CHAIRMAN NOBER: Okay. Well, thank you very much, and thank all of you for your testimony.

We'll start with Commissioner Buttrey. Do you have any questions for the panel?

COMMISSIONER BUTTREY: I'd like to sort of drill down, if I could, down to the bedrock of some of these real-world circumstances. If I'm a shipper in Boise, Idaho, for instance, and another shipper in Pine Bluff, Arkansas, both need a flatcar for carrying lumber products, and they -- they call and try to arrange for this car to be provided at their facility, so they can ship their lumber products to the -- either a warehouse or a retailer, or whatever, and they ask for a quote on that car.

Does the shipper in Boise, Idaho, get the exact same rate as the shipper in Little Rock, Arkansas, assuming that the same number of days are involved and the same, you know, total shipment time, and so forth is involved -- is that an assumption I could make, or not?

MR. MEYER: Well, let me answer that question this way. The person the shipper will call in each of those instances is the railroad that serves the shipper. And that shipper then will want, you know, transportation service from that railroad. It will be up to the railroad to provide whatever quote is associated with, again, the transportation and the car supply.

The car supply remains a railroad obligation. It's not something that TTX is taking over for the railroads. The railroads continue to have, as the Board explained, or the ICC explained in 1974 in detail -- the railroads continue to have the car supply obligation. And they -- they'll quote whatever they regard as a rate needed to, you know, serve that shipper's needs and consistent with the railroad's other commitments, etcetera. That's not something TTX is involved in.

If the railroad wants to draw upon a TTX car to serve that shipper, that railroad will know that it has access to the TTX car at the same rate for the Boise move as the railroad serving the Pine Bluff move would have access to a TTX car. And if -- you know, if the move -- one of the beauties of TTX is that the railroad that serves Boise doesn't have to invest in a pool of cars that -- of its own that sits idle hoping for a move to materialize in Boise if all the shipments are happening in Pine Bluff.

The TTX cars will flow to where the demand is, and so there is, you know, much more efficient -- much more efficient investment. The same number of cars can serve more transportation needs, and the risks of any given investment are lower.

COMMISSIONER BUTTREY: I'm not sure I got an answer there. I think --

MR. MEYER: There are two things that should come out of that.

COMMISSIONER BUTTREY: Let me just restate the question, if I could. I'm trying to find out, if it is a TTX car that's being used for this move, for both moves, a move from a Boise and a move from Pine Bluff, are both -- if it's a TTX car, is the rate going to be the same for both shippers for the use of that car for the same period of time?

MR. MEYER: The rate -- there's an intermediate step, and that may be the confusion. The TTX rate is the same, absolutely, yes. That rate is paid by the railroad to TTX, and then the railroads have to decide commercially what their terms are going to be in interacting --

CHAIRMAN NOBER: I think he's trying to say no.

MR. GOODE: My railroad doesn't serve either of those points, so maybe I can --

(Laughter.)

-- unfortunately --

COMMISSIONER BUTTREY: I was hoping you'd jump in here and --

MR. GOODE: The pricing on this -- on intermodal business is quite competitive. It is competitive pricing, and the movement from Pine Bluff to wherever it would be would be priced according to the cost of providing the service, but also it would be priced according to the demand. I mean, the supply and demand and the market -- the intermodal market is a very fast-moving, shifting market, which is highly truck competitive. So there are a lot of factors that go into the pricing.

The railroad marketing person who would be trying to make the deal with the shipper in Pine Bluff would price that business so that he could get the business. That might or might not be the same as if he were looking at it from the other -- from the point of view of the person in Boise.

What would be the -- what would be good about TTX's role in this is that the individual railroad would not have to be projecting its business in any particular point in order to have the equipment necessary for that shipper in Pine Bluff, because the TTX equipment can work on a much larger universe of potential shippers, so that the Pine Bluff railroad could make that quote knowing that it has equipment available to do it. And that, I suggest, is the benefit -- is the benefit of this. But the question of the overall pricing to the end user has lots of factors in it.

COMMISSIONER BUTTREY: Well, the claim seems to be made that this somehow allows price fixing for the prices of the cars. And I was just trying to get down -- drill down, if I could, to the individual customer and look at it from a customer's or shipper's standpoint to see -- because the shippers appear uniformly to support this.

