

CONRAIL MERGER IMPLICATIONS

HEARING
BEFORE A
SUBCOMMITTEE OF THE
COMMITTEE ON APPROPRIATIONS
UNITED STATES SENATE
ONE HUNDRED FIFTH CONGRESS
FIRST SESSION

SPECIAL HEARING

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CONRAIL MERGER IMPLICATIONS

THURSDAY, MARCH 20, 1997

U.S. SENATE,
SUBCOMMITTEE ON TRANSPORTATION
AND RELATED AGENCIES,
COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 10:05 a.m., in room SD-192, Dirksen Senate Office Building, Hon. Richard C. Shelby (chairman) presiding.

Present: Senators Shelby, Specter, Lautenberg, and Mikulski.
Also present: Senator Warner.

PANEL 1

NONDEPARTMENTAL WITNESSES

STATEMENT OF HON. PARRIS GLENDENING, GOVERNOR, STATE OF MARYLAND

OPENING REMARKS OF SENATOR SHELBY

Senator SHELBY. The committee will come to order.

At today's hearing we will explore some of the issues likely to be raised by the proposed acquisition of the Consolidated Rail Corporation, better known as Conrail, by the CSX Corp. and the Norfolk Southern Corp.

I scheduled this hearing at the request of Senator Specter, who has strong concerns about the possible impact of this proposal on the Commonwealth of Pennsylvania. Several other States represented on this subcommittee might be affected as well, such as my State of Alabama, Maryland, Missouri, North Carolina, West Virginia, and so forth, and I expect that our ranking member, Senator Lautenberg, will discuss his views on the proposal's possible implications for New Jersey.

Congress created Conrail in 1973, following the bankruptcies of seven private railroads. The Federal Government began operating Conrail on April 1, 1976, and invested over \$7 billion in taxpayers' funds to cover Conrail's capital and operating needs.

In 1986, Congress voted to authorize a public stock offering of the Federal Government's holdings of Conrail stock.

Ten years ago, in the spring of 1987, Conrail was privatized in a process that produced \$1.95 billion for the Federal Government, \$1.65 billion from a stock sale, and \$300 million from the Conrail excess cash.

It is interesting to note that the current asking price for Conrail is about \$10.5 billion, an increase in value of 438 percent over the past 10 years.

Conrail is now the largest freight railroad in the Northeast, operating an 11,000-mile rail freight network that serves 12 States, the District of Columbia, and the Province of Quebec. Conrail's 1995 revenue was \$3.7 billion.

On October 15, 1996, Conrail and CSX announced a merger of equals, that would have created a powerful strategic alliance between the two railroads. The agreement called for Conrail's shareholders to receive a combination of cash and CSX stock value of \$8.4 billion, or \$92.50 per Conrail share.

Norfolk Southern then made a competing all-cash offer to buy Conrail at a higher price, and Conrail shareholders supported this approach.

This month, on March 3, Conrail's board approved a revised agreement with CSX that would enable shareholders to receive about \$10.5 billion, or \$115 per Conrail share, and permit CSX and Norfolk Southern to negotiate a splitting up of the Conrail system.

I understand that CSX and Norfolk Southern are now working out the framework of a joint acquisition deal that will basically partition the Conrail system. Once completed, the details of this agreement will have to be approved by the Surface Transportation Board [STB], which is the successor agency to the Interstate Commerce Commission.

We will hear from Linda Morgan, Chairman of STB, later this morning. The subcommittee will also be interested in hearing how the STB reviews applications to approve railroad mergers, both in terms of policy and in procedure.

At this point in time, none of us know the details of how this merger proposal will be structured, when it will be filed with the STB, or what a final package might contain in order to satisfy the STB. Hopefully, once it is finalized and submitted to STB, the end product will be an improved freight rail system for the entire eastern and southeastern region.

I understand that significant rail service improvements are possible by a streamlined, single-line service from the South into Eastern markets. In my State of Alabama, and other States in the South, this may present a unique opportunity to access new markets faster, more efficiently, and without adding congestion to all overcrowded interstate highways.

More competition and better quality service should enhance rail traffic moving through the region and provide valuable benefit to consumers. I look forward to hearing from our witnesses today, and at this time I am going to recognize Senator Lautenberg, the ranking member.

STATEMENT OF SENATOR LAUTENBERG

Senator LAUTENBERG. Thanks very much, Mr. Chairman. The issue of rail competition in the Eastern United States is critical to the economy of New Jersey and the entire mid-Atlantic and northeast region, so I look forward to hearing from our witnesses this morning.

I want to hear them discuss their views on the possible purchase of Conrail by CSX, and the division of Conrail's assets between CSX and Norfolk Southern.

As we hear this testimony, however, it must be remembered that the precise impacts of this proposed purchase of Conrail will very much depend on how its assets are divided. Negotiations on this issue, I understand, are still ongoing.

To date, no applications or operating plans have been filed with the Surface Transportation Board. As such, the testimony today may lack some details, and in this deal, the devil is obviously going to be in the details, so we cannot rush to judgment.

There is a great deal of enthusiasm in my State regarding the potential reintroduction of real rail competition into the region, as well as the Ports of New York and New Jersey. Our Newark, NJ, Port is the largest container port in the Eastern United States, and it is one of the largest container ports in the world; however, it has been served almost exclusively by only one railroad, Conrail, since that railroad was created in 1976.

While the Federal Government sought to create a competitive environment in the port at that time, these efforts went unfulfilled. I have followed the issue closely. Since that time I have been very active on the issue, not only as a Senator, but I was formerly a commissioner of the Port Authority of New York and New Jersey.

Back in 1984, 1985, I strenuously opposed efforts by Norfolk Southern to purchase Conrail at that time. Not only was the railroad being sold I thought too cheaply, but coming from the corporate world, I was thinking of the public market place, and thank goodness we did it.

The proposed arrangement appeared to encourage, at that time, the bleeding of cargo and jobs away from the ports of New York and New Jersey, and the arrangement did nothing to encourage competition within the port.

Thirteen years later we find that our long-awaited goal of competition in the port may finally be fulfilled. Competition in the port holds the promise of more jobs, due to greater rail traffic at more competitive grades. But in order for that to happen, we must have serious competition that provides shippers with a real choice.

CSX and Norfolk Southern are discussing a bold plan, with the intention of going toe to toe in very promising markets, and I want to encourage the division of Conrail's assets to maximize competition.

As a highway safety advocate, I am also encouraged by the prospect of moving some of our truck traffic off of our interstates and major highways. It will cut congestion, reduce pollution, and save lives; however, our railroads do not have unlimited capacity. More than any other State, New Jersey's commuter rail system is integrally linked with our existing freight network.

Currently, just under 14,000 commuters a day travel over lines owned and operated by Conrail. Conrail also operates over lines owned by New Jersey Transit, that serve 11,500 commuters a day.

New Jersey Transit is conducting studies and preliminary design work on several new potential commuter rail lines, and many of these new lines would be required to operate over freight-owned railroad lines.

So I am interested in the impact of expanded freight traffic on New Jersey's mass transit system, its commuters, and its environment. In planning the division of Conrail's assets, transit opportunities must be fully viewed. We accomplish very little by moving truck traffic onto the rails, only to force transit commuters back on the highways.

Finally, I want to raise the issue of rail safety. Recent press reports indicate that there are plans being developed to dramatically increase freight operations over Amtrak's Northeast corridor. In 1987, I visited Chase, MD, the scene of a crash between a Conrail freight train and an Amtrak passenger train. That gruesome sight was one that no one could easily forget. The Rail Safety Act of 1988 included provisions that I advocated, that were intended to minimize freight traffic on the Northeast corridor.

Now, many of the Nation's freight railroads argue that high-speed passenger rail and freight traffic do not mix. If that is true, then the question has to be asked: How can we expand freight operations over the Northeast corridor at the same time that Amtrak is procuring new high-speed train sets for 150-mile-an-hour service over the corridor?

Moreover, Amtrak and the commuter railroads expect to increase use of the corridor in future years. Train services cannot be expanded over our Nation's busiest passenger rail corridor if it will risk lives.

I feel that I must say that we can make the accommodations that are necessary, and, again, it very much depends on how committed the freight rail service is to participating fully with passenger service. I am told by experts that they can coexist, and I hope that is the case. I thank you very much, Mr. Chairman, for the opportunity.

Senator SHELBY. Senator Specter.

STATEMENT OF SENATOR SPECTER

Senator SPECTER. Thank you very much, Mr. Chairman, and thank you for convening this hearing so promptly, within 2 weeks of the renegotiation of the Conrail-CSX merger, with the new arrangement between CSX and Norfolk Southern.

I have been in this hearing room on many occasions in the past one and one-half decades, and I have never seen it standing-room-only, with so many corporate executives and so many corporate counsel here. This is a unique hearing in this Appropriations Committee hearing room.

I think that it is very important for the Congress to take a very close look as part of our oversight function as to what is happening in this transaction.

The Congress has been intimately familiar with Conrail, with the events of the seventies, and the efforts of the administration to sell Conrail to Norfolk Southern, which was a hard-fought battle, involving very detailed hearings of the Antitrust Subcommittee of the Judiciary. We finally stopped that sale. They said Conrail could not survive as an independent entity, and it did, and it flourished.

The issues here are of enormous importance nationally, in terms of access to competitive shipping rates, and of extreme importance

to my own State, Pennsylvania. When we take a look at just a few of the statistics, they are sort of overwhelming.

More than 8,100 Pennsylvania residents are employed by Conrail. Conrail employees live in 64 of Pennsylvania's 67 counties, a tremendous economic impact on the State as a whole, and especially heavy in Pittsburgh, Altoona, Harrisburg, and Philadelphia.

When you take a look at the \$31 million in State and local taxes paid in Pennsylvania, it is obviously a major, major impact, and \$7 million in the Philadelphia wage tax alone, a figure that makes our distinguished Mayor Rendell sit up and take notice.

What I am looking for here is to monitor very closely to see what the impact will be. When you have a contract between Conrail and CSX, and then there is a new arrangement, there is no one left that might appear to enforce Conrail's rights under the original agreement. The shareholders were delighted with the very high price, \$115 a share paid, but I think it is important to know that under the applicable law there are other parties and interests with standing. The employees of Conrail have standing because under the Federal law, the employees have to be considered by the Surface Transportation Board, and under the Pennsylvania Takeover Act, the Pennsylvania communities have standing.

It may well be that this transaction will work out to the benefit of the Nation and to Pennsylvania, and I think that has to be determined.

But we have to note that these rail mergers, in the entire history of Conrail, in the entire history of the industry, have been very rough and tumble, and if we play by the Marquis of Queensberry rules, that is fine, but I think it is very important that the Congress and the Senators, whose States have vital interests here, be very much on top of it, as it moves through the process.

I have had a chance to discuss this matter at length with David Levan, the CEO of Conrail, and John Snow, the CEO of CSX, and David Goode, the CEO of Norfolk Southern, and it may be that there will be increased facilities in many parts of Pennsylvania, in a terminal in Harrisburg, or in competition in Philadelphia. And it may be that part of Conrail will be maintained, that there may be some joint operations, and if that were to follow, that would be a very, very good signal.

So I welcome these hearings, Mr. Chairman, and I thank you for the suggestion which you made yesterday of field hearings in Pennsylvania, which I would like to see move forward perhaps as early as April 7, consistent with the schedules that the subcommittee has.

Thank you very much.

Senator SHELBY. Senator Mikulski, I know you just arrived. Do you have an opening statement?

Senator MIKULSKI. I sure do, Mr. Chairman.

Senator SHELBY. OK. Sure. You will be recognized.

STATEMENT OF SENATOR MIKULSKI

Senator MIKULSKI. I like to think of myself as the little engine that could, for Maryland, and so, therefore, I am delighted to be at this hearing, and I would—

Senator SHELBY. Senator, the little engine that has done so many things, not just could.

Senator MIKULSKI. Well, you are very kind, Mr. Chairman. First of all, I am going to thank you personally for conducting this hearing, and allowing it to go forth. For those of us in the Northeast corridor, particularly, the Boston to Carolina, going through New York, New Jersey, Maryland, and Virginia, there is nothing more important than railroads.

Railroads built our communities, we are railroad-dependent communities, and, of course, in my own State, we are very much concerned about the entire job issue.

Know this, that ultimately we, in Maryland, are very much concerned about certain basic issues, the first and foremost is jobs, and we want to know what this merger means in terms of jobs, what does it mean to the great Port of Baltimore, to be able to have competitive railroads, so that our port is thriving, and we are just not the largest barge port or pond in the corridor.

Second, we are concerned about jobs in western Maryland, up in the Cumberland area, where really, the railroads are so crucial to the viability of that community. We are interested in what the railroad means to the Delmarva Peninsula, so that we have rail service, to be able to bring our grain in, so that we can have our vibrant poultry industry.

In addition to that, we are, of course, very much concerned about what this rail merger could have as an impact on passenger line, the so-called Marc train, which allows people to live in Maryland and commute to jobs primarily here in the District of Columbia.

And last, but not at all least, we are concerned about what type of infrastructure improvements need to be made. So, Mr. Chairman, as the hearing goes forth, I will look forward to discussing this with my Governor, who has led the way in a task force with his secretary of transportation, Mr. Winstead, on analyzing these issues and what we need, and I look forward to hearing from our railroad tycoons what their responses are to how we are going to generate jobs, keep jobs in Maryland, while they are trying to sort out how they can generate profits for shareholders.

We would hope that those two would be mutually compatible, and then if that occurs, I will be very happy to be the little engine that could. Thank you very much.

Senator SHELBY. We are joined today by our colleague, Senator Warner. If you have any statement you want to make, your written statement will be made part of the record in its entirety. You may proceed.

STATEMENT OF SENATOR WARNER

Senator WARNER. Thank you, Mr. Chairman, and members of the committee.

I agree that there is a role for the Congress to review these proposals, but it is the depth and the time that will be consumed in that review which really, I think, is at issue.

I strongly support the efforts by these two private sector entities and others to make this happen. I support the proposal, because I believe that by opening the Northeast to rail competition, for the first time in several decades, it will yield substantial benefits to

American business and consumers throughout our country, not just here in the East.

Ensuring a strong rail network through the East has been a long-sought goal, and a matter that I know, Mr. Chairman, has been of interest to you and other members of this panel. The fact that a solution is being developed through the private sector initiative, without governmental intervention, I think is most notable.

Today, CSX and Norfolk Southern are engaged in negotiation to divide Conrail's operation, giving both rail systems access to the Northeast. The final plan is not yet completed, but I believe the negotiations will produce and enhance competition, especially in the area north of my State, Virginia.

Two strong railroads serving industry and agriculture east of the Mississippi ultimately will benefit shippers and consumers alike throughout the region and the Nation.

I say to you, my good friend, Senator Specter, I keenly share your concern for the long history of rail in your State, but as you said, in reference to the Marquis of Queensberry, this is a one-rail market that this group behind us are involved in every day, and those marketplaces beyond our shares do not play with the Marquis of Queensberry rules.

It is tough, and I think it is incumbent upon us as a Congress to do everything we can to encourage the private sector and industry in their ability to meet that competition.

In Virginia we have a particular interest in the process, and have paid great attention to the unfolding events in the last 5 months involving Conrail, which, as you know, is the overwhelming rail presence in the Northeast.

CSX and Norfolk Southern provide service throughout the Mid-Atlantic and Southeast. Both Norfolk Southern and CSX are corporate citizens of the Commonwealth, combined, 8,000 employees, 3,300 miles of rails in our State.

The thousands of businesses and industries in my State that depend on our railroads, including coal, paper, chemicals, and, indeed, I must say, critically, national defense, are looking for faster, more efficient, direct service to the vast consumer markets in the Northeast.

Our ports want to strengthen the global reach through improved north-south intermodal networks. The solution that is being devised, I believe, promises to satisfy these goals. I would hope that we in Congress would allow these discussions to come to completion. Congress must not attempt, I say to my distinguished colleagues, to write this operating plan.

Mr. Chairman, I would like to call attention to the fact that Congress wisely has created an independent quasi-judicial agency to evaluate the public interest and transactions of this nature, the Surface Transportation Board.

The STB must provide a forum for all interests, including employees, communities, and shippers, affected by this transaction, to be heard. With that venue available to us, I believe there is an appropriate process in place to address the valid concerns of the many in this Northeast corridor, and elsewhere in the country.

That concludes my statement, it's short and to the point.

PREPARED STATEMENT

Senator SHELBY. Thank you, Senator Warner. We will insert your complete statement in the record.
[The statement follows:]

PREPARED STATEMENT OF SENATOR WARNER

Mr. Chairman, thank you for permitting me to appear before the Subcommittee today to address an issue which is very important to the Commonwealth of Virginia.

The economic and public policy considerations posed by pending changes in the nation's rail system certainly warrant review, and I welcome the opportunity to share my thoughts with you on these important matters.

I am pleased to be here to endorse the restructuring of the Northeast rail system that is underway. I support the proposal because I believe that, by opening the Northeast to rail competition for the first time in several decades, it will yield substantial benefits to American businesses and consumers.

Ensuring a strong rail network throughout the East has been a long-sought goal and a matter that I know, Mr. Chairman, has been of interest to you. The fact that a solution is being developed through a private sector initiative, without government intervention, I find particularly noteworthy.

Today, CSX and Norfolk Southern are engaged in talks to divide Conrail's operations giving both rail systems access into the Northeast. While the final plan is not yet completed, I believe that the negotiations will produce enhanced competition—especially in the area north of Virginia. Two strong railroads serving industry and agriculture East of the Mississippi ultimately will benefit shippers and consumers alike throughout the region and the nation.

We, in Virginia, have a particular interest in this process and have paid great attention to the unfolding events of the last five months involving Conrail, which, as you know, is the overwhelming rail presence in the Northeast; and CSX and Norfolk Southern which provide service throughout the mid-Atlantic and Southeast.

Both Norfolk Southern and CSX are corporate citizens of the Commonwealth, with 8,000 employees and 3,300 miles of rail lines in the state. The thousands of businesses and industries in Virginia that depend on our railroads—including coal, paper and chemicals—are looking for faster, more efficient, direct rail service into the vast consumer markets of the Northeast. Our ports want to strengthen their global reach through improved north-south intermodal networks. The solution that is being devised, I believe, promises to satisfy those goals. I would hope that we in Congress would allow those discussions to come to completion, and not attempt to write the operating plan ourselves.

Mr. Chairman, I would like to call attention to the fact that Congress wisely has created an independent, quasi-judicial agency to evaluate the public interest in transactions of this nature, the Surface Transportation Board. The STB must provide a forum for all interests—including employees, communities and shippers—affected by this transaction to be heard. With that venue available to us, I believe that there is an appropriate process in place to address the valid concerns that can be expected from an undertaking of this magnitude.

NEXTEA PROGRAM

Senator SHELBY. Senator Warner, we appreciate you taking your time to testify today, we know it is very important to you, as it is to us. I know how busy you are working on the reauthorization of the bill for the ISTEА, or as the administration has called it, NEXTEA program.

While you are here, do you have any comments for us on how the NEXTEA program might affect rail freight and intermodal shipments? Do you anticipate that the new legislation will cover these areas?

Senator WARNER. Mr. Chairman, the anticipated legislation will cover these areas, but I assure you, time does not permit me the opportunity to cover that together with your colleagues. I assure you that I will work carefully.

The distinguished Senator to your right is on our committee, takes a very active interest, and we have gone toe to toe, and I hope on this one we go arm and arm. Thank you very much.

Senator SHELBY. Any other questions?

Senator Lautenberg.

Senator LAUTENBERG. I have no questions of our colleague. We share a common interest. We are linked together by the rails, and we want to make sure that it is operating.

We are willing to compete on a fair and equitable basis, we need the tools to do it with, and this could very well provide it.

Senator SHELBY. Senator Specter.

Senator SPECTER. I do not know if I have any questions, but a comment or two. On the Marquis of Queensberry rules, I quite agree with you that they do not play that way overseas, but I just want to be sure that domestically we do serve the Marquis of Queensberry rules.

I do not want to get into the ring with these contestants or pugilists, but there may be some appropriate stance for a referee.

A kind of microscope, which I think is appropriate for us to put on here may have some impact as to how it will all be worked out, but it has to be worked out between the parties, I agree with you totally. And it is very much a national picture; it is a matter for America's consumers, principally, as they benefit from reduced shipping rates, but the employees and the communities also have standing.

I am fascinated to know that Norfolk Southern has worked out an arrangement with Pennsylvania Power & Light Co., which benefits the upstate coal producers of Pennsylvania, and that was worked out in the context of the litigation, which was underway, so that the parties here are very sensitive to the communities, and to the employees, and to the consumers, and I would like to keep that sensitivity at a high level. Thank you.

Senator SHELBY. Senator Mikulski.

Senator MIKULSKI. I have no questions of Senator Warner. I do not know about the Marquis of Queensberry rules, but I do know that I will not throw in the towel when it comes to competing with Norfolk.

Senator SHELBY. Senator Warner, thank you.

Senator WARNER. Thank you very much, Mr. Chairman.

Senator SHELBY. Our next panel, we will have the Honorable Parris Glendening, Governor of the State of Maryland, the Honorable Ed Rendell, Mayor of the city of Philadelphia, the Honorable Brad Mallory, Secretary of the Commonwealth of Pennsylvania Department of Transportation, and the Honorable John Haley, Secretary of the State of New Jersey Department of Transportation, if all of you would come to the table.

Governor, if you would start the panel, your complete written statement, all of you, will be made part of the record in its entirety, and if you will sum up in 5 minutes or less what you want to tell us, it gives us some time to get in. Thank you, Governor.

STATEMENT OF GOVERNOR GLENDENING

Mr. GLENDENING. Thank you, Mr. Chairman.

I am Parris Glendening, the Governor of the State of Maryland, and I appreciate your efforts and the committee members' efforts. Let me give special appreciation to Senator Mikulski, who has been doing such a wonderful job for us, overall, and particularly on this issue, where she has brought our entire congressional delegation together on a bipartisan basis, so that we speak with one voice.

I appreciate the opportunity to speak briefly about the current situation regarding Conrail, CSX, and Norfolk Southern. We have introduced a detailed statement.

For just about one-half of a year we have worked together to protect our State's interest. Many people came together early in the process, we identified clear objectives, and spoke with one voice for the common good of our State.

I am very proud of the efforts of Maryland's business community, and rail community, commuters, businesses throughout the State, the coal mining industry, all to work with elected officials so that we could make sure that all the issues were addressed.

From early indications it seems that this merger is, indeed, getting on the right track for Maryland, but I must tell you, we are not at the station yet. Let me speak just briefly about three issues here today that we identified, the implications for the rail merger, what these implications are for our State, and where we stand in light of recent events.

In terms of identifying the issues, we understood that this merger is clearly a private business decision, but it was up to our team to protect the railworkers in Maryland who were concerned about the loss of jobs, to speak out on behalf of the commuters who depend on our commuter system, as is the case in New Jersey, to get to and from work, to ensure that businesses across the State would have the railroads to get their products to market, to be kept at competitive rates, and this ranged from our concern about the Port of Baltimore, to the coal fields in western Maryland.

The merger is about real people, that is why Senator Mikulski and I, and others, are so concerned and involved about this.

After the merger was announced we convened forums of business leaders and labor leaders throughout the State, we held dozens of meetings that involved hundreds of people, and briefed leaders from across Maryland, we appointed a railway merger advisory council, and we initiated repeated personal communications with the CEO's and other representatives of all three railroads.

For Maryland, the primary issues were to preserve competitive service by two class I railroads, to assure class I carriers give access to a full customer base, to secure commitments to competitive rates and services, it would have no significant job reductions for Maryland, and would secure commitments to infrastructure improvements, and preserve and enhance our commuter rail service.

Again, we recognize that this merger is a business decision, but the public good must not be overlooked. The railroads and services that they offer are critical elements of our State's economic health. Everyone, business, labor, and all levels of elected officials, agreed that we must unite and speak with one clear voice about these goals.

With regard to the current situation, Maryland has had a long relationship with CSX, and we are ready to welcome Norfolk

Southern to Maryland. We are excited about the prospect of building a dynamic partnership with Norfolk Southern.

We are optimistic, but there are still some concerns that must be met. It appears that two successful class I railroads will continue to serve our State.

We are pleased to announce, in fact, that in Cumberland, and elsewhere in Maryland, it appears that our jobs will be protected, and commitments to infrastructure improvements are being presented, but it is important to note that this is not a full endorsement.

Until all the details of the proposals are on the table, and can be reviewed, critical questions remain, questions regarding freight service, congestion, regional competition, job protection, and other issues. We are interested, for example, in having a level playing field for our business community.

We are concerned with our coal fields in western Maryland, that if they continue to operate only with one class I railroad, and two class I railroads are open for other fields, will we be at a competitive disadvantage.

In closing I would note, Mr. Chairman, that Maryland's approach to this merger has been somewhat unprecedented and unparalleled. We organized very early, we clearly defined our objectives, and we presented a unified front of elected officials, business, labor, and community leaders.

The final decision is up to the Surface Transportation Board, but I will remind everyone, as we know well, that it will impact literally thousands of citizens in Maryland alone, and tens of thousands of citizens throughout the corridor.

We have been fair and forthcoming with all three railroads, we have worked hard to speak for our citizens, and we will continue to speak for Maryland until the last I is dotted and the last T is crossed.

What we are seeking is an enforceable agreement that incorporates into the final surface transportation approval document of the issues that we have raised, and the preliminary consensus that we have reached with Norfolk Southern and CSX.

PREPARED STATEMENT

I thank you for the opportunity to share our approach to this issue before the committee here, and appreciate your time.

Senator SHELBY. Thank you, Governor.

[The statement follows:]

PREPARED STATEMENT OF PARRIS N. GLENDENING

Thank you Mr. Chairman, members of the Committee, and of course, my Senator, Barbara Mikulski, for giving me the opportunity to testify before the Senate Appropriations Subcommittee on Transportation regarding the implications of the proposed acquisition of the Consolidated Rail Corporation by CSX Corporation, and the associated agreements with Norfolk Southern Corporation.

First, I personally thank Senator Barbara Mikulski who has been a tireless advocate for Maryland on this merger. I appreciate all that you, Senator Sarbanes, and the Maryland Congressional Delegation have done for our State, on this and so many issues that affect the lives of our citizens.

Mr. Chairman, I very much wanted to be here today to talk about this merger because of what it means for the future of railroads in Maryland. Additionally, I

will speak of the pursuit of Maryland's leadership in advancing the state's interests and objectives concerning the merger.

For the past six months, we have worked tirelessly to protect our State's interests. We are here today because so many people, many of whom are here today—business owners, community leaders, union officials and the transportation community—came together early, identified clear, achievable objectives and spoke with one voice for the common good of our State. I know that the reason that we are here today is because of the unparalleled, early, intense and unified effort we began nearly six months ago. Although the Surface Transportation Board has the final say, we hope that Maryland's leadership on this rail merger will be seen as a model of how one state can make a difference. From early indications, it seems that this merger is heading down the right track for Maryland but we are not in the station yet.

I will speak briefly about three issues today: First, how Maryland identified the implications of the rail merger for our State; second, what those implications are; and third, where I think we stand in light of recent events.

