

SURFACE TRANSPORTATION BOARD

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1 stand before you --

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

4 (Laughter.)

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

7 I stand --

8 CHAIRMAN MORGAN: Glad to hear that.

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

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

21 Applicants in this proceeding have agreed
22 to divide the market, the New York City regional

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1 market, into two distinct parts. One part of the New
2 York City regional market will have to be served by at
3 least two rail carriers directly, and one part will be
4 served by one rail carrier directly. That's what this
5 condition is intended to address -- the anti-
6 competitive situation that's created by the
7 applicants.

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

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

20 When New York City first learned of the
21 plans of CSX and Norfolk Southern to divide the assets
22 of Conrail, and to create rail competition in the New

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1 York market for the first time in over 20 years, the
2 people of the City of New York were delighted. Ever
3 since the formation of Conrail in 1976, the people in
4 the city, in its northern, eastern, and western
5 suburbs have been at the mercy of Conrail. And the
6 decline in rail shipments into and out of the city
7 shows the effect of their having been at the mercy of
8 that carrier.

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

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

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1 those shippers.

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

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

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

22 It's designed to create an anti-

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1 competitive problem created by this transaction. It's
2 limited in scope. The trackage rights will take the
3 new carrier in this market to the point of interchange
4 with other carriers that can compete effectively with
5 CSX for the long haul.

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

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

16 Metro North officials have testified on
17 the record in this proceeding that there will be no
18 interference with commuter operations as a result of
19 the operation of the trains that will operate over the
20 trackage rights of the city and state seen here.
21 There is room on this track for these trains.

22 There's a market, according to the experts

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

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

13 Thank you very much for your time.

14 CHAIRMAN MORGAN: Thank you.

15 Mr. Maser?

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

21 This group is composed, as you know, of
22 rail shippers in the Buffalo and Niagara Falls and

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1 Dunkirk area of western New York, also of economic and
2 regional development agencies, and also city and
3 county officials.

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

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

21 Similarly, those conditions would at long
22 last, after a 20-year hiatus, fulfill the preferred

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1 approach of the Federal Government when -- at the time
2 Conrail was created with respect to the Niagara
3 frontier area.

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

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

15 Now, I want to take -- and these
16 conditions also, I might say, picking up a point that
17 Mr. Slover made, would be consistent with the Norfolk
18 Southern's principles of balanced rail competition.
19 The proposed transaction would not because it would
20 not inject two-carrier competition in major markets in
21 the northeast, including in the Niagara frontier. And
22 there is no doubt that the Niagara frontier is a major

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1 market, a half billion dollars.

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

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

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

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1 Niagara Falls. But they are overhead trackage rights
2 only; they are not local trackage rights.

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

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

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

19 Now, let me address also reciprocal
20 switching in connection with the NIT League settlement
21 agreement. The NIT League settlement agreement, good
22 client that it is of my firm, is fine as far as it

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1 goes, but it does not go far enough. It does not,
2 with respect to reciprocal switching, address the
3 majority of the traffic -- actually the vast majority
4 of the traffic -- in the Niagara frontier.

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

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

17 In addition, I want to say that what we
18 are asking is, indeed, a pro-competitive approach. It
19 restores and enhances the competition that was
20 intended by Congress, and the applicants, when the
21 opportunity was presented to them, they're touting
22 fulfillment of the final system plan elsewhere, and

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1 now they seem to be saying, "Well, these shared asset
2 deals were just private deals because we couldn't
3 otherwise reach an agreement." In their application
4 they're saying, "We did this because, in part at
5 least, in large part, it fulfilled the final system
6 plan's preferred approach." They have done that in
7 the Niagara frontier area.

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

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

17 Thank you very much.

18 CHAIRMAN MORGAN: Thank you.

19 Mr. Midkiff?

20 MR. MIDKIFF: Right.

21 (Laughter.)

