stand before you --

CHAIRMAN MORGAN: We see many faces here today many times over, so --

(Laughter.)

MR. SPITULNIK: And it's a pleasure to be here more than once.

I stand --

CHAIRMAN MORGAN: Glad to hear that.

MR. SPITULNIK: I stand before you now representing the New York City Economic Development Corporation, which appears in this proceeding on behalf of the people of the City of New York.

Together with New York State, New York City seeks trackage rights for a carrier on the east side of the Hudson River. This is not an extension of the New Jersey shared assets operating area. This condition is pro-competitive, it is limited in scope, it addresses directly a potential anti-competitive impact of this transaction, not a preexisting condition.

Applicants in this proceeding have agreed to divide the market, the New York City regional
market, into two distinct parts. One part of the New York City regional market will have to be served by at least two rail carriers directly, and one part will be served by one rail carrier directly. That's what this condition is intended to address -- the anti-competitive situation that's created by the applicants.

Don’t listen to Mr. Lyons when he tells you that we are trying to remedy a condition that was created 25 years ago with the creation of Conrail. The shippers in the New York City market have suffered together on the level playing field, or on the playing field that was created by having only Conrail serving them.

Now shippers in that market are not on a level playing field anymore. The playing field is bumpy and unlevel, because some of those shippers will have access to two rail carriers directly, and some will not.

When New York City first learned of the plans of CSX and Norfolk Southern to divide the assets of Conrail, and to create rail competition in the New
York market for the first time in over 20 years, the people of the City of New York were delighted. Ever since the formation of Conrail in 1976, the people in the city, in its northern, eastern, and western suburbs have been at the mercy of Conrail. And the decline in rail shipments into and out of the city shows the effect of their having been at the mercy of that carrier.

Along came CSX and Norfolk Southern with a plan to fix that, trumpeting the introduction of competition into the New York City marketplace. Unfortunately for the city, harsh reality soon turned New York’s happy anticipation of a new era into deep concern over the anti-competitive impacts of the proposed transaction for shippers on the east side of the Hudson River.

If this transaction is approved as presented, businesses in northern Jersey and elsewhere on the west side of the Hudson will have not one, but two, carriers serving them directly. The creation of the shared assets operating area in North Jersey guarantees the presence of direct rail competition for
those shippers.

Applicants, however, place businesses on the east side of the Hudson River at a clear and distinct competitive disadvantage with respect to their competitors in northern Jersey, or elsewhere in the metropolitan region.

All of the shippers on the east side who need direct service will have access to -- direct rail service, pardon me -- will have access to, after this transaction is approved, will be CSX, which has made no secret of the documents it has filed in this proceeding of its plans to prefer west side routes and routings or to look to truck these shippers' goods across the river to New Jersey.

This is not a happy picture for these businesses, and this Board has the authority and the ability to fix this problem. How can they do that? By imposing the condition that New York State and New York City have together requested. This relief falls squarely within the Board's authority under the state and within the regulations under Part 1180.

It's designed to create an anti-
competitive problem created by this transaction. It's limited in scope. The trackage rights will take the new carrier in this market to the point of interchange with other carriers that can compete effectively with CSX for the long haul.

Granting these trackage rights will not interfere with anyone's operations. Notwithstanding Mr. Snow's fears expressed to you this morning, this trackage rights will not undo the proposed CSX operating plan.

CSX only plans to operate one freight train, maybe two freight trains on this line. An awful lot more freight trains were operating on this line before the GM Terrytown plant closed a couple of years ago.

Metro North officials have testified on the record in this proceeding that there will be no interference with commuter operations as a result of the operation of the trains that will operate over the trackage rights of the city and state seen here.

There is room on this track for these trains.

There's a market, according to the experts
that the city has retained. According to the testimony you’ve heard this morning from Congressman Nadler, there’s a market here that’s waiting to be tapped, that’s waiting to have its goods moved over this line once there is competitive rail service available directly in this portion of the market.

In short, Madam Chairman, Mr. Vice Chairman, there is ample justification in the record in this proceeding to grant the relief -- to grant the responsive application of New York City in which we seek trackage rights over the CSX -- the proposed CSX line on the east side of the Hudson River.

Thank you very much for your time.

CHAIRMAN MORGAN: Thank you.

Mr. Maser?

MR. MASER: Good evening, Madam Chairman, Mr. Vice Chairman. It’s a pleasure to be here again on behalf of the Erie-Niagara-Chitagwa Rail Steering Committee, which has been participating actively in this proceeding.

This group is composed, as you know, of rail shippers in the Buffalo and Niagara Falls and
Dunkirk area of western New York, also of economic and regional development agencies, and also city and county officials.

Now, this group has requested a number of pro-competitive, reasonable, operationally feasible conditions in the alternative. Our preferred approach is to have an additional shared asset area of the Niagara frontier shared asset area in the Buffalo and the western New York area. Alternatively, we support the reciprocal grant of terminal trackage rights for CSX and Norfolk Southern. And, finally, in the alternative, and at the very least, we support increased reciprocal switching opportunities for shippers located in Niagara frontier.

Now, why should you grant these conditions? Well, the answer is simple and it’s amply demonstrated in this record. The pro-competitive conditions that we seek would benefit not only the shippers in communities in that area, but also CSX and Norfolk Southern themselves.

Similarly, those conditions would at long last, after a 20-year hiatus, fulfill the preferred
approach of the Federal Government when -- at the time
Conrail was created with respect to the Niagara
frontier area.

Third, the pro-competitive conditions
would ameliorate and serve to protect the shippers of
competitive harm that would be caused directly by the
applicants’ proposal to create shared asset areas in
competing markets of Detroit, northern Jersey, south
Jersey, Philadelphia.

And, finally, the pro-competitive
conditions would be fair to all parties concerned,
including the railroads, and well within the broad
conditioning power of this Board in the public
interest.

Now, I want to take -- and these
conditions also, I might say, picking up a point that
Mr. Slover made, would be consistent with the Norfolk
Southern’s principles of balanced rail competition.
The proposed transaction would not because it would
not inject two-carrier competitor in major markets in
the northeast, including in the Niagara frontier. And
there is no doubt that the Niagara frontier is a major
market, a half billion dollars.