PROCESS FOR IDENTIFYING THE ISSUES

When we first learned of the proposed merger, we immediately contacted the railroads to express our concerns about the possible loss of competition for Maryland businesses and customers, as well as effects on commuter rail service in Maryland. We knew that we had to act quickly and decisively because Maryland is now served primarily by CSX and Conrail. Therefore, any straight forward merger of these two corporations would have left our State and the Port of Baltimore at a competitive disadvantage by being served only by one major Class I railroad. We were also concerned about the future of Maryland's successful commuter rail system which operates on tracks owned by CSX as well as on the Amtrak Northeast Corridor.

Early on, we decided that while the ultimate decision about whether to complete this merger was a private business decision, it was up to our team to protect the rail workers in Maryland, who told us that they were worried about whether they would still have jobs. It was up to us to speak out on behalf of the commuters in the Washington metro area who depend on the MARC commuter rail system to get to work, and it was up to us to ensure that the small produce shippers in Anne Arundel County, the sand and gravel operators in Southern Maryland, manufacturers in Baltimore and Montgomery Counties and poultry growers on the Eastern Shore, all of whom rely on the railroads to get their products to market, did not lose competitive rates or suffer declines in service. As you know, Mr. Chairman, this merger is not simply about rails and box cars, it is about real people and real businesses whose survival depends upon the outcome of this merger. That is why I got involved in this process. That is why we reached out to railworkers, to the business community and to affected rail customers to develop a package that reflected their interests and concerns. And, Mr. Chairman, that is why I am here today.

We knew that we only had two real opportunities to affect the outcome of this merger: First, we had to negotiate directly with the railroads in hopes of influencing the development of their operating plans; second, we had to prepare to participate in the federal Surface Transportation Board proceedings. We believed that Maryland had to pursue both avenues in order to protect the State's interests. In doing so, we used a three-pronged strategy:

- First, we initiated direct and ongoing negotiations with the railroads to seek mutually acceptable goals and conditions;
- Second, we worked to focus public attention on Maryland's concerns about the proposed merger; and
- Third, we prepared for proceedings at the Surface Transportation Board by collecting information to make our case.

Just two weeks after the merger was announced, on October 30, 1996, we convened a forum for business and labor leaders from across the State. Representatives from many sectors of business and industry in Maryland participated in the forum, including port shippers, freight handlers, aggregates, rail labor, longshoremens, coal, poultry, commuter rail citizen groups, business organizations as well as federal, state and local elected officials.

The turnout was an obvious indication of how serious and far reaching the merger issue was for Maryland. In this, and literally dozens of other meetings, we briefed leaders from across Maryland on what we knew at the time, as well as on the process for the merger proposals to move forward. Most importantly, we were able to begin a dialogue to identify the most critical issues of concern to Maryland.

We did not stop at the forum. We reached out to more than 800 business and community leaders in Maryland, as well as to shippers located outside of Maryland who

send rail traffic through our State, to seek their views and concerns regarding the proposed merger.

In November 1996, I appointed a fourteen member private sector Railroad Merger Advisory Council to work closely with me in identifying the key issues, developing our negotiating strategy, and providing information. All of this information was used to identify our primary concerns about the merger.

At the same time, we initiated repeated personal communications with the CEO's and other representatives of all three railroads, and I talked to Senator Mikulski and other members of our Congressional Delegation regularly about the merger. We also established an interagency merger team of outside experts in freight and commuter rail issues, and senior level officials from our Departments of Transportation and Business and Economic Development. This team still meets regularly to coordinate information obtained from discussions with the railroads together with that provided by Maryland businesses, elected officials, and citizens. Throughout this process, we have remained in constant and close contact with members of our Congressional Delegation as well. I am convinced that the fact that the State, our Congressional Delegation, the General Assembly, business, labor and community leaders came together with one voice for Maryland made a difference in the future of our State, and I am grateful for the efforts of everyone involved.

IMPLICATIONS AND CONCERNS OF THE MERGER PROPOSALS

By speaking with one voice, Maryland has sent a clear message to all three railroads. This comprehensive outreach process also enabled the Maryland team to share our key concerns with the railroads early in the process—by December. For Maryland, the primary issues were:

Preserve competitive service by two class I railroads.—In order to preserve the value of competition in the both the Port of Baltimore and Maryland overall, our State must have comparable rail service available from a true competitor to a merged CSX/Conrail—that is, another Class I railroad with similar market reach.

Assure that Class I carriers give access to a full customer base.—We understand that for two major carriers to have a real presence, they must have access to an adequate base of customers to make business worth while.

Secure commitments to competitive rates and service.—Any rail service must offer rates and service that are competitive. Businesses were concerned that changes in pricing policy could have negative impacts on their success.

No significant job reductions for Maryland.—Maryland currently has over 2,000 employees directly employed by the railroads. As in every state, we were very concerned that consolidation could lead to a loss of employment. We were also concerned about the loss of collateral jobs.

Secure commitments to infrastructure improvements.—The various merger proposals have described benefits that would occur due to additional service. In most cases, this will necessitate improvements to tracks, bridges or clearances, such as double-stack improvements at Perryville, Maryland. We needed to be sure that each railroad is committed to providing funds for these improvements.

Preserve and enhance MARC Commuter Rail Service.—As mentioned, Maryland has a very successful commuter rail service to both the Washington and Baltimore metropolitan areas. We currently operate 80 commuter trains a day. This service involves rails owned by CSX as well as Amtrak. We wanted assurances that any changes in freight traffic will not have a negative effect on the hours of service to our commuters or on the safety of such operations.

We pursued these issues with the railroads at every step of the way. After the three railroads began to work together in January, I contacted all three CEO's and the Surface Transportation Board and urged them to enter into equitable discussions of the competitive issues at stake. We believed that a more balanced solution existed.

While we understand this merger is primarily a business decision, the public good must not be overlooked. The railroads and the services they can offer are a critical element of each state's economic health. In Maryland, we are proud of the choices we offer businesses that come to our State. This merger held the potential of taking that valuable asset—a choice between competitors—away from us. Everyone—business, labor, and all levels of elected officials—agreed we must unite and speak with one clear voice about what had to result from the merger from Maryland's perspective.

CURRENT SITUATION

Mr. Chairman, nearly six months after the merger was announced, we are excited about the future of railroading in Maryland. Our State has enjoyed a rich railroad

tradition. The United States' first railroad, the Baltimore and Ohio Railroad, was started in Baltimore in 1828 and we understand the vital importance of having good rail service. Maryland has had a long relationship with CSX, which grew out of the Baltimore and Ohio Railroad, and we look forward to continuing and strengthening that relationship.

We now are ready to welcome Norfolk Southern to Maryland. Norfolk Southern has worked closely with us throughout this process to address our concerns and needs. We are excited about the prospect of building a dynamic partnership with Norfolk Southern, which has a well-deserved reputation for safety, service and satisfaction throughout the railroad industry.

While we are optimistic about the future, my presence here today should not be interpreted as an endorsement for the current proposals under discussion. Because the railroad operating plans are still not available for review, we truly do not know if our issues have been adequately and explicitly addressed. The old adage is true—"the devil is in the details."

We are pleased that the railroads are working together to devise a solution. We strongly agree with the Surface Transportation Board's Chairperson, Linda Morgan; it is best if the industry can sort most of these issues out before coming to the Board. Based on the limited information available so far, we are encouraged that most of our concerns were met:

- It appears that two successful Class I railroads will continue to serve our Maryland;

- We are pleased to announce that jobs in Cumberland and elsewhere in Maryland will be protected; and

- Commitments to funding infrastructure improvements are being presented.

Until all of the details of the proposals are on the table and can be reviewed, however, critical questions remain.

- For example, how will Norfolk Southern operate its freight service on the Northeast Corridor? The congested Corridor has presented problems to Conrail in the past—we hope that Norfolk Southern will do better. Is there a better solution on which the railroads can agree?

- Will these operating plans present a new imbalance of competition between regions by providing for new open access in some areas but not in others? For example, we understand that there will be open access to all customers to the Port of New York and New Jersey, but not to Baltimore. We also understand that coal mines in Pennsylvania will be open to competition, but that coal mines in Maryland will not have the same access. These inadequacies must be addressed. Will those decisions put Maryland or others at a new competitive disadvantage?

- What jobs will be protected and what jobs will not?

Clearly, this is an evolutionary process. The effect of restructuring the railroads serving our country will extend far into the next century. The issues are complex and the committee is correct in calling attention to this transaction. To date, Maryland has had reasonably good experiences with all three railroads. We have not favored one over the other. The process and outcomes have taken many unexpected turns and twists along the way. We look forward to seeing Maryland's concerns—especially the need for competition—addressed in the operating plans submitted to the Surface Transportation Board. No decision is final until there is an enforceable final document reviewed by the Board, and the Board renders its decision. Based on input from literally hundreds of people in Maryland, I know that this decision is critical.

Mr. Chairman, the message I am bringing today is one I have heard repeatedly over the last six months. This decision will affect the lives, the well being and the health of hundreds of businesses and thousands of individuals across Maryland and across the nation. Unfortunately, corporate restructurings in order to achieve the desired efficiencies and cost reductions often result in consolidation and job loss. We must work to see to it that this pain is minimized in Maryland and elsewhere.

CLOSING REMARKS

Mr. Chairman, Maryland's approach to this merger has been unprecedented and unparalleled. It appears that our strategy of getting organized early, defining clear objectives and creating a unified front of elected officials, businesses, labor and community leaders to advance Maryland's interests has made the railroads recognize and address our concerns. We have been fair and forthcoming with all three railroads. We have worked hard to speak for our citizens, and we will continue to speak up for Maryland until the last "I" is dotted and the last "T" is crossed.

I again thank Senator Barbara Mikulski and the Maryland delegation for its support of all our endeavors in this area.

Thank you for the opportunity to share our approach to this issue and Maryland's concerns with the Committee.

STATEMENT OF HON. ED RENDELL, MAYOR, CITY OF PHILADELPHIA

Senator SHELBY. Mayor Rendell.

Mr. RENDELL. Thank you, Senator, and we would like to start off by thanking Senator Specter for asking for these hearings. He is dogged in the protection of Pennsylvania's interest and Philadelphia's interests, and we view these hearings as an important step in that direction.

I would like to start out by telling you briefly what the city of Philadelphia stands to lose if this merger is not conducted in a proper and appropriate fashion. The city of Philadelphia right now has 2,300 Conrail employees.

As was stated earlier, they produce \$7 million in wage taxes, and nearly \$12 million from Conrail in overall direct taxes to the city of Philadelphia's treasury.

Indirectly, Conrail produces well over \$100 million in economic impact for the city of Philadelphia. Conrail is one of our leading corporate presences.

It delivers as a great corporate citizen, and it has delivered over the last decade between \$2 million and \$2.5 million to charitable and civic organizations in the city of Philadelphia on an annual basis. It is one of the largest land holders, property holders, in the city of Philadelphia.

Conrail had made a commitment, which was as yet unrealized, to develop an intermodal transportation center, taking advantage of the confluence of our port, I-95, and our western highway hook-ups, which we believe would be one of the outstanding intermodal transportation facilities in the eastern half of the country. So all of those things we stand to lose if this merger is not done in an appropriate fashion.

We also need to maintain many of these things, and I would suggest, and I do not mean to in any way denigrate Maryland's interests, or Virginia's interests, or any other State's interests, certainly New Jersey's, or any other State's interests, but the city of Philadelphia has, as you know, a historical special relationship with Conrail.

When the Congress enacted the original legislation, Conrail legislation in 1973, Philadelphia was written into that legislation for a guarantee that the corporate headquarters of Conrail would remain there. Senator Vance Hartke, back in 1973, said this was done so its headquarters in Philadelphia would guarantee maximum reemployment opportunities for office workers of the two defunct carriers.

In 1986, when the effort was made, and successfully made to privatize Conrail, again, this Congress not only held that subsection when it amended out many other provisions of the 1973 act, this Congress not only held that subsection, but actually passed another subsection, making clear that that subsection 741(b) would remain in effect. So we have a historical relationship to this whole chain, recognizing Philadelphia and Pennsylvania's importance as a great railroad State and a great railroad city.

We need to maintain strong operating commitments of both major facilities, Norfolk Southern and CSX, and I was heartened to read in John Snow's letter to Senator Specter a commitment to have a major operating presence in the city of Philadelphia, and I would emphasize the word, major.

It is my understanding that the negotiations which, of course, are not finalized, it is my understanding that those negotiations will give Norfolk Southern almost all of the existing Conrail property in the city of Philadelphia. It is our strong belief that that justifies a significant major operating presence in Philadelphia of Norfolk Southern.

With Norfolk Southern coming into the North, we strongly believe that Philadelphia should receive the same treatment as Atlanta, as an operating headquarters for Norfolk Southern. Between those two strong operating presences, the jobs that the Congress sought to protect in 1973, and reprotect in 1986, will, in fact, be maintained or even grow.

We also believe that both Norfolk Southern and Conrail working together should take steps to ensure the economic development of our region by fulfilling Conrail's promise to develop that intermodal facility.

The city of Philadelphia knows that it has to participate and incentivize those efforts with land and other economic development incentives, and we stand ready to do so, and most of all, we need competition. As Governor Glendening said about western Maryland, we need competition.

Today, outside of our port area and some intermodal facilities in south Philadelphia, there is no head-to-head class I rail competition in southeastern Pennsylvania, and that has a definite damaging effect on southeastern Pennsylvania companies.

When this is done, it is crucial that that type of head-to-head competition be maintained, either by the establishment of a neutral terminal railroad, or by an agreement of the parties, a holding company, to do some form of—holding company that ensures equal access and head-to-head competition.

Last, we would like to see, of course, the corporate presence, some trust fund established to keep the corporate presence, and a real estate task force to look at the real estate.

Let me close by saying that this past Monday, Governor Ridge, in Harrisburg, myself, and Secretary Mallory met with John Snow and David Goode, and I think it was a terrific meeting. It was a terrific meeting.

We agreed to set up a working group, a small working group, with the governments of Pennsylvania and Philadelphia, the Port of Philadelphia represented, with all three railroads, counting Conrail as well.

That working group is going to move quickly in the next 2 weeks to begin the process of sorting out all of these issues, and it is our availability, obviously, and our intention to be available to share our progress with the Congress, and, of course, eventually with the Surface Transportation Board.

Mr. Snow's and Mr. Goode's attitude toward our needs as a State, I think, was extraordinarily positive, and we are looking forward to a great working relationship.

Senator SHELBY. Thank you, Mayor.

Mr. Brad Mallory, Secretary of the Pennsylvania Department of Transportation.

STATEMENT OF HON. BRAD MALLORY, SECRETARY, COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

Mr. MALLORY. Thank you, sir, and thank you all for the opportunity to share the views of the administration of Gov. Tom Ridge concerning the proposal to divide Conrail between CSX and Norfolk Southern, obviously a matter of utmost importance, not only to Pennsylvania, but to the rail industry and the economy of the Northeast and the Nation beyond.

We must all work together to ensure that our employers, our communities, our workers, and for that matter, our thriving rail industry in Pennsylvania, can all find a way to benefit and prosper out of this transaction.

The Governor said it clearly on Monday, in Pennsylvania, we in government can be helpful allies or formidable adversaries, depending on whether or not our legitimate interests are met.

Pennsylvania, with 70 railroads, ranks first in the Nation in the number of operating railroads, and with 5,400 miles of track, fifth in the Nation in terms of mileage of railroads.

One-third of all the U.S. rail traffic in the Nation moves through the Keystone State, not incoincidentally. Railroad employment in the State totals nearly 13,000 workers, the third highest totals in the Nation. Obviously, we take the rail industry in Pennsylvania very seriously.

The latest developments, obviously, would indicate that CSX and Norfolk Southern will be dividing up Conrail's lines. We know that rail service will change dramatically in the area, and the Ridge administration is working diligently to ensure that the needs of Pennsylvania are, in fact, protected.

As Mayor Rendell mentioned, on Monday of this week, the Governor, Mayor Rendell, and I, and others met with the CEO's of CSX and Norfolk Southern to formally establish a working group, as to the disposition of the old Conrail freight lines, and the operation of them.

Now, I stress formally established a working group, because the Governor and I have met individually with Messrs. Levan, Goode, and Snow, as early as November and December of last year, and we, of course, had been working aggressively with rail shipping interests, rail unions, communities, and I might add, and stressed the port communities throughout Pennsylvania, Deep Water, in Philadelphia, Inland, in Pittsburgh, and Great Lakes Port, in Lake Erie, from the onset of this issue.

CSX and Norfolk Southern believe that within 1 to 2 weeks they will have put a little more ink on their arrangement, and will be able to join with us in aggressively pursuing a menu of issues that the Governor, and the mayor, and others in Pennsylvania believe must be addressed.

First and foremost, employment, a major concern. Current employment levels and rail facility operations must be protected to the maximum extent possible.

The indications are very promising, based on our discussions to date, concerning the railroad repair shops in Altoona and Hollidaysburg, the National Regional Customer Center and regional headquarters in Pittsburgh, and the intermodal facilities in Pittsburgh, Harrisburg, Philadelphia, and Allentown, as well.

As the mayor mentioned, Philadelphia has a historic role as a rail corporate headquarters for more than a century, and consideration must be given to the maximum ongoing corporate presence in that city.

Conrail has made a great economic impact in our State, especially in Philadelphia. Over 2,400 people are employed just there, 8,000 people throughout the State, \$31 million in State and local taxes, as Senator Specter mentioned.

They also purchase more than 439 million dollars' worth of goods and services from Pennsylvania vendors, and I might add, contributed more than \$2 million to over 200 charities, community groups, and other deserving nonprofit corporations of Pennsylvania. This is a presence that matters.

The second major issue, competitive access. It is imperative that all 2-to-1 locations be maintained. For example, where Conrail is currently permitting another major carrier to use one of its lines, the successor owner must continue to afford access.

At least three major carriers must be granted access to the Port of Philadelphia, as we enjoy today, and in the case of Pittsburgh, we must maintain the level of two major railroads having access.

We need to retain our two competitive east-west routes and two competitive north-south routes. Major rail carriers must provide competitive access to our large regional and shortline railroad industry, the largest in the Nation, I might add.

Passenger service is of a particular interest to us, obviously. It must be addressed in the merger, and we will be seeking a commitment from all the involved class I's to work with us on expanding rail passenger service, where it makes sense to do so.

Obviously, the dollars are important, and fair and competitive transportation rates and charges are going to have to be addressed. If transportation efficiencies are realized as part of this deal, we must have some passed through to the customers.

Finally, plans to dispose of rail lines should be made known to the Commonwealth as soon as possible. We need about 60 to 90 days prior notice, and the rationalized lines, if you will, must be offered at a reasonable minimum cost.

If this merger is structured correctly, that is a big if, but if it is, Pennsylvania could have good connections and good routes to Chicago, St. Louis, Memphis, New Orleans, and give Pennsylvania products a new and more competitive market reach to the south, and ultimately to the west.

Our goal, our task, is to ensure that through face-to-face hard bargaining, that we achieve that, and we greatly appreciate the interest of you gentlemen, and the chance that you can help us provide the leverage to make sure that that process works in that fashion.

Thank you.

PREPARED STATEMENT

Senator SHELBY. Thank you, Mr. Mallory. We have your complete statement and it will be inserted in the record.
[The statement follows:]

PREPARED STATEMENT OF BRADLEY L. MALLORY

Good morning and thank you for allowing me to share the views of the administration of Gov. Tom Ridge on the proposal to divide Conrail between CSX and Norfolk Southern. It is a matter of utmost importance that we are discussing here today.

The impact of this proposed restructuring of Conrail will determine how railroads will operate well into the 21st century—not just in Pennsylvania, but ultimately in the entire country as well. Those of us in government must join with those in the private sector to ensure that a merger will be in the best interest of our economy, our workers, and all of our railroads.

We in government can be helpful allies or formidable adversaries depending on whether our legitimate needs are met.

Railroads have a rich heritage in leading the growth and development of the Commonwealth. In February 1854, the Pennsylvania Railroad began operating a through route between Philadelphia and Pittsburgh—opening a new chapter in the nation's and Commonwealth's transportation history. Those cross-state ribbons of iron allowed trains to transport coal, lumber, other raw materials and finished products to factories and the marketplace. Towns sprang up around the railroad. Businesses emerged. Jobs were created. Railroads were the economic lifeblood of the Commonwealth.

While the "glory days" of railroading may be gone—the "working days" of trains are not. Railroads will continue to play a key role in the economic well-being of Pennsylvania. That is why the Ridge Administration and those of us in the Department of Transportation are committed to working with the merger partners to protect Pennsylvania's interests in this latest transformation of the eastern rail industry.

Maintaining a viable rail system serving Pennsylvania and beyond is important. My vision is to create—as Governor Ridge has directed—a multi-modal transportation system throughout the state . . . one that combines the use of our highways and waterways, airways and bikeways and, of course, our railways. This is the only way to move people and goods efficiently and effectively.

Highways cannot serve as our sole means of transportation. To be prepared for tomorrow's global demands, a blend of all transportation modes must be developed . . . and rail must be a part of the total transportation mix. In fact, many of our shippers, including coal, chemicals and lumber, are dependent on our rail network to move their commodities.

The state recognized the importance of rail by investing \$35 million in infrastructure improvements to permit doublestack container shipments across the Commonwealth, a crucial development to keep Pennsylvania and its employers competitive in the world marketplace.

Today, with 70 railroads, Pennsylvania ranks first in the nation in the number of operating railroads and, with 5,400 miles of track, the state ranks fifth in track mileage. One-third of all U.S. rail traffic moves through Pennsylvania—befitting our status as the Keystone State.

Railroad employment in the state totals nearly 13,000 workers, the third highest in the nation.

These numbers tell the story of railroads' role in Pennsylvania. And any plan that would restructure rail freight service from the Northeast to the deep South is going to affect the Commonwealth, its other railroads and those in business and industry who rely on trains to deliver raw materials or move completed products to market.

The latest developments indicate CSX and Norfolk Southern will be dividing up Conrail's lines. We also know that rail transportation in Conrail's service area will change, perhaps dramatically. At the Pennsylvania Department of Transportation, we are working diligently to ensure that the needs of Pennsylvania and its employers are protected.

On Monday of this week (March 17), Governor Ridge, Philadelphia Mayor Edward Rendell and I met with the CEO's of CSX and Norfolk Southern to formally open lines of communications between Pennsylvania and the new owners of the old Conrail freight lines. Substantive issues cannot be resolved with one meeting. We have been talking with the railroads all along. But now we have agreed to establish a

formal working group—one that will convene within the next two weeks to sit down and hammer out the tough issues facing our state's economy, worried Conrail workers and the railroads.

On behalf of the Ridge Administration, I am anxious to open discussions with the other members of the working group which includes a representative from the City of Philadelphia, the chairman of the Delaware River Port Authority, the governor's general counsel, a member of Conrail's interim management team, and a representative from both CSX and Norfolk Southern.

This small group of individuals has the monumental task of coming to terms, reaching agreement and compromising, where necessary, on the key issues and concerns facing the Commonwealth, so that we can all support the operational plan that the railroads will submit to the Surface Transportation Board for final approval.

Since the issue first arose last October, the Pennsylvania Department of Transportation has been assessing the impact of the sale of Conrail. I would like to outline for you those concerns that I will bring to our working group.

Employment. Employment is a major concern. Current employment levels and rail facilities' operations must be protected to the maximum extent possible. I'm referring to the railroad repair shops in Altoona and Hollidaysburg, the national regional customer center and regional headquarters in Pittsburgh and the intermodal facilities in Philadelphia, Pittsburgh, Harrisburg and Allentown. In addition, Philadelphia has served as a rail corporate headquarters for more than a century and consideration must be given to an ongoing corporate presence in the state's largest city.

Conrail has made a great economic impact in our state and especially in the Philadelphia region where approximately 2,400 people are employed.

Conrail employed approximately 8,000 people in Pennsylvania last year. In 1995, Conrail paid more than \$31 million in state and local taxes in Pennsylvania and purchased more than \$439 million in goods and services from Pennsylvania vendors. Conrail also contributed more than \$2 million to over 200 charities, community groups and other deserving non-profit organizations in the state in 1995. All told, Conrail's presence has mattered in Pennsylvania.

Competitive access is critical for our rail users.

It is imperative that all "two-to-one" locations be maintained. For example, where Conrail is currently permitting another major carrier to use one of its lines, the successor owner must continue to afford access to that rail line to the other major carrier.

At least three major carriers must be granted access to the Port of Philadelphia, and in the case of Pittsburgh's port operations, a minimum of two major railroads must be maintained.

The Commonwealth will need to retain two, competitive east-west routes and two, competitive north-south routes within the State.

Major rail carriers must provide competitive access to the regional and shortline railroads. This can be attained through trackage rights agreements or through reciprocal switch/local access.

Passenger service is another area that should be addressed with this merger. We will be seeking a commitment from all the involved Class I lines to work with us on expanding rail passenger service onto existing freight lines where it makes sense to do so.

Fair and competitive transportation rates and charges in some cases should be frozen or guaranteed to rail users, such as coal companies and bulk chemical producers who are solely dependent on railroads for moving their products. If transportation efficiencies are realized as a result of any merger, consideration must be given to passing some cost savings on to the customers. We have done much to keep Pennsylvania businesses more competitive. We need to keep transportation rates low to assist in this effort.

Recognized customer service standards and good corporate citizenry are essential to ensure reliable and efficient freight service. Rail users and major carriers should meet on a regular basis to assess service. And the railroads should commit to local and state officials to properly dispose of bridges, facilities and land parcels when rail lines and yards are abandoned.

And finally, plans to dispose of rail lines, including associated real estate and parcels of land, should be made known to the Commonwealth as soon as possible. This notification should come at least 60 to 90 days prior to the railroad's filing for abandonment. Also, the major carriers should offer future "rationalized" lines to our regional and shortline railroads at a reasonable, minimum cost.

Pennsylvania has a healthy rail network today . . . a network that is vital to the Commonwealth's economic growth.

For five months, my staff has talked with shippers, shortline and regional railroad operators, representatives of our ports and officials from the city of Philadelphia and our major Metropolitan Planning Organizations. The Ridge Administration also has maintained positive relations with all parties to this proposed merger, and we believe we are well-positioned to be a player in the merger's final design.

If the merger is structured correctly, Pennsylvania could have good connections and good routes to Chicago, St. Louis, Memphis and New Orleans. This could give Pennsylvania products a "new" and more competitive market reach to the south and ultimately to the west. But we must emphasize that the Ridge administration will work hard to represent the state's interests as this merger develops.

We have been and will continue to work together in designing a rail network for the future—a system that will be part of the world class transportation network that is vital for Pennsylvania.

Thank you.

STATEMENT OF HON. JOHN J. HALEY, JR., SECRETARY, STATE OF NEW JERSEY DEPARTMENT OF TRANSPORTATION

Senator SHELBY. Next will be the Honorable John Haley, Secretary of the Department of Transportation, the State of New Jersey.

Mr. HALEY. Thank you, Mr. Chairman, Senator Lautenberg, Senator Specter.

I will enter into the record my formal testimony as well as a tactical study that was prepared at our direction on the impact.

And I will briefly comment to say that with New Jersey located literally in the heart of the largest market in the United States, 100 million customers are within 1 day's travel of New Jersey, and really it is one of the largest markets in the world, and to stress simply that this proposed merger is of critical importance for New Jersey, not just as a transportation merger, but as an economy, because our economy and the State, to a great extent, is organized around the distribution and movements of goods, both in and out of the States.

