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STB Finance Docket No. 33388 (Sub-No. 91), Conrail Oversight

Chairman Nober, Vice Chairman Mulvey, Commissioner Buttrey, good morning.

The Conrail Transaction that the Board approved in 1998 involved the acquisition of control of Conrail by CSX and Norfolk Southern, and the division of the assets of Conrail between CSX and Norfolk Southern. Control was achieved on August 22, 1998; the division of the assets took place on June 1, 1999. And, as is well known, certain assets — mainly the lines in the three Shared Assets Areas — were not actually divided; they remained with Conrail, to be shared by CSX and Norfolk Southern.

In the decision approving the Conrail Transaction, the Board imposed numerous conditions to ensure that the transaction would not result in any competitive or market power problems. In addition, a 5-year oversight condition was established to allow the Board to monitor the progress of implementation of the transaction, and jurisdiction was retained to impose additional conditions and to take other action, if necessary, to address harms that might be caused by the transaction.

This year, at public hearings in Trenton, NJ, and here in Washington, DC, and also with written pleadings filed in accordance with the procedural schedule, the Board has conducted the fifth annual round of the oversight proceeding. At the hearings, and in the pleadings, many issues were raised by a wide range of parties, including shippers, shortlines, and government agencies at the state and local level. In general, many parties testified that the merger did not result in all the benefits they anticipated or hoped for, but they also testified that they were nonetheless better off after the transaction.

The draft decision that we have prepared for the Board incorporates three main recommendations.

First, because the Conrail Transaction, as conditioned by the Board, has not resulted in any competitive or market power problems, we recommend that formal oversight of the transaction be concluded.

Second, because most of the conditions the Board imposed are still in effect and will remain in effect, we recommend that the Board remind all interested parties that, even after oversight has ended, the Board will continue to have jurisdiction to enforce the conditions it imposed.

Third, because we believe that, to date, CSX and Norfolk Southern have complied with the conditions the Board imposed, we recommend that the Board deny the various requests for relief that are premised on non-compliance.

This year's fifth annual round of Conrail oversight is important. If there were a fundamental problem with the Conrail Transaction, this would be the time to fix that problem. We have approached this matter with that thought in mind. We believe that, all things considered, the Conrail Transaction has worked fairly well and that there is no fundamental problem that needs fixing. Thus, we recommend that oversight should be concluded as scheduled.

As to the Shared Assets Areas, we also recommend that the Board remind all interested parties that CSX and Norfolk Southern cannot, on their own, make any change in a Shared Assets Area if the change either conflicts with a condition the Board imposed or otherwise requires Board approval under our statute. This means, as a practical matter, that CSX and Norfolk Southern cannot, on their own, make any fundamental change in the structure of the Shared Assets Areas. Any change of that sort will require prior Board approval.

We would be happy to take any questions.