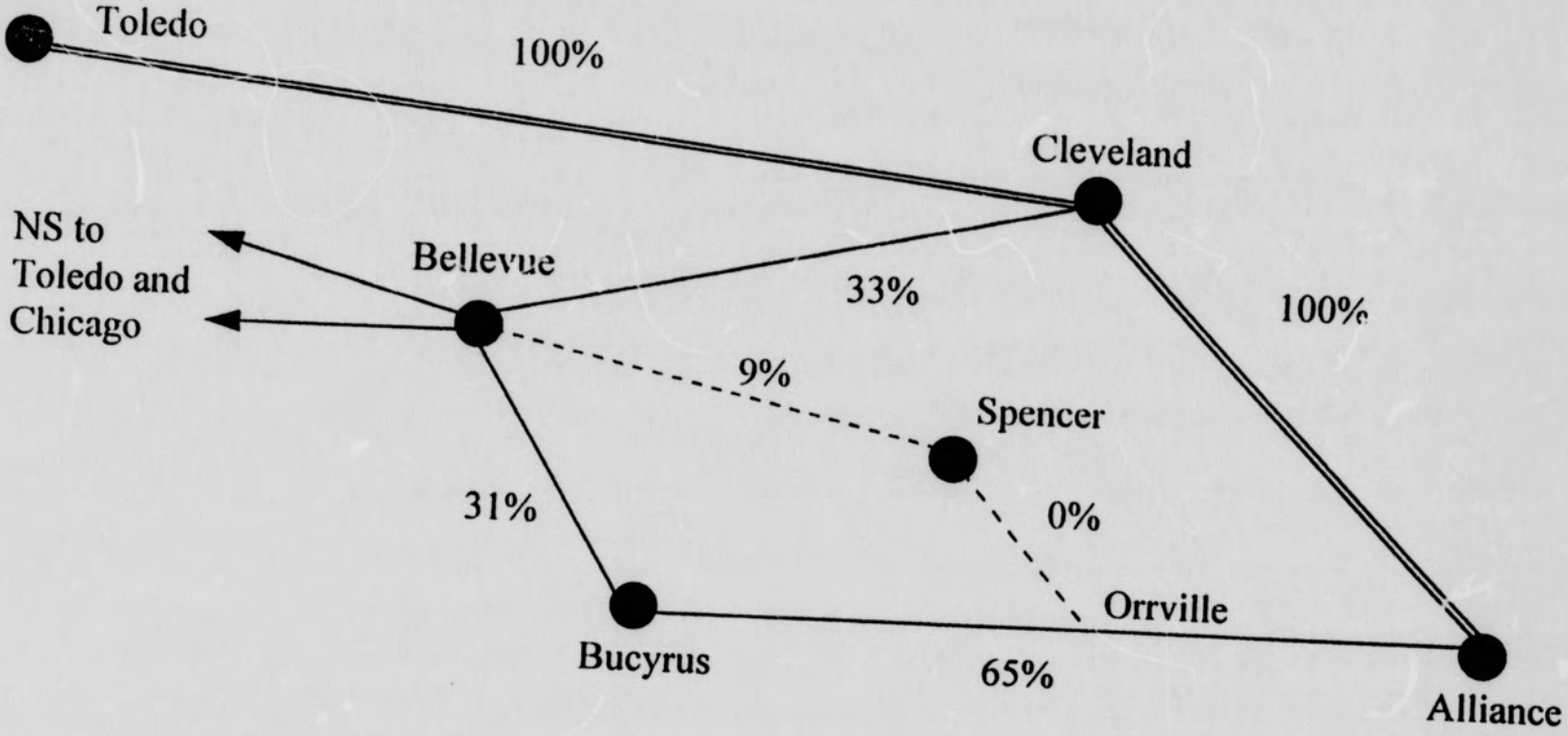
Third, the eastern portion of the line between Spencer and Orrville is no longer signaled. This more than 25 mile stretch of "dark territory" is a condition not found on the other preferred NS routes.

Finally, the W&LE and Conrail routes do not have a connection that would support the interchange of trains in Orrville, OH. Because the lines are grade separated, using W&LE would require construction of a new, expensive connection between Conrail and W&LE lines, upgrading of the W&LE Orrville Running Track (currently in 10 mph or poorer condition), and reconfiguring CP ORR, the Conrail control point at Orrville. This project is more fully discussed in Item 8 below.

Given the capacity limitations, it is difficult to imagine how the line could stand any appreciable increase in through freight traffic. Traffic that could be rerouted to that line would suffer significant delays without benefit of meeting or passing points. W&LE's purported 9 mile route savings would not justify the additional transit time incurred, the measure by which NS service is judged.

The above should not be taken to mean that NS will not consider alternate routes as relievers for its main lines, or even as potential future mainlines. For example, the routes of regional carrier Ohio Central offer an even greater promise of savings in mileage and transit time, and NS has discussed use of these routes on a preliminary basis with Ohio Central. But in contrast to the W&LE's approach forcing NS to make use of its route, the NS-Ohio Central discussions are in the context of a free-market, arms-length business deal that could produce business benefit for both carriers.

In sum, the proposed W&LE route is inferior to the NS routes, and use of that route would cause, rather than reduce, congestion and delay.



NS Ohio Line Capacity
Percentage of Double Track

Not all NS or CR lines shown. Not to scale

NS Routes

W&LE Route

8. Trackage rights for Stone Traffic

W&LE seeks a total of approximately 185 miles of trackage rights over NS, CR and CSX lines in order to expand the W&LE's stone-hauling franchise. These rights cause a variety of operating difficulties, and because of the lack of connecting tracks designed to accommodate the W&LE's specific wishes, would cause serious congestion and loss of capacity on NS, CR and CSX mainlines. It appears that W&LE only cares about expanding its Ohio stone franchise, to the exclusion and detriment of other types of traffic and shippers that traverse the same mainlines over which W&LE seeks priority.

General Concerns

W&LE's Operating Plan for "stone traffic" (Wait VS, pp. 18-19) proposes movements over several NS, CR, and CSX mainlines. These mainlines presently handle significant levels of through freight traffic including numerous time-sensitive movements. Two of the mainlines in question, the CR Cleveland Line and CSX's New Castle Subdivision, also host daily AMTRAK trains.

Many of the time-sensitive intermodal trains handling "service-commitment" traffic and all of the passenger trains are scheduled to operate through Ohio during the twelve hours between 6 PM and 6 AM. W&LE (Wait VS, pp. 20-21) insists that its proposed stone trains be operated during this same window and without incurring much delay, a condition which may be inconsistent with the operating patterns and physical plant design.

Operations which are non-disruptive and/or acceptable on the secondary or branch lines of shortlines, regional operators and/or Class I carriers are often not practical on

mainlines over which numerous movements (including "priority" trains) are competing for a finite number of "slots". Stone is a perfect example. Railroads are able to handle aggregate traffic, despite revenues per car that are often less than one-sixth that of other traffic, because stone traffic does not demand priority handling. Stone is handled with existing infrastructure (such as track), because returns will support little dedicated infrastructure, during times when that infrastructure is not being used for higher-return or higher-priority traffic. But W&LE proposes that it, and W&LE's stone traffic, be given the ability to clog mainlines due to run-around and extended reverse moves, a de-facto priority greater than all other traffic, regardless of its urgency.

Specific Concerns

A. Access to Maple Grove, OH

W&LE proposes 21.3 miles of new trackage rights over the NS Fostoria District to reach an interchange with the Northern Ohio and Western RR (NOW) at Maple Grove, OH. W&LE would receive interchanged stone originating at Redlands, OH from NOW, for movement to Twinsburg, OH.

Since both the NOW at Maple Grove and Twinsburg will be served by NS, this stone can be moved by NS 113 miles from the NOW interchange to Twinsburg in NOW/NS service, via a route shorter than the current Conrail route for this move.

But W&LE proposes using four new sets of trackage rights (NS Fostoria District, CSX New Castle Subdivision, former CR Akron Branch, and CR Cleveland Line, involving four different dispatchers) to haul the stone 124 miles (11 miles longer than the NS route)

from the NOW interchange at Macedonia to Twinsburg.

Finally, W&LE use of the NS/NOW interchange at Maple Grove would congest that interchange, making it more difficult for both NS and NOW to efficiently handle the increased volumes expected to flow through Maple Grove. W&LE proposes no capital contribution to help expand this interchange to accommodate its presence.

The W&LE proposal is clearly less efficient, more circuitous, and involves more carriers than the NS/NOW routing that would otherwise result, and is thus not justified.

B. Access to Spore, OH

W&LE proposes to access the National Stone quarry at Spore, OH via two routes: trackage rights on the NS Sandusky District south 10.8 miles from a W&LE connection at Chatfield to Colsan (Bucyrus), and west on the Conrail Fort Wayne Line from a W&LE connection at Orrville, OH to Colsan. Both routes would use the Conrail Spore Industrial Track to reach 6.2 miles to Spore.