And I might say, Chairman Morgan, you asked the question earlier about the scope of Conrail's dominance today. It is substantial; about two-thirds of the market. It's controlled by Conrail. CSX would step into those shoes and continue to control it, and it would control the major commodity groups in that area -- chemicals, coal, automotive parts, among others.

So it is not fair to say, as the applicants have said today, that their proposal would fulfill the preferred system, final system plan objectives. I must say, in all candor, that is just simply not true. And I'm sure counsel for CSX misspoke himself when he said it.

The transaction, as proposed, would not allow Norfolk Southern access over the old Erie-Lackawanna lines in the Buffalo, Rockport, Niagara Falls area. There was extensive competition before. What they are proposing does not replicate that. Yes, Norfolk Southern gets some lines into south Buffalo where it is today. Yes, there is trackage rights to
Niagara Falls. But they are overhead trackage rights only; they are not local trackage rights.

So it is just simply not correct to say that what they are proposing does replicate the final system plan. It does not. What we are proposing does, and I want to make sure the record is clear on that.

Secondly, with respect to infrastructure, Vice Chairman Owen, you had a question about that. I want to assure you that there is ample infrastructure in the Niagara frontier for a shared asset operation. Indeed, the applicants have not even tried to contest the operational feasibility of the conditions that we have sought, and there is no operational disability to it.

Our expert witness has testified to this fact, and I would direct your attention to his testimony. So that is not an issue.

Now, let me address also reciprocal switching in connection with the NIT League settlement agreement. The NIT League settlement agreement, good client that it is of my firm, is fine as far as it
goes, but it does not go far enough. It does not, with respect to reciprocal switching, address the majority of the traffic -- actually the vast majority of the traffic -- in the Niagara frontier.

Let me mention a few of those large commodity groups again. Chemicals -- almost exclusively captive to CSX after transaction. Automotive parts -- the majority captive to CSX. Coal -- captive to CSX. Those are not open to reciprocal switching today. The NIT League settlement agreement would not help those.

The Niagara and Mohawk facilities at Dunkirk and Huntley, for example, are closed to reciprocal switching, as all are of the chemical companies out in Niagara Falls. Conrail and CSX would retain those to themselves.

In addition, I want to say that what we are asking is, indeed, a pro-competitive approach. It restores and enhances the competition that was intended by Congress, and the applicants, when the opportunity was presented to them, they’re touting fulfillment of the final system plan elsewhere, and
now they seem to be saying, "Well, these shared asset deals were just private deals because we couldn't otherwise reach an agreement." In their application they're saying, "We did this because, in part at least, in large part, it fulfilled the final system plan's preferred approach." They have done that in the Niagara frontier area.

If I may, just two more seconds. You have the unique opportunity to remedy that. Please do not let it slip by again.

As Mr. Snow said, maybe the timing wasn't right for implementation of the preferred final system plan at the time back in '76, but the time is right now. I would say the time is, indeed, right. And it should be corrected now, and we earnestly and respectfully request this Board to do so.

Thank you very much.

CHAIRMAN MORGAN: Thank you.

Mr. Midkiff?

MR. MIDKIFF: Right.

(Laughter.)

CHAIRMAN MORGAN: I'm a quick learner.
MR. MIDKIFF: First, I want to say thank you for your patience in sitting here and letting us come right on down the line and get our thoughts and our views in. I'm happy to have the chance to present to you the views of the Genesee Transportation Council, which represents a nine-county area in upstate New York.

And while I'm certainly pro-competitive, I want to say that I should not be lumped with the others here in some of the issues that they are discussing, such as the trackage rights, and so forth.

I'd like to say that the GTC is the metropolitan planning organization for nine counties, as I have said. It has a population of 1,150,000 people. It has an area that is four times greater than the State of Rhode Island. And it is a home -- is the home of many industries whose names are household words -- Eastman Kodak, Xerox, Bausch & Lomb, Canandaigua Wine, and so forth -- 1,700 manufacturing establishments and over 25,000 business establishments in this nine-county area.

We operate under the authority of ISTEA,
soon to be known as T21. And isn’t that a great name? T21. And as a metropolitan planning organization, we are mandated by the federal law to get the maximum use out of the existing infrastructure. That is what we are told to do, and we’re told to do that as local agencies to try to blend a public and private infrastructure in a way that we can move freight without laying down strip after strip of concrete for the ever-increasing number of trucks.

So what I’m coming to you for is for your help in moving intermodal traffic. In 1992, Conrail removed the intermodal facilities from Rochester. The nearest facility we have is in Syracuse, some 90 to 100 miles east of Rochester. There is a facility in Buffalo operated by the Norfolk Southern that handles westbound traffic, and that is some 60 to 70 miles west of Rochester. And you have to add additional money in order to get it there.

Now, the applicants make much over the benefits of single-line operation and say they’re going to recapture a million truck lines -- truck shipments from the highways. But unless we have
intermodal facilities in Rochester, we're not going to be able to be a party to that.

So we ask you to help us in getting or requiring the CSX to build intermodal facilities in Rochester, New York, so we can take advantage of the single-line operations that they are touting. And we also ask that you require the Norfolk Southern to work with the Rochester and Southern Railroad, the Short Line Railroad that serves the city.

I also say another reason for removing the firewall of the Livonia, Avon & Lakeville is because they have a large intermodal bulk -- intermodal facilities in Lakeville, and we ask that you honor their request to remove that firewall or let them buy the Genesee Junction Yard.

And, finally, we say reduce the reciprocal switching charge, because our reciprocal switching charge is not covered by the NIT League agreement, since it's a charge between Rochester and Southern on the one hand and CSX to be on the other hand.

And we ask you to give oversight of the Monongahela usage agreement -- a five-year oversight
because we know -- I know personally, as a transportation manager for Eastman Kodak, of the problems associated with the Monongahela Railroad and the usage of that by two railroads.

So I thank you very much for the opportunity to put my views and the views of our group before you.