As many of our other speakers have said, at Governor Whitman's direction we have developed a series of principles against which any merger must be measured, and I would like to share with you those principles this morning.

First of all, as you have heard the prior speakers indicate, we need assurance that New Jersey will have competitive rail access by at least two class I rail carriers, each with access to their own viable terminals, and access via a reciprocal switching or terminal railroad operation to all industries in the State.

As I do not have to tell anybody here, it appears that the monopoly that Conrail has enjoyed over the last 20 years will be going away, and we need to make sure that we have real and viable competitive access.

The second principle is that we need access for all 12 New Jersey shortline rail carriers. Like Pennsylvania, small railroads provide a critical need and service to the economy in New Jersey, they have literally picked up and grown over the last several years, areas and businesses that are not served for a number of legitimate business reasons by Conrail, and they are in lumber, in warehousing, all sorts of industries, so it is very important to us to see that the 12 shortline railroads throughout the State of New Jersey have access to a new arrangement.

Third, we are faced with literally, in parts of New Jersey, a traffic jam on the existing rail system. Senator Lautenberg laid out the

importance of mass transits in New Jersey, he talked about the need for coexistence, and suffice it to say that we need to underscore that coexistence, not only with commuter and freight in New Jersey, but also with the Northeast corridor, and the intercity system, which is so important to the State of New Jersey, and to the entire region.

Any business arrangement must have the ability to deal with the capacity constraint that exists on the railroads throughout New Jersey.

Fourth, and this one is particularly important to us as a State with a number of intermodal systems in the North, is that we have improved shipper access to intermodal and carload freight options.

A percentage of traffic moving on rail has increased from 2 to 10 percent at the Port Authority of New York, New Jersey, in the last few years. We would like to see continued growth of rail, because not only would it provide for better movement, and open up additional markets, but also will take some trucks off the road, and we need to have a good, compatible system.

The fifth principle is that we have reasonable accommodation for workers who may be displaced by this arrangement. We have a number of facilities and employees located throughout the Northeast, and let me add, this is an issue on which we should think regionally, and New Jersey would support the mayor's contention that we should have a very strong corporate presence in Philadelphia.

This is important not only to Pennsylvania, but by accidents of geography, we should not let that stand in the way of a joint effort in bringing this important—we have had a similar experience to what Pennsylvania has had in dealing with the two railroads in the proposed merger.

Our feeling is that based on the information we have seen, we can feel pretty good about it, but as was indicated earlier, the devil is in the details, and we need to see the specifics, and we will weigh them strongly against our five principles.

With that, Mr. Chairman, I would conclude my testimony to say that New Jersey and Governor Whitman intend to remain active, and we will work with the committee and the Surface Transportation Board, and our colleagues on the panel to make sure that we have an effective and smooth transition, and it is in the best interests of all of the economies of our States. Thank you.

PREPARED STATEMENT

Senator SHELBY. Thank you, Mr. Haley. We will insert your complete statement in the record.

[The statement follows:]

PREPARED STATEMENT OF JOHN J. HALEY

Chairman Shelby, Senator Lautenberg, Members of the Committee: Mr. Chairman, with your permission I would like to submit for the record a report prepared for the New Jersey Department of Transportation and the North Jersey Transportation Planning Authority with regard to the Conrail/CSX/Norfolk Southern merger.

Good morning and thank you for this opportunity to appear and discuss an issue which is of extreme importance to the future economic health of New Jersey. I applaud your initiative in holding these hearings, and assembling all interested parties to discuss what this merger will mean to the States, and to the many industries that rely on rail transportation.

First, let me begin with a word as to why this issue is so important to New Jersey. The State is located in the heart of the largest market in the United States (100 million consumers are within 1 day's travel), and one of the largest markets in the world. As a result, a sizable portion of our economy is centered around the distribution of huge quantities of goods within this market, and the transshipment of manufactured and imported goods beyond our Region. The following facts are indicative of the importance of this industry to the State's economy:

- Taken as a whole, goods movement employment in New Jersey (rail, truck, port, warehousing, freight forwarding, customs, etc.) makes it our fourth largest industry.
- 22 percent of New Jersey's work force (600,000 people) are employed in industries which are either directly, or indirectly, impacted by the costs and quality of rail service to the State.
- Our geographic position as a corridor State means that 850 million tons of freight, 10 percent of the total annual freight tonnage moved nationwide, originates, terminates or passes through New Jersey.
- 25 percent of the total revenues earned by Conrail throughout their 11,000 mile system are earned on traffic that originates or terminates right here in New Jersey.

Put simply, the Conrail System is very important to New Jersey, but, New Jersey is equally important to the Conrail System.

With this in mind, we entered into the process of evaluating the impacts of the Conrail/CSX merger when it was announced in October of last year. We developed a set of principles that we felt served as the basis for any approval by the Surface Transportation Board (STB) of any proposed merger.

The principles we insisted serve as the basis for any agreement were:

(1) Assurance that New Jersey will have competitive rail access by at least two Class 1 rail carriers, each with access to their own viable terminals, and access via reciprocal switching or terminal railroad operation to all industries in the state.

As most of you are aware, Conrail has held a virtual monopoly over rail transportation in NJ and much of the northeast for over 20 years. Competitive rights granted by Congress to the Delaware & Hudson Railroad at that time have never yielded viable competition due to restrictions imposed on the D&H by the trackage rights agreement with Conrail.

(2) Access to the competing Class 1 railroads by all of NJ's 12 short line rail carriers.

(3) Co-development of intercity, commuter and freight services where shared trackage is necessary.

This issue is of vital importance to NJ. Much of our transportation infrastructure, especially in the northeastern part of the State, is at or near capacity. Yet, Conrail freight service operates over every passenger line in New Jersey. In parts of the State our excellent mass transit system, operated by NJ Transit, is all that stands between us and a total breakdown in transportation. Development of new transit services, and expansion of existing services, are critical to our efforts to assure the continued mobility of our citizens, and to our efforts to meet Federal clean air standards.

It is largely an issue of capacity constraint. There are areas of shared trackage between NJ Transit and Conrail that even now are straining under the amount of traffic handled daily. This does not take into account the increased levels of traffic projected under the merger scenario.

(4) Improved shipper access to intermodal and carload freight options.

This includes correction of capacity constraints at NJ rail yard and terminal facilities to avoid the termination of intermodal shipments at the State's border, with subsequent movement of the freight into NJ by motor carrier. Such moves negate the clean air and infrastructure advantages of intermodalism to the State.

(5) Reasonable accommodation for workers displaced by merging of facilities and services between carriers, and would further maintain a headquarters presence in the Northeast, particularly Philadelphia.

It appears that the revised merger proposal which includes Norfolk Southern as a merger partner with CSX Corporation and Conrail appears to achieve most, if not all, of these points . . . but only in general terms. We need to take the next steps to ensure that the principles will be adhered to and implemented in a satisfactory manner. As one writer put it, "the devil is in the details".

—Competitive access means different things to different people. We must ensure that all industries have competitive access to the merger partners, and continued access to already existing competitors, such as Canadian Pacific and the New York, Susquehanna & Western Railroads in New Jersey. This will require the creation of neutral terminal carriers in markets where they do not currently

- exist, or the expansion of rights by short line railroads to interchange with the competitors at central terminal locations.
- Southern New Jersey, especially, requires close scrutiny. One of the options suggested to provide competitive access to the short line carriers in this part of the State would extend the existing Philadelphia Belt Line Railway across the Delaware River to Camden. Here it would interchange with yet another short line, RDC, recently selected by Conrail to purchase several lines in New Jersey. This short line, in turn, would interchange with the existing short lines. In this particular case, our zeal to provide competitive access could place as many as two intervening carriers between the short lines and the Class 1's serving the Philadelphia area.
 - Capacity concerns need to be addressed up front. We must make clear the need to expand lines to accommodate both freight and passenger operations. Rationalization of the system over the years by the railroads has led to decreased capacity at a time when we're seeing a resurgence in rail use by industry, and a demand for many new transit starts. The proposed increases in rail freight as a result of this merger will only serve to increase pressures on available transit assets.
 - Finally, we need to establish a meaningful corporate headquarters presence in the northeast by both competitors. The Philadelphia headquarters of Conrail must continue to exist as the focal point for marketing and operational activities throughout the northeast. By their own admission, our markets are not markets that have been cultivated in the past by CSX or Norfolk Southern. The most effective marketing is done by people who know their territories intimately. Likewise, customer relations suffer if accounts are serviced by "absentee" account representatives who do not know or understand the unique requirements of each customer.

In summary, the Northeast's rail freight services must emerge from this process with an improved ability to compete for, and serve, the manufacturing and distribution systems that are vital to our future prosperity. We believe this merger, as proposed, largely furnishes us with this ability. We must, however, see to it that the STB process leaves in place a truly competitive rail system, and positions us for the next round of transcontinental mergers that cannot be far in the future.

Thank you Mr. Chairman, Subcommittee Members, ladies and gentlemen.

CONRAIL MERGER

WHY THIS ISSUE IS IMPORTANT TO NEW JERSEY

The Conrail merger is the "window of opportunity" for NJ to ensure future rail competitive access throughout the State to key strategic markets.

NJ, through its maritime and aviation facilities, is a crucial gateway to the global marketplace for U.S. industry.

Global is good for NJ. The trick is keeping manufacturing in the U.S. We need transportation logistics to help offset cheap labor overseas.

Within this framework, rail freight is critical for the cost-effective movement of goods between the maritime terminals in NJ and business locations throughout the U.S., particularly the midwestern markets.

Without effective pricing in rail freight, truck/rail intermodal, and maritime/rail intermodal ("hub port"), key industries in NJ will be at a significant competitive disadvantage compared to other locations in the U.S. and the world.

NJ is the heart of the nation's (and one of the world's) largest markets. It is within one day's travel of 100 million consumers.

Railroads play a key role in supporting both NJ's industrial base and its consumers.

NJ'S GOODS MOVEMENT FACTS

Ten percent of the total annual freight tonnage moved nationwide originates, terminates, or passes through NJ (850 million tons).

Goods movement represents NJ's fourth largest industry.

Twenty-two percent of NJ's work force are employed in industries which either directly or indirectly are impacted by the cost and quality of rail service to NJ.

Twenty-five percent of Conrail's total revenues come from traffic that begins or ends in NJ.

Shortlines in NJ often serve shippers previously abandoned by Conrail.

Rail moves 11 percent of all containers at the Port Authority of New York & New Jersey, up from just 2 percent five years ago.

NJ'S MERGER PRINCIPLES

Competitive rail access by at least two Class 1 carriers to all key NJ markets.
 Access to competing Class 1 railroads by 12 shortline carriers.
 Compatibility of intercity, commuter and freight services for shared track.
 Improved shipper access to all modes.
 Reasonable accommodation for displaced workers.
 Headquarters presence in the Northeast, particularly Philadelphia.
 Additional capacity to address future rail freight and passenger needs.

INTENTION OF TWO CARRIERS TO PROVIDE COMPETITION

Senator SHELBY. Senator Lautenberg, any questions?

Senator LAUTENBERG. Yes.

Welcome, Mr. Haley, I am glad to see you here. You have had experience with the port authority as well as now commissioner of transportation.

In your opening comments, you suggest that one of the key principles of genuine rail competition is the assurance that each of the class I carriers will have access to their own viable terminals.

The question I raised this morning with my staff, at this point, what are your impressions regarding these two carriers, and whether or not they might be able to truly provide that, and from what you have learned so far, is that your intention?

Mr. HALEY. I will tell you, without question, that both of the carriers that I have talked to understand the problem, and have listened and stated it is their intention to provide competition, particularly in the ports in Elizabeth and Newark.

We made clear to them some of our specific concerns regarding capacity and intermodal transfers, both of them understand the need for a terminal facility, and real access, because as you know, and the committee knows, previously, when Conrail was created, part of what was intended was to have competition with lines like Delaware & Hudson; however, as a practical matter, as these business arrangements evolved, the access that Delaware & Hudson had was rather limited, so we ended up with the situation that we have all talked about, which is a Conrail monopoly over the last several years.

So in answer to your question, I think that in our discussions with both CSX and Norfolk Southern, they have indicated that they understand the problem for competition, and are working very specifically on it in the ports in Elizabeth and Newark.

I will tell you, though, one of the issues that we put on the table, and we have not seen any of the details yet, is we and Governor Whitman are very concerned about what it means for the Port of Camden.

In the connections with the important lines in Philadelphia, we have yet to see very much information, and I understand and accept that they are in a negotiating posture, but we are concerned about how the ports in south Jersey and in the Philadelphia area are treated, and how we come out of this.

So we are, I guess, Senators, statewide, overall, guardedly optimistic, but we will need some additional information on how exactly the agreements will roll out, and how the lines will shape up before we could give you much more certainty than that.

Mr. RENDELL. Senator—

Senator LAUTENBERG. Yes.

Mr. RENDELL. I am sorry, if I could just reinforce—

Senator LAUTENBERG. I know, as soon as he said Camden, I saw you twitch there.

Mr. RENDELL. If I could reinforce what the secretary said, there is no doubt, from our conversations with the two CEO's, there is no doubt that the marketplace and the need for both to be competitive will ensure some type of operation among themselves.

The question is, in New Jersey, with the shortlines, and Pennsylvania, with the shortlines, and CP, and the Delaware & Hudson, what access they will have to competitive switching in terminals.

That is where the rub is. I think we are absolutely assured that we will have at least two open and head-to-head competitors in Pennsylvania, but there are a lot of other railroads to consider as we go through the details.

Senator LAUTENBERG. Yes; I am encouraged by reports I get from each of the railroads, and I think that this is going to be a net gain for all of us, including, obviously, the carriers.

They are not interested in this to spread their responsibilities. They think that is a good investment, and I like to think of things as good investments, they can benefit the communities that are connected or involved with them.

So I think that this is a positive thing, but I think it is very important at this early stage to highlight those things which we regard as kind of bedrock importance, so even though I know the leaders of the CSX in Norfolk have been hearing it frequently, I think it is important to get it clearly on the table.

Mr. Haley, in your capacity as transportation commissioner, you also serve as chairman of the board of the New Jersey Transit.

Now, have you had discussions to date with CSX and Norfolk Southern regarding your requirements for current and expanded computer rail, in connection with the Conrail-owned track in the State of New Jersey?

Mr. HALEY. We have had, actually, several months of discussions, starting back in October, with the first proposed deal, and talked about specific corridors.

In the last 2 weeks I have had discussions with both of the railroads as well, on the needs, particularly on the, I used the term earlier that we have a traffic jam on the rails, but those of us who lived in the Northeast during the phaseout or transition of passenger service at Conrail, when they became entirely a freight railroad, I think will have very long memories, and most of them are not very pleasant about experiences that many of us went through on the passenger rail side, with delays.

It is an issue that both of the railroads have been very forthcoming on, and understand the need for this. We have identified particular corridors, such as the Valley Line, such as the Port Service Line that runs between a couple of towns in the New York State border, into Hoboken Terminal, as some key corridors.

We have also put on the table the issue of the development of the, further development, I should say, of the Hudson-Bergen line, which needs to be completed on the Hudson part of it, and moved very quickly, and Senator, with your help, again, as you have done with the Hudson part of it, the Hudson-Bergen light rail system as well. That will have many interfaces in the operating area.

We have been very frank about the history of troubles, if you will, between passenger and freight railroads operating over the same corridor, and we are looking both for a detailed plan that identifies open windows for freight, and how it will coexist with passengers, as well as some commitment and coordination on the capacity side, because I think, simply, better management of the existing physical plant is one way that will make the railroads coexist more effectively, but there needs to be a well thought out and prudent plan, not only plan, but finances for capacity expansion, because ultimately, if this arrangement leads to what all of us in the Northeast hope it will lead to, there is going to be a need for additional capacity.

Senator SHELBY. OK.

Senator SPECTER.

Senator SPECTER. Thank you very much, Mr. Chairman.

Secretary Mallory, I appreciated your comment quoting Governor Ridge to the effect that the Governor and Pennsylvania could either be helpful allies or formidable adversaries, and I think that is a good division to make.

I was referred to in the press recently as threatening lawsuits, which I have not done yet.

What I have tried to do is make a point that the new arrangement could have some very beneficial effects to Pennsylvania, as well as the country, but we have to see exactly how it is worked out.

The unusual circumstances here, when you have a contract between Conrail and CSX, when a new contract is formed, the initial impression might be, as a matter of law, that there would be nobody to enforce the contract, because Conrail shareholders are delighted with the price that they receive. That is why I made the point that there could be standing as to employees under the Federal law, where the Surface Transportation Board must consider employees, or communities which must be considered under the Pennsylvania takeover statute.

When you have characterized the question here as this committee, you used gentlemen, could provide leverage, I think that is really what we are looking toward.

Have you been aware of the arrangement which was worked out by Norfolk Southern with Pennsylvania Power & Light, during the course of the last litigation, which was, in effect, a bargaining tool to try to present a good reason for Pennsylvania to be happy with the new arrangement?

Mr. MALLORY. I believe I became aware of that on or about Monday of this week. Various representatives of the railroad had mentioned to us that we had been working with several Pennsylvania industries, we think we have some good news coming in the near future, and so yes, I became aware of it, I guess, Monday of this week.

Senator SPECTER. Was it your impression that that arrangement had been made, Norfolk Southern with Pennsylvania Power & Light, as a result of the pressure to try to have Norfolk Southern put the best face possible on what it could do for Pennsylvania?

Mr. MALLORY. I really do not know what the motivation was. Clearly, it was good news, and received as such in many corridors in Pennsylvania.

Senator SPECTER. Well, we will reserve that question for Mr. Goode. I gave him a little advance notice of a question.

Mayor Rendell, I congratulate you on your work generally for the city, and for your stance taken here on this proposed arrangement.

You have cited accurately the statutory background for preserving Philadelphia as the headquarters for Conrail, and we have talked a little bit about the history of the railroad in Philadelphia, and there is a lot more to it.

The Pennsylvania Railroad was the initial giant, running through the main line, and all the way to St. Louis, and just an overwhelming factor, coming right opposite city hall.

The general corporation law is that when an acquiring party takes over a company, that they succeed on all the assets and all the liabilities.

Would you think there would be a pretty good argument for that? I do not know whether you would call it a liability to have Philadelphia as the headquarters, or an asset to have Philadelphia as the headquarters, but would you agree with me that that would at least be a pretty good argument, that there is a statutory obligation to carry that forward, at least in one way or another?

Mr. RENDELL. I think a strong case can be made for that, Senator, but let me say that if—we are pragmatists in Philadelphia, the things that have happened to us in the last quarter of a century mandate that we are pragmatists.

Senator SPECTER. A few of us are in Washington, too, Mr. Mayor.

Mr. RENDELL. We are more interested in concrete results than symbols, and that is why I quoted Mr. Snow's letter to you, which said major, and again, with the emphasis on major, major operating presence in Philadelphia.

If there is a major operating presence, if there is the type of corporate trust fund set up between the three entities, if there are efforts to be made to deal with the real estate in a positive fashion, if there is the efforts to complete Conrail's promise to create a first-class, world-class intermodal facility, which, Senator Lautenberg, would benefit the Port of Camden enormously as well, if all of those things are done, then the symbolism means little to me.

So I think it is important what the agreements are, and what the details are, as to the agreements, but I agree with you, as a lawyer, I learned a lot of my law from you, that that is probably a reasonable interpretation.

Senator SPECTER. The mayor refers to the fact that I gave him his first job out of law school as an assistant district attorney.

Mr. Mayor, I appreciate you referring to my letter to Mr. Snow, and his reply, and I would ask unanimous consent that that correspondence be included in the record, as well as the response from Mr. Goode.

Senator SHELBY. Without objection, so ordered.

[The information follows:]

LETTER FROM SENATOR SPECTER

March 6, 1997.

Mr. JOHN W. SNOW,
President and Chief Executive Officer, CSX Corporation,
Richmond, VA.

DEAR MR. SNOW: I have been closely following the developments in the proposed merger with Conrail, particularly the impact on the more than 8,000 Conrail employees who live in Pennsylvania and the location of the headquarters in Pennsylvania.

I am very troubled that CSX Corporation has breached a commitment it made to me that any arrangement would protect both the corporate headquarters in Pennsylvania and the dedicated employees throughout the Commonwealth.

With an estimated 2,400 employees in Philadelphia, 1,700 in the Pittsburgh area, 1,200 at the Altoona shops, and 850 at the Harrisburg intermodal terminal, and several thousand others at points in between, Conrail plays a vital role in Pennsylvania's economy and communities. The governing Pennsylvania statute for corporate mergers is especially relevant in the context of the commitment made to me, as it states that the board of directors must take into account:

"[t]he effects of any action upon any or all groups affected by such action, including shareholders, employees, suppliers, customers and creditors of the corporation, and upon communities in which offices or other establishments of the corporation are located." 15 Pa.C.S. § 1715 (1996) (emphasis added).

In addition to Pennsylvania law, the proposed arrangement may be contrary to federal policy which requires consideration by the Surface Transportation Board of the impact of any merger proposal on the employees of the rail carrier. I intend to pursue this issue and other potential federal issues with the Surface Transportation Board.

I would appreciate your prompt response to my concerns.

Sincerely,

ARLEN SPECTER.

LETTER FROM JOHN W. SNOW, CHAIRMAN, PRESIDENT, AND CHIEF EXECUTIVE OFFICER, CSX CORP.

March 11, 1997.

Hon. ARLEN SPECTER,
U.S. Senate,
Washington, DC.

DEAR ARLEN: I have reviewed your letter to me of March 6 which raises questions about how recent developments in the Conrail merger will affect important Pennsylvania interests. We are mindful of your concerns and those of other prominent political and business leaders in the State. Let me assure you that those concerns will be addressed.

We are currently engaged in negotiations with Norfolk Southern on the important issue of creating a balanced rail system in the East. I am confident you will find the outcome of those discussions beneficial for Pennsylvania and its interests. It is important, however, for me to clarify what appears to be a misunderstanding. While your comments relating to corporate headquarters and other issues are correct under the old contract which was in force at the time you wrote your letter, we have now amended the contract and many of the provisions have been revised.

As you know, on October 15, 1996, CSX announced a strategic merger of equals with Conrail. It was our stated intention at that time to relocate the Richmond-based holding company (currently 120 employees) to Philadelphia. We also clearly stated that this transaction was subject to the approval of the Surface Transportation Board and an affirmative vote of a majority of Conrail shareholders.

Clearly, changes in circumstances forced us to amend our original transaction with Conrail. First and most importantly, we were unable to win the required opt-out vote of a majority of Conrail shareholders. Subsequent attempts to sway major Conrail shareholders convinced us that we could not win the required vote.

Secondly, statements by federal regulators, public officials, and numerous customers led us to believe that we could not win regulatory approval without substantive concessions to Norfolk Southern. We tried repeatedly to persuade Conrail executives to agree to a realistic set of concessions. This could have ultimately led to a successful outcome of the original agreement.

With neither shareholder approval nor the likelihood of STB acceptance, we reluctantly embraced the call for a partition of Conrail. The amended contract that was approved by the Conrail Board last Friday is a significant departure to the original agreement. What was originally a merger of equals is now an acquisition.

The result is a major victory for a number of important constituencies. The Conrail shareholders will receive \$115/share, the shippers will benefit from a balanced rail system in the East, and the driving public will benefit from fewer trucks on already overcrowded highways.

Please be assured that many of your concerns and those of others were clearly heard and considered. The revised agreement with Conrail addresses a number of your concerns in a positive fashion. We intend to retain the Juniata Locomotive Shops in Altoona, the Sam Ray Car Shops in Hollidaysburg, the Pittsburgh Service Center and a major operating presence in Philadelphia.

While some important issues have been resolved, other major issues relating to Pennsylvania will be the subject of discussions with both Norfolk Southern and elected officials. It is my intention to discuss these issues with you and others in the coming days. I hope that our talks will eventually lead to your support of the revised transaction.

With best regards,
Sincerely,

JOHN W. SNOW.

Senator SPECTER. The red light is on, so I will conclude with a very brief reflection on your statement. It may be that if Norfolk Southern and CSX are in Philadelphia, and they have substantial operating presences, and they may have division headquarters, or offices of some sort, that they may take up the employee level and the space level.

So I quite agree with you, that that is something which we have to monitor and try to work out.

Mr. RENDELL. Senator, I believe that, and again, this is reinforcing my discussions with Mr. Snow and Mr. Goode, I believe that this cannot just be an effort to maintain what we have, but I believe out of this, there can be genuine economic development growth, and growth in other areas as well, and we are hopeful.

Senator SPECTER. OK. Equal to or better than.

Mr. RENDELL. Right.

Senator SPECTER. Thank you.

Senator SHELBY. Senator Mikulski.

PREPARED STATEMENT

Senator MIKULSKI. Thank you, Mr. Chairman. And, Mr. Chairman, will the record be kept open, so that I may submit a statement from Senator Sarbanes?

Senator SHELBY. Absolutely. We will keep it open.

[The statement follows:]

PREPARED STATEMENT OF SENATOR SARBANES

Thank you Mr. Chairman for scheduling this hearing on the implications of the proposed merger of Conrail with CSX and Norfolk Southern Corporation. At the very outset, I want to commend Governor Glendening and my colleague Senator Mikulski, who serves on this Committee, for their continued leadership and advocacy of Maryland's goals in connection with the proposed acquisition of Conrail.

As the birthplace of railroads in America and as a State with an extensive freight rail network, Maryland has much at stake in the proposed acquisition. Today, two Class I carriers—CSX and Conrail—provide freight rail access to the Port of Baltimore and along the Northeast Corridor. This has been an important force in guaranteeing coal and other shippers in our State the benefits of competitive rail rates and service levels. The two railroads move nearly 16 million tons of freight from the Port of Baltimore alone each year, control 98 percent of the tracks in Maryland, and employ more than 2,200 workers. Norfolk Southern also serves our State, albeit with

much more limited trackage. Maryland's commuter rail service, MARC, relies heavily upon the CSX Brunswick and Camden lines for daily passenger service. Clearly, the proposed merger has substantial implications for Maryland's economy, industries, work force, and commuter rail service.

During the past six months the Maryland Congressional Delegation, which I Chair, has worked very closely with Governor Glendening, members of his Cabinet, the Maryland General Assembly and Maryland's Rail Merger Advisory Council to protect and advance our State's interests in the acquisition. We have worked as a team to develop and press our principal goals with the three railroads:

- Preserving competitive service by no fewer than two Class I railroads;
- Continuing existing service and rates to industries throughout Maryland, including the Eastern Shore and Western Maryland;
- Protecting railroad related employment in Cumberland and throughout Maryland;
- Preserving and enhancing MARC commuter rail service;
- Securing commitments to infrastructure improvements necessary to achieve the asserted benefits of the merger.

Based on the preliminary information available to date, we are cautiously optimistic that our goals will be met in the recent rail merger agreement. However, key questions remain to be addressed in the details of the proposals and in the operating plans submitted to the Surface Transportation Board. Among other issues, we are concerned about how open access to our full customer base, including the coal industries in western Maryland, will be addressed. We are also concerned about the capability to operate both expanded freight and passenger rail services on the already congested North East Corridor. In addition, we would like to see firm commitments to job protections and infrastructure improvements including high cube double stack service by both Class I railroads.