MR. GOODE: At the railroad shipper interface, where the pricing is done, I think there's just no such thing as price fixing, because in these markets all of this business is competitive, and the competitive rates apply. The shipper has a lot of option.

What is appealing to the shipper is that from the shipper's perspective this is an economical and efficient way for the railroads to get the equipment, and from the railroad's perspective what we want is to have as many options to get the equipment that we need for our -- to provide our services as possible.

That's why we would like to keep as many arrows in our quiver as possible in acquiring equipment, and that's why we -- that's why we are suggesting that this arrangement that TTX has historically had should be continued, because it would certainly be disruptive to our business to lose that, because we want to do business with TTX, but we also want to do business with the leasing companies. And we want to buy equipment and use it on our own, so we just want to have all of the options and do it in the most economical way.

COMMISSIONER BUTTREY: And even with the existence of TTX, is it correct that there is still a shortage of railcars in general, of certain types of railcars in general, like automobile transporters and things like that?

MR. GOODE: At particular times there are shortages developing in particular markets. I think that -- at the moment we are -- the good news is that the rail industry seems to be able to serve this -- the increasing demand in the intermodal markets. And with fuel prices being high and other factors in the economy strong right now, that growth is quite significant, and for the most part we have been able to handle that, although the -- although equipment is tight and it's constant -- it's a constant battle to provide that equipment.

MR. MEYER: There's no question, Commissioner Buttrey, that there is a continuing need for the railroad industry to have more and more flatcars to meet growing -- the exploding intermodal demand and to meet the demand for a host of other commodities that will continue to grow over time. Certainly, we hope it will continue to grow over time.

The leasing companies point out that there is a need for continued investment. TTX has provided a tremendous track record of investment and will continue to provide a tremendous vehicle for the railroads to jointly invest in a group of cars that no one of them might have bought on its own, because of the additional risk, the additional cost, and the lesser utilization efficiencies associated with an individually-owned car.

Now, the leasing companies are not the railroad's enemy. We're not trying in this proceeding to even remotely suggest that the leasing companies ought not invest in cars as well. If they can serve the needs of the railroad industry as well, if they can provide individual railroads with good deals, those railroads will take them.

As the record shows in this case, in the last 10 years, the leasing companies have increased the number of flatcars -- just the leasing opponents in this case have increased the number of flatcars that they own by roughly five-fold.

If TTX were somehow an anti-competitive force that was closing out other options, that five-fold increase would not have occurred. We submit that there's just absolutely no concern about TTX. Indeed, one of the great benefits of TTX is its investment to serve the continuing needs of the industry.

COMMISSIONER BUTTREY: Is there any current provision in the tax code that treats leasing companies differently from railroads, regular railroads that -- with relation to the acquisition, purchase, amortization, whatever, of railcars?

MR. MEYER: I don't know the answer to that, Commissioner.

MR. REARDON: Commissioner, in my former life, and in David Goode's former life, we --

MR. GOODE: We used to be competent tax lawyers, Andy, but I don't know about now.

(Laughter.)

MR. REARDON: But I think it's a case of who can use the tax benefits best as opposed to distinguishing different tax benefits, that I am aware of, and I'll throw out that caveat. There is no difference as to the tax benefits available at one company versus -- a non-leasing company versus a leasing company.

I might also add that we, in fact, lease cars from many of the leasing companies involved in this case.

MR. MEYER: In other words, TTX acquires its cars and often -- in many cases TTX will acquire its cars from a leasing company rather than buying the car outright.

COMMISSIONER BUTTREY: Is the manufacturing segment of this industry shrinking or expanding, or is it about static, or -- the manufacturers of the cars.

MR. MEYER: There are fewer manufacturers, in part because the manufacturers have had a compelling need to be able to deal better with the -- sort of the droughts and peaks of this -- the cyclical freight car industry. And so there has been consolidation in the industry, you know, freight car manufacturers buying other freight car manufacturers.