CHAIRMAN MORGAN: Thank you. Right on the button there.

(Laughter.)

MR. MIDKIFF: Right on the button all the time.

CHAIRMAN MORGAN: Mr. Lamboley?

MR. LAMBOLEY: Madam Chairman, Mr. Vice Chairman, it’s a pleasure to appear before you this evening on behalf of Southern Tier West Regional Planning and Development Board at this late hour, but certainly not the last hour. I want to make three quick points.

First, to inform you that at Southern Tier West, the applicants, Norfolk Southern, and Conrail,
as well as the New York State DOT, regarding the Southern Tier extension line.

And because that line is important, and because the agreement addresses serious concerns, and achieves certain goals that Southern Tier West wishes to go on record in this proceeding in support of the proposed transaction sought by the applicants.

Finally, I would ask that the Board recognize that in the course of these proceedings agreements are entered into by parties which create certain obligations, and, as a part of its decision, perhaps to express its expectations that the obligations created under those agreements would be honored by the parties; if not, to use their best efforts to do so.

Thank you very much.

CHAIRMAN MORGAN: So then, Mr. Lamboley, you're really not asking for anything more than make sure the applicant -- or NS does what it says it's going to do. Is that a good summary?

MR. LAMBOLEY: Yes.

CHAIRMAN MORGAN: Mr. Midkiff?
MR. MIDKIFF: Yes?

CHAIRMAN MORGAN: Listening to your statement, a couple of things. First of all, we heard earlier the testimony regarding the firewall for Livonia, Avon Railroad. I presume that if that's taken care of that's an issue that you care about. Is that correct?

MR. MIDKIFF: We support that wholeheartedly on the basis that it will allow them to grow their intermodal business and take trucks off of our highways by offering competitive rail service.

CHAIRMAN MORGAN: And then in looking at the NIT League agreement, if that were to be extended to more than the switching that it applies to right now, would that be responsive to your concerns?

MR. MIDKIFF: I think it would, yes. At the present time, as I understand it, the agreement applies only for reciprocal switching between CSX and Norfolk Southern. In Rochester, this would be reciprocal switching between the CSX and the Rochester and Southern Railroad. So it would have to be extended. The level is -- I would have a hard time
arguing for something less if the rest of the nation
is taking what they’re going to agree to. But it
should be broadened to include the Short Line
connections.

Thank you.

CHAIRMAN MORGAN: Thank you.

Mr. Slover, you’re sitting in the back
there. You can come up and join us.

First of all, I was happy to hear that you
were interested in a 10-year oversight period. I
guess you think we’ll be around for 10 years.

(Laughter.)

MR. SLOVER: Well, I --

CHAIRMAN MORGAN: We can start a campaign
right here if you’d like.

(Laughter.)

Couldn’t resist. Excuse me.

You talked about, you know, several
different things that are --

MR. SLOVER: That’s correct.

CHAIRMAN MORGAN: -- important to New
York, and I know we have a couple of different
interests at the table. But let me just ask, with respect to some of the recent agreements that have been entered into with CP and CN in the New York area, how does that respond to some of the concerns that the State of New York has relative to competition in the state?

MR. SLOVER: Well, the principal agreement is the agreement with CP, which involves the traffic on the east side -

CHAIRMAN MORGAN: Right.

MR. SLOVER: -- of the Hudson. And we do not believe that that agreement even begins to meet our problems. The economics of that agreement are unacceptable. Those are confidential. They're in our papers. They are severely circumscribed in terms of product, what they can haul, and they are geographically circumscribed, and basically the traffic moves only to Montreal. So it is not even a mere shadow of what we seek in the way of competition on that side of the river.

CHAIRMAN MORGAN: Thank you.

MR. SLOVER: Sure.
CHAIRMAN MORGAN: Mr. Spitulnik, with respect to east of the Hudson, there has been concern raised that there right now is not enough traffic to sustain two carriers. I presume that really what we’re talking about here is attracting traffic that then would be there to sustain more than one carrier. Is that right?

MR. SPITULNIK: Well, we are expecting that as this market develops the traffic will grow; there will be more traffic. But we don’t share the concern. The city doesn’t share the concern. Our witness explains that there is sufficient traffic for there to be -- enough traffic to -- for an additional carrier to be operating on that line at least one train a day.

So, but certainly the goal is to increase the level of traffic on that line. That’s our objective. That’s what we’re looking for -- take the trucks off the bridge, put the traffic on this train.

CHAIRMAN MORGAN: Okay.

Mr. Maser?

MR. MASER: Yes, ma’am?
CHAIRMAN MORGAN: With respect to Buffalo, you talked a little bit about the market share in Buffalo as you see it. Is the market share better now than it -- would it be better under the transaction if we did nothing for your area than it is today? In other words, are there added advantages not -- perhaps not as much as you would like, but is there some added competition under the proposal before us as compared to today?

MR. MASER: No, there really isn’t, Madam Chairman, I would say.

Let me address quickly in that respect the agreements with the Canadian carriers. I certainly share Mr. Slover’s concern about that, and we are constrained in what we can say about it because of the highly confidential nature of it. But I would direct your attention to the two-page Appendix A, I believe it is, to our brief, where we discuss the provisions of both the CP and the CN agreements and discuss the restrictive nature of them in detail. And I guess I must rest on that, but I do direct your attention to that. They do not provide significant benefits to us
as we see it.

Secondly, as to any added benefits caused by the transaction -- in fact, and perversely I suppose, there is going to be -- and we demonstrate this in our evidence -- this is going to be a loss of single-line service. There is going to be a net loss of single-line service as a result of this transaction. There is going to be -- CSX is going to be the dominant carrier, and there's going to be less single-line service with CSX than there was with Conrail.

Indeed, the actual market share of CSX post-transaction is going to be more than it was with Conrail, by a certain percentage. Again, it's based on confidential information. I direct you, I think, it's to page 14 of our witness G.W. Fauth's testimony, which addresses this.

Beyond that, yes, Norfolk Southern does get Southern Tier into Buffalo, but it stays in the south Buffalo area. As I say, there is not going to be increased competition between Norfolk Southern and CSX in the Niagara frontier. That is what we're
asking for. So we do not see it as adding competition.