Mr. Chairman, we all want to benefit from this merger transaction. We urge the railroads to continue to work with us to reach agreements of mutual benefit prior to the submission of any merger application to the Surface Transportation Board.

Senator MIKULSKI. To you, Governor Glendening, and to other Marylanders who are here, Senator Sarbanes is very deeply involved in the Housing/Banking, but he is 100 percent, as you know, involved in this issue.

Governor Glendening, I would like to thank you for the leadership that you have provided on this issue. When the announcement first came about a merger between CSX and Conrail, we were all very concerned about the crisis that this could create for jobs in the port, western Maryland, the Delmarva, the concern that commuters would be stranded or abandoned, and I want to thank you for organizing the strategy and the process, so that we could have a rapid response, talking to the community, and your leadership in talking to the railroad, and I would also like to thank you for the professionalism of your staff in this.

Now that we have gone through the process, the question is: Where are we? We have outlined those major criterions related to jobs, passenger service, and, of course, infrastructure.

Now that you have heard what they have all said to you, could you tell where you think we are, in terms of the jobs for the Port of Baltimore, and do you feel that we have a real commitment in the way this merger is being proposed to preserve those jobs, or do you identify yellow flashing lights, that we must continue to stand sentry over, and also flush out those details?

Mr. GLENDENING. Well, Senator, first, thank you for your comments on the State role. I recall that you and I were on the phone, I guess, in detailed conversations just 1 or 2 days after the discussions, and outlined how we were going to handle this, and I certainly appreciate your help, your leadership on this as well.

With regard to the question of where are we, and specifically relative to the port and jobs, I must say we were alarmed at first, but

after very productive discussions with all three principals, but particularly, most recently, with Norfolk Southern and CSX, I believe there is the commitment there that will either keep us at the current level of competition, or in many cases, increase the competition level. We want to make sure that we not only have the two class I railroads, but we want to make sure that they have the ability to compete with one another.

I think for the port, the potential is here to open up competition even better to the Midwest, and that aspect of it is just—

Senator MIKULSKI. So your preliminary assessment is that this could actually enable us to have a greater volume, and once again, reestablish our preeminence in travel to the Midwest that we once enjoyed.

Mr. GLENDENING. I believe that that is very possible, and particularly if there is a shared track use as well, and if there are some cooperative arrangements with some of the shoreline, even further, but I do think that you are correct in your conclusion.

Let me make one observation, though. While I am trusting, and I know everyone else is, and while we love the CEO's, and everyone working very productively here today, I do hope, and I am sure this is probably true for the other States, but I do hope that the guarantee of competition, which is the guiding line on the—which the Surface Transportation Board is supposed to operate, that that is incorporated into the final agreement of approval in a way that would be legally enforceable, so there is personality change, we can have the same confidence in the future.

Senator MIKULSKI. Well, this then takes me to western Maryland. I know that everybody feels that they have commitments about that.

Now, we understand—I mean there are over 1,000 jobs at stake in western Maryland, and there are two, those who actually work on the railroads, those wonderful people who have really built CSX for the last over 150 years, and also the people in our coal fields are being able to have access.

I understand that there is, again, a promise, but do you feel that there has been an actual commitment to western Maryland, or is this something else that we needed to pursue with both Mr. Snow and Mr. Goode, and the others, when they testify?

Mr. GLENDENING. There has been a verbal promise, and I think that good intentions here, I would like to try to lock some of this down a little bit further.

John Snow, as you know, has made some serious efforts to work very closely with us, and we appreciate that, and there is a sense of confidence, and we are clearly headed in the right direction, and we hope to be able to have some more detailed announcements shortly about that.

I might also add real quickly as something that is of great concern to us, that for the 20,000 commuters a day, particularly on the Baltimore-Washington corridor, that we are very close to having a significant announcement there—

Senator MIKULSKI. Well, that is what I was going to ask, because I am going to ask these same questions to them, in other words, what you are saying, both either to make sure that our commuters are not stranded, and that there will be jobs in these areas, there

seem to be assurances, but there is not now yet firm agreements in the flushing out of the details.

Mr. GLENDENING. I believe on the commuters that we will have not just a firm agreement, we will have a contract ready to sign and announce in a matter of a few days on the protection and actual expansion of commuter capacity. We do not have the same guarantees yet for western Maryland, both for the employment, but also, as you mentioned correctly so, for the coal fields, so we want to make sure that the same level of competition, of access, is available for our workers and owners in western Maryland that are being provided elsewhere.

I noted with interest the conversation about what is going on in Pennsylvania.

Senator MIKULSKI. Yes; another question that I will be asking is, the rail service to the Delmarva, in order to be able to get our grain in, to have a poultry industry, which, of course, is so viable.

I see that my time is up. I have other questions related to infrastructure that I will ask. I would like, in closing, just to make a reflection.

First to you, Mr. Mayor, and to others representing the Governor of New Jersey, it is one thing to compete on rates, and services, and so on, but we know what it is like to lose a headquarters. We knew how it felt when CSX moved to Florida.

So we are here, and we are all trying to be jolly, but over the last several years, we have seen the erosion here, we do not—I want you to know from the standpoint of Maryland, the philosophy of Governor Glendening, we would hope that as we work on this, that it is truly a win-win situation, and we compete on the basis of rate and service, but we would really look forward to that.

I think, in conclusion, what this says is that while we in this committee focus on highways, byways, subways, ISTEA, et cetera, that we need to keep in mind the role that railroads play, and we need to be really standing sentry over that, see what public policy initiatives, what kind of modernizations there need to be, and public/private partnerships, because I think we take railroads for granted, and then when they either want to go or rearrange themselves, we get scared, and then we come in, and we really need to look at what our railroad policy is. Thank you, again. We look forward to working with all of you.

Senator SHELBY. Gentlemen, we thank all of you.

Our next panel will be Mr. John Snow, chairman and CEO, CSX Corp., Mr. David Goode, chairman and CEO, Norfolk Southern Corp., Mr. Tim O'Toole, senior vice president for law and government affairs, Consolidated Rail Corp. (Conrail).

Senator SPECTER. Mr. Chairman, while the witnesses are coming up, may I ask unanimous consent to put in a letter from Mayor Tom Murphy, of Pittsburgh? Mayor Murphy could not be here, but he has some important comments to add.

Senator SHELBY. Without objection, so ordered.

[The information follows:]

LETTER FROM TOM MURPHY, MAYOR, CITY OF PITTSBURGH

March 20, 1997.

Hon. ARLEN SPECTER,
*U.S. Senate,
 Washington, DC.*

DEAR SENATOR SPECTER: Thank you for inviting me to participate in a hearing this morning on the proposed merger of CSX, Norfolk Southern and Conrail. I regret that prior commitments will not permit me to travel to Washington today.

Although the details of the proposed merger are not yet finalized, I wanted to address three critical issues that I believe must be factored into the final plan. First, it is imperative that rail cargo service be maintained in the City of Pittsburgh and the surrounding region. This area is an established intermodal hub that connects air, highway, rail and water transportation systems to move local goods and products to domestic and international markets.

Second, the redevelopment of Pittsburgh's downtown and riverfronts has been tremendously successful in recent years. There are currently 1,000 units of new market-rate housing underway, many on the historically underutilized waterfronts. Plans for the downtown area include an expanded convention center, a new department store and the continued development of the Cultural District. The presence of major rail lines along the riverbanks and, literally, through the downtown area pose public safety risks and may limit the development potential of the City. It is important to this community that the future relocation of these lines be an explicit condition of the final business deal.

Finally, Conrail has an historic presence in Western Pennsylvania. Thousands of dedicated employees have made this area their home and have contributed to its vitality for many years. I trust that the merger will appropriately respond to the employment needs of these individuals.

Again, thank you for permitting me to submit this statement for the record. I look forward to working with rail officials and you to insure the future of railroad service in Pittsburgh.

Sincerely,

TOM MURPHY,
Mayor.

PREPARED STATEMENT

Senator SPECTER. And also testimony from the Pennsylvania Coal Association.

Senator SHELBY. Without objection.

Senator SPECTER. I thank the Chair.

[The statement follows:]

PREPARED STATEMENT OF GEORGE ELLIS, PRESIDENT, PENNSYLVANIA COAL ASSOCIATION

Thank you for accepting my written testimony concerning the proposed breakup of Conrail. My name is George Ellis, and I am president of the Pennsylvania Coal Association, a trade association organized and operating under the laws of Pennsylvania representing producers of bituminous coal in Pennsylvania.

PCA's 40 Producing Members are responsible for 75 percent of the state's annual bituminous coal output, which according to preliminary data from the Department of Environmental Protection and the U.S. Department of Energy, totaled approximately 67 million tons in 1996. PCA's 86 Associate Members provide services to the coal industry ranging from banking and insurance to equipment and engineering consultation.

According to DOE's latest figures, railroads are the main transportation link for coal nationwide. Coal constitutes some 40 percent of rail tonnage and a fourth of the railroads' annual revenues.

Pennsylvania is no exception. During 1995, 36 percent (or 22 million tons) of Pennsylvania bituminous coal deliveries to both in-state and out-of-state customers were by rail. The vast majority of that coal went to electric utility generation stations, which consumed 70 percent of Pennsylvania's coal production. While railroads are the dominant haulers of Pennsylvania mined coal to Pennsylvania utilities, Pennsylvania coal is also delivered by rail to electric generation and industrial consumers in 22 other states.

Coupled with utility deregulation, rail mergers are changing forever the way coal is bought, sold and transported. The proposed breakup of Conrail is no different in that its outcome will realign Eastern coal markets and dramatically change coal movement and rates.

With that, it should come as little surprise that PCA member companies have a substantial interest in and harbor a number of concerns about splitting Conrail between Norfolk Southern and CSX.

Fairness, competition and cost are paramount concerns; but equally important questions turn on captive shipper access, rate structures, quality of service, and new access to Pennsylvania coal markets from out-of-state suppliers.

There is a risk that Conrail will merely be replaced by another dominant carrier and that one railroad will reach most rail users. If this happens, coal operators fear a market concentration that would impede a shipper's ability to obtain competitive contract rates.

A good example of monopolistic control over pricing in the realm of transportation is airline routes with no competition, where the consumer in effect becomes the captive "shipper." With no competition for flights to Pittsburgh from Baltimore (211 miles), a roundtrip excursion fare on USAir costs \$198.00 (94 cents per mile). Yet from airports with competition to destinations with much longer air mile routes, USAir ticket prices plummet. A good comparison is Baltimore to Chicago, where United Airlines competes with USAir. Even though this flight is nearly three times as long (611 miles) as the first example, USAir's excursion fare price is only \$130.00 (21 cents per mile)! The price for any commodity will decrease where there is more competition and increase where there is less. That is the basic tenet of economics. The coal industry may likely bear the lion's share of the burden posed by a realignment, as higher rail freight costs reduce the competitiveness of Pennsylvania coal and force down coal prices.

The split may also accelerate the growth of Central Appalachian coal in markets historically supplied by Pennsylvania coal operators (i.e., Pennsylvania coal-fired electric generating plants). Coal mined to the south is inherently lower in sulfur and can be burned as a so-called "compliance" fuel by electric utilities with little or no value-added preparation. As the mandates of the Clean Air Act Amendments of 1990 become even more strict after 2000, this fuel option could become increasingly attractive to utilities in Pennsylvania and the Northeast. With that potential demand, a single rail system with monopolistic pricing control and access to huge, Central Appalachian low-sulfur coal reserves could open a floodgate of that competing coal to Pennsylvania coal markets.

The result would not only be devastation of the state's most important indigenous energy supplier (coal, much of it mined in Pennsylvania, fires 58 percent of the state's electricity supply), but also for the many communities for which it provides well-paid, family-sustaining jobs. And the breakup could have a similar effect on shipments of Pennsylvania products from other economically important businesses and industries—from agriculture to manufacturers.

This is all playing out at a time when both the electric utility industry and the coal industry are in a period of rapid change due to the deregulation of the electric industry. Competition in electric generation will place a premium on cost-effectiveness. Consequently, the future for coal or any other fuel will be dictated by how competitive it is. If coal remains a cost-effective fuel—as it certainly is now—the coal industry will benefit from competition in the electric generation market. However, competition among coal-fired plants will intensify, which could result in significant displacements between coal-fired plants.

Thus, transportation costs, which already represent a significant portion of the cost to generate electricity, and the ability to negotiate with railroads for lower rates, become an even more significant component in the fuel procurement equation. As utilities sell electricity in a competitive, real-time market, will the railroads package coal hauling services to meet utilities' changing needs? Utilities may balk at fixed-volume, fixed-rate, long-term commitments. But without such commitments, railroads may resist the capital improvements utilities expect. How can coal haulage contracts be written to satisfy these seemingly conflicting concerns while providing haulage rates that will continue to make locally produced Pennsylvania coal attractive to its chief users—Pennsylvania's electric utilities.

It is also hard for coal operators to believe that the breakup of Conrail will accrue the "efficiencies" and "cost savings" promised—especially for coal. Why? Because the debt load of any Conrail acquisition will easily offset by far any potential economies of scale.

The bid for Conrail went so high that the debt of the new rail company will be enormous once acquisition is completed. The coal industry will certainly face claims

by the new, monopolistic giant that they must receive "a fair return on their investment" that will require higher freight rates.

Another fear expressed by Pennsylvania coal operators is loss of service quality with a breakup. Without any real competition left behind in the wake of the deal making, quality of service may be reduced.

Experience shows that deficiencies in coal transportation services are more prevalent to coal train movement originating in mines where a single rail carrier represents the only mode of freight transportation. Problems such as late train arrivals for scheduled loading operations, an inadequate supply of rail cars, and lack of track maintenance, repair and upgrading operations adversely affect utility operations which characteristically demand a relatively constant flow of coal fuel.

The issue surrounding captive coal shippers in Clearfield County is also very urgent. Currently, 75 percent of coal shipped from the Clearfield Cluster, a privately owned short line system in central Pennsylvania, goes to power plants operated by Pennsylvania Power & Light Co. In 1996, total coal shipments on the Clearfield Cluster totaled 3.2 million tons. Because of Clearfield coal operator proximity to PP&L's coal-fired power plants—and the importance of coal industry jobs to the Clearfield County region, the Clearfield Cluster must be offered competitive shipping rates in the future.

The Clearfield Cluster provides rail access to approximately 10 percent of the land area of Pennsylvania. Without its primary coal traffic, the Clearfield Cluster will be forced to discontinue its operations, with devastating impact on Clearfield County's already distressed economy for years to come.

Conrail's argument that Clearfield County coal—or coal from mines in other regions of Pennsylvania—will become less attractive to coal-fired utilities in the future due to its sulfur content and Clean Air Act considerations denies the fact that low-cost sulfur dioxide emission allowance credits are available for sale with their coal.

Indeed, if they remain inexpensive, emission allowance credits combined with higher sulfur coal shipments are a viable Clean Air Act compliance option for utilities that can keep Pennsylvania coal competitive during Phase II implementation.

To summarize, the future for Pennsylvania coal depends on how efficiently—and economically—it can be delivered to electric utilities and other markets. Because rail freight rates are a major part of the delivered price of coal, the cost of that transportation is a key factor in coal sales. Only with true market competition can reasonable rates for hauling coal and other bulk commodities be assured.

Many shippers of coal and other commodities are already captive to Conrail in Pennsylvania, with no effective transportation alternatives. This condition will remain no matter how the current proposal proceeds through the approval process. Therefore, captive shipper protection against abuses in rates or service must be instituted where railroads dominate Pennsylvania rail shippers. Conversely, where effective rail transportation competition does exist in Pennsylvania, it must be preserved when a railroad consolidation would otherwise wipe out that competition.

The goal of preserving the limited competition can only be attained by retaining the competition offered by more than one rail carrier, or at the very least, requiring trackage rights for a second railroad as a condition of approving any transaction.

In the final analysis, PCA believes that a Conrail split should only take place if it includes provisions that give shippers meaningful competitive options. Issues such as how rates will be established, competitive access to traditional markets and quality of service need to be addressed and resolved before approval is given to any realignment.

PCA will continue to work with the General Assembly and the Ridge Administration to assess the implications for shippers and freight originators. We will also closely examine related issues raised by public comments as the proposal is considered by the federal Surface Transportation Board. We reserve judgment on any realignment until the specifics on the restructuring of the Eastern rail system are made known.

I thank you for the opportunity to voice PCA's concerns and our wish to preserve effective rail transportation competition where it exists today for Pennsylvania coal producers.

PREPARED STATEMENT

Senator SPECTER. And also a statement for the record by Mr. Paul Gilmore, president of the Delaware & Hudson Railway Co.

Senator SHELBY. Without objection, it will be ordered.

[The statement follows:]

PREPARED STATEMENT OF PAUL D. GILMORE, PRESIDENT, DELAWARE & HUDSON
RAILWAY CO.

The Delaware & Hudson Railway Company appreciates having this opportunity to present its views to the Subcommittee.

THE DELAWARE & HUDSON ("D&H")

The Delaware & Hudson Railway Company is the oldest continuously operated transportation company in the United States. The D&H traces its history back to 1823 when the New York State Legislature passed a special act establishing the Delaware & Hudson Canal Company. In 1840 the D&H became the first transportation company traded on the New York Stock Exchange.

The D&H is a survivor and has a sense of history and tradition which has provided the company with the creativity to compete in an increasingly competitive environment. Today, the D&H operates in six states, the District of Columbia and one province on 1,500 miles of track. The primary Class I interchange partners with the D&H are Conrail, CSX, Norfolk Southern and Canadian National. The D&H also connects with 24 regional and shortline railroads throughout its system of which we currently interchange freight traffic with six Pennsylvania shortlines.

With the 1976 creation of Conrail from the ruins of six bankrupt railroads (at a cost of more than \$7 billion to tax payers), the Federal government designated the D&H, the region's only viable operator, as the competitive alternative to Conrail in the Northeast. However, the government assumed that an enlarged D&H could retain its overhead business even though more than one third of that traffic would originate on Conrail owned lines. This assumption was incorrect.

In 1991 with the help and support of Pennsylvania and New York, and of the Federal Railway Administration the D&H was acquired by the Class I CP Rail System. Since 1991 CPR has invested more than \$200 million in the purchase, rehabilitation and operating expenses of the D&H.

Canadian Pacific Railway system is the first transcontinental railway and currently the only transcontinental railway to provide seamless service to U.S. ports. As an integral part of the Canadian Pacific Railway system, the D&H belongs to North America's fifth largest railroad network. This system provides Class I service to D&H customers.

Our first transcontinental movement occurred shortly after the D&H was purchased in 1991—a movement of cedar shakes from Vancouver to the Port of Philadelphia. Before the purchase, Canadian Pacific Railway would have moved this traffic via Montreal.

THE MERGER AND THE NORTHEAST

The acquisition of Conrail by either CSX or Norfolk Southern, or both, will have a profound impact on the competitive balance of rail transportation in the Northeast. Here, our market has been dominated by Conrail since 1976. Some call it a monopoly. Indeed, the proposed merger could be the precursor of a fundamental realignment of the United States rail system that would leave the U.S. with two transcontinental railroads that will dominate long haul rail transportation. The implications for the Northeast are significant.

Both the Federal government and State governments have poured billions of dollars into Conrail's structure. The Federal government spent over \$7 billion on the first years of Conrail's existence. State governments continue to provide major funding for some capital projects. When the federal government created Conrail in 1976, provided it with tax exempt status, and conveyed other lines to it, it limited competitive rail service in key industrial locations in the Northeast.

It is clear that the Delaware & Hudson is well-positioned to provide added rail service, particularly for Canadian traffic, in the Northeast, if it is given the proper tools. However, the D&H needs expanded access over our current routes, access over new, more competitive routes and access to terminals and facilities, to be able to provide that service effectively to the ports and industrial centers of the Northeast.

WHAT THE CPR/D&H PARTNERSHIP HAS TO OFFER SHIPPERS

The CPR/D&H is particularly attractive to shippers in the Northeast because it has demonstrated its determination to serve its customers through such action as an expenditure of \$200 million on D&H operations since 1991 and contributing to double-stack clearance of the Conrail line through Pennsylvania. CPR/D&H is already well positioned geographically in the heart of the Northeast. When the Federal government created Conrail, it designated the D&H to provide competition, albeit without granting the necessary access. When CP purchased the D&H in 1991

it undertook an obligation to provide service over the full D&H franchise, including to the railway connections at Alexandria and over the Southern Tier to Buffalo, although access over this franchise remained limited by the 1976 plan.

The D&H continues to provide a valuable bridge line for shippers and shortlines in the Northeast to CSX and NS as well as to other railroads. It functions as a bridge carrier between Canada and New England and the South; it also bridges shippers and shortlines in the Northeast and the Midwest.

If CSX and NS divide the Conrail assets between them, CPR/D&H offers shippers a unique North-South service, connecting the eastern seaboard with the northern states and the Canadian provinces of Québec and Ontario. This service will be significant to pulp and paper shippers whose competitors are located on the CSX and NS owned lines.

The D&H offers shippers much more than a regional railroad. On joining the CPR, the Delaware & Hudson became an integral part of a major transcontinental Class I system that operates from the East Coast of North America through both the United States and Canada to Vancouver, the North American port closest to the main Asian markets. New York to Hong Kong is 1,000 miles shorter via Vancouver than through Los Angeles! Importantly, D&H traffic moves onto CP's Soo Line in Chicago, giving "end-to-end" CP access to the upper Midwest. As well, it connects with Conrail, CSX, NS and other railroads at numerous points between the East Coast and the Midwest, extending the range of the D&H's bridging role.

THE MERGER AND THE D&H

CPR's preferred strategy is to negotiate the business opportunities with the merging entities. We feel that it is not in anyone's best interests to fight this out in front of the STB. Currently, at the highest levels, we are negotiating with both the NS and CSX.

It must be admitted that the current scenario of a split Conrail appears to be the most challenging of all merger scenarios for CPR. CPR is concerned about its investment in the Northeast. The D&H, despite its enthusiastic management and the injection of over \$200 million, has only reached the "break even" point; this status quo is NOT acceptable in the long term. The D&H must acquire more traffic to survive. We believe that the task of providing the D&H with a fully viable network will be that much more difficult when there are three rather than two Class I railroads seeking assets and access.

The current "bridge line" role of the D&H could come under severe pressure as a result of CSX and NS acquiring Conrail lines into the heart of the Northeast, reducing or eliminating the D&H hauls that currently exist. The thrust of the two buyers of CR to obtain direct access to Northeast markets will likely bring pressure to short haul, if not eliminate, the D&H as a bridge carrier between Canada and/or New England and the South; it could also be increasingly difficult to continue competing between the Northeast and the Midwest.

CPR also has concerns about the long-term viability of rail service to customers of the D&H that wouldn't be served by either NS or CSX. It has invested substantially in the D&H's current franchise of providing a competitive alternative to CR as far South as Alexandria and West to Buffalo. While the competitive balance will change under the scenario of a CR split, the rights and interests of the D&H and its customers will remain. The D&H has struggled to provide service despite severe restrictions on access. These must be corrected in this merger.

The CPR is prepared to invest capital to expand its participation in the Northeast if it is determined that there is a good business case for such investment. There are no arbitrary bounds on what we would consider. We would require adequate assets, terminals, trackage rights and access agreements to be commercially viable in the Northeast and an aggressive, effective competitor. This includes adequate terminal facilities and local access to the industrial base in the Northeast port areas as well as competitive and viable corridors to Buffalo and to the North.

Our concept of operations makes us particularly attractive as a partner to regional railroads and shortlines. Our approach is to utilize regional carriers already having assets and operations in the area. Conceptually, the regional carriers will perform certain of the local pick up and delivery functions. We will perform the linehaul work and national marketing. CPR will be the Class I thread through the whole plan.

Given a choice between owning and renting railway assets, we prefer to own in instances where the potential volumes from the opportunities are sufficient to justify ownership. This will be assessed on a case by case basis. In some instance there are no surplus assets, leaving no choice to renting from the merger partners. In these cases, long-term financial predictability and equal treatment will be very im-

portant. We cannot afford drawn out and expensive legal battles over exorbitant trackage rights cost increases like we are now in with Conrail on the Southern Tier.

CONCLUSION

It goes without saying that, in your consideration of the impact of the merger (or mergers) on shippers and the economy of the Northeast you will be demanding competitive choices in rail transportation. We respectfully ask that you also examine how those competitive choices have been provided in the past and will be provided in the future. We ask that you continue to support the CPR/D&H network.

Thank you.

Senator SPECTER. And also to note that my colleague Senator Santorum has other commitments, could not be here, but is very much concerned about the entire process.

Senator SHELBY. Any statement, and we will leave the record open, too, for Senator Santorum.

Senator SPECTER. Thank you very much, Mr. Chairman.

Senator SHELBY. Gentlemen, your written statement will be made part of the record in its entirety.

Mr. Snow, we will start with you, if you can sum up your testimony in a few minutes.

STATEMENT OF JOHN SNOW, CHAIRMAN AND CEO, CSX CORP.

Mr. SNOW. Thank you very much, Mr. Chairman, Senator Specter. It is a great privilege to be here.

Let me assure you that I am a mere businessman, I'm not a pugilist, and not a Titan, but somebody who is, with Mr. Goode, and with the full cooperation of Conrail at this point, an advocate for a transaction which we think is very much invested with the public interest, a transaction that I must say has taken many twists and turns, and is quite a bit different than the one that Mr. O'Toole, and I, and a number of others worked on last July, August, September, and October, and yet it is one that I feel advances the interest in competitive rail service in the region effectively, that will provide single-line service over most of the Eastern half of the United States, benefiting shippers in New Jersey, Alabama, Florida, and Pennsylvania, one which will promote economic development in the Northeast, connect the Northeast, and the Southeast, and the Southwest, in ways that simply—the full benefits of which are not even foreseeable today.

But one thing we know about rail transportation, where single-line service is made available, our ability to render better service, and, therefore, grow the business, and compete more effectively with trucks, is demonstrably better, demonstrably better.

It is as if the railroad industry today is two worlds, there is the world of single-line service, where our market share against trucks is quite high, and there is the world of joint-line service, where our market share is demonstrably lower.

The secret of this merger, the key to this merger is the potential for, Senator Lautenberg talked about it, competing more effectively against the major competitor of railroads, that is the motor carrier industry, an industry that overwhelmingly has the majority of the transportation service in the United States today.

This merger is going to give us the ability, the respective mergers, of each of these companies, Norfolk Southern and CSX, to compete more effectively with truck return traffic that is now on the

highways, to the rail beds, and I am confident, grow employment in the railroad industry over time.

While this has been a stressful time for all of us, I must say that I got quite a measurable sense of satisfaction a week or so ago when a letter arrived in my office from a distinguished former Philadelphia lawyer, who went on to great national prominence, is Secretary of Transportation, and I refer, of course, to Bill Coleman, and I had the great privilege of serving under Bill Coleman back in the Department of Transportation in the mid-1970's, when the very issue of what would happen with Conrail, which was then being managed by the Department of Transportation, was the principal issue on the Secretary's desk, and the Secretary had designed a program for returning Conrail to the private sector, in which a substantial part of it would go to Mr. Goode's predecessor company, the NNW, and a substantial part, the other half, would go to my predecessor company.