One of the benefits that has been pointed to by the supporting equipment suppliers -- and the entire equipment supply industry supports the TTX application in this case -- the continuation of the full range of TTX's pooling. But one of the points they make is that TTX, unlike railroads and others, doesn't just invest sort of at the peaks. TTX spreads out its acquisitions over time on a more regularized basis, looking forward to anticipated demand rather than reacting after the fact and it materializes.

That is also a beneficial force to the equipment supply industry. It allows them to maintain their lines on a more steady basis rather than peaks and troughs, and so forth.

COMMISSIONER BUTTREY: Mr. Reardon, you mentioned earlier the investment that TTX has made in railcars over the last few years. Would it be appropriate to ask what your forecast looks like for, say, the next three to five years about what --

MR. REARDON: Yes, Commissioner, I'll give you an example. Our budget this year is about $969 million, to be exact, for the purchase of new equipment, another $146 million in capital expenditures in conversion or modification of existing equipment, specifically to meet market demands, taking 48-foot intermodal equipment and extending it to 53-foot equipment. That program is ongoing at three of our division shops as we speak.

Next year our capital program is estimated to be in the vicinity of $800 million -- that is in 2005. In the outyears, of course, that figure gets a bit more flexible as planning and market plans change. But our capital expenditures will be quite substantial for the foreseeable future.

MR. GOODE: And I must just very quickly say that when you compare that with our -- Norfolk Southern's capital budget for the next year of approximately $800 million, it gives you a sense of how important this -- TTX is to the capital needs of the industry.

CHAIRMAN NOBER: Vice Chairman Mulvey?

VICE CHAIRMAN MULVEY: Thank you, Roger. I have a few questions.

In the past, the ICC denied a 15-year period, because, in part, the industry was in a very dynamic environment. Given the rapid growth of the intermodal market, and given the fact that deprescription is just newly complete in total last year, how is the current climate different? Don't we also have a very dynamic situation right now which would make it risky to extend it to 15 years?

MR. MEYER: I think not at all. In 1989, the Board expressed a particular concern about -- an uncertainty about whether the freight car leasing business was going to grow and flourish as an alternative way of providing freight cars to the railroad industry or not.

If you look at the reason -- at the underlying discussion in that decision, with the controversy over assignment, in 1994 the Board -- the ICC extended to 10 years the term of approval, because with five years of experience and really unanimous support in 1994 it saw lesser need for caution with respect to the term of authorization.

What we've seen in the last 15 years is two things. First and foremost, the change that the leasing companies feature in their filings -- and it has been a very dramatic and significant change -- is that the leasing business has emerged as a robust, well-established, and strong business.

There is no question about the leasing company's ability to step in, if and when any railroad, Norfolk Southern or any other railroad, chooses it wants to lease any kind of flatcar, any kind of freight car, it's there. So there's no uncertainty as there was in '89 about that factor.

What else have we seen? We've seen significant change in a lot of other factors in the railroad industry. You know, the number of railroads has shrunk. You know, there has been continued growth in the intermodal business.

What all of those changes show, I submit, is that TTX's benefits are robust, that they cross -- you know, they cross over all of the different other factors going on in the rail industry. They are a foundation, really, a foundational set of benefits.

Now, it is theoretically possible -- I can't imagine a circumstance that would change in the coming years, in the next 15 years, that would alter the basic calculus of TTX's benefits and lack of anti-competitive harm, but at the same time one never knows. What we have proposed is that the Board, as it has consistently done over the first 30 years of TTX's existence, is reserve jurisdiction to consider any claim by any party that the circumstances have changed in some unexpected way, or changed in any way, that alters the basic calculus of TTX's benefits and costs.

And in that situation, the Board will be here to consider whether pooling authority ought to continue as it currently exists or whether additional conditions are needed. And indeed, you know, one of the things that the leasing opponents seem to feature is that, you know, we don't want to have to come forward on our own.

Well, first of all, it would surprise me if the assembled, you know, masses of bankers sitting behind me aren't capable of speaking up if there is some problem that they perceive. But at the same time, if there is an interest in having comments, inviting comments on a date certain, we would be more than happy to have the Board schedule a time, say five years out and 10 years out, as we pointed out in our rebuttal, for comments to be solicited if there are any.

We think it very likely that TTX's benefits will be as clear to everyone in the railroad community in five and 10 years as they are today. If they're not, folks who have concerns can certainly speak up, and we'll be prepared to address them.