And, indeed, as we demonstrated, I think, conclusively in our evidence, the very opposite is going to occur, because by virtue of the shared assets areas which they are creating and competing markets, we are actually going to be harmed. So when you look at all of this, that is why we’re here asking for relief from this Board through the exercise of your jurisdiction, which is clearly adequate to do the job.

CHAIRMAN MORGAN: Now, how about the NIT League reciprocal switching provisions and any other provisions?

MR. MASER: Well, the NIT League --

CHAIRMAN MORGAN: To what extent does that --

MR. MASER: It’s fine as far as it goes. It does help some of the shippers in the Niagara frontier area. It takes Conrail’s outrageously high $450, 390 charge -- depending what part of it is down -- to the 250 level. Frankly, in our view, that is still too high, but it is some help. But it doesn’t
go far enough because it doesn’t include the bulk of
the traffic in the Niagara frontier area.

As I mentioned earlier, I think the --
 some of the key traffic in that area -- chemicals, the
 coal, and auto parts -- would not benefit by it
 because they are not open to reciprocal switching.
 Therefore, they would not get the benefit of it.

So it does help some shippers, but it does
not -- certainly, it does not address adequately the
harm that is there. It doesn’t address the underlying
structural harm caused by the Conrail monopoly. But
it also does not fully address the additional
competitive harm caused by the transaction itself --
namely, the creation of the shared asset areas.

CHAIRMAN MORGAN: Thank you.

MR. MASER: Thank you.

CHAIRMAN MORGAN: Questions?

VICE CHAIRMAN OWEN: Yes, I have a couple
of questions.

Let me get your name right here. Mr.
Midkiff, on the MPO, if I’m not mistaken, I think you
have access to intermodal funds.
MR. MIDKIFF: Yes, sir.

VICE CHAIRMAN OWEN: And some ISTEA funds. Have you made application for anything along that line to --

MR. MIDKIFF: At the present time, of course, under the old ISTEA they were restricted to access roads, and so forth, as opposed to what -- I understand the railroads can benefit from some of funds in the future.

Yes, we have made application for some access roads and are -- currently have in the mill some plans to build access roads to -- we hope will be an intermodal facility at the Brooks Avenue Yard of Rochester and Southern Railroad -- an airport access road that would serve the airport as an intermodal facility, as well as the railroad intermodal facility. And we're also looking at intermodal access roads into the Lakeville terminal of the Livonia, Avon & Lakeville.

VICE CHAIRMAN OWEN: That's quite a bit of intermodal activity there.

Then, I'm sorry, the Economic Development
-- I can't pronounce your name.

MR. SPITULNIK: Spitulnik.

VICE CHAIRMAN OWEN: I won't even try.

MR. SPITULNIK: Many have tried.

(Laughter.)

VICE CHAIRMAN OWEN: Sorry about that.

MR. SPITULNIK: Many have tried.

CHAIRMAN MORGAN: His first name is Charles.

(Laughter.)

VICE CHAIRMAN OWEN: Charles, we'll go with that.

MR. SPITULNIK: Works for me.

VICE CHAIRMAN OWEN: From the Economic Development -- I'm always concerned about -- we talk about all of these things and saying we need another railroad, and then we need competition, yet we heard earlier this evening that some of the short lines are fearful of losing business and having to do this and that. And so I say, well, now, if we bring two Class 1's into an area like that -- and we cannot do that. We cannot force two Class 1's to go in there
and spend money when there's no economic justification for it.

If there's economic justification for it, then they can go in there. We might set down some guidelines or something along that line, but I'm just wondering where we get all of this economic data that would bring two Class 1's in when you have some short lines there now to take care of quite a bit of the traffic, if they're given certain little trackage rights or little interchanges here and there.

Would they not do the same thing with the interlining with the CSX?

MR. SPITULNIK: Well, I'm not sure that I understand your question fully, Mr. Vice Chairman, but let me give it a try. We're not asking -- the city is not asking to bring two Class 1's. We're not asking to extend the joint assets operating area over to the east side of the Hudson River. That's Congressman Nadler's petition. That's -- we are more limited in scope than that.

We are simply asking that the Board order that the line between Fresh Pond, New York, the point
in the city, and Albany, Selkirk Yard, and Schenectady, be open via trackage rights to another carrier. It can be a short line carrier. It can be another Class 1. It can be anyone who wants to bid on the service once the Board grants the rights as a condition of its approval of the proposed application.

There is economic justification for that. The testimony that we've submitted in the record in this case demonstrates that there is sufficient traffic. There is sufficient traffic to justify the addition of another carrier on the line on the east side of the Hudson River via trackage rights.

The evidence that we have submitted demonstrates that there is environmental justification for doing that, to reduce the air quality problems that are created by the potential for having more traffic across the bridges. The testimony that we've submitted demonstrates that there is capacity on the line. There is room on this line for another carrier, and there's a market waiting to be served there. It is not -- it doesn't necessarily have to be the two Class 1's.
And, once again, it's more limited in scope than creating another shared assets operating area. That's not what we're talking about. We're talking strictly about trackage rights for another carrier.

MR. MIDKIFF: Vice Chairman Owen, may I say that in connection with your concern about different views of Conrail, that the way you look at Conrail is like the blind man who looked at the elephant. It depends on where you grab hold of it.

(Laughter.)

And you do have different aspects of it in New England versus New York State. So it's not a monolithic idea.

VICE CHAIRMAN OWEN: Okay. Good enough.

MR. SPITULNIK: Mr. Vice Chairman, did I answer your question? I wasn't sure whether I --

VICE CHAIRMAN OWEN: I think you did, Charles. I thought you were a more cohesive group here, and you're all going for one thing. And to find out that you're -- but thank you very much.

CHAIRMAN MORGAN: I would just follow up
by saying that I think what you’re saying is that if
-- if we deem that it’s appropriate under our statute
that, you know, we can direct certain access, and so
forth. I mean, that’s part of your proposal.

MR. SPITULNIK: Exactly correct.