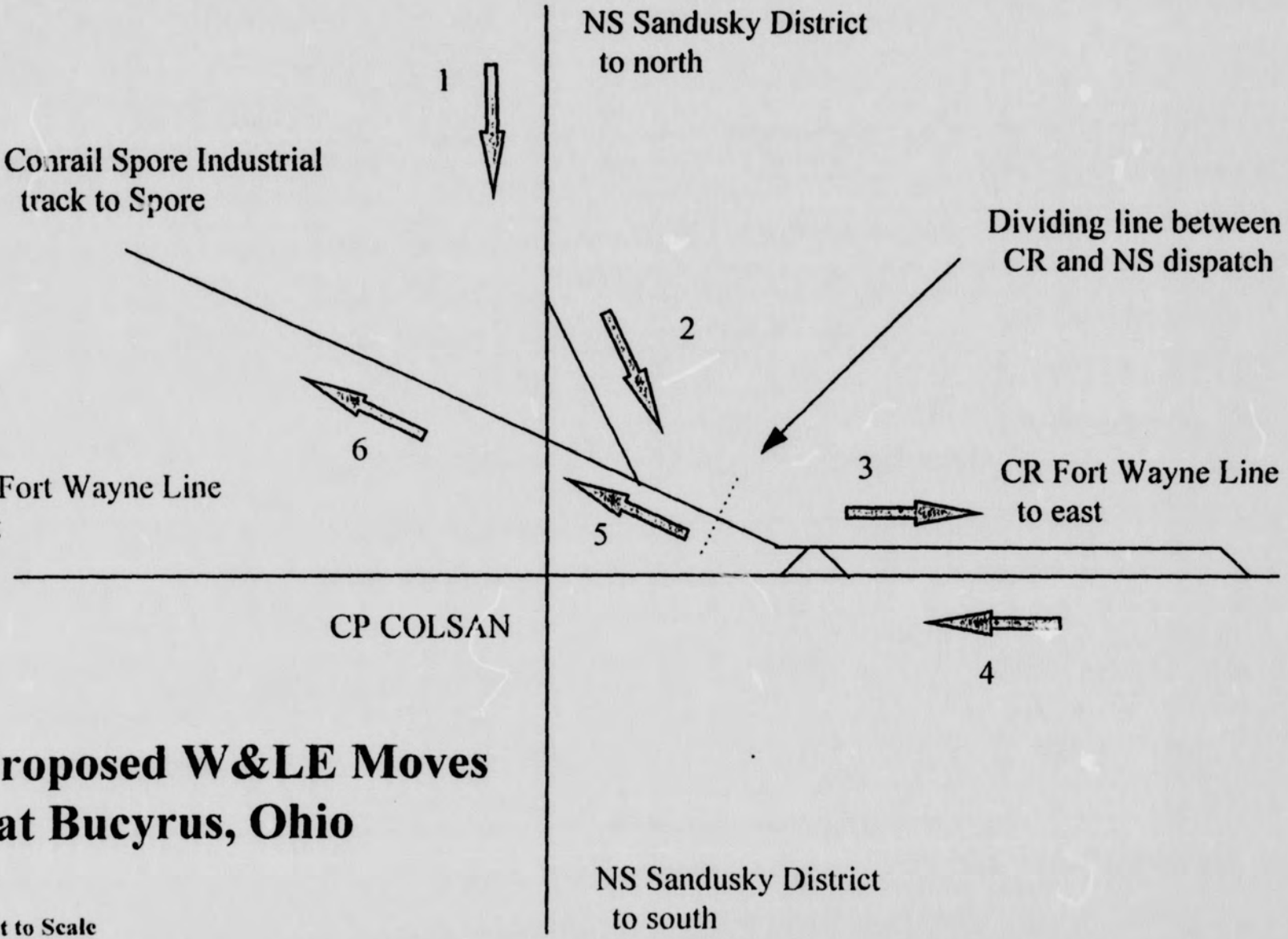
W&LE's use of the NS Sandusky District from Chatfield creates the most congestion and operating problems. These trackage rights would cause major congestion at Bucyrus, a major crossing point between NS and CR that is expected to see increased train volumes due to the merger.

This congestion is due to the fact that it is impossible to make a direct move from the NS Sandusky District to the CR Spore Industrial Track. There is no connection in the northwest quadrant between NS and CR. A large ravine, plus bridges on NS and Conrail at the site, would make construction of that connection very costly.

The complicated moves W&LE trains would make at Colsan are illustrated in the following diagram. Going to Spore from Chatfield, W&LE trains would have to proceed south along the NS Sandusky District (1), and onto the existing NS/CR connection at Colsan in the northeast quadrant (2). At the south end of the connection, the trains would pass from NS to CSX dispatcher control (3). Because the trains would be now facing east instead of west, the W&LE locomotives would have to run around their train on the CR(CSX) mainline east of Colsan (4), fouling both mainline tracks and halting traffic on the CR(CSX) east-west mainline, as well as any NS trackage rights movements on CSX moving to or from the NS Sandusky District. Once the W&LE train has been reassembled and has the locomotives on the west end, and after completion of the required brake test, the train would proceed, passing back from CSX to NS dispatcher control (5), across the NS Sandusky District (halting north/south traffic on that line), back to CSX Dispatcher control, and west to Spore (6).

Upon returning from Spore, W&LE trains would have to reverse the above procedure if they wished to return to Chatfield.

The move is quite complex, and involves three railroads and two dispatchers. In addition, the Spore Industrial Track is in poor condition. It is classified by Conrail as FRA Excepted Track, limiting speeds on the line to a maximum of 10 mph. The slow speeds inherent in such a move, the coordination required between two sets of dispatchers, and the run-around required of the W&LE, would combine to tie up the Colsan interlocking for at least one hour per move (up to a total of two hours per round trip), delaying trains on two



Proposed W&LE Moves at Bucyrus, Ohio

Not to Scale

P-145

busy NS and CSX lines handling over 40 total trains per day.

Finally, a new connection would be required at Chatfield to accommodate the W&LE movements. The existing connection at Chatfield will not accommodate a direct move to/from Colsan and Spencer. A movement toward Spencer would require W&LE to make a shoving move for several miles. Moving this material west to Carey before moving it east to Spencer would be inefficient.

C. Access to Wooster, OH

W&LE seeks trackage rights on the Conrail Fort Wayne Line from a W&LE connection to be built at Orrville, OH west through Wooster, OH to Bucyrus (Colsan), OH, and on to S/pore, OH. W&LE seeks these rights to haul stone from Spore to a currently Conrail-served stone unloading facility at Wooster, OH, and via Orrville, OH to distribution points on the W&LE.

The move from Spore to Wooster is relatively straightforward, and involves no reverse or backup moves. The connection at Bucyrus is properly oriented to support this move. But in addition to the two track-owning carriers (NS and CSX), this would inject tenant W&LE as a third carrier, not simplifying, but instead complicating, this move.

But the connection between the W&LE and the Conrail Fort Wayne Line (to be operated by NS) at Orrville will cause major operating problems and congestion.

W&LE proposes to operate Brewster-originated trains via "a reverse move on the Orrville Branch for a distance of 0.6 miles," after which a W&LE train would make a connection to the current CR line at Orrville. W&LE officials describe this as a "simple

connection to an existing control point." (Wait VS, p. 10)

However, a physical inspection of the proposed connection reveals that W&LE's proposed trackage rights would cause congestion, would require reverse moves, and new construction of track as well as extensive rehabilitation.