MR. REARDON: I might also respond to that, if I could, Vice Chairman Mulvey, in two fashions, one a bit tactical and the other more cosmic or strategic.

You asked, really, what has changed. First, with respect to the 1989 proceeding, that was -- there was one opponent in that proceeding, which was a car builder. That particular party later withdrew its opposition, and, in fact, in 1994 supported our application, and, in fact, in this proceeding they also support it. It's Gunderson Car Builders, Portland, Oregon -- an outstanding product. And, consequently, that tactically is one thing that has changed.

But perhaps on a more cosmic basis, in further response, broader response to your question, the fact is that there has been much change in the industry. The intermodal business went from three and a half million loads in 1983, now -- we surpassed 11 million last year. Consistent with that, the capital demands of the industry have changed dramatically.

Our spending, which we discussed a moment ago, our most recent highest amount was $600 plus million in the year 2000. With that tremendous increase in capital needs, I think it's important that the longer term is better, because of our need to go to the market and raise money for the longer term, higher spending.

VICE CHAIRMAN MULVEY: Well, following up on that, you mentioned in your testimony that TTX has the best credit rating in the industry. I think you said --

MR. REARDON: Yes.

VICE CHAIRMAN MULVEY: -- A --

MR. REARDON: Single A+.

VICE CHAIRMAN MULVEY: -- from Standard & Poor's.

MR. REARDON: Standard & Poor's.

VICE CHAIRMAN MULVEY: And BAA from Moody's. Is there any evidence, though, therefore, that there will be a major increase in your cost of borrowing capital if a five- or 10-year period were adopted rather than 15 years?

And in the past you had authorizations for five or 10 years? Did that affect your ability to borrow? You just came from a 10-year period, and you've already achieved the best credit rating in the -- in transportation. And the other part of that question is: what is the financing period for flatcars? In the testimony it said that these flatcars last for 40 years, but they're not financed over a 40-year period, I assume.

MR. REARDON: No. With respect to your first question, back when we did get the five-year renewal, our capital needs then were literally a fraction of what they are now. Our capital spending then was in the $200 million or $300 million range, and that was in a high year, late '80s, early '90s. So the capital needs were lower.

With respect to the other aspects of it, the markets now -- we typically go into the markets, and we will borrow anywhere from three years to eight years, 10 years perhaps, under what we call medium-term notes. I think, to answer your question in the most honest fashion, is this.

You don't really know what it will cost you until you go to market at a particular time. There are some periods, particularly when the economy is a bit shaky, that there is a so-called flight to quality, and the money markets will go to the lower-risk investments, such as TTX.

Now, if, in fact, our investment time period during that -- or our borrowing period during that time of economic fragility, then we may end up paying a higher rate because in the interim period perhaps our authority will expire, and an investor may say, "Well, I'm not so sure that I want to invest in that. I don't know what might happen down the road."

So it's difficult to pinpoint. It's not mathematically formulaic, but our experience in the market tells us longer is better and longer is typically cheaper.

VICE CHAIRMAN MULVEY: I have one more question. Under our governing standards, antitrust immunity should only be granted if there's an absence of alternative ways to achieve the benefits without granting the immunity. Can you show how antitrust immunity is required for the efficient equipment utilization for other than free-running intermodal flatcars -- that is, for some of the specialized cars -- why they need the same kind of protection from the antitrust laws as the free-running flatcars?

MR. MEYER: Let me answer that first question with a legal answer, and that is the statute and the cases really don't say that you can only approve if there is no other way of accomplishing the efficiencies. What they say --

VICE CHAIRMAN MULVEY: It's generally policy -- more policy than it is --

MR. MEYER: Well, it's policy in this respect. If there is a less anti-competitive way of achieving the same benefits, then it makes good sense that you would not approve an unnecessarily anti-competitive arrangement when a less anti-competitive arrangement was available.

What we have here is a situation where there is a clear showing of benefits that TTX achieves, and I want to get to the rest of your question, because certainly it deserves an answer, about the non-intermodal cars and generating benefits.