22 CHAIRMAN MORGAN: I'm a quick learner.

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

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

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

22 We operate under the authority of ISTEA,

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1 soon to be known as T21. And isn't that a great name?
2 T21. And as a metropolitan planning organization, we
3 are mandated by the federal law to get the maximum use
4 out of the existing infrastructure. That is what we
5 are told to do, and we're told to do that as local
6 agencies to try to blend a public and private
7 infrastructure in a way that we can move freight
8 without laying down strip after strip of concrete for
9 the ever-increasing number of trucks.

10 So what I'm coming to you for is for your
11 help in moving intermodal traffic. In 1992, Conrail
12 removed the intermodal facilities from Rochester. The
13 nearest facility we have is in Syracuse, some 90 to
14 100 miles east of Rochester. There is a facility in
15 Buffalo operated by the Norfolk Southern that handles
16 westbound traffic, and that is some 60 to 70 miles
17 west of Rochester. And you have to add additional
18 money in order to get it there.

19 Now, the applicants make much over the
20 benefits of single-line operation and say they're
21 going to recapture a million truck lines -- truck
22 shipments from the highways. But unless we have

1 intermodal facilities in Rochester, we're not going to
2 be able to be a party to that.

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

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

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

21 And we ask you to give oversight of the
22 Monongahela usage agreement -- a five-year oversight

1 -- because we know -- I know personally, as a
2 transportation manager for Eastman Kodak, of the
3 problems associated with the Monongahela Railroad and
4 the usage of that by two railroads.

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

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

10 (Laughter.)

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

13 CHAIRMAN MORGAN: Mr. Lamboley?

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

20 First, to inform you that at Southern Tier
21 an agreement has been reached between Southern Tier
22 West, the applicants, Norfolk Southern, and Conrail,

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1 as well as the New York State DOT, regarding the
2 Southern Tier extension line.

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

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

16 Thank you very much.

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

21 MR. LAMBOLEY: Yes.

22 CHAIRMAN MORGAN: Mr. Midkiff?

1 MR. MIDKIFF: Yes?

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

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

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

16 MR. MIDKIFF: I think it would, yes. At
17 the present time, as I understand it, the agreement
18 applies only for reciprocal switching between CSX and
19 Norfolk Southern. In Rochester, this would be
20 reciprocal switching between the CSX and the Rochester
21 and Southern Railroad. So it would have to be
22 extended. The level is -- I would have a hard time

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1 arguing for something less if the rest of the nation
2 is taking what they're going to agree to. But it
3 should be broadened to include the Short Line
4 connections.

5 Thank you.

6 CHAIRMAN MORGAN: Thank you.

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

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

12 (Laughter.)

13 MR. SLOVER: Well, I --

14 CHAIRMAN MORGAN: We can start a campaign
15 right here if you'd like.

16 (Laughter.)

17 Couldn't resist. Excuse me.

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

20 MR. SLOVER: That's correct.

21 CHAIRMAN MORGAN: -- important to New
22 York, and I know we have a couple of different

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1 interests at the table. But let me just ask, with
2 respect to some of the recent agreements that have
3 been entered into with CP and CN in the New York area,
4 how does that respond to some of the concerns that the
5 State of New York has relative to competition in the
6 state?

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

10 CHAIRMAN MORGAN: Right.

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

21 CHAIRMAN MORGAN: Thank you.

22 MR. SLOVER: Sure.

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

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

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

20 CHAIRMAN MORGAN: Okay.

21 Mr. Maser?

22 MR. MASER: Yes, ma'am?

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1 CHAIRMAN MORGAN: With respect to Buffalo,
2 you talked a little bit about the market share in
3 Buffalo as you see it. Is the market share better now
4 than it -- would it be better under the transaction if
5 we did nothing for your area than it is today? In
6 other words, are there added advantages not -- perhaps
7 not as much as you would like, but is there some added
8 competition under the proposal before us as compared
9 to today?