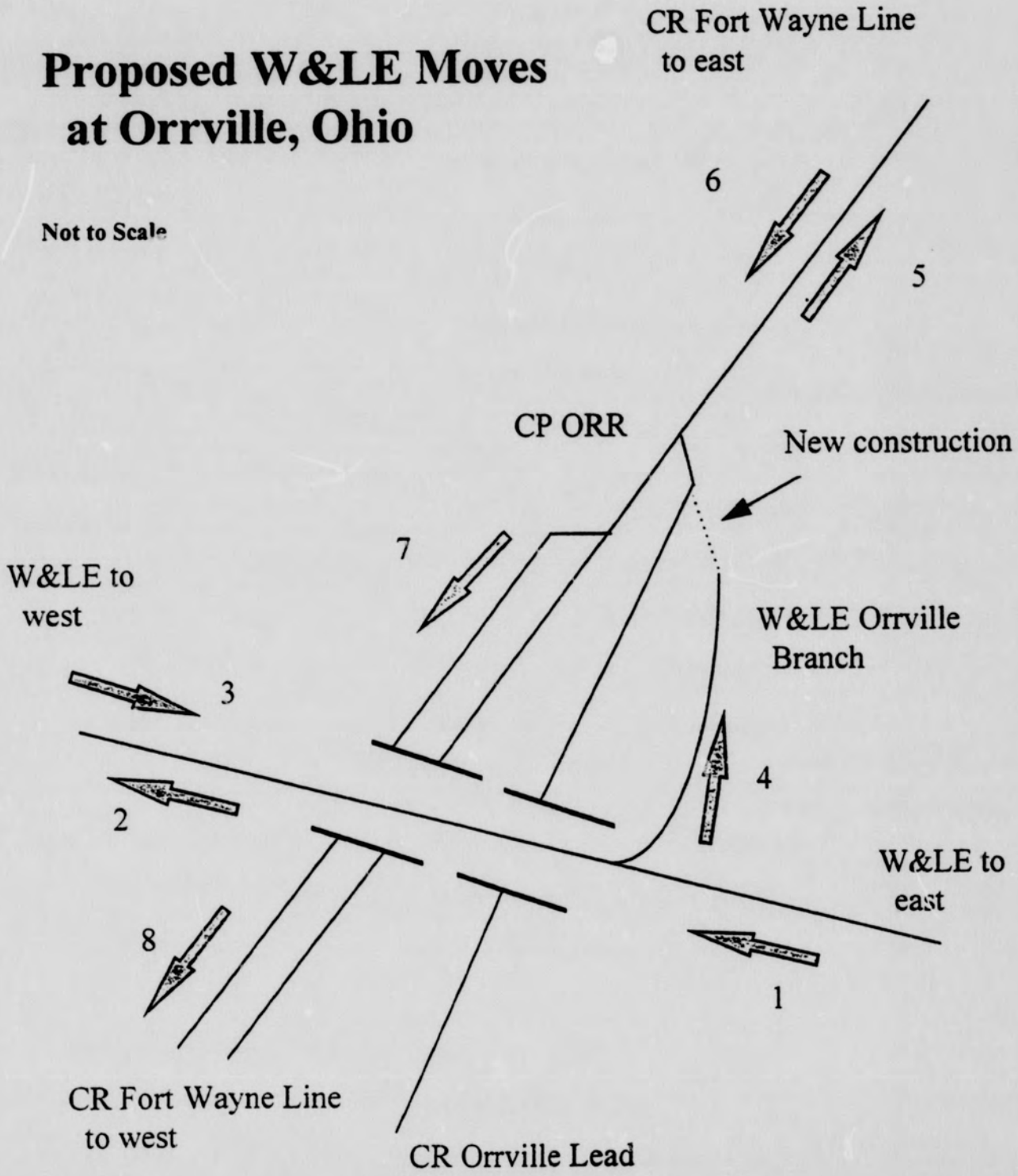
First, the W&LE and Conrail routes do not have a connection that would support the movement of full trains in Orrville, OH. Creating a new connection would require the full rehabilitation of the W&LE Orrville running track, construction of 750 feet of new track with a 1.2% grade across private property. In addition, this connection would connect directly to Conrail's CP ORR, requiring reconfiguration of that signal control point and associated communications and signal expenses.

Second, the proposed W&LE connection is backwards for the moves W&LE wishes to make, and thus will involve extensive reverse moves, causing congestion and train delay.

As shown in the following diagram, a westbound W&LE train to Spore would proceed west on the W&LE mainline (1), until it was clear of the W&LE Orrville running track switch (2). The train would then be forced to back up (3), down the W&LE Orrville running track (4), and back until it was clear (east) of CP ORR on the busy Fort Wayne Line (5). This backup movement would block the single-track Fort Wayne Line (6), forcing trains to be held 14 miles away at CP MACE until the train was completely backed off the Orrville Branch, and until the employee protecting the reverse movement across a pair of grade crossings was returned to the locomotive. After these delays, the W&LE train would then head west on the Fort Wayne Line toward Spore (7,8).

Proposed W&LE Moves at Orrville, Ohio

Not to Scale



The move above would be reversed for an eastbound train, causing similar delays and blockages.

Because of the grade crossings and the gradient of the connection, this move would have to be made at a slow speed, likely not exceeding 10 mph. This slow backup movement would halt NS rail traffic on the busy Fort Wayne line for at least 45 minutes each time, in addition to the ordinary additional congestion that the W&LE movement would cause.

This request should also be denied.

D. Access to Alliance, OH

W&LE proposes to originate stone at the jointly served CSX/W&LE Wyandot Dolomite quarry in Carey, Ohio, bound for Alliance, OH. W&LE proposes to handle these cars via W&LE to Canton, Ohio, and then via trackage rights on the Conrail Fort Wayne Line (to be operated by NS) to a currently Conrail-served stone unloading facility at Alliance, Ohio.

This move from Carey to Alliance is relatively straightforward, and involves no reverse or backup moves. The connection at Canton is properly oriented to support this move. But given that W&LE proposes to operate from Bucyrus (Colsan) to Orrville, OH and from Canton to Alliance on the Conrail Fort Wayne Line, W&LE is requesting 26 miles of extra trackage rights from Orrville to Canton, OH that are not needed for the movements actually anticipated, and thus should not be granted.

E. Access to Macedonia, Twinsburg, and Ravenna, OH

W&LE seeks access to stone terminals at Macedonia, Twinsburg, and Ravenna, OH

on, or on spurs off of, the Conrail Cleveland Line (to be operated by NS). These terminals are currently served only by Conrail.

This is the most disruptive of the accesses proposed by W&LE, because of the density and configuration of the lines involved, especially the Conrail Cleveland Line. If granted, this access will obstruct and congest rail traffic on one of the busiest rail routes between New York, Philadelphia, Pittsburgh and Cleveland, Toledo, and Kansas City.

This line is projected to carry 29 trains per day post-transaction, and currently hosts 2 Amtrak trains per day.

W&LE proposes to reach all three of these stone terminals via trackage rights of varying distances on the Conrail Cleveland Line, starting at Hudson, OH. W&LE proposes "out and back" service from Hudson to the stone terminals. But because of the signaling system and the location of crossovers on the Cleveland Line, W&LE would have to make long moves "against the current of traffic," causing severe congestion and safety concerns. A general explanation follows.

The Cleveland line is a double track main line. But much like a road, in this case each mainline is equipped to handle traffic moving only in one direction -- one track handles westbound traffic from Alliance to Cleveland, and the other track handles eastbound traffic from Cleveland to Alliance.

Mainlines like the Cleveland Line which are equipped with two main tracks that are signaled only for movement "with the current-of-traffic" (in one direction on each line) can handle significant volumes of traffic as long as each flow of traffic stays in its "lane" or

proper track. W&LE, however, proposes movements "against the current of traffic." Due to the lack of "reverse signaling", movements against the current-of-traffic (including passing moves) have the effect of "shutting-down the 'pipeline'" for a significant stretch of mainline, often 20 or more miles. For example, moves against the current of traffic must move at restricted speed approaching grade crossings because crossing bells, lights and gates are not designed to be activated from the "opposite" direction. Turnouts must also be approached at restricted speed. Conrail movements are designed today to avoid these safety difficulties, but the W&LE proposal would introduce this new measure of risk into this corridor.

The net effect is that one tenant movement that is contrary to the owner's physical plant design can actually require many more "slots" than the one for the actual movement, delaying substantial numbers of trains.

F. Access to Twinsburg

W&LE proposes to reach the Whitestone stone terminal at Twinsburg via a connection at Hudson, OH and 8 miles of trackage rights west on Conrail's Cleveland Line.

The 2.5-mile Chrysler lead (on which the Whitestone stone terminal at Twinsburg is located) is located north of the main tracks and is accessed by a hand-operated turnout which faces west. Because of the way this switch is located, Conrail serves Twinsburg to and from the west, using crossovers immediately west of the Chrysler lead switch.

But W&LE proposes to access the Chrysler lead from Hudson, which requires access from the east, causing congestion and delays to mainline trains. To access the Chrysler Lead to/from the east would require a run-around move in both directions, utilizing the

aforementioned crossover and the hand-operated crossover at milepost 105 (actually beyond the limits sought by W&LE) for this purpose. Westbound trains would be held until the W&LE run-around move and required brake test were completed. The storage track west of the Chrysler Lead can not be used for this move as it is used to stage cars for other customers.

The major congestion occurs when W&LE seeks to exit the Chrysler lead facing west, and must move against the current of traffic to run around its train.

Due to the eastbound grade of the Chrysler Lead and the mix of loaded and empty cars anticipated, W&LE eastbound shove moves would be discouraged. The move toward the Whitestone terminal would be identical to CR's present operation, a pulling move. Also, due to W&LE's proposal to "split" its locomotives at CP Hudson, the W&LE train might be under-powered for the ascent toward the Whitestone terminal. For the W&LE move destined to the Chrysler Lead, eastbound Cleveland Line trains would probably proceed without delay.