CHAIRMAN MORGAN: Thank you all.

The last panel of the day -- Chicago. We,
first of all, have Robert Wheeler, Wisconsin Central;
William Sippel, I&M Rail Link; and Richard Friedman,
with the Illinois International Port District. We
saved the last -- the best for the last. Is that the
saying?

(Laughter.)

MR. WHEELER: Chicago, last but not least,
and hopefully by now leading in the game in Salt Lake
City, Utah.

(Laughter.)

CHAIRMAN MORGAN: I see your priorities
are in order.

(Laughter.)

MR. WHEELER: Chairman Morgan, it’s a
pleasure to be here, Vice Chairman Owen. I’m very
pleased to be able to represent the interests of the Wisconsin Central, Limited, and particularly all of its shippers throughout Wisconsin and the Upper Peninsula of Michigan, into Minnesota and Northern Illinois.

I know it's late, but there are some points that I think need to be made, and Chicago is an important gateway and we're determining the future of the Chicago gateway for years to come.

Initially, the Board should be aware that Wisconsin Central, Limited does not oppose the carve up of Conrail between Norfolk Southern and CSX. We believe that the shippers in the east will realize some significant service benefits. And if there's one characteristic about Wisconsin Central, it is that we have always fought for anything that will improve service to our customers.

However, it's that concern for service that has caused us to come here to ask that the transaction be conditioned in three specific ways, all of which are intended to protect the movement of our traffic through the Chicago gateway.
The first is we’re going -- we request that CSX be required to sell part of the Altenheim subdivision to the Wisconsin Central. Secondly, require that CSX conduct direct interchange in Chicago without the agency of the B&O/CT. And, thirdly, require a neutral dispatching on the IHB.

Each request, we believe, addresses specifically a merger-generated impact, and only a merger-generated impact, that will have an impact on shippers moving through Chicago.

Today, Wisconsin Central directly reaches its connections in Chicago generally through two switching carriers. We connect into the B&O/CT, which is wholly owned by CSX, and we connect into the IHB, which is owned jointly by Canadian Pacific and Conrail, but, as this Board has found, functions as an independent switching carrier. Through either the IHB or the B&O/CT, we can also reach the Belt Railway Company of Chicago.

After the merger, CSX, pursuant to its contract with Norfolk Southern, will appoint the general manager of the IHB; and, moreover, will be
entitled to control the dispatching of the IHB in the entire Chicago terminal area. Thus, after the merger, Wisconsin Central’s access to other carriers in Chicago will be through CSX’s wholly-owned B&O/CT, or through CSX’s controlled and dispatched IHB.

Today, WCL interchanges with Norfolk Southern at Norfolk Southern’s Calumet Yard. We use IHB trackage to effect that interchange. After the merger, the interchange will be at Conrail’s Ashland Yard. We use B&O/CT trackage to reach that yard. Unless this Board intervenes, what Wisconsin Central faces after merger is that all of its Norfolk Southern interchange will have to go through CSX-controlled trackage.

Now, I believe Norfolk Southern itself has recognized the problem that this creates. Norfolk Southern has agreed with Wisconsin Central -- and the agreement is part of the record -- to transfer to Wisconsin Central an interest in a rail line known as the Panhandle Line. This line, in part, will assist WC in making a direct connection to Norfolk Southern after the merger.
We intend to invest in this line, add some additional track, so it will also allow us to provide some additional and badly-needed capacity in Chicago. But the full effect of the Panhandle transaction cannot be realized unless we can also obtain the Altenheim -- part of the Altenheim subdivision from CSX, less than 10 miles worth of track.

With the Altenheim subdivision, Wisconsin Centra will be able to reach Norfolk Southern for interchange at that Ashland Avenue Yard essentially free of any CSX control or interference, thereby eliminating the adverse impact of the merger as it's being proposed.

Moreover, as an additional benefit, Wisconsin Central will also be able to make direct connections with the Union Pacific, Canadian National, and BN/Santa Fe. Right now, the Altenheim is a badly maintained track. It's a 10 mile an hour track. To us, it's our lifeblood. We intend to invest in it, and we intend to create a smooth flowing interchange so that 200,000 cars coming out of our system through Chicago can move without this narrowing impediment.
that we’re going to face with CSX domination.

There are two other conditions that we ask. One is the imposition of the requirement that CSX make itself available for direct interchange in Chicago. It’s going to be present throughout Chicago.

There’s no longer the need of moving everything through the agency of B&O/CT. This will remove a great amount of inefficiency.

And, finally, because CSX will dominate switching in Chicago to the extent that we’ve laid out in the record, we are asking that the IHB be maintained, at least dispatching-wise, as an independent -- that there be an independent dispatching authority established.

I believe, again, Norfolk Southern appreciates the need for this, because in our agreement with Norfolk Southern we are not precluded from continuing to ask for this.

One final point. None of the things that we ask -- none of the things -- take away one dollar from the public benefits or the private benefits that CSX seeks to obtain. It will in no way interfere with
any of their Chicago operating plant, because their Chicago operating plants did not even mention the Altenheim subdivision.

So I thank you very much for the opportunity to be here this evening.

CHAIRMAN MORGAN: Thank you.

Mr. Sippel?

MR. SIPPEL: Chairman Morgan, Vice Chairman Owen, good evening again. I am pleased to appear on behalf of a coalition of railroads, which have sometimes been referred to in this proceeding as the Chicago Railroad Coalition, or simply the coalition.

The coalition seeks a condition that would preserve the Indiana Harbor Belt Railroad as a neutral, independent, intermediate switching carrier in the Chicago gateway. Until today, the coalition consisted of Transtar, Incorporated, its subsidiary the EJ&E, and the I&M Rail Link. As I advised the Board earlier this evening, Transtar and EJ&E have reached a settlement agreement and have withdrawn their names from the coalition’s responsive
However, I&M Rail Link -- a Class 2 railroad serving Chicago -- remains a party to the responsive application, and the application is still, therefore, before the Board.

It has always been part of the coalition’s plan that if the Board approved the proposed Conrail transaction, and conditioned the transaction as the coalition has requested, the coalition would invite other regional railroads and interested short lines and small Class I’s serving Chicago to participate in the ownership of the IHB.