10 MR. MASER: No, there really isn't, Madam
11 Chairman, I would say.

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

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1 as we see it.

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

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

18 Beyond that, yes, Norfolk Southern does
19 get Southern Tier into Buffalo, but it stays in the
20 south Buffalo area. As I say, there is not going to
21 be increased competition between Norfolk Southern and
22 CSX in the Niagara frontier. That is what we're

1 asking for. So we do not see it as adding
2 competition.

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

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

14 MR. MASER: Well, the NIT League --

15 CHAIRMAN MORGAN: To what extent does
16 that --

17 MR. MASER: It's fine as far as it goes.
18 It does help some of the shippers in the Niagara
19 frontier area. It takes Conrail's outrageously high
20 \$450, 390 charge -- depending what part of it is down
21 -- to the 250 level. Frankly, in our view, that is
22 still too high, but it is some help. But it doesn't

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1 go far enough because it doesn't include the bulk of
2 the traffic in the Niagara frontier area.

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

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

15 CHAIRMAN MORGAN: Thank you.

16 MR. MASER: Thank you.

17 CHAIRMAN MORGAN: Questions?

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

20 Let me get your name right here. Mr.
21 Midkiff, on the MPO, if I'm not mistaken, I think you
22 have access to intermodal funds.

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1 MR. MIDKIFF: Yes, sir.

2 VICE CHAIRMAN OWEN: And some ISTEAs funds.
3 Have you made application for anything along that line
4 to --

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

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

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

22 Then, I'm sorry, the Economic Development

1 -- I can't pronounce your name.

2 MR. SPITULNIK: Spitulnik.

3 VICE CHAIRMAN OWEN: I won't even try.

4 MR. SPITULNIK: Many have tried.

5 (Laughter.)

6 VICE CHAIRMAN OWEN: Sorry about that.

7 MR. SPITULNIK: Many have tried.

8 CHAIRMAN MORGAN: His first name is

9 Charles.

10 (Laughter.)

11 VICE CHAIRMAN OWEN: Charles, we'll go

12 with that.

13 MR. SPITULNIK: Works for me.

14 VICE CHAIRMAN OWEN: From the Economic
15 Development -- I'm always concerned about -- we talk
16 about all of these things and saying we need another
17 railroad, and then we need competition, yet we heard
18 earlier this evening that some of the short lines are
19 fearful of losing business and having to do this and
20 that. And so I say, well, now, if we bring two
21 Class 1's into an area like that -- and we cannot do
22 that. We cannot force two Class 1's to go in there

1 and spend money when there's no economic justification
2 for it.

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

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

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

21 We are simply asking that the Board order
22 that the line between Fresh Pond, New York, the point

1 in the city, and Albany, Selkirk Yard, and
2 Schenectady, be open via trackage rights to another
3 carrier. It can be a short line carrier. It can be
4 another Class 1. It can be anyone who wants to bid on
5 the service once the Board grants the rights as a
6 condition of its approval of the proposed application.

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

13 The evidence that we have submitted
14 demonstrates that there is environmental justification
15 for doing that, to reduce the air quality problems
16 that are created by the potential for having more
17 traffic across the bridges. The testimony that we've
18 submitted demonstrates that there is capacity on the
19 line. There is room on this line for another carrier,
20 and there's a market waiting to be served there. It
21 is not -- it doesn't necessarily have to be the two
22 Class 1's.

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1 And, once again, it's more limited in
2 scope than creating another shared assets operating
3 area. That's not what we're talking about. We're
4 talking strictly about trackage rights for another
5 carrier.

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

11 (Laughter.)

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

15 VICE CHAIRMAN OWEN: Okay. Good enough.

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

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

22 CHAIRMAN MORGAN: I would just follow up

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1 by saying that I think what you're saying is that if
2 -- if we deem that it's appropriate under our statute
3 that, you know, we can direct certain access, and so
4 forth. I mean, that's part of your proposal.