But there are benefits. There's no showing that those benefits can be achieved in other ways. No one has attempted to show that. The railroads have 30 years of experience with TTX providing these benefits, and this is the proposal that the railroads want to continue, the arrangement the railroads want to continue.

And the statute really doesn't call for a sort of -- a fine tooth comb examination of whether one can conceive of with -- with respect to any particular, you know, aspect of the pool, some other way of achieving that benefit.

A second point I want to make is more practical, leave aside the legal standard. The pool really is a whole that is greater than the sum of its parts. It doesn't -- it would not function, as we have shown in our rebuttal I think quite effectively -- it would not function if one thought about carving off from the pool different aspects of what TTX does.

For example, I think we have pointed out that if you imagine TTX as a pool, without the ability to price TTX cars, it wouldn't be a pool. Think about, from first principles, what TTX is. It's the railroads coming together to jointly invest in cars, and then to jointly use cars.

Well, if any given railroad has to engage in some kind of hard-to-imagine separate bilateral negotiations with TTX, then it doesn't have the assurance that it's being treated fairly with its co-investors in the fleet of cars that TTX represents. There would be no pool. There would be no fleet if one took away that aspect.

I think ultimately what is being sought is to take away TTX's ability to own cars, to invest in cars, but the experience of every other pool that has tried to divorce ownership from management is failure, we would submit, failure not -- failure, in some cases outright failure and demise because railroads wouldn't have the same incentive to keep their cars in a pool that was managed by TTX if all of a sudden they had a need that might lead them to want to pull the cars out, husband them for their own use.

And so in times of shortage, in particular, when needs are growing, as they are today, pools fall apart. In addition to that, the investment incentives are completely different. You lose all the benefits that TTX brings to bear in the investment in flatcars, reducing risks by pooling risks. If you're relying on railroads to go out and buy cars or obtain cars in some fashion, you're going to have fewer cars. And the railroad industry needs more cars.

MR. GOODE: But what we as railroads want to do, Mr. Vice Chairman, if I may say, is -- is grow and look into new areas of business. And where we're doing that, for example, in the movement of these large trucks, which we're -- which we're just beginning to go into, it is useful for us because of the risks and the uncertainty about where that business is going to be, and how long we're going to be able to hold that it's useful from a railroad perspective to have a TTX who -- which can spread the risks more broadly for the use of some of these new types of equipment.

MR. MEYER: You asked a question about cars other than the free-running intermodal cars, and I think it's really quite clear that with respect to all of TTX's flatcar types, every set of benefits, every one of the interlocking benefits that TTX's pooling activity brings to bear, applies to those cars, whether or not they're intermodal cars.

The specialized cars of all sorts in particular benefit from TTX's ability to pool a risk. You know, it's the chain tie-down cars that, you know, Norfolk Southern may not want to have in its portfolio because the demand may materialize on CSX, and vice versa. TTX invests -- I think the DOD witness will speak to this directly TTX invests in those cars, because they are investing for the railroad industry.

The same is true for center beams, for other -- every other class of flatcar that TTX has. All of the other benefits of maintenance, of innovation, of improvement, of redeployment -- and I want to -- I think it's important to remember that a lot of the non-intermodal flatcars that TTX has in its fleet used to be intermodal flatcars.

If TTX were somehow carved up into a more limited -- with more limited authorization, TTX would not be able to redeploy its intermodal cars into other uses as they wore out or as innovation in the intermodal equipment arena called for new types of equipment. That would impose frictions that would be inefficient rather than efficient.

And, finally, the leasing companies, you know, treat as if it were the be all and end all of pooling, the notion of utilization benefits. First, I want to reemphasize that that's just one part of what pooling -- one benefit that pooling brings to the table. But even in that narrow arena of utilization, it's well documented that TTX is able to do things that cannot be accomplished otherwise.

We looked specifically at the center beam fleet, which was featured in the leasing opponents presentations. And we were able to identify just, you know, kind of on the surface level thousands of situations where TTX, by managing its fleet of cars, because the fleet of cars is set up in a way that there are common terms, common prices, you know, the railroads understand what a TTX car is, it's the yellow car, it's fungible across the entire network, cars can be swapped from one railroad's shipper pool to another railroad's shipper pool, so that both sets of shippers are served more effectively, both railroads have lower costs, and everyone benefits.