Thus, the ultimate group of smaller railroads would -- this ultimate group of smaller railroads would constitute the actual coalition, which would acquire Conrail’s ownership in the IHB. For that reason, and for consistency of terminology in the record in this case, I will continue to refer to the plan as the coalition’s plan.

As Mr. Wheeler just described, three railroads currently provide the vast majority of intermediate switching service and interchange routes
through Chicago -- the Belt Railway, the B&O/CT, and the Indiana Harbor Belt Railroad.

Following the acquisition by NS and CSXT of Conrail's controlling ownership interest in the IHB, and Conrail's minority ownership interest in the Belt Railway, CSXT will continue to own 100 percent of the B&O/CT. CSXT and NS will each be the largest shareholders of the Belt Railway, together owning 50 percent of the company.

And now, in addition, by voting Conrail's IHB as a block -- stock as a block, as they have agreed to do, they will control the IHB as well.

As Administrative Law Judge Leventhal found, and the Board affirmed earlier in this proceeding, despite Conrail's 51 percent ownership of the IHB, Conrail historically has not exercised control of the IHB. IHB has been allowed to conduct its own operations on a semi-autonomous basis.

Accordingly, intermediate switching service by the IHB and interchange by operation over IHB lines through Chicago are available today on a generally open and neutral basis to all railroads.
serving Chicago. Under the plan which applicants are asking the Board to now endorse, that is going to change.

Under applicants' plan, the neutral IHB will be gone. Applicants have made it clear that, unlike Conrail, they will exercise control over the IHB and transform it into essentially an operating extension of CSXT and, to a lesser extent, NS.

CSXT's operating plan reveals the extent of this change. Under their plan, CSXT will assume control over the dispatching of IHB's lines. CSXT has proposed removing IHB's dispatching functions from IHB's offices and placing them at the same location as the dispatches for the B&O/CT.

CSXT will appoint the general manager of the IHB -- the highest-ranking operating officer on the railroad. The function of IHB's Blue Island Yard, its largest yard and only hump yard, will be changed from one used to support IHB's local customers to one whose principal mission will be to "support Gateway flow traffic."

To prevent the loss of IHB as a neutral
switching carrier, the coalition has proposed a condition under which the coalition would purchase Conrail’s 51 percent equity interest in the IHB. Each railroad member of the coalition would purchase a minority share, thus assuring that no one member would or could control it.

Under this diverse ownership structure, the IHB would continue to operate as the IHB operates under Conrail’s control today as an independent entity focused on providing efficient service to all of its customers, including the railroads serving the Chicago Gateway and its online shippers.

Perhaps the strongest feature of the coalition’s plan for neutral independent IHB is its simplicity. The basic plan is to let the IHB be the IHB. Let IHB manage its own operations, dispatch its own lines, market its own services, determine the priority of its own capital investments, and otherwise make decisions based on what is in the best interest of IHB and its customers, not some other railroad.

By putting in place a diverse ownership structure, the plan does not need to rely upon
arbitrations, litigations, or continuing STB oversight
to accomplish its purpose.

The coalition’s plan for the IHB has
received broad public support. Over a dozen and a
half shippers, including the ad hoc committee of
online IHB shippers, the Illinois Department of
Transportation, the Indiana Port Commission, the
Chemical Manufacturers Association, the Society of
Plastics Industries, the two United States Senators
from Illinois, and the Chicago Congressional
Delegation have advised the Board they strongly
support retention of an independent neutral IHB.
Significantly, no railroads other than applicants have
opposed the coalition’s plan.

Chicago is the largest and most important
rail gateway in North America. It is already prone to
periodic congestion. Central to the continued smooth
interchange of traffic through this critical gateway
is that at least some key interchange routes be
operated in a manner that is focused on utilizing the
route’s capacity to keep everyone’s traffic moving,
not just the traffic of one or two railroads.
It is not without a little irony that we note that neutral operation of certain lines in the Houston terminal is now being implemented as a solution to the problems there. If anything like what happened in Houston were to happen in Chicago, the effect on the nation's rail system would be catastrophic. What happened in Houston cannot be allowed to happen in Chicago.

A neutral avenue for the interchange of traffic through this gateway must be kept open and available to all railroads. The coalition urges the Board to act to protect the interchange of traffic through the Chicago gateway and approve the coalition's responsive application.

Thank you.

CHAIRMAN MORGAN: Thank you.

Mr. Friedman?

MR. FRIEDMAN: Thank you. Good evening, Madam Chairman, Mr. Vice Chairman. I'm Richard Friedman, and I feel like the caboose on a train that left early this morning.

CHAIRMAN MORGAN: A very distinguished
position, I might add.

(Laughter.)

MR. FRIEDMAN: I speak for my client, the Port District, and I'm sure for everyone in this room, in thanking you for your close attention and the close attention that your staff has given to these proceedings today, and you have another day ahead of you tomorrow.

I represent the Illinois International Port District, also know as the Port of Chicago. We are seeking the imposition of conditions on this merger, if the merger is approved. We are requesting that the STB fulfill its mandate to encourage competition and to encourage intermodal transportation that appears as a standard in its regulations.

The Illinois International Port, or the Port of Chicago, is located on Lake Calumet at Lake Michigan. It's the largest inland port in the United States, and it's the home to steel manufacturers, bulk terminals, grain elevators, and persons who use the -- can take advantage of the Lake Michigan and the Illinois waterway transportation, the road system in
Chicago, and, of course, the rail traffic that we’re talking about today.

The port is divided into two sections. The first is the west side. On the west side, the rail service is provided by, owned, and operated by Norfolk Southern. On the west side, the traffic and the car movements have been increasing from year to year. On the east side, rails are owned and operated by the Norfolk Southern, but the traffic has been decreasing over the past several years.

What’s the difference? The difference is access. The access on the west side where the traffic has been increasing is open to other carriers. Other carriers have rights to serve, and they do serve, our customers and our warehouses and grain elevators on that side.

