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substantial improvements to ease train movements within Chicago, including upgrading tracks to accommodate higher speeds and eliminate "slow orders" and building connections at the periphery of Chicago and between the lines of the local switching companies within Chicago to facilitate access to their yards and provide multiple routes to and from the yards so trains can traverse quickly as they enter and exit Chicago. Id. at 18-19.

Third, the CSX plan for train operations between the East and the Chicago area is designed to avoid wherever possible the need for opposing trains to "meet" and give way to one another or to wait while another train does work in a particular location. Additionally, CSX will take measures and enter into arrangements so that whenever possible through trains between CSX and western carriers will be assembled elsewhere and will take the most efficient routing through the Chicago terminal area without intermediate handling. This will greatly improve transit times and reliability, which is a primary benefit of this Transaction. By overheading, capacity is created within the intermediate switching carriers so they and their yards can more efficiently handle the remaining traffic; all customers and users will benefit.

CSX's schedules and routings have been devised to promote a predominantly counterclockwise flow of traffic. Inbound traffic flows from Willow Creek to Pine Junction, where the BOCT line to the west turns off and the line to Rock Island Junction further north commences. Trains exiting Chicago will generally continue in the counterclockwise direction using the BOCT and IHB tracks to reach Gibson and Ivanhoe interlockings and then onto the Porter Branch via Tolleston to Willow Creek.

FCC's Alternative Routing Plan would alter these traffic patterns and undermine the objectives of the CSX Operating Plan. First, rerouting traffic to avoid reactivating the Hobart-Clarke Jct. portion of the Fort Wayne line would undermine the objective of creating an alternative service route into Chicago. As Messrs. Rooney and O'Connor demonstrate, this portion of the FCC's proposal is based on the incorrect assumption or misperception that the only reason CSX is reactivating this line segment is to make coal and coke deliveries to US Steel. FCC-9, Burris VS at 8, n.11 and 16. That is patently incorrect.¹⁰ As stated throughout the Operating Plan, the Fort Wayne route is an

¹⁰ Mr. Burris purports to derive this mistaken notion from a CSX response to a much narrower question, that has nothing to do with the purpose for which CSX needs this line segment. Specifically, the Four Cities posed, and CSX responded to, the two questions, as follows:

Question 5. After the transaction is consummated, will CSXT have any ownership interest in, or operating rights over, either (a) the EJE line (or right-of-way) between Dunes, IN and a connection with EJE's Ivanhoe-Gary Line just west of Pine Junction, or (b) the NS (former Wabash) line (or right-of-way) between Dunes and a connection with EJE in the vicinity of Pine Junction.

Response:

a. No ownership, possible rights from EJE crossing PRR line north of Clark road (Dunes) to US Steel.

b. No.

6. If the answer is "yes" with respect to either part (a) or part (b) of question 5, please describe CSX's expectations with respect to improvements to and/or future operations on such line(s) after the transaction is consummated.

integral part of the CSX routes into and through Chicago. As this portion of FCC's routing proposal is based on a faulty premise, it substantially understates the impact of its proposal on CSX operations.

An essential requirement -- and key objective of the traffic flows -- is efficient connections with other carriers. The FCC's alternative routing of trains -- from the Van Loon line to the EJE line -- would needlessly complicate CSX's connections to other carriers and substantially impair CSX's ability to perform efficient interchange with western carriers. Because of its physical location on bridges above the intersection of CSX, Conrail (NS) and the BOCT at Pine Junction, the proposed EJE routing leaves trains on the Fort Wayne Line literally "up in the air." Rooney/O'Connor VS at 10. This greatly complicates access to the CSX mainline at Pine Junction and to other connecting carriers, including direct access to either BOCT or Rock Island Junction. This virtually negates the operational flexibility

Response:

Install a crossover between former PRR Tolleston lines and the EJE at the Dunes allowing coal and coke deliveries to US Steel using CSX crews.

These questions, in CSX's view and on their face, relate to possible CSX ownership interest in EJE or NS lines that CSX would or might acquire, and CSX responded accordingly. The questions, and hence the responses, are totally unrelated to the overall purpose for which CSX is using and upgrading the Fort Wayne Line -- that purpose is clearly spelled out in the Operating Plan. Therefore, the very premise of FCC's Alternative Routing Plan -- to enable CSX to serve US Steel without reactivating this line is false -- and the proposed "solution" does not even come close to addressing the harm to CSX that would occur from this rerouting.

objective for acquiring the Fort Wayne Line and thwarts plans for more efficient train movements and improved interchanges with western carriers. Id.

Moreover, under the FCC proposal, CSX would be put in the undesirable position of having a crucial segment of its operations available only by trackage rights over NS and EJE lines. Relying on only trackage rights to handle traffic flows to and from a gateway that is a critical center of CSX's system-wide and transcontinental operations would severely constrain CSX's ability to control its destiny. CSX's ability to develop and maintain competitive schedules, to freely undertake the capital improvements it deems necessary to maintain and/or increase capacity and operating efficiencies, or even to pursue new marketing opportunities would be constrained by the terms of trackage rights agreements. For CSX to achieve the operating efficiencies contemplated in the Operating Plan and to provide the high quality service its customers demand, CSX must have the ability to own and control the facilities that are essential to its operation, and particularly in an area as critical to system wide operations as Chicago.

It makes no sense operationally or commercially to move traffic over NS and EJE lines, possibly under different operating rules and different dispatching territories, when there is an available option over CSX's own lines. It makes even less sense, when, as here, the trackage rights route is more circuitous and hinders rather than promotes efficient connections to other carriers. The FCC proposal would completely disrupt operations and obviate any chance of enhancing efficiencies and providing improved service to customers. See Rooney/O'Connor RVS at 9-10.

The other part of the FCC's proposal -- to reroute eastbound traffic off the Willow Creek/Pine Junction/Calumet Park line segments and onto the IHB line from Calumet Park to Conrail's Porter Branch to Willow Creek via a connection at Tolleston, IN -- likewise is impractical and would unnecessarily impair operations. Mr. Burris claims as a benefit of the FCC proposal the fact that the proposal would result in "a pair of mainline tracks each moving in a single and opposite direction." FCC-9, Burris VS at 6-7. But that "benefit" is not attributable to the FCC proposal -- indeed that is the traditional mode of operating in Chicago and one that the CSX proposed Operating Plan already preserves and expands.

In fact, the FCC's proposal, while maintaining that objective for the limited segments at issue, ultimately alters traffic in a way that conflicts with the directional patterns for the entire Chicago area. In order to reduce traffic on the segment from Pine to Calumet Park, the FCC proposes that CSX acquire and rehabilitate a section of the IHB from Virginia to Chase Street in Gary -- a distance of about 2.1 miles. This segment, which is elevated above street level in central Gary, would be connected to the Porter Branch in the vicinity of Virginia Street in the east and the IHB track would be used to Ivanhoe, where the IHB line appears on the map to -- but does not in fact --join the Porter Branch.

Assuming the existence of the elevated line in Gary, the FCC further recommends that 17 CSX (and CP) trains be rerouted eastbound over the elevated line and off the BOCT line -- reducing the planned BOCT trains from 33.3 to 16.7 premised on the assumption that eastbound and westbound movements would be about equal over the BOCT

line. FCC-9, Burris VS at 14 n.13. However, the schedules show that there are not 17 eastbound trains that are not already routed via Ivanhoe. Moreover, even if there were 17 trains available for rerouting they cannot be rerouted as Mr. Burris suggests because of conflicts with the operating concept, namely, most would be more efficiently rerouted via BRC rather than the longer IHB route and it would make no sense to reroute Barr Yard trains west and then east through the neighboring IHB yard. It also should be noted, that one reason that there is capacity on the Porter Branch for the trains that the FCC proposes be moved over that line, is that NS removed 10 trains from that line in order to achieve a more efficient routing and to reduce delay.

FCC suggests that its plan would be more economical because it would save CSX the cost of reactivating the Hobart to Clarke Junction segment, but FCC ignores the real costs that would be associated with its proposal. In fact, FCC's investment program is materially inadequate to support its proposal. It makes no mention of the cost to reconnect the IHB line to the Porter Branch, or in the alternative to refurbish part of the IHB or the cost, or feasibility, of establishing connections from the EJE elevated line to connecting carriers at Pine Junction. And even if the elevated line from Gary were a plausible alternative for the future, the plan cannot be implemented without substantial investment. The physical condition of the bridges is poor. The wooden trestles would have to be filled and the track structure completely replaced, including the entire line to Chase Street. The IHB line to Ivanhoe would have to be refurbished as it could not in its present condition support 40 mph operations. Rooney/O'Connor RVS at 25-26.

The CSX Operating Plan already incorporates use of lines and yards in a way that will improve traffic flow and ameliorate the situations hypothesized by FCC. For example, the Pine Junction to Calumet Park segment today is the main east-west connector for CSX trains to its yards and to the IHB and BRC yards that CSX uses in the southwestern Chicago suburbs. Since CSX's plan is to continue to use extensively the services of these railroads and yards, the role of that line will continue as it is today. However, the way in which CSX's Operating Plan uses the Porter to Ivanhoe line segment changes the predominant flow from westbound to eastbound traffic. Thus, the flows of traffic will be more efficient, meets and passes will be avoided, and as a result there will be fewer delays.

Thus, FCC's Alternative Routing Plan offers no "benefit" other than the elimination of the alleged increases in delays at grade crossing on two of the many line segments in the Chicago area -- namely, Pine Junction to Calumet Park and Hobart to Pine Junction. But as Messrs. Rooney and O'Connor demonstrate, Mr. Burris has greatly overstated the potential delays because he has failed to take into account two important facts. First, only two additional trains will traverse the BOCT section during the 6 AM to 6 PM peak vehicular traffic window, which means a very limited increase in delays. Second, the train delay study that Mr. Burris relied upon ignores the fact that the train speeds under the CSX proposed operations would be 40 mph, not 25 mph (or 10 mph as assumed in the case of the Hobart to Clarke Jct. segment). Thus the length of delays in the study are inaccurate and the "harm" is substantially overstated. Rooney/O'Connor RVS at 16-17.

Even setting aside, for the sake of argument, the errors in the FCC train delay study, which are addressed in the Rooney/O'Connor statement, the FCC Alternative Routing Plan does not resolve the grade crossing issue or even significantly ameliorate it. The total number of grade crossings across all line segments (as opposed to just those addressed by the FCC) remains virtually the same under the FCC's alternative routing. The FCC proposal simply shifts the burden to other communities.

The FCC's Alternative Routing Plan would substantially hinder efficient operations in Chicago and undermine the benefits of improved traffic flows in Chicago that are inherent in the CSX Operating Plan. The limited and localized benefits of the FCC's Alternative Routing Plans are insufficient to offset that loss of public benefits. It should therefore not be adopted or prescribed.

B. Requests for Trackage Rights

1. Forced Trackage Rights Create Operational Complications

Dozens of commentators have requested trackage rights over lines that CSX or NS own or will operate, totaling more than 1,000 miles. If the Board were to grant all of these requests, the railroads' operations would be crippled and CSX's ability to provide the efficient rail service contemplated by the operating plan would be severely undermined. I will summarize in general the operational complications of forced trackage rights and address some of the individual requests for such rights that would impact operations.

Trackage rights allow one carrier to use another carrier's tracks and/or other facilities in exchange for agreed upon compensation and under negotiated terms and conditions. Trackage rights are not problematic per se. In fact, there are many instances in which rail carriers enter into trackage rights voluntarily for their mutual benefit, as for example NS and CSX have done in various locations. But the sharing of tracks and facilities requires close cooperation and coordination to avoid congestion and delays to each other's traffic. Even under mutually beneficial arrangements, the presence of another carrier on the line impacts the landlord carrier's operations.

In a situation, such as here, where parties request the Board to impose trackage rights that are not mutually beneficial and which were not anticipated during the development of the commercial and operating plans of the railroad, the addition of Class II and Class III carriers onto CSX and NS mainlines can severely jeopardize operations.

Trackage rights limit a carrier's ability to control its own facilities and ultimately its own destiny. Obviously, delays and failures by the tenant carrier on the line itself will interfere with the owner's use of its line. Less obviously, joint use of tracks and facilities requires close cooperation and coordination in train movements in order to meet the service requirements of each carrier. If a tenant carrier does not keep on schedule on its own tracks, it will impact the schedules on the shared track as well, again resulting in delays to the owner.

It also is more difficult to control entry and exit at junction points when Class I and shortline carriers share tracks. Bunching and congestion are more prevalent with multiple users. Scheduling of maintenance of way operations, capital improvement projects or other operations that curtail use of the line become more complicated. Furthermore, shortline and local operations conducted on mainline track interfere with through traffic and other local traffic, adding interchanges and delays to freight.

Differences in operating rules, communications systems and equipment also can be problematic. The tenant carrier's crews must be trained and qualified in the operating rules and knowledge of the lines over which they will operate. The owning carrier often is required to provide a pilot (or training) crew to accompany the tenant's train until the tenant's crew is fully qualified. This imposes additional administrative and manpower demands, but these needs cannot be compromised. The potential for human error when crews of one railroad operate over another is always present and safety cannot be compromised.

Incompatible radio and telemetry equipment complicates communications, resulting in misunderstanding and delays. Replacement of broken equipment or out-of-service locomotives can cause considerable delay if the equipment is incompatible with the landlord carrier's equipment and trains enroute must be sidelined to await replacements.

Logistics problems also arise when crews reach their hours of service limits outside of their own seniority districts and a new crew must be provided from a distant point.

Trackage rights also increase administrative activities, such as coordinating billing procedures and recordkeeping for locomotive power, car mile and other joint costs.

Finally, introducing third carriers would change the volume of traffic that CSX would carry and thus would affect the pattern of traffic flows, the collection of efficient blocks to eliminate intermediate switching, the design of train makeup and the competitive train schedules that were developed in the Operating Plan to provide benefits to the shipping public.

2. Negative Impact of Individual Trackage Rights Requests on CSX Operations

The most troublesome requests are those of Class II and III railroads that want to expand into new markets by gaining use of CSX mainlines that are critical to CSX operations and which already are heavily used. For example, as I discussed in Section III, NECR, which is a relatively new, small carrier that currently operates only 12 trains per day in rural and undeveloped areas, requests trackage rights over 256 miles of the eastern portion of CSX's mainline between Chicago and the Northeast, including access to the NJSAA.

Similarly, WLE wants to operate in Chicago, Toledo, and West Virginia, without limitation on future increases, using CSX mainlines, including CSX's critical Alternative Chicago Gateway/Fort Wayne Service Route.

ISRR, a shortline that currently moves coal in Indiana, wants to provide local service and switching service to other shortlines over three mainline segments between Indianapolis and surrounding communities. One of those line segments, Indianapolis to Muncie, is CSX's mainline between Cleveland and St. Louis on the St. Louis Gateway Service Route.

These mainlines represent valuable assets that CSX is obtaining at great cost in this transaction in order to provide the competitive service between major gateways and the Northeast that customers demand. Fast reliable service is mandatory on these lines. The presence of shortline operations would add to the complexity of operations over these lines, which already require careful management and, for some of the line segments, coordination with other freight and passenger and commuter operations that also have rights over these lines. The presence of multiple carriers with trackage rights over vast portions of CSX's newly-obtained routes would disrupt schedules, increase the risk of delays and congestion, and subvert CSX's ability to control its destiny. Each new tenant would bring increased risk of delays, and other uncertainties that jeopardize schedules and impede efficient operations.

Centerior's requested condition would bring even greater risk to CSX operations, as it seeks trackage rights for NS, CSX's competitor, over a crucial portion of CSX's mainline. Centerior wants trackage rights for NS over CSX's acquired line between Centerior's Lake Shore Generating Station in Cleveland, OH and CP 124 at Ashtabula, OH. This is yet another request for rights over a portion of the Northeastern Gateway Service Route that CSX obtains in the transaction. This line is part of the key competitive route that

CSX is paying for in this transaction -- the former Water Level route between Cleveland and New York/New Jersey. This route is part of a double track high speed mainline with high traffic density. The trains that traverse this line primarily carry merchandise, automotive, and intermodal traffic that is highly competitive and time sensitive. Adding NS coal trains that would be moving over trackage rights would pose a significant coordination and operational problem.

Coal trains will not be able to maintain the same speed as the bulk of the movements on this line. It will require a significant coordination effort for CSX to manage its own coal movements across this key line segment to avoid delays. To add NS' coal traffic across this key corridor given that CSX does not control NS' movements leading to this line, would result in delay not only to the NS trains but to the other, time-sensitive traffic that CSX will handle on this line. Any such delays would be advantageous to NS as it will be CSX's primary competitor for transportation service between Chicago and the Northeast.

The City of Indianapolis asks that the Board modify the Trackage Rights Agreement between CSX and NS to include 13 specific provisions designed to promote NS' position in Indianapolis. See, CI-5, Comments of City of Indianapolis at 14-16. Some of the conditions would "require" CSX to perform in a manner that is already common practice between CSX and NS at various points on the railroad and therefore does not require STB intervention. Others are based upon unsupported and unrealistic assumptions of traffic

volumes that NS might develop, if these terms were imposed. A few of the proposed conditions would actually be detrimental to efficient customer service.

First, no STB order is necessary to assure that CSX will "maintain the subject trackage at its current Track Class and Speed." CI-5, Responsive Application at 14. CSX has an extensive maintenance of way program that compares to or exceeds that of other major carriers in the rail industry. Moreover, it would not be in CSX's interest to devalue its investment in these lines by allowing them to deteriorate. Nor is there any reason to impose upon CSX a requirement to "dispatch trains equally and without prejudice." Id. at 15. In the railroad industry, trains and interchanges are scheduled. It is just as important to one carrier as it is to the other to run the trains on time. Most facilities operate by dispatching industry jobs, trains, and interchange cars on particular shifts daily. Yards must operate in this fashion to keep the resources turning -- tracks, locomotives, and crews -- or they get bogged down. CSX and NS successfully deal with each other at various points on their networks, including the Cincinnati and New Orleans areas, without any contractual conditions of the type proposed by the City of Indianapolis. Likewise, the two railroads have been doing business together for many years, without any need for a third party to arbitrate for them. These proposed terms are therefore unnecessary.

Likewise, the NS and CSX have switching agreements in place now that work without "requirements" or "setting forth a specific time requirement for CSX's pick up and delivery of NS' cars to and from the customer sidings." Id. at 16. Where CSX and NS do business today, interchanges and trains from each other are expected and handled on the

same shift and at the same time daily. There is no reason to expect that operations in Indianapolis would be any different.

Concerned that NS will not have a volume of traffic sufficient to maintain adequate rail service in Indianapolis, the City further proposes terms that would (a) give NS access to all customers served by CSX, (b) release all of CSX's customers from provisions of contracts that would preclude them from rebidding to NS, and (c) require CSX to provide haulage for NS from Indianapolis to Chicago. Id. at 13. The trackage rights granted NS give it more than just access to Indianapolis; they give NS two routes to and from the City with excellent connectivity with NS routes to the West and Chicago (via Muncie) and to the East and Cleveland (via Lafayette).

The City also wants the STB to impose terms to enable all present and future shortlines to connect with CSX and NS and with each other. There is no evidence that the volume of available traffic would support such activity, particularly given the City's request that NS be given the right to provide its own direct service to Indianapolis customers and shortlines or to contract with a third party to provide these switching services. The result would be more than one carrier trying to pull and place cars at the same industries, which would be extremely disruptive to customers. Even in the SAA's, CSX and NS have reconciled yard operations to avoid duplication and the chaos that would be created by having multiple yard engines attempting to serve customers.

Several industries in the area like to be worked at night, so that when they come to work in the morning their tracks are set up. This permits them to get the most production from the car unloaders. Generally, industry lines are single track and a switching crew spends 8 to 12 hours servicing customers on the line. The switching crew is not concerned about, or even aware of, which carrier's cars it is delivering, so there is little chance for prejudice in servicing the customers.

Finally, under the terms of the Transaction Agreement, CSX will operate Conrail's Hawthorne Yard in Indianapolis and will provide NS with sufficient trackage for arrival, departure and makeup of trains. The City, however, finds this arrangement insufficient and would instead impose a term that would give NS the right to lease, buy or build trackage at Hawthorne Yard for its own use. CI-5, Responsive Application at 15. Not only is such a term unsupported by any evidence that additional capacity is needed, but more importantly, that provision would disrupt CSX's operations. CSX plans to consolidate traffic from its small State Street Yard in Indianapolis into a single operation at Hawthorne Yard in order to improve operating efficiencies. This means that Hawthorne Yard will be a critical facility for CSX operations in Indianapolis and any requirement limiting CSX's use of Hawthorne could be detrimental to those operations.

The State of New York (NYS) asks the Board to impose trackage rights over portions of the Conrail line east of the Hudson River (allocated to NYC) that will enable an unidentified third party operator to provide service between New York City/Long Island and Albany. NYS-10/NYS-11. The Erie-Niagara Rail Steering Committee (ENRS) requests

that there be a Niagara Frontier Shared Assets Area that would include all of Erie and Niagara Counties and the northern portion of Chautauqua County in New York State. ENRS wants conditions that would (1) allow all current and future customers that will be served by Conrail lines involved in this proceeding within the limits of the Niagara Frontier SAA to have direct and equal access to rail service from both CSX and NS, or (2) require reciprocal switching arrangements that would extend to carriers other than CSX and NS, such as Canadian National (CN), Canadian Pacific (CP) and the various shortlines that already operate in these areas, or alternatively, (3) have NS and CSX grant each other terminal trackage rights over all Conrail lines in the Niagara Frontier area.

The grant of trackage rights to an unidentified entity over the Conrail lines south of Albany and east of the Hudson River (between Schenectady/Albany/Selkirk and Poughkeepsie) and Conrail trackage rights over lines owned by Metro North between Mott Haven Junction and Fresh Pond, NY (NYS-10, Argument at 17), would impose operations of an unknown entity onto an already high density line -- a line that for some segments currently carries about 332 passenger trains in addition to Conrail local freight trains or at already busy yards, switching leads and track within the Harlem Yard and Oak Point areas. Contrary to NYS's contentions, shippers in the State of New York have increased competition as a result of this transaction. CSX has entered into joint-line marketing agreements with CP, CN and P&W with respect to service to New York City and Long Island. Further imposition of trackage rights to a third, unidentified carrier in order to "create" competition in this area is unneeded. On the other hand, the presence of other

freight operations on lines CSX will operate from Conrail east of the Hudson would only impede CSX operations, and create additional passenger/freight coordination issues on this line.

For all the operational reasons stated in Section IV.B.1 above, grant of the extensive trackage rights sought by these two parties would significantly devalue CSX's investment in New York and seriously impair its ability to perform the high quality service intended over the Northeastern Gateway Service Route. ENRS' request would create confusion, dispatching nightmares and congestion on the Conrail lines that make up this important service route. Access by multiple carriers over the same lines would increase the risks of delay to all traffic; imposing multiple shortline operations over these lines would delay intermodal and other time-sensitive transcontinental freight traffic. Moreover, there is no competitive, commercial or operational reason for granting the requested trackage rights and reciprocal switching rights in this area. Unlike the NJSAA area which is today served only by Conrail, Buffalo and other areas in ENRS' proposed SAA have access to numerous rail carriers, who have their own lines and facilities already in place, including Class I carriers such as CN and CP as well as several shortlines, as indicated on the map included in NYS-10, Exhibit JAU-1.

International Paper Company (IP) currently transports products in both directions between its Erie Mill in Erie, PA and Lock Haven, PA. The service is provided by Conrail over a combination of Conrail and Allegheny and Eastern Railroad (ALY) lines. IP-4 at 1. This service traverses three line segments: (1) a 75 mile Conrail line between

Lock Haven, PA and Emporium, PA; (2) a 150 mile ALY line between Emporium and the OD Yard in Erie over which Conrail has trackage rights; and (3) a 3 mile Conrail line from the OD Yard to IP's Erie Mill. Id. After the transaction, NS will operate between Lock Haven and Emporium and inherit the trackage rights over the ALY line. CSX will own the line from the OD Yard to IP's Erie Mill.

IP argues that the service it currently receives from Conrail between Lock Haven and Erie cannot be maintained after the transaction unless the Board orders either (1) trackage rights to NS over CSX's line between OD yard and Erie; or (2) trackage rights to ALY over the NS line between Lock Haven and Emporium and over CSX's line between OD Yard and Erie Mill.

IP is concerned that after the transaction its service will deteriorate because the movements will become joint-line. However, for this particular movement, joint-line service can be just as efficient as single-line service.

Currently, Conrail moves the train from Lock Haven to OD Yard, where a Conrail yard crew switches the movement into IP's Erie Mill. After the transaction, NS will provide service from Lock Haven to OD Yard, just as Conrail does today, and at OD Yard, a CSX Yard crew will switch the movement into the mill just as a Conrail crew does today. The service will be essentially the same as it is today. Therefore, there is no justification for IP's concern that this movement will be jeopardized as a result of the transaction.

C. Requests to Purchase a Line or Facility

In this section I will briefly address the adverse impact of divestiture and reply to requests of individuals seeking to purchase portions of the system that CSX will operate.

If the Board were to require NYC to sell part of the allocated facilities to another carrier, the loss could disrupt the balance of operations across the network, or severely cripple operations in a particular locality. Divestiture of a line or facility frustrates expansion plans, jeopardizes capital projects, and obstructs operations.

IC's demand that it be entitled to purchase a 2-mile segment of CSX's mainline from Leewood Yard to Aulon in Memphis, TN would impact not only Memphis operations, but CSX's network operations as well. That line segment constitutes a section of CSX's Memphis Gateway Service Route. It is located just east of the Mississippi River and is critical to CSX's through freight service to and from western carriers.

CSX runs 10 through freight trains per day over that line. In addition, CSX uses the line to reach BN and UP yards for interchange with those carriers. The change of ownership of that line would profoundly interfere with CSX operations over the Memphis Service Route.

IC attempts to minimize the impact of its request by characterizing the line as little used by CSX and the traffic as "transfer" traffic, which completely distorts the nature

of the Memphis line. IC-5 at 19. The Leewood-Aulon segment is part of CSX's east-west mainline from the Mississippi River to Nashville and Cleveland. Divestiture of this line would disrupt major flows of chemicals and other general merchandise traffic from western carriers that traverses this route.

Although this line is used by IC as its north-south mainline that is the result of a conscious decision by IC. IC is the junior carrier. Until the late 1980's IC primarily used its own route along the Mississippi River rather than through Leewood-Aulon.

Another request that would seriously impair operations is WCL's attempt to force a purchase of the BOCT's Altenheim Subdivision in Chicago. WCL claims that its operation and control of the Altenheim Subdivision would improve the efficiency of Chicago Terminal District operations, but in fact WCL proposes to hold its trains on the line and in the 48th Avenue Yard that is currently used by BOCT to efficiently serve local customers. This would severely impact BOCT's ability to provide competitive and efficient service to these customers.

On a lesser but still significant scale is LAL's attempt to purchase Genesee Junction Yard near Chili, NY. As discussed earlier, although Conrail is currently using that yard only for interchange with the LAL and R&S area, there is potential for development in this area, which might require the use of the yard.

D. Requests for Change in Control of Interlockers/Dispatching

Several parties have expressed concerns about "neutral" dispatching, and "neutral" switching, "equal and fair" dispatching and the like, particularly with respect to the Chicago area and the shared assets areas. I believe these concerns are unfounded.

There is a common misperception that dispatchers are biased and favor their own railroad's trains over that of another. When a train is held up at an interlocking for any amount of time and the reason for the delay is not immediately apparent, some railroads jump to the conclusion that their trains are being singled out for biased treatment and that the dispatcher is intentionally delaying them in order to move its own trains more quickly.

This is generally not the case. As I testified in my deposition, there are many reasons for delays including signal malfunctions, derailments, maintenance work, broken rail and congestion. See Orrison Dep., Sept. 12, 1997 at 431-33. Sometimes a dispatcher is attempting to move a train that is behind schedule quickly in order to avoid congestion or conflict with another scheduled train. Often the dispatcher's own trains are as much affected as are other railroads' trains, although that may not be apparent to those who do not have all of the information.

A dispatcher's objective is to move all the trains scheduled on his or her territory. A dispatcher makes decisions on the basis of a large amount of information that is not available to others. In the course of the day, he or she will make hundreds of quick

decisions. It is easy to second guess a dispatcher and assume that the decision was biased. But in my experience, I have found that when you contact the other railroad and try to determine the cause of the delay, there is generally a good reason. Many claims of bias are based on miscommunications or lack of information as to what is transpiring.

I will now address some of the parties' comments concerning switching and dispatching.