5 MR. SPITULNIK: Exactly correct.

6 CHAIRMAN MORGAN: Thank you all.

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

13 (Laughter.)

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

17 (Laughter.)

18 CHAIRMAN MORGAN: I see your priorities
19 are in order.

20 (Laughter.)

21 MR. WHEELER: Chairman Morgan, it's a
22 pleasure to be here, Vice Chairman Owen. I'm very

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1 pleased to be able to represent the interests of the
2 Wisconsin Central, Limited, and particularly all of
3 its shippers throughout Wisconsin and the Upper
4 Peninsula of Michigan, into Minnesota and Northern
5 Illinois.

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

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

18 However, it's that concern for service
19 that has caused us to come here to ask that the
20 transaction be conditioned in three specific ways, all
21 of which are intended to protect the movement of our
22 traffic through the Chicago gateway.

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1 The first is we're going -- we request
2 that CSX be required to sell part of the Altenheim
3 subdivision to the Wisconsin Central. Secondly,
4 require that CSX conduct direct interchange in Chicago
5 without the agency of the B&O/CT. And, thirdly,
6 require a neutral dispatching on the IHB.

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

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

20 After the merger, CSX, pursuant to its
21 contract with Norfolk Southern, will appoint the
22 general manager of the IHB; and, moreover, will be

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1 entitled to control the dispatching of the IHB in the
2 entire Chicago terminal area. Thus, after the merger,
3 Wisconsin Central's access to other carriers in
4 Chicago will be through CSX's wholly-owned B&O/CT, or
5 through CSX's controlled and dispatched IHB.

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

15 Now, I believe Norfolk Southern itself has
16 recognized the problem that this creates. Norfolk
17 Southern has agreed with Wisconsin Central -- and the
18 agreement is part of the record -- to transfer to
19 Wisconsin Central an interest in a rail line known as
20 the Panhandle Line. This line, in part, will assist
21 WC in making a direct connection to Norfolk Southern
22 after the merger.

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1 We intend to invest in this line, add some
2 additional track, so it will also allow us to provide
3 some additional and badly-needed capacity in Chicago.
4 But the full effect of the Panhandle transaction
5 cannot be realized unless we can also obtain the
6 Altenheim -- part of the Altenheim subdivision from
7 CSX, less than 10 miles worth of track.

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

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

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1 that we're going to face with CSX domination.

2 There are two other conditions that we
3 ask. One is the imposition of the requirement that
4 CSX make itself available for direct interchange in
5 Chicago. It's going to be present throughout Chicago.
6 There's no longer the need of moving everything
7 through the agency of B&O/CT. This will remove a
8 great amount of inefficiency.

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

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

19 One final point. None of the things that
20 we ask -- none of the things -- take away one dollar
21 from the public benefits or the private benefits that
22 CSX seeks to obtain. It will in no way interfere with

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1 any of their Chicago operating plant, because their
2 Chicago operating plants did not even mention the
3 Altenheim subdivision.

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

6 CHAIRMAN MORGAN: Thank you.

7 Mr. Sippel?

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

14 The coalition seeks a condition that would
15 preserve the Indiana Harbor Belt Railroad as a
16 neutral, independent, intermediate switching carrier
17 in the Chicago gateway. Until today, the coalition
18 consisted of Transtar, Incorporated, its subsidiary
19 the EJ&E, and the I&M Rail Link. As I advised the
20 Board earlier this evening, Transtar and EJ&E have
21 reached a settlement agreement and have withdrawn
22 their names from the coalition's responsive

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1 application.

2 However, I&M Rail Link -- a Class 2
3 railroad serving Chicago -- remains a party to the
4 responsive application, and the application is still,
5 therefore, before the Board.

6 It has always been part of the coalition's
7 plan that if the Board approved the proposed Conrail
8 transaction, and conditioned the transaction as the
9 coalition has requested, the coalition would invite
10 other regional railroads and interested short lines
11 and small Class 1's serving Chicago to participate in
12 the ownership of the IHB.

