CHAIRMAN NOBER: Okay. Well, again, thank you for your patience, and thank you for coming. We appreciate your comments.

And we'll move on to the next panel, which will be Mr. George Mayo representing CIT Rail Resources and General Electric Railcar Services; J.J. Thomas for First Union Rail Corporation, representing First Union and Bombardier Capital Rail; and Mr. Terry Heidkamp from GATX Rail.

Gentlemen, come on forward. And whoever sits in that seat is going to draw short straw, so think accordingly.

(Pause.)

MR. MAYO: Mr. Chairman, I take the short straw.

CHAIRMAN NOBER: Well, you're listed first anyway, so -- please go ahead.

MR. MAYO: Chairman Nober, Vice Chairman Mulvey, Commissioner Buttrey, on behalf of CIT Rail Resources and GE Railcar, we appreciate the opportunity to appear before you today and explain the grounds upon which we take exception to various aspects of the pooling authority that TTX is seeking in this proceeding.

TTX attacks the objections that the leasing companies are asserting as though we are essentially entities that are carping about the fact that we're having to compete with TTX in the marketplace, and we don't like the challenges of dealing with them in the marketplace.

What TTX fails to acknowledge, though, is that we deal in a marketplace that is entirely different from the marketplace in which they deal. We deal in the marketplace as independent leasing companies operating one by one, no antitrust immunity. We are subject to the antitrust laws, and we're competing what -- with what is tantamount to an equipment cartel -- an equipment cartel owned by the major railroads in this country, which purchases railroad equipment, operates railroad equipment, prices railroad equipment, and does that under complete antitrust immunity.

It conducts its business in a way that it could not conduct its business but for the fact that it has pooling authority from this Board and is exempt from the antitrust laws. That's the entity with which we have to compete, and it should not be surprising to the Board to know that, given that fact that we are competing with this pooled entity, an entity with antitrust exemption, that we are pressing to ensure that that entity satisfies all of the relevant statutory requirements to justify its existence.

We're happy to compete with them, but we want a fair and level competitive ground upon which to compete, and that's what we are here today seeking. Under Section 11322, the Board's authority is essentially to do a balancing of the pooling requests put before it. You look at the public interest elements of the pooling request, and you balance that against any competitive concerns that the request raises.

In conjunction with that, you have the authority to condition the request that has been put before you, so that if you see problems associated with the pooling authority you can condition it and eliminate those problems.

The Board, in 1989 and in other pooling decisions that it has handled, has really adopted two principles in conjunction with addressing 11322. The first principle is that when it is interpreting an agreement that is put before it, it strictly interprets it in terms of how it's going to be applied, because that agreement inevitably raises anti-competitive concerns. And so it's a strict application of the agreement that is put before you.

And the second principle is that the agreement that is approved should be as narrow as possible to achieve whatever public benefits are associated with pooling, because if it's not narrow you then risk enhancing the potential anti-competitive effects of the agreement. So those are the two principal policy guides that the Board employs, and we urge you to employ those two principal policy guides as you look at the TTX agreement that is before you today.

In our view, applying those principles and applying 11322 to the TTX proposal, we don't think that you can approve the TTX proposal as it is presented to you. We urge the Board to modify the proposal in five respects. First, we think that you should not approve it for more than five years. Secondly, we think that the proposal should be modified so that pooling does not extend to non-intermodal cars. Third, we don't think there should be pricing authority granted to the pool.

Fourth, TTX has asked that it basically be able to self-define the scope of its pooling authority. We think that that is a very bad idea, that the scope of that authority, as originally talked about back in 1974 where TTX can't make substantive changes in terms of its policies and procedures without coming back to you, should stay in place.

And, lastly, to the extent that there is any issue as to assignment and allocation, we think that the Board should stand fast to prohibiting any assignment and allocation of TTX cars.

Before getting to the merits, before getting to those five various points, let me talk first about the relative support and opposition for the TTX proposal. If you listen to TTX, essentially all of the known world supports their proposal. We don't think that that's a fair reflection of what the record says.

The first point to remember is if you look at the roughly 60 shipper statements that have been submitted in this case, those statements focus almost exclusively on the intermodal aspects of what TTX does. If you look at what the port authorities are saying, you look at what the trucking companies are saying, you look at what the manufacturing companies are saying, they are talking about the intermodal aspects of what TAX's operation does.