Secretary Coleman's letter to me, in effect, said, "John, congratulations, you did now what you and I tried to do and could not do 20 years ago."

Justice Holmes once observed, Senator Specter, that sometimes a page of history is worth a volume of logic, I think there is important history here, but there is also important logic, fundamental transportation, competitive policy logic in the way this merger has unfolded, and I thank you very much for the opportunity to be here with you.

PREPARED STATEMENT

Senator SHELBY. Thank you, Mr. Snow. Your written statement will be made part of the record.

[The statement follows:]

PREPARED STATEMENT OF JOHN W. SNOW

Mr. Chairman, and members of the Subcommittee, I am John W. Snow, Chairman, President and Chief Executive Officer of CSX Corporation. I appreciate the opportunity to appear before the Subcommittee today to discuss the merger agreement that we entered into with Conrail last October, the key reasons which led us to amend that merger agreement, and why we believe that the acquisition of Conrail by CSX and Norfolk Southern will bring significant benefits to the region and the nation.

CSX entered into a strategic merger agreement—a merger of equals—with Conrail last October 15. We felt that agreement would be beneficial to our companies, customers and employees. Of course, the entire merger agreement was subject to an affirmative vote of the majority of Conrail shareholders and the approval of the Surface Transportation Board.

As has been widely reported, this proposed merger was strongly opposed by Norfolk Southern, but that opposition was not restricted to Norfolk Southern. In January, Conrail shareholders resoundingly refused to opt-out of the Pennsylvania law that would have allowed us to proceed with the merger. In addition, statements by federal regulators, public officials and numerous customers made it clear that regulatory approval was not achievable without major concessions to Norfolk Southern and that in fact, a negotiated settlement with Norfolk Southern that provided competitive balance in the region was the preferred course.

It was always CSX's view that some concessions would have to be made. In part, this view was based on the history that led to the creation of Conrail. Conrail was created in 1976 out of the bankruptcy of the Penn Central and other railroads in the Northeast. At the time, I was an Assistant Secretary at the Department of Transportation under Secretary Bill Coleman serving on his senior policy team. Secretary Coleman pushed for a private sector solution that would have split the assets of the bankrupt railroads between the Norfolk and Western and the Chessie System

(predecessor railroads of the Norfolk Southern and CSX, respectively). The Department advocated this approach because it wanted shippers to have a choice between the two carriers. Unable to overcome some of the objections from rail labor and the carriers own reluctance to proceed, a backup plan proposed by the United States Railway Association (USRA) for the creation of a single "Big Conrail" was adopted. That outcome was reluctantly agreed to by Secretary Coleman and the Congress.

Given this historical perspective and the clear signals we were getting from shippers, other railroads and public officials demanding a private sector solution that created competitive balance in the region, we tried to persuade Conrail to agree to a reasonable set of concessions to Norfolk Southern. While we remained committed to our friendly merger of equals until the end, we could not overcome Conrail's insistence on retaining virtually all of its system. As a result, we failed to produce a solution that could gain support from shippers or public officials.

Norfolk Southern's February 24 proposal to us and Conrail calling for a roughly equal division of the Conrail system forced resolution of the issue and resulted in amendment of our merger agreement with Conrail. Currently, we are in negotiations with Norfolk Southern which I am confident will produce two strong railroads.

I would like to be able to provide this Subcommittee today with very specific information about that transaction. However, such details must await the successful conclusion of these negotiations. Today, I can tell you—the result of the amended agreement with Conrail is a major victory for a number of important constituencies. Conrail shareholders will receive \$115/share in cash and, although we do not yet have a final division or operating plan, it is clear that shippers throughout the East will benefit from much better service over a balanced rail system, and the driving public will benefit from fewer trucks on already overcrowded highways.

While I am optimistic that this transaction holds great potential for economic growth and expanded employment opportunities for the first time in the rail industry, I must be candid and acknowledge that initially there will be some job loss. Once we complete our negotiations with Norfolk Southern, we will file a joint application with the Surface Transportation Board which will provide a detailed operating plan. This plan, among other things, will specify the impact on jobs. It goes without saying that we are attempting to minimize job loss. It is important to keep in mind that under federal law any worker who is unable to continue working will be eligible for up to six years of labor protection or a generous stay and severance package which is provided for under the amended merger agreement. In addition, many of Conrail's employees participate in an ESOP which would be a benefit in addition to the stay and severance package.

As we take advantage of the business opportunities presented by this pro-growth transaction, CSX will not lose sight of our fundamental commitment to safety. Over the last eight years, we have dramatically improved our safety record. Today we are first in the industry in train accident prevention and Norfolk Southern is first in personal injury prevention.

We hope to conclude our negotiations with Norfolk Southern and file a joint application with the Surface Transportation Board by the end of May or early June. Mr. Chairman, we believe that an historic opportunity exists to bring to the Northeast precisely the competition that was sought—but never achieved—twenty years ago. This transaction will maintain competition where it exists today and introduce competition into key areas that have not seen competition in three decades. We plan to work with interested parties in the coming days so this application will enjoy widespread support. I am confident that it will obtain approval by the Surface Transportation Board. I will, of course, keep this Subcommittee informed as our negotiations proceed.

I am happy to answer any questions that you may have.

STATEMENT OF DAVID GOODE, CHAIRMAN AND CEO, NORFOLK SOUTHERN CORP.

Senator SHELBY. Mr. Goode.

Mr. GOODE. Thank you, Senator Shelby.

My filed statement does have some information about Norfolk Southern, but in the interest of time, I will leave the advertisements for those to read, and turn to the proposal.

As has been said earlier, right now Norfolk Southern and CSX are working hard on a lot of details of a historic proposal for a major restructuring of rail transportation in the East.

As we reach those agreements, a lot more information is obviously going to become available. We are in the process, trying to work hard with other interested parties, including many of the parties who have already been here this morning, and a great many others, and with shippers, so that we can present to the Surface Transportation Board, an application supported by a very wide group of constituencies.

We have groups, as has been alluded to earlier, working with the States and public officials. We hope that we can wrap all of this together, so that we can get a proposal to the Surface Transportation Board by June, and seek approval as rapidly as possible, because we want the benefits of this transaction, which we believe will be very competitive and good news for all of the region, to be available as quickly as possible.

This is a procompetitive proposal, we are going to create two relatively equivalent competitor rail transportation companies east of the Mississippi, as there are now two such companies in the West.

Our systems will provide the benefits of long-haul, single-line rail transportation service for shippers throughout the region, and will make the economy more efficient and competitive, and while we have been focusing a lot on the Northeast and the area served by Conrail, it is very important to recall throughout this that the benefits of that kind of service will benefit people all through the area that Norfolk Southern and CSX serve, which includes all of the country east of the Mississippi, and, indeed, in our cooperation with the Western railroads, this is going to mean that the benefits of the better service presented by this proposal are going to redound to the benefit of shippers, really, throughout the United States.

As Senator Warner said earlier, this is a global transportation network, it is a global economy, and the benefits of this proposal, we believe, can redound to make industry in this entire country more competitive, and that is our plan.

As has been said several times, the devil is in the details, and John and I are discovering a lot of devils as we negotiate. We are good friends, we have competed head to head for many years, our companies, and John and I have long histories in our two companies, and we have done that for a long time, and I think it has been a benefit to both of our companies, and to the shipping public, to have us as friendly, but hard, and decisive competitors.

So we look forward to the opportunity to present that, and while we need some space and time to complete these negotiations, we are certainly welcoming the opportunity, and, indeed, are seeking it out to involve all of the interested constituencies in our thinking, as we proceed forward to get to the Surface Transportation Board.

This is a very positive development. It is going to yield significant public benefits, and Senator Specter, I will wait and let you ask me that question, rather than presuming the——

Senator SPECTER. No; go ahead, your green light is on, use your time.

Mr. GOODE. Would you like me to? Perhaps as a preliminary statement, I would be happy to address the reasoning behind the contract that we have entered into with PP&L, which they announced the day before yesterday, or a couple of days ago.

I am happy, if it is seen as a positive thing for the State of Pennsylvania, and the customers of PP&L, and I am happy that they are happy about it, but Norfolk Southern enters into transactions for the purpose of making a fair return for our shareholders.

We believe that that is best done by serving our customers effectively, we are interested in doing business, and we are happy to be moving some coal to PP&L, and I hope it is profitable.

I have every confidence that it is a profitable transaction for us, but it is a good illustration, perhaps, of some of the benefits that can redound from this.

Thank you very much.

PREPARED STATEMENT

Senator SHELBY. Thank you, Mr. Goode. Your written statement will be made part of the record.

[The statement follows:]

PREPARED STATEMENT OF DAVID R. GOODE

Mr. Chairman, members of the Subcommittee, my name is David R. Goode. I am Chairman, President and Chief Executive Officer of Norfolk Southern Corporation. I am pleased to be here today to discuss various aspects of our proposed acquisition of Conrail with CSX.

I would like to begin by telling you a little about Norfolk Southern. Then, as you have requested, I will address some of the issues you have raised about this transaction. Before I am through I hope to convey Norfolk Southern's firm conviction that the proposed plan for Conrail will be good for customers, good for employees and good for the country.

Norfolk Southern Corporation was created in 1982 through the combination of two highly successful railroads, Norfolk and Western and Southern. Some of you may be surprised to learn that Norfolk Southern has deep bloodlines in the Northeast. In fact, the Pennsylvania Railroad, one of Conrail's predecessors, once controlled Norfolk and Western.

Today, Norfolk Southern is the fourth largest freight railroad in the United States. We own more than 14,000 miles of track throughout the Midwest and Southeast. We haul anything that moves by rail, primarily coal, chemicals, automobiles, auto parts, grain, paper, and construction materials. We also move trailers and containers—what's known as intermodal freight because it moves by more than one kind of transportation (for example, trains and trucks)

One of Norfolk Southern's proudest accomplishments has been to achieve the best safety record among the nation's larger railroads for seven years in a row, an unprecedented feat. In its annual corporate reputations survey, Fortune magazine for the second year in a row recently named Norfolk Southern "America's most admired railroad." We were ranked 41st, in the top 10 percent of all companies surveyed.

Let me turn now to Norfolk Southern's and CSX's proposal to restructure Conrail. There is no question it has been a tough fight. Norfolk Southern battled hard to get to where we are today. We fought fairly, honestly and with the integrity that defines the way we conduct business. Right now, we are meeting with CSX to work out the myriad details of the restructuring. We have a basic agreement on what the map will look like and how the transaction will be structured. Norfolk Southern, for example, will step into Conrail's shoes most places in Pennsylvania. We will also extend our reach north to the Port of New York and New Jersey and introduce a number of new north-south services that will link the metropolitan New York area with Philadelphia, Baltimore and the Southeast.

We plan to file an application with the Surface Transportation Board in June. If the Board approves the plan, the restructuring will take place in 1998. Many more details will become available once we file with the STB and we will be happy to return and give you an update. In the meantime, I can tell you in general terms how this transaction will benefit customers, employees, and the communities in which Conrail operates.

There will be a blossoming of competition, the likes of which the Northeast has not experienced in decades. It is not difficult to foresee the advantages of the new competitive framework. Railroads are network businesses, and they are most useful when they connect the markets their customers want to reach. Our restructuring

plan will create two far-flung transportation networks, each serving virtually all major markets east of the Mississippi River. Each will link domestic manufacturing centers with consumer markets, and also with Atlantic coast ports, which will speed the flow of goods from United States origins to overseas destinations. Similarly, the proposed restructuring will lessen transit times for products moving among the United States, Canada, and Mexico. This will help make a broad base of American businesses more competitive internationally, and will reduce costs to consumers.

But don't take our word for it. Just this week Pennsylvania Power & Light said the restructuring "would reintroduce competition to rail service in the Northeast, benefit electricity consumers in Pennsylvania and lower the cost of transporting coal to PP&L power plants." There is no question the transaction will have a direct benefit for customers like PP&L. But that is not all: it will have a ripple effect throughout the Northeast's economy that will extend to consumers of electricity, among others.

The impact of the transaction on economic development should also be extremely positive. When Norfolk Southern enters new markets, our world-class industrial development team accompanies it. To give you an idea of what we can do, in 1996 alone, Norfolk Southern helped locate 73 new industries on its lines, and helped 32 other industries to expand. Eight of the last 11 automobile assembly plants built in the United States were constructed on the Norfolk Southern system. There is every reason to be confident similar success stories can occur throughout the Northeast.

We are already beginning to think about some of the projects we will undertake to improve the Conrail lines we will acquire. We expect that the lion's share of the east-west freight trains we will operate will utilize the old Pennsylvania Railroad mainline across the state of Pennsylvania. However, we will also acquire, and intend to upgrade, the former Erie-Lackawanna between northern New Jersey and Buffalo, the line known as the Southern Tier. Conrail has operated the Southern Tier as a secondary mainline for secondary trains. But the dynamics of Norfolk Southern and the portion of Conrail we will acquire will cast the Southern Tier in a new role: it will be our main link between northern New Jersey and Buffalo. It will also serve as Norfolk Southern's key route between New England and the West.

In closing, Norfolk Southern and CSX are working hard to nail down the details of the Conrail restructuring. Unfortunately, we may not have answers yet to some of your questions. Even now, however, I can say with complete confidence that the opportunity before us—an historic opportunity, to restore competitive rail transportation to the Northeast—will yield very substantial public benefits.

Again, thank you for inviting me. I will be happy to answer your questions.

STATEMENT OF TIM O'TOOLE, SENIOR VICE PRESIDENT, LAW AND GOVERNMENT AFFAIRS, CONSOLIDATED RAIL CORP. (CONRAIL)

Senator SHELBY. Mr. O'Toole.

Mr. O'TOOLE. Thank you, Senator.

My comments will be very brief. As you say, I serve as Conrail senior vice president for law, but throughout the term of this transaction, I occupy the position of Conrail's chief financial officer.

Under the terms of our amended agreement with CSX, our shareholders will receive no later than June 2, through CSX's tender offer, \$115 in cash for all the remaining shares of our common and ESOP stock. All the Conrail stock, as you know, acquired by CSX, will be placed in a voting trust, pending the outcome of the STB's proceedings.

The amended merger agreement enables CSX to negotiate with Norfolk Southern on a division of our assets, as you pointed out, and although Conrail will cooperate fully to ensure an orderly transition, we are not party to the current discussions between CSX and NS, therefore, I really am not in the position to comment on the public policy ramifications of those discussions.

I would only note, especially for Senator Specter's interest, as he has pointed to it, that the amended merger agreement with CSX states that it is CSX's intention that following the control date, Conrail's locomotive shops at Altoona, PA, Conrail's Sam Rea car

shops at Hollidaysburg, PA, Conrail's Pittsburgh Service Center, and a major operating presence in Philadelphia shall be maintained.

In conclusion, Conrail's board management would have preferred for the Conrail system to remain intact; however, under the circumstances, as they develop, we believe we succeeded in negotiating the best possible transaction for all of Conrail's constituents.

Thank you. I would be happy to answer any questions.

PREPARED STATEMENT

Senator SHELBY. Thank you, Mr. O'Toole. Your written statement will be made part of the record.

[The statement follows:]

PREPARED STATEMENT OF TIMOTHY T. O'TOOLE

My name is Timothy O'Toole, and I have been Conrail's Senior Vice President for Law and Government Affairs since February. Before that I was Conrail's Chief Financial Officer.

Under the terms of Conrail's amended merger agreement with CSX, Conrail shareholders will receive no later than June 2, through a CSX tender offer, \$115 in cash per Conrail share for all remaining shares of Conrail's common and ESOP preferred stock. All the Conrail stock acquired by CSX will be placed in a voting trust pending the outcome of the Surface Transportation Board's proceeding.

The amended merger agreement also enables CSX to negotiate with Norfolk Southern on a division of Conrail's assets. Although Conrail will cooperate fully to ensure an orderly transition, we are not party to the current discussions between CSX and NS. Therefore, I really cannot comment on the public policy ramifications of their discussions.

The amended merger agreement with CSX states that "it is White's (CSX) intention that following the control date: Green's (Conrail) locomotive shops at Altoona, Pennsylvania; Green's Sam Rea car shops at Hollidaysburg, Pennsylvania; Green's Pittsburgh service center; and a major operating presence in Philadelphia (including headquarters of the surviving corporation) shall be maintained."

In conclusion, Conrail's Board and management would have preferred for the Conrail system to remain intact. However, under the circumstances as they developed, we believe we succeeded in negotiating the best possible transaction for all of Conrail's constituents.

I would be pleased to answer any questions. Thank you.

POSITIVE SIDE OF CONRAIL ACQUISITION

Senator SHELBY. Mr. Snow, on the positive side, and there have to be big positive sides, otherwise, you would not be here today, and you would not have pursued, first, the Conrail acquisition, and then joined by Norfolk later, there are going to always be disruptions and some negative sides to everything, but just in a couple of minutes, tell us again what are the big positive sides of this acquisition for both companies, if it goes through.

Mr. SNOW. Senator, you are absolutely right in saying that, given the price we are paying—

Senator SHELBY. That is right.

Mr. SNOW. We have to expect enormous benefits from this merger for our shareholders and investors to benefit. Mr. O'Toole, Mr. Levan, and their board have negotiated a whale of a transaction from the point of view of the Conrail shareholders and other constituencies.

If the transaction is going to fulfill the expectations for our shareholders and the Norfolk Southern shareholders, there is only one answer, and that is growth. We have to grow the business.

This is not a merger where you can save yourself to prosperity. Given the price we have paid, there is no way to save yourself to prosperity. We need to grow the business, and that means we are going to have to make very large investments in our system to expand the capacity for the growth we anticipate.

Senator Mikulski, large investments are being contemplated right now on the B&O Railroad, and large investments in new sidings, double track, communications systems, information systems, to enable us to accommodate the growth that we are confident will come as a result of this single-line service. That means long term, more jobs in the railroad business.

Senator SHELBY. To all three of you, my State of Alabama, and all the other Southeastern States, what will this mean to them?

I can see it moving—you can move it all the way to the Northeast from the Southeast on either line that we would choose to run with, and that would be up to the market, right?

Mr. GOODE. I would be happy to confirm that this is good news for Alabama. Of course, we—

Senator SHELBY. And the other Southeastern States.

Mr. GOODE. And, indeed, throughout all of the East, but particularly in the Southeast. The Northeast is a fabulous consumer market, it is a fabulous manufacturing area, and goods move back and forth between the Northeast and the Southeast.

This will enable both Norfolk Southern and CSX to provide single-line service both ways on that corridor, and goods move in major ways in that corridor, and we are going to be able to provide faster, more efficient service as a result of having single-line service, and we are going to compete actively for that business, and that is good news for the shippers throughout the Southeast.

Senator SHELBY. Let me ask you this. What about head-to-head competition between your two big railroads, if this goes through? You are going to have more of it, are you not?

Mr. GOODE. We have thrived on it. We have competed—

Senator SHELBY. That is good.

Mr. GOODE. If you look at a railroad map, you will see that Norfolk Southern and CSX have pretty much competed head to head in the Southeast and the Midwest for many years. John and I are fond of using each other as examples, both internally, and to drive our people to better service and higher levels of productivity, because we have been in the position of competing.

I think that both our companies have thrived on that, and I am convinced that it has had a lot to do with the success of industrial development in the Southeast and the Midwest, that our two companies are competing in that fashion, and we look forward to doing the same in the Northeast.

Senator SHELBY. Gentlemen, at this point in time I am going to turn the chair over to Senator Specter. Senator Lautenberg is the next one to question. I have to go to another committee meeting. Thank you.

Mr. GOODE. Thank you, Mr. Chairman.

Mr. SNOW. Yes; thank you, Mr. Chairman.

Mr. O'TOOLE. Thank you, Mr. Chairman.

Senator LAUTENBERG. Thanks, Mr. Chairman.

I wanted to ask what we can do to get real competition, for instance, in the Port of New York/New Jersey, but particularly focused on the Port of Newark, which is a pretty appealing marketplace, I would think.

How do you arrange for each of you to be able to provide some service in there, and get some market share that each of you see?

Mr. GOODE. That is precisely the question that John and I have a team working on right now, because I think we are doing something here that we recognize is very significant, and perhaps a little different than anything we have seen before, because of the scope and the broadening of the service in areas like the area that you mentioned, Senator Lautenberg, which are vitally important areas, with tremendous amounts of business.

We are working out the arrangement, not only because we know that the ports want to have both the service from both railroads, but because we both expect to be in there, competing for the business on behalf of our own company, we want the access.

Senator LAUTENBERG. You do this, I assume, by establishing some kind of a terminal operation, terminal railroad, is that the proper—

Mr. SNOW. That is being explored as one way to do it.

Senator LAUTENBERG. Is there another way, Mr. Snow?

Mr. SNOW. I think there may be other ways. I think we are a little reluctant, because we need some time to negotiate this arrangement among ourselves—

Senator LAUTENBERG. I will not press you for the details. It has to be high on the agenda, so that we can be sure that there is service out of the port area that accommodates the needs of the shippers.

Mr. SNOW. While we cannot give you the details on that Senator, I think we can assure you that that is right at the top of the discussion among our associates, who I think are meeting right now.

The problem we have is to decide first the big division, and I think we have made a pretty good cut at the big division, so that we are both in, say, the Port of New York/New Jersey.

Then the question is: Well, how do each get competitive access in a way that is equitable for the shippers and for the company?

Mr. GOODE. Fortunately, John and I have a lot of talented people working for us, who have been working closely with the officials in New Jersey, Pennsylvania, Maryland, and other areas, who I am confident are going to be able to come up with a satisfactory resolution of that, if John and I give them enough room to do that.

Senator LAUTENBERG. How about southern New Jersey? Now, I know Senator Specter is sitting here alongside me, and I do not see Mayor Rendell in the room anymore, but there is enough business, I think, to satisfy everybody down there, if the port area gets developed to its maximum capability.

We saw that in the New York/New Jersey area. Once we cooperated, instead of fighting one another, then things really began to develop.

Can we be assured that there will be a serious attempt to provide the same kinds of service on an as-needed basis in the southern part of our State, a lot less business and so forth, but great po-

tential, and pretty good ports down there. Are you looking at what is required to provide service to the southern New Jersey shippers?

Mr. GOODE. Again, we are, and while the details of this as well need to be worked out, we certainly are looking at that, because we believe, and we are convinced, and we are making a very large financial bet on this, because we believe that there is a lot of business that is not being handled by rail in the area you are talking about right now, and our objective is to work out the best structure, so that we can tap that business, much of which is moving on the highway now, and make it available for rail service. So that means we will be making the investments that will be necessary in order to do that, because it is going to be good business for us.

Mr. SNOW. In the process we are learning a lot of new geography that—

Senator LAUTENBERG. New Jersey is small.

Mr. SNOW. [continuing]. Deep Water, Vineland, Palarmo, and Salem. Fortunately, we have people who are far more knowledgeable on that subject than David and I, who are also working with the State authorities, the State department of transportation authorities on this very question.

Senator LAUTENBERG. I would like to ask you a question about labor protection provisions that Conrail workers would expect, if they are displaced, a general question about labor. Mr. Chairman, I beg your indulgence here for just a minute.

Senator SPECTER [presiding]. That is fine. Proceed, Senator Lautenberg.

Senator LAUTENBERG. Is the combined railroads willing to enter into a dialog with Conrail's labor force about severance packages? It is distinctly different from the labor protection that is currently existing in law now.

I have had a chance to read the article in the New York Times, it is pretty illuminating, it is so illuminating, that I wonder what happened when I left the corporate world to come here. I do not know if we are dealing in different currencies or what, but we were not certainly in the same league. What about that?

Mr. SNOW. Senator, we have already begun discussions with the various brotherhoods, and with the AFL-CIO, which has indicated it wanted to play a coordinating role in all of this.

We are open to suggestions, and certainly want to have an open, candid, and effective set of discussions with rail labor on this whole subject, but obviously, this is not the place to carry on negotiations.

Senator LAUTENBERG. No, no; and I would not expect that. But the fact that it is something that you recognize has to be—

Mr. GOODE. Senator, I might say that we would hope that, again, because of our desire to move the transaction toward approval as rapidly as possible, that will put a very high priority on us, working out implementing agreements with labor, because what we are talking about doing will require that, so we have that very high up on our list of priorities.

Senator LAUTENBERG. Have you had discussions with—

Mr. GOODE. We have begun discussions, yes.

Senator LAUTENBERG. Thank you very much, Mr. Chairman.

Thank you, gentlemen.

Senator SPECTER. Thank you, Senator Lautenberg.

Mr. O'Toole, we appreciate you being here, and I talked to Mr. David Levan, CEO of Conrail, he said he could not be here, because of a prior commitment, and a funeral this afternoon, and we may need to call him, too, but we will wait to see what the events are there.

Let me move west to east. We have talked about shippers, and about competition, and I would like to be as specific as I can, realizing that much of this has to be worked out, but moving west to east from Pittsburgh, and focusing on one of the issues in Mayor Murphy's letter today, you have in the Pittsburgh area 1,700 employees divided among the national customer service center in North Fayette Township and the Conrail railyard in the Greentree division headquarters. To what extent will those operations be maintained? I think that will be your question, Mr. Goode.

Mr. GOODE. Yes; I think, again, while we are still working it out, I think it is likely that we will be getting Conrail's operations in the Pittsburgh area, and we are happy to do that.

It will clearly be our intention that Pittsburgh will continue to be the major operating center that it is now. The yards and the yardworkers, I think, will certainly be something that we would anticipate continuing. We are looking hard at the service center.

Senator SPECTER. Will you keep the service—

Mr. GOODE. I had one conversation with Mayor Murphy, and we have talked about, I know how important the service center is. We have not yet, frankly, made a decision whether the service center will be able to serve for the entire system or not, but we are looking at that, and clearly we will have a major presence in Pittsburgh.

Senator SPECTER. Mr. Goode, if you undertake to make any significant changes there, would you be willing to let the subcommittee know?

Mr. GOODE. Absolutely.

Senator SPECTER. OK. Moving east to the Altoona shops, the locomotive repair shops, and Hollidaysburg, again, Mr. Goode, what would your expectation be there as to the employment situation?

Mr. GOODE. Well, we have looked, as you know, earlier this week at those shops, we had some knowledge of them earlier than that. John and I had a very good tour of the shops, they are excellent facilities.

Since Norfolk Southern will be the likely beneficiary of the lines and of those shops, we do not have nearby shop facilities, as CSX did in Cumberland, so we are in a position of not only being able to give assurances that we will keep those shops and keep them operating, we are going to need them.

I have talked with, as we toured, the folks in the shop some about looking at ways to expand the work that is going on in those shops.

I may even be negotiating with Mr. Snow, perhaps, on some of his work, but certainly we would anticipate that our operating plan would include not only using those shops in the way that they are used now, but in seeking ways to find additional business for them, and it will be important that we enter into good implementing agreements with labor, so that we can have a strong competitive product and do that.

Senator SPECTER. OK. That answer will be well received in Blair County. Thank you.

Moving on into the Harrisburg and Enola area, the Harrisburg intermodal terminal, you and I have discussed, Mr. Goode.

Mr. GOODE. Yes.

Senator SPECTER. The likelihood of expanded operation, because of the new configuration of Norfolk Southern, could you confirm that and amplify it a bit?