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

20 As Mr. Wheeler just described, three
21 railroads currently provide the vast majority of
22 intermediate switching service and interchange routes

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1 through Chicago -- the Belt Railway, the B&O/CT, and
2 the Indiana Harbor Belt Railroad.

3 Following the acquisition by NS and CSXT
4 of Conrail's controlling ownership interest in the
5 IHB, and Conrail's minority ownership interest in the
6 Belt Railway, CSXT will continue to own 100 percent of
7 the B&O/CT. CSXT and NS will each be the largest
8 shareholders of the Belt Railway, together owning
9 50 percent of the company.

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

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

19 Accordingly, intermediate switching
20 service by the IHB and interchange by operation over
21 IHB lines through Chicago are available today on a
22 generally open and neutral basis to all railroads

1 serving Chicago. Under the plan which applicants are
2 asking the Board to now endorse, that is going to
3 change.

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

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

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

22 To prevent the loss of IHB as a neutral

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1 switching carrier, the coalition has proposed a
2 condition under which the coalition would purchase
3 Conrail's 51 percent equity interest in the IHB. Each
4 railroad member of the coalition would purchase a
5 minority share, thus assuring that no one member would
6 or could control it.

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

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

21 By putting in place a diverse ownership
22 structure, the plan does not need to rely upon

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1 arbitrations, litigations, or continuing STB oversight
2 to accomplish its purpose.

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

15 Chicago is the largest and most important
16 rail gateway in North America. It is already prone to
17 periodic congestion. Central to the continued smooth
18 interchange of traffic through this critical gateway
19 is that at least some key interchange routes be
20 operated in a manner that is focused on utilizing the
21 route's capacity to keep everyone's traffic moving,
22 not just the traffic of one or two railroads.

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1 It is not without a little irony that we
2 note that neutral operation of certain lines in the
3 Houston terminal is now being implemented as a
4 solution to the problems there. If anything like what
5 happened in Houston were to happen in Chicago, the
6 effect on the nation's rail system would be
7 catastrophic. What happened in Houston cannot be
8 allowed to happen in Chicago.

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

15 Thank you.

16 CHAIRMAN MORGAN: Thank you.

17 Mr. Friedman?

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

22 CHAIRMAN MORGAN: A very distinguished

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1 position, I might add.

2 (Laughter.)

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

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

16 The Illinois International Port, or the
17 Port of Chicago, is located on Lake Calumet at Lake
18 Michigan. It's the largest inland port in the United
19 States, and it's the home to steel manufacturers, bulk
20 terminals, grain elevators, and persons who use the --
21 can take advantage of the Lake Michigan and the
22 Illinois waterway transportation, the road system in

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1 Chicago, and, of course, the rail traffic that we're
2 talking about today.

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

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

17 However, on the east side -- and that's
18 what we're seeking today -- on the east side, Norfolk
19 Southern service is exclusive, and despite requests
20 and demands, the service remains exclusive to Norfolk
21 Southern today. The condition that we're asking is
22 that the traffic on the east side be put on an

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1 equitable footing with the west side, and, that is,
2 open to other local service carriers as well in the
3 Chicago area.

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

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

19 Also, transactionally related is the
20 change for the service to the port. Currently,
21 service through the port is operated through the
22 Calumet Yard. It isn't really clear from the

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1 materials provided by the railroad exactly what's
2 going to happen or when it's going to happen to
3 Calumet Yard. However, the ultimate goal, I suppose,
4 is the -- I think they told us particularly -- they're
5 going to reduce crews there, and they are eventually
6 going to turn that Calumet Yard into an intermodal
7 facility.

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

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

22 But I ask you, does it matter what color

1 these engines are painted? The operations, whether
2 they're operated as they currently are by NS or by the
3 other carriers, are going to have to cross or use NS
4 lines. It doesn't make a difference who operates
5 them.