The run-around operation for the empty movement would utilize the same crossovers as above but would require eastbound Cleveland Line movements to stop west of milepost 105 while the W&LE crew made its two "against the current-of-traffic" moves. The move would also stop westbound trains as well. Due to crossover design and the impracticality of constructing a connection from the Chrysler Lead to the eastbound Cleveland Line, the empty train would enter the eastbound main track "against the current-of-traffic" in a westbound direction. The engines would then use the westbound main, also in the "against

the current-of-traffic" mode, to return to the east end of the empty cars. After the W&LE crew coupled onto the cars on the eastbound main and restored the crossovers to normal position, stopped westbound trains could proceed. Stopped eastbound trains, however, could not depart until the W&LE empty train completed its required brake test, and the train in question would have to follow this W&LE train until it cleared on the Akron Industrial Track at CP Hudson.

These moves, as shown above, are extremely complex and would halt trains on the Cleveland line for at least 1 hour per W&LE trip (or two hours per W&LE round trip), delaying traffic and causing congestion. This request should be denied by the Board.

G. Access to Macedonia

The Roger's Group (aka Summit Crushed Limestone) has an unloading facility at Macedonia adjacent to the CR Cleveland Line (on the north side) which W&LE proposes to serve. If W&LE were to work this facility separately, W&LE would have to make the same complex eastbound run-around move to serve this facility as it would to serve Twinsburg, with the same delays to mainline trains, and thus should be denied by the Board.

H. Access to Hugo

To access the Hugo Stone (aka Honker Sand) unloading facility at Hugo (Brady Lake), W&LE proposes to operate 8 miles over CR's Cleveland Line from Hudson to Brady Lake.

The Hugo facility is located 1.7 miles west of milepost 89 on CR's Hugo Industrial Track and is accessed via a hand-operated turnout off the eastbound main line. Conrail today

serves Hugo with an eastbound train that backs into the Hugo Industrial, as the W&LE proposes to do.

But after serving Hugo Stone, W&LE must again run "against the current of traffic" to return west to Hudson, per their proposal. Between CP Hudson and Brady Lake (8 miles), there are no crossovers between the two main tracks, again which are signaled only for movements operating "with the current-of-traffic." W&LE proposes the return (empty) move would make an impractical eight-mile reverse movement "against the current-of-traffic" in order to match up at CP Hudson with the return movement from Macedonia and Twinsburg. Again, this 8-mile backing move must be made at a slow speed, halting all Cleveland Line eastbound traffic until this move is complete. This move, combined with the need to match trains at Hudson, would cause major congestion and operating problems on this vital section of mainline.

Current Conrail moves do not have this problem, because the current Conrail local typically continues east, instead of immediately turning west, and thus runs with, not against, the current of traffic.

I. Hudson Secondary

To reach the Conrail Cleveland Line, and the stone receivers located on that line at Twinsburg, Macedonia, and Hugo, W&LE proposes to use CSX trackage rights in Akron and a line called the Hudson Secondary from Akron to Hudson.

W&LE claims it will need to use only 0.5 miles of trackage rights of the CSX New Castle Subdivision to get between its own lines and the Hudson Secondary. However, the

southern 3 miles of the Hudson secondary that the W&LE proposes to use has been torn up and thus no longer exists as an active rail line. The track materials (rail, ties, and ballast) have been removed, and the right of way turned into an access road. To make its proposed operating scenario work, W&LE would have to reconstruct this rail line, or pursue 3.6 miles of additional trackage rights on the busy adjacent CSX mainline.

This use of trackage rights, while not long in distance, will cause congestion on CSX's important "Eastern Gateway Service Route," CSX's main route between Chicago and Pittsburgh, Philadelphia, and Baltimore. This busy route hosts an average of 34 CSX trains per day, including two daily Amtrak trains.

While a W&LE train is using the trackage rights, CSX could move no westbound trains through Akron, clogging the route.

This part of the Eastern Gateway Service Route, the CSX New Castle subdivision between the Akron Junction and XN Tower is equipped with two main tracks signaled for movement "with the current-of-traffic." Because the switches to and from the W&LE connection and the connection to the Hudson Secondary, are both located off the westbound track, eastbound W&LE trains would have to run "against the current of traffic." Again, like driving the wrong way on a one-way road, W&LE trains would halt all movements on that westbound track. For example, W&LE's proposed eastbound movements from Spore/Carey/Redlands/Parkertown to Twinsburg/Macedonia/Hugo would require CSX to hold all westbound movements east of the former XN Tower at a location where the stopped westbound trains would not block grade crossings.

Most of the Hudson Secondary that actually does exist is currently out of service. The segment between former CR milepost 8.0 and CR milepost 1.5 is currently out-of-service and would have to be restored to accommodate W&LE. Due to the lack of storage tracks along CR's Cleveland Line, CR presently uses a portion of the active segment between MP 1.5 and MP 0.0 of the former Hudson Secondary as a staging area for cars destined to Cleveland Line customers. If W&LE is to use the former Hudson Secondary, another location would have to be found for these cars.

The former Hudson Secondary (current Akron Industrial Track) connects with CR's Cleveland Line at CP Hudson. CR's Cleveland Line, except for the controlled interlocking at CP Hudson, contains two main tracks and is signaled for "movements with the current-of-traffic" (similar to CSX's New Castle Subdivision). However, trains from/to the Akron Industrial Track can enter/leave CR's Cleveland Line in either direction at CP Hudson due to a wye track with turnouts and crossovers at each end. (CR's Cleveland Line is westbound towards Cleveland so the eastbound proposed W&LE "stone" train to Twinsburg and Macedonia would operate westbound from CP Hudson, entering the CR Cleveland Line at milepost 97.9. To permit this move, both eastbound and westbound movements on the Cleveland Line would have to be stopped. This in turn causes additional congestion on the Cleveland Line while W&LE trains enter, exit, and cross over at CP Hudson.

9. Access to Wheeling Pittsburgh Steel at Allenport, PA

W&LE proposes to provide a new route between the Wheeling Pittsburgh Steel complexes at Allenport, PA, and Mingo Jct., OH. Wheeling Pitt today enjoys the benefit of single-system service between Allenport and Mingo Junction. Both these complexes are served today by Conrail, and would be served in the future by Norfolk Southern. Mingo Junction is also served by W&LE, but Allenport is not.

W&LE's proposal saves only 18.4 total miles, provides no new single system service, but instead introduces operating congestion and complexity.

Most seriously, W&LE's trackage rights on the CSX Mon Subdivision increases, not decreases, congestion. CSX's Mon Subdivision is a single-track, unsignaled line that will serve as CSX's primary Northern outlet from the Monongahela coalfields. Traffic on the line will increase from 1.5 to 10.8 trains per day. Clearly, W&LE's presence on the line will only add to congestion, and inhibit vigorous CSX-NS competition in the Monongahela coalfields.

W&LE also fails to attempt to address how it will coordinate pulling and placing traffic at Allenport with NS, who will succeed to Conrail's role as the sole server of the mill.

W&LE's proposed route would also subject trains to the authority of dispatchers from three different railroads - CSX, NS, and W&LE, all for a movement under 100 miles. Ensuring crews are qualified on three different rulebooks, and coordinating movement over three different railroads all to save less than 20 miles would be less efficient than the current Conrail single-line routing.

10. Trackage Rights on CSX New Castle Subdivision

This affects the operations of CSX and is addressed by John W. Orrison in his Rebuttal Verified Statement.

11. Access to Reserve Iron and Metal

In the verified statement of Mr. Parsons, W&LE claims that Reserve Iron and Metal in Cleveland is a 2-to-1 shipper, and W&LE should be granted access. This item is not mentioned in Mr. Wait's verified statement, nor is any operating plan provided, so NS is unsure if W&LE is really requesting access to this shipper or not.

Since this is a commercial more than an operating matter, it will be dealt with in the Verified Statement of Mr. D.W. Seale of NS.

12. Access to Weirton Steel

In the verified statement of Mr. Parsons, W&LE requests access to Weirton Steel Weirton, WV. This item is not mentioned in Mr. Wait's verified statement, nor is any operating plan provided, so NS is unsure if W&LE is really requesting access to this shipper or not. W&LE evidently "wishes" for access to Weirton Steel, but provides no operating information to support its wish.

Weirton Steel is located at Weirton, West Virginia. It is solely served by Conrail and before that was served exclusively by the Penn Central (and before that by the predecessor the Pennsylvania Railroad).

W&LE has no trackage suitable for serving Weirton Steel. W&LE would need to use

current Conrail trackage (to be allocated to NS) from Ohio into West Virginia, across the Ohio River, to reach the Weirton plant. This access would interfere not only with NS' service to Weirton, but with NS service to the multiple customers located on the Conrail Weirton Secondary, Half Moon Industrial Track, Newell Industrial Track, and the Wells Industrial Track. Service to these customers is all dependant on access via the single-track Weirton Secondary, the same track via which W&LE would access Weirton.