Mr. GOODE. I would be glad to. As you and I have discussed, and as we have discussed with the Governor's transportation department, Mr. Mallory, and others, Norfolk Southern's, we would anticipate that our major north-south intermodal route will be the route where we connect with Conrail now at Hagerstown, and go north to Harrisburg, and into the New York area that way, so that we move along what I think of as the Interstate 81 corridor, with a lot of intermodal traffic.

There will be major expansions in the intermodal business, if we are successful in getting that business, which I certainly anticipate we will be, and I think that will clearly auger for more intermodal development in the Harrisburg area.

Senator SPECTER. Well, time does not permit going into all of Pennsylvania's 67 counties, where Conrail now has employees, or the 18 counties having more than 100 Conrail employees as residents, but I would appreciate your commitment to keep the subcommittee informed as to any significant changes in that employment picture.

Now, as to the Philadelphia location, this would involve Mr. Snow, as well as you, Mr. Goode. Both of the railroads, Norfolk Southern and CSX, will have major operations in Philadelphia, is that correct, Mr. Snow?

Mr. SNOW. Well, we contemplate certainly having on the CSX side, on behalf of CSX, major operations in Philadelphia, yes.

Senator SPECTER. Mr. Goode, Norfolk Southern will have major operations as well.

Mr. GOODE. That is also our—we see Philadelphia as a major business center for the railroad, and also we would—our plan, while we have not formulated it completely yet, envisions that we will have a significant general presence in the Philadelphia area.

Senator SPECTER. When you say a significant general presence, will that include some sort of a regional headquarters?

Mr. GOODE. I would think—I do not know whether regional headquarters is the right way to characterize it.

Senator SPECTER. Well, leave out the word regional.

Mr. GOODE. I was going to leave out the other word.

Senator SPECTER. But you will not.

Mr. GOODE. But I will not. No; very seriously, we will certainly have a major operational presence and a major marketing presence, and Philadelphia will be the center of activities for us, and we certainly will have significant continuing operations there, in terms of people in offices, in addition to what I think will be significant growth, in terms of the intermodal activities and the other on-the-ground workers.

Senator SPECTER. Now, Mr. Snow, I am sure you can top that description, as to the extent of CSX's operation in Philadelphia.

Mr. SNOW. Well, Mr. Goode always tops me, but I have told you privately and publicly, and in my letter to you, that we will have a major presence there.

We will need to have a major presence there in order to be able to manage the part of the railroad that looks like will be taking runs from Philadelphia, and north, to New York, and up Albany, and across to Boston, and so on, Montreal. So there will be a real need for us.

The details of that are, of course, not worked out yet. It is part of the discussion with the working group that Mayor Rendell talked about, and Secretary Mallory.

Senator SPECTER. Would you expect—I am going to go into a little overtime, and I will give Senator Mikulski more time, too, so we can just do this on one round. Would you expect to have a regional headquarters in Philadelphia?

Mr. SNOW. I would expect a division headquarters, regional headquarters. We call our management groups corridors or line segment management groups, and that is to take a big part of the railroad, Chicago to Atlanta, and put it under a major management field team that has close connections with the Jacksonville operation center. That is the new way we are operating.

I think we will need that sort of management arrangement, and Philadelphia would be a natural place to headquarter that major operation. As I say, part of the purpose of the working group is to review these matters.

Senator SPECTER. From the conversations that I have had with you, Mr. Snow, you expect to give better service to the port or expanded service to the Port of Philadelphia.

Mr. SNOW. I think that is one of the truly major benefits of this merger. We will both be in the port, we will both be in, I hope in ways that give us access, and we are talking to the mayor about this, more efficiently, more effectively, maybe with some closings of great crossings and great separation, and other things, that will enable us to access the port more effectively, and tie intermodal operations more effectively with port operations, which is not the case today, at all, as you know, with the potential for new world-class intermodal facility of some kind in the Philadelphia Port area.

Senator SPECTER. Would you anticipate Norfolk Southern as well servicing the Philadelphia Port?

Mr. SNOW. No question. We will undoubtedly be discussing whether we even have some sort of sharing, and we will want to talk with the mayor about how to make that investment in the best way for both of our operations in the city, but, again, we are looking—we are paying a lot of money for this property, and we are doing it, because we are going to generate business, and the Port of Philadelphia is one way, along with the other ports, to do that. We think it can be done.

Senator SPECTER. Well, as you men describe the activities with expanded service of the Port of Philadelphia, and intermodal facilities, in looking for expanded business, there seems to be a decisive likelihood, at least as you have described it today, that there may be more employees in Philadelphia, and the combined headquarters operation, whatever you call it, may exceed what the Conrail headquarters has today, is that a possibility, Mr. Snow?

Mr. SNOW. Senator, I am not quite sure what the numbers are, in terms of the headquarters staff today. Mr. O'Toole would have that. It is something on the order of 1,300 people, something like that—

Mr. O'TOOLE. In the nonagreement ranks.

Mr. SNOW. In the nonagreement ranks, yes. I think there will be—

Senator SPECTER. Did you say in the nonagreement, Mr. O'Toole?

Mr. SNOW. In the nonagreement ranks. One thousand three hundred or so is my recollection. I think it is safe to say that there will be a significant reduction in that number. What we are talking about here is replacement jobs in one form or another, as we grow the business, put in intermodal yards, compete more effectively.

Senator SPECTER. Those replacement jobs might grow to or exceed that number.

Mr. SNOW. Potentially, sure. Potentially. I do not think day one, but I think potentially, yes.

Senator SPECTER. Mr. Goode, same question, do you think there is a likelihood that the combined operations, as you have described them, expanded on the port, intermodal, et cetera, might lead to a greater presence of the two railroads in Philadelphia than is present today with Conrail?

Mr. GOODE. I do not know—I just do not know what the numbers are going to be in the future, but we are making a major bet here, both companies are. We are making a major bet on behalf of both of our companies, on growth in this business. We are looking to the future.

This is not an investment that is based upon cost savings, and that sort of thing, it is based upon growth and the expectations that we can make the business grow in the future.

If we do that, that is going to mean jobs. That is the commitment that we are making, and we are making it, because we believe it is a good business commitment to make.

Senator SPECTER. Senator Mikulski.

Senator MIKULSKI. Thank you, Senator Specter.

First of all, I want to thank you for your leadership in making sure that this hearing happened. It has been an excellent conversation. I have a few questions. The entire Maryland delegation is meeting with our mayor of Baltimore.

We are all worried about our cities, and I know you, and I know your wife Joan, a former city council lady, are very deeply concerned, so I am going to ask my questions, and I wonder when Ms. Morgan testifies if I could just ask her three quick questions after that.

Senator SPECTER. Certainly, Senator Mikulski.

Senator MIKULSKI. Thank you very much.

First of all, Mr. Goode, I do not know you, and I am looking forward to getting to know you.

Mr. GOODE. We will get better acquainted.

Senator MIKULSKI. I know that Norfolk Southern has a great reputation for both service and competitive rates. I do know Mr. Snow, and I do know Conrail, because before I became a U.S. Senator, I was on the Energy and Commerce Committee, where we essentially created the Conrail railroad system, and worked hands-

on with Liddy Dole to make sure we had a railroad system, and also that it was not cherry picked over the years with piecemeal selloffs that would leave shippers and commuters vulnerable. So we look forward to it.

Now, let me get specifically to my question. The very excellent question of Senator Specter about the Port of Philadelphia is what I have, and here is the fear. When all of these mergers became discussed, and you started your bidding wars, and all the things you did as tycoons, we in Baltimore were doing shooters of Mylanta, because here is what we were concerned about, exactly that.

You are Mr. Norfolk, Conrail is Mr. Philadelphia, and then there is the great market of New York/New Jersey. We were concerned that whatever the arrangements were would be a leapfrogging over Baltimore, that essentially for the Port of Baltimore, there would be a leapfrogging out of Norfolk, a great competitor, into either Philadelphia or New York, and we would either become a great barge port, we would become a great pond, and quite frankly, I love my inner harbor, and I helped to save that area, but when we have to choose between quiche and cargo, I will go with cargo any day of the week, because of the kinds of jobs it has.

Now, my question to you is: Are you, with all these wonderful promises you just gave Senator Specter, intermodal this, and headquarters that, and we are sure going to be generating business, are you two, in these routes, do you envision leapfrogging over Baltimore, or is it in your thinking that Baltimore would be a major anchor to what you envision in terms of railroad service?

My question is really for you, sir, and for Mr. Snow.

Mr. GOODE. Let me try it first, Senator—

Senator MIKULSKI. Remember, I am the cargo Senator, not the quiche Senator. [Laughter.]

Mr. GOODE. Well, first let me say that I do look forward to getting better acquainted with you, and I assure you that my consumption of Mylanta during the last 6 months will be the equal of anybody's in this.

Our commitment on behalf of Norfolk Southern, we make a commitment to the ports we serve, because it is a good business commitment.

There is no question that—sometimes I think that railroads are extensions, are just the natural extensions of the ports, and vice-versa. We are in the business of getting that intermodal freight and other freight off the ships and moving it inland, and vice versa, and we pride ourselves on the development of it. We are proud of what we have done—

Senator MIKULSKI. Good. What does it mean, though?

Mr. GOODE. What we will do for the Port of Baltimore and the Ports of Philadelphia and New York is what we have done for Norfolk, make sure that there is good rail transportation service available out of that port.

We will provide the service to move those goods. We cannot develop the ports, I mean the ports themselves need to develop themselves, and there is a lot of competition.

What we want to do is be a first-class rail transportation provider to all of the ports in the eastern part of the country, and compete with—

Senator MIKULSKI. Do you see major rail service continuing and adding competition for Baltimore, or is it your long-range intention to eventually leapfrog over us?

Mr. GOODE. Absolutely not. Absolutely the former, rather than the latter. We are going to be in the port, we are going to be providing first-class rail transportation for the port.

Senator MIKULSKI. Mr. Snow.

Mr. SNOW. Well, I regret to hear that, but it is obviously going to happen, and where it does happen, I can say, Senator Mikulski, good things happen for shippers, rates come down, service gets better, there is more traffic, there is more economic development.

We are going to get better in Baltimore, I think, because Norfolk Southern is there with the whole network that they have to serve the port from, and you and I will continue our discussions about improvement to the port with the port authority people and the Governor on double-stacking, which, as you know, is something we think will have to come to the port for us to be as competitive in serving the port as we need to be.

Senator MIKULSKI. Well, thank you.

Mr. Chairman, I just have a question also about these railroad jobs in western Maryland that—

Senator SPECTER. Proceed, Senator Mikulski, if you need a little extra time, by all means.

Senator MIKULSKI. Thank you. Let us go to western Maryland, both Cumberland, the railroad yards in western Maryland, as well as I know there has been some talk about intermodal facility in Hagerstown.

Mr. Snow, Mr. Barlett said that he got a commitment from you about jobs in western Maryland. Could you tell us what really is the commitment to jobs in the CSX Railroad there?

Mr. SNOW. Well, I have been talking to you and to House Speaker Cass Taylor for 6 months now about western Maryland, and know well your concerns on that subject.

To be candid, the original proposal presented some risks to Cumberland, because the Altoona and Hollidaysburg shops are, as the crow flies, not very far. I think it would have meant some reductions or rationalizations at one place or the other. That was almost inevitable.

One of the virtues of the merger, as it has evolved, or mergers, as they have evolved, is that threat to each of those facilities has been, in effect, eliminated, and we are, as I said to the employees of the shops in Cumberland just 2 days ago, when I was there, I think you can count on these shops continuing to operate for the next 150 years, because the threat has been removed.

If anything, we are going to see growth in jobs, as I told the mayor and told the speaker, and the county commissioners who were there, you are going to see growth in jobs here, because we are deadly earnest about growing the business.

The Cumberland facilities are critical to us now. They are even more critical now than they were before. And added to that is the fact that single-line service on the coal, moving out of that region, and you know we have the headquarters for the coal unit for northern West Virginia and western Maryland, which generates a lot of coal, that unit is headquartered there in Cumberland.

With the single-line service, Dan Green, who runs that unit for us, who you know, our vice president for coal there, estimates that we are going to be able to generate additional demand for western Maryland coal, with additional moves into the present Conrail territory, and into southern Maryland, with quicker turn times and better results.

It is a growth story, and as we grow the coal business out of there, there are more locomotives to be repaired and more cars to be repaired.

Senator MIKULSKI. Well, I would really welcome a letter from you kind of outlining what your plans are for that.

Mr. SNOW. I will give you that. Sure.

Senator MIKULSKI. I say that, because I know Senator Byrd is interested. This is my last question for the panel.

Mr. Goode, is Norfolk Southern's intent to continue to—do you plan to take over the tracks in the Delmarva Peninsula and serve their bringing in Midwestern grain? I know this is important to Biden and Roth, Robb and Warner, and, of course, Sarbanes and Mikulski.

Mr. GOODE. And I have heard from most of those folks about it, and it is important, and we have every anticipation of continuing that service, and, indeed, this will improve the service of grain into those areas, and I know how important it is to the poultry farmers, and others in that area, and we have every intention of continuing and improving that service.

I might just say one thing about Hagerstown, too.

Senator MIKULSKI. Yes.

Mr. GOODE. The story on Hagerstown is that there is going to be a lot more freight moving through that important gateway, and I do not know exactly what we will be looking at developing there, but it is certainly good news for that.

Senator MIKULSKI. Well, thank you. That is very, very good news to know about Hagerstown, but also Delmarva.

Mr. Chairman, there are many questions, and I know we will continue this conversation, but I think the representatives of the railway industry raise a really important point that I know you are keenly interested in, which is the modernization of our ports, and I would like to compliment the Port of Philadelphia, that put in a bucket of bucks modernizing its port, but it is hard for one State to do it, or one city to do it, and I think it is a conversation that those of us in the corridor should have, with the recommendations of what is appropriate in a public/private cost-sharing relationship to modernize our ports, because this is the stuff of Philadelphia, this is the stuff of Baltimore that generates jobs and makes cities great.

Knowing of your commitment in this area, I think it will be a topic for us to have conversations about. I invite the railroads to give us what their thinking is on that topic, again, not a new railroad entitlement, but a public/private partnership about the role of the private sector, States, and the Federal Government.

There is a great cornucopia of opportunities developing. With ships coming through the Suez Canal, we can begin to pick up some Asian traffic, whether it is Philadelphia, Baltimore, Camden, Newark, et cetera, that we now do not have, but boy, our infra-

structure is old, and it is a topic I think we should really think about. I offer that in a very invitational and hospitable way.

Senator SPECTER. Senator Mikulski, I think you raise a good point, and we have deepened the Port of Philadelphia, and it may well be that the new approaches for extended service by the two railroads, intermodal, will make it in their interest to have a deeper port, and I think to the extent that we can help on the costs there, so much for the good, so we will pursue that.

Gentlemen, we will be submitting some questions for the record, but before you leave, I want to touch on just a couple of other points very briefly.

There is a 42-mile stretch of track from Meadville to Corry, in northwestern Pennsylvania, which Conrail has decided to abandon, and tear up the tracks for use elsewhere in the Conrail system, and it is now in litigation. If either of you is familiar with it, I would be interested in your comments as to whether—Mr. Goode is gesturing to Mr. Snow.

Do you think we might work that out? This is of great concern to Congressman English, as well as to Senator Santorum and me, if we might find some help for that area.

Mr. SNOW. Senator, that is going to be on the part of the system that apparently CSX will be taking in the division. We have heard that that is a very important issue, and it is under review, and my discussions with the Conrail counterparts indicate that we are prepared, CSX, to, in effect, see the Corry to Meadville segment stay in operation.

Senator SPECTER. Stay in operation. Well, that will be very good news to Congressman English, who has been very concerned about it, as has the rest of our delegation.

One other point, and that is, in my discussions with both of you gentlemen, you have described some operations which might be joint, and there might be an entity or a chain, they might even be named Conrail, and I had urged you that if there were two operations, and there could be some retention of Conrail, that that would, at least symbolically, be very, very helpful to public acceptance of this whole arrangement.

To what extent, Mr. Snow, do you see joint operations which might be under a common operation, and might be labeled as Conrail?

Mr. SNOW. Senator, there are a number of places on the system where CSX and Norfolk Southern, I think, will end up sharing facilities, whether it is a terminal company, or a joint operation, or something, because we will each need access to the industries. I think Indianapolis is an example. Senator Lautenberg mentioned the New York/New Jersey Port Authority.

As we have talked about it, I think there is, and David and I have not—this is one of the things we are still reviewing, but I think there is a reasonable prospect, a good prospect, I would say, that, given the sensitivities of Conrail, and its name, and its corporate presence, that we can structure the transaction in a way that a Conrail continuing corporate presence with the Conrail name to manage these very important joint activities could occur.

Senator SPECTER. Well, I am very pleased to hear that, and we will stay in touch with you to see what extent—I know you are not

in the position to say now what that would mean by way of headquarters or employees, but I think that would be very helpful.

Well, we very much appreciate you coming, and the final word, I want to compliment all of you. Mr. Goode, I am not going to pursue this issue with Pennsylvania Power & Light, I know that Norfolk Southern only makes arrangements, I am trying to quote you, because I wrote it down for the benefit of your shareholders, but there might be something equivalent of a loss leader, or it might be something of a little initiative to make the coal operators happy, and Pennsylvania Power & Light happy, and make it look good in Pennsylvania. If that was not your motive, I would accept that, and I would compliment you if that had been your motive.

Thank you very much.

Mr. GOODE. Thank you, Senator.

PANEL 2

SURFACE TRANSPORTATION BOARD

STATEMENT OF LINDA MORGAN, CHAIR

INTRODUCTION OF WITNESS

Senator SPECTER. We now call the Honorable Linda Morgan, Chairman of the Surface Transportation Board.

Chairman Morgan, we welcome you here.

Ms. MORGAN. Thank you.

Senator SPECTER. Before turning to you for any testimony, when we had proposed a witness list, I was a little apprehensive about including you on the witness list, but we leave it, of course, to your discretion, because you have a judicial function, as Chairman of the Surface Transportation Board, and we want to be very careful that we do not impinge in any way on that judicial function in any conversations we have there.

So to the extent you feel comfortable in testifying, we very much welcome you, but we just raise that issue, so that you will know in advance that in addition to your own sensitivity on it, that we are sensitive as well, and would respect any judgment you might make on not answering, or not elaborating, or handling it however you see fit.

Ms. MORGAN. Thank you very much, Mr. Chairman. As you indicated, I am Linda J. Morgan, Chairman of the Surface Transportation Board. I am here at the request of this committee, following recent activity surrounding possible restructuring of rail service in the East.

I ask unanimous consent that the full text of my extensive written testimony be submitted in the record, and I will now summarize that presentation.

Senator SPECTER. That is fine. As requested, your full statement will be made a part of the record, without objection.

Ms. MORGAN. Thank you.

As the committee knows, this activity regarding restructuring of rail service in the East has spanned several months, and has garnered much attention. However, because no merger application affecting the East has been formally filed with the Board as yet, the Board is not formally privy to any final details surrounding any such application. Nevertheless, to assist the committee in understanding this entire matter more fully, my testimony explains the process by which the Board would handle such an application, should it be filed.

Such an application would involve control or merger of two or more class I railroads, and would be governed by the rail merger provisions of the ICC Termination Act of 1995, administered by the Board. My testimony lays out in some detail the nature of the pro-

ceeding that would be conducted by the Board, the statutory criteria to be applied by the Board, and the Board procedures applicable to such a proceeding.

The Board, as the committee knows, is an independent adjudicative body that must conduct all of its deliberations on the record, and make all of its decisions based on a record compiled after adequate notice and full opportunity for participation and comment by interested parties.

With respect to any rail merger proposal such as the one at issue today, the record would include facts and argument concerning the statutory criteria, and the Board's evidentiary regulations implementing those criteria. As no formal application regarding rail structuring in the East has yet been filed, no record building on such a proposal has yet begun.

In this regard, I, as an ultimate decisionmaker, cannot prejudge or speculate about any decision that the Board might reach on such a merger proposal. Rather, the Board must maintain objectivity until the evidentiary record is completed and analyzed, and a final Board decision is rendered. I know that this committee shares my commitment to ensuring that the independent adjudicative process at the Board is preserved in the way envisioned by Congress when it established the Board. Thus, I remain committed, as with any pending proceeding before the Board, to maintaining my impartiality today, and throughout any proceeding involving any rail restructuring in the East.

With respect to the overall statutory standards, under the ICC Termination Act, the Board shall approve a transaction that is consistent with the public interest. The Board does not initiate or solicit such a transaction, but rather becomes involved once the private sector has produced such a proposal, and then seeks Board approval.

In reviewing a rail merger proposal of two or more class I railroads, the Board must consider the following five factors: One, the effect of the proposed transaction on the adequacy of transportation to the public; two, the effect on the public interest of including or failing to include other rail carriers in the area involved in the proposed transaction; three, the total fixed charges that result from the proposed transaction; four, the interest of rail carrier employees affected by the proposed transaction; and five, whether the proposed transaction will have an adverse effect on competition among rail carriers in the affected region or in the national rail system.

The Board may, where warranted to alleviate anticompetitive effects, impose conditions upon any merger approval, including divestiture of parallel tracks, or requiring the grant of trackage rights, or grants of access to other facilities. Also, in approving a merger, the Board is required, by statute, to impose labor protective conditions to alleviate harm to nonmanagement employees who are adversely affected by the transaction.

As you know, Congress has recognized that rail mergers invariably result in job losses and in job relocations, and Congress has addressed this matter in the statutory provisions governing rail mergers by directing the agency to impose the standard New York Dock employee protective conditions. The New York Dock conditions impose and embody the basic framework for mitigating the

labor impacts of rail mergers. The conditions provide both substantive benefits for adversely affected employees—dismissal allowances, displacement allowances, and the like—and procedures—negotiation, if possible, arbitration, if necessary—for resolving disputes regarding implementation of particular merger-related transactions.

In addition, as part of the decisionmaking process, the Board also must consider the environmental impact of such a proposed merger, pursuant to the National Environmental Policy Act and related environmental laws. In approving a merger, the Board imposes conditions, as appropriate, to mitigate the potential environmental impacts resulting from the proposed merger that are identified during the course of the environmental review process. That process runs concurrently with the procedural schedule for considering the merits of the merger proposal, and considers such matters as safety.

My written testimony also discusses overall procedures and timetables for handling a merger application, as well as how the Board would handle competing applications and merger-related applications.

In addition, my written testimony describes in detail the information required to be filed with each application, including a summary of the proposed transaction, its purpose, and its financial arrangements, as well as information about the statutory criteria, environmental submissions, market analyses, operational data, and material on specific labor impacts.

This concludes my oral testimony. In accordance with my earlier remarks, I would be happy to answer any questions that you might have.

And you have my commitment that any and all issues and concerns that are raised on the record developed in any proceeding at the Board relative to this matter will be carefully and fairly considered in accordance with the Board's statutory responsibilities.

PREPARED STATEMENT

Senator SPECTER. Thank you very much, Chairman Morgan. Your complete statement will be made part of the record.

[The statement follows:]

PREPARED STATEMENT OF LINDA J. MORGAN

Mr. Chairman and Members of the Committee, my name is Linda J. Morgan, and I am the Chairman of the Surface Transportation Board (Board). I am here at the request of this Committee, following recent activity surrounding possible restructuring of rail service in the East.

SUMMARY OF TESTIMONY

As the Committee knows, this activity has spanned several months and has garnered much attention. In October of last year, CSX Corporation (CSX) and Conrail Inc. announced their plan for merging. Subsequent to that announcement, Norfolk Southern Corporation (NS) indicated its intention to pursue a "hostile" bid to take over Conrail. A bidding war ensued, and on January 27, 1997, the shareholders of Conrail voted not to allow the merger proposal that had been agreed to between Conrail and CSX to go forward. More recently, the three railroads announced their agreement to pursue a joint restructuring.

Because no merger application affecting the East has been formally filed with the Board as yet, the Board is not formally privy to any final details surrounding any such application. Nevertheless, to assist the Committee in understanding this entire

matter more fully, my testimony explains the process by which the Board would handle such an application should it be filed. Such an application would involve control or merger of two or more Class I railroads and would be governed by the rail merger provisions of the ICC Termination Act of 1995 (ICCTA), administered by the Board. My testimony lays out in some detail the nature of the proceeding that would be conducted by the Board, the statutory criteria to be applied by the Board, and the Board procedures applicable to such a proceeding.

OVERVIEW OF THE BOARD'S ADJUDICATIVE PROCESS

The Board, as the Committee knows, is an independent adjudicatory body that must conduct all of its deliberations on the record and make all of its decisions based on a record compiled after adequate notice and full opportunity for participation and comment by interested parties. With respect to any rail merger proposal such as the one at issue today, the record would include facts and argument concerning the statutory criteria and the Board's evidentiary regulations implementing those criteria. As no formal application regarding rail restructuring in the East has yet been filed, no record-building on such a proposal has begun.

In this regard, I as an ultimate decisionmaker cannot prejudge or speculate about any decision that the Board might reach on such a merger proposal. Rather, the Board must maintain objectivity until the evidentiary record is completed and analyzed, and a final Board decision is rendered. I know that this Committee shares my commitment to ensuring that the independent adjudicative process at the Board is preserved in the way envisioned by Congress when it established the Board. Thus, I remain committed, as with any pending proceeding before the Board, to maintaining my impartiality today and throughout any proceeding involving any rail restructuring proposal in the East.

OVERALL STANDARDS FOR REVIEW AND CONDITIONING AUTHORITY

Statutory Standards.—Under the ICCTA (section 11324), the Board shall approve a transaction that is consistent with the public interest. The Board does not initiate or solicit such a transaction but rather becomes involved once the private sector has produced such a proposal and then seeks Board approval.

In reviewing a rail merger proposal of two or more Class I railroads, the Board must consider:

- (1) the effect of the proposed transaction on the adequacy of transportation to the public;
- (2) the effect on the public interest of including, or failing to include, other rail carriers in the area involved in the proposed transaction;
- (3) the total fixed charges that result from the proposed transaction;
- (4) the interest of rail carrier employees affected by the proposed transaction; and
- (5) whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region or in the national rail system.

Conditioning Authority.—The Board may, where warranted to alleviate anti-competitive effects, impose conditions upon its approval, including divestiture of parallel tracks or requiring grants of trackage rights or grants of access to other facilities. Any trackage rights and related conditions imposed to alleviate anticompetitive effects of the transaction shall provide for operating terms and compensation levels to ensure that the anticompetitive effects are alleviated. As an example, in approving the Union Pacific-Southern Pacific (UPSP) merger in August of last year, the Board imposed as a condition of approval the granting of 4,000 miles of trackage rights to the Burlington Northern Santa Fe (BNSF) over UPSP track to ameliorate competitive harm.

Also in approving a merger, the Board is required by statute to impose labor protective conditions to alleviate harm to non-management employees who are adversely affected by the transaction. As you know, Congress has recognized that rail mergers invariably result in job losses and job relocations, and Congress has addressed this matter in the statutory provisions governing rail mergers by directing the agency to impose the standard New York Dock employee protective conditions [New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979)]. The New York Dock conditions embody the basic framework for mitigating the labor impacts of rail mergers. The conditions provide both substantive benefits for adversely affected employees (dismissal allowances, displacement allowances, and the like) and procedures (negotiation if possible; arbitration, if necessary) for resolving disputes regarding implementation of particular merger-related transactions.