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

10 CHAIRMAN MORGAN: Thank you.

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

16 MR. FRIEDMAN: Yes.

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

19 MR. FRIEDMAN: Well, that -- you describe
20 the condition as it exists. What I'm saying is that
21 as a result of the two items I mentioned -- the SSAs
22 and the change in the yard -- service is going to

1 decline further. So I'm asking that -- not that the
2 status quo be preserved, but we be put on an equal
3 footing to counteract the impact of the changes.

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

8 MR. FRIEDMAN: That's correct.

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

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

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

19 MR. WHEELER: They are both. They are
20 competitive insofar as presently Wisconsin Central
21 coming in with its shipment and either go through the
22 IHB and interchange with Norfolk Southern for traffic

1 going east, or through the B&O/CT and interchange with
2 CSX.

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

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

16 What freight yard there had been there,
17 which we don't have access to, is in the process of
18 being apparently salvaged, and we'd like to reverse
19 that process, improve those operations. Frankly, I'm
20 tired of driving down the Eisenhower Expressway and
21 seeing our trains sit there waiting on this line of
22 railroad until it can be worked in to the B&O/CT's

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1 dispatching to move it on to their busier parts of the
2 road. This is sort of like an appendage on the
3 entirety of the B&O/CT operations in Chicago.

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

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

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

18 CHAIRMAN MORGAN: Well, on that matter of
19 control, and I -- it's late, so I might otherwise walk
20 through the percentages before and after of ownership
21 -- but it seems to me that you're assuming that there
22 will be some sort of collusion between NS and CSX in

1 the operations of these companies that they will now,
2 you know, have different shares in.

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

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

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

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1 two railroads.

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

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

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

18 Regardless of the issue of stock control,
19 it is that agreement between the two of them, and the
20 fact that they would then have 51 percent and be able
21 to implement that plan, that causes the concern of the
22 groups in the coalition, that at that point the IHB

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1 has ceased to be a neutral interchange route through
2 Chicago.

3 CHAIRMAN MORGAN: Thank you.

4 Questions?

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

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

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

17 VICE CHAIRMAN OWEN: Yes, go right ahead.

18 MR. WHEELER: -- in Chicago, you have had
19 a history of at least several of the major
20 classification yards which have been used by many of
21 the western and eastern carriers, effectively being
22 operated as neutral yards.

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1 The Belt Railway Company, which WC only
2 gets to through the IHB, or the B&O/CT, so it doesn't
3 provide us a viable alternative. But the Belt Railway
4 Company is owned by most every one of the Class 1
5 carriers, and that actually acts as a neutral
6 classification and switching yard.

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

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

22 So we have had a history in Chicago of

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1 independent neutral dispatching, which is being upset
2 by this transaction. Were it not for the change, we
3 wouldn't be here.

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

9 MR. SIPPEL: I think --

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

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

20 MR. SIPPEL: I would hope that would have
21 been the case. I assure you that we wouldn't be here
22 making the presentation we have if we couldn't have

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1 worked it out. And I think in fairness to the
2 Class 1's, and particularly to CSX -- at least from
3 the WC's perspective -- it's from them that we're
4 seeking the largest condition.

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

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

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

19 VICE CHAIRMAN OWEN: No, no. I --

20 MR. SIPPEL: -- discretely here requires
21 that.

22 VICE CHAIRMAN OWEN: Okay.

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(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

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1 also move traffic through the Chicago gateway and
2 understand the importance of having an ability to move
3 traffic through that gateway.

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

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

17 CHAIRMAN MORGAN: Okay. Well, thank you
18 all.

19 VICE CHAIRMAN OWEN: Thank you.

20 CHAIRMAN MORGAN: And this concludes
21 today's testimony. I think we've heard from about 50
22 witnesses today, and I thank all of you who have

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1 stayed in the room with us.

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

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