In addition to the en-route disruption that W&LE would cause attempting to reach Weirton Steel through a heavily industrialized area, W&LE's presence would disrupt interchange activities between NS and Weirton's internal switching carrier. The interchange facilities at Weirton are designed for, and always have been used for, interchange between one line haul carrier (i.e., PRR, PC or CR) and Weirton's in-house carrier. W&LE's use of these facilities would congest interchange operations, thus harming rather than helping transportation efficiency. In this instance, W&LE again proposes to use the infrastructure of others, here NS and Weirton Steel, for its own advantage, while imposing costs of congestion and delay on those other parties.

13. Performance on Trackage Rights

W&LE seeks guarantees of service that will be provided when W&LE is a tenant on lines owned by others. Paradoxically, this request comes when W&LE requests a broad reaching array of trackage rights that exceed the total current mileage of the W&LE system, involving many complicated run-around moves, reverse moves, and movements against the current of traffic that guarantee operational disruption to CSX and NS of the type for which

W&LE would like to be compensated.

What W&LE is actually asking for is preferential treatment while on trackage rights, attempting to have others pay for incidents often caused by the W&LE. For example, W&LE would have the host road pay tenant W&LE $1,000 for each crew that "outlaws" (exceeds the maximum 12 hours it is allowed to work per day under Federal law) while on trackage rights. But if W&LE supplies a crew that has very few hours to work within the Federal Hours of Service Law when it reaches the trackage rights territory, and that crew outlaws, it is more the fault of the W&LE than the host road that the crew ran out of time. W&LE proposes no compensation for host road crews that "outlaw" due to the preferential treatment demanded by W&LE. The same principal holds for the $10,000 "missed switch" penalty -- in that case, W&LE would have more incentive to "miss a switch" than to actually serve the customer.

To further its quest for preferential treatment while on trackage rights, W&LE proposes a set of simplistic standards that would enable W&LE trains to have preferred access to assets it does not own and does not choose to invest in, while causing congestion and reducing the overall capacity of the assets of the host railroad. W&LE proposes that if a W&LE train is held for an hour, it would automatically become the next in line to proceed. But what if W&LE shows up, and wishes to proceed against a "fleet" of trains proceeding in the opposite direction that are still an hour away? Should this fleet, after one train has passed, be put in sidings (if that capacity exists for an entire fleet of trains) so the W&LE train may proceed, thus delaying four or five trains for the purpose of satisfying an arbitrary

deadline?

W&LE also seeks preferential treatment without any corresponding obligation on the part of the W&LE. W&LE does not propose to guarantee times when it's trains would present themselves for service on trackage rights (except to intimate that it would be during the congested 6 pm - 6 am window), and does not propose to coordinate operating patterns to meet those of the host railroads. W&LE also does not propose to guarantee performance standards for its trains while on trackage rights, such as horsepower to trailing ton ratios that would ensure its heavy stone trains could run up to appropriate track speeds. W&LE feels that simply by "showing up" at any time of its choosing, at any location permitted, and without advance notice, it should be accommodated regardless of the operating constraints of the host that has been ordered to grant such trackage rights.

14. Joint Facility Obligations

W&LE seeks to be relieved of its joint facility obligations at four railroad crossing locations, because the other lines involved have more traffic and are owned by more financially successful railroads.

First, it should be noted that these are industry-standard obligations. The W&LE agreements in question are not materially different from agreements where railroads agree among themselves to handle maintenance costs for crossings of railroad lines at grade. There is nothing inherent in these agreements that is more or less unfair than the thousands of similar agreements throughout the industry.

Second, none of these obligations are new obligations. They arise from the time the

lines were built, and were part of the obligations of the owners of each of those lines from that time forward. In many cases, the maintenance obligation was assumed by a railroad in return for the value of being allowed to cross the right of way owned by another railroad. Like all contracts, there was value received by both sides. W&LE knew of the contents of these agreements when they agreed to purchase the railroad in 1990, and the costs inherent in these agreements were not hidden.

Third, W&LE seeks to have agreements modified simply because others use the crossings more than the W&LE at this particular time. For example, the to-be CSX crossing at Wellington that is slated to have a second track installed formerly had two tracks until one was removed some time ago. The original W&LE (or successor N&W/NS) did not object the removal of this second track because it was to the advantage of the W&LE, but "new" W&LE objects to the restoration of the previously existing track.

Fourth, W&LE is not limited by some artificial constraint in these agreements about how much tonnage it can or cannot put through these crossings. W&LE's ability to use these crossings is only limited by the amount of freight it is able to attract to its lines. Because other railroads have become more successful in attracting freight to their lines, W&LE seeks to penalize those other carriers (in this case, NS and CSX) for their success in attracting business and being successful transportation providers.

Finally, W&LE objects even in the case where it expects to benefit from reductions in tonnage. For example at Canton, W&LE acknowledges that NS tonnage will be reduced by almost 60%, yet this reduction is not enough to satisfy the W&LE, whose seeks to further

shift the joint facility burden to NS. The STB should deny all W&LE's attempts to abrogate its pre-existing contractual commitments.

Conclusion

W&LE's solutions are generally poorly thought-out, are unrelated to the transaction before the board (and to each other, except that each would benefit W&LE), and often create more problems than they purport to solve.

Most of W&LE's themes are even in conflict with each other. W&LE proposes additional single-line service for stone shippers, yet proposes denying the benefits of NS single-line service to customers on the Randall Secondary and Huron Branch. W&LE proposes use of its Orrville-Bellevue line as an alternative to congestion, but proposes run-around and reverse moves at Bellevue, Orrville, Bucyrus, and on the Cleveland Line that would cause congestion far worse than any benefit the W&LE could provide. Finally, W&LE proposes new access to major shippers such as Weirton Steel or Allenport without any operating plan or detail to support those proposed operations, proposing new trackage rights unrelated to the transaction, while at the same time decrying its ability to operate on the trackage rights W&LE currently possesses.

W&LE may indeed be a troubled railroad. But its troubles should not be spread to NS, CSX and their shippers just to enrich the W&LE.

City of Cleveland

In CLEV-9, the City of Cleveland, OH, has expressed concern about the number of trains to be routed by NS and CSX through the Cleveland area. I will now comment upon the lack of viable alternatives to the proposed train routing and the difficulties in routing NS rail traffic around Cleveland.

Importance of Cleveland to NS Operations

Conrail's Northern New Jersey--Harrisburg--Chicago mainline, which passes through Cleveland, will be allocated to NS. This combination of former NYC and PRR lines was made into a through Chicago - East Coast route in the 1980's, when Conrail downgraded its line through Ft. Wayne. It has now been enhanced with full double stack clearances.

NS' route from Chicago via Buffalo and to the East will be a combination of the current NS route (former Nickel Plate) and Conrail's Lake Shore route from Chicago to Cleveland. NS' ownership of the Lake Shore route will end at CP 181. To provide a high capacity-high speed and competitive route between Chicago, Buffalo, New York and New England, NS will use the Conrail (former New York Central) line from Chicago to the Cleveland area and connect with the NS line from Cleveland to Buffalo. Proposed connections at Vermilion and Rockport-Cloggsville will give NS the through route it needs along the Lake Shore. No other trackage combination can achieve the time-distance relationship that NS must have to remain competitive versus CSX.

NS's new route from Kansas City to Pittsburgh and east must also flow through the

Cleveland area. Just like the Lake Shore route, the Pittsburgh to Kansas City route achieves the most competitive time-distance relationship moving via the high capacity Conrail lines from Pittsburgh, through Cleveland and Toledo to Butler, IN, and connection with NS' Detroit to Kansas City line.

Both NS routes from the Northwest to the East--via Pittsburgh and via Buffalo, must flow through Cleveland.

There exists no other routing to the east other than via Cleveland that can achieve the transit times necessary to attract and hold time-sensitive automotive and intermodal traffic.

Cleveland's Role as a Rail Hub

Cleveland's request for rerouting of the post-transaction rail traffic is inconsistent with the fundamental, long-standing structure of rail operations across the midwestern United States. Cleveland has long served as a central hub for rail traffic, even pre-dating Conrail.

During the past decade, Conrail's announced strategy was to concentrate rail traffic through Cleveland. Conrail focused its efforts and investment in a mainline system dubbed the "X," with Cleveland at the center of that "X." This was an entirely logical and appropriate move on Conrail's part, because the lines comprising the "X" were both the best engineered and highest capacity lines, and had the largest concentration of on-line industry. Three of the four lines of the Conrail "X" have two or more tracks, and Conrail is in the process of adding double track to the fourth leg of the "X."

Cleveland's status as a major Lake Erie port (especially for ore and salt), and as a major industrial center (auto parts and vehicle manufacturing, steel, coke and coal

consumption) also played a major role in Conrail's decision to focus on Cleveland.