In particular, the New York Dock conditions require the merged carrier to pay up to 6 years of wages to employees dismissed or displaced as a result of the consolidation. And procedurally, the merged carrier, under New York Dock, must give at

least 90 days written notice of any action implementing the merger that adversely affects employees, including a 30-day negotiation period. If the parties are unable to resolve their differences, the matter then may be submitted to binding arbitration.

In addition, as part of the decisionmaking process, the Board also must consider the environmental effects of a proposed merger pursuant to the National Environmental Policy Act (NEPA) and related environmental laws. In approving a merger, the Board imposes conditions as appropriate to mitigate the potential environmental impacts resulting from the merger that are identified during the course of the environmental review process. That process runs concurrently with the procedural schedule for considering the merits of a merger proposal.

The Board's environmental staff, the Section of Environmental Analysis (SEA), establishes the process and conducts various public outreach activities to inform the public about the proposed merger and to encourage and facilitate public participation in the environmental review process. As part of the environmental review process, SEA prepares a detailed analysis not only of the system-wide effects of the proposed merger, but also of particular merger-related activities that would affect, for example, individual rail line segments, rail yards, intermodal facilities, and commuter and rail passenger services. This analysis includes a thorough independent assessment of potential safety impacts as well as other environmental impacts.

OVERALL PROCEDURES AND TIMETABLE

Statutory Scheme.—The schedule for processing applications for the merger or control of two or more Class I railroads is governed by the ICCTA at section 11325. Once an application has been filed, the Board has 30 days to publish notice in the Federal Register of its acceptance or rejection of the application. If the application is accepted, all evidentiary proceedings must be concluded within 1 year of publication of acceptance, and the Board must issue its final decision within 90 days after the conclusion of the evidentiary proceedings. Thus, the maximum time under the statute for processing an application is 16 months from the date of filing of the application to the date of issuance of a final decision.

Procedural Regulations.—The regulations that govern mergers are published at Volume 49 of the Code of Federal Regulations, Part 1180 and amplify the statutory requirements. In accordance with these regulations, applicants proposing the merger or control to two or more Class I railroads must file a notice of intent to file an application between 3 and 6 months prior to filing the application. When a notice of intent is filed, the Board is required to publish a notice in the Federal Register within 30 days. This notice provides a brief description of the transaction, the year to be used for impact analyses, and the approximate date for the filing of the application, which when filed then triggers the statutory time frame set forth in section 11325.

In the matter at issue today, CSX and Conrail Inc. filed a notice of intent on October 18, 1996, in which they indicated an intention to file an application no sooner than January 18, 1997, and no later than March 1, 1997. The Board published notice of that filing on November 15, 1996. NS filed a notice of intent on November 6, 1996, indicating an intention to file an application for control of Conrail on or before May 1, 1997. The Board published notice of that filing on November 27, 1996. Thus, two separate proceedings were initiated: one by CSX and Conrail, and one by NS.

Procedural Schedule.—While the statute sets the outer limits for the Board's processing of railroad merger applications, the practice for the past several years has been that the applicants propose a procedural schedule that is less than that required by statute, the agency solicits public comments on a proposed schedule (the applicants' proposed schedule or the proposal as modified by the Board), and, after considering the comments, the agency adopts a schedule for building the record and deciding the case.

For example, the Board granted the UPSP application for common control in a decision issued approximately 8½ months after the application was filed. The BNSF application for common control was approved by the agency in a decision issued approximately 10½ months after the application was filed and in less than 6 months from the time the proceeding was reinstated under a new procedural schedule following shareholder approval of the proposed transaction.

As noted earlier, both CSX and NS filed notices of intent to file an application for a consolidation with Conrail. Each requested that the Board establish a procedural schedule that would provide for a final decision 8½ months after the filing of their respective applications. The Board reviewed these requests and instead proposed a 10-month procedural schedule and sought comments from the public on its

proposed schedule. Based on the comments, the Board issued decisions in both proceedings on January 30, 1997, establishing a 365-day schedule for each of the Conrail merger proposals. In deciding on this schedule, the Board determined that additional time was needed to handle both the primary, or first-filed, merger application and the inconsistent application expected to be filed by whichever carrier did not file the primary application. As part of the procedural schedule, the Board also adopted the requirement that the applicants file a preliminary environmental report 30 days prior to the filing of the primary application. NS filed its preliminary environmental report on February 21, 1997.

Other Matters.—Typically, during this pre-filing stage, prospective applicants submit a request for a protective order (to permit any necessary access to confidential materials, while at the same time providing protections for sensitive data), a petition for waiver or clarification of certain filing requirements, and a request for an informal staff opinion on a proposed voting trust agreement to ensure that any stock transfers do not result in unlawful control in advance of any final Board action on the merger proposal. Informal staff opinions have been issued on various voting trusts and amendments proposed by CSX and NS, respectively. Board decisions also have been issued granting protective orders and addressing petitions for waiver or clarification by the prospective applicants in each proceeding.

COMPETING APPLICATIONS

The railroad merger review process at the Board is designed to handle either a single consolidation application or one or more competing applications in addition to the primary application. Because of the possibility of competing applications for control of Class I railroads, the statute, the pertinent regulations, and the actual schedules established in each proceeding all provide for filing and consideration of "responsive" applications.

Inconsistent Applications.—A responsive application that seeks to acquire the property that is the subject of the primary application is called an "inconsistent" application. Under the statute and under the rules, inconsistent applications are due 90 days after publication of acceptance of a primary application. It is possible for both a primary application and an inconsistent application to be granted. It is also possible for both to be denied or for one to be granted and the other denied. In the past 20 years, railroads have filed inconsistent applications in a half dozen or so proceedings. In the decisionmaking process, the statutory criteria are applied to the evidence presented with respect to both the primary and the inconsistent application and a decision on each is reached at the same time.

In late 1994 and early 1995, for example, it looked for a period of time as if there might be competing applications filed for control of the Santa Fe—one by Burlington Northern and one by Union Pacific. In fact, after Burlington Northern had filed its application to acquire control of the Santa Fe, the Board process was held in abeyance for a period of time to permit Santa Fe shareholders to vote on the Burlington Northern proposal. Once the vote to approve that proposal had occurred, the Union Pacific withdrew as a competing bidder, a new procedural schedule was established, and the record-building and review process resumed. While Union Pacific might have filed a competing application in that proceeding, it did not.

Other Responsive Applications.—Interested parties may file narrower responsive applications. These include applications seeking trackage rights or other conditions to be imposed on the merger if it is approved. These are also due 90 days after the Board publishes a notice that it has accepted the primary application. Each responsive application is considered consolidated with the primary application. Records are built for each responsive application and a decision on each one is reached at the same time as a decision is reached on the primary application.

Any merger-related applications, petitions, and notices (such as for trackage rights, abandonments, and constructions) are usually processed in accordance with the overall merger procedural schedule, by virtue of a waiver of, or exemption from, the otherwise applicable procedures and timetables. Likewise, as indicated previously, the environmental review process occurs concurrently with the record-building and decisionmaking process under the overall merger procedural schedule.

REQUIRED INFORMATION

General.—Each application must contain basic information, including a summary of the proposed transaction, a proposed time schedule for consummation, a statement of the purpose of the proposed transaction (such as improving service, improving the financial viability of the applicants, eliminating excess facilities, or attaining operating economies), and a statement of the financial arrangements. An application must also show how the proposed transaction is consistent with the public interest.

This must include a statement of the effect on competition; the financial aspects of the transaction, including the effects of any increase in fixed charges; the effect on the adequacy of transportation service to the public; the effect on the applicant carriers' employees; and the effect on inclusion (or lack of inclusion) in the merger of other railroads in the territory. An application must also include geographical and environmental data, which can include information relative to safety.

Market Analyses.—Applicants are required to submit analyses of the impacts of the proposed transaction (both adverse and beneficial) on intermodal and intramodal competition for freight surface transportation in the regions affected and nationally. The applicants must show the impact on the provision of essential services by applicants and other carriers. Applicants must address relevant markets. Applicants have some flexibility in choosing the types and format for data submitted. Market analyses can focus on city pairs, interregional movements, or movements through a particular point. They can also focus on a particular commodity or group of commodities.

Operational Data.—Applicants are required to submit an operating plan that includes a summary of the proposed changes resulting from the transaction. This plan must include a statement of anticipated gains in service, operating efficiencies, and other benefits. The plan should also include: (a) a statement of service patterns on the properties, including the proposed principal routes, proposed consolidations of main-line operations, and the anticipated traffic density and general categories of traffic on all main and secondary lines in the system, with identification of yards expected to have a greater than 20 percent increase in activity; (b) if commuter or other passenger services are operated over the lines of applicant carriers, a statement of the anticipated impacts on these services; (c) a statement of anticipated equipment needs, including plans to acquire, retire, or improve use of equipment in relation to operating changes; (d) a description of the effect of any deferred maintenance or delayed capital improvements on road or equipment properties involved, including a schedule for eliminating the deferrals and for carrying out rehabilitation, as these relate to service improvements or operating economies expected to result from the transaction; and (e) traffic density charts for principal lines and for segments of lines between major freight yards and terminals.

Specific Labor Impact.—Applicants are required to provide information on the impact that the transaction will have on employees of the merging carriers. Specifically, applicants must discuss the effect of the proposed transaction on applicant carriers' employees (by class or craft), the geographic points where the impact will occur, the time frame of the impact (for at least 3 years after consolidation), and whether any employee protection agreements have been reached.

Financial Information.—For merger transactions, applicants must submit a pro forma balance sheet giving effect to the transaction and a pro forma income statement giving effect to the transaction. The income statements must be provided for at least the first 3 years following consummation of the transaction. Applicants must also identify sources and application of funds for the current year and a forecast of sources and application of funds for the year following consummation of the proposed transaction and for the years necessary to carry out the operating plan. If an applicant has agreed to assume liabilities with respect to encumbered properties, the properties and encumbrances must be identified.

OTHER PROCEDURAL MATTERS

In recent merger proceedings, the record has closed with an oral argument. The oral argument on the UPSP merger, as an example, lasted 10 hours. The Board has also held a public voting conference to discuss and vote on the issues presented. The Board then has issued a final decision on the merits reflecting the vote at conference.

This concludes my testimony. In accordance with my earlier remarks, I would be happy to answer any questions that you might have. You have my commitment that any and all issues and concerns that are raised on the record developed in any proceeding at the Board relative to this matter will be carefully and fairly considered in accordance with the Board's statutory responsibilities.

ENFORCEMENT MECHANISMS

Senator SPECTER. Senator Mikulski, you had commented earlier that you have a luncheon commitment with the delegation, so you may proceed first.

Senator MIKULSKI. Thank you very much, sir, and thank you for the courtesy.

Ms. Morgan, we understand the need for real propriety. My questions are only broad policy questions. First, I am delighted to hear about the fact that one of your criteria will be adequacy of public transportation, because we are concerned about passenger rate, but also the rigorous criteria on specific impact on labor, both in terms of the jobs affected, as well as the specific geographic areas.

But let me get to my question. After all the processes go forward, and all the agreements are signed, my question about the Board is this: What enforcement mechanisms does the Board have to ensure that the railroads live up to the plans that have been filed and approved, how do you monitor that compliance, and what recourse do parties have if the railroads do not live up to it?

In other words, your enforcement mechanisms, how will you monitor it, and what is the place of redress?

Ms. MORGAN. Well, I would answer that question in a couple of different ways. First of all, it depends upon what the commitment, the issue, the obligation is. If the Board relies on a particular commitment and obligation as part of its final decision, whether it would be about benefits, or employee impact, or whatever, then we would expect the parties that have filed the application to live up to their responsibilities. Second, there are situations in which the Board will impose as a condition, to ensure the public interest, a particular arrangement that has been agreed to.

With respect to enforcement in either of these situations, obviously, we can enforce in both situations. We have oversight responsibilities, we can haul the parties back in, we can try to determine exactly why certain obligations were not met. We have very broad authority in this area.

Senator MIKULSKI. How will you monitor it?

Ms. MORGAN. Well, monitoring can be by a very specific monitoring condition, which we have imposed before in prior mergers.

For example, in one merger, we are requiring quarterly reports, and we have indicated that at a minimum, within a year of the implementation of the transaction, we will begin a proceeding to take comments on how the conditions that we have imposed are working.

Senator MIKULSKI. If the parties do not feel that the railroads have lived up to their agreements, and particularly, the labor area, or the passenger maintenance area——

Ms. MORGAN. They can certainly file something with us, which can assist us then in trying to determine whether, indeed, there is a valid concern about——

Senator MIKULSKI. An affected party, the municipality, a labor union, can——

Ms. MORGAN. Yes; either we can, on our own initiative, pursue oversight and monitoring, or we can do it in response to particular information that has come to our attention, or a combination of both.

Senator MIKULSKI. Thank you very much.

Mr. Chairman, thank you.

That kind of gives me an answer to that, and Ms. Morgan, I would like to compliment you on your intellectually rigorous pres-

entation here. It is the best understanding I have gotten of this Surface Transportation Board since we have eliminated the ICC, and I am going to thank you. I now have an excellent understanding of it, and appreciate it very much.

Thank you for the courtesy.

Ms. MORGAN. Thank you for your comments.

Senator SPECTER. Thank you, Senator Mikulski.

Chairman Morgan, I began with an exchange of correspondence, which you and I had, prompted by a newspaper account appearing in the Washington Post on January 21 of this year, quote:

The Chairman of the Surface Transportation Board, the agency that is likely to redraw the map of eastern railroading, says the Board would prefer a negotiated settlement of the battle for Conrail, but is prepared to impose a plan that will split control of the East equally between the two rail giants.

Now, my letter of January 21 was made a part of the record together with your reply of January 23, and also my letter to you of March 11, together with your reply of March 13, and in your reply of March 13, you point out, quote:

Because these are pending cases, it will be inappropriate for me to comment on the specific merits of these matters.

Now, I can understand, I had not asked you to comment in my letter to you, I had referred to you the recent developments on the abrogation of the Conrail/CSX matter, and the new arrangement between CSX and Norfolk Southern, and I quite agree with you in the comment in your letter of March 13 that it would be inappropriate for me to comment on the specific merits of these matters.

In your reply on this newspaper article, you did not deny that that had been said, you said the account was essentially correct, and I know it is difficult for anybody in public office making comments to the press as to what appears and what does not appear.

But when somebody is in a judicial position, it is my sense that it is something that ought not to be done. I have heard it quoted repeatedly that the regulators did not like the Conrail/CSX deal, and the comments were made that when you combine Wall Street and the regulators, this was a deal which could not occur.

My question to you is: Is it really appropriate—you testified today that the Surface Transportation Board, quote, "Does not initiate or solicit," a transaction, and, of course, you do not, but in saying that the Surface Transportation Board is prepared to impose a plan that would split control of the East equally between the two rail giants, does not that really prejudice the Conrail/CSX agreement?

Ms. MORGAN. Well, let me just discuss in answer to your question here, which I think I explained in my letter to you of January 23, the circumstances surrounding that interview. I was called by Don Phillips, and he asked me to discuss the UPSP merger decision, which had already been rendered.

If you read the article by Don Phillips, he indicates that I did not discuss the merits of the particular matter in the East, that I discussed the UPSP merger and what that decision meant.

So I do not believe that I have been inconsistent in anything that I have said regarding how I am handling a pending matter.

Senator SPECTER. Well, the Washington Post article does say, as you quote in your letter of January 23, "Carefully avoided discus-

sion of specifics of the Conrail matter," Conrail matter in parentheses. Discussion of specifics has a lot of latitude.

Did you tell the reporter that the Surface Transportation Board, and this is what he says, "Is prepared"—he does not put this in your quotes, this is what he says out of quotes, but he says, referring to you, the Chairman of the Board, and this is his language, and this is language, quote, "Is prepared to impose a plan that would split control of the East equally between the two rail giants," closed quote.

Ms. MORGAN. As you indicated, that is not a direct quote from me. All of the direct quotes in that article are accurate. Inferences can be drawn from direct quotes.

I cannot speak to the inferences that have been drawn, and I indicated that in my letter to you in response to your letter about that article.

Senator SPECTER. Well, from the totality of your conversation with him, is it an incorrect inference that you said that the Surface Board, quote, "Is prepared to impose a plan that would split control of the East equally between the two rail giants"?

Ms. MORGAN. I did not say that I would approve a plan to split Conrail. What we talked about was the UPSP merger and the notion of competitive balance, and preservation of balance in the West.

Senator SPECTER. Well, Chairman Morgan, it is pretty strong language for him to say that the Chairman is prepared to impose a plan; that is a pretty forceful statement. Are you saying that that is an unfair, incorrect inference from the conversation you had with the reporter?

Ms. MORGAN. All I can say to you is that was not a direct quote. We discussed the UPSP merger and the meaning of that decision. I do not want to comment on Mr. Phillips and his press integrity one way or the other.

Senator SPECTER. Well, I am not talking about Mr. Phillips' press integrity, I am talking about what is a fair inference from what you said. Is it a fair inference or is it not a fair inference, from what you said to the man?

Ms. MORGAN. I do not know that it is or it is not. We discussed the UPSP merger, and what we did in that case, which was to try to achieve a competitive balance and a preservation of competition, and to ensure that there were two strong competitors in the West.

Senator SPECTER. OK, Madam Chairman, if you do not know whether it is or is not an unfair inference, you are not saying it is an unfair inference.

Ms. MORGAN. I am not commenting on it, because it was not the position that I took in the interview, and as a decisionmaker in this case, I do not want to take a position, nor have I taken a position.

Senator SPECTER. OK. On the issue of making sure that the competitive balance is worked out—Senator Mikulski covered this with you to some extent.

But I would just like to be as precise as we can be, Conrail and Norfolk Southern are going to work out an arrangement here, and it is obviously in their economic interest if some parts are not as competitive as they might be, and the Surface Transportation

Board is going to look at it, and you are going to try to work it out so that it is as competitive as it can be, correct?

Ms. MORGAN. That is my responsibility, yes, in terms of analyzing the effect on competition of any proposed—

Senator SPECTER. Right. Well, I understand that is your purpose, and I think it is a very important objective, obviously, but if after you make an approval you find that there are modifications, or the way they work it out in practice is not as toughly competitive as they had committed, do you have authority to enforce the original undertaking?

Ms. MORGAN. Again, it depends upon the situation. In the UPSP merger, we adopted a 5-year monitoring condition, whereby we are requiring parties to file quarterly reports, and as I indicated earlier, at a minimum, an annual proceeding to take comment on the status of the implementation of the conditions that we have imposed.

Senator SPECTER. Why only 5 years, Chairman Morgan, why not longer?

Ms. MORGAN. We felt that 5 years, which we had imposed previously in other decisions, seemed to make sense.

Senator SPECTER. On the issue of the employees, your testimony notes that under the applicable provision of Federal law, the Board must consider the impact of a transaction on the affected carrier's employees.

A review of the Board's decision and the Union Pacific/Southern Pacific merger shows that the Board pretty much dismissed the impact on such employees by noting that they would receive certain severance benefits under the so-called New York Dock doctrine.

Do you think that that is all that you have to consider, insofar as the employees are concerned, that they are getting severance benefits under the New York Dock doctrine?

Ms. MORGAN. Again, it would depend upon what record is developed and what evidence is presented to us, in the context of the employees. We are responsible for looking at the impact on the employees, and each case is different in that respect, in terms of what the record shows.

Senator SPECTER. So you are saying it could go—

Ms. MORGAN. We are required by statute to impose labor-protective conditions, pursuant to New York—

Senator SPECTER. Well, I know you are, and the Congress knew about the New York Dock doctrine when the Surface Transportation Board was formed, and maintained the criteria, one of which you quoted: the interest of rail carrier employees affected by the proposed transaction. So I would think that it would require something more than the New York Dock doctrine, that there would be an obligation on the part of the Surface Transportation Board to look beyond just that compensation, and protecting employees interest. Would you agree with that?

Ms. MORGAN. Well, again, if an argument is made and a record is developed on that issue that causes us to do something different from what we may have done in the past, we obviously would have to make a decision based on what is in the record.

Senator SPECTER. I am not quite sure what your answer means.

Ms. MORGAN. Well, what my answer means is that each case is different, the facts are different—

Senator SPECTER. Well, I understand that.

Ms. MORGAN. The arguments are different, parties bring to us different arguments from arguments that we have seen previously, and the—

Senator SPECTER. Well, you are saying the facts may present a situation where the New York Dock compensation would not be the totality of employees' rights.

Ms. MORGAN. That may be. I cannot prejudge even that—that it may be—but it is always a possibility, because parties can file whatever argument they feel is appropriate in any given case.

Senator SPECTER. OK. Thank you very much, Chairman Morgan. We very much appreciate you joining us here today.

PANEL 3

NONDEPARTMENTAL WITNESSES

STATEMENT OF HUGH WELSH, PORT AUTHORITY OF NEW YORK/NEW JERSEY

INTRODUCTION OF WITNESSES

Senator SPECTER. I would like to call our final panel now, Mr. Hugh Welsh, Mr. Robert Scardelletti, Mr. Robert Evans, Mr. George Warrington, and Mr. Michael Hawbaker. The full statements will be made a part of the record.

We appreciate your patience, we are running late, but this is an important matter.

We would like to turn first, as the witness list has been presented, to the deputy general counsel, Mr. Hugh Welsh, deputy general counsel, Port Authority of New York and New Jersey.

Welcome, Mr. Welsh, your full statement will be made a part of the record, and to the extent you can summarize within 5 minutes, or even less, we would appreciate it.

Mr. WELSH. Thank you, Senator. Senator, I represent an agency that was created by a compact or treaty between the States of New York and New Jersey, and it is rather unusual, in that regard, but that same treaty created a district in southwestern New York and northeastern New Jersey, and it is recognized as being one economic and commercial community, and it has existed since 1921. It is our mandate to represent the commercial interests of that region.

In addition, I have heard a lot of talk this morning about ports, and we do have a port of some significance built to the north of Philadelphia, that you might be aware of, that we are concerned about.

The port district currently has 15 million residents, and by anybody's standards is a vital economic and commercial center of the United States. We already had a rail consolidation in the Northeast, and particularly in our region, in the port district, and that came about with the creation of Conrail.

It was, in fact, a rail consolidation of the bankrupt railroads, except that consolidation came about immune and exempt from oversight and approval of the ICC, it was immune from the antitrust laws, it was immune from virtually all oversight, except, of course, the approval of Congress, so we have essentially a monopoly railroad in our region that is a creation of the Congress of the United States, and for that reason, if no other, this merger proceeding can be distinguished from any other railroad merger proceeding that has ever taken place before.

We have read reports about a tentative settlement between the two major suitors for Conrail, but none of these accounts have

mentioned anything with regard to the disposition of the rail lines within the port district in the lines serving the Port of New York and New Jersey.

We are, of course, vitally interested in the disposition of that, because at the present time we have a monopoly situation in New York. Unlike some of the other ports and regions that are worried about the loss of competitive rail service, we currently do not have competitive rail service.

The rail lines in the New York district, or the Port of New York district, if you will see by the maps that are attached to the prepared text of my testimony, are highly concentrated in a very urbanized area of our country, and they are in an area of extreme real estate values.

With the disposition of those rail tracks, it will be necessary, in order to achieve competitive rail service to all areas of our port district, it will be necessary to work out some scheme or arrangement so that there will be an equitable distribution or division of those lines, and it will be extremely difficult, given the high concentration of the rail lines in those areas.

We suggest that a neutral terminal railroad that would be operated or established by the two principal railroads that are seeking Conrail, and perhaps others, would probably be a good device in order to provide rail access to our region.

Our studies have indicated that after the turn of the century the rail facilities in our region will not have the capacity to handle the increased demand at that time, and service by a neutral terminal railroad that would be supported by all of the railroad users could allow for the most efficient allocation of the limited resources that would be available, and to provide needed additional capacity and competitive rail access into our region.

We have not yet had any discussions with either the CSX or the Norfolk Southern regarding their plans for the port district, we have not received any details of any planning with regard to the disposition of those tracks, but we assume that they have been busy with what I think what Mr. Snow called the major division that has been taking place, and will be getting down to the allocation or the division of the rail lines within our port district in the future.

We look forward to working with both the CSX and the Norfolk Southern in the planning for the disposition of those rail systems within our region, and hope that it can be done in a manner that will provide efficient rail service, and most importantly, competitive rail service into our area, and we believe it should be done prior to any filing with the Surface Transportation Board, so there is no misunderstanding.

PREPARED STATEMENT

Senator SPECTER. Well, thank you, Mr. Welsh. I think that you raise a very important consideration as to what will happen to the rail lines which service your port area, and we will maintain a continuing monitoring of it to see what is done there.

[The statement follows:]

PREPARED STATEMENT OF HUGH H. WELSH

My name is Hugh H. Welsh and I am the Deputy General Counsel of the Port Authority of New York and New Jersey. I am pleased to be here today to present the views of the Port Authority of New York and New Jersey on the disposition of Conrail. We at the Port Authority have followed with interest the merger options and subsequent discussions relating to the future of Conrail. The Port Authority has been involved in virtually every railroad issue affecting the New York/New Jersey area since the creation of the agency in 1921 and since the creation of Conrail in 1973 has consistently advocated the establishment of rail competition within our region. We find ourselves as one of the few areas of the country without significant rail competition. The lack of meaningful rail competition was not the result of business decisions or competitive forces but rather the result of a final system plan adopted by Congress and a series of circumstances which prevented it being dealt with at that time.

The Port Authority was created in 1921 by a Compact between the States of New York and New Jersey with the consent of Congress. That Compact also created the Port of New York District, a legislatively created district which today has over 15 million residents, retail sales of more than \$100 billion dollars, over \$400 billion in personal income with some 7.2 million salary jobs. By any standard, the Port District is a major commercial and industrial area of this country. Attached you will find a map of the Port District so that you can better appreciate the area included in it.

The Port Authority had its genesis in railroad issues, having been created as a result of the New York Harbor case which was decided by the Interstate Commerce Commission in 1917. The ICC in its decision recognized that the area that would later become the Port District historically, geographically and commercially constituted a single community. It was a recognition that this area was one commercial and economic entity regardless of where the State boundary was.

Our agency was created as a means of resolving some of the railroad rate and other disputes that existed prior to World War I involving the then 12 major railroads that served our port and the region. The Port Authority has vigorously attempted to fulfill its duty to protect the commerce of the Port District during the current era when as a result of the failure of the major railroads serving the area, Conrail was created. Toward that end, we participated in the legislative debate that led to the passage of the Rail Reorganization Act of 1973 (3R Act). This Act created Conrail as a "for-profit" corporation which would acquire and operate any rail properties that might be conveyed to it pursuant to the Final System Plan. The implementation of the Final System Plan was freed from restraints normally applying to railroads and it was granted anti-trust immunity, immunity from the Interstate Commerce Commission, the Bankruptcy Act and the National Environmental Policy Act. While it is clear that the goal of the 3R Act was not to create a virtual rail monopoly in the northeast, unfortunate circumstances resulted in that occurring.

Hence, we find ourselves in a unique situation. We receive meaningful service from only one major railroad and that railroad is a product of legislative fiat. Conrail is a creature of Congress not the private sector and was established as a virtual railroad monopoly in our region. We suggest that this alone distinguishes this railroad, and any merger or disposition of this railroad, from any merger that has come before.