And you know what? We don't disagree with them. We think TAX functions very efficiently in the intermodal market. We don't oppose that aspect of their pooling authority, so we are all in agreement on that particular issue. We take exception to other elements of the pooling agreement, and those are the elements that I'll be talking about in a bit.

If you look -- our count is that there were 21 formal comments filed with the Board. If you look at those 21 formal comments, we believe that 18 of those comments either take strong exception to what TAX is proposing, or at least raise issues as to the quality of the service that TAX is proposing.

First, you can look at shippers. There are shipper elements that are opposed to the TAX proposal. If you look at the North American Freight Car Association comments, it's an association of shippers, leasing companies, and freight car owners. They take exception to each of the elements to which we take exception.

Read the Ford Motor Company, Daimler-Chrysler objections. Look at the Pacer International objections. And even though DOD and the NIT League basically support the TAX proposal, even they say that there are issues as it relates to car supply and TAX consideration of customer needs.

Two of the four major manufacturers of equipment take exception to the TAX proposal. Those two are Trinity and Greenbrier. The vast majority of the leasing companies in this country have taken exception to the TAX proposal. In other words, there is a more broad-based expression of opposition to the TAX proposal today than there has been at any point in the past with the exception of 1989 when the -- was the last time that the Board or its predecessor, the ICC, took a hard look at pooling.

This broad-based opposition touches on each of the features to which we take exception. Let me start talking about the term of the agreement. TAX asks that the Board approve the agreement for 15 years. We think that term should be no more than five years.

TAX also asked at one point that there be an evergreen provision to the agreement -- that is, that the agreement would automatically renew year after year. It has since modified that request, and that modification basically says that if the next time that the Board is reviewing the TAX agreement the period of approval has expired, then the approval will be deemed to continue until after that review is completed and a short period of time after that.

We have no objection to that modification. We strongly oppose any notion of an evergreen component to the pooling agreement, but we have no objection to that short extension of any authority or approval that this Board grants. We have a strong objection to the notion of a 15-year term.

If you look at 1989, the last time that there was a hard examination of the TAX proposal, at that time TAX was asking for a 15-year term. The ICC gave them a five-year term. They did that in the context of expressing concerns about the uncertain regulatory environment which then prevailed, the prospect of deprescription, the fact that there had been concerns expressed about the anti-competitive effects of the pool, and market conditions generally. They thought it was safer to approve it for five years as opposed to 15 years.

The next time it comes up in 1994, there is no one -- no one objecting to the pooling -- to the TAX pooling authority. And even in that world, the ICC said, "We're going to approve it for only 10 years." TAX asked for 15 years.

The ICC says, "Even with everybody endorsing it, we're going to ask -- we're going to approve it for 10 years, and we're doing that because we're concerned that there are, after all, potential anti-competitive effects associated with how this thing operates. It is a pool. It inherently raises questions as concerns the impact on competition. So we're going to approve it for 10 years."

Well, TAX in their filing suggest that we are devotees of George Orwell's 1984. We are not devotees of 1984, but we think that we're back in 1989. If you look at the scope of the objections, you look at the world in which we exist today as concerns changes in the environment in which TAX operates, we think you can't justify a 15-year term.

Consolidation in the railroad industry today -- we've gone from roughly 40 Class 1 railroads back in 1974 when the pooling agreement was first approved to 17 Class 1 railroads in 1989 when it was last looked at at a hard time, to their being only seven Class 1 railroads today and four dominant Class 1 railroads in the United States.

We disagree with the notion that bilateral agreements can't achieve a lot of what pooling is designed to do in this new world. The railroads deal with one another bilaterally, for example, as it relates to locomotive runthrough agreements. The whole concept of deprescription is focused on bilateral negotiations between railroads as it relates to car hire.

If you look at relationships that railroads negotiate with one another, they negotiate haulage arrangements with one another bilaterally. They negotiate pricing authority with one another bilaterally. The world works fine in a bilateral set of arrangements.

As the number of railroads begin to close into itself, and you get fewer and fewer railroads, the prospect of using bilateral negotiations to address what pooling is otherwise designed to address vastly increases, and we suggest that that is a consideration that the Board needs to keep in the back of its mind.