Of course, major rail traffic in Cleveland did not start with Conrail. All of the Ohio predecessors of Conrail had substantial presences in Cleveland. New York Central's New York - Chicago "Water Level Route" mainline ran through Cleveland. This line now comprises two legs of the Conrail "X" east and west of Cleveland. The New York Central "Big Four" mainline ran from Cleveland to St. Louis, and is now a third leg of the Conrail "X." The "C&P" line of the Pennsylvania connected the Pittsburgh area with Cleveland, and has historically served as a conduit for large movements of ore from docks at Cleveland to inland steel mills. This line is the fourth leg of the Conrail "X." Conrail predecessor Erie Lackawanna had a former Erie railroad mainline from Youngstown to Cleveland that also carried large volumes of traffic, including ore traffic. This line is now the Conrail Randall Secondary, and most of these volumes have been consolidated onto other Conrail lines through Cleveland.

CSX and NS predecessors have also had major rail presences in Cleveland.

Cleveland was historically a major traffic generator for CSX predecessor Baltimore and Ohio Railroad, which had two lines into the area. One of these lines currently serves as CSX's Cleveland access and carries large volumes of coal, coke and steel traffic, while the other has been mostly sold and sees only local freight or excursion passenger service.

NS predecessor "Nickel Plate" had a mainline from Chicago to Buffalo through Cleveland, closely paralleling and competing with the New York Central. This route has historically seen large volumes of priority freight, and has become busier in recent years due

to NS' success in capturing intermodal and merchandise traffic in Cleveland, Buffalo and points east. NS predecessor Wheeling and Lake Erie also had a line into Cleveland from the south which was inactive for a time, but is now the Cleveland access for the revived Wheeling and Lake Erie regional system.

Costs Associated With Rerouting Proposals

Given unlimited resources, a variety of options exist for rerouting of rail traffic. Tracks can be buried, elevated or even moved to a different corridor--but at a tremendous cost that often precludes such radical solutions. The vast majority of railroad traffic is truck competitive, and the returns available to railroads from this traffic are constrained by the prices charged by truckers using a public right of way. Thus, proposals for grade separations, overpasses and other dividers between rail traffic and communities must be considered in the context of the potential resources available. Additionally, if rerouting would diminish the efficiency and competitiveness of rail transportation, public benefits associated with rail transportation could be lost. This fact is of serious concern to Cleveland-area shippers, several of whom have provided support letters specifically expressing reservations about the City of Cleveland's suggestions that NS alter its operating plan. These companies who employ Cleveland-area residents, describe in their letters their reliance upon a strong, competitive rail network. (See letters of ICI Paints, Handl-it Inc., Fleet Supplies, Inc., Blue Circle Cement, Gateway Cold Storage, Harry Rock & Co. and Columbia Companies, appended hereto.)

Difficulties with Potential Changes to Rail Operations in Cleveland.

Cleveland has, in various meetings, proposed reversal of the NS and CSX portions of Conrail in Cleveland. This proposal would allocate to CSX the Conrail Lakefront Line from downtown Cleveland west to Berea (currently allocated to NS), and allocate to NS the Cleveland Short Line from Harvard west to CP Short and Berea.

This proposal is infeasible because it would require every CSX east-west train through Cleveland to intersect the route of most NS east-west trains through Cleveland at Berea. NS and CSX specifically designed the allocation of Conrail routes through Cleveland to avoid such a devastating bottleneck of rail traffic and severe impacts at grade crossings on the west side of Cleveland.

If this proposal was implemented, this at-grade crossing at Berea would become the major bottleneck in eastern railroading, and would cause unprecedented congestion throughout the systems of CSX and NS. This would result not only in the loss of public benefits such as truck diversions to rail, but would also likely divert existing rail traffic to the highway. The congestion would not be without serious consequences for the Cleveland area as well, since it would interfere with local rail switching and effective service to local industries. For example, NS would lose effective use of Conrail's Rockport Yard, which is planned to be the NS' primary Cleveland yard post-transaction. This proposal would render the yard a dead end for NS, precluding service to Cleveland by through trains, and hurting service to major Cleveland employers such as General Motors (Parma) and Ford (Brookpark).

Not only would Ford and GM be affected by the loss of unhampered NS access to Rockport Yard. Chrysler and all of the Cleveland area steel companies would not be accessible to NS on a competitive basis with CSX. Chrysler currently has a large daily volume of auto parts generated in the Cleveland area that will have to move via Rockport yard to continue or improve current service offered by Conrail today. NS hopes to win this traffic versus CSX and cannot do this without Rockport Yard.

Construction of a grade separation to avoid the crossing is impractical, because it would essentially split the town of Berea in two. Even if such a separation could be engineered, the cost for a project of this magnitude would be in excess of $100 million dollars.

Difficulties With Rerouting Around Cleveland

Cleveland has also suggested rerouting traffic south of the city on other rail lines. As discussed below, this is impractical for a variety of competitive and operational reasons.

"PRR Route" from Alliance, OH to Chicago.

In theory, NS east-west trains could bypass Cleveland by using this route from Alliance, OH, to Chicago. This route is scheduled to be allocated to NS from Alliance to Crestline, OH. From Crestline west to Fort Wayne and Chicago, this route will be allocated to CSX.

There are two substantial difficulties with using this route. First, this route does not have the capacity of the routes through Cleveland to be operated by NS. The line through Cleveland is fully double track, features continuously welded rail, and is equipped with

signals and traffic control on its entire distance. It is a high-speed 60 mph route (79 mph for passenger) that has seen substantial investment. By contrast, Conrail has downgraded the PRR route systematically since the mid-1980's. The line is single track with passing sidings, and many of those sidings have been removed. For example, there is only one passing siding in the now NS-owned segment from Fort Wayne to Hobart, IN, 115 miles. Conrail has removed 235 miles of signals on the line from Bucyrus to near Chicago, effectively reducing maximum speeds to 49 mph. Amtrak diverted its passenger trains off the line in 1990, citing low speeds. Most of the rail is jointed rail, unsuitable for major increases in tonnage without replacement or upgrading. Conrail recently attempted to abandon much of the line because of the lack of on-line business and lack of need for a through route, but portions of the line were retained only by sale to NS (Fort Wayne - Hobart, IN) and by usage by daily Triple Crown RoadRailer trains (east of Fort Wayne). Thus, from a capacity and running time standpoint, the "PRR" route is clearly incapable of substituting for the current Conrail routing via Cleveland.

Second, If the "PRR" route were to be fully allocated to NS as a Cleveland bypass, NS would then control three of the four New-York Chicago routes across Ohio, leading to a potential competitive imbalance resulting from the transaction.

W&LE route from Orrville to Bellevue.

In theory, this route could be used in combination with the PRR route discussed above from Alliance to Orrville, OH, and then via what would be a new connection to the W&LE route from Orrville to Bellevue, and thence west on existing NS routes from Bellevue

to Chicago, avoiding Cleveland. This could provide an alternate route for some PRR line traffic to the West to bypass Cleveland.

I address the deficiencies of this route fully in this Statement in my response to a similar suggestion by the W&LE for NS use of this route. To summarize those arguments: First, the route is not owned by either NS, CSX or Conrail, so use would need to be negotiated with an outside party. Second, the line is not currently in a condition to be usable as a mainline route. There is no usable connection at Orrville, OH. The line lacks sufficient sidings (one 40- mile segments has no sidings), and part of the signal system has been removed. The rail on the line, while welded, is approximately 50 years old and would require replacement if substantial tonnage were to be routed over the line. The line is currently suitable for 40 mph speeds, but would need major upgrading to support the 60 mph speeds comparable to the NS route via Cleveland.

Other Alternatives

No other suitable alternatives exist. The next nearest NS east-west lines pass through West Virginia or Tennessee. Use of these routes for Northeast-Midwest service would result in higher costs, poor service, and thus massive diversions of traffic to trucks. This would undermine the public benefits to be derived from the transaction.

West Virginia Secondary Line

Commenters such as the West Virginia State Rail Authority ("WVSRA") and the West Virginia Association for Economic Development through the Joint Use of Conrail Tracks by Norfolk Southern and CSX ("WVED") propose that CSX be given trackage rights over the West Virginia Secondary line that is to be operated by Norfolk Southern. This is another variation on the theme that because some shared assets areas have been created, other ones should be as well.

Neither trackage rights nor any other form of additional two carrier service or shared assets should be imposed on the West Virginia Secondary line.

Applicants are addressing the requests for expansion of or creation of new shared asset areas generally in their narrative response to issues. That general response will apply to the West Virginia Secondary line, as well. The following comments deal specifically with the West Virginia Secondary line and comments asking that it receive shared asset or other dual status.