Since the passage of the 3R Act in 1973, other legislation has been enacted by Congress such as the Railroad Revitalization and Regulatory Reform Act of 1976 (4R Act), the Staggers Act and the Northeast Rail Service Act of 1981 (NERSA). All of this legislation has affected to some extent, the regulation of railroads and the ability to compete in the Northeast. Many of the regulatory policies that were set forth in the 4R Act were carried forward and expanded in the Staggers Act, or what is sometimes referred to as the Railroad Deregulation Act. Included in the policy statement of the 4R Act is a declaration that "the policy of Congress in this Act is to foster competition among all carriers by railroad and other modes of transportation services . . ." The Staggers Act was equally dedicated to the precept that competition is the best regulator. We believe in these statements of public policy and urge that they be considered now during the disposition of Conrail.

We find ourselves now on the verge of the next chapter in the history of railroads in the Northeast. There are competing offers to acquire Conrail, the only railroad we have. Both the CSX and Norfolk Southern are well managed companies and fine railroads. We have no doubt regarding the ability of either to manage and operate a new railroad that will include some or all of the Conrail properties. We are concerned, however, that the transactions contemplated will only perpetuate the current condition, the lack of significant rail competition to the Port District. Our con-

cern is not recent. Similar concerns were expressed by the Port Authority in 1985 at legislative hearings regarding the proposed acquisition of Conrail by Norfolk Southern. Also, CSX and Norfolk Southern are not the only railroads that are seeking full access to the Port District. Several others who have operations in New York and New Jersey want to expand their service, which ought to be encouraged.

We've read lately reports of a "settlement" by the two railroads that are seeking to acquire Conrail. Based upon the newspaper accounts and industry statements, the competing suitors have decided to divide Conrail's lines generally along the lines of the former New York Central and Pennsylvania Railroads. It is probably logical and efficient to resolve the dispute in such a rational manner thus avoiding the depletion of the resources of one or both of the railroads and it is generally positive news. What concerns us is not what has been described as the basis of a settlement, but rather what is conspicuously absent from any described solution. No mention has been made publicly of how the valuable tracks and property within the Port District will be disposed of. We have heard nothing of the final disposition of the rail system in the region, the rail monopoly enjoyed by Conrail.

Exhibit B attached is a map showing the rail lines, docks and yards in the Port District. These rail properties are within some of the most urbanized areas of the country and among some of the most valuable real estate. We wonder how these properties can be divided in an equitable manner between the two railroads and yet, provide the efficiency and competitive access needed so badly.

It will be very difficult if not impossible to provide duplicate or parallel facilities in the region. For one railroad to pledge trackage rights to the other to permit the competitor access to valuable customers only promises years of contentious relationships. Yet, we feel that it is absolutely critical to the needs of the people of the Port District, that meaningful competitive rail service be provided.

One solution that could be considered is the development of a neutral terminal railroad in the Port District by the two competitors and perhaps more, to provide access to this region. Such a solution would provide a rationalization of the facilities available and an efficient use of a railroad which, to a certain extent, the public paid for. It would avoid the need for duplicate infrastructure and provide the potential for competitive access. Most importantly, it would provide a condition encouraging the improvement of service and facilities and the development of improved rail facilities in the future. Our studies have indicated that after the turn of the century, the rail facilities in our region will not have the capacity to handle the increased demand. Service by a neutral terminal railroad supported by all of the railroad users would allow for the most efficient allocation of limited resources to providing additional capacity.

This we're sure is not the only possible solution to the problem of lack of rail competition and the need for additional capacity. We look forward to hearing from the various interested parties as to their view on how the problem can be addressed. We pledge to work with them to develop a solution to these problems. But we are of a view that it must be addressed in any planning for the disposition of Conrail, in any proceeding before the Surface Transportation Board or legislative hearings such as the one we are participating in today.

The disposition of Conrail presents a unique opportunity to correct a problem that resulted during the creation of Conrail. If it is not resolved now, in the future nothing short of legislative intervention could correct it. Thank you for the opportunity for the Port Authority of New York and New Jersey to present its views on this important matter.

STATEMENT OF ROBERT SCARDELLETTI, INTERNATIONAL PRESIDENT, THE TRANSPORTATION COMMUNICATIONS UNION

Senator SPECTER. I would like to turn now to Mr. Robert Scardelletti, international president of the Transportation Communication Union, since 1991 and 1995, elected to the post on the AFL-CIO executive council.

Welcome, Mr. Scardelletti, the floor is yours.

Mr. SCARDELLETTI. Thank you, Senator Specter.

Let me begin by saying that there is a great deal we do not know about this transaction, and really, until we learn the details, there is no way that rail labor can make a judgment on the impact it will have on us.

So far, really all we know is what the rails have chosen to tell us, and basically through the press, and basically what we heard

this morning, that is really the extent of what the railroads have told us.

We have heard some comments about jobs being created, and just let me say that in the history of rail mergers, which goes back with the history of the United States, there has never been a rail merger that has created more jobs than it started with. Every single rail merger, including the rail mergers that created the three railroads that just testified, resulted in significant losses of jobs, and that would be expected in whatever scenario that comes out in the end here. Just recently, with the UPSP and Santa Fe, two mergers, they are projecting 6,000 rail jobs will be decreased.

While we try to keep an open mind, we think it is becoming clear who the winners will be, it is going to be Wall Street and the railroad corporate chieftains, who are going to enlarge their empires, and we know who the losers are going to be, it is going to be the same people who have been losing in railroad mergers all along, it will be those people who have sweat and put their money in preserving the rail system in the Northeast, and in this case, with Conrail, it is the public, it is the taxpayer, and most importantly to rail labor, it is the employees.

We sweated through the years when Conrail was a basket case, you are familiar with that, Senator, begging Congress for funds to repair the infrastructure that Penn Central and other Northeast bankrupt railroads intentionally neglected.

We fought to preserve Conrail when some said it could never make it on its own. We convinced Conrail employees that they should take a wage cut, and in some cases, actually lose their jobs, so Conrail could become a successful company. We struggled for over 21 years to have a viable company that would preserve good rail service in the Northeast, and the public, and for Conrail employees, and we succeeded very well, and actually, we succeeded too well.

The railroad we privatized in 1987 with the Government got about \$1.6 billion. Today it is worth seven times more. The Federal Government invested billions into Conrail, but that even was not enough.

It took the investment of Conrail employees, they invested with wage cuts, job cuts, and sweeping changes in their collective bargaining agreements, and just a lot of plain, hard work, and without those employees, Conrail would not be the success it is today.

We have heard a lot about what a good deal this is for rail service in the Northeast. Well, let me say this, Senator, I have 30 years on the railroad, and every rail merger you are going to hear, it is always good for the company, for the rail merger, and for the customers, but basically, they will tell you whatever is necessary to win your support, and then after the merger, they will do whatever they need to do to maximize their buck, so you need guarantees from them.

We see the creation of short lines, and the short-line sales after a merger, where a company who expends too much cash in a merger seeks to get money back by selling lines. BN and Santa Fe are now in the process of selling off 2,300 miles, because they overpaid in that rail merger. Not surprisingly, we now see the short lines

come before Congress and wanting Federal assistance under ISTEA to preserve their deteriorating infrastructure.

So I do not think we want to allow that to happen in the Northeast, where we have already invested billions.

We need enforceable guarantees, with the conditions that exist today. That means the track, the maintenance facilities, locomotives, rolling stock, customer service operations. We do not need pie-in-the-sky predictions, when management describes the transaction, we need enforceable guarantees.

We have already seen in the press about Conrail management receiving \$1.5 billion in severance and bonus packages, with Chairman David Levan receiving an estimated \$22.3 million.

Now, that combined figure is over 10 percent of the purchase price, just to pay management off, even if they do get a job. If they get a job the next day, they still get all this money, and most of these management people getting all this money, they were not there back then when Conrail was struggling to survive, when we made it work, they were not even a part of it.

We have heard job protection. Yes; we have job protection, we know all about job protection under the New York Dock doctrine. You try to collect it. This is a very difficult, complicated protection agreement, a lot of loopholes, and a lot of strings.

A lot of things have to be proven that you are affected by the transaction, and it can be very difficult at times, and sometimes even when you win in arbitration, the STB the last 13 times, overruled the arbitrators and favored the company, the last 10 out of 13 cases that the company appealed to the ICC, to overrule the arbitrators.

There are a lot of difficult obligations that you have to assume under this job protection, and, of course, it is important, but it does not compare it to the extravagant sums of money being provided to these few management employees.

The hard-working men and women who have made Conrail the success it is, through their sacrifices and hard work, cannot be abandoned, so Wall Street, top management, and other railroads can count their millions. We need to look at this transaction with great care, there can be no rush to judgment. Once it is done, it cannot be undone.

I thank you, Senator.

PREPARED STATEMENT

Senator SPECTER. Thank you very much, Mr. Scardelletti. Your complete statement will be made part of the record.

[The statement follows:]

PREPARED STATEMENT OF ROBERT SCARDELLETTI

Mr. Chairman and Members of the Committees my name is Robert Scardelletti and I am International President of the Transportation Communications Union. I appreciate the opportunity to testify today about the sale of Conrail to CSX and Norfolk Southern (NS) and the impact the sale will have on our transportation system, rail service, and employees. I am here today speaking on behalf of the Rail Labor Division of the Transportation Trades Department, AFL-CIO, which represents all the rail unions whose members are affected by this transaction.

Let me begin by saying that there is a great deal that we do not yet know about this transaction. And until we learn the details, there is no way we can judge the impact of this breakup of Conrail on our rail transportation system and its working

men and women. What we know so far is what the parties have chosen to tell us through press releases and newspaper leaks, and I guarantee there is a lot we haven't been told.

We will wait to see the details before we make a final judgment, but there are criteria by which we will judge the transaction, and those are what I would like to talk about today.

Some are describing this breakup of Conrail as inevitable. That is incorrect. Conrail is an immensely profitable corporation, with good markets, a terrific, modern infrastructure, productive employees and a bright future. There was and is nothing inevitable about this transaction except the desire of some to make a quick profit.

While we will keep an open mind as we learn more about the transaction, it is perfectly clear who the winners are. The winners are the Wall Street arbitrageurs, the same ones who denounced CSX and Conrail when the price wasn't as high as they thought they could get. Now they think this is a great transaction, and I am sure they have carefully studied the impact on the transportation infrastructure, the economy, and jobs in Pennsylvania, New York, New Jersey, Ohio and many other states. They are the winners, along with the corporate chieftains who get to enlarge their empire.

And it is clear who the losers will be—those who have put their sweat and money into preserving rail service in the Northeast. It is the public, the federal taxpayer, and the employees who stand to lose the most.

Rail labor sweated through the years when Conrail was a basket case, begging the Congress for funds to repair an infrastructure the Penn Central and its predecessors intentionally neglected, fighting to preserve Conrail when some said it could never make it on its own, convincing Conrail employees that they had to sacrifice part of their wages, and in some cases their jobs, so Conrail would be a successful company. We struggled for a decade and a half to preserve a viable, competitive company that would preserve good rail service in the Northeast. And we succeeded.

Maybe we succeeded too well. Conrail is so successful, because of the efforts of the federal government, the employees, and the management, that now it is worth \$10.5 billion. This is the railroad we privatized in 1987, with the government getting \$1.6 billion. It is now worth nearly seven times what we sold it for in 1987.

Remember what we put into preserving rail service in the Northeast—we invested in keeping Conrail going, over \$3 billion between 1976 and 1982; we invested when we were forced to pay the Penn Central for the assets the federal government took over, some \$3 billion.

And most important of all, we invested with the wages, jobs and hard work of all the Conrail employees. Without those sacrifices by the employees, Conrail would not be the success it is today. It would have been broken up and sold off, and the Northeast economy would have been the loser. Conrail handles the same traffic it did a decade ago with half the number of employees.

Our financial return was \$1.6 billion when Conrail was privatized, a laughable amount compared with what Wall Street will take out of this transaction. But we should keep our eye on what the real return was and continues to be—the preservation of rail service in the Northeast. We have a rail system in the Northeast where once we had a disaster. We have rail service, we have jobs, we have infrastructure. That is why this transaction is about more than money. It's about continuing the commitment to a vital region and part of our economy.

Let me describe briefly the principles that rail labor will use to judge this transaction.

RAIL SERVICE IN THE NORTHEAST

First, we are concerned about the impact on rail service in the Northeast. We have simply invested too much to preserve rail service to see it neglected because someone has taken on so much debt they must make decisions based on financial considerations rather than the needs of the Northeast transportation system.

We have seen a lot of press releases from CSX and NS about how good this deal is for rail service in the Northeast. We are going to insist that the deal live up to the press releases. That means better rail service, not abandonments or selling off segments to cut expenses or raise cash. If Conrail is so valuable, CSX and NS must make a commitment to maintain the entire Conrail system.

We have seen throughout the country the creation of short lines after a merger, as the merged carrier seeks to cut costs or raise cash. The result is less dependable rail service and the loss of good jobs only to be replaced by lower wage, typically non-union jobs. Not surprisingly, we have seen recently where all these wonderful short lines, described as independent entrepreneurs preserving rail service, are now

seeking federal assistance under ISTEA to preserve a deteriorating infrastructure. So goes entrepreneurship.

We cannot allow this to happen in the Northeast where we have invested millions. We need an enforceable guarantee that the infrastructure will be preserved and maintained in the condition it is in today. That means the track, the maintenance facilities, the locomotives, the rolling stock and the customer service operations.

Not the pie in the sky predictions we get when management describes the transaction, but enforceable guarantees. If this transaction is so good, let's get some guarantees.

We read in the press releases that this breakup will increase competition. After watching rail mergers for two decades, we have observed that people don't pay a premium for the ability to compete fiercely.

Competition should mean what it says: railroads competing with each other on price and service. And again we must get enforceable guarantees.

IMPACT ON EMPLOYEES

Second, we are concerned about the effect on the employees, and I mean the employees of Conrail, CSX and NS.

We have seen the news reports about the \$1.15 billion going to the management employees of Conrail. That's \$1.15 billion for a couple of thousand employees, with hundreds of management employees getting bonuses worth over a million dollars. Over 10 percent of the purchase price has been carved out to pay off management employees even if they start a new job the next day. No such luck for rank-and-file workers.

We will not sit back and let the union employees get less than the management employees. I have already seen the stories that the union employees will be okay because they will get six years of their salary. At best, if they have enough years on the railroad, they get a one-year severance payment if they flat out lose their job because of the merger.

But try to collect. First, the employee must prove that he or she lost a job because of the transaction. And proving it is not easy. In the unusual event that the Surface Transportation Board determines that a job is lost because of the transaction, the worker is entitled to protection. But he or she also must be prepared to show up for work whenever called, or everything is lost. If another job is secured, any income is deducted from his or her protection. And any of the workers can be ordered to move or lose all protections.

While this protection is something, it is nothing like the astounding amounts being provided to these few management employees, and it doesn't compare with a job. The hardworking men and women who have made Conrail a success through sacrifices—in salary, in jobs, and in hard work—must not be abandoned, while the Wall Street arbitrageurs, top management, and other railroads count their millions.

IMPACT ON CSX AND NORFOLK SOUTHERN

No one should believe that the potential fallout from this merger will affect only Conrail or the Northeast. The financial impact on CSX is enormous. I guarantee you that the employees of CSX subsidiaries are praying they get the buyout package offered to Conrail management as CSX puts them on the block to raise cash.

While they have my sympathy, our concern is the rail industry. CSX cannot be allowed to do to itself what we should prohibit them from doing to Conrail—cutting back on capital investment, selling essential rail assets, or cutting employees—in the desperate attempt to find the cash to pay off their share of the \$10.5 billion.

Once again, we do not want promises. We want enforceable guarantees about the level of service, competition, employment, and investment.

The same analysis applies to NS. While NS has a great deal more cash than CSX, we need the same guarantees that capital investment, rail service and jobs are maintained.

CONCLUSION

I want to commend this Committee for holding this hearing. It is the Congress which created Conrail, funded it, made it the success it is today. I do not believe that any of us who participated in that effort should stand by and watch our efforts destroyed because a few Wall Street speculators stand to make billions.

This transaction should be judged on its merits—its effects on the transportation system, the economy of the regions, and jobs. The breakup of Conrail is not inevitable. If this transaction does not meet the test of improving rail service, helping the economy and preserving jobs, then it should be rejected.

We all need to look at this transaction with great care. There can be no rush to judgment. Once done, it will not be undone.

Rail employees stand ready to work with all participants to make sure that these goals are achieved.

STATEMENT OF ROBERT L. EVANS, CHAIRMAN, RAILROAD TRANSPORTATION COMMITTEE, NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE

Senator SPECTER. Turning now to Mr. Robert Evans, chairman of Railroad Transportation Committee, of the National Industrial Transportation League.

Welcome, Mr. Evans, the floor is yours.

Mr. EVANS. Thank you, Senator.

My name is Bob Evans, and I am corporate manager of rail transportation for Occidental Chemical, but I appear today as Chairman of the National Industrial Transportation League's Railroad Transportation Committee.

The league is the oldest and largest shipper's organization. The league represents shippers of all sizes and types. Our members use all modes of transportation and domestic and international commerce.

Over the past few years there has been much debate about the national rail transportation policy and rail mergers. In 1994, the Burlington Northern and Santa Fe Railroads merged. In 1995, Congress eliminated the Interstate Commerce Commission and established a Surface Transportation Board to administer rail policy. In 1996, the Union Pacific and Southern Pacific Railroads merged.

Today we await the formal filing of a proposal to divide Conrail between CSX and Norfolk Southern Railroads. When the dust settles, the United States will be served by two mega railroads in the West and two mega railroads in the East. It is important, therefore, that this merger be viewed from a national perspective.

In the debate before Congress over sunseting the ICC, shippers argued that rail mergers should be judged by mergers of any other company, solely by antitrust laws. Congress chose a different approach, the Surface Transportation Board is instructed by statute to take the antitrust laws into account, but it is not restricted to those laws.

Instead, the STB can find a rail merger to be completely anti-competitive, yet still approve it, because it produces rail efficiencies, and the Department of Justice cannot challenge a merger as anticompetitive in court.

Taken to the extreme, the STB could allow one railroad in the United States, because it would produce efficiencies. Obviously, rail shippers would have no benefit of competition in that case. Competition in the railroad industry is already a difficult issue for customers of railroads.

Today most shippers are served by only one railroad at origin, destination, or both. It is vital, therefore, that shippers have reasonable access to another railroad. Access means more than having a competing railroad nearby.

Shippers must actually be able to utilize a railroad to carry freight. In other words, shippers desire increased rail-to-rail competition, so that the market will function properly. It is from head-

to-head competition that companies find ways to capture and retain customers through price, innovation, and service improvements.

An example from my own company may help to illustrate. Occidental Chemical ships 10,000 carloads a year from a plant in Niagara Falls, NY. In practicality, the plant is served by one carrier, Conrail. Just about 25 miles away, Buffalo is served by competing rail carriers. That does not help us, because Conrail insists on the longer haul.

Niagara Falls needs both of the mega railroads of the East. The Niagara Falls area of New York could use an economic shot in the arm, and competitive rail service would be of substantial help to the industries located there.

The Conrail merger offers a unique opportunity. In previous mergers, railroads have been held to a relatively low standard. In essence, the ICC and STB have forced the railroads to provide additional competition in places where the number of rail competitors would be reduced from two to one, because of a merger.

Usually, the additional competition has been provided through trackage rights. In this case, CSX and Norfolk Southern have promised a plan to expand and enhance rail-to-rail competition, even to the areas where today no competition exists.

According to the company statement, much of the expanded competition will be developed through line sales. Two competing railroads which own their own tracks are preferable to one railroad merely renting track space.

The league's rail transportation committee will meet in April to formulate our policy with regard to the Conrail merger. The league will work to ensure that the agreement between CSX and Norfolk Southern truly results in expanded and enhanced rail-to-rail competition for shippers in the affected areas.

While some observers might view this merger negatively on its impact on Conrail, I suggest it is viewed in a broader context. A more competitive rail system would strengthen the area's economy by making it a more desirable business location, by making local businesses more competitive, both domestically and internationally, and by enhancing the viability of local ports.

One of America's greatest strengths is its transportation system. It is this transportation system that allows us to remain competitive, even though our cost productions are higher.

To remain competitive, however, we need to have a fiercely competitive transportation system, one that is both intermodally and intramodally competitive. The public statements about the proposed Conrail merger are positive developments, in the effort to have a more competitive transportation system.

The league is anxious to await the details, and I would like to thank you for this opportunity.

PREPARED STATEMENT

Senator SPECTER. Thank you, Mr. Evans. We have your complete statement and it will be made part of the record.

[The statement follows:]

PREPARED STATEMENT OF ROBERT L. EVANS

My name is Robert L. Evans. I am Corporate Manager, Rail Transportation, for Occidental Chemical Corporation. I appear today as Chairman of The National Industrial Transportation League's Railroad Transportation Committee. The League is the nation's oldest and largest shippers' organization. The League represents shippers of all sizes and types. Our members use all modes of transportation in domestic and international commerce.

Over the past few years there has been much debate about the national rail transportation policy and rail mergers. In 1994, the Burlington Northern and Santa Fe railroads merged. In 1995, the Congress eliminated the Interstate Commerce Commission and established the Surface Transportation Board to administer rail policy. In 1996, the Union Pacific and Southern Pacific railroads merged. Today, we await the formal filing of a proposal to divide Conrail between the CSX and Norfolk Southern railroads. When the dust settles, the United States will be served by two mega-railroads in the West and two mega-railroads in the East. It is important, therefore, that this merger be viewed from a national perspective.

In the debate before Congress over sunseting the ICC, shippers argued that rail mergers should be judged like mergers of any other company—solely by antitrust laws. Congress chose a different approach. The Surface Transportation Board is instructed by statute to take the antitrust laws into account, but it is not restricted to those laws. Instead, the STB can find a rail merger to be completely anticompetitive, yet still approve it because it produces rail efficiencies and the Department of Justice cannot challenge the merger as anticompetitive in court. Taken to the extreme, the STB could allow only one railroad in the U.S. because it would produce efficiency. Obviously, rail shippers would have no benefits of competition in that case.

Competition in the railroad industry is already a difficult issue for customers of railroads. Today, most shippers are served by only one railroad at origin, destination, or both. It is vital, therefore, that shippers have reasonable access to another railroad. Access means more than just having a competing railroad nearby. Shippers must actually be able to utilize the railroad to carry freight. In other words, shippers desire increased rail-to-rail competition so that the market will function properly. It is from head-to-head competition that companies find ways to capture and retain customers through price, innovation, and service improvements.

An example from my own company may help to illustrate this. OxyChem ships 10,000 carloads/year from a plant in Niagara Falls, NY. In practicality, the plant is served by one carrier—Conrail. Just about 25 miles away, Buffalo is served by competitive carriers. That doesn't help us because Conrail insists on a longer haul. Niagara Falls like other shipping locations needs both of the mega-railroads in the East. The Niagara Falls area of New York could use an economic shot-in-the-arm and competitive rail service would be of substantial help to the industries located there.

The Conrail merger offers a unique opportunity. In previous mergers, railroads have been held to a relatively low standard. In essence, the ICC and STB have forced the railroads to provide additional competition in places where the number of rail competitors would be reduced from 2 to 1 because of a merger. Usually, the additional competition has been provided through trackage rights. In this case, CSX and Norfolk Southern have promised a plan to expand and enhance rail-to-rail competition, even to areas where today no competition exists. And, according to the companies' statements, much of the expanded competition will be developed through line sales. Two competing railroads which own their own tracks are preferable to one railroad merely renting track space.

The League's Railroad Transportation Committee will meet April 10 and 11 to formulate our policy with regard to the Conrail merger. The League will work to ensure that the agreement between CSX and NS truly results in expanded and enhanced rail-to-rail competition for shippers in the affected area. While some observers might view this merger negatively for its impact on Conrail, I suggest that it be viewed in a broader context. A more competitive rail system could strengthen the area's economy by making it a more desirable business location, by making local businesses more competitive both domestically and internationally, and by enhancing the viability of local ports.

One of America's greatest strengths is its transportation system. It is this transportation system that allows us to remain competitive even though our costs of production are high. To remain competitive, however, we need a fiercely competitive transportation system. One that is both intermodally and intramodally competitive. The public statements about the proposed Conrail merger are positive developments

in the effort to have a more competitive transportation system. The League is anxious to see the details.

Thank you for this opportunity.

NATIONAL RAILROAD PASSENGER CORPORATION
(AMTRAK)

**STATEMENT OF GEORGE D. WARRINGTON, PRESIDENT, NORTHEAST
CORRIDOR**

INTRODUCTION OF WITNESS

Senator SPECTER. Next is Mr. George D. Warrington, President, Northeast corridor, National Railroad Passenger Corporation (Amtrak).

Welcome, Mr. Warrington, the floor is yours.

Mr. WARRINGTON. Thank you, Senator Specter, for the opportunity to testify here today.

Tom Downs, President of Amtrak, is unfortunately unavoidably absent today. Your counterpart on the House side, the Transportation Appropriations Subcommittee, is having a hearing on DOT appropriations today.

As you know, Amtrak stands in a dual capacity as railroad passenger service provider. Across most of the country, Amtrak operates on track that is owned, dispatched, and maintained by freight railroads.

In the Northeast corridor, the situation is reversed, Amtrak owns, dispatches, and maintains the tracks. As a corporation we have been watching the merger events very closely.

As president of the Northeast corridor, I have been particularly interested in the effects the merger will have on the operations on the Northeast corridor, which is the Nation's busiest corridor, carrying not only daily freight trains and Amtrak trains, but over 220 million commuter passengers each year, on eight commuter services between Massachusetts and Virginia.

We have been watching these events over the last several months with an eye focused on three areas in particular, improving the ontime performance of Amtrak and commuter trains over freight railroads, ensuring that no additional burden of excess railroad retirement costs is imposed on Amtrak and commuter rail operations, and evaluating the opportunities for Amtrak revenue through selective, compatible, incremental freight services on the Northeast corridor.

Let me address each of these points individually, very briefly. With respect to ontime performance in the recent past, the Northeast corridor of Amtrak and commuter operations on the Northeast corridor have consistently averaged low to mid 90 percent ontime performance [OTP].

We continue to strive for even better performance, and we will be increasing our OTP goals continually as we make very selective capital investments in the corridor to increase reliability and flexibility in our own operations.

By contrast I will tell you that the off-corridor performance is far less impressive. Where the freight railroads own, dispatch, and control the tracks, many of them do not do a satisfactory job of bringing our trains in on time, despite Amtrak's statutory right to priority, and financial incentives that generously reward ontime performance.

The last page of my written testimony, Mr. Chairman, contains a chart that details the OTP of the three railroads you have heard from today, and as you can see, the 3-year average of those railroads is less than 75 percent. Even the best of the group, the Norfolk Southern, hovers at about 80 percent.

Market research and experience clearly tells us that ontime performance is the single most significant driver of customer satisfaction for us.

Nationally, poor ontime performance costs Amtrak more than \$68 million a year in both lost revenues and excessive costs. Commuter authorities share this concern with ontime performance on freight railroad lines, which we heard about earlier today.

Our hope and our expectation is that the performance of freight railroads in delivering Amtrak trains on time will improve as a result of the merger proceedings. At a minimum, the