The ownership of TAX has changed dramatically. Back in 1974, there were 31 railroads that owned -- that were shareholders in TAX. You go to 1989, there are 19. Today, there are nine. Four railroads own 93 percent of TAX. Roughly 36 percent is owned by UP, 20 percent is owned each by CSX and Norfolk Southern, and 17 percent is owned by Burlington Northern Santa Fe.

The private car ownership industry has become significantly more important than it has ever been before. You go back to 1974, roughly 80 percent of the cars that were operating on the railroad system in this country were owned by the railroads, and roughly 20 percent were owned by others. You go to 1989, that has shifted to where there are about 65 percent of the cars operating on the national railroad system are owned by the railroads, and roughly 35 percent are owned by leasing companies and private car owners.

You go to today, 40 percent of the cars on the system are owned by the railroads, and 60 percent are owned by the private car owners. There is a huge shift towards private car ownership as it relates to who is operating on the railroads. Included in the private car ownership count is TAX.

With regard to changes worth noting, that the old car service Rules 1 and 2, which had years ago dictated that when a car is unloaded it has to be routed back towards its owner or in the direction of its owner, that has changed. Now the presumption is that the car, when it's unloaded, is available to go to any destination on any route.

That is a change which -- with respect to cars that are not in any pool will assist them in moving efficiently and moving in a loaded capacity. Deprescription has only gone fully into effect as of January 1, 2003, and the interplay between pooling and deprescription is yet to be fully understood. We think that that is a fact which the Board should weigh in terms of what the length of time of any approval should be.

TAX says, well, it's enough that if -- if there's a problem, a party can come forward and ask that the Board reexamine what is going on as it relates to pooling. Well, there are two problems with that. First, it shifts the burden of proof away from the proponents of the pool and puts it on the proponent or the complaining party who has to come before the Board and say, "There is something wrong here. We think that that is inappropriate."

And, secondly, although TAX disagrees, the people who have to come forward are going to be people like the leasing companies or the car manufacturers or shippers, all of whom in one respect or another are dependent upon the Class 1 railroads that own and operate TAX. And there is a natural concern about retaliation.

It is a lot easier to bring this sort of issue before the Board when there is a regularly-scheduled hearing. TAX bears the burden of proof, demonstrating that its pooling agreement is something that should yet be extended, and opponents can come in and express their views as opposed to putting it upon some single opponent to come forward and try to move the Board to open up an examination or an investigation of the pool.

TAX argues that it needs the 15-year term in order to finance equipment. Well, as the Vice Chairman was pointing out, it hasn't had a 15-year term in the last 15 years. It had, first, a five-year term and then it had a 10-year term, and it has functioned perfectly well in the capital markets with those terms. And, in fact, for the last five years it has had less than a five-year term as it has moved towards the expiration of the existing term. And it has had no difficulty raising capital.

With respect to capital-raising in 2000, if you look at Standard & Poor's publicly-available information, they issued $485 million worth of equipment-related debt. In

2003, they issued $225 million of equipment-related debt. And on May 17, 2004, in the midst of this hearing, they issued $90 million of equipment-related debt. All of that debt is A-rated debt. That debt is medium- to long-term maturities. The longest term maturity is 2021, long after any potential extension of the existing agreement authority.

The capital markets are not creating any sort of impediments to their ability to finance equipment because of the fact that they are operating under a term which expires at some point in time and then has to be reexamined.

So, in sum, we think that taking into account public interest, all of the relevant public interest factors, you just can't justify a 15-year term for this agreement, and at most a five-year term is appropriate.

The second point relates to intermodal equipment. We don't think that the pooling authority should extend to non-intermodal equipment. The principal public interest justification for the inclusion of equipment in the pool is that the equipment in the pool is free-running in nature. It's removed from restrictive AAR car service rules. It will move on a loaded basis more than cars outside the pool, because it is free-running, available to go anywhere, any time, any road.

That argument works very well for the equipment which is the intermodal equipment. That argument does not work at all -- it does not work at all with respect to the non-intermodal equipment. The non-intermodal equipment tends to work and tends to move in defined corridors from a shipper to a destination, back to the shipper. And when it goes back, it goes back in an empty capacity.