The WVED states that 4,000 miles of Conrail tracks are to receive joint access by NS and CSX. The actual number of miles with joint local access is much smaller. There are to be three shared asset areas, the definitions of which are summarized in Volume 1 of the Application, pages 46-49, and equal access usage by CSX to the former Monongahela Railway lines to be operated by NS. The North Jersey Shared Assets Area includes approximately 189 route miles of track. The South Jersey/Philadelphia Shared Assets Area includes approximately 240 route miles of track. The Detroit Shared Assets Area includes

approximately 85 route miles of track. In addition, Conrail lines formerly a part of the Monongahela Railway will be operated by NS, but CSX will have equal access. The Monongahela is defined in the Monongahela Usage Agreement (Volume 8C, page 715 of the Application) to include 191.9 miles of line.

The CSX and NS Operating Plans in Volumes 3A and 3B of the Application and the related agreements indicate that other trackage rights agreements relate to overhead traffic, or overhead access to "2-to-1" points that would otherwise be created as part of the transaction.

Despite comments that imply that points along the West Virginia Secondary will suffer a reduction in service, the transaction will not reduce the number of rail carriers serving points along the West Virginia Secondary line. Only one rail carrier, Conrail, currently generally serves points on the line. NS will be substituted for Conrail as the operator of the line. NS currently only serves one point -- Alloy, WV -- along the line, and generally does not serve the section of the State served by the line. Thus, the commenters seeking two-carrier service along this line are not seeking to fix any adverse effects of the transaction, such as reduction in the number of carriers serving locations on the line.

There is no local service on this line. Companies that became rail service customers located along the line with the knowledge they would be served by only one railroad. NS and CSX have pledged to maintain reciprocal switch access to the companies in the area that currently enjoy such service.

Because CSX maintains a parallel line on the opposite riverbank for almost the entire distance of the line, the area has a choice of rail service providers. There are few barriers to

transload and intermodal competition -- indeed many coal operators in the area often truck their coal to CR, CSX or use the river depending on who provides the most efficient transportation option.

Only one chemical shipper has joined in the WVED filing despite the location of several major chemical companies along the West Virginia Secondary line, and WVED's contention of harm to those companies. This may be due to a number of factors, including: (a) the companies' realization that NS service will be as good or better than current service, (b) the chemical plants in West Virginia have other transportation options, including barge and motor carrier service, (c) chemical plants in West Virginia may not produce the same products as those produced in New Jersey, and (d) many of the chemical manufacturers or users can negotiate volume discounts in rates based on their use of rail service at other locations.

Moreover, NS' sole operation of the West Virginia Secondary will result in new investments and service improvements on the line and on the connecting NS Deepwater, WV-Elmore WV line ("Deepwater line") to the south that will enhance the competitive circumstances of shippers located on the West Virginia Secondary line even without dual operation of the line. No rail customers in West Virginia will face a loss of competitive rail options. In fact, rail customers on the West Virginia Secondary line will have the advantages of direct, single-line service to a much larger territory than they do now.

NS' commitment to the area is shown by its willingness to invest over $10 million dollars in its Deepwater line to the south of Charleston, WV in order to provide shippers on

the West Virginia Secondary and Deepwater lines with efficient service over new or shorter routes to both the south and east. The new NS single-line route to the south will shorten shipment distances between Charleston, WV and Atlanta, GA from the current 802 miles over the joint Conrail-NS route to 601 miles over a single-line NS route. Similarly, the new single-line NS route between Charleston, WV and Baltimore, MD via the Deepwater line will be 492 miles as contrasted to 810 miles over the current Conrail line between these two points.

WVED's assertions concerning possible future neglect of this line if it is served by one carrier are belied by the fact that NS will immediately invest substantial sums in order to serve the line and to grow traffic on what will be NS' sole line in this part of the State. NS operation of this line will better balance the competition between NS and CSX in this part of the State.

NS lease and operation of the West Virginia Secondary line is expected to spur coal development along the line because coal producers along the line will have new single-line routes to new and existing markets, such as export markets over Norfolk, VA and electric utility markets in the southern United States. Currently, development of these coal markets on Conrail is limited due to its circuitous route to eastern markets.

Contrary to WVED's suggestion, some reciprocal switching now exists between the CSX's partially parallel line on the other side of the Kanawha River from the West Virginia Secondary line. (Also, CSX already has access to one of the listed members of WVED, Elkem Metals at Alloy, WV.) Many of the large shippers on the line also have access to

competitive barge service.

For all these reasons, and the general reasons stated in the narrative, requests of parties for local trackage rights over or shared asset area status for the West Virginia Secondary line should be rejected.

Chicago Metra

I have reviewed the delay data supplied by Chicago Metra in conjunction with Metra's demand that CP 518 be dispatched as to avoid any potential of freight delay to Metra trains.

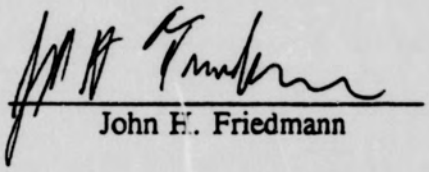
First, this is a pre-existing condition, and Metra has shown no evidence that the delays will be worsened by NS' assumption of Conrail's role at CP 518. Second, the delays mentioned by Metra at CP 518 are hardly significant when viewed in the context of the overall number of Metra trains passing through CP 518.

In 1996, the last full year for which data is available, Metra ran 3234 trains through CP 518. According to Metra, those trains incurred 43 delays totaling 363 minutes in the entire year 1996. This works out to a delay of about one in 75 trains, or one delay every six working days. Averaged among all the Metra trains traversing CP 518, the amount of delay totals just over one-tenth of a minute per train, or about seven seconds.

For Metra to compile such a record, especially through a corridor that has volumes of both parallel and crossing freight train activity, Conrail must have been according Metra the appropriate high priority as dictated in the 1989 CR/Metra agreement.

VERIFICATION

John H. Friedmann, states under penalty of perjury, that he is Director, Strategic Planning, Norfolk Southern Corporation, Norfolk, Virginia, that he is authorized to file and verify the foregoing verified statement in STB Finance Docket No. 33388 on behalf of the applicants, that he has carefully examined all the statements in the foregoing verified statement, that he has knowledge of the facts and matters stated therein, and that all representations set forth therein are true and correct to the best of his knowledge, information and belief.



John H. Friedmann

ICI Paints

Norfolk Southern Corp.

DEC 10 1997

Strategic Planning
ICI Paints North Americ
925 Euclid Avenue
Cleveland
Ohio 44115 U S A

Telephone (216) 344-8000
Fax (216) 344-8900

December 8, 1997

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423

Dear Mr. Williams:

RE: CSX/NS Conrail Transaction, STB Finance Docket No. 33388
Cleveland Comments

My name is Gerald E. Brown and I am Corporate Transportation Manager for ICI Paints with Cleveland area facilities located at 925 Euclid Avenue, Cleveland OH 44115. My Company had previously submitted a letter of support for the joint application of CSX and NS to acquire Conrail and had urged the STB to approve the transaction giving my Company greater market penetration through single-line service and competitive pricing to, from and within the eastern United States.

The purpose of this letter is to strongly reiterate that support. It has come to my attention that the City of Cleveland and the Honorable Mayor White have expressed serious concerns over the impact of increased frequencies of trains through certain neighborhoods of Cleveland. Furthermore, the City and Mayor White have stated that the City of Cleveland, its residents and businesses, will not see any noticeable benefits from this transaction. While I appreciate the City's concerns for the impact on local neighborhoods, I believe the NS plans offer enormous economic benefits to the City, its residents and businesses. As most of this new traffic is intermodal, the expected increased train traffic will be far less disruptive to local neighborhoods than more trucks traversing roads in Cleveland and northern Ohio.

My Company employs 1500 Cleveland area residents. For this facility to stay competitive in the face of a global economy, Cleveland area businesses need a variable, strong rail network that the transaction will produce. Competitive rail service offers my Company and others the opportunity to expand and enhance employment prospects for Cleveland residents.

I have serious reservations about suggestions that NS restructure or alter a solid operating plan. These suggestions lack economic or transportation justification. I expressed support for the transaction because I believe that those plans, if implemented, would translate into significant advantages to my Company. Deviations from that plan could place my and other Cleveland businesses dependent on rail service at a competitive disadvantage vis-a-vis other industrial Midwestern cities. I cannot stress enough that in order to grow and employ more residents, we cannot jeopardize the efficient, cost-effective rail service this plan represents. Using alternative trucking is more expensive and affects my Company's ability to compete successfully. Besides, trucks pollute far more than rail. They damage our roads, and increase the tax burden on citizens and businesses. These types of costs determine whether businesses locate or expand in Cleveland.

NS has an excellent safety record. Its safety program serves as a model for other carriers. I know firsthand that NS takes its commitment to safety seriously, and so do we. I know that NS has pledged to work with Cleveland officials to improve safe rail operations.

The City of Cleveland should not view this transaction as a threat or blight to local communities, but as an opportunity. Cleveland has an opportunity to prosper again as an industrial giant. The joint NS/CSX transaction is a necessary component in attaining that goal.