Chicago Area

EJE claims that CSX's partial indirect ownership of IHB after the approval of the acquisition would mean that IHB would no longer be "a neutral, independent switching carrier." EJE-10 at 9. EJE witness, Millard Turner, General Manager of the EJE, claims that even though Conrail owned 51% of IHB, IHB remained neutral because there would be no benefit to Conrail if traffic were switched by another carrier. EJE-10, Turner VS at 056. He suggests that because CSX would have economic interests in all three major Chicago switching carriers, IHB, BRC, and BOCT, CSX would be able to control switching operations in Chicago.

That is incorrect. CSX's interest in IHB will be held in common with NS -- Conrail will continue to own the 51% block of stock and CSX and NS will direct Conrail's voting of it in accordance with an agreement set forth in the primary application. See CSX/NS-25, Vol. 8C at 692. In addition, the remaining 49% interest in the IHB will

continue to be held by the remaining owner, Soo Line Railroad, which is a subsidiary of Canadian Pacific (CP). I understand, however, that in his deposition, Mr. Turner admitted that he knew nothing about the agreement between CSX and NS and had never read it. NS and CP are strong carriers and competitors of CSX. Together they could prevent CSX from exercising any undue control over IHB in the way suggested by EJE. I understand that when Mr. Turner was asked at his deposition why NS and CP/Soo would ever put up with CSX's dominating the IHB, he said that he had no idea why they would. As to the BRC, while at the present time CSX has more stock in that company than does NS, its total stock interest is only 3 shares out of 12. After the Transaction, NS will also have three shares, thus counterbalancing any perceived advantage CSX might have had. CSX will not have any more shares than the other owning carriers.

More importantly, it would not be in the interest of any party in Chicago, including CSX, to control switching operations in a way that would discriminate against other carriers. Neutral switching is essential to smooth operations. Trains must be progressed in an orderly and expedient manner in accordance with their schedules. Undue preference to any one particular carrier would eventually create gridlock and congestion, which would impede all operations in the Chicago area.

As I stated in one of my earlier verified statements a key goal of our Operating Plan is to assist in facilitating movement of traffic through Chicago. See CSX/NS-19, Vol. 2A at 453-59. CSX consulted with IHB and with other carriers including the western carriers, to ensure that its plans were consistent with their goals for Chicago. Biased

switching and dispatching would impede, rather than, promote fluid traffic flows in and through the terminal and thus would undermine the ability to achieve those goals.

Chicago Metra claims that "CSX and NS plans for the Chicago terminal area will result in significant changes that threaten at least three interlockings, including the chokepoint at Forest Hill, with even greater freight traffic volume and potential interference for Metra's commuter operations." METR-6 at 3. The three interlockings are the Forest Hill interlocker at 75th Street controlled by BOCT; the Chicago Ridge interlocker controlled by IHB and the Belt Junction interlocker controlled by BRC. Metra requests that Applicants transfer (or with respect to Belt Junction exercise control to see that BRC transfers) control of these interlockings to Metra. See Figure JWO-17.

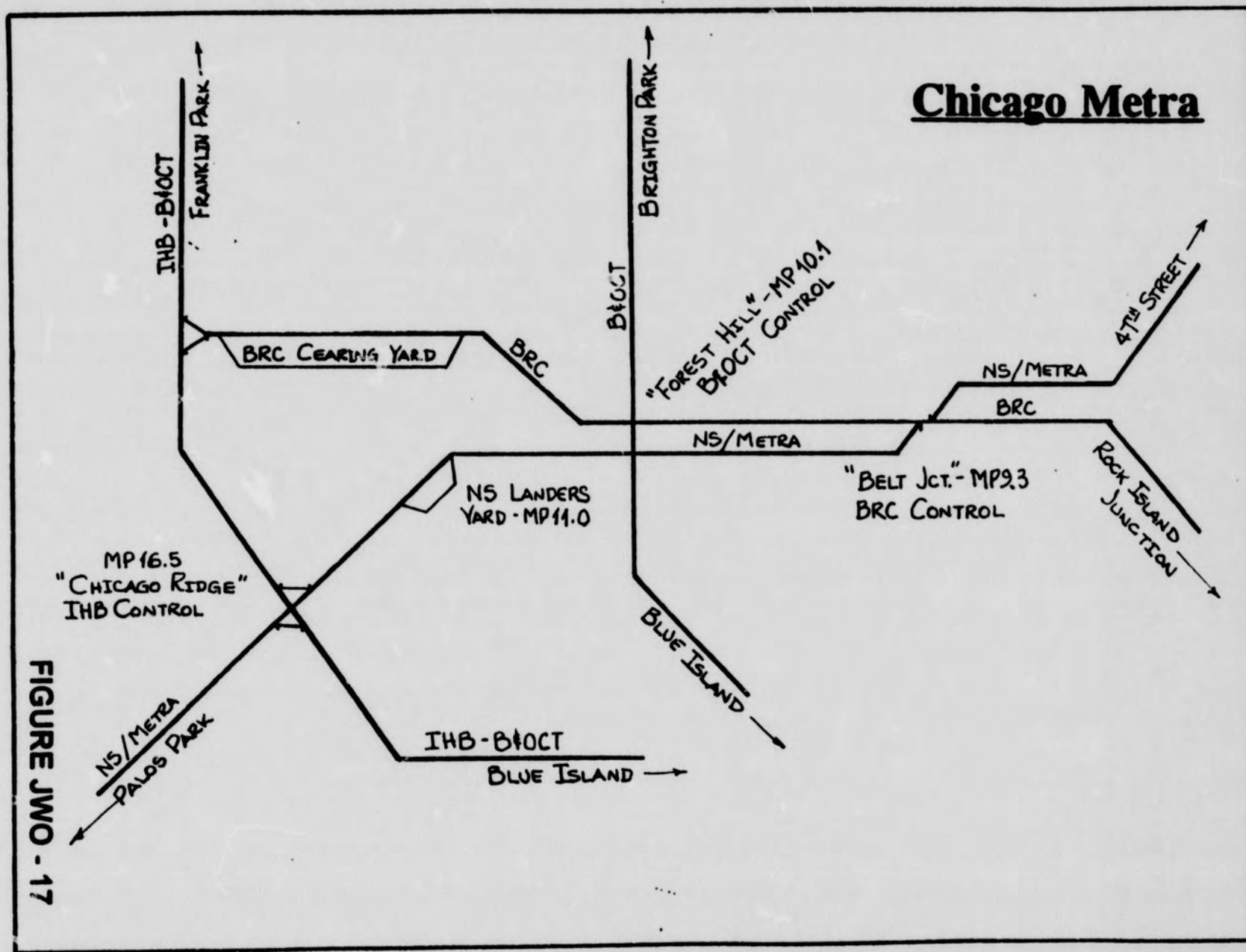


FIGURE JWO - 17

Metra's concerns are misplaced. CSX's substantial planned improvements in the Chicago vicinity are designed to improve, not impede, operations, including commuter operations, in Chicago.

CSX plans include numerous improvements including the construction of a new 59th Street Yard; expansion of Bedford Park and Forest Hill Yards; rehabilitation of Blue Island Yard; upgraded crossovers at 22nd Street; several new or upgraded connections; upgrading and converting sidings to make a third mainline on the McCook Subdivision; upgrade road crossings and signals on the Barr Subdivision and signaling improvements on the Chicago mainline from Blue Island to Dolton. These improvements will significantly improve traffic flows through Chicago. See Exh. JWO-7. One of the significant problems with the Forest Hill interlocking, which Metra calls a "chokepoint," was that it was manually operated from a control tower at the site. During extreme weather conditions, including heavy storms, alignment of the interlocking became very difficult, thus creating train delays at the facility for all traffic. CSX has recently modernized the interlocking to rectify this problem. The interlocker has been relocated from a tower at the interlocker to an office shared by the BOCT and BRC dispatchers in the BRC dispatching center in Clearing, facilitating coordination with the BRC.

The Chicago Ridge interlocking was modernized in 1994, with IHB taking over control of the interlocking on August 1, 1994. By the terms of its agreement, IHB must afford N&W, BOCT and IHB equal access through the interlocking and connection track

without prejudice or preference to the trains of any party, except that preference shall be provided to Metra trains.

Improvements to Belt Junction to facilitate movements from the proposed new UP northeast connection are also under consideration. All of these improvements should alleviate Metra's concerns and remove any reason for change of control of the interlockings.

Moreover, significant effort has been made to eliminate delays to Metra trains at Forest Hill and Belt Junction. According to Metra, sixteen Metra trains per day in each direction go through the Forest Hill interlocking. In October 1997, there were only 4 delays to Metra trains, only one of which was caused by freight interference. Similarly, out of 414 Metra trains that passed through the Belt Junction interlocking in October, only 7 incurred delays, which represents a 98.3% train performance level. See Letter from V. L. Stoner (Metra) to Don Reardon (CSX), Nov. 10, 1997; Letter from Ronald L. Batory (BRC) to Vaughn L. Stoner (Metra), Nov. 13, 1997. Exh. JWO-2.

Another proposal under consideration to alleviate dispatching problems in Chicago is to co-locate the BRC, IHB and BOCT dispatchers at a common area so that they can communicate face-to-face with one another and be equally apprised of approaching trains on each other's lines. This also should help to dispel concerns of biased dispatching.

From an operations standpoint, change of control of the interlockings would further complicate operations in Chicago. The Forest Hill (75th Street) interlocking is

central to CSX operations. CSX currently moves four intermodal trains per day in each direction and about 30 yard and transfer trains through the Forest Hill interlocking. For post-transaction traffic, CSX has designated primary, secondary and alternate routings for each scheduled train that will traverse the Chicago terminal area. The Forest Hill interlocking will be on the primary routing for 29 trains, and the secondary or alternate routing for an additional 19 trains.

Change of control from one carrier to another means a change of rules. This creates confusion, the need for piloting and qualifying crews, and further risk of delays during transition.

Illinois Department of Transportation (IDOT)'s concerns regarding construction of a new connection in the southwest quadrant of 75th Street interlockers are unfounded. IDOT-2, Kirk VS at 1. CSX's Chicago Train Route Plan does not route any trains through this connection as a primary route. It is necessary, however, to provide an alternate route to the CSX intermodal facility at Bedford Park and BRC's Clearing Yard. One of the major benefits of the CSX Operating Plan is the availability of alternative routes through Chicago. We plan to use this connection as a secondary route (in the event the primary is not available) for up to ten intermodal trains and as an alternate route for five intermodal and one merchandise. In addition, this connection will provide for a direct connection between Bedford Park and Forest Hill which will be used as necessary.

I do not agree with IDOT's assessment that the connection adds a "risk" -- not even very small. The existing connection in the northwest quadrant is very time consuming and requires multiple moves through the interlockers to move west. Thus, on a normal day, with the new connection in place, the number of freight train moves across the interlocker used by Metra will actually decrease, not increase as IDOT believes.

IDOT requests as a condition that Conrail's 51 percent ownership share of the IHB must be transferred instead to a neutral carrier or to a "balanced" group of concerned carriers, thus preserving the IHB as a neutral connection.¹¹

IDOT offers no thoughts on how operations under its preferred ownership scenario would differ from existing operations. This makes it impossible to assess the impact on CSX's Operating Plan.

This and similar concerns regarding "neutral switching" in Chicago are discussed in Section IV.D. Implementation questions are addressed in Section II,

Memphis Area

IC's complaints of biased dispatching by CSX on the Leewood-Aulon segment are discussed in Section III.E.

¹¹ Indiana Port Commission expresses similar concerns. IPC-2 T 9-11.

V. ADDITIONAL CONCERNS RAISED ABOUT PROPOSED OPERATIONS ARE UNFOUNDED

A. CSX Will Be Able to Provide Competitive and Efficient Service in the MGA

Several commentors -- including among others, Centerior, NYSEG, BLE, and Commonwealth of Pennsylvania -- have questioned whether CSX will have adequate facilities to manage coal movements in the MGA. Centerior and other commentors note that Newell Yard is considerably smaller than Shire Oaks and therefore assume that it will not be able to handle the anticipated CSX coal movements.

While CSX recognizes that Newell Yard is presently inferior to the Shire Oaks facility, it has plans to increase the capacity of the yard in order to accommodate the new coal traffic that CSX will move after the transaction. When construction is complete, Newell Yard will have 3 tracks each capable of holding a 150-car coal train, 2 tracks each capable of holding a 105-car coal train, a couple of short tracks to permit setting out cars as may be required, and the mainline. This will allow CSX to hold up to 5 trains at the facility.

Even after the construction is completed, Newell will not be as large a facility as Shire Oaks, but it will be sufficient to handle CSX coal movements. CSX does not intend to use Newell Yard for all of the functions that Conrail currently performs at Shire Oaks. CSX will use its existing facilities at Cumberland, MD and expanded facilities at New Castle, PA in concert with Newell to provide the inspections, train sizing, and locomotive

servicing functions. This will allow Newell and the personnel there to focus solely on the coordination of empty flows to MGA.

Newell Yard will be the final staging point to position empties for loading at MGA mines. This facility will also be the controlling point for managing movements from the CSX network back onto the MGA. Newell Yard will work in concert with New Castle and Cumberland to provide efficient and timely flows of empties to the MGA and to maintain a fluid operation across CSX's lines entering this area. When empty trains return from dumping at their last destination, car inspections, locomotive servicing (if necessary) and resizing of the set (if required) will be completed at New Castle or Cumberland. These points will also serve as "managed" control points by the Newell operation. When the empty train is ready and the mine loading is identified, the train will be dispatched from the "managed" control points to Newell. Newell will serve as the final buffer to allow for variation in the anticipated loading time, allow for variation in track availability to enter the MGA, and to provide the ability to resequence trains and some ability to resize trains if the customers loading needs change in the last 8 hours prior to departing Newell.

It should be pointed out that CSX will bring additional capacity to the MGA through the addition of the Newell, Cumberland and New Castle physical facilities, which will offset the complexity of adding a second carrier to the operation. CSX also brings two additional egresses to the MGA: CSX's route heading north (Newell through McKeesport, PA to the CSX Chicago - Philadelphia mainline) and South (Rivesville through Grafton, WV to Cumberland and the CSX Chicago-Philadelphia mainline or through Grafton to CSX's

Ohio River Subdivision reaching south to Huntington, WV and beyond). These facilities and egresses will enable CSX and NS to focus on coordinating service to the mines and maximizing the capacity of the MGA itself without significant concern about the capacity of the egresses to the territory. This also improves the available routes to mitigate the impact of "line blockage" events such as weather related track disruptions.

B. Proposed Shared Assets Areas Provide Competitive and Efficient Service

I have heard of or read comments expressing concerns about the feasibility of the SAA concept, and while that concept was initially developed by CSX and NS negotiators rather than service planners and operators, I will comment on why the concept is operationally feasible.

In determining the allocation of Conrail assets, CSX and NS established three areas -- Detroit, South Jersey/Philadelphia and North Jersey -- as Shared Assets Areas.

CSX and NS operating personnel have worked together to determine how to serve the customers in those areas most efficiently and to develop a coordinated operating plan for those areas. It was determined that to assure uninterrupted service to local shippers, to assure CSX and NS equal and unbiased use of SAA facilities, to improve logistics, and to facilitate scheduling, dispatching and communications, CSX and NS would retain Conrail (or the Conrail entity remaining after the acquisition) to provide switching and dispatching services within each SAA. Accordingly, the operating plan specifies that the CSAO will

continue to dispatch lines, provide local service, conduct yard activities, supervise maintenance and operations in each SAA in the same manner as Conrail performs those services today.

While several commentators have expressed concern that this will cause greater congestion -- i.e., "three" carriers operating over facilities previously operated by one carrier -- that is incorrect. By taking advantage of Conrail's experience and expertise in these areas, the learning curve for CSX and NS will be reduced significantly. CSAO will provide continuity of service so that the transition can be made with minimal disruption to customers. Moreover, because the CSAO will provide services that CSX and NS would have to provide if Conrail were not there, there is no increase in traffic or activity as a result of retaining Conrail. Indeed, the presence of the CSAO, which will have dispatching authority over all CSX and NS movements in the SAA and supervisory authority over yard operations and SAA employees, will be an efficient and effective means of coordinating CSX and NS efforts and operations in the SAA's.

With CSAO as the neutral coordinator, CSX and NS operations in the SAA's will not differ significantly from operations of multiple carriers in other major commercial, and particularly port, areas. Mr. Mohan discusses this in Section II of his Rebuttal Verified Statement.

CSX and NS teams are working on developing the details of operations for each of the SAA's, just as each carrier has teams working out the operational details of every

other yard and terminal area on its network. As with other areas, the SAA's will have superintendents who will be responsible for coordinating train movements, switching operations and yard assignments within their respective territories. The SAA superintendents, like any others, will have authority to adapt the general operating plan to changing customer and market demands and to resolve operating issues that are local to their territories.

The coordinated operating plan for the NJSAA jointly submitted by CSX and NS demonstrates how the CSAO will operate and how the train operations of the two carriers can be coordinated. Thus there is nothing about the concept of SAA's that would make operations in the SAA's any more complicated than in other large commercial areas served by multiple carriers. Indeed, operations here will be even smoother and better integrated than in such other areas because CSX and NS have worked together voluntarily to develop and coordinate operations and have agreed to operate under the same rules and dispatching authority. This commitment to coordination and the extensive pre-planning and implementation processes undertaken by CSX and NS will enable the two carriers to establish well-coordinated operations. The joint investment of both parties in the physical assets of the SAA's will incent them to maintain the facilities in a manner that will promote growth and increase efficiency.

1. Requests for New SAA's, Inclusion in Existing SAA's or Dual Access Are Unnecessary and/or Would Create Operational Problems.

While some parties express concern about the SAA concept, others want to expand the concept either to create new SAA's, or to have particular industries included in the currently proposed SAA's. The requests for new shared assets areas are discussed in the Narrative at Section VIII. In this section I will explain the operational complexities that would result if certain parties' requests were granted.

The State of New York (NYS), New York City (NYC) and the New York City Economic Development Corporation (NYCEDC) complain that while the part of the Greater New York market west of the Hudson will be served by both CSX and NS through the NJSAA, the area east of the Hudson will continue with access to only one Class I carrier -- CSX. These parties ask the Board to impose trackage rights over portions of the Conrail line east of the Hudson that will enable a third party operator of their choosing to provide competitive alternative service to and from shippers and receivers in New York City and Long Island. These trackage rights would permit the carrier to operate over Conrail lines east of the Hudson from Albany to New York City, as far as the South Bronx, site of the Oak Point Yard.

The proponents of these rights fail to address, let alone acknowledge, the serious physical and operational problems of their proposal. First, the lines over which these parties propose to operate are heavily traveled passenger lines. Metro North operates as

many as 332 passenger trains a day over some of these segments. Second, Harlem Yard and Oak Point Yard could not readily accommodate additional carriers. Third, the prospects of achieving acceptable densities to support the operations of two or more freight carriers are poor.¹²

Because these lines are heavily congested, portions of the line are single track, and terminal capacity at Oak Point and Harlem Yard is limited, physical access to additional carriers is problematic. This does not mean that shippers east of the Hudson will have no competitive options. In addition to the service provided by several carriers currently serving the Albany area, including Conrail, CP/D&H from Montreal and the Boston & Maine (B&M) at Mechanicville, CSX is providing competitive alternatives through joint marketing agreements to CP/D&H, CN and Providence & Worcester (P&W) to markets east of the Hudson. These carriers will be given commercial access, but not physical operating rights. The operational advantage of such arrangements is that it will permit the continued efficient dispatching of the lines rather than complicating operations by introducing a third, fourth and even fifth carrier to the mix of carriers. The presence of multiple carriers operating over the

¹² Although the proponents acknowledge that freight traffic density is relatively low over lines east of the Hudson, I am told that they justify their request for trackage rights on the basis of their consultant's study which predicts that the third party carrier could attract enough traffic to provide one additional train per day in each direction five days a week (260 days a year). However, in response to CSX's First Set of Interrogatories (CSX-72) seeking an estimate as to the number of loaded cars the parties anticipate would move over this route, NYS and NYCEDC could only identify the volume of traffic as "approximately 50 loads, with a 100 percent empty return" (NYC-13 at 5; NYS-15 at 7). This optimistic projection, even if it were correct, would hardly support a daily train operation. They fail to take into consideration that a carrier cannot provide efficient service to and from Albany without adequate levels of traffic to support its operations.

same lines complicates the coordination of dispatching and the scheduling of freight and passenger service, requires training of crews in operating rules, and increases the risks of delays associated with interchanging locomotives and crews. Thus, the proposed CSX commercial arrangements will give shippers east of the Hudson the advantages of both commercial competition and more efficient operations over these lines.

Congressman Nadler, Tri-State and others also seek rights to introduce new freight service along a route over Amtrak's Northeast Corridor (NEC) rail line, extending north and east from Newark, NJ using existing passenger railroad tunnels in midtown Manhattan. Tri-State also wants to develop an intermodal yard near Harlem Yard in South Bronx.

The line in question passes through the Hudson River Tunnel leading into Manhattan from the west and through Penn Station. The median height clearance for the tunnel is 14'8" (permitting only 3 feet wide at that height). Carey RVS at 4. As the proponents are well aware, such clearance restricts freight train operations to specialized equipment, such as low slung box cars. Standard boxcars used in conventional carload movements today require at least 15'4" clearance (average height of 15 feet with 4" clearance). Standard intermodal equipment requires railroad clearances ranging from 19'6" to 20'6" for high cube double stack containers. Indeed, most intermodal trains, including the piggy back waste train service that Tri-State requested of CSX, could not clear the tunnel and thus could not operate over this route. Rather, the trains would have to move the way they move today.

Proponents' submission(s) are devoid of any assessment of the time or expenses that would be involved to clear the tunnels for intermodal service. The prospect of closing the tunnels to perform the work necessary to provide clearance is staggering as the tunnels are extensively used by passenger trains.

Even if the tunnels could be cleared for freight trains, enormous operational difficulties would still exist. First, given the high density passenger traffic over this route, scheduling additional freight traffic would not only be difficult but also would increase substantially the risk of delay, disruption to passenger service, and even risk of injury in the event of a freight train derailment or breakdown. Operating these trains at night would not resolve the problem. Evening is the only time available for Amtrak to perform its ongoing and complex maintenance operations on the rights of way through Penn Station. Second, even if a freight train did reach Penn Station, there is no provision for switching the train for service further east. Finally, I understand that under a long-standing New York City ordinance, only electric locomotives are permitted in underground tunnels in New York City. Carey RVS at 4. However, to my knowledge neither CSX, NS nor Conrail currently has electric locomotives in their fleets, and it is unlikely that any third party operator selected by proponents would have such equipment. Moreover, portions of this segment use a third rail to convey electricity to the trains. As the third rail is in addition to the normal rail/track configurations, operations in third rail territory require specially designed equipment.

In sum, in the absence of any evidence that proponents will be able to attract sufficient traffic to support their proposed operations, and any evidence that it would be

economically feasible to make the capital investments necessary to support such operations, there is no commercial justification that could offset the operational complexities created by granting trackage rights to an additional carrier or carriers over these lines.

Millenium Petrochemicals, Inc. (MPI) is an international chemical company that maintains five regional distribution centers, one of which is located in Finderne, NJ. Conrail currently provides both the line haul service and switching of rail cars destined to the distribution center, using Manville Yard to marshall cars for switching to the Finderne facility. MPI-2 at 2, 7. After the transaction, Finderne will be allocated to NS, Manville Yard to CSX and the track that MPI leases on the Lehigh Line for transloading operation to the NJSAA.

MPI expresses concern at the exclusion of the Finderne facility from the NJSAA and the ability of NS and CSX to coordinate operations to provide efficient service to Finderne. MPI's concerns are addressed in the CSX Operating Plan (CSX/NS-20, Vol. 3A at 232) and in the NJSAA Operating Plan (CSX/NS-119 at 91). While Manville Yard will be allocated to CSX, it will be accessible to both CSX/NS, and CSAO. NS will have the ability to pick up Lehigh Line local industry traffic at Manville for destinations on the NJT Raritan Valley Line west of Bound Brook. To the extent that NS needs Manville Yard to support MPI's operation, CSX will make sufficient track space available to NS and CSAO and switching services will be provided in the same manner as Conrail provides them today. Any CSX line haul movements to Finderne will be joint-line with NS, with the interchange to be determined by agreement between NS and CSX.

Resources Warehousing & Consolidation Services (RWCS) has intermodal facilities located on the southern terminus of a north/south rail line owned and operated by the New York Susquehanna & Western Railroad (NYS&W). While RWCS can be served directly now, and in the future, only by NYS&W, the CSX and NS Operating Plans will provide RWCS with the dual access it seeks. NYS&W will be able to connect to NS via the Passaic Junction off the Southern Tier on the Conrail lines allocated for use by NS, and to CSX via a connection to be built from Bergen to Little Ferry.

C. CSX Will Have Sufficient Manpower to Efficiently and Competently Provide Quality Transportation Service

Several parties, including but not limited to labor representatives, have asserted that CSX and NS will not have sufficient labor forces to adequately carry out their proposed operations. This is incorrect. In developing their respective Operating Plans, CSX and NS were careful to assess the labor situation and to determine the most efficient way to conduct all aspects of operations. In some areas, such as maintenance-of-way, CSX will be reducing work forces while in others, such as trainmen, it will increase manpower. The Labor Impact Exhibit filed on July 7, 1997 indicates that for the combined CSX and NS, there will be 1,109 jobs created and a net job loss of only 1,981 (based on the 1996/1997 headcounts which are the most accurate and realistic). CSX/NS-26 at 13.

After careful analysis of the Conrail and CSX maintenance-of-way programs, CSX determined that it would be able to achieve productivity improvements on the Conrail

territory similar to those it has been able to achieve over its own network over the past three years. By using an agreement that allows maintenance of way workers flexibility to work across the network, CSX is able to more efficiently schedule crews and equipment and as a result has increased production by 40-50% in the last three years. For example, CSX has been able to reduce major track crews from three to one while still laying significantly more rail; it has reduced major tie gangs from six to three and still has been able to replace 100,000 more ties per year. CSX schedules its maintenance work year-round (whereas Conrail lays off crews in the winter months) (CSX/NS-18, Vol. 3A at 306) and generally operates on a 4-day 10 hour per day schedule. As a result, CSX's productivity rate is considerably higher than Conrail's. For example, where Conrail crews currently install an average of 1,000-1,200 ties/day per team, CSX crews average 3,000 ties/day.

Conrail's current costs per mile are significantly higher than CSX's. This is because Conrail has organized its maintenance crews by regions, rather than on a system wide basis, which means that each region must have its own crews and its own equipment. By bringing Conrail territory and crews under CSX's system agreement, CSX will be able to incorporate and maintain the Conrail properties with the addition of only one track gang and one tie gang.

CSX has also been able to improve productivity through its preventive equipment maintenance program. CSX has cut breakdowns by 50% over the past three years by keeping equipment in good order. A key ingredient of its equipment maintenance

program is the use of a shop with an assembly line for rebuilding maintenance equipment (such as spikers). This has significantly reduced the need to purchase new equipment.

Allied Rail Unions (ARU) mischaracterizes data in order to create the impression that CSX will encounter manpower shortages after the transaction. For example, ARU asserts that "CSX does not intend to create new positions at Raceland even though it is adding 17,831 cars to its system." ARU-23, Vol. I at 30, n.10. ARU cites a meaningless statistic that has no factual bearing on the Raceland workforce. The predominant maintenance activity supporting fleet ownership is daily or running maintenance to cars in the serviceable fleet. These repairs are performed at running repair facilities across the system.

CSX previously has stated that it intends to utilize existing facilities and existing manpower to perform these types of repairs on the current fleet. No workforce changes are anticipated at those obtained system repair locations since the volume of repairs should remain the same.

The Raceland car shop is dedicated not to running repair maintenance but to performing heavy car repairs and "rebodys." Applying Conrail's current percentage of heavy bad order cars to its total fleet (approximately 8.5%), only 1,500 cars from the 17,831 used would be potential candidates for heavy repairs.

CSX, with fewer than 5.5% of its car fleet unserviceable, would have fewer candidates for heavy repair, thus the workforce at Raceland can remain stable even with the Conrail Transaction.

CSX also will have a sufficient workforce for heavy repairs to locomotives. CSX will obtain use of 800 locomotives, 450 to 475 of which will be road units and the rest switching yard units. Only the road units will require major overhauls and then only every seven years. Running repairs and quarterly inspections of locomotives will continue to be performed at existing facilities with existing workforces. CSX currently has 850 units assigned to each of its 3 shops at Waycross, Cumberland and Corbin. Running repairs and quarterly inspections for the 800 locomotives from Conrail will be handled at the Conrail facility at Selkirk, which is equivalent in size to the CSX shops and can easily handle the 800 Conrail locomotives. There will be no reduction of force at Selkirk. The approximately 130 additional major overhauls per year required on the locomotives obtained from Conrail will be handled at CSX's heavy repair shop at Huntington.

ARU states that CSX is "hiring only an additional 99 employees to handle an increase of 17,831 cars and 761 locomotives to its combined fleet." ARU-23, Vol.I at 24, n.8. That is patently incorrect. The manpower at Raceland will remain stable, but CSX is hiring 179 additional persons at Huntington. See CSX/NS-26.

CSX also will have sufficient trainmen on hand to handle the new traffic. The Labor Impact Exhibit shows that for CSX and NS combined there will be a net increase of

48 trainmen. In addition, CSX is committed to hiring additional crews (including pilot crews) for Day 1 operations to ensure that there will be a sufficient pool of well-trained employees to handle the new traffic.

The comments of most of the labor groups are replete with anecdotes about problems that UP is currently experiencing following its merger with SP. They speculate that the same thing will happen with this transaction. As I discussed earlier in this statement, and as is addressed more fully in the Rebuttal Verified Statement of James W. McClellan, there are significant differences between this transaction and the UP/SP merger. Moreover, UP's problems are atypical which is why they are so newsworthy.

Some commentators have peppered their statements with unsupported speculation. For example, New York State Legislative Chairman, John F. Collins, who filed a verified statement on behalf of the Brotherhood of Locomotive Engineers, states that "CSX and NS have speculated rosy predictions . . . After they win STB approval of this transaction, there is nothing that can be done to stop them from spinning off what they claim to be "marginal lines." BLE (unnumbered), Collins VS at 7. As we have said, this is not a merger in which lines are being rationalized, but a growth opportunity for both CSX and NS. Both railroads are expanding, not reducing, their networks. Moreover, any subsequent transactions to abandon or sell lines would require STB approval.

D. The CSX Operating Plan Accommodates Passenger/Commuter Service, Improves Passenger/Freight Coordination and Promotes Better Service for Both Freight and Passenger Customers

Several commuter/passenger services have filed comments on the Primary Application. Their concerns largely relate to on-time performance issues. As I have stated previously, CSX remains committed to working with all passenger and commuter operations in an effort to maximize both CSX's and the passenger trains' performance. CSX has hired Paul Reistrup, the former President of Amtrak, to assist CSX in understanding commuter and passenger concerns, negotiating with passenger/commuter services to assure that our development of schedules and operating plans will adequately serve the interests of both freight and passenger services. Mr. Reistrup's verified statement filed with this submission provides more detailed information on specific issues raised by these parties and the status of current CSX negotiations with those parties to determine how best to accommodate those services and meet their needs. In this statement, I will address operational issues and, particularly, efforts to accommodate passenger train schedules and improve on-time performance.

1. Amtrak

Amtrak has expressed concern about on-time performance on the various lines over which CSX and Amtrak both operate, and particularly on Amtrak's Northeast Corridor (NEC). As Amtrak has acknowledged in its most recent filing (NRPC-09), CSX and Amtrak

are engaged in on-going negotiations that will resolve the issue without the need for STB intervention.

With respect to Amtrak's comments concerning its on-time performance over CSX lines, as I discussed in my deposition, CSX's goal is 100% on-time performance for all Amtrak trains operated on CSX lines. Amtrak complains of CSX's past on-time performance record compared to that of other carriers over whose lines Amtrak operates. As explained in the verified statement of Paul Reistrup, Amtrak's figures are misleading because they include delays not caused by CSX and because they do not account for important differences among the carriers who have Amtrak trains. Nevertheless, CSX already has increased its on-time performance record, achieving its 100% goal on at least 10 days in 1997. CSX will continue to work with Amtrak in an effort to achieve 100% on-time performance. CSX planners have been involved in ongoing reviews of barriers to CSX achieving 100% on-time performance. As an example, CSX analysis of the train performance on the Richmond-Rocky Mount segment of the Atlantic Coast Service Route has identified the single main track segment across the Appomattox River as a key chokepoint. CSX is currently undertaking a number of tasks to improve operations at this location. Furthermore, CSX is upgrading the track on lines over which Amtrak operates along the Conrail Water Level Route between Albany and Buffalo, NY to increase both passenger and freight traffic speeds. Moving traffic more quickly will increase the track's capacity and improve service for both passenger and freight trains.

2. VRE

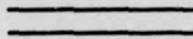
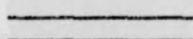
VRE likewise seeks improved on-time performance commitments from CSX and asserts that CSX is needlessly delaying its trains. VRE's own evidence shows that freight interference is only partially responsible for the delays it has experienced, and that there are other contributing factors.

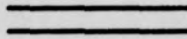
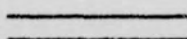
Yet VRE attempts to blame CSX for its problems. VRE submitted a study from R.L. Banks suggesting that CSX operations *ipso facto* cause delays in VRE trains. The Banks study is flawed. First, the study uses a tally of CSX trains operating on the Fredericksburg line during commuter peak periods as a measure of interference between freight and commuter trains. This measure is naive in that it does not consider the multiple tracks available in this territory, or the proximity of freight and commuter trains in location and time. Correct presentations of the string line charts show that there is no conflict between the proposed CSX train operations with respect to known VRE train operations.¹³ Figure JWO-18.

¹³ These charts reflect the schedules as adjusted for the NJSAA Operating Plan and minor adjustments needed to adapt them to schedules of other trains on our network, including NJT operations in the North Jersey area.

Trains on line from Alexandria VA to Washington DC

Northbound - Weekdays

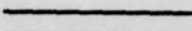
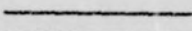
AMTRAK 
CSX 

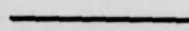
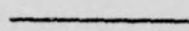
COMMUTER 
NS 

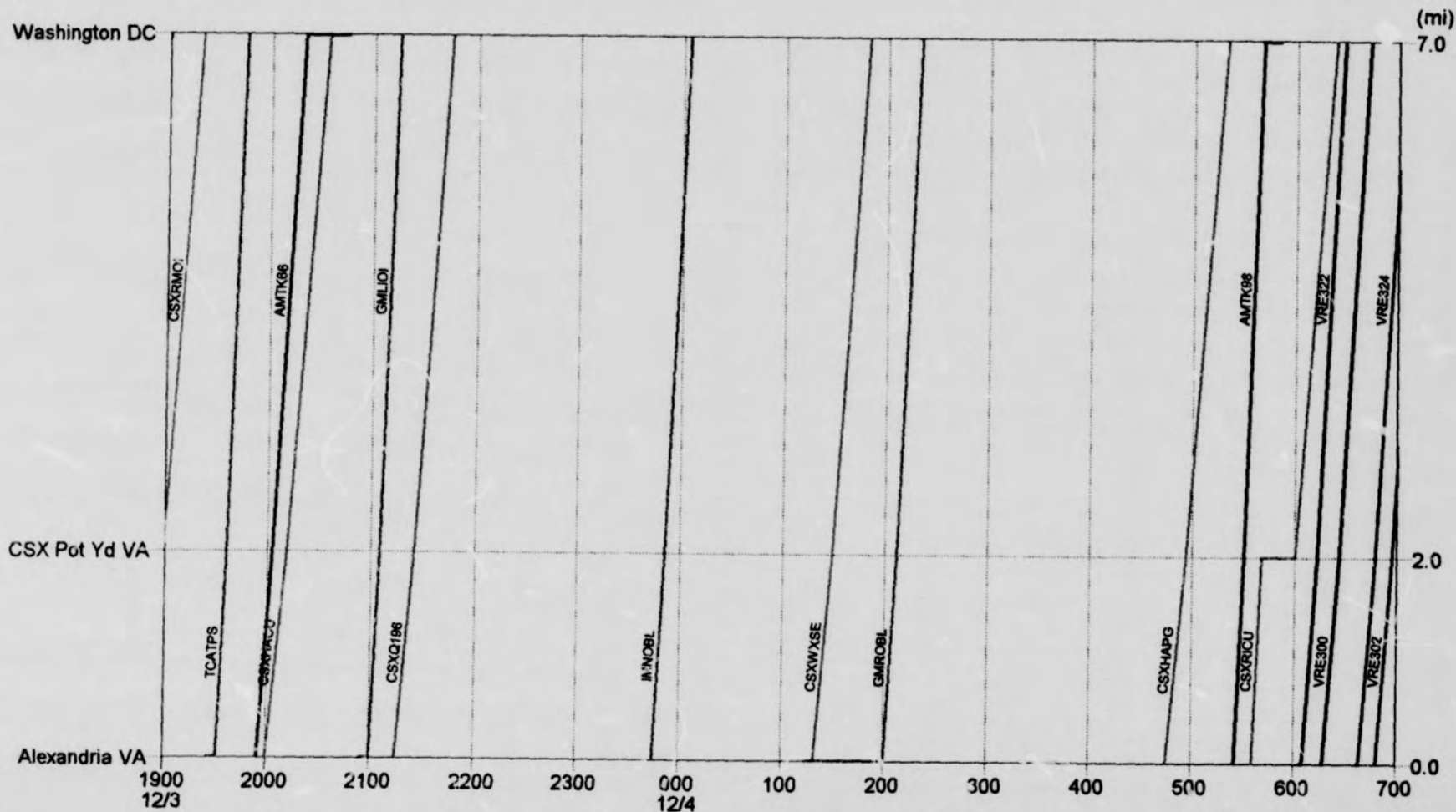


Trains on line from Alexandria VA to Washington DC

Northbound - Weekdays

AMTRAK 
CSX 

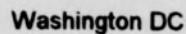
COMMUTER 
NS 



Southbound - Weekdays

CSX

NS



7.0 (mi)

CSX Pot Yd VA

2.0

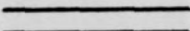
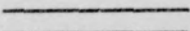
Alexandria VA


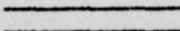
700
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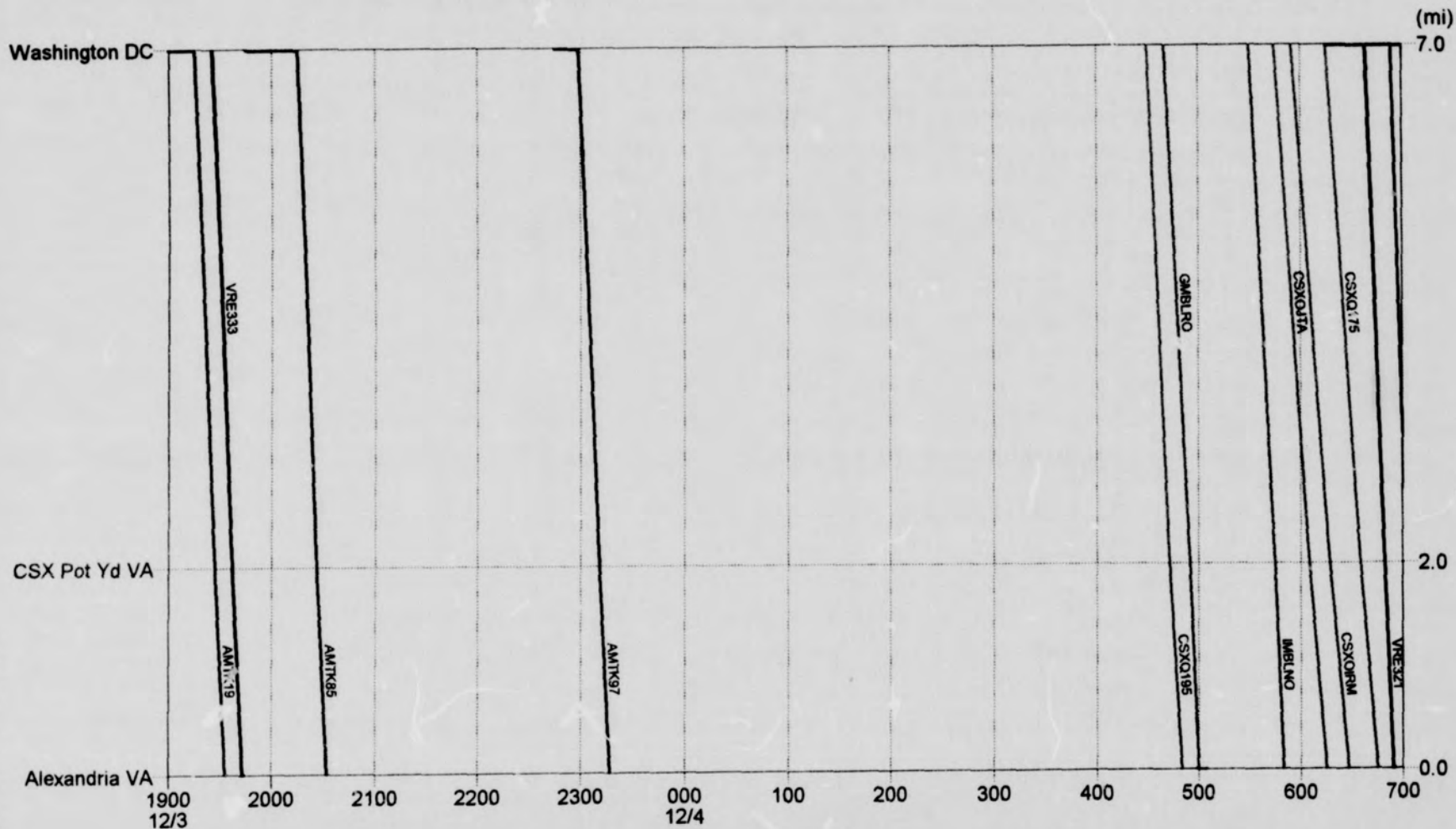
0.00

Trains on line from Alexandria VA to Washington DC

Southbound - Weekdays

AMTRAK 
CSX 

COMMUTER 
NS 



Additionally, Banks' claim that VRE's on-time performance will plummet to "less than 81.1 percent," (VRE-8, Banks VS at 14) is highly suspect. First of all it reflects a base year operating level of 84%, whereas VRE's on-time performance during its FY 97 as measured by VRE,¹⁴ was 90.1 percent as shown at Attachment 2 to the Roberts VS. VRE-8. Furthermore, in arriving at its conclusion, Banks used a cumulative average. A cumulative average always will lag current performance, possibly for a long time until early occurrences of poor performance are diluted by numerous later periods of good performance. Hence, a cumulative average is not a good indicator of future performance.

Nonetheless, CSX continues to advance its efforts to improve VRE's on-time performance. One means by which CSX seeks to increase service levels is by improving capacity and service over the Atlantic Coast Service Route, over segments of which VRE operates. Improving the track will move traffic over this line more quickly and create greater capacity for freight and passenger trains. An example of CSX's commitment to improve track and train operational capacity is the plan to modify the Virginia Avenue Tunnel and more than double the track speed in the tunnel area (from 10 mph to 25 mph or more) to improve train meets in Washington, D.C. Second, CSX is committed to operating a scheduled railroad; by adhering to these schedules, train operations will flow more smoothly and both passenger and freight service will be improved.

¹⁴ When on-time performance is calculated according to the terms of CSX's contract with VRE, the record is even better.

3. New Jersey Transit

NJT seeks a condition requiring CSX and NS to cooperate in the development of the South Jersey Light Rail Transit Project (the "Project"), and, in the event that the parties are unable to reach an agreement regarding the Project, requiring the parties to submit the dispute to the Board for resolution. NJT-8 at 17-18. In recognition of the fact that FRA safety standards prohibit the concurrent operation of light rail and conventional rail (whether freight or passenger) on the same track, Frank Russo, NJT's Senior Director-New Rail Construction, proposes to limit freight rail use of the Bordentown Secondary to a late night "window." NJT-8, Russo VS at 4-5. Although Mr. Russo does not reveal the proposed hours of the freight window in his verified statement, the consultant's study on which he relies states that freight operations would have to be curtailed to the [[]] period from [[]]. R.L. Banks & Associates, "Planning to Accommodate Freight Operations in Conjunction with the Southern New Jersey Light Rail Transit System," dated June 16, 1997 (the "Banks Study") (included in Vol. 3). NJT's proposal does not appear to be operationally feasible even for the current amount of service on the line, and would certainly not accommodate any growth in freight business.

Mr. Russo makes a valiant effort to persuade the Board that existing freight operations can be accomplished within the proposed [[]] freight window. NJT-8, Russo VS at 5-13. However, assuming for the sake of argument that all of Conrail's freight customers on the line would be willing to accommodate switching during this narrow window

in the middle of the night (which NJT has not ascertained) and that the scenario would otherwise actually work under perfect conditions, Mr. Russo makes it clear that there would be little if any tolerance for any deviation from perfect conditions, including the need to perform additional unscheduled service to freight customers.

The Banks study reveals how tenuous NJT's plan is. The Banks Study (at 1) acknowledges that [[

]] The following passages from the Banks Study make clear just how challenging this plan would be for CSX and NS:

[[

]]

NJT's scenario is a recipe for poor freight service and unreliable rapid transit service. Despite a railroad's best efforts, equipment malfunctions do occur, and weather, of course, is entirely beyond control. Under NJT's plan, a minor equipment malfunction or a snowstorm could quickly turn into major delays for both freight and passenger customers. If a locomotive experiences problems during the proposed freight window, it is very likely that the train would be stranded somewhere off line until the next day's window begins.

A 1996 NJT study, performed at the direction of the New Jersey State Senate, concluded that a separate 3.4-mile long track would have to be constructed for light rail operations from Pavonia Yard in Camden to CP Hatch because freight operations on that line are so heavy. NJ Transit, Burlington-Gloucester Transit System, Special Study No. 2, Camden-Trenton Rail Corridor (June 1996) (included in Vol. 3). It is surprising that NJT has failed to analyze the proposal that would appear to be the most reasonable from the standpoint of accommodating both freight and transit service -- building a separate track along the entire route for transit service on the Conrail right-of-way.

The Bordentown Secondary is presently used by Conrail for local freight services, and under the CSX and NS Operating Plans, it would continue to be used for local freight services. However, CSX and NS should not be deprived of the opportunity to develop new business in this area, an area that has been served solely by Conrail for more than 20 years. Neither should the existing customers on the line be relegated to second-class status. Moreover, the Bordentown Secondary could provide an alternative through route from Philadelphia to North Jersey in the event of an emergency closing of the main lines.¹⁵ The NJT proposal would not accommodate either of these potential uses of the Bordentown Secondary.

E. CSX Will Negotiate With Customers and Cooperate With NS to Develop Operations to Meet Specific Shipper Needs

While the transaction will provide tremendous benefits to the shipping public as a whole, in any transaction of this size there will inevitably be a few situations in which the changes adversely affect some aspect of an individual shipper's needs. For example, there are some situations in which movements that are currently Conrail single-line movements, as a result of the allocation of Conrail assets will become joint-line moves after the acquisition. By and large this kind of change will not commercially disadvantage the customer, but a few shippers have raised the concern that their service will be adversely affected. These instances, however are few. In many cases, while a particular single-line

¹⁵ If for any reason the Delair Bridge became inoperable the Bordentwon Secondary would be the only rail access route for all of South Jersey.

movement may no longer be available, the shipper will have new competitive options as a result of the transaction, such as single-line service from a different source or new sales opportunities to buyers it can reach economically. Nonetheless, while the efficiencies of single-line service are well known, traffic continues to move efficiently and competitively in joint line service. Where a shipper is genuinely affected by the change, CSX is willing to work with the shipper, and if need be to coordinate with NS, to develop an operation that will meet its needs.

I will discuss below the concerns of two shippers and ways in which, from an operational viewpoint, those needs can be met.

1. New York State Electric and Gas (NYSEG)

NYSEG is an investor-owned public utility which operates four power plants in New York State: Goudey, Greenidge, Milliken and Kintigh. All four of these plants are coal-burning stations. NYSEG currently has single-line service via Conrail to all four plants from all of the mine origins that NYSEG claims it is capable of using. After the acquisition, the Kintigh station will be exclusively served by CSX, and the other three will be exclusively served by NS. NYSEG-14 at 14-15. After the acquisition, the Kintigh station will have single-line service via CSX from some, but not all, of the mines that could supply the quantity and quality of coal ordinarily burned at Kintigh. NYSEG-14, Appendix 1 at 17.

Specifically service from the Powhatan [6 Mine and Mine 84, which will be served by NS, would be joint-line NS/CSX movements.

Basically, NYSEG argues that having single-line service via the same carrier to all four of its plants provides efficiencies and better car utilization. NYSEG-14, Appendix 1 at 17. For example, NYSEG notes that through a wholly owned subsidiary, Somerset Railroad Corporation (SRC), NYSEG owns three 130-car unit trains; one of those trains is used for service both to Kintigh and to Milliken. With both of these plants served by the same carrier, NYSEG says that it has the flexibility to divert coal movements enroute to Kintigh to Milliken and vice versa. NYSEG claims that these efficiencies will be obviated by the allocation of Conrail, assets.

NYSEG's proposed remedy to this car utilization issue is to seek trackage rights on behalf of NS or a third party carrier over the approximately 11.2 miles of line from Buffalo to NYSEG's Kintigh plant that CSX will operate; or on behalf of CSX or a third party carrier over the 333.4 miles of lines between Buffalo and NYSEG's Milliken, Goudey and Greenidge plants that NS will operate. NYSEG-14 at 4.

Trackage rights are not a reasonable solution to NYSEG's problem. Commercial considerations aside, trackage rights would create additional coordination issues on the lines, and lead to all the other previously discussed shortcomings of forced trackage rights. However, CSX is willing to address ways in which to improve cycle time and car

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utilization. NYSEG responses to interrogatories and document requests indicate that the instances in which cars are actually diverted enroute between Kintigh and Milliken are relatively few -- in 1996 only two trains were diverted from Kintigh to Milliken and one train from Milliken to Kintigh; in 1997 five trains were diverted from Kintigh to Milliken and two trains from Milliken to Kintigh. See NYSEG-17, Nov. 19, 1997 at 11. All but two of these diversions were for inventory management, with the remaining two due to outage at Milliken. NYSEG was unable to identify any specific cost savings as a result of these diversions. Id.

Given NYSEG's limited use of diversions and car switching between Kintigh and Milliken, the transaction will have relatively little effect on NYSEG and this can be ameliorated by improved inventory and car utilization. CSX is willing to work with NYSEG in developing operations to Kintigh that will improve the cycle time for NYSEG trains, and thus improve car utilization. Moreover, CSX currently has practices in place that permit efficient diversion of traffic upon notice from a shipper. CSX has in the past, and will in the future, work with NS to effect smooth interchanges efficiently and quickly provide for such diversions. While joint-line service is generally not as efficient as single-line service, for an occasional diversion of a unit train, there is no reason that the parties cannot work out a suitable arrangement that will be cost-effective and timely, and much less disruptive to overall service than the proposed trackage rights.

2. Inland Steel Company (ISC)

Inland Steel Company (ISC) is a steel producer whose sole steelmaking facility is located in the 1,900-acre Indiana Harbor Works (IHW) at East Chicago, IN. ISC, in a joint venture with Nippon Steel Corporation, operates a cold-rolling mill near New Carlisle, IN, for finishing. The joint ventures in New Carlisle are supplied with steel solely from IHW on a just-in-time basis and from there the finished product is shipped to the companies' customer in Kenton, OH. ISC also has a potential customer in Indianapolis, IN. ISI-5 at 1-3.

Currently the Kenton movement is handled in single-line service from New Carlisle via Conrail. The Indianapolis traffic moves by truck. ISC states that it has been able to demonstrate to its customers in Kenton, OH that the volumes of steel shipped by rail can be substantially increased without sacrificing the reliability of deliveries or increasing weather-related damage to the steel. ISC seeks assurances that after the transaction, these customers will continue to receive fast, reliable service. Id. at 3.

CSX and NS marketing and operating personnel have been working together to develop an operation that will preserve the existing reliability of the Kenton movement and enhance opportunities for further development of ISC's business. Conrail currently moves the steel out of ISC's IHW facility to the processing facility at New Carlisle on a train that moves from Michigan Avenue Yard on the IHB to Elkhart, IN and sets off the steel enroute

at New Carlisle. Conrail then has another train destined to Columbus, OH, which picks up the finished steel at New Carlisle and moves it to Kenton. After Day One, NS will operate the line to New Carlisle and will continue to provide single-line service for that leg of the movement. However, CSX will serve Kenton and there are no current single-line through trains from New Carlisle to Kenton, which means that the move would become a joint-line move.

To address this situation and assure reliable service to Kenton, CSX and NS marketing personnel have reached an agreement that provides for NS to bring the finished steel back from New Carlisle to Michigan Avenue Yard everyday in its reverse move from Elkhart to Michigan Avenue. This will position the steel to move on a train that CSX will operate for expedited service to Toledo and Columbus. CSX shares ISC's desire to increase this business, and expects this expedited service to attract other steel movements from the steel mills in northwestern Indiana destined to points in Michigan, Toledo, Kenton, Columbus and South Charleston. CSX is eager to work with ISC to further develop this business.

ISC also is developing rail movements of steel from IHW and New Carlisle going to warehouses in the Indianapolis area. The traffic is currently handled by truck. CSX plans to operate train service from Chicago to Indianapolis and will move these steel shipments on that through service.

VI. REPLY TO COMMENTS ON CSX/NS-119, NORTH JERSEY SHARED ASSETS AREA OPERATIONS

Several parties -- including, but not limited to, the Port of New York and New Jersey (PONYNJ), The Commonwealth of Pennsylvania, and APL -- expressed the desire for more details as to how Applicants intend to operate in the Shared Assets Areas (SAA's). They claimed that this concept was "untried" and, particularly with respect to the North Jersey Shared Assets Areas (NJSAA), expressed concerns that the area was too "complex" and "congested" to enable three rail carriers to operate facilities that today are operated by only one carrier.

In response to those concerns, the Board issued Decision No. 44, which required Applicants to submit a more detailed operating plan for the NJSAA. CSX and NS submitted a joint plan of operations for the NJSAA on October 29, 1997 (CSX/NS-119), which outlined more fully the particular trains that would operate in the NJSAA, the division of labor between the NS and CSX and the Conrail Shared Assets Operations (CSAO), the proposed blocking strategies, and the local yard assignments in the NJSAA. CSX and NS attempted to explain (although some parties continue to profess a failure to understand) that Conrail will not be an individual carrier holding itself out to provide rail service, but would continue to provide the local service and switching services for CSX and NS in the same manner that it provides those services for itself today. The purpose of this arrangement is to have as little change in local operations as possible and to retain within the NJSAA (and other SAA's) the Conrail personnel that are most familiar with local operations. This will

eliminate inefficient duplication of effort (and resulting increased congestion) that would result if NS and CSX were each to provide its own crews for yard activities, 90 interyard switching and local service. It also means that there will not be the additional traffic that would result from three carriers attempting to serve customers on their own behalf -- the CSAO will not be seeking its own customers or business; it will not be included in the waybill and will not participate in rates or negotiations with customers.

Five parties have responded to the October 29 submission: The Port Authority of New York and New Jersey (PONYNJ), APL, Amtrak, NJT and the Rutgers Environmental Law Clinic on behalf of the Tri-State Transportation Campaign (Tri-State). As Amtrak, NJT and Tri-State have fewer issues to address than PONY and APL, I will address them first.

A. Amtrak

Amtrak acknowledges in its response (NRPC-09) that it is currently in negotiations with Applicants and that the October 29 filing satisfied many of its concerns, e.g., Applicants have acknowledged and accepted all existing rights of passenger and commuter services, have stated a commitment to abide by the terms of existing Conrail/Amtrak agreements and have acknowledged that operations on Amtrak's NEC will be governed by Amtrak (NORAC) operating rules. NRPC-09 at 2. Amtrak's remaining concern at this time is a possible conflict with certain freight train schedules that propose to

operate over the NEC outside the 10:00 pm - 6:00 am period to which Amtrak has restricted freight operations. However, as Amtrak acknowledges (id. at 4) these schedules are the basis of continued negotiations between the parties and will be resolved outside of this proceeding.

B. New Jersey Transit Corporation (NJT)

After reviewing Applicants' NJSAA operating plan, NJT in its Comments (NJT-12) has withdrawn its requests for a condition regarding capital expenditures on the NK-Aldene line segment and for conditions regarding the dispatching and maintenance personnel in the NJSAA. NJT-12 at 3. It continues, however, to press for (1) a "coordination condition" that will "ensure that implementation of the evolving NJSAA operating plan and the operation of multiple freight railroads in the NJSAA will not have an adverse affect on the safety or reliability of NJT's commuter rail operations in and around the NJSAA" (id. at 5); (2) a condition requiring NS, CSX and the CSAO to install Automatic Train Control/Positive Train Stop (ATC/PTS) on-board apparatus . . . on locomotives operating over NJT-owned properties, at the railroads' sole cost and on NJT's time schedule (id.); and (3) a condition assuring that NORAC rules will be retained. Id. at 6.

All of the issues raised by NJT were addressed in the NJSAA operating plan, in the Applicants' responses to NJT's subsequent discovery requests and in the joint

deposition of myself and Mr. Mohan. First, Applicants have agreed to work for coordination with NJT. See Rebuttal Verified Statement of Paul Reistrup. Nothing more is necessary or advisable. While it is true that operations in the NJSAA are somewhat complex and that there is substantial traffic in the area and at times even congestion, it is certainly not beyond the experience or capabilities of CSX and NS, as NJT and others suggest.

Naturally, it is operationally easier to be a sole carrier in a major port and commercial area such as the New York/New Jersey area -- but it is not the norm. CSX and NS are experienced carriers that currently operate in many busy, complex and congested areas, including Chicago and Cincinnati. Both carriers are well aware of the need for coordination and careful planning to ensure smooth operations in such areas. Indeed the CSX Operating Plan is specifically designed to address those issues in Chicago and Cincinnati as well as all other major gateways and terminal areas, including the Shared Assets Areas.

CSX and NS have both invested time, effort and capital to coordinate efforts and improve operations across their networks. They certainly did not devise, and definitely will not allow, the organization of the SAA's to undercut all of their efforts in other areas of their networks. Good planning and coordination in the SAA's, and particularly the NJSAA because of its importance to both carriers' intermodal networks, are essential to the fulfillment of the objectives of the Operating Plans. NJT continues to be concerned about "three" railroads operating in the NJSAA, but there will be no additional traffic or

movements as a result of retaining CSAO. If the CSAO were not there, CSX and NS would each have to provide crews to perform the local service and yard switching currently performed by Conrail and planned to be performed by CSAO. Because CSAO will retain individuals knowledgeable in the local operations and well versed in the complexities of the area, the use of the CSAO is more efficient and will alleviate, not increase, risk of congestion and confusion in the area.

Second, with respect to ATC/PTS, both CSX and NS have clearly stated their intent to install technology compatible with NJT's prospective train control equipment on locomotives that will operate over NJT-owned lines (CSX/NS-119 at 11) and to operate with equipment that is "compatible with the requirements of the owner of the track." Id. at 125. We would like the opportunity to discuss with NJT its plans for the new signalling technology, but we are committed to equipping locomotives compatible with NJT requirements.

Third, in addition to the affirmative statements made by me and Mr. Mohan in our joint deposition that Applicants will retain NORAC rules for three years, Applicants also responded to NJT's interrogatories concerning the length of time that the carriers intended to retain NORAC rules. Applicants stated in response that there were no plans to change and that NORAC rules would be retained into the foreseeable future. CSX/NS-166 at 6.

Thus, Applicants have adequately responded to all of NJT's concerns and there is no need for relief to be imposed by the STB. See Carey RVS for discussion of Bordentown Secondary.

C. Tri-State

Tri-State's comments are contained in a letter submitted to the STB by Edward Lloyd, General Counsel for Tri-State and Director of the Rutgers Environmental Law Clinic at Rutgers, The State University of New Jersey, School of Law Newark. ("Tri-State Comments"). A primary thrust of Tri-State's Comment is a reiteration of previous requests from Congressman Nadler and others that the NJSAA be expanded to include the area East of the Hudson River. This issue has been addressed elsewhere in this submission, and for the reasons stated there, should be denied.

Second, Tri-State notes with enthusiasm the restoration and increased use of the hump yard at Oak Island, which Tri-State believes could be an enhancement for carload freight in the area. To assure the increase in carload freight activity (especially vis-a-vis intermodal), Tri-State requests conditions that would require the Applicants to "spell out specific measures to maintain, expand and improve the hump classification facility at Oak Island Yard," and to conduct an assessment for New Jersey "similar to the New York Downstate Rail Freight Study (Mercer 1995)" in order to discover "untapped potential" and

assign CSX and NS "specific target levels" for developing carload freight traffic. Tri-State (unnumbered) Comments at 4.

To the extent Tri-State asks the Board to compel particular studies and establish particular targets, this request goes far beyond the requirements and scope of this proceeding. There is no requirement to identify untapped potential traffic or to develop specific traffic, but only to show that the proposed operations will more efficiently handle existing traffic and provide benefits to the shipping public.

That said, it should be noted that the core traffic for the CSX and NS Operating Plans is conventional carload traffic, with the intermodal, automotive and coal networks superimposed on the carload traffic. In other words, carload traffic is the lifeblood of the railroads. Blocking plans and car movements are designed primarily to provide for efficient movement of carload traffic. The blocks that will be built at Oak Island involve carload traffic as do the movements of merchandise trains into and out of the NJSAA. The Operating Plan is replete with evidence of the provision for conventional carload traffic. Improvements to service routes and yard facilities benefit general merchandise (carload) traffic. In short, the carriers do not need any incentive to compete for and develop additional carload traffic -- they will do that in the normal course of business, and will continue to invest in improvements necessary to develop and retain that business. Accordingly, if the growth of this core traffic exceeds the capacity of existing facilities, CSX and NS will move quickly to make the necessary improvements at Oak Island and elsewhere

to accommodate that traffic. Thus, Tri-State's request for assurances that Applicants will continue to pursue carload freight is nonsensical.

Finally, Tri-State requests a condition that CS, CSX and CSA cooperate with NJT and MTA to allow for expansion of rail passenger service on existing routes and the introduction of passenger service on new routes in the sector west of the Hudson. As noted in the responses of NJT and Amtrak, the Applicants are in negotiations with passenger and commuter services to coordinate passenger/freight service and to discuss means of accommodating future passenger/commuter service development. In addition, CSX has hired a former president of Amtrak, Paul Reistrup to help us in these efforts. A more thorough discussion of passenger/freight issues is discussed in his verified statement filed with this submission.

D. Port of New York and New Jersey (PONYNJ)

PONYNJ's comments consist of the Verified Statement of William H. Sheppard, which basically is a page by page review of CSX/NS-119, listing what he apparently views as flaws, including such glaring errors as the inadequacy of the explanation in the color key on Figure 2 (NYNJ-18, Sheppard VS at 3), the failure of the Applicants to define the term "high quality" (id. at 4) and the inclusion of Little Ferry (which is a CSX facility and not part of the Shared Assets Area) in the schematic of the NJSAA without fully describing it in Section 4.0 (Service and Facilities in NJSAA).

Mr. Sheppard's points of concern are for the most part unfounded and can in no way support his dire prediction of "operational paralysis." Basically, he suggests that any change from existing Conrail operations (such as new blocking and switching strategies) will automatically mean doom and not improvement. These concerns, however, rest solely upon his lack of understanding of the overall objectives of the CSX and NS Operating Plans.

Mr. Sheppard incorrectly notes that "further investigation reveals" that CSX train Q173 providing service between North Jersey and Jacksonville, FL "will be 1'30" slower than current joint CSX/Conrail train service." Sheppard VS at 5. In fact, the schedule for the current CSX/Conrail train has for some time been arrival in Jacksonville at 08:00, not 06:30, as Mr. Sheppard asserts. The 08:00 arrival time meets all customer requirements. However, if it becomes necessary to reduce the running time for the customer, and again schedule the train to arrive at 06:30, the available time will be there.

Many of Mr. Sheppard's points are incorrect or have already been addressed in Applicants' various submissions, including the Operating Plans, the NJSAA plan, discovery responses and deposition testimonies. Nonetheless, I will respond to some of his points concerning CSX operations in the NJSAA. My counterpart at NS will respond to those points addressing NS operations.

A number of Mr. Sheppard's points focus on changes in operations at Oak Island, including blocking patterns, car handlings and routings. See, e.g., Sheppard VS at 5-

6 and 8, items 1-4, 7-9, and 11. While Mr. Sheppard asserts that these changes will "tax" Oak Island's capabilities, that is incorrect. There is, and has been in the past, sufficient capacity at Oak Island to handle the blocking and switching planned by CSX and NS. When the hump yard was fully utilized, it could sustain an average of 1,200 cars per day.

Changes in blocking patterns and use of Oak Island are parts of CSX and NS plans to improve service in the NJSAA. The current Conrail operating plan affecting facilities that after the acquisition will be part of the proposed NJSAA does not make the most efficient use of Oak Island. In an attempt to reduce costs, Conrail reduced operations at Oak Island Yard. However, doing so resulted in detrimental affects on customers' traffic. To reduce switching at Oak Island, cars were sent out of route resulting in additional handlings (which increases risk of damage as well as delay) and adding days of transit time to customers' traffic. CSX and NS are planning a much more customer-oriented operation by restoring humping activities at Oak Island. This, together with better blocking plans throughout the CSX and NS systems, will remove car days from the existing operating plan and improve customer service. As noted in CSX/NS-119, since the filing of the Primary Application, Conrail has itself attempted to improve service by gradually increasing the hump processor at Oak Island and operating first one, and now two, shifts per day. CSX and NS will operate the facility three shifts per day in order to efficiently handle service.

The plan also calls for moving large blocks of traffic through Oak Island which will improve transit time on existing traffic. Likewise, switching traffic received from

South Jersey will improve service to customers by removing car days from the existing Philadelphia operation. Mr. Sheppard is incorrect in his assertion that there will be increased switching of inbound North Jersey traffic previously classified at Selkirk -- the Selkirk operation will remain the same as it is today for those movements.

Blocking instructions for Train CASE (Sheppard VS at 11), Train RMOI and Train SETA (id. at 12) are also part of the more customer-oriented plan that will reduce car days and improve transit times. With respect to the connecting block of traffic moving from Savannah, CSX currently picks up Selkirk and Oak Island blocks at Savannah on Train Q410 and will continue to do so.

Mr. Sheppard also notes with apparent disapproval that the NJSAA operations will include "transfer runs to reposition loaded and empty traffic moving among NS, CSX and NJSAA facilities" and "light engine (hostling) movements to reposition CSX and NS motive power among terminals in North Jersey for fueling and servicing." VS at 9, items 12 and 15. This is currently done by Conrail today and as these movements are operationally successful today, CSAO will continue such operations to the extent necessary after the implementation.

Mr. Sheppard notes (VS at 9, item 5) that certain CSX time-sensitive auto parts traffic will be "rerouted" for connections via Oak Island. However, with the exception of the Buffalo-Baltimore movement, the other three moves cited (Parma-Baltimore, Saginaw-

Baltimore and Parma-Wilmington) will continue to move as presently in CSX auto parts train Q296 operating from Saginaw, MI to Wilmington, DE, serving assembly plants in Lordstown, OH, Baltimore, MD and Wilmington. This train picks up auto parts at various locations.

Mr. Sheppard's statement (VS at 9, item 6) that CSX will bring blocks of time-sensitive auto parts on various trains for consolidation and movement in local service to Linden and Metuchen rather than using Train TOMT is not entirely correct. Unless there is sufficient traffic to introduce a separate Toledo-Metuchen train (TOMT), CSX has capacity on its existing Q290 train to bring existing Conrail Toledo traffic to the NJSAA and will use the existing TOMT local movement for delivery to Linden and Metuchen. However, service requirements may identify the need to operate a small auto parts train from Selkirk to Linden. If so, CSX is prepared to establish a parts train to serve Linden.

Mr. Sheppard notes (VS at 12) that there is no schedule in CSX/NS-119, Figure 4 for Train SASE. No schedule was submitted for SASE in CSX/NS-119 because northbound traffic will move in local service to Oak Island Yard and connect to OISE. This local was labelled as CSX SASE in CSX/NS-119, Figure 25.

Mr. Sheppard also complains that CSX trains OJTA and TAOJ will operate on Amtrak's NEC outside the 10:00 pm - 6:00 am window. As noted elsewhere in this

statement, the schedules for those trains are the subject of on-going negotiations with Amtrak and those schedules will be run only with Amtrak approval.

With respect to concerns over potential traffic growth as a result of CSX's agreement to give Canadian Pacific commercial access into the NJSAA (Sheppard VS at 4), CSX does not anticipate significant traffic increases as a result of the agreement, and believes that any such traffic can be handled on existing trains. Therefore, no expansion of the operating plan is necessary.

As I mentioned in my deposition (joint with Mr. Mohan), in response to a question as to whether CSX will have a backup train for Q163 (Sheppard VS at 12), which is the CSX equivalent of TV207, it is CSX standard procedure to run a second section of the same train as a backup, if required. The scheduled and backup trains would run one behind the other so that they follow through on the same type of dispatching as a scheduled train. Generally the second section operates in advance of the regular scheduled train so that both trains meet their commitments at destination. Mohan/Orrison Dep., Nov. 19, 1997 at 74.

Mr. Sheppard suggests that detailed operating plans should be prepared for each facility in the NJSAA, to include 16 areas indicated in his statement. Sheppard VS at 17. Naturally all of these details are being worked out and will be in place in time for Day 1. Many of them have already been addressed, but others, such as descriptions of volumes of traffic by block and train, specific qualifications of individuals, chronological list of all

train activity, will have to wait until the transaction has been approved, all conditions have been taken into account and final arrangements with specific shippers have been made. Also, many of the details are the responsibility of the General Manager and area superintendents. Those positions for the SAA's will be filled well in advance of Day 1 to allow the appointed managers and superintendents to fully develop and oversee all work assignments and crew qualifications.

Mr. Sheppard also notes changes that NJT and the Port intend to make in the NJSAA and suggests that additional operating flexibility should be provided to accommodate the increased demand of these plans. As I noted in my deposition, we are already aware of these plans and have prepared for them.

The four blocks that appear to be set off at Oak Island by Train SECA-B -- Parma-Penn Mary; Parma-Wilmington, Saginaw-Bay View and Saginaw-Penn Mary (Sheppard VS at 11) -- actually will move in Train Q296. As explained above, Q296 is an auto parts train operating from Saginaw, MI to Wilmington, DE via Toledo, Willard, and Cumberland, MD. Therefore, these blocks will not be handled at Oak Island or through Oak Island. The listing of these as blocks at Oak Island was incorrect.

PONYNJ is also concerned about movements of multi-levels along the Atlantic Coast Service Route before (and during) clearance of the Virginia Tunnel. The Virginia

Tunnel clearance project is scheduled to be completed by the fourth quarter of 1999. Prior to and during construction, traffic will be routed via Cincinnati, as it is today.

Finally, Mr. Sheppard expresses concern that there be review and coordination of dispatching activities, particularly "where control changes to CSX and NS employees in charge of train movements at Port Reading Junction, North Bergen, Croxton and other locations." (Sheppard VS at 19). Dispatching will be done by the CSAO and not by CSX and NS employees. As stated in CSX/NS-119, "All train movements, whether they are NJSAA CSX, NS or NJT, operating on trackage within the NJSAA and currently dispatched by Conrail, will be under the direction of the NJSAA Train Dispatcher. Train operations on trackage owned and dispatched by Amtrak or NJT, will be under the direction of Amtrak or NJT dispatchers, as it currently exists." CSX/NS-119 at 136. Thus, PONYNJ's concerns in this area are unfounded.

E. APL

APL, an ocean carrier and intermodal container train operator, seeks a condition voiding a provision of the Transaction Agreement that contemplates that Conrail rail transportation contracts continue to be binding on APL and other shippers and provides that they will be binding on CSX and/or NS. APL's 15-year rail transportation contract with Conrail expires in 2004. While many of the issues raised by APL go beyond the scope of operational issues, and will be addressed elsewhere by Applicants in this rebuttal filing, I will here respond to two verified statements of Peter K. Baumhefner, Director of Stacktrain

Operations for APL Land Transport Services, Inc. These are the statements submitted in support of APL's October 21 Response and Request for Conditions (APL-4) and the statement submitted in support of APL's November 24 Response to the CSX/NS Operating Plan for the North Jersey Shared Assets Area (APL-8). For convenience, I will refer to these as the October 21 Statement and the November 24 Statement.

In these two statements, Mr. Baumhefner describes a parade of horrors concerning post-transaction CSX and NS service with respect to APL intermodal trains, particularly Northeast-Midwest trains. The premise of Mr. Baumhefner's analysis is that Conrail provides service at a level that CSX and NS will not be able to match. Worse than that, he predicts an operational "meltdown" in service from which APL will need to "start building what we can from the rubble." APL-4, Baumhefner VS at 16. Based on his dire predictions, he asks that the operational implementation of the transaction be postponed "until APL (and others similarly situated) have had a fair opportunity to negotiate with Applicants for a new, jointly-determined substitute for what Conrail does for us today." In other words, Mr. Baumhefner's arguments are set forth to support APL's primary request in this case -- that it be allowed to escape from the contract that it entered with Conrail so that APL can negotiate something more to its liking with CSX and NS. I will respond only to Mr. Baumhefner's operational points.

I will show here that Mr. Baumhefner's picture of operational chaos is not supported by the facts. His notion that two large and well-managed railroads such as CSX

and NS cannot efficiently handle its traffic under APL's existing contract with Conrail is self-serving. We are prepared to discuss and address any legitimate operational concerns APL may have well in advance of the post-transaction institution of operations by CSX on Conrail lines. Our goal is to provide excellent service to APL, and I have no reason to believe that we will not be able to do so.

CSX has provided APL a detailed description of the service that CSX proposes to provide to its traffic and has already participated in several meetings to discuss these matters. While APL at the time showed enthusiasm with respect to CSX's plans, APL remains focused on its efforts to improve its contract position over that which it negotiated. Mr. Baumhefner's November 24 statement on page 2 contradicting my statement that the latest CSX contact with APL was on September 24, 1997 is not correct. CSX had three formal meetings with APL dealing with the Conrail acquisition: on April 16, 1997 in Phoenix; May 6 in Chicago, and June 25 in Jacksonville. Our proposed service design for APL was discussed at these meetings, as were APL's operational needs. In addition, on September 24, 1997, Peter Rutski, VP-Planning CSX Intermodal ("CSXI"), had a telephone conversation with Dan Pendleton of APL. Mr. Pendleton informed him that APL would oppose the Application as it was related to the treatment of pre-existing contracts, and that APL was developing a contract proposal for CSX and NS to consider, which would be sent by the end of September. I have been informed by Mr. Rutski that no such proposal, however, has been received. The ball is still in APL's court to respond to our presentations in response to its operational concerns.

In his October 21 and November 24 statements, Mr. Baumhefner has focused on three primary operational areas -- the interchange of its traffic with UP at Chicago, the operation of trains between the Midwest and Northeast and operations at its APINY facility in South Kearny, NJ, within the NJSAA. I will address each area below.

Chicago Area Operations

In his October 21 Verified Statement, Mr. Baumhefner expresses concern that the Conrail transaction will not allow direct or efficient connections between CSX and UP at Chicago. In fact, CSX will provide several alternative direct routings for the interchange of traffic which will represent an improvement over the service APL currently receives from Conrail. Figure JWO-19 illustrates these routing options.

First, CSX via the BOCT (B&O Chicago Terminal Company) will offer direct access between APL's Global I terminal and CSX's new 59th Street dedicated intermodal interchange facility for APL containers moving between any point on the CSX system and

TRAIN ROUTES IN CHICAGO

P-639

FIGURE JWO - 19



the West. CSX is investing over \$30 million in this new terminal as a part of the transaction to combine the functions performed by Conrail for APL at Conrail's Ashland Avenue and 47th Street. Construction of the 59th Street facility has begun (all environmental and other permissions having been obtained) and it will be completed by September 1998, well in time for the start of operations following the allocation of the Conrail assets.

The 59th Street facility is sited directly on a double-track CSX mainline, within 4.5 miles of Global I. Transit times between the two facilities should be excellent. I understand that APL has advised CSXI that it often has significant congestion and delay on movement between Global I and Conrail's Ashland Avenue Terminal. Due to its superior location on the BOCT mainline interchange to or from CSX at Chicago, the 59th Street facility will relieve this congestion.

As a result of CSX's substantial investment in a combined steelwheel lift on/lift off-facility at 59th, APL will have the opportunity to steel wheel mixed destination cars to the 59th Street Terminal for reconsolidation to cars on trains operating direct to all major points on CSX's eastern network. The combined steel-wheel/intermodal lift-on/off capabilities of the 59th Street CSX terminal should minimize or even eliminate APL's need to perform any "rubber" crosstowns (APL must typically cross-town less than stack-car load volumes to Conrail, since the Conrail Ashland Avenue interchange does not have lift-on/off capabilities). If there is any rubber-tiring required at all in getting to CSX, the distance and

drayage cost differential between CSX's 59th Street terminal and NS' 47th Street terminal is minimal or non-existent.

APL cars handled at 59th Street will then have access to the entire CSX network. Whereas today APL only has the opportunity to operate to Northeast and Upper Midwest points served by Conrail, CSX will offer APL the opportunity for direct dedicated service from the 59th Street Terminal to additional points throughout the Lower Midwest, Southeast, and Florida.

Mr. Baumhefner evinces doubt that the 59th Street facility will be ready at the time CSX begins to service APL's traffic, and he therefore offers an extended critique at pages 7 through 11 of his November 24 statement of transit times between Global I and CSX's Bedford Park facility. His concerns are misplaced -- CSX does not intend to utilize the Bedford Park facility for APL traffic. Mr. Baumhefner indicates that he will have to use CSX's Q160 as a fallback train out of Bedford Park as a replacement for TV78, thus causing a double-dray. Mr. Baumhefner is incorrect again, as train Q164 (which serves APINY) will be available from 59th Street, will have a later cut-off than Q160 and will operate to Kearny.

CSX has little doubt that the new 59th Street facility will be ready on time, but even in the very unlikely event that it were not complete, CSX has an interim plan to use the Conrail 63rd Street facility for up to 12 of the trains per day that would be handled at 59th

Street. The 63rd Street terminal has all of the connectivity and features of both 47th Street and 59th Street, and, in any event, its use would be short term.

CSX will also provide an alternative routing for APL traffic at Chicago via the IHB. This route provides an alternative for through APL trains to be routed around the Chicago terminal direct between UP-Proviso and CSX's mainline B&O route.

In addition, APL/UP have the ability to operate between Global I and UP Dolton Jct. via BOCT from Global I to 75th Street and then via BRC between 75th Street and 80th Street, then UP trackage to Dolton. At Dolton, APL's trains could operate through to eastern points via a planned CSX connection from the UP to CSX's B&O line.

Mr. Baumhefner states at page 8 of his November 24 Verified Statement that he was advised by UP officials that they were unaware of CSX's plans with respect to interchanging traffic at 59th Street. While he does not identify with whom he spoke, the fact is that a team of UP officials came to Jacksonville, Florida on August 21, 1997 to meet with CSX and CSXI officials. These UP officials included UP's VP Strategic Planning, its General Manager - Northern Region, the Director - Transportation Research, and Sr. Director - Interline Marketing. The Chicago and St. Louis interchanges were discussed in great detail. UP agreed that 59th Street was appropriate and feasible for performing steel-wheel interchanges. UP also was in agreement that the CSX-IHB route between Proviso and Barr was the most direct route for run through trains (i.e., APL TV200).

There have been numerous communications between CSX Service Design officials and UP regarding CSX's interchange and train operating plans at Chicago, and all plans have been developed in coordination with UP management. Since a major determining factor of any intermodal design is traffic density, both CSX and UP agreed to develop additional details on interchanges as the transaction moves forward.

Train Operations Between Chicago and the Northeast

Mr. Baumhefner suggests that CSX will not be able to operate the three primary run-through dedicated APL trains operated today. APL-4, Baumhefner VS at 8. He also suggests that CSX will not have back-up trains for APL's dedicated services.

CSX has trains in its plan that will accomplish each of these services. CSX has the capability to run additional dedicated trains as necessary between APL's western carriers and APINY for any dedicated train APL chooses to operate. CSX has included APL's "filet and toupee" service in its filing and service plan at Syracuse for New England service points, pending ultimate clearance of these points for double-stack.

Mr. Baumhefner describes the tight connections at Syracuse as if to suggest that CSX is not capable of performing the same operation as Conrail performs there. There are essentially no plans for changes in intermodal operating plans, personnel or infrastructure at Syracuse. Mr. Baumhefner offers no reason why CSX managers and former Conrail managers working for CSX in the future would be incapable of the same "joint effort and

hard work" and "tightly coordinated" operations with APL that he describes in his October 21 statement. While CSX is committed to working with state and government agencies to eliminate all double-stack clearance impediments on its network, it is nonetheless well versed in "filet and toupee" operations (which it refers to as "stack hubbing"). CSX has successfully performed such services at Chicago, Atlanta, and Jacksonville in connection with transcontinental stack train operations for many years.

CSX also has included this type of operation at Cleveland for Baltimore and Philadelphia service points as a replacement for those functions presently performed by Conrail at Harrisburg. CSX is investing significant capital at Cleveland's Collinwood intermodal facility to add additional stack hubbing opportunities for APL and other container train customers. Cleveland's location at the intersection of the former CR-St. Louis-Boston/New York route and the CSX-Chicago-Baltimore/Philadelphia B&O route is ideally suited for transcontinental train operations via either the Chicago, St. Louis or Memphis gateways.

Mr. Baumhefner also describes congestion on Conrail's River Line, which will be operated by CSX. APL-4 at 7, 10-11. CSX plans to improve siding lengths, capacity and signaling on this line, as described in the Operating Plan. CSX/NS-20, Vol. 3A at 107-15. As an additional measure to improve capacity on this route, CSX will also invest capital to upgrade the track configuration, increase line capacity and to construct a new connection at Little Ferry.

While capital improvements are designed to eliminate the need for "escape valves," Mr. Baumhefner is not correct in his assumptions that the transaction will leave CSX and NS without "escape valves" in the event of line congestion. For example, CSX has the ability through the proposed Little Ferry connection to the NYSW to operate via the NYSW between Ridgefield and Syracuse. Also, CSX can operate trains via the Trenton line and the B&O or even (as is common industry practice) to operate via a standard detour agreement on the NS-operated Penn Route.

Similarly, NS would have the ability in the event of a problem on one of its lines to operate trains on CSX's River Route or on the B&O. Mr. Baumhefner's assertion that the transaction somehow eliminates the possibilities of alternative routings is therefore incorrect.

Mr. Baumhefner claims at page 9 of his October 21 statement that Chicago-Cleveland traffic would be handled by CSX over NS trackage rights. That is not true. CSX has its own lines between Chicago and Cleveland.

APL's concerns over line capacity on the Conrail line between Chicago and Cleveland are also unwarranted and ignore the fact that CSX has invested over \$200 million to double-track the B&O mainline between Chicago and Greenwich, Ohio. The Operating Plan also describes CSX's plans to double-track the line from Greenwich to Collinwood.

Contrary to Mr. Baumhefner's assertion, there will be more, not less, capacity and better service between Chicago and Cleveland after the transaction.

CSX has the ability to operate up to 12 trains per day on the Conrail line between Berea and Chicago. The Operating Plan specifies that priority intermodal trains will operate on the newly double-tracked CSX route between Chicago-Greenwich and Cleveland. CSX/NS-20, Vol. 3A at 109-111. Further, contrary to Mr. Baumhefner's speculation, the major CSX improvements to Conrail's lines between Greenwich and Cleveland and Albany and Newark are all scheduled to be completed before Day 1.

Mr. Baumhefner posits in his November 24 Statement that the CSX and NS schedules may not replicate Conrail's schedules to and from the NJSAA. CSX schedules were based on independently determined market share components to/from the NJSAA as determined by ALK and Associates and the terms of the Transaction Agreement. Schedules will be further refined when the allocation of responsibility for service is worked out between CSX and NS. In any event, we will ensure that APL's traffic will be transported efficiently on our system.

Lane volume density is a major determiner of the range and types of services CSX can provide to APL and other customers. Assuming future APL lane volume concentrations equivalent to APL's current operation on Conrail, CSX is prepared to commit

to APL that it will provide schedules at least equivalent to those provided today by Conrail to/from the NJSAA.

NJSAA Operations for APL

After the transaction, both CSX and NS will have direct routes and be able to offer direct service to and from the APL's APINY facility at South Kearny. The NJSAA agreement provides for either carrier's train crews to operate to or from the APINY facility. CSX will have direct routes via the Conrail River Line and the Trenton line; NS will also have two direct routes, via the Penn Route and the Southern Tier. APL is presently familiar with routing their trains and cargoes via three of these routes today and will be well served by their use by CSX and NS in the future.

Mr. Baumhefner states in his November 24 Statement that APL played no role in the formulation of CSX's Operating Plan and the NJSAA Operating Plan. To the contrary, APL and other major customers played a major role. CSX and NS operating officers met with APL officials at South Kearny on March 13, 1997 to discuss APL operations and service requirements and on May 6, 1997, CSX met with officials in Chicago, including Mr. Baumhefner. Input from both of these meetings was used to develop CSX's portion of its Operating Plan. CSX officials also met with APL officials on June 25, 1997 to further discuss CSX's operating plans and APL service requirements, and a copy of CSX's service presentation to APL is found in Volume 3.

In each case, input from APL was instrumental in formulating the NJSAA Operating Plan, which has evolved over time as more recent and improved information becomes available. CSX also had operational meetings with other major intermodal customers in the NJSAA and incorporated a balance of customer needs when developing the NJSAA Operating Plan.

Mr. Baumhefner suggests at page 3 of his November 24 Statement that there may be insufficient crews to handle APL's APINY traffic post transaction. Under the NJSAA Operating Plan, three CSAO crews will be assigned to serve APINY and the five other industries served by the CSAO from Kearny, and four CSX crews will serve the adjacent CSX Intermodal Terminal at S. Kearny. These job assignments are equivalent to the seven crews presently working APINY and the South Kearny Yard.

Mr. Baumhefner forecasts that increased volumes will require more train services and that this will result in NJSAA congestion. He overlooks that one of the primary economic benefits of the Conrail transaction is that by extending single-line services CSX can take advantage of existing capacity on trains and increased volume, without increasing fixed train starts. One example referred to by Mr. Baumhefner is the Philadelphia-New York over the road services, replaced by intermodal services. Trains planned between Chicago and New York can easily absorb the 26,000 annual units contemplated. Mr. Baumhefner also speculates that increased CP volumes will dictate additional train starts. Again, existing trains can absorb anticipated CP intermodal volumes.

Mr. Baumhefner's negative depiction of taking trains off the Southern Tier and running them through the Ridgefield connection to Little Ferry is actually counter to the facts. By expanding use of CSX's Little Ferry facility, which is not within the NJSAA, CSX will be taking intermodal volumes out of the NJSAA area. This will have a substantial impact on reducing actual or perceived NJSAA congestion (especially at Kearny) as depicted by Mr. Baumhefner.

CSX remains prepared to discuss with APL any legitimate operational concern it may have. We also remain confident that we can efficiently handle APL's traffic, just as we handle the traffic of hundreds of large and important intermodal customers. There is no need to reopen APL's contract to accomplish these ends.

F. Durham Transport Inc.

Durham Transportation also submitted a comment noting that the CSX/NS Application failed to mention interchange operations with Durham Transport, or continued joint use of lead tracks within the Raritan Center Industrial Park, and that the Conrail system map includes tracks in the North Jersey Shared Assets Area that belong to the Raritan Center Industrial Center. Durham seeks assurance that there will be coordination of rail operations over the GSA lead used to serve Durham.

Durham is correct concerning both the ownership of the lead tracks and the service, as CSX will acknowledge in a letter to Durham.

Although the Metuchen area map does not specifically depict Raritan Center tracks, CSX recognizes that tracks within the center that are not currently owned by Conrail are not part of the Shared Assets Area. The NJSA will continue to interchange with Durham at Lower Yard in the Raritan Center in accordance with a July 1, 1994 Interchange Agreement between Conrail and Durham Transport Inc. The CSX/NS application has stated consistently that agreements between Conrail and other carriers would be honored.

Currently, train movements over the GSA lead and Raritan Industrial track are coordinated by the yardmaster at Metuchen. This arrangement has provided safe and - efficient operation in the past and should continue to do the same in the future.

VII. INDIANAPOLIS COAL OPERATIONS

I have been asked to address coal operations in Indianapolis, specifically service to Indianapolis Power & Light Company's two generating plants located there.

Shippers in Indianapolis that are currently served by two carriers will continue to have two carrier options. Current train operations for the movement of coal to IP&L's Stout and Perry K plants will undergo only modest changes. The following compares the existing operating regime in Indianapolis with post-acquisition operations.

A. Overview of Service in Indianapolis

Today there exists a line of railroad of the former Belt Railroad and Stock Yard Company extending for approximately 13.5 miles in a horseshoe or belt configuration around the east, south, and west sides of the City of Indianapolis, generally between North Indianapolis and Brightwood, Indiana. This line is now Conrail's Indianapolis Belt Running Track (commonly referred to as the "Belt"). Conrail operates the Belt and switches all industries located on the Belt as part of the Conrail system.¹⁶ Running horizontally through the middle of the Belt is a 1.25 mile, former Indianapolis Union Railway Company track in the center of Indianapolis that is now owned and operated by Conrail (commonly referred to as the "IU" line).

Customers located on the Belt have the option of line haul service from Conrail, CSX, or INRD. However, Conrail is the only carrier that has direct physical access to customers on the Belt. CSX and INRD traffic must be switched by Conrail to reach customers located on the Belt.

¹⁶ Conrail does not own the Belt, but operates it pursuant to a 999-year lease. From 1883 to 1996, operations on the Belt were governed by terms and conditions found in the 1883 Operating Agreement, original parties to which are succeeded today by Conrail, CSX, and the Indiana Rail Road ("INRD").

In 1996, (prior to the inception of the acquisition of Conrail), Conrail, CSX, and INRD entered into a series of agreements that dissolved the 1883 Operating Agreement and substituted in its place certain switching and trackage rights agreements. This action was taken for the operating and administrative convenience of the railroads.

To serve customers located on the Belt, CSX currently uses Conrail switching services and trackage rights over Conrail. CSX pays Conrail a separate fee for each service. CSX operates its trains into CSX's State Street Yard in Indianapolis. To reach the State Street Yard from the west, CSX uses Conrail's tracks and pays Conrail a trackage rights fee for that use. I have been advised that the fee is over 30¢ per car mile. (CSX can reach State Street Yard from the east using its own tracks.) At State Street Yard, Conrail picks up cars for delivery to Belt customers. I have been advised that Conrail charges CSX its standard reciprocal switch charge -- \$390 per loaded car -- to perform this switch.¹⁷

For CSX deliveries to customers located on an INRD line, CSX takes its trains into the State Street Yard where the cars are interchanged to Conrail. Conrail then pulls the cars to its Hawthorne Yard where they are interchanged to INRD. I have been advised that Conrail charges CSX an intermediate switch charge of \$110 per car for the switch from State Street Yard to INRD at Hawthorne Yard. CSX 31 P 000255.

B. Deliveries to IP&L Plants

1. Perry K

After consultation with CSX Coal Marketing representatives, I have learned that today, Conrail delivers Indiana Southern-origin coal to IP&L's Perry K plant, located in

¹⁷ CSX 31 P 000254 (included in Volume 3). There is an exception for the Citizens Gas and Coke facility located on the Belt. CSX 31 P 000255 (included in Volume 3).

downtown Indianapolis. Conrail is the only rail carrier with direct physical access to IP&L's Perry K plant. The Perry K plant is not open to reciprocal switch.

2. Stout

After consultation with CSX Coal Marketing representatives, I have learned that IP&L's Stout plant is located on trackage owned by INRD. All rail coal destined to the Stout plant must be handled by INRD, the destination carrier. Currently, coal is being delivered to the Stout plant via a single-line haul of INRD-origin coal.

For deliveries of ISRR-origin coal to the Stout plant, ISRR coal could move over Conrail's tracks from the ISRR property line at Milepost 6, thence via Conrail's former Petersburg secondary north to Conrail's Crawford Yard. Conrail then moves the traffic to the Raymond Street interchange track, where it is interchanged to INRD. INRD then delivers the traffic to the Stout plant.

VIII. IMPACT OF PROPOSED TRANSACTION

A. In General

The proposed transaction intends to replicate the existing operating scenario -- but with some significant improvements for shippers. First, CSX will operate the Belt and

the IU line. Like Conrail does today, CSX will switch traffic destined for customers located on the Belt or on former Conrail lines off the Belt.

Second, to avoid the loss of competitive rail service by two Class I carriers, NS will essentially assume CSX's present position in Indianapolis. Customers located on the Belt will be able to use CSX and NS line haul -- just as they have CSX and Conrail options today. All other "two-to-one" customers located off the Belt will have the same option. Moreover, NS will be able to serve the General Motors metal fabrication plant, one of the largest rail shippers in Indianapolis and one that CSX cannot serve today. See CSX/NS-25, Vol. 8A at 377.

Third, instead of being switched at CSX's State Street Yard, as CSX traffic is today, NS traffic will be switched at Hawthorne Yard. NS will have sufficient tracks at Hawthorne Yard for the arrival, departure and make up of trains and will have reasonable access to and from designated tracks. CSX/NS-25, Vol. 8A, at 369; CSX/NS-25, Vol. 8B at 118. NS will also be able to interchange directly with INRD at Hawthorne Yard without an intermediate switch by CSX.

B. Effect on IP&L

1. Perry K

Today, Conrail is the only rail carrier with physical access to the Perry K plant. Post-acquisition, CSX will be the only rail carrier with physical access to the plant. Just as today, ISRR can interchange ISRR coal at Milepost 6. The only difference will be that it will interchange with CSX instead of Conrail.

In contrast to the existing operations, however, NS will be able to participate in moves to the Perry K plant through an interchange with CSX at Hawthorne Yard, giving the plant two line-haul carriers to choose from.

2. Stout

As set forth above, coal by rail will be delivered to the Stout plant by INRD. I have been told that ISRR is seeking trackage rights over CSX and over INRD in order to reach the Stout plant. Today, ISRR can interchange with Conrail for subsequent movement to the Stout plant. There is no operating reason why, post-Transaction, ISRR's ability to handle coal movements delivered to Stout would be affected in the least. Post-Transaction, CSX will assume Conrail's role in interline coal movements to Stout.

In addition, NS will be able to participate in moves to the Stout plant. The Transaction will enable NS to interchange directly with INRD at Hawthorne Yard. CSX/NS-25, Vol. 8B at 111; CSX/NS-25, Vol. 8C at 313-34. This interchange capability, which will not require a switch by CSX, will give NS access to the plant via INRD, the sole rail carrier with direct physical access to the Stout plant. Accordingly, the IP&L Stout plant will gain the ability to source coal from the east, south, and west via two Class I carriers into Indianapolis, for final delivery by INRD.

WASHINGTON, D.C.

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VERIFICATION

John M. Orrison, being duly sworn, deposes and says that he is qualified and authorized to submit this Rebuttal Verified Statement, and that he has read the foregoing statement, knows the contents thereof, and that the same is true and correct.

John W. Orrison

Subscribed and sworn to before me by John W. Orrison this 2nd day of December, 1997.

Samuel M. Galatini

My Commission Expires:

3/14/2002

EXHIBITS

TRAIN OPERATING TIME SUMMARY REPORT 2 (OS-TO-OS)
MILEPOSTS SPECIFIED: LEENOD - AULON
DATE RANGE: 10/04/97 - 11/07/97

TRAIN INITIAL	TRAIN COUNT	AVG TIME (HOURS)	MIN TIME (HOURS)	MAX TIME (HOURS)	STD DEV (HOURS)	3+ HRS SHORTER	1-3 HRS SHORTER	+/-1 HR W/ MEAN	1-3 HRS LONGER	3+ HRS LONGER
E	1	1.0	1.0	1.0	.0	0	0	1	0	0
L	16	.8	.2	3.3	.9	0	0	13	3	0
Q	202	.5	.1	4.4	.6	0	0	186	12	1
S	10	.5	.2	1.2	.3	0	0	10	0	0
V	1	.2	.2	.2	.0	0	0	1	0	0
X	3	.3	.2	.4	.1	0	0	3	0	0
Z	752	.5	.1	12.3	1.2	0	0	653	12	25
TOTAL		.5			1.1					

TRAIN INITIAL

E = Empty Unit
L = Alternate Schedule For Q
Q = Merchandise
S = Second Section
V = Unit Train
X = Extra
Z = Foreign

EXHIBIT JWO - 1



547 W. Jackson Boulevard

Chicago, Illinois 60661

Phone: 312 323-6900

TTY: 312 322-6777

November 10, 1997

Mr. Ron Batory
President
Belt Railway Company
6900 S. Central Avenue
Bedford Park, IL 60638

Dear Mr. Batory:

Attached is a summary of delays to Metra Southwest Service trains at Belt Junction for the month of October.

We have noted a significant improvement from September, but four of the seven delays exceeded our five minute threshold for reportable train delays, and the delays on October 6 and 9 caused major delays to our customers.

I appreciate your continued attention to this trouble spot on our Southwest Line.

Sincerely,

V. L. Stoner
Chief Operations Officer

mlf

Metra is the registered service mark for the Northeast Illinois Regional Commuter Railroad Corporation

EXHIBIT JWO - 2
PAGE 1 OF 5

FREIGHT DELAYS - SOUTHWEST SERVICE

BELT JUNCTION - OCTOBER

<u>Date</u>	<u>Train</u>	<u>Delay (min)</u>	<u>Cause</u>
10/6	15	22	freight interference
10/6	18	7	"
10/9	10	11	"
10/16	11	4	signal malfunction
10/28	10	1	
10/31	11	7	freight interference
10/31	16	4	

Delays\BNC2
11/5/97



537 W. Jackson Boulevard

Chicago, Illinois 60661

Phone: 312 322-6900

TTY 312 322-6774

November 10, 1997

Mr. Don Riordan
Assistant General Manager
CSX Transportation, Inc.
733 W. 136th St.
Riverdale, IL 60627

Dear Mr. Riordan:

Attached is a summary of delays to Metra Southwest Service trains at Forest Hill Interlocking for the month of October.

We will appreciate your assistance in minimizing these delays to our customers on the Southwest Line.

Sincerely,

V. L. Stoner
Chief Operations Officer

mlf

cc: P. Reistrup

FREIGHT DELAYS - SOUTHWEST SERVICE
FOREST HILL INTERLOCKING - OCTOBER

<u>Date</u>	<u>Train</u>	<u>Delay (min)</u>	<u>Cause</u>
10/6	11	8	dispatch error
10/14	3	4	signal malfunction
10/15	1	12	freight interference
10/21	18	6	signal malfunction

Delays\CSX
11/6/97

THE BELT RAILWAY COMPANY OF CHICAGO

6900 SOUTH CENTRAL AVENUE - BEDFORD PARK, ILLINOIS 60638

R. L. SATORY
PRESIDENT



Phone: (708) 493-4001
Fax: (708) 496-4005

November 13, 1997

Mr. Vaughn L. Stoner
Chief Operations Officer
METRA
547 West Jackson Boulevard
Chicago, IL 60661

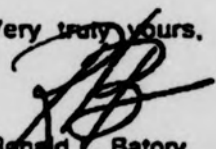
Dear Vaughn:

Reference is made towards your letter of November 10, 1997, concerning Metra Southwest commuter train service for the month of October, via our Belt Junction interlocking plant. It is pleasing to note that we continue to improve in reducing the amount of interference at said locale.

This current achievement of 98.3%, based on 414 trains with seven (7) incurred delays, is certainly the result of the continuing operating commitment of our respective organizations. Be assured, efforts will be progressed towards 100% performance of existing train schedules while we simultaneously encourage your pursuit of infrastructure improvement plans that will accommodate future commuter line growth.

Look forward to meeting with you early next month. In the meantime, best regards to you and yours during the forthcoming Thanksgiving holiday.

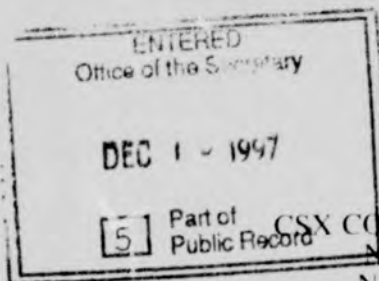
Very truly yours,


Ronald L. Satory
President

bcc: Mr. Jon L. Manetta, Vice President Transportation & Mechanical - NS
Mr. Franklin E. Pursley, Vice President Operations Support - CSXT
Mr. Gordon Mott, Assistant Vice President Passenger Integration - CSXT

This information augments letter previously sent to you on October 21, 1997 regarding results of September, 1997.

EXHIBIT JWO - 2
PAGE 5 OF 5



PUBLIC-REDACTED

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 2B OF 3**

REBUTTAL VERIFIED STATEMENTS

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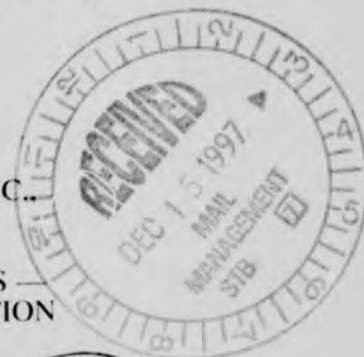
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D

VOLUME 2

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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.

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REBUTTAL JOINT VERIFIED STATEMENT
OF
KENNETH R. PEIFER
AND
ROBERT S. SPENSKI

Kenneth R. Peifer is Vice President Labor Relations of CSX Transportation, Inc. ("CSX"). Robert S. Spenski is Vice President Labor Relations of Norfolk Southern Corporation and Norfolk Southern Railway Company ("NS"). Both previously submitted testimony in support of the Application through a Joint Verified Statement and a Supplemental Joint Verified Statement.

This Rebuttal Joint Verified Statement is offered to respond to comments of various parties on labor-related issues.

I. Employee Impact

A number of the comments filed were premised on the theme that the transaction will result in an extraordinary number of employee dislocations. They offered no support for this view, which is simply not correct. For instance, nine unions filing joint comments and calling themselves the "Allied Rail Unions" ("ARU") stated that, if this transaction is approved and implemented as described, "several thousand workers will lose their jobs and thousands more will have to relocate." ARU-23 at 56; see also id. at 24. The Transportation Trades Department of the AFL-CIO ("TTD") similarly predicted that "close to 3,000 workers will lose their jobs, thousands more will be asked to move." TTD-3 at 3. This theme was echoed by other unions and others as well. TCU-6 at 3 (employees "will suffer from forced relocation and employment loss"); John F. Collins V.S. (unnumbered) at 12 ("significant job cuts" in New York state); Congressman Robert Menendez (unnumbered)

at 3 ("vastly reduced labor forces" in New Jersey); OAG-4 at 26 (serious negative impact in terms of jobs lost in Ohio).

The proposed impact of this transaction is relatively modest. Using the most accurate portrayal of the transaction, the 1996-97 Labor Impact Exhibit, the projected net contract job loss is only 1,159 contract positions. While 2,260 contract positions will be abolished, Applicants expect to create in the first three years 1,101 new contract positions, with most created in year one. Applicants also expect that most employees who are not initially able to retain a position will be offered employment within the first three years.

To put these numbers in context, we note that the total projected job loss of this transaction is far less than those predicted in the two recent major control transactions. In this transaction the total net job loss for contract and non-contract is 1981 positions.¹ In Burlington Northern Inc. and Burlington Northern R.R.—Control and Merger—Santa Fe Pacific Corp. and the Atchison, Topeka and Santa Fe Ry., Finance Docket No. 32549 ("BN/SF Control"), the net job loss was 2,761. In Union Pacific Corp., Union Pacific R.R. and Missouri Pacific R.R.—Control and Merger—Southern Pacific Corp., Southern Pacific Transportation Co., et al., Finance Docket No. 32760 ("UP/SP Control"), the Applicants' Labor Impact Exhibit projected a net job loss of 3,387.

The projected job impact from this transaction is also far less than in recent consolidations and mergers in other industries. For example, in the recently announced Core-States Financial Corp. and First Union Corp. merger, job cuts are projected to significantly exceed 3,000. The Chemical-Chase Manhattan merger in 1995 resulted in

^{1/} 822 are non-contract positions.

12,000 layoffs. Wells Fargo's merger with First Interstate in 1996 led to 12,600 job cuts. See "CoreStates Says Job Cuts Will Exceed 3,000," The Baltimore Sun, Nov. 20, 1997, page 2D; "Nationsbank Earnings Up 26 Pct.," The St. Louis Post-Dispatch, July 15, 1997, page 1C; "First Bank Agrees To Buy U.S. Bancorp," Las Vegas Review Journal, March 21, 1997, page 1D; "Job Cuts Continue at Wells," The San Francisco Examiner, Aug. 18, 1997, page D-1; "Bank Deal May Mark Bigger Job Cuts," St. Petersburg Times, Sept. 4, 1997, page 1E. (Articles attached to this Rebuttal Joint Verified Statement as Exhibits A-E.)

The relatively light impact of this transaction is further demonstrated by the fact that the job abolishments on Conrail, CSX, and NS as a percentage of the combined workforce of the three carriers are only four percent over three years. This three year total is equal to approximately one year's normal attrition on these carriers. In the longer run, CSX and NS expect that traffic will be diverted from truck to rail and this traffic diversion will result in additional new railroad jobs.

Only three crafts will experience any appreciable job loss, clerical, carmen and maintenance-of-way. The job losses in the clerical area will primarily result from the elimination of duplicative administrative functions, computerization of manual work, and the centralization of functions. It is for these reasons that clerical workforces traditionally experience more significant reductions in railroad consolidations. We are projecting job losses in the maintenance-of-way area, because CSX and NS are able to use employees and equipment more efficiently than Conrail does in this area.

The job losses for the carmen primarily result from the consolidation of heavy car repair work by NS.

In other crafts, there will be either slight net job losses or net job increases. For instance, the net job loss projected for signalmen is only 12 positions. In other crafts, boilermakers, bridge inspectors, communication workers, dispatchers and dock workers, there will be no net job losses. Electricians will experience an increase of 14 jobs; engineers, an increase of 187 jobs; the machinists, an increase of 24 jobs; and trainmen, an increase of 148 jobs.

Of course, those employees who are adversely affected by the transaction will be eligible for labor protection benefits under the New York Dock conditions, which we expect to be imposed.

Some commentators claiming significant job losses apparently rely on erroneous data. For example, John F. Collins, on behalf of the BLE New York State Legislative Board, states, without providing any source for his figure, that as a result of the transaction, "a minimum of 100 people in the Buffalo, New York area will lose their jobs." John F. Collins V.S. (unnumbered) at 5. In fact, the 1996-97 Labor Impact Exhibit shows that, in Buffalo, 13 jobs will be abolished, 57 jobs will be created and 7 jobs will be transferred (for a net gain of 37 jobs). When the economic analysis relied on by Mr. Collins in his comments is applied to the correct job impact, a net gain of 37 jobs in Buffalo, Mr. Collins' projected 30-year loss of income totaling \$246,000,000 becomes a gain in income of approximately \$91,000,000 for the City of Buffalo.

Similarly, the Ohio Attorney General, Ohio Rail Development Commission, and Public Utilities Commission of Ohio, also without citing any source, state that a net loss of 450 Ohio-based jobs is projected and that 300 positions are slated to be transferred out of

Ohio. OAG-4 at 27-28. In fact, the 1996-97 Labor Impact Exhibit shows that the expected net loss to Ohio is 264 jobs (400 jobs abolished and 136 created). The Exhibit also shows that while 189 jobs will be transferred out of Ohio, forty-seven jobs will be transferred into the state, for a net transfer out-of-state of 142 jobs. Accordingly, the total net loss to Ohio through job elimination and transfers is only 406 jobs, which is approximately five percent of the combined CSX, NS and Conrail employment in that state.

Many of the anticipated reductions in maintenance of way ("M of W") positions are associated with the performance of production work. Utilizing the more efficient CSX and NS regional or system production gangs and their equipment will permit the anticipated reduction in M of W positions. The same efficiencies are expected with the institution of CSX's system production gangs. Other M of W positions are being reduced as a result of the consolidation of roadway equipment repairs and the elimination of a few fixed headquarters positions.

In the mechanical areas, the consolidation of work from Conrail shops into CSX and NS facilities and the adoption of the best practices will increase the efficiencies of shop operations. For example, the ARU questions the fact that CSX is "hiring only an additional 99 employees to handle an increase of 17,831 cars and 761 locomotives to its combined fleet." ARU-23 at 24, n.8. The ARU claims that this will have a long-term impact on employees because CSX later will supposedly use the lack of employees as a justification for contracting out more work when "employees retire and resign." According to ARU, "the long term effect then is a depletion of the work being performed by the shop crafts, an effect that is not compensated by the New York Dock protections." ARU-23 at 25, n.8.

There is no basis for this ARU contention. First, CSX intends to hire 179, not 99, additional employees at its Huntington heavy locomotive shop. This additional force will be sufficient to maintain CSX's combined locomotive fleet. Of the approximately 800 locomotives being obtained for use by CSX from Conrail, some 200 locomotives will fall out of the scheduled repair criterion. These are yard and switch locomotives, which because of their age, will not receive further heavy repairs, but simply be replaced. This will leave 600 additional Conrail locomotives to be worked into a six or seven year heavy repair cycle, resulting in an annual increase of less than 100 locomotives at Huntington.

With respect to the "17,831 Conrail" cars being obtained for use by CSX, only approximately 1,500 cars would be potential candidates for heavy repair. (Conrail's current percentage of heavy bad order cars in its fleet is 8.5 percent. $8.5\% \times 17,831 = 1,515$). That number will be further reduced, since Conrail has a larger percentage of its fleet under lease obligations and a leased heavy bad order car with less than five years remaining of its lease term will not be repaired.

Currently, because of CSX's aggressive car repair programs in recent years coupled with significant improvements in utilization, CSX has significantly reduced the foreseeable need for heavy repairs for CSX cars at its Raceland heavy repair facility. Absent the heavy repairs for obtained Conrail cars, Raceland would have been faced with the potential of a furlough because of lack of work. Therefore, the proposed transaction will actually have a positive employee impact at Raceland.

Moreover, the predominant maintenance activity to support the car fleet is not heavy repairs, but daily or running repairs on the serviceable fleet. CSX intends to utilize all

existing facilities performing this work on the allocated portion of Conrail for its use. Further, CSX does not foresee any significant reduction of the workforces engaged in this activity. Similarly, CSX intends to maintain all the existing Conrail locomotive servicing points and running repair and quarterly maintenance facilities which it obtains use of in the transaction, including most of their existing staffing.

Contrary to the implication of the ARU's assertions, CSX has not understated the impact of this transaction on the shopcrafts. More importantly, the facts disprove the alleged scheme of underestimating manpower needs to create future opportunities for subcontracting.

The ARU suggest that CSX is proposing to consolidate the work of welding rail now done on Conrail at Harrisburg, Pennsylvania with CSX's rail welding plant at Russell, Kentucky, because the CSX facility is operated by a nonunion contractor. ARU-23 at 28. This is not true. First, the rail welding for Conrail at Harrisburg is done by the same nonunion contractor that also operates CSX's Russell plant. Second, CSX is consolidating this work because it already has two rail welding plants and will not need a third.

With respect to the forecast job eliminations in the clerical craft, many of these are occurring because work that had been manually performed on Conrail will be computerized when the work is transferred to CSX and NS. For instance, Conrail has fifty-five Payroll and Input and Verification clerical employees, whose function involves the receipt of paper time and pay claims from the operating craft employees. These tasks have been computerized on CSX. The computerization of Conrail's payroll input and verification process will eliminate the necessity for fifty-five existing clerical positions. Even if this

transaction had not occurred, it is likely that Conrail would in due course have implemented comparable changes in its own practices, resulting in job reductions.

[[

]]

Several unions and others (e.g., ARU-23 at 24, 56; TTD-3 at 3; OAG-4 at 27-28) comment on the fact that there will be a certain number of transfers associated with this transaction. Railroad consolidations almost always involve employee relocations. Hundreds of employees have been required to relocate over the years on CSX and NS as the carriers have implemented approved transactions. Moreover, employees voluntarily move long distances as a matter of personal preference, using their regional or system seniority.

The number of agreement employee transfers contemplated over the three year period reflected in the Operating Plans and Impact Exhibits is modest. Only 1,476 transfers are projected in that time period. In year one, 1,040 transfers are expected to occur, while in years two and three the transfers will drop substantially to 247 and 189, respectively.

All employees who transfer will be entitled to the generous relocation benefits that are available under the New York Dock conditions. CSX and NS have attempted to minimize the number of relocations necessary to fully integrate Conrail properties to be operated by them with their respective systems and preserve the valuable expertise and knowledge of Conrail employees. Indeed, in the field -- as opposed to headquarters operations -- it is expected that transfers will be rare. Most transfers will be in administrative departments or shops.

This transaction will not involve significant shedding of redundant lines through abandonments or line sales. Rather, this transaction envisions the expansion of CSX's rail network from approximately 18,000 miles to 22,000 miles and NS' system from approximately 14,000 miles to approximately 21,000 miles, both with virtually no retirement of track. As we previously explained, this is a growth-oriented transaction. Through the expansion of line hauls, CSX and NS will become more competitive with trucks, thereby being able to divert more traffic from trucks. As our business grows, more jobs will be created for our employees.

Any interim adverse impact on employees will be more than adequately offset by the New York Dock labor protection benefits, which we anticipate will be imposed in this transaction. While CSX and NS do not concede that Conrail employees will necessarily be less well paid on CSX and NS, any employee who must accept a lower-paying position on CSX or NS will have his or her Conrail compensation protected under the New York Dock conditions. The conditions provide 100 percent wage and benefit protections for up to six years. A statutorily required assurance of six years income maintenance may be without parallel in any other industry in this country. For example, a survey, Sale of Central Vermont Railway, Inc. - Study of Severance Pay Practices, W. M. Mercer, Inc. (Oct. 1994), which was submitted in New England Central R.R.—Exemption—Acquisition and Operation of Lines Between East Alburgh, Vermont and New London, Connecticut, Finance Docket No. 32432, revealed that 46 percent of the collective bargaining agreements across U.S. industry do not provide for any severance or supplemental unemployment benefits. When only the transportation industry was considered, that percentage jumped to 60 percent. The

most representative severance pay plan (the median plan) reported in the survey pays one week of pay for each year of service up to a maximum of 26 weeks. The severance payment plans in the ninetieth percentile (i.e., the plans of the most generous employers) provided for two weeks of severance for each year of service with no maximum. Thus, an employee with 35 years of service in a ninetieth percentile program would be entitled to 70 weeks in severance pay. By contrast, a railroad employee with only six years of service is eligible for 312 weeks of protection under the New York Dock conditions. The extremely generous nature of the New York Dock protections undoubtedly explains why many union comments recognize that the New York Dock conditions are appropriate for this transaction.

The TTD and the ARU claim in their comments that the New York Dock conditions are inadequate, because employees actually do not receive monetary benefits. TTD-3 at 5; ARU-23 at 59; see also Congressman Robert Menendez (unnumbered) at 4; Senator Arlen Specter (unnumbered) at 3. The assertion is simply wrong. TTD contends (TTD-3 at 5) that railroads "regularly expend massive resources to utilize every loophole at their disposal to evade actually making these protective payments." In fact, CSX and NS have expended tens of millions of dollars in protective benefits. For example, on CSX, between 1992 and 1996 alone, some \$45.2 million in New York Dock claims were paid. During this same period CSX made protective payments to 1,958 new New York Dock claimants. Moreover, from 1990 to the present, some CSX employees, who were affected by more than one transaction, have drawn New York Dock benefits for more than six years. For example, 111 clerical employees have received New York Dock benefits for ten consecutive years, 52 for nine consecutive years, and 92 for more than eight years. In addition, CSX has also paid

protection under collectively bargained protective arrangements where the employee chose the contract protection in lieu of New York Dock protection.

For its part, NS has paid out some \$18.2 million in New York Dock benefits (including \$4.7 million in separation payments) since 1982. This number does not provide the complete NS expenditure, because under the New York Dock conditions an employee has the right to elect other protective arrangements, if they are available. NS' total protective payments since 1982 have amounted to \$79.7 million.

If carriers improperly deny New York Dock claims, the employees may pursue arbitration under Article I, Section 11 of the conditions. The experience on NS and CSX regarding arbitrated claims shows there is no basis for the assertion that railroads have improperly avoided their labor protection obligations. For example, on NS, only 31 New York Dock cases have gone to arbitration under Section 11 since the 1982 decision in NS Control. Of those 31 arbitrated cases, NS' decisions were upheld in 24 cases or 77 percent.

What the facts demonstrate is that employees do submit unmeritorious claims. Recently, a local union official's campaign literature boasted that he had organized a job bidding process so that all employees on the seniority roster would be adversely affected and entitled to receive New York Dock benefits. See campaign flyer captioned "Vote for Jim Hantz, District Chairman, Lodge 697" (attached to this Rebuttal Joint Verified Statement as Exhibit F).

Only the TCU has asked for modification of the New York Dock protections. The TCU is requesting three modifications. First, the TCU asks that employees be provided a separation option if the position available would require relocation. Under New York Dock,

if an employee refuses to relocate to follow his work or to exercise obligatory seniority, he or she is not eligible for a separation allowance. Second, the TCU is requesting that the amount of the separation allowance be increased. Third the TCU is requesting that dismissed employees be provided "attrition protection." TCU-6 at 7. The TCU states that these enhancements are justified by the "unique circumstances of this transaction." Id. at 3. This type of condition has been requested in many other cases and it has been denied because of a failure to show unusual circumstances. In the instant proceeding, the TCU again has failed to demonstrate the "unusual circumstances" that would be required to justify departure from the standard labor protections. If anything, the modest job reductions associated with this transaction and the fact that nearly all dismissed employees are expected to be offered employment within three years show that there are no circumstances which would warrant the imposition of protection greater than New York Dock conditions.

Nor, as suggested by the TCU, would it be in the public interest to pay benefits to those employees who refuse to follow work to a new location. Such a modification of New York Dock would not only increase the labor protection costs of the transaction, it would deprive CSX and NS of knowledgeable employees. In effect, CSX and NS would be forced to pay twice for the performance of the same work, once through protection to the employee who refused a transfer and again to the new employee who has to be hired to perform the job at the new location. Also, the training cost for the new employees and the loss of the job knowledge of the current incumbents would be significant. Not only would the railroads' post-transaction operations be more efficient if the employees follow their work, the transferred

employees will continue to be productively employed at wage and benefit levels not easily matched in other industries.

To sum up, labor commentators have exaggerated the impact of this transaction. The number of job abolishments is relatively modest and comparable in number and kind to those in other consolidations. Adverse impacts will be ameliorated by New York Dock protections and the fact that positions will become available for dismissed employees.

II. Washington Job Protection Agreement

The ARU assertion that implementation of the Conrail transaction could occur through the Railway Labor Act ("RLA") bargaining procedures and/or the Washington Job Protection Agreement ("WJPA") is completely unrealistic. That is why the ICC directed that implementation of approved transactions is to occur through the New York Dock procedures, and not through the RLA or WJPA process. The ARU cannot seriously suggest that after 18 years of application of the New York Dock conditions in major merger or control transactions, the Board should now find that this transaction must be implemented through the WJPA instead. The applicable procedures are those in the Board's New York Dock conditions, not the procedures of the WJPA.

In all events, the WJPA is not a viable means for guaranteeing that implementing agreements will be expeditiously reached. Although WJPA § 13 provides for arbitration of disputes, it contains no method to ensure that arbitration will proceed or a decision will be reached in anything approaching a timely manner. Originally, the § 13 procedure was based on decisionmaking by a permanent joint management-labor committee (the Section 13 Committee), which, historically, included dozens of members. This process was unwieldy,

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cumbersome, and prolonged. Under that procedure the permanent Section 13 Committee would convene intermittently to attempt consensually to resolve the disputes on its docket. In order to reach arbitration, the Section 13 Committee would first have to declare that the two sides were deadlocked. Once the arbitrator was finally chosen, he would often sit with the full Section 13 Committee, which would have to convene again for that purpose. The sheer size of the Section 13 Committee and the extended procedures involved before an arbitrator could even be chosen left the entire process vulnerable to extensive delay.

In 1984, the parties modified the § 13 procedures so that cases can be submitted to, and heard by, a neutral arbitrator without the participation of the full Section 13 committee. But the § 13 process is still not a tested or effective means for obtaining implementing agreements. Even as modified, the § 13 process contains no meaningful timetables to generate prompt disposition at each stage: negotiation, selection of an arbitrator, conduct of the arbitration proceeding, and the rendering of an award. The § 13 procedures contain no mechanism to encourage the timely negotiation of agreements or to ensure that cases will not languish. Nor is the WJPA process subject to regulatory oversight by the Board, an integral part of the overall New York Dock process. The § 13 process also contains procedural restrictions ill-suited to the task of arriving at an implementing agreement. For instance, the practice is for the parties' submissions to the Section 13 Committee and the arbitrator to be restricted to the factual record developed on the carrier's property. By contrast, in a New York Dock arbitration, the parties typically submit extensive evidentiary materials that were not exchanged on the carrier's property.

Most telling, the current WJPA § 13 procedure is totally unproven as a means of implementing transactions. Only a handful of cases have ever been arbitrated under the current process. The last such arbitration occurred 10 years ago. And not one of these cases involved the arbitration of an implementing agreement.² WJPA, in fact, has fallen into disuse as a means of implementing coordinations. The last time an implementing agreement was actually imposed in arbitration under WJPA § 13 was in 1969, in a case that took nearly two years to reach a decision.

Further, in asserting that implementation should occur through the WJPA, the ARU are arguing for lack of uniformity as well as undue delay. Three unions -- TCU, BRS, and BMW -- are parties to a February 7, 1965 job stabilization agreement (the "February 7 Agreement"), which provides that for those unions disputes arising under WJPA would be resolved not through the § 13 process but through arbitration before an RLA Special Board of Adjustment, known as Special Board of Adjustment No. 605. This arrangement does not provide any better guarantee of prompt resolution of disputes than does the WJPA § 13 process itself. On average, it has taken two years from the time of submission for the last five WJPA disputes (most of which date back to the late 1970s or early 1980s) to have been decided by Special Board of Adjustment No. 605.³

² Only three cases have been submitted to the Section 13 Committee since adoption of the new procedures in September 1984. Even though none of these involved arbitration of an implementing agreement, it still took more than two years to reach a decision in one case, and more than seven months to reach decisions in the other two.

³ BMW has recently entered into another agreement that provides, inter alia, that disputes arising under WJPA will be resolved by a new RLA Special Board of Adjustment No. 1087 created by that agreement.

In sharp contrast to WJPA, New York Dock is a well understood, proven means of obtaining implementing agreements in a timely manner. Under New York Dock, carriers can operationally implement transactions and generate the public transportation benefits that unification is designed to achieve. The New York Dock procedures do not permit frustration of a transaction. The entire New York Dock process is to be completed within 95 days. Although delays do sometimes occur, the New York Dock procedures still ensure that transactions are implemented in a reasonably expeditious manner. The ARU suggestion that the parties follow WJPA § 13 is a transparent attempt to thwart implementation of the Conrail transaction, not promote it.

In this transaction especially, where the allocated Conrail assets are to be operated by CSX and NS, it is imperative that the New York Dock implementing agreement process apply. The uncertainty and delay inherent in the WJPA process would preclude both CSX and NS from being able to divide and separately operate the allocated portions of Conrail in anything approaching a timely fashion and could perhaps frustrate implementation for several years. Further, resort to WJPA would extend the payment of the significant carrying costs for this transaction while at the same time delaying the receipt by NS, CSX, and the public of the benefits of the transaction.

III. UP/SP Transaction

Most of the labor organizations attempt to tar CSX and NS with the service and safety problems encountered by the Union Pacific Railroad ("UP") in implementing its merger with the Southern Pacific ("SP"). However, such analogies are totally misplaced.

CSX and NS both have extensive experience in successfully implementing railroad consolidations. The ICC's decision in CSX—Control was issued in 1980. Its decision in NS—Control was issued in 1982. Both railroads have successfully consolidated the extensive railroad systems which came under common control as a result of those decisions. Each railroad has negotiated or arbitrated dozens of implementing agreements which have successfully combined operations with all affected crafts.

CSX's experience also includes the successful implementation of the recent acquisition of the assets of the Pittsburgh and Lake Erie Railroad in 1992 and the assets of the Richmond, Potomac and Fredericksburg Railroad in 1991.

CSX and NS have maintained their position as industry leaders in safety performance while implementing these consolidations. In the past seven years CSX has reduced its train accident rate by 64 percent and its injury rate by 79 percent. NS' train accident rate is less than half of that of the rail industry as a whole. The Verified Statement of Edward English filed in this proceeding recognizes that CSX and NS have had the lowest accident rates of Class I railroads over the last five years. Additionally, NS' employee safety record has improved each year for ten consecutive years, and in 1997 NS was awarded its eighth consecutive Harriman Gold Medal Award for employee safety.

CSX's and NS' experience in successfully implementing transactions while maintaining a position as industry leaders in safety performance will be applied to the Conrail transaction.

CSX and NS intend to obtain the implementing agreements that are necessary before beginning to operate the respective portions of Conrail allocated to them. These

arrangements will permit the expanded CSX and NS workforces to be fully integrated in the respective consolidated territories.

In addition, in the UP/SP merger, the UP was adding the 16,700-mile SP system to its 22,000-mile system. In this transaction, by contrast, neither CSX nor NS will have to assimilate an additional 16,700 miles of railroad into its existing system. Since Conrail's assets are being allocated, CSX and NS will each be responsible for operating only a portion of the present Conrail system. CSX will obtain operational rights on approximately 4,000 miles or less than a 25 percent increment to its existing 18,000-mile system. NS will obtain operational rights on approximately 7,000 miles or about 50 percent of its current 14,000-mile system. The remainder of Conrail's lines will be in the Shared Assets Areas, which will continue to be operated by Conrail for the joint benefit of both CSX and NS.

The ARU's claim (ARU-23 at 46) that CSX and NS will encounter dispatching problems is also without foundation. CSX does not intend to consolidate Conrail dispatching work with CSX work in the first three years. In its prior consolidation of dispatching work, CSX has pursued a cautious approach. For instance, Corbin dispatching work was not consolidated in Jacksonville for eight years. Former Conrail territory will continue to be dispatched from former Conrail offices with former Conrail manpower except for 4.5 miles of line between Washington, D.C. and Alexandria, Virginia. During this period, necessary technological improvements and changeovers will be carefully phased in so that the ultimate consolidation of dispatching at Jacksonville can proceed in a safe and efficient manner. For its part, NS will dispatch the portion of Conrail territory which it will operate using dispatching territories similar to those that have been in use on Conrail.

Additionally, CSX has a long history of safely operating a state-of-the-art consolidated dispatching center. CSX first consolidated dispatching in Jacksonville under a single labor agreement in 1988 through a New York Dock implementing agreement with the American Train Dispatchers Association, which is now the American Train Dispatchers Department of the BLE. During this same period NS has successfully and safely dispatched its trains from multiple dispatching offices. As noted above, during this period CSX and NS, despite their contrasting approaches to dispatching, have been the industry leaders in safety. It is obvious that the decision to dispatch on either a centralized or non-centralized basis does not significantly impact safety.

Additional employees are being hired and trained to meet projected service needs. For example, CSX intends to hire and have available at the start-up 350 additional train and engine service employees for its territory which will be consolidated with the allocated Conrail lines operated by it. Conrail plans to hire 109 additional train and engine service employees to work on the allocated lines which will be operated by NS, including the Southern Tier line in New York.

Furthermore, both CSX and NS have plans to hire additional train and engine service employees in 1998 for the remainder of their respective systems. CSX intends to hire over 1,000 such employees, and NS intends to hire approximately 1,000 employees. Both railroads are taking action to ensure they have available sufficient qualified and trained employees to fill the positions required for consolidated operations.

The ARU also claims that CSX has had problems implementing its coordination of train operations into its Eastern B&O Consolidated District ("EBOC") and thus will

experience UP-type problems in implementing the Conrail transaction. ARU-23 at 44. This will not be the case. First, the allegation that CSX forced employees to relocate throughout the EBOC district is not correct. No employee has been forced to relocate as a result of the implementation of this coordination of operations. Second, the allegation that CSX restricted engineers in the EBOC from exercising their seniority is not true. These employees are permitted to exercise their seniority consistent with the provisions of the governing agreement.

Some problems were encountered in the implementation of EBOC as a result of engineers voluntarily, and in some instances deliberately, using their expanded seniority to move to jobs for which they were not qualified. In most cases, these employees could have held jobs for which they were already qualified, but chose to attempt to burden the system by moving to other jobs. These moves did create a temporary problem in providing sufficient pilots to qualify the crews to operate trains over territory new to them. However, CSX has learned from this experience and will seek provisions in its implementing agreements that avoid its reoccurrence in the implementation of the proposed transaction. CSX also plans to have sufficient pilots available to qualify crews where the need arises.

CSX would also note that BLE's predictions that implementation of the EBOC would force many engineers to relocate in order to hold a position on the expanded district did not come true. In fact, no engineers have filed for moving allowances as a result of that coordination.

IV. Carriers' Appendix A Proposals

Some unions take issue, on a variety of grounds, with the carriers' proposals for implementing the proposed transaction, as presented in each carrier's Appendix A. In general, these unions question the necessity for the carriers' proposals to operate the allocated assets of Conrail under labor agreements other than those that currently are in effect on the Conrail properties. The unions also criticize specific aspects of each carrier's proposed post-transaction operations.

The following two sections of our statement address the unions' criticisms separately, first on behalf of CSX, and second, on behalf of NS. This format is dictated largely by the carrier-specific nature of the carriers' respective Appendix A's and of the union's comments on those proposals. NS' and CSX's proposals both are guided by the same fundamental New York Dock standards, as we describe jointly in Volume 1. But each carrier brings to the proposal its own management, experience, and operating practices. Each carrier will be allocated different parts of the former Conrail properties and workforces, and those parts will mesh with their existing properties, operations, and workforces in different ways. Most importantly, each carrier has its own Operating Plan designed to produce efficiencies from the consolidation of operations, facilities and equipment on its own expanded system. As we explain in the following sections, each carrier's Appendix A represents that carrier's best judgment regarding which agreements are appropriate for operating the respective Conrail properties as an integrated part of its own existing system.

A. CSX's Appendix A Proposal

As set forth in CSX's Appendix A, CSX proposes to integrate the allocated Conrail assets which it will operate into its current system in order to achieve the benefits of single-system integration and expansion consistently recognized as public benefits by the Board, its predecessor, and the courts. The ARU and TCU contend that the agreement applications proposed in CSX's Appendix A are not necessary. Their criticisms are based on a fundamental mischaracterization of CSX's proposals.

The ARU contend that CSX is trying to use the Board's New York Dock arbitration procedures to obtain single system-wide agreements for each craft, without having to go through the RLA bargaining process. This is not true. CSX is not proposing in this proceeding system-wide collective bargaining agreements for any craft. As is typical in Board-approved transactions, CSX is proposing to combine its existing operations, workforces, facilities and equipment with the allocated portion of Conrail's operations, workforces, facilities and equipment, so that these properties can be operated as a single, integrated rail system. This consolidation does not require system-wide agreements. It does require that all employees, facilities, equipment and operations from CSX and Conrail that are to be consolidated be placed under a single agreement for each craft. For example, as explained in CSX's Operating Plan, CSX is proposing to integrate train operations on the allocated portion of Conrail which it will operate with CSX's existing train operations in the same territory. In order to accomplish this integration, CSX is proposing three new senicity districts, two of which will include both CSX operations and former Conrail operations. CSX is not proposing that these three new districts be placed under a single system-wide

agreement each for locomotive engineers and trainmen. As explained in its Appendix A, CSX is proposing that two of the districts be placed under CSX's agreements applicable to the former B&O and that the third district be placed under the Conrail agreements. Clearly, CSX is not proposing in this proceeding to create new system-wide agreements. The unions' comments do not in fact identify any instance where CSX is proposing to create a system-wide agreement for any craft.

Several unions argue that, because CSX already operates successfully with more than one agreement applicable on its system in each craft, it is not necessary to place CSX and Conrail employees who work together under a single agreement. ARU-23 at 128, 155; TCU-6 at 8; IAM-4 at 3. While CSX continues to administer multiple agreements, representing former railroads which are now part of its system, it does not usually administer multiple agreements at a facility or in a territory which has been coordinated pursuant to Board or ICC authorization. Such coordinated operations are typically placed under one former railroad's agreement. This has been CSX's practice since the ICC first approved CSX's creation in 1980.

The EBOC is a good example of such a consolidation. CSX conducted train operations on the former B&O, C&O, WM and RF&P as if they continued as separate railroads, each with its own agreements. CSX decided in 1994 that this was not an efficient way to realize the efficiencies of common control of these carriers. In order to operate the rail lines of these former carriers in a fully integrated manner in this geographical area, it made operational sense to consolidate the train and engine employees into consolidated seniority districts covering the area. An arbitrated New York Dock agreement (the so-called

O'Brien Award) placed all the train and engine employees working in the EBOC on consolidated rosters (one for trainmen and one for engineers) under the former B&O agreements.

There are many other examples where CSX placed employees, operations, facilities, or equipment, which were coordinated pursuant to an ICC or Board authorized coordination, under a single railroad's agreement. CSX has had consolidated dispatching at Jacksonville for almost ten years. All of the dispatchers working at Jacksonville have been consolidated under a single agreement with the ATDD. Heavy car repair has been consolidated at Raceland, Kentucky under the former C&O's agreements with various shopcraft unions. A list of these and other examples of consolidations on CSX where employees in each craft were placed under a single agreement is attached to this Rebuttal Joint Verified Statement as Exhibit G.

The TCU comments assert that the norm on merged carriers is to leave employees under multiple agreements. TCU-6 at 8. However, as the above discussed examples show, consolidating employees from various railroads under a single agreement is the usual method for implementing approved transactions. This is equally true for clerical employees represented by the TCU. On CSX, hundreds of clerical employees -- 208 from the L&N, 224 from the B&O, and 424 from the C&O -- have been transferred from various points on the former B&O, C&O, L&N and other carriers to CSX's general offices at Jacksonville, where they have been placed under the SCL-TCU agreement.

The TCU Comments also suggest that, after the mergers of Burlington Northern and Santa Fe and of UP and SP, clerical employees were left under their former agreements. As

on CSX, at locations where work was consolidated on these merged carriers, clerical employees were placed under a single agreement. Even before its acquisition of the SP, the UP had a single system-wide collective bargaining agreement with the TCU, consolidating clerical work on the various carriers which were then part of UP. We understand that, since its acquisition of SP, UP has transferred nearly 800 former SP clerical employees from San Francisco and other former SP locations to Omaha and St. Louis on UP. In each instance the employees became covered by UP agreements applicable to those locations. These coordinations were accomplished pursuant to a New York Dock implementing agreement negotiated between UP and TCU.

CSX plans to achieve those kinds of efficiencies by combining portions of its operations with those of the allocated portion of Conrail it will operate. For example, CSX's Operating Plan explained the efficiencies from the multiple routings CSX will have after the transaction between Chicago and Cleveland, Chicago and Toledo, Chicago and Detroit, Cleveland and Cincinnati, and Cincinnati and St. Louis. CSX/NS-20 at 486. In order to realize the efficiencies of these multiple routings, CSX must be able to use CSX or former Conrail engineers interchangeably, as an integrated workforce, on these routings. However, it would be very difficult to blend former Conrail and CSX train crew employees if they remained subject to their prior agreements. The former Conrail employees would claim that they have the exclusive right to operate trains over former Conrail track, even though that track has become part of the CSX system. The ARU does not actually deny that CSX must be able to consolidate CSX and former Conrail engineers under one agreement in each of

three new seniority districts it is proposing for engineers if it is to realize the efficiencies described in the Operating Plan.

Similarly, operational problems result from the inability to consolidate crew calling. After a transition period, CSX plans to consolidate its crew calling on the allocated portion of Conrail with its center in Jacksonville. If all crew callers remained under separate agreements, the former Conrail crew callers would most likely claim that only they could call the crews that operated over the former Conrail lines. If CSX could not coordinate this crew calling work, a balkanized, inefficient operation would result at the crew calling center.

As explained above, CSX's approach is consistent with its own prior practice and with the practice of the industry in general. The unions incorrectly have characterized CSX's proposal as an attempt to abrogate or annul the Conrail agreements. The Conrail agreements are not being annulled or abrogated. They will continue to apply in the Shared Assets Areas, which will continue to be operated by Conrail for the benefit of CSX and NS. The Conrail agreements will also continue to apply on certain of CSX's operations, as described in CSX's Appendix A.

CSX did not select the collective bargaining agreements it has proposed for coordinated areas out of a desire to abrogate Conrail agreements.⁴ CSX's Appendix A represents its best judgment regarding which agreement was appropriate for CSX's consolidated operations. In arriving at its proposed selections, CSX took into account its

⁴ Three quarters of the crafts had higher average individual compensation on CSX than on Conrail, based on 1995 data. Only three unions have higher average earnings on Conrail than on CSX: BMW, BRS, and UTU-RYA. In each case, the higher average earnings for these unions resulted from a significantly higher incidence of overtime on Conrail.

Operating Plan, individual method of operations, and past experience with approved transactions. CSX was also guided by the many New York Dock precedents, some on CSX's own properties, where arbitrators approved the carrier's selection of the single collective bargaining agreement to be applied in a coordinated area.

CSX is proposing to apply the agreement from the carrier which accounts for the predominant number of employees in the coordinated area. Using this rationale, CSX specified in its Appendix A which collective bargaining agreement would be applied for many of the crafts in the consolidated areas.

The ARU also do not take serious issue with CSX's proposed agreement modifications in the shopcrafts area. The ARU repeat their assertion that it is not necessary to place employees under a single agreement, because CSX operates with multiple agreements for each shopcraft now. ARU-23 at 150. However, as in other areas, CSX typically does not apply multiple agreements at locations which have been coordinated. For example, CSX consolidated freight car heavy repair work from its shop on the former SCL in Waycross, Georgia, at its Raceland, Kentucky, shop on the former C&O. All employees and work were placed under the C&O shopcraft agreements. CSX's locomotive heavy repairs are performed at its Huntington, West Virginia, locomotive shop on the former C&O, and all employees performing work there have been placed under the former C&O agreements.

The ARU do not deny that, in order to efficiently manage and repair former Conrail locomotive and cars as part of an integrated fleet, CSX must be able to repair these

locomotives and cars at its existing facilities.⁵ With respect to repairs at locations on portions of Conrail to be operated by CSX, the ARU shopcraft unions also do not quarrel with CSX's approach of determining the applicable agreement based upon the predominant number of employees. However, they assert that CSX does not always follow that methodology, because CSX is proposing to apply former B&O or C&O agreements at locations where, according to the ARU, former Conrail employees will predominate over CSX employees. ARU-23 at 135-137. CSX intends to follow a consistent approach. However, CSX is considering a geographic approach rather than the specific points. In any event, the ARU is clearly wrong in asserting that "CSXT does not have a predominate number of employees at any of the [shopcraft] locations at which it intends to apply its CBAs." ARU-23 at 135. CSX employees will continue to predominate, for example, at its Raceland heavy repair car shop and its Cumberland locomotive repair shop.

Regarding CSX's proposal to centralize dispatching over the portion of Conrail to be operated by CSX at CSX's dispatching center in Jacksonville, the ARU merely assert that the consolidation of such Conrail dispatching with CSX's "does not demonstrate that a public transportation benefit would be obtained from elimination of the ATDD-Conrail CBA." ARU-23 at 153. The ARU also allude to alleged safety problems found by the FRA at UP's centralized dispatch center.

^{5/} CSX will not operate Conrail's heavy locomotive and freight car repair facilities, which will be operated by NS after the transaction.

The ARU do not deny, though, that efficiencies result from centralized dispatching. Moreover, CSX has consolidated dispatching at Jacksonville since 1988 without any safety problems.

And, the ARU certainly do not deny the necessity for all dispatching work on CSX to be done under CSX's agreement with the ATDD applicable at Jacksonville. The ATDD agreed in 1988 that all dispatching centralized at Jacksonville will be done pursuant to that agreement.

Like the ARU, the TCU asserts that CSX cannot show a necessity to place employees under a single agreement, because CSX currently has several agreements with the TCU. The TCU argues, without any support, that "multiple collective bargaining agreements among merged carriers are the norm in the industry, including the recent BN/Santa Fe and UP/SP mergers." TCU-6 at 8. To the contrary, as shown in the discussion above, the norm is to place employees and work in consolidated functions under a single agreement. This is equally true for clerical work and employees.

For example, CSX has clerical agreements applicable to the former B&O, C&O, L&N and SCL. Where the work of these clerical employees has been coordinated, they have been placed under a single agreement pursuant to a New York Dock implementing agreement. Thus, where clerical employees from these former railroads have been consolidated on a merged seniority roster in Jacksonville, they have all been placed under CSX's clerical agreement covering the former SCL. The TCU has never questioned the need to place employees working in operations coordinated from several railroads, which have come under common control, under a single agreement on CSX. Indeed, TCU admits that

employees can be consolidated under one railroad's agreement. TCU-6 at 18 ("If work is transferred, the agreement at the receiving location is normally applied."). In fact, TCU does not object to the application of the CSX-TCU agreement (former SCL) to former Conrail clerical work that is coordinated with CSX clerical work performed at CSX's Jacksonville headquarters.

CSX is proposing to create a single field seniority district for clerical employees working on portions of Conrail operated by CSX and adjacent portions of CSX. A "field" seniority district simply refers to clerical work done outside of the carrier's headquarter's location. The TCU does not disagree with CSX's proposal that the Conrail-TCU agreements apply to this district; rather, the TCU contends that CSX's proposed field district is unnecessarily large and unprecedented. TCU-6 at 17. CSX has previously consolidated numerous clerical districts into much larger districts covering several states.

The TCU contends that a consolidated field district is unnecessary, because CSX is not proposing to transfer CSX and former Conrail employees between locations in the new field district. TCU-6 at 17-19. However, CSX is proposing to consolidate the work done within this district, which is performed by these employees. Conrail clerical employees working today in the area covered by the proposed field district only work on tasks related to Conrail. After the transaction, they will work on tasks related to both CSX and the allocated portion of Conrail operated by CSX. In order to assign clerical work in the field as part of an integrated operation, CSX must be able to assign clerical work without regard to whether the clerical employee is a CSX or former Conrail employee. Only in that fashion can CSX

achieve the efficiencies in clerical operations contemplated in its Operating Plan and made possible by the proposed transaction.

Several unions claim that CSX cannot show necessity to apply a single agreement to the consolidated territories, because it did not perform studies of the Conrail agreements. However, CSX did not need to perform special studies. CSX has had more than fifteen years experience with coordinating the operations, employees, facilities and equipment of the railroads which it controls. Moreover, it is obvious that a railroad cannot achieve the efficiencies of consolidation, if collective bargaining agreements on the pre-consolidated carriers require that they continue to be operated as separate carriers.

Finally, it is no answer to assert, as the ARU do, that work and employees can be integrated by modifying only scope and seniority provisions in agreements. ARU-23 at 93 n.18. First, scope and seniority provisions are integral to and interrelated with other provisions dealing with rates of pay, rules and working conditions. Second, leaving employees, who are supposedly working together in an integrated operation or facility, under different work rules will frustrate efficiencies, as we have explained.

Imposing multiple agreements where work would be coordinated would not just make the coordination of work in the area unwieldy but would totally thwart the benefits of the transaction. CSX could never fully attain the operational efficiencies of the transaction if it had to manage work and supervise employees under multiple and sometimes conflicting agreements. Some specific examples are as follows:

- Seniority rules - Employees on a dovetailed roster would be subject to conflicting rules related to bidding, assignment, displacement and other basic procedural matters.

For example, under the B&O BMW Agreement (Rule 39) new positions and vacancies must be "... bulletined within fifteen (15) calendar days previous to or following the dates such positions are created or vacancies occur, except that temporary vacancies need not be bulletined until thirty (30) calendar days from the date such vacancies occur". This is inconsistent with Rule 3 of the Conrail BMW Agreement which provides in Section 3(a), "All positions and vacancies will be advertised within thirty (30) days previous to or within twenty (20) days following the dates they occur." Similarly, the period of time advertisements run under the B&O and Conrail BMW Agreements are not the same. On Conrail, under Rule 3(b) advertisements are "... posted on Monday or Tuesday and shall close at 5:00 P.M. on the following Monday". On the B&O, under Rule 40(a) bulletins are posted for a period of ten days, with no specific requirement to post on any particular day. The conflicts between these two agreements are repeated under almost every conceivable seniority move that could occur, such as force reductions and displacements. Under the Conrail BMW Agreement Rule 4, Section 2(b), "An employee entitled to exercise seniority must exercise seniority within (10) days after the date affected." The Conrail Rule further provides, "Failure to exercise seniority to any position within his working zone (either divisional, zone or Regional) shall result in forfeiture of all seniority under this Agreement, except employees who decline to exercise Regional seniority in their Work Zone shall forfeit such Regional seniority". Under B&O Rule 44 employees who fail to exercise displacement rights are simply, "considered furloughed" and their seniority rights are not at risk until they are

recalled and only then when recalled " . . . to a position with headquarters located within thirty (30) road travel miles from his home" In other words, if the conflicting agreements survived, chaos would reign.

- Classification of work - While the BMW Agreement on both the B&O and Conrail generally cover employees working in the Track and Bridge and Building Departments, and the BRS Agreements generally cover employees in the Signal Departments, the basic classification of work rules are not identical. Accordingly, work that is normally assigned to one group of employees on Conrail, is not assigned to the same group of employees on the B&O. Switch heaters are maintained by Signalmen on the B&O and by Electricians working under the IBEW Agreement on the Conrail lines being operated by CSX. Moreover, the B&O BMW Agreement contains specific classification of work rules and strict lines of demarcation between classifications, whereas the Conrail BMW Agreement (Rule 19) permits employees to ". . . be temporarily assigned to different classes of work within the range of his ability".
- Classification of trains enroute - This rule applies to train and engine crews who depart their terminal and then are required to classify the cars in their train (switch them into different positions to create blocks or switch blocks of cars into different positions) at intermediate points or to reclassify their trains when no cars are picked up or set out. The B&O agreements do not restrict such intermediate point switching, as Conrail agreements do.

- Deferments - This rule applies to runs which are advertised to go on duty at a certain time. When trains are delayed and they will not be ready at the designated time, the rules require that the crews be notified of the delay prior to the time they are to show up at the reporting point. The Conrail rules require notifying them of the delay and the time to which their start is to be deferred within the advance calling time in effect at the particular terminal (60, 75, 90, etc., minutes, whatever the calling time is to allow the employee to get ready and report). The B&O rule provides for 1 hour. The Conrail rule allows a deferment of unspecified length; the B&O rule allows a maximum of 3 hours and then the crew goes on pay.
- Lap back - This rule allows or restricts the carrier from turning a train and engine crew back to a location that it just passed in the normal progress of its train, which turn is not part of the advertised work. The B&O agreement has no rule covering the lap back. The Conrail agreement has a rule which requires the carrier to pay a penalty of the round trip mileage traversed back in addition to the crew's normal compensation for pool freight crews. If the crew is regularly assigned, then the mileage is included in the actual miles run and paid for on a continuous time basis.

The only practical way to administer conflicting agreements would be to segregate the work force in the common geographical area which would effectively nullify any savings or efficiencies that would normally flow from a coordination.

Finally, there are significant administrative efficiencies from being able to apply a single labor agreement to employees performing consolidated work. There are costs to applying multiple agreements to employees. Supervisors and other employees involved with

the administration of agreements must be familiar with disparate work rules in various agreements. This complexity invariably leads to mistakes, which result in grievances and additional costs for the carrier.

B. NS' Appendix A Proposal

NS' Appendix A is a fair and reasonable proposal for the selection and assignment of forces for NS' proposed operation of the former Conrail properties. On the basis of its extensive experience with railroad consolidations, NS developed Appendix A in order to address the immediate imperatives of operational implementation and also to accomplish the objectives of network expansion and single-system efficiency detailed in NS' Operating Plan. As the ICC and the Board and courts have long recognized, it almost always necessary to modify labor agreements in order effectively to implement railroad consolidations. This transaction is no exception.

The changes that NS proposes in Appendix A are, if anything, more necessary than in previous major railroad consolidations. The proposed transaction, unlike the typical railroad consolidation, will divide the properties of a single carrier into three parts, two of which will be operated by and need to be integrated into the existing systems of competing railroads. Following that division, the former Conrail property could not continue to be operated in place, as it is now. This circumstance makes the selection and assignment of forces among the Applicants' current employees an immediate operational imperative: NS and CSX must obtain the implementing agreements that are necessary to permit them to be able to operate allocated Conrail properties.

For similar reasons, the necessity of selecting appropriate labor agreements is obvious. NS will not be operating Conrail in its current form. It would not be possible for NS simply to operate allocated Conrail properties under the agreements currently in place on Conrail. Those agreements provide for the operation of a single integrated railroad by employees of a single carrier, a structure fundamentally at odds with the proposed transaction. This carrier cannot simply step into the role of employer under the previous owner's labor agreements.

The operational imperatives arising from the division of Conrail properties could not be resolved by simply narrowing the scope of the Conrail agreements to correspond to the NS-allocated properties which NS will operate. Many of the terms of Conrail's agreements, including terms that the unions contend are particularly worthy of preservation, are integrally tied to Conrail's existing size and geography. Existing scope and seniority rights (ARU-23 at 108) and bonuses and retirement benefits tied to the financial performance of Conrail (*id.* at 107), for example, cannot be applied on the fragmented properties that NS will operate as integral part of a completely different railroad system, in an environment in which Conrail itself will no longer be operating a major railroad.

By dividing the Conrail properties, the proposed transaction fragments Conrail's existing seniority districts. If the existing Conrail agreements were left in place unchanged, NS' ability to use equipment and personnel would be artificially and inefficiently confined. The resulting operational inefficiencies would be particularly pronounced with respect to territorially confined maintenance and construction functions, such as the work performed under Conrail's agreements with BRS and BMW. The BMW agreement divides the

Conrail property into three tiers of geographic territories over which certain types of M of W work are performed. For purposes of major program production work (e.g., laying rail), the property is divided into two parts (eastern and western regions). Within those regions, the property is subdivided into six "zones," which confine the work of other production gangs (e.g., timber and surfacing gangs) and their equipment. Finally, the six zones correspond to 18 separate seniority districts for purposes of day-to-day line and other maintenance functions. The proposed transaction will divide both of Conrail's M of W regions, all six M of W "zones," and 11 of the 18 M of W districts among the portions of Conrail to be operated by the Applicants and the Shared Assets Areas. The properties to be operated by NS therefore will include fragments of these various Conrail M of W geographic territories. The Conrail/BMWE agreement was never intended to apply to properties after such fragmentation and could be "preserved" only at great cost. The Conrail properties to be operated by NS, standing alone, as would occur if the Conrail/BMWE agreement applied, would consist principally of territories that would not support a season's production work.

Similarly, the proposed transaction will fragment most of the existing seniority districts for signals and certain communications functions. Conrail's current agreement with BRS provides for 22 separate seniority districts. Employees subject to that agreement are required to protect assignments within those districts which do not require a change in residence.⁶ The properties to be operated by NS will include parts of 11 districts that will

⁶ Under the Conrail agreement, a change in residence is defined to mean a change to a work location more than 30 miles from the employee's former work location and farther from the employee's residence than his former work location; or to a work location more than 30 miles from the employee's residence and farther from his residence than his current work location.

be split among NS and CSX and/or the Shared Assets Areas. If the Conrail/BRS agreement applied, the employees performing signal and communications work under that agreement would be restricted to truncated, unworkable seniority districts. Accordingly, any effort by NS to operate the allocated properties under Conrail's existing BRS agreement would be handicapped by territorial limitations that bear no relation to NS' post-transaction operations.

Beyond NS' immediate operational needs, Appendix A also addresses the objectives of operational integration set forth in NS' Operating Plan. NS intends to take full advantage of opportunities for single-system improvements by integrating the operations of former Conrail properties into its own highly successful operations.

The cornerstone of the NS operating plan is its "hub network system," under which NS plans to integrate the operations of former Conrail properties into a series of hubs grouped into three separate network systems. Each system will be comprised of combinations of existing NS and Conrail routes radiating from central hubs, which were selected (and may be shifted over time) to reflect major traffic flows. Within the hub network system, NS intends to operate run-through freight trains, combine duplicative functions and facilities, and consolidate yard operations to improve yard efficiency and the speed and responsiveness of its train operations. To function, the hub network system depends upon NS' ability to operate through existing terminals, to eliminate interchange movements, and to route trains according to traffic type.

All of these elements will necessitate extending the appropriate NS agreements and practices (with appropriate accommodations) to cover the former Conrail properties included in each hub network system. This will create unified workforces, which may be utilized in

the combined train and yard operations without regard to former corporate boundaries. In addition, NS needs to realign and merge existing seniority districts and crew districts to match the hub design and to combine extra boards that provide crews for trains operating in different directions. None of this would be possible if NS were required to operate each hub network system using all of the agreements currently in effect on the properties that will comprise each hub network. To the contrary, if all agreements applied, NS would be required to make crew changes at the borders of existing crew districts, to engage in duplicate handling and interchange-type operations between existing terminals, and otherwise to operate the Conrail properties as a separate railroad rather than as part of the NS system.

Implemented in accordance with Appendix A, the hub network system will produce immediate and substantial improvements in the speed and efficiency of train operations by extending routes and facilitating the efficient use of track, workforces, and equipment. The Appendix A proposal will permit NS to take advantage of the multiple routings made possible by the combination of NS and Conrail track which NS operates. Under Appendix A, NS will be able to offer efficient single-system service in the corridor between Chicago, Cleveland, Pittsburgh and Harrisburg by routing trains according to traffic type, service demands, and other operational considerations, rather than by prior corporate ownership. If NS were to attempt to operate under the agreements currently in effect on the lines comprising that corridor, through freight operations would involve twelve separate seniority districts, which would dictate the routing of trains according to crew composition rather than service needs. Under NS' plan, the number of seniority districts would be reduced to four, thereby significantly enhancing the flexibility and efficiency of operations in this critical

corridor. Likewise, throughout the Midwest, NS will use the NS track and the allocated Conrail track interchangeably, making possible shorter routings and segregation of traffic by type.

NS also intends to make the most efficient use of the new properties it will operate and the unified workforce by combining crew districts and eliminating crew changes at existing terminals. NS intends to operate single-crew through freight service between Bellevue, Ohio and Elkhart, Indiana, via a new connection at Oak Harbor, Ohio, a route comprised of both existing and allocated track. New single-crew service also is planned between Toledo, Ohio and Peru, Indiana and between Elkhart and Peru. These train operations will be substantially faster and more efficient than would be possible if existing labor agreements were applied to the allocated properties.

Similar efficiencies will be achieved through yard consolidations at the several hub locations where NS and Conrail currently maintain yards. Common point terminals include Toledo, Cleveland, Chicago, Cincinnati and Columbus. By combining those yard operations under the appropriate NS agreements, NS will reduce the delay, cost, and risk of loss associated with duplicate handling and transfer of rail cars between yards.

NS' proposed coordinations are not limited to train operations. Proceeding with due prudence and at an appropriate pace, NS intends to take advantage of opportunities to achieve efficiencies by coordinating a range of other functions, as described in our Operating Plan. For example, NS intends to combine clerical functions through both the consolidation of yards and terminals at common points and the centralization and relocation of clerical functions (such as yard operations, waybilling, and demurrage) from their former Conrail

points to the respective NS facilities. NS intends to integrate the centralized yard functions for the allocated Conrail properties which it will operate (performed by approximately 200 TCU-represented clerks) in NS' centralized yard operations center at Atlanta, Georgia, where the work will be performed under the NS/TCU agreement already applicable to the center. In accordance with the Operating Plan, the Atlanta CYO center will monitor train and car movements for all yards on the NS system, including allocated Conrail facilities which NS will operate. NS and former Conrail employees will monitor car movements without regard to former corporate boundaries.

Likewise, it is necessary to apply a single labor agreement in order efficiently to maintain an integrated equipment fleet, as described in NS' Operating Plan. NS intends to consolidate heavy locomotive repair work so as to provide functional specialization based on manufacturer, sending General Electric locomotives to NW's Roanoke facility and General Motors locomotives to the former Conrail shop at Altoona. This will require operating both shops under a single set of agreements in order to enable NS to direct work based on functional specialization, rather than on the prior ownership of the locomotives, and to provide needed flexibility to shift locomotive work in response to changes in demand. Likewise, NS will consolidate the car repair facilities at NS-Conrail common points by unifying parts of the work and workforce of the former Conrail with the NS work performed under the NW shop craft agreements. Finally, NS intends to integrate shop craft personnel at field locations in order that running repairs may be made efficiently, without regard to the original ownership of the line on which the equipment is located at the time of the needed repair. Absent such consolidation, NS could be required to maintain duplicative forces at

common points and on parallel lines that can be staffed efficiently only with a unified workforce. NS properly plans to avoid such inefficiencies by placing allocated Conrail properties under the NW shop craft agreements.

Equally important is the integrity of the infrastructure for track and signals. NS' Operating Plan also calls for integrating M of W work in order to achieve efficiencies in work force allocation and equipment use. NS intends to integrate allocated properties which it will operate into its designated production gang ("DPG") program. NS uses the heavily mechanized DPGs to perform major programmed track renewal and production work, such as timber and surfacing work and laying rail, which require the use of specialized machinery operated by qualified personnel. DPGs travel across broad territories, generally following the seasons south to north in order to make most efficient use of the expensive equipment and employee expertise needed for such work. NS intends to expand its existing DPG territories to include the allocated Conrail properties in order to make the most efficient use of its DPGs. To do so, it is necessary that NS extend the NW/BMWE agreements to the allocated Conrail properties which it will operate.

Conrail has no comparable DPG program. If the Conrail/BMWE agreement were adopted on the allocated property operated by NS, NS' DPGs could not be operated on the property. Under the Conrail/BMWE agreement, production projects that span existing seniority districts could not be performed by a single gang. Rather, a group of employees working on a production gang could stay with a project only to the limits of that group's seniority district; at the border, the existing gang would have to be disbanded, and a new gang, made up of employees holding seniority on the portion of the former Conrail territory

operated by NS, created and trained. Such territorial restrictions would substantially slow production work and increase operating costs by reducing productivity in workforce and equipment utilization. Indeed, given that Conrail's seniority districts will be fragmented, as earlier discussed, application of the Conrail/BMWE agreement to allocated Conrail properties would be a practical impossibility. To avoid such inefficiencies, NS properly proposes to extend the NW/BMWE agreements to cover allocated Conrail properties which it will operate.⁷

Finally, Appendix A appropriately and of necessity promotes uniformity in standards, practices, and rules. The labor agreements on Conrail and NS contain various differing and conflicting rules regarding how work must be allocated between crafts of employees. As ARU acknowledge in their comments (ARU-23 at 109), the Conrail and NW shop craft agreements contain different, and conflicting, rules regarding how work must be allocated between the various crafts. Likewise, communications work is apportioned between BRS and IBEW in a significantly different manner on Conrail than on NS. Perpetuating these differences on the combined operation would complicate training and supervision of employees, create conflicts over work jurisdiction, and potentially result in delays in

⁷ NW's DPG program was established in 1993 pursuant to the recommendation of Presidential Emergency Board 219 ("PEB 219"). PEB 219 found that DPGs were essential to the efficient use of certain production gangs and equipment and that, in order to function, DPGs should work under certain flexible work rules, such as flexible start time and work site reporting rules. In addition, in order for the DPGs to function as intended on the acquired properties, it is necessary that the DPGs be operated in tandem with the NW schedule agreement, which, unlike the Conrail/ BMWE agreement, contains the flexible work rules that PEB 219 found essential to the operation of DPGs.

performing repairs. NS appropriately proposes to avoid such problems by operating the allocated properties under the NW agreements.

Some of the unions have criticized NS for citing, among the justifications for the changes proposed in Appendix A, the promotion of uniform payroll, claims handling, and training processes and procedures. The unions seem to contend that such considerations, by definition, are insufficient to establish necessity under New York Dock standards. In addition, they contend that the fact that NS currently operates with multiple labor agreements refutes any suggestion that a single agreement is strictly necessary to efficient operations. ARU-23 at 129; TCU-6 at 8. The unions are wrong.

First, there is no inconsistency in NS' proposal with respect to the number of agreements that will be applied. It is true that for many crafts NS currently administers (and will continue to administer) more than one agreement per craft. NS' labor agreements generally cover only the NSR or NW properties, and some agreements govern only particular territories within the two properties. However, with few exceptions involving very few employees, facilities and operations that have been consolidated have been placed under a single agreement per craft. To that end, in previous New York Dock consolidations, NS has sought and obtained implementing agreements that place combined workforces under single agreements. NS proposes to do the same in this case.⁸ This will enable NS to realize the

^{8/} NS proposes to place the combined operations under appropriate NS agreements. NS proposes to apply particular agreements to particular crafts and/or geographic regions in order to achieve appropriate unified workforces, based on considerations of geography, workforce size, and operational efficiency. For the most part, the unions do not appear to challenge the selection of the particular NS agreement proposed, as much as they challenge the proposal to use any NS agreement rather than a Conrail agreement.

efficiencies of applying uniform rules and procedures to its combined workforce, an objective perfectly consistent with New York Dock standards and NS' own practices.

The unions' effort to trivialize the significance of uniform rules and practices also is unavailing. Maintaining multiple staffs and systems to preserve administrative features of labor agreements imposes costs that are no less real in terms of their impact on carrier operations than are the costs associated with maintaining other duplicative facilities and functions. Differences in items such as crew calling rules, claims handling procedures, and the rules governing rights to work assignments and filling vacancies necessitate duplicate computer programming, additional staffing levels, and unnecessary complication and confusion, while producing no corresponding benefits.

Likewise, NS reasonably considers it necessary to extend its first-rate training facilities and methods to the portions of Conrail which it will operate. This proposal is driven not only by bottom-line efficiencies, but by considerations of employee and public safety. NS brings to its management of the former Conrail property a consistently successful record in all measures of railroad performance and safety, including rates of bad orders for locomotives, employee injuries, and train incidents and derailments. In train operations alone, achieving NS' personal injury ratios and track-related derailment incident levels will contribute to approximately \$20.7 million in annual savings. There is no reason why such savings should be considered any less necessary than equivalent savings achieved by eliminating unnecessary crew changes and car handling.

V. Comparability Of Labor Agreements

Some unions complain that CSX and NS did not let them pick the agreement to be applied in coordinated areas. However, the Applicants, not the unions, are responsible for developing their Operating Plans. The need for single collective bargaining agreements flowed from the new and changed operations described in the Operating Plans. We would not expect the unions to design the Applicants' Operating Plans. As explained, we selected the agreement proposed for each coordinated area based on our individual assessments of which agreement best implemented that particular coordination.

Contrary to the arguments of some unions, we did not propose to replace Conrail agreements because they were "superior" than the comparable CSX or NS agreement. The CSX, NS and Conrail agreements contain many similar provisions. While there are sufficient differences between the rules in the Conrail, CSX and NS agreements to make it impracticable to apply multiple agreements to the same integrated workforce, there are also many similarities between railroad agreements. The fundamental economic terms are, for the most part, the same on NS, CSX, and Conrail, because they were the product of national bargaining or followed the national pattern. For example, most of the provisions in Conrail's, CSX's and NS' train and engine service agreements resulted from World War I Director General's General Order 27, which laid the foundation for the separation of road and yard work and set forth the rules governing each. Since 1964, national agreements have brought further uniformity to the road and yard rules. These national agreements provide uniformity in matters such as pay, engine standards, hiring, promotion, vacation, personal leave time, off track vehicle insurance, health benefits, and lodging and meal allowances.

Where there are differences in the wording of similar rules between the Conrail agreement on the one hand and a CSX or NS agreement on the other, we do not understand how the unions can make the qualitative judgment that the Conrail agreement is better. For example, the mechanical department shopcraft agreements with CSX, NS and Conrail all contain scope and/or classification-of-work rules designed to preserve certain work for the employees in the various crafts.

The ARU make a blanket allegation that virtually all Conrail disciplinary rules are more protective than those on CSX and NS. ARU-23 at 30. However, while not identical, the rules of all three carriers are premised on the same concepts -- due process and discipline for just cause. Any differences in the agreements are not significant. For example, with respect to train dispatchers, the Conrail agreement provides for a more expedited disciplinary process, particularly in the initial stages, but all agreements allow for postponements, and postponements are common (often at the union's request if the time limits provide an insufficient amount of time to prepare a defense). Even with these time differences, however, the total amount of time to progress an appeal all the way to a tribunal under all dispatchers' agreements, if each appeal and decision uses the full period allotted, is the same: one year and one month (except that under the NSR/ATDD agreement, the full period would be ten months). Moreover, Conrail, CSX and NS employ similar informal practices regarding employee performance issues (coaching, counseling, etc.), and resort to formal disciplinary procedures only if such efforts prove to be unsuccessful.

Many of the purported "benefits" of the Conrail agreements, as opposed to the CSX or NS agreements, are illusory. For instance, the ARU contend (e.g., Buchanan Decl. ¶

16) that Conrail's agreements with SMWIA afford employees greater protection against loss of earnings by entitling furloughed employees to bid on positions system-wide. In fact, the NW shop craft agreements confer substantially the same right by enabling furloughed employees (per Rule 28 of the 1939 master shop craft agreement) to fill openings at other points while retaining seniority at their home points. Similarly, the ARU mischaracterize the NW rule regarding overtime earnings for signal employees. Contrary to the assertion of the ARU (Mason Dec. ¶ 24(c)), NW's BRS agreement provides (Rule 306(d)) for double time pay for work in excess of sixteen hours.⁹ Finally, a number of the Conrail agreement rights that ARU contend are not conferred by the NS agreements -- such as a 401(k) savings plan and a commitment to adhere to federal and state civil rights and safety and health laws (ARU-24, Meredith, McAteer, Heinz Decl., at 13) -- are in fact provided to NS employees as a matter of company policy or statutory mandate.

The ARU also mischaracterize the differences between CSX and Conrail agreements. For example, the ARU point out that the Conrail-BRS agreement provides "special relocation benefits" for employees allowed to "transfer to a position at a work location where the Company has a need to hire new employees, provided any vacancy which results therefrom at the employee's former work location does not create a need to hire another employee." We have been informed that opportunities for such assistance have been extremely limited. In fact, the agreement provision has not been used since its adoption in August 1996. In addition, the inference in Mr. Mason's declaration (ARU-24 at 172, ¶ 20) that the Conrail-

⁹ The ARU also erroneously contend (ARU-23 at 115) that NW's shop craft agreements do not provide for the payment of overtime wages when a relief employee works in excess of eight hours per day or forty hours per week.

BRS agreement is unique in containing such relocation benefits is incorrect. A national agreement provision on this subject (effective on Conrail, CSX, and NS) has been in effect for more than 25 years. It provides moving expenses for signalmen required to change their residence as a result of "organizational, operational or technological changes," which would cover most transfer of work situations not resulting from ICC/STB approved transactions.

Similarly, it is highly questionable whether Conrail's 401(k) plans are "better" than those of CSX or NS. For example, under the Conrail 401(k) plan for engineers, Conrail matches 20% of the employee's contribution, up to 2% of his or her annual earnings, if Conrail has reached a certain yearly goal. The amount matched by Conrail is prorated if the company is under the yearly goal. Under the CSX 401(k) plan, CSX matches 25% of an employee's contributions, up to 4% of the employee's annual earnings. The plan has no company goal contingency. An employee can deposit from 1% to 15% of his or her pay each pay period, subject to the above-discussed limit on matching.

Likewise, with respect to 401(k) plans for dispatchers, Conrail's plan provides for a company match of 20% of the employee's contribution, subject to a cap of 3% of the employee's pay, based on Conrail's percentage achievement of its performance goals. Under CSX's 401(k) plan for dispatchers, a match of 25% of the amount contributed by the employee, up to 4% of his or her compensation, is provided. The match is not tied to CSX's achievement of performance goals or any other standards or criteria. In addition, under CSX's plan, the employee may elect, once a year, to voluntarily contribute the monetary equivalent of up to 5 personal leave days to his or her account. Any personal leave days requested and not granted may also be voluntarily contributed to the employee's

account. Finally, ARU's claim that CSX's dispatcher plan caps an employee's contribution at 10% of his or her earnings, as opposed to 15% under the Conrail plan, is untrue. CSX's plan allows employees to contribute up to 15% of their pay.

Under the NS 401(k) plan, an employee can contribute up to 10% of earnings to a pre-tax account, and NS matches 30% of the contribution (up to a maximum match of \$45 per month). In addition, an employee may contribute up to 5% of earnings to an after-tax account.

In any event, CSX and NS did not follow an approach of trying to determine which railroads' agreements were "better" in determining which agreement was to be applied in the coordinated areas. Parties could argue forever which agreement was qualitatively better and never come to an objective basis for picking the "better" agreement.

Contrary to the comments of the ARU and TCU, we also are not proposing to abrogate the protections or rights that Conrail employees have under the Supplemental Unemployment Benefit Plan (SUB Plan) found in some Conrail agreements or the flowback agreements which allow certain employees with Conrail seniority to move from Conrail to Amtrak or commuter rail authorities. CSX and NS agree that former Conrail employees who are adversely affected will have the choice under Article I, Section 3 of New York Dock of electing protections under New York Dock or their SUB Plan or other protective arrangement. CSX and NS also intend to honor applicable flowback rights.

CSX is not proposing to abrogate rights that CSX clerical employees have under existing stabilization agreements between CSX and TCU. Pursuant to CSX's Appendix A, CSX clerical employees working in the field clerical district covering the CSX territory

coordinated with the portion of Conrail CSX will operate will be placed under the Conrail/TCU agreement, which currently does not have a stabilization provision. These employees, however, would still be eligible for protections under the CSX/TCU stabilization agreement by virtue of Article I, Section 3 of New York Dock.

VI. Size of Seniority Districts

The ARU and TCU assert that Applicants are proposing to create unusually, and unnecessarily, large seniority districts. See, e.g., ARU-23 at 26, 45, 112; ARU-24 at 190; TCU-6 at 17. To the contrary, the districts proposed by NS and CSX are comparable in size to existing seniority districts and are necessary to realize the efficiencies in their Operating Plan. Indeed, some existing seniority districts on Conrail, CSX and NS are actually larger than those proposed by CSX and NS. For instance, on Conrail, the BLE and UTU agreed to system wide seniority for engineers and trainmen.

With respect to train and engine employees, CSX's proposed Eastern District will expand the current EBOC District only a relatively small amount, adding the territory between Cumberland, Maryland, and Willard, Ohio, which is now part of CSX's Central B&O District. CSX's proposed Northern District is actually smaller than Conrail's current "F" District, since the southern tier trackage in Conrail's F District will be allocated for operation by NS.

CSX's proposed train and engine districts are also smaller than some such districts on other parts of CSX. In 1996, the CSX BLE Western Lines and Northern Lines General Chairmen proposed, and CSX agreed to, the creation of seniority districts which are much larger than the districts proposed for the Conrail transaction.

The proposed seniority districts for M of W and signal work on the allocated properties operated by NS will each extend 789 highway miles. On NW, the corresponding existing seniority districts for both M of W and signal construction work range in length from 593 to 764 highway miles. Under the NSR/BMWE agreement, employees can be required to protect territories as long as 1,000 miles, well in excess of the largest district proposed for the combined NS-Conrail properties.

Likewise, the existing seniority districts for BRS-represented signalmen on the former SCL, IBEW-represented communications workers on the former SCL, B&O, and C&O, and TCU-represented communications workers on the former L&N encompass the entire former railroad systems and are larger than any of the districts proposed in CSX's Appendix A for these crafts.

CSX's and NS' proposed seniority districts are also smaller than some of those that exist on other railroads. Even before its acquisition of the SP, the UP had very large train and engine seniority districts. One district, for example, extended from Oakland through Salt Lake City to west of Boise, Idaho. Another ran from Lake Charles, Louisiana to Council Bluffs, Iowa, to Pueblo, Colorado. Districts proposed in this transaction are also significantly smaller than the M of W seniority districts on the western railroads, BNSF and UP.

Contrary to the comments of the unions, large seniority districts do not increase the work responsibility of, or otherwise impose undue hardships on, individual employees. To the contrary, as the ARU themselves recognize (ARU-23 at 31), large districts increase job

opportunities by allowing employees to exercise their seniority throughout a broader area (objecting to point seniority as impinging on job opportunities).

For line and signal maintenance work, the size of a seniority district bears little practical relationship to the distances that will be covered by individual employees. Fixed headquarters employees typically work only on limited territories, which tend to be smaller than seniority districts. The proposed transaction will realign but not substantially alter the size of those territories. Fixed headquarters employees rarely will be required to travel the length of the seniority district. Moreover, a mobile gang does not normally work over the full extent of its territory in any given year. The carriers' proposals therefore will expand the work opportunities for M of W employees, but will not substantially alter employees' typical work patterns. In any event, employees on traveling assignments receive away-from-home expenses, in accordance with their applicable labor agreements.

Large districts also do not necessarily require employees to relocate. When CSX created its EBOC District, no moving allowances were claimed, even though the unions had predicted its creation would force many employees to relocate. Also, contrary to the ARU's assertion, engineers will not be transferred hundreds of miles from their homes for one or a few days. The relocation costs would be prohibitive for such short, temporary moves. Also, the transfer would be of little utility since engineers have to be familiar with the physical characteristics of a new territory.

Contrary to the ARU's assertion, large districts also do not cause safety hazards. Logically, there is no correlation between the size of a M of W or signal district and the safety of the corresponding work. The work performed by M of W production and signal

production gangs requires functional, but not territorial, familiarity. The SCL signal district, which covers the entire former SCL, has been in existence since the 1960's. That district has experienced no unusual or disproportionate safety problems in its over 30 years of existence. If larger districts cause safety problems, they would have been evident by now on this district. Moreover, individual signal maintainers' territories on the SCL district are no larger than signal maintainers' territories elsewhere. The size of maintenance territories is generally a function of the number of signal devices and the complexity of the signaling system, not the size of the seniority district.

The centralization of dispatching on CSX will not produce safety problems. The transfer of dispatching work to the centralized train dispatching center in Jacksonville will not take place until the technological improvements have been completed to allow for the performance of this work in an efficient and safe manner. The dispatching work for the allocated Conrail lines operated by CSX will continue to be performed by the former Conrail dispatching offices at Albany and Indianapolis until the work is consolidated. Where individuals assume responsibilities for trackage which they do not currently dispatch, adequate training and familiarity with the territory will be provided.

In addition, CSX has had a centralized dispatching operation since 1988, and during the past nine years, CSX's safety record, and that of NS, have consistently been among the best in the industry. For the past five years, NS and CSX have maintained the lowest reportable train accident rates of the major railroads. Historically, derailments have accounted for 20% of all freight damage costs. CSX and NS ended 1996 with the same freight damage ratio, 20 cents in damage costs per \$100 in revenue. This is considerably

better than the industry average of 39 cents per \$100. Since both CSX, with a centralized dispatching system, and NS, with multiple dispatching offices, have achieved the same ratio, no case can be made that either centralized dispatching or decentralized dispatching puts safety of operations at risk.

Contrary to the ARU's contentions, train and engine crews will be qualified on and familiar with the territory in which they operate. CSX and NS have always qualified their engineers and conductors over the territory they operate before they are permitted to operate without supervision. For example, in implementing the EBOC District, CSX spent millions of dollars qualifying employees. Significantly, the unions give no examples of employees being required to operate in territory where they were "qualified, but not familiar." Indeed, under CSX and NS operating rules, it would be nearly impossible for an engineer to be qualified on, but not be familiar with, a particular territory, since engineers on both carriers are required to make periodic qualifying trips over the trackage to remain qualified.

Train and engine employees will not necessarily operate trains over an entire seniority district. In fact, a train crew's runs post-transaction will be no longer than they typically are today on CSX, NS and Conrail. CSX, NS and Conrail now have long runs, which have not produced safety problems. Interdivisional runs are common and have existed for 25 years. In addition, the amount of time that a particular crew can operate a train is limited by the Hours of Service Act. As we previously stated, both carriers intend to hire and train a significant number of new train and engine employees as well as making certain that Conrail will have sufficient trained employees.

The ARU's claim that large seniority districts will cause declines in efficiency is also untrue. The CSX System Production Gangs, which can operate over CSX's entire system, are the most productive, as well as safest, track maintenance gangs that CSX has ever utilized. Unit costs for track rehabilitation have been dramatically reduced, while on-the-job injuries of maintenance-of-way employees are at an all time low. The productivity record of CSX's system gangs is far better than that of repair gangs on Conrail. For example, the unit cost for installing a cross tie on Conrail, including labor and material, is 50 percent higher than on CSX. CSX's unit costs for various types of programmed rail laying gangs are 25 to 60 percent less than the unit cost for similar Conrail gangs. CSX's unit costs for major programmed track surfacing are over 60 percent less than Conrail's unit costs for similar work.

Moreover, there will be no added emergency response time for track or signal repair projects. While seniority districts will increase in size, CSX and NS are not proposing to make substantial increases in the size of the basic maintenance territories for either M of W or signal employees. As we have previously stated, the size of a maintenance territory is not determined by seniority district size. Rather, the size is determined by such factors as the number and complexity of facilities or units and the traffic density on the territory.

The BRS and BMWWE have asserted that CSX's proposed M of W and signal seniority districts are improper, because they include territory (former L&N, Monon and C&EI) that are "nowhere near the Conrail property to be acquired by CSX." ARU-23 at 32. To the contrary, CSX will operate allocated Conrail lines in Indiana and Illinois, in which lines of the former L&N, Monon and C&EI are also located. In fact, these allocated Conrail lines

actually cross and connect with the former C&EI and Monon districts at several points such as Danville, Illinois and Terre Haute and Greencastle, Indiana. The inclusion of a line of the former SCL running from Petersburg to Richmond, Virginia in the proposed new Eastern District was also questioned. It is only reasonable to have the same M of W employees maintaining this line, as well as the former RF&P and B&O lines in that common geographical area.

VII. CSX's Proposed Transfer of Clerical Seniority Is Appropriate

CSX proposes to consolidate the clerical work associated with Conrail's customer service, crew management, finance and headquarters functions in Jacksonville, Florida, where it performs similar functions. CSX also proposes to place former Conrail clerical employees performing these functions, who are not immediately needed in Jacksonville, on its seniority rosters in Jacksonville. When future clerical vacancies arise at Jacksonville, these former Conrail employees who have been furloughed will be recalled to fill those vacancies.

TCU argues that such a transfer of seniority, when the employee is not being initially transferred, is unprecedented. TCU wants former Conrail employees who are furloughed when clerical work is transitioned to Jacksonville to be able to sit at home and draw full pay and benefits for up to six years, even when CSX has clerical work available in Jacksonville.

Contrary to TCU's contention, CSX's proposal is not unprecedented. CSX has in past coordinations transferred the seniority of surplus employees to the new location and then recalled them when a position became available. One such example involved the 1984 coordination of clerical work from the former L&N to CSX's Queensgate Yard in Cincinnati

on the former C&O. There were more L&N employees than jobs initially available at Queensgate. The L&N and C&O employees were coordinated and added to C&O District No. 7 roster. Furloughed employees were later called to work at Queensgate as vacancies occurred. This is similar to what CSX is proposing in the instant transaction.

Another example involved CSX's 1988 coordination of dispatching at Jacksonville. The implementing agreement with ATDA provided dovetail seniority for excess train dispatchers who remained furloughed at outlying points until there was a subsequent need for them to occupy vacant positions in the centralized facility at Jacksonville.

Requiring furloughed former Conrail employees to relocate to Jacksonville as positions become available is not unfair. As previously explained, it is not unusual for clerical employees to have to relocate as a result of railroad consolidations. Clerical functions are often centralized as a result of such consolidations. The New York Dock conditions clearly contemplate that employees may be required to relocate, and provide for compensation for that event. Accordingly, any clerical employees required to relocate to Jacksonville will suffer no economic loss. Moreover, rather than sitting idle and collecting New York Dock benefits for the remainder of the six year protective period, they will be productively employed at good, high-paying jobs and able to use their prior railroad experience.

VIII. The Transaction Does Not Result In A Transfer of Wealth From Rail Employees

The ARU argue that the transaction results in a transfer of wealth from Conrail employees to CSX and NS. The ARU's argument is based, in part, on its comparison of projected labor cost savings with projected labor protection costs. The ARU contend, for

example, that the Applicants only project paying labor protection for contract employees for three years after the transaction, for a total estimated cost of \$66 million for CSX and of \$103 million for NS. In contrast, CSX projects labor cost savings of \$30.3 million annually from a reduction of contract positions. NS projects such savings of \$44.1 million. The ARU then make the observation that labor costs savings will exceed labor protection costs after year four.

The ARU's analysis misses the point that labor cost savings are not coming from changes to Conrail's agreements. The ARU's own comments show that most of the labor cost savings are coming from reductions in positions, not from reducing pay or benefits. CSX and NS are able to reduce the number of positions because of the efficiencies envisioned in their Operating Plans such as the elimination of redundant operations and/or facilities. Those former Conrail employees who will be put under CSX and NS agreements will have wages and benefits that are generally comparable. To the extent that some former Conrail employees might realize somewhat lower compensation in a given month as a result of the transaction, they will be made whole by New York Dock displacement allowances or, if they elect, by protections under existing agreements. Those employees who initially lose their employment as a result of the transaction will not suffer any cognizable economic loss since they will be protected by the New York Dock benefits. Moreover, we expect that they will all be offered an opportunity to return to service, in most cases before these protections expire. Thus, CSX's and NS' projected labor savings are not the result of any current agreement employee's reduced compensation, but more a result of not needing to hire new employees to fill the positions that can be eliminated as a result of this transaction. The

projected labor cost savings are the product of elimination of unneeded positions exclusive of any reduction in wages of current employees.

The ARU try to obfuscate these facts by arguing that wages of rail workers have remained stagnant while railroad profits have increased. According to the ARU, CSX's and NS' profits will increase even more, because they will pocket a significant share of the labor cost savings and not pass them on to shippers. First the ARU's premise that rail employee earnings have stagnated is incorrect.¹⁰ To the contrary, employee earnings on an annual basis have increased by 118% since 1980, while the CPI-W has increased by only 85%. Selected Average Compensation Measures and BLS CPI-W, 83 Classes of Operating and Nonoperating Union Employees, Class I Freight Railroads, 1980 to 1996 (compiled by National Railway Labor Conference). Furthermore, it must be noted that throughout this period, and continuing today, rail workers are among the highest paid in all U.S. industries, with greater earnings than at least 97 percent of employees nationwide in each year since 1980. Survey of Current Business, U.S. Department of Commerce, August 1997 - July 1982 (attached as Exhibit H).

The ARU also admits that cost savings, including labor cost savings, are passed onto shippers in the form of lower rates. In fact, the same AAR statistics relied upon by the ARU show that Class I railroads' revenue per 1000 ton miles decreased from \$32.27 in 1983

^{10/} The ARU support their statement with their Table 9. ARU-25 at 301. In that table, however, the ARU failed to adjust the current dollar figures to real dollars, and they computed the average base year earnings incorrectly. It was necessary to build the 1980 CSX data from that of its predecessor railroads, and in so doing, the ARU simply averaged the wages for the former railroads, rather than using an average weighted by the number of employees of each.

o \$24.11 in 1996. The 1996 figure has not been adjusted for inflation. If it were, it would show an even greater revenue drop.

IX. Impact On Railroad Retirement

The ARU's assertion that the transaction will negatively impact Railroad Retirement is not relevant to the Board's consideration of the Application.

In any event, as discussed above, it is expected that most dismissed employees will be offered positions within three years. It is also anticipated that New York Dock protection will be available to these dismissed employees. Any protective payments will be reported as earnings, and creditable retirement months will be accrued.

In addition, according to the Railroad Retirement Board's Twentieth Actuarial Valuation Report, issued in August 1997, the railroad retirement system is financially sound for the next twenty years.

CSX and NS also project that they will grow railroad employment as they become more truck competitive as a result of this transaction. This growth will have a positive effect on the railroad retirement system.

X. Conclusion

As we have explained, there is no basis for complaints that labor is being treated unfairly by this transaction. Only three employee crafts will see significant job reductions. Most will see some increase or little impact, if any. Job abolishments, moreover, are expected to total only about the equivalent of one year's attrition on CSX, NS and Conrail. Employees who are adversely affected will be eligible for employee protection benefits. We expect that CSX and NS will be able to offer employment to most employees whose positions

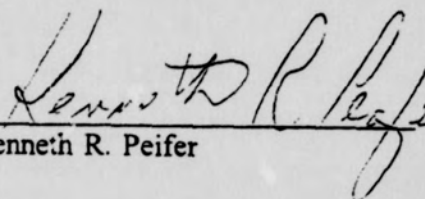
are abolished as a result of the transaction within three years. Over the long run, CSX and NS also expect that they will be more efficient and vigorous competitors and attract new business as a result of this transaction, resulting in job growth.

VERIFICATION

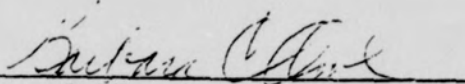
DISTRICT OF COLUMBIA

)
) ss.
)

Kenneth R. Peifer, being duly sworn, deposes and says that he is Vice President Labor Relations of CSX Transportation, Inc., that he is qualified and authorized to submit this Rebuttal Verified Statement, and that he has read the foregoing statement and knows the contents Parts I, II, III, IV(A), V, VI, VII, VIII, IX, and X thereof, and that those parts are true and correct.


Kenneth R. Peifer

Subscribed and sworn to before me
by Kenneth R. Peifer this 10th day
of December, 1997.

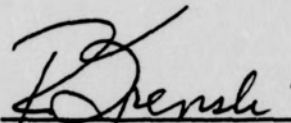

Notary Public
My Commission Expires April 30, 2000

VERIFICATION

DISTRICT OF COLUMBIA

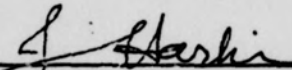
)
) ss.
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Robert S. Spenski, being duly sworn, deposes and says that he is Vice President Labor Relations for Norfolk Southern Corporation, that he has read the foregoing statement and knows the contents of parts I, II, III, IV(B), V, VI, VIII, and IX thereof, and that those parts are true and correct.



Robert S. Spenski

Subscribed and sworn to before me
by Robert S. Spenski this 10th day
of December, 1997.



Notary Public

JOANNA HARKIN
NOTARY PUBLIC, DISTRICT OF COLUMBIA
My Commission Expires July 14, 2002

EXHIBIT A

LEVEL 1 - 5 OF 355 STORIES

Copyright 1997 The Baltimore Sun Company
The Baltimore Sun

November 20, 1997, Thursday, FINAL EDITION

SECTION: BUSINESS, Pg. 2D

LENGTH: 761 words

HEADLINE: CoreStates says job cuts will exceed 3,000; Merging banks' chiefs say attrition, freezes will reduce layoffs; Banking

SOURCE: FROM WIRE REPORTS

BODY:

PHILADELPHIA -- Core-States Financial Corp. Chief Executive Terrence A. Larsen said yesterday that initial job losses from the proposed \$ 16 billion merger between his bank and First Union Corp. would far exceed the 3,000 new positions promised for the Philadelphia area.

But Larsen and his new boss, First Union Chief Executive Edward E. Brutchfield Jr., vowed to work to limit the number of layoffs through attrition, hiring freezes and cross-regional reassignments.

"We start with disruption that will be significantly above the 3,000, without question," the Core-States executive said at a 45-minute press conference.

Half the positions eliminated are expected to come from retail banking, a quarter from Core-States' Philadelphia headquarters and the remainder from back-office support.

Substantial closings

The bank also indicated there would be substantial branch closings: 55 percent of CoreStates' branches are within 2 miles of First Union branches.

Larsen and Brutchfield emphasized time and again that efforts would be made to soften the blow on the greater Philadelphia area, including New Jersey and Delaware, where most of the initial job cuts were expected to take place.

First Union has agreed to set up a \$ 16 million training fund under which local technical and community colleges will retrain displaced CoreStates employees for new jobs, either at the merged operation or another employer.

The Charlotte, N.C.-based bank also agreed to establish a \$ 100 million foundation to support charitable activities in Philadelphia.

But pledges did not silence critics of the merger.

U.S. Sen. Arlen Specter, a Pennsylvania Republican, referred to job losses while calling on the Justice Department to scrutinize the deal's antitrust implications.



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Industry analysts said the merger would result in substantial layoffs in New Jersey and Pennsylvania, where the banks' operations overlap.

The two companies combined will have the largest share of retail deposits on the East Coast, including the largest share in New Jersey and Pennsylvania and the city of Philadelphia.

A day after announcing the merger, First Union said the purchase will trim earnings next year, before cost-cutting and expanded corporate banking services boost profit in 1999.

First Union now expects to earn \$ 3.82 a share next year, or 9 cents less than estimated before the purchase. By 1999, the bank expects to earn \$ 4.46 a share, 12 cents more than previously forecast, after it slashes CoreStates' expenses by 45 percent, or \$ 459 million, and boosts revenue.

Larsen and Crutchfield said higher fees for banking services were not part of the higher revenue projections from the merger.

"There is not a penny factored into this transaction for higher fees," Crutchfield said.

The First Union CEO angrily took issue with press speculation that Larsen had rejected an initial offer from his bank in order to protect his own job and agreed in the end only after being offered a berth at the top of the merged banks' hierarchy.

"I don't know where this baloney came from about Mr. Larsen's going to do this or that, depending on whether there's a position for him," Crutchfield said.

Investors greeted the proposed merger -- valued at \$ 16.6 billion based on First Union's closing \$ 51.75 stock price Friday when it was announced late Tuesday -- less than enthusiastically, and the stocks of both banks fell even as other bank stocks rose. Yesterday, First Union fell 75 cents to \$ 49.50 and CoreStates lost 93.75 cents to \$ 76.0625, both on the New York Stock Exchange.

The drop in First Union stock means the deal is already worth less than the price announced after the market closed Tuesday, since the acquisition is to be made with shares of First Union, the nation's sixth largest bank.

But it was unclear if the drop in the stock price meant Mellon Bank Corp. would remount a rival bid for CoreStates. CoreStates recently rejected an offer of about \$ 17.4 billion from Pittsburgh-based Mellon, which declined to comment Tuesday on the First Union-CoreStates announcement.

Analysts said after Tuesday's announcement that the deal was expensive for First Union, which is paying more than five times CoreStates' book value, or assets minus liabilities.

With 3,756 offices serving 16 million customers, the combined bank will be the nation's sixth largest, with about \$ 204 billion in assets.

The acquisitive First Union is also in the process of acquiring Richmond,



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The Baltimore Sun, November 20, 1997

Va.-based Signet Banking Corp.

Pub Date: 11/20/97
LOAD-DATE: November 21, 1997



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EXHIBIT B

LEVEL 1 - 58 OF 355 STORIES

Copyright 1997 St. Louis Post-Dispatch, Inc.
St. Louis Post-Dispatch

July 15, 1997, Tuesday, FIVE STAR LIFT EDITION

SECTION: BUSINESS, Pg. 1C

LENGTH: 314 words

HEADLINE: NATIONSBANK EARNINGS UP 26 PCT.

BYLINE: 1997,; Bloomberg News; Jim Gallagher Of The Post-Dispatch Staff
Contributed Information For

DATELINE: CHARLOTTE, N.C.

BODY:

NationsBank Corp. said Monday that second-quarter earnings rose 26 percent as the bank boosted income from loans, generated more deposit and investment banking fees and kept costs in check.

The nation's 4th-largest bank said second-quarter net income rose to \$ 762 million, or \$ 1.05 a share, from \$ 605 million, or \$ 1.00, in the same period last year.

In January, NationsBank bought Boatmen's Bancshares, the biggest bank in St. Louis.

NationsBank said it now expects to save 17 percent more from the Boatmen's merger than it originally expected. That would bring the savings to \$ 600 million by 1999.

NationsBank said it increased its estimate as it got a better look at Boatmen's operations.

About half the increase will come from increased cost savings. The bank has trimmed 2,500 jobs so far from the 87,000 employed by both NationsBank and Boatmen's.

The banks imposed a hiring freeze when the merger was announced in August, and NationsBank says most of the job cuts have come through attrition. The bank last year estimated that 4,000 jobs would eventually go.

Meanwhile, NationsBank in St. Louis has been advertising to hire low-level lenders and tellers.

NationsBank has also boosted its estimate of the amount of new business it will generate in Boatmen's territory through marketing and by offering new products.

The bank said it is winning back some of the money-management business it lost when it merged Boatmen's Trust Co. into its operation.



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A university and a union pension fund decided to stay with NationsBank, the bank said. It wouldn't name the clients or reveal the amount of money the bank will manage.

Several big Missouri pension funds and institutions removed more than \$ 2 billion from NationsBank's management after some top Boatmen's bond fund managers defected and NationsBank sold off some back-office pension services.

LANGUAGE: English

LOAD-DATE: July 16, 1997



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EXHIBIT C

LEVEL 1 - 89 OF 355 STORIES

Copyright 1997 DR Partners d/b/a Las Vegas Review-Journal
Las Vegas Review-Journal (Las Vegas, NV)

March 21, 1997 Friday, FINAL EDITION

SECTION: D; Pg. 1D

LENGTH: 564 words

HEADLINE: First Bank agrees to buy U.S. Bancorp

BYLINE: Amy Corneliussen

BODY:

Few of the 4,000 job cuts expected from the merger will come from the bank's 33 branches in Nevada.

By Amy Corneliussen Associated Press

Graphic: FIRST BANK BUYS U.S. BANCORP (not available)

PORTLAND, Ore. — First Bank System Inc. plans to buy U.S. Bancorp for \$ 9 billion in a deal that will create the nation's 14th-largest bank with branches in 17 Midwestern and Western states, including Nevada. The new company, to be called U.S. Bancorp, will be based in First Bank's home town of Minneapolis. U.S. Bancorp's home is Portland. It will have assets of \$ 70 billion and customers stretching from Minnesota to California, including almost 4 million households and 475,000 businesses. The combined bank expects to eliminate 4,000 jobs as a result of the merger, which it said will allow it to cut operating costs by 14 percent. Few, if any, of the job cuts will fall on Nevada, where U.S. Bancorp operates 33 branches, including 17 in the Las Vegas area, according to the leader. U.S. Bancorp's spokeswoman for Nevada operations. Thursday's announcement comes as a new wave of mergers sweeps the banking industry. They are aimed at adding customers through acquisition while at the same time cutting costs. In a messier merger between Western and Midwestern banks, Washington Mutual and W.F. Ahmanson are fighting each other for Great Western Financial Corp. Gerry Cameron, U.S. Bancorp's chairman and chief executive officer, said the merger will be different from the Wells Fargo-First Interstate marriage, in which technical glitches left many unhappy customers. "I think it will probably be one of the quietest mergers you could ever find," he predicted. First Bank first approached U.S. Bancorp last November. Cameron was reluctant at first, but took First Bank's chairman and chief executive John Grundhofer's offer to his board of directors. First Bank has been in the market for a West Coast bank before. Last year, it lost a high-stakes buyout battle for Los Angeles-based First Interstate to hostile bidder Wells Fargo & Co. U.S. Bancorp had been facing increasing pressure to find a friendly merger partner to ease rivals, including Washington Mutual, were growing larger and could offer services at lower cost. "This deal will help First Bank," said Jim Bradshaw, an analyst with Pacific Crest Securities. "They have a great franchise, and this will allow them to expand to the West Coast."

In Nevada, the newly merged bank will continue U.S. Bancorp's practice of



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Las Vegas Review-Journal (Las Vegas, NV) March 21, 1997 Friday.

lending to the gaming industry, Loader said. U.S. Bancorp spokeswoman Mary Ruble said the location of planned job cuts hadn't been made public. U.S. Bancorp employees were surprised to learn of the acquisition. An announcement was posted Thursday on the corporate computer bulletin board. First Bank System has \$ 36.5 billion in assets with 374 offices in 11 Midwestern and Plains states. U.S. Bancorp, founded in 1891 as U.S. National Bank in Portland, has \$ 33.3 billion in assets and 636 U.S. Bank branches in Oregon, Washington, Nevada, Utah, Idaho and Northern California.

Review-Journal writer Adam Steinhauer contributed to this report.

GRAPHIC: Associated Press Harry Helfenstein sweeps up outside U.S. Bancorp headquarters in Portland Thursday. Minneapolis-based First Bank System plans to buy U.S. Bancorp, which has 33 branches in Nevada.

LANGUAGE: ENGLISH

LOAD-DATE: March 24, 1997



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EXHIBIT D

LEVEL 1 - 52 OF 355 STORIES

Copyright 1997 The Hearst Corporation
The San Francisco Examiner

August 18, 1997, Monday; Second Edition

SECTION: BUSINESS; Pg. D-1

LENGTH: 511 words

HEADLINE: Job cuts continue at Wells;
Imperfect unions

SOURCE: OF THE EXAMINER STAFF

BYLINE: ZACHARY COILE

BODY:

Wells Fargo & Co. will cut another 1,200 jobs through the end of the year, bringing the total jobs lost to 12,600 since the San Francisco bank took over rival First Interstate Bancorp last spring.

The bank's quarterly filing with the Securities and Exchange Commission, received Thursday, confirmed it would trim its entire work force to 32,000 full-time positions by the end of the fourth quarter. The bank said in a June 30 filing that its work force totaled 33,216 full-time workers.

time positions by the end of the fourth quarter. The bank said in a June 30 filing that its work force totaled 33,216 full-time workers.

One of the ways you reduce costs after a merger is through staff reductions," said Wells Fargo spokeswoman Lorna Doubet. "It's part of carrying out the merger."

The continuing job losses are another signal of the difficulty the bank has had in absorbing a hostile takeover of the company's former Los Angeles-based competitor last April. The \$ 11.3 billion merger created the second largest bank in California after BankAmerica.

Doubet said the job losses were not unexpected and had been approved several months ago by bank management. The cuts drop the size of the bank's full-time work force from a high of 45,800 employees in April 1996, she said.

Still, the work force cuts are significantly deeper than Wells Fargo originally predicted. When the deal was signed, bank executives projected 7, 200 jobs would be eliminated. In December, Wells officials acknowledged that the merger would actually wipe out 10,800 jobs.

In the recent filing, the bank said it spent \$ 12 million in the second quarter on salaries and employee benefits, including severance payments tied to the merger, as well as \$ 10 million in the first quarter. The bank also warned that expenses may rise as a result of the job cuts.



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Wells Fargo has long said its merger with First Interstate would result in huge cost savings for the bank. Instead the company has faced mass customer departures and unexpected costs.

In July, the company reported worse-than-expected earnings due to "back office" issues related to the merger, including clearing of accounts at other banks. The company's net income fell to \$ 228 million for the second quarter, 37 percent lower than the same quarter last year.

The bank has been criticized for computer glitches and other mishaps, including the incorrect posting of deposits, meaning that some customers' deposits never got to their accounts. Doubet said the bank has ironed out the technical kinks related to the merger.

"We have had some problems. They are behind us," she said.

Catherine Murray, analyst with J.P. Morgan Securities in New York, said the SEC filing was unlikely to cause much of a stir on Wall Street since the cuts were expected. But Murray noted investors have watched warily as Wells Fargo has faced a torrent of bad news related to the merger.

"The merger integration has been difficult, but I believe it's largely behind Wells at this point," Murray said.

GRAPHIC: COLOR PHOTO 1 (EXAMINER / MARK COSTANTINI)

Caption 1. The facade of the Wells Fargo branch at 464 California St. gives no hint of the Bank's merger woes.

LANGUAGE: English

LOAD-DATE: August 18, 1997



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EXHIBIT E