And because that occurs, you get none of the efficiency benefit that TAX trumpets. Those efficiency benefits we agree apply with respect to intermodal equipment. It does not apply with respect to non-intermodal equipment.

The TAX flatcar pool was first conceived as an intermodal pool. If you look at the 1974 ICC authority for the TAX pool, it is focused exclusively on intermodal and on auto racks. There is no mention in that agreement -- in that decision of anything that relates to non-intermodal equipment. By the time you get to '89 and you move on, the pool has expanded. It has begun to pick up non-intermodal equipment, and now it is -- there is a huge fleet of non-intermodal equipment in the pool.

But the role of that non-intermodal equipment and why it is there and the justification for its being pooled has never been examined until right now. This is the first time that this issue has been squarely put before the Board.

TTX's justifications for the efficiencies that it brings to the non-intermodal equipment just do not hold water. They say, "Well, we maintain and repair the equipment." Well, everybody maintains and repairs equipment. The leasing companies have sophisticated maintenance and repair facilities and contracts. The leasing companies have no difficulty keeping their equipment maintained and repaired and operating.

They talk about research and development, and all that they have brought to bear in research and development. Well, the fact of the matter is, first, their research and development is focused on intermodal. Secondly, there is a lot of research and development going on in intermodal that has nothing to do with TAX stack trains. Double-stack trains. where the idea of Southern Pacific in 1977 wasn't even adopted by TAX until 1985. The road railer technology didn't come out of TAX. It came out of Norfolk Southern.

The iron highway concept did not come out of TAX. The iron highway concept came out of CSX and was then adopted by CN and CP. These are all intermodal concepts that came from the industry, didn't come from TAX. And if you start to focus on non-intermodal equipment, it's CP and Burlington Northern and Santa Fe that are out experimenting with modifications to center beam flatcars with respect to lumber-related movements.

It's not TAX that's doing that. I don't want to demean TAX. I don't want to say that they are not conducting research and development activities, but there's nothing unique that they bring to the table as it relates to research and development.

Financing -- TAX doesn't have anything special to offer in the financing area, any special efficiencies. The leasing companies -- GE Rail and CIT -- have debt ratings which are the equal of or better than the TAX debt ratings. And so there's no efficiency that is brought to the non-intermodal equipment by TAX in the financing area.

There is probably no better illustration of the notion that pooling doesn't make sense with respect to non-intermodal equipment than the fact that TAX has assigned the vast majority of the non-intermodal equipment to either shipper pools, commodity pools, or agent pools under this Rule 16.

The genesis of this is, you go back to 1989, TAX had in place assignment allocation of various of its equipment. There was a big fight about that in '89. The STB -- or the ICC said, "You can't do that anymore. It is -- we will not approve it. There are leasing companies who do this. There is no need for you to be doing this." And a prohibition was put in place.

In 1994, they come back to the ICC and they say, "We would like to be able to do assignments of non-intermodal equipment to so-called shipper pools," and the ICC approved that under Rule 16©). TAX thought that that was such a great idea that without any further authority from the ICC, or subsequently from the Board, they began to assign non-intermodal equipment also to commodity pools and agent pools under Rule 16(d).

And the net effect of this is that that equipment is taken completely out of any sort of free-running pool of equipment. That equipment, at this point, there's 97 percent of the center beam flatcars are assigned to one of these three kinds of pools, and over 60 percent of the other kinds of flatcars are assigned to those kinds of pools.

And the net effect of this is that those -- that equipment is controlled by either the shipper to whom it is assigned or the railroad to which it is assigned. That equipment, under applicable car hire rules, when it is empty has to be sent back to its point of origin. It can't be reloaded. It, by definition, is not free-running. And in that setting, you simply cannot justify granting pooling authority for that equipment, because there is no efficiency being achieved by that equipment.

Now, TAX tries to defend its position by saying that it arranged for some swaps, a certain of these center beam flatcars, and we point out in our final submission that at best they were in something like six percent of the swap -- a swap of roughly six percent of the loads with respect to center beam flatcars.

That doesn't address any of the other kinds of flatcars that are in these pools where there are no swaps going on. And, secondly, that sort of swapping can be achieved through an information clearinghouse. You don't need pooling authority with antitrust exemptions associated with it in order to do that.

And so I see that my time has run out, and I will cede the floor.

Thank you.