Sincerely,

ICI PAINTS

Gerald E Brown

Gerald E. Brown
Manager-Transportation

rg:GB120801

Handl-it INC.

Warehousing & Distribution Services

December 8, 1997

Vernon A. Williams
Secretary
Surface Transportation Board
1925 K. Street N.W.
Washington, DC 20423

RE: CSX/NS Conrail Transaction: STB Finance Docket No. 33388 Cleveland Comments

Dear Mr. Williams:

My name is Jerry Peters and I am the President for Handl-it, Inc. with several Cleveland area facilities. My company had previously submitted a letter of support for the joint application of CSX and NS to acquire Conrail and had urged the STB to approve the transaction giving my company greater market penetration through single-line service and competitive pricing to, from and within the eastern United States.

The purpose of this letter is to strongly reiterate that support. It has come to my attention that the City of Cleveland and the Honorable Mayor White have expressed serious concerns over the impact of increases frequencies of trains through certain neighborhoods of Cleveland. Furthermore, the City and Mayor White have stated that the City of Cleveland, its residents and businesses, will not see any noticeable benefits from this transaction. While I appreciate the City's concerns for the impact on local neighborhoods, I believe the NS plans offer enormous economic benefits to the city, its residents and businesses. As most of this new traffic is intermodal, the expected increased train traffic will be far less disruptive to local neighborhoods than more trucks traversing roads in Cleveland and Northern Ohio.

My company employs 160 Cleveland area residents. For this facility to stay competitive in the face of a global economy, Cleveland area businesses need a viable, strong rail network that the transaction will produce. Competitive rail service offers my company and others the opportunity to expand and enhance employment prospects for Cleveland residents.

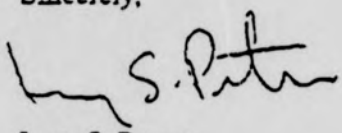
I have serious reservations about suggestions that NS restructure or alter a solid operting plan. These suggestions lack economic or transportation justification. I expressed support for the transaction because I believed that those plans, if implemented, would translate into significant

advantages to my company. Deviations from that plan could place my and other Cleveland businesses dependent on rail service at a competitive disadvantage vis-a-vis other industrail Midwestern cities. I cannot stress enough that in order to grow and employ more residents, we cannot jeopardize the efficient, cost-effective rail service this plan represents. Using alternative trucking is more expensive and affects my company's ability to compete successfully. Besides, trucks pollute far more than rail. They damage our roads, and increase the tax burden on citizens and businesses. These types of costs determine whether businesses locate or expand in Cleveland.

NS has an excellent safety record. Its safety program serves as a model for other carriers. I know firsthand that NS takes its commitment to safety seriously, and so do we. I know that NS has pledged to work with Cleveland officials to improve safe rail operations.

The City of Cleveland should not view this transaction as a threat or blight to local communities, but as an opportunity. Cleveland has an opportunity to prosper again as an industrial giant. The joint NS/CSX transaction is a necessary component in attaining that goal.

Sincerely,



Jerry S. Peters
President

JSP/mjc

Fleet Supplies, Inc.
250 Mahoning Avenue
Cleveland, Ohio 44113

Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423

RE: CSX/NS Conrail Transaction: STB Finance Docket No. 33388 Cleveland Comments

Dear Mr. Williams;

My name is Mary Tatarko and I am Corporate Traffic Manager for Fleet Supplies, Inc. with Cleveland facilities at 250 Mahoning Ave.. Our company had previously submitted a letter of support for the joint application of CSX and NS to acquire Conrail and has urged the STB to approve the transaction giving my company greater market penetration through single-line service and competitive pricing to from and within the eastern United States.

We strongly support this effort. It has come to my attention the the City of Cleveland and the Honorable Mayor White have expressed serious concern over the impact of increased frequencies of trains through certain neighborhoods of Cleveland.

While I appreciate the City's conerns for the impact on local neighborhoods, I believe the NS plans offer enormous economic benefits to the city, its residents and businesses. It is also a much more efficient and less taxing mode of transportation.

Our company employs 16 Cleveland area residents. For this facility to stay competitive, we need a reliable rail service We feel the alteration of rail service would be disruptive to our business and other area businesses, and would restrict further growth at our facility.

NS has a very strict commitment to safety which we are asked to participate in. We know firsthand that NS takes its commitment to safety seriously. I know that NS has pledged to work with Cleveland Officials to improve safe rail operations.

Very truly yours
Mary Tatarko
Fleet Supplies Inc.

Blue Circle Cement

250 Jefferson Avenue
Cleveland, OH 44113-2523
Telephone (216) 579-1911
Fax (216) 579-0625

December 8, 1997

Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423

RE: CSX/NS Conrail Transaction. STB Finance Docket No. 33388
Cleveland Comments

Dear Mr. Williams:

My name is David Lumsden and I am Regional Distribution Manager for Blue Circle Cement with Cleveland area facilities located at 250 Jefferson, Cleveland. My company had previously submitted a letter of support for the joint application of CSX and NS to acquire Conrail and had urged the STB to approve the transaction giving my company greater market penetration through single-line service and competitive pricing to, from and within the eastern United States

The purpose of this letter is to strongly reiterate that support. It has come to my attention that the City of Cleveland and the Honorable Mayor White have expressed serious concerns over the impact of increased frequencies of trains through certain neighborhoods of Cleveland. Furthermore, the City and Mayor White have stated that the City of Cleveland, its residents and businesses, will not see any noticeable benefits from this transaction. While I appreciate the City's concerns for the impact on local neighborhoods, I believe the NS plans offer enormous economic benefits to the city, its residents and businesses. As most of this new traffic is intermodal, the expected increased train traffic will be far less disruptive to local neighborhoods than more trucks traversing roads in Cleveland and northern Ohio.

My company employs seven Cleveland area residents. For this facility to stay competitive in the face of a global economy, Cleveland area businesses need a viable, strong rail

network that the transaction will produce. Competitive rail service offers my company and others the opportunity to expand and enhance employment prospects for Cleveland residents.

I have serious reservations about suggestions that NS restructure or alter a solid operating plan. These suggestions lack economic or transportation justification. I expressed support for the transaction because I believe that those plans, if implemented, would translate into significant advantages to my company. Deviations from that plan could place my and other Cleveland businesses dependent on rail service at a competitive disadvantage vis-à-vis other industrial Midwestern citifies. I cannot stress enough that in order to grow and employ more residents, we cannot jeopardize the efficient, cost-effective rail service this plan represents. Using alternative trucking is more expensive and affects my company's ability to compete successfully. Besides, trucks poliute far more than rail. They damage our roads, and increase the tax burden on citizens and businesses. These types of costs determine whether businesses locate or expand in Cleveland.

NS has an excellent safety record. Its safety program serves as a model for other carriers. I know firsthand that NS takes its commitment to safety seriously, and so do we. I know that NS has pledged to work with Cleveland officials to improve safe rail operations.

The City of Cleveland should not view this transaction as a threat or blight to local communities, but as an opportunity. Cleveland has an opportunity to prosper again as an industrial giant. The joint NS/CSX transaction is a necessary component in attaining that goal.

Sincerely,

David Lumsden
Regional Distribution Manager

GATEWAY COLD STORAGE

December 8, 1997

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

Patrick J. Gorbett
Gateway Cold Storage
3725 Croton Ave.
Cleveland, Ohio 44115

Re: CSX/NS Conrail Transaction: STB Finance Docket No. 33388
Cleveland Comments

Dear Mr. Williams,

As President of Gateway Cold Storage I currently operate 2 facilities in the Cleveland area. Both are located in the downtown Cleveland area and are rail served. My company had previously submitted a letter of support for the joint application of CSX and NS to acquire Conrail and had urged the STB to approve the transaction giving my company greater market penetration through single-line service and competitive pricing to, from and within the eastern United States.

The purpose of this letter is to strongly reiterate that support. I have recently read in the newspapers and seen on television that Congressman Dennis Kucinich is stating that the increased traffic is going to have a negative impact on the Greater Cleveland area. While I do believe the impact will be felt on the areas that have many train crossings, I can't help but think that it would not be any more traffic than there was during the rail heydays of 40 or 50 years ago.

My company employs approximately 25 greater Clevelanders. For this facility to remain competitive in the global economy we will need to have a strong rail presence that is run in an efficient manner.

Norfolk Southern has an excellent safety record. In talking to their employees it seems that their safety program could act as a model for other rail carriers. They have also stated that NS has pledged to work with local government officials to improve safe rail operations.

Mr. Williams, if you have any questions or concerns please don't hesitate to call me.

Sincerely,

Patrick J. Gorbett

Patrick J. Gorbett
President

Gateway Cold Storage
3725 Croton Avenue ◇ Cleveland, OH 44115
(216) 361-6200 ◇ FAX (216) 361-1993 ◇ TOLL FREE (888) 361-9333