So I think on all of those levels the answer is there is quite clear showing on this record that TTX benefits extend to every type of flatcar that is in the pool.

CHAIRMAN NOBER: That was quite an answer.

Can we try to keep our answers to within the five minutes of the --

MR. MEYER: I'm sorry.

CHAIRMAN NOBER: -- of the time each person has. We'll try to go around one more time, but I'd like to ask a couple of questions now myself, if that's all right. And you may have subsumed it in the last answer, probably so.

But if we were to grant the conditions that the leasing companies have asked for, what would be the effect on the carriers?

MR. MEYER: I think the first effect would be to destroy the TTX pool as we know it. There are two key conditions that the leasing companies appear to be seeking in this case, and I'm sure they can speak for themselves. But as I read their papers, it's, first, to eliminate TTX's so-called pricing immunity.

I don't think any of the leasing companies has thought through what that means. We have tried. And, frankly, it doesn't make any sense at all. It would disable the pool -- and I think this is part of the prior answer to Vice Chairman Mulvey -- it would disable the pool from having a fungible set of terms and conditions for all of its owner users for every one of its cars.

And by doing that, it would interpose all kinds of frictions that disable the efficient swapping and fungibility and movement of cars to where they're needed within the pool. But even more fundamentally, if the railroads that were jointly investing in the pool couldn't agree through TTX on what they were going to charge themselves to use those cars, they wouldn't invest -- they wouldn't -- they just wouldn't invest through the pool in those cars.

It's sort of a fundamental attribute of this joint investment that there is a joint decision about how to price the cars. Fundamental to any effective joint venture is: what price are you going to sell your product at? Without that ability, the pool really couldn't function.

The second condition that the opponents propose is to do away with TTX's ability to pool non-intermodal and some -- many acknowledge that automotive flatcars are equally -- equally benefit from the TTX pool, but at the very least non-intermodal and non-automotive flatcars.

By carving them away from the pool, it would deprive shippers and railroads of the tremendous benefits of pooling for those car types, and it would impose tremendous frictions and difficulties with respect to one of TTX's great benefits of redeploying its assets to the area of greatest need and most efficient use.

CHAIRMAN NOBER: In the statute -- and I appreciate your citing it, because ultimately that is what we have to look at when we get an application like this -- it says that we're supposed to look to the interest of better service, to the public or the economy of operation, and it will not unreasonably restrain competition. Competition among whom or to whom? Who is that referring to, in your opinions?

MR. MEYER: Well, if you go back to first principles, and where the pooling statute comes from, I think really Congress was referring to competition among the railroads with respect to their provision of transportation service. I mean, the original idea of pooling back in the late 1800s was, you know, pooling of -- pooling of transportation services in a particular competitive corridor. So that's clearly the thrust of the statute.

Now, obviously, in 1989, the Board also considered a different brand of competitive concern -- again, competition among the railroads -- this time involving the purchase of equipment, the so-called monopsony concern.

CHAIRMAN NOBER: I read the prior decisions, but I'm just curious as to -- you know, I read the Interstate Commerce Act and look at the rail transportation policy -- and I'm going to ask the leasing companies this very question, so if you want to begin thinking about the answer go ahead -- which is what -- competition among whom are we supposed to -- to whose public benefit are we supposed to be looking at? And I'm curious where the concerns of the leasing companies come in.

MR. MEYER: Well, I think that's a very valid point, quite frankly. I think the leasing company's concerns are not about competition at all. I think if you read their papers --

CHAIRMAN NOBER: More competition among whom? Is it -- if it's railroads to shippers, that's one thing, if it's among consumers or between railroads. But as between one purchaser of equipment versus another, where in the statute does that concern come into account? That's my question.

MR. MEYER: I have a hard time seeing it myself, frankly, but at an even more fundamental level I think the leasing companies are not trying to further the aims of anyone's competition. They are trying to impose impediments on options that are available to folks who need cars.

CHAIRMAN NOBER: Thank you.

Commissioner Buttrey, do you have any further questions?