However, on the east side -- and that’s what we’re seeking today -- on the east side, Norfolk Southern service is exclusive, and despite requests and demands, the service remains exclusive to Norfolk Southern today. The condition that we’re asking is that the traffic on the east side be put on an
equitable footing with the west side, and, that is, open to other local service carriers as well in the Chicago area.

Now, we’re not here to shake the Christmas tree and see what falls out, because this is something that’s transactionally related. It’s directly related to this transaction for two particular reasons. Earlier this morning Mr. Allen, counsel for Norfolk Southern, spoke of the competition that’s being promoted by the shared service areas, and that competition is being provided to the Atlantic coast. These are competitors with Chicago.

If that open competition that’s going to appear there occurs, it’s going to be to the detriment and the further degradation of the east side of the Calumet Harbor. So what we’re asking is to be put on an equal footing as a result of what’s happening with this transaction.

Also, transactionally related is the change for the service to the port. Currently, service through the port is operated through the Calumet Yard. It isn’t really clear from the
materials provided by the railroad exactly what’s going to happen or when it’s going to happen to Calumet Yard. However, the ultimate goal, I suppose, is the -- I think they told us particularly -- they’re going to reduce crews there, and they are eventually going to turn that Calumet Yard into an intermodal facility.

That definitely means changes and, of course, reduced service by the crew reductions. The current operations of Calumet Yard, if they’re moved, appear to be going to the Elkhart Yard in Indiana, which is about 80 miles distant. So the transaction which contemplates the movement of the services that are now provided are not certain what’s going to occur and likely to be degraded.

The only contrary argument that we have heard appears in the rebuttal, and Norfolk Southern says that operations by such carriers as CSX or the South Shore or the CRL, who may have operations on the east side, would interfere and cross tracks of the Norfolk Southern.

But I ask you, does it matter what color
these engines are painted? The operations, whether they're operated as they currently are by NS or by the other carriers, are going to have to cross or use NS lines. It doesn't make a difference who operates them.

So I am asking the Board to enhance the intermodal facility and the Port of Chicago as the quintessential intermodal facility by imposing the conditions that we are asking.

CHAIRMAN MORGAN: Thank you.

Let me just, while you're there, Mr. Friedman -- you don't need to stand. You can sit, if you'd like. But the situation that you describe, this is a preexisting condition, is that correct? In other words, this is an issue that's --

MR. FRIEDMAN: Yes.

CHAIRMAN MORGAN: This is something -- the east and the west has been an issue before, right?

MR. FRIEDMAN: Well, that -- you describe the condition as it exists. What I'm saying is that as a result of the two items I mentioned -- the SSAs and the change in the yard -- service is going to
decline further. So I’m asking that -- not that the status quo be preserved, but we be put on an equal footing to counteract the impact of the changes.

CHAIRMAN MORGAN: I think one of the concerns that I hear you raise is an operational one in Chicago. In other words, you have one half that’s working better than the other half, as you see it.

MR. FRIEDMAN: That’s correct.

CHAIRMAN MORGAN: And you don’t believe that the changes that NS plans to make in the yard will help that?

MR. FRIEDMAN: Not in the least. And nothing appears in the evidence that was submitted that would indicate any enhancement to the service on the east side.

CHAIRMAN MORGAN: Mr. Wheeler, your discussion of Chicago, are you talking about competitive concerns, operational concerns, both?

MR. WHEELER: They are both. They are competitive insofar as presently Wisconsin Central coming in with its shipment and either go through the IHB and interchange with Norfolk Southern for traffic...
going east, or through the B&O/CT and interchange with CSX.

After the merger, whether I go through the IHB or whether I go through the B&O/CT, I’m going through a controlled managerial and dispatched, and, in the case of B&O/CT, owned operation by CSX. So I’ve gone from two to one.

The second is operational. The line that we use to go from Forest Park over to -- into the B&O/CT’s yard, that Altenheim subdivision, is basically a line that is not used by CSX other than for a once a day freight train that goes out and handles 11 different shippers online. The line has been allowed to deteriorate to the point where it is substantially a 10 mile an hour railroad.

What freight yard there had been there, which we don’t have access to, is in the process of being apparently salvaged, and we’d like to reverse that process, improve those operations. Frankly, I’m tired of driving down the Eisenhower Expressway and seeing our trains sit there waiting on this line of railroad until it can be worked in to the B&O/CT’s
dispatching to move it on to their busier parts of the road. This is sort of like an appendage on the entirety of the B&O/CT operations in Chicago.

CHAIRMAN MORGAN: Now, have you had any discussions with CSX about these issues?

MR. WHEELER: We have. We've had extensive discussion. I think some of them are reflected in the record, some of the correspondence back in forth between the parties. This is a line that at one point we had attempted to purchase earlier.

What makes it a matter to bring before the Board, as opposed to simply continuing to discuss, is the fact that now CSX not only will have B&O/CT, but they also will be controlling and operating the IHB. And that raises it to the level that, regretfully, we have to bring it here before the Board.

CHAIRMAN MORGAN: Well, on that matter of control, and I -- it's late, so I might otherwise walk through the percentages before and after of ownership -- but it seems to me that you're assuming that there will be some sort of collusion between NS and CSX in
the operations of these companies that they will now, you know, have different shares in.

MR. WHEELER: No. It’s not a function of the share ownership so much on the IHB, but rather a function of the contractual arrangement that Norfolk and CSX have entered into with respect to the actual operation of the IHB. I think it’s in Volume 8(c), Exhibit F, which is the Norfolk Southern/CSX agreement pursuant to which CSX has the right to appoint the general manager for the IHB.

Now, my understanding of a general manager is that’s the individual who literally will direct the day-to-day operations. Moreover, CSX has the right to direct the dispatching of the IHB in the Chicago terminal area.

I’d put those two together. And to me, functionally, that is control, by contract, that CSX will be able to exercise over the IHB. And, thus, when I come to deal with do I go down to -- over the IHB to reach, or do I go over to B&O/CT, I’m going to be dealing with the same dispatching entity. And I’m going to be dealing with the same management of those
two railroads.