COMMISSIONER BUTTREY: I was just curious. I don't want to be prying too deep here, and I certainly wouldn't ask Mr. Goode to give us any propriety information that he doesn't think is appropriate. But I'm just curious about even -- even with TTX's capacity to get railcars and to finance railcars at a good rate, etcetera, presumably the carriers are out there buying railcars fairly rapidly also, even with that at your disposal. Is that -- that's a safe assumption.

MR. GOODE: That would be a safe assumption, yes.

COMMISSIONER BUTTREY: Okay.

MR. GOODE: And I think the -- I think from the railroad's point of view, that comes back to our -- our concern is simply how to find the capacity which we believe we're going to need over the next few years. The principal thing that is on my mind, as the CEO of a major railroad, is I see an opportunity for the rail transportation business to grow, perhaps even grow dramatically, in the next few years.

And that's why I want to be certain that we don't lose any of these options that are so useful to us in raising that capital and in providing for the growth which we think our customers are going to need.

CHAIRMAN NOBER: Mr. Vice Chairman?

VICE CHAIRMAN MULVEY: Thank you.

I guess we're talking about competition in the intermediate goods market rather than between the railroads and the shippers or between railroads, rather TTX competing with leasing companies, and then the question is whether or not the Act covers that, and whether that's in our purview or not.

But let me ask a question about the -- again, back to when the TTX was originally approved back in 1974, and it was first granted antitrust immunity to pool the equipment. At that time, there was 40 or 50 Class 1 railroads, and today now there's only five U.S. and two Canadian.

And it has been pointed out that some of the benefits -- some of the need for the pooling authority, which was necessary in 1974, no longer exists today, that it would be a lot easier today for the railroads to set up bilateral arrangements for sharing cars or for pooling cars, because you don't have as many possible permutations, given the few number of railroads.

So is that a valid -- in your view, is that a valid observation, that it's much more doable today than it was in 1974?

MR. MEYER: I believe the evidence in this case shows it's not at all a valid observation. To be sure, there are fewer railroads. We'll concede that. But what we have also been able to demonstrate is that you still have significant seasonal geographic competitive fluctuations in traffic, and the idea of any two railroads getting together, any -- and agreeing to something that replicates the pool, or any four or five railroads getting together and replicates the pool through a series of bilateral arrangements, is just hard to fathom. It hasn't happened.

One illustration of that is in the chassis arena, where TTX, as has been pointed out by the leasing companies, is in a position to offer some management services if the railroads ever can agree bilaterally to ways of sharing the chassis, the intermodal chassis that they use at intermodal terminals in various parts of the country. They haven't been able to reach agreement on that, something as seemingly mundane as that.

Now, you know, going back, though, to the idea of multiple railroads getting together and agreeing bilaterally, if Norfolk Southern and Union Pacific were to agree bilaterally as to the sharing of their equipment, that would be pooling. That's what pooling is. That would be a small, less efficient version of pooling, but it would still be pooling.

What we have is a network-wide and, therefore, much more efficient way of achieving the benefits of agreements among otherwise competing railroads with respect to how they can efficiently share a group of cars in which they have jointly invested.

No matter how you slice it, in terms of, you know, calling it a joint venture, or calling it a series of bilateral agreements, calling it what you will, it is under the statute pooling that requires approval, and deserves approval, if it can be shown to be pro-competitive and not anti -- excuse me, beneficial and pro-competitive. That's this pool.

MR. GOODE: Vice Chairman, we would have to invent something else, and I would -- and I guess I would simply say that that -- please don't make us have to do that, because we are operating at a very high level of stress in the system right now at a time when it wants to grow. And from a railroad perspective, I guess, I would say please let's don't have to invent a new system here. We've got one that has absorbed a lot of growth and worked rather well.

VICE CHAIRMAN MULVEY: If it ain't broke, don't break it.

(Laughter.)

MR. GOODE: Absolutely.

VICE CHAIRMAN MULVEY: I have one other question. In your verified statement, Mr. Reardon, you said that TTX has no independent profit motive. But absent a profit motive, therefore, you are basically saying you are subsidized by the railroads. You are competing with firms and the lessors who do have a profit motive.

MR. REARDON: Well --

VICE CHAIRMAN MULVEY: When you said "profit," were you talking about an economic profit, or were you talking about an accounting profit? Do you know what the distinction between the two is? So can TTX compete fairly in equipment supply, in the cost supply area, if it doesn't have a profit motive and the other firms do?

MR. REARDON: Well, we have a profit motive, to be sure, Vice Chairman. Specifically, our profit motive is to ensure that we reach a certain coverage ratio in order to maintain our credit rating with the rating agencies, and that, in turn, of course reduces our cost of borrowing because we're a lower risk then, and, therefore, pay lower rates for our paper.

So to that extent, absolutely, we have a profit motive. Beyond that, our profit motive is not such that perhaps an independent leasing company would have to respond to its shareholders and obtain as high as possible a return on their investment. Our direction is different than that.

MR. MEYER: To put another approach on this, I think -- I mean, TTX's motives are in alignment with the railroads. TTX has the same profit motive that a railroad investing in its own cars has with respect to the investment in the cars. It makes no sense to think about Norfolk Southern buying its own cars and does that somehow unfairly compete with the leasing companies providing cars to Norfolk Southern. It just -- that doesn't make any sense.

What TTX does is it sort of, you know, it mirrors the incentives the railroads have to make those acquisitions, make them efficiently as possible, support the -- obviously, support the investment through a return on the cars. There is no subsidy. I think we have shown that quite clearly.

And, you know, if the leasing companies in that environment can supply cars and still make a profit for themselves, which won't necessarily get reinvested in the railroad industry, which won't necessarily support the same, you know, redeployments and other adaptations to meet shipper needs, because it's the leasing company's own separate, independent profit motive, why then they are free to offer their wares to any railroad without restriction.

VICE CHAIRMAN MULVEY: It seems like a form of transfer pricing almost, but that usually is done when there's tax benefits involved. But anyway --

CHAIRMAN NOBER: I just have one final followup question to an earlier question by the Vice Chairman, and that has to do with the length of time. If we -- I mean, you've all basically asserted that a 15-year period is financially advantageous, because it -- can you sort of lay out just, again, how that would be? Where would the benefits come, and how would they be reflected into the system?

MR. REARDON: Yes, I can do that, Chairman Nober. The longer the term, quite frankly, the more at ease the investment community is with our paper. I mentioned in partial response to Vice Chairman Mulvey's question that we use a series of medium-term notes ranging anywhere, depending upon rates of the day, depending in time they may range from three years to eight years.

However, that doesn't mean that they are totally paid off in eight years. We keep refunding those, and so an investor in our paper is interested not only in what will the return be on this particular note but, on the longer range, what will our ability be to refund at maturity? Consequently, longer is better.

Now, can you reduce that to a mathematical formula? No. It depends upon the money markets at the time that you go to the market.

CHAIRMAN NOBER: And the lower costs, how do they get reflected, then, in the system? Does that turn into lower lease payments to the railroads?

MR. REARDON: Absolutely. If our costs -- yes, sir. If our cost is lower --

CHAIRMAN NOBER: Will there be lower rates to shippers or --

MR. GOODE: Well, it enables us to be more competitive in the pricing. I mean, I do have a profit motive, but --

CHAIRMAN NOBER: I understand. Or it helps you become more revenue adequate, which are the two concerns we have in the rail transportation policy.

MR. GOODE: Become revenue adequate.

MR. REARDON: I should point out, then, Commissioner, over the last two years, as everyone knows, interest rates were at historically low levels. Consistent with that, TTX gave back to the railroads historic rate decreases and actual rate reductions -- $71 million in 2003 -- correction, in 2002, and in addition to that close to the same amount in 1974.
So -- correction, from 2003, the succeeding year, so between the two of them we had over $140 million which we gave back to the railroads in the form of rate reductions, and obviously that inures somehow to the benefit of the shippers.

CHAIRMAN NOBER: Okay. Well, I have no further questions.

MR. REARDON: Thank you.

CHAIRMAN NOBER: Well, again, thank you all very much for your very patient testimony. And, again, we'll move on to the next panel.

MR. REARDON: Thank you.

(Pause.)

CHAIRMAN NOBER: Okay. We'll move on to our next panel, and we'll have Mr. George Gounley from the U.S. Army Military Surface Deployment and Distribution Command.