I don’t even have to get to the level of trying to argue on a staff ownership basis. It’s the contract that has created this problem.

CHAIRMAN MORGAN: Mr. Sippel, do you have anything to add, since you’re obviously talking about the same sort of issue?

MR. SIPPEL: Yes. I think our issue is very similar to what Wisconsin Central has addressed. I think what we’re seeking to preserve is a neutral independent IHB. Exactly as Bob has said, they have an agreement between them as to how the general manager will be appointed, how they will be dispatching, and who will do that dispatching, and how Blue Island Yard will be made into a CSX yard. That is far and away well beyond anything that Conrail has ever done with the IHB.

Regardless of the issue of stock control, it is that agreement between the two of them, and the fact that they would then have 51 percent and be able to implement that plan, that causes the concern of the groups in the coalition, that at that point the IHB
has ceased to be a neutral interchange route through Chicago.

CHAIRMAN MORGAN: Thank you.

Questions?

VICE CHAIRMAN OWEN: Based upon the -- either one of you's histories -- the history of -- in the industry here, how many other yards are controlled by neutral dispatchers or a neutral company like this? Are they controlled by BN/Santa Fe, or whatever it might be? The Richmond Yard is controlled by Santa Fe, the West Coulton Yard is controlled by old SP, and yet things go through.

So I guess my point is this: how many neutral yards are there in the country?

MR. WHEELER: If I may, Mr. Vice Chairman --

VICE CHAIRMAN OWEN: Yes, go right ahead.

MR. WHEELER: -- in Chicago, you have had a history of at least several of the major classification yards which have been used by many of the western and eastern carriers, effectively being operated as neutral yards.
The Belt Railway Company, which WC only gets to through the IHB, or the B&O/CT, so it doesn’t provide us a viable alternative. But the Belt Railway Company is owned by most every one of the Class 1 carriers, and that actually acts as a neutral classification and switching yard.

Similarly, as this Board in one of the earlier findings in this case ruled, that the way Conrail has allowed the IHB to be managed -- in fact, the IHB’s Blue Island Yard is being conducted on a neutral basis. It’s a fair and even-handed conduct of the business serving online shippers and carriers that want to have their traffic classified there.

As we have looked at what is being proposed by CSX with respect to the conduct of the operation of that Blue Island Yard, which is a major classification yard, it is going to become a CSX classification yard, and CSX is going to determine -- some traffic will stay there to its benefit. Some they’ll move over to Barre Yard, to their wholly-owned subsidiary, B&O/CT’s Barre Yard.

So we have had a history in Chicago of
independent neutral dispatching, which is being upset
by this transaction. Were it not for the change, we
wouldn’t be here.

VICE CHAIRMAN OWEN: Did you think about
some type of contractual deal would emerge, or
something like that? Say, if CSX doesn’t process your
cars through in a certain period of time, they start
paying you so much money. If they lose --

MR. SIPPEL: I think --

VICE CHAIRMAN OWEN: I don’t know. I’m
just trying to think of some other way here, because
I think if I were the Class 1, and I had invested all
of this money, and it was going to be my yard, yes,
I’d want to run it my way. And I’d want to make as
much money off of it as possible.

And so I would move your cars through as
fast as I’d move mine through, because the more cars
I run through a manifest chart, then supposedly I make
more money. I would think that’s the case.

MR. SIPPEL: I would hope that would have
been the case. I assure you that we wouldn’t be here
making the presentation we have if we couldn’t have
worked it out. And I think in fairness to the Class 1’s, and particularly to CSX -- at least from the WC’s perspective -- it’s from them that we’re seeking the largest condition.

They have their principles on this, and they feel they’ve gone as far as they can. And we believe that that simply is not far enough. We’ve tried to reach an accord and have been unable to, and I think there are matters of principle and law which are before the Board and are going to require a ruling from you.

VICE CHAIRMAN OWEN: An extension of that might be that you would say that, well, maybe all of the major classification yards in the nation should be owned by private consortiums.

MR. SIPPEL: As a policy matter, that may be a wonderful thing. But I don’t think what we’re asking --

VICE CHAIRMAN OWEN: No, no. I --

MR. SIPPEL: -- discretely here requires that.

VICE CHAIRMAN OWEN: Okay.
(Laughter.)

Thank you.

CHAIRMAN MORGAN: Are the shippers that are weighed in in this respect -- I mean, obviously, you’re talking about issues that ultimately affect service to shippers. Is there a coalition of shippers that has come forward and raised concerns about Chicago on this particular issue?

MR. SIPPEL: Yes. There is a group that formed specifically for this case called the Ad Hoc Committee of Online IHB Shippers, who support very strongly --

(Laughter.)

-- the neutral independent IHB concept.

We have the Chemical Manufacturers Association, the Society of Plastics Industry. We have over a dozen and a half individual shippers who filed statements with the Board indicating their concern over the plan as the applicants have outlined it, and indicating their strong support for retention of a neutral IHB.

These are shippers who are online on the IHB, and these are shippers who -- other shippers who
also move traffic through the Chicago gateway and understand the importance of having an ability to move traffic through that gateway.

MR. WHEELER: And I might add that with respect to Wisconsin Central, and specifically the request that we be able to establish an independent route to reach Norfolk Southern, a very substantial number of shippers constituting our shipper base in Wisconsin and in the Upper Peninsula, largely representing the paper industry, which is completely dependent on our ability to get the traffic through Chicago, have weighed in in support as well as the Wisconsin Department of Transportation.

MR. SIPPEL: I might add the Illinois Department of Transportation has also weighed in in support of a neutral IHB.

CHAIRMAN MORGAN: Okay. Well, thank you all.

VICE CHAIRMAN OWEN: Thank you.

CHAIRMAN MORGAN: And this concludes today's testimony. I think we've heard from about 50 witnesses today, and I thank all of you who have
stayed in the room with us.

I also want to thank all of the Board staff who has worked throughout the day, this very long day, to ensure that the day went well, and I appreciate it. And with that, we will be back here tomorrow at 10:00.

(Whereupon, at 9:08 p.m., the proceedings in the foregoing matter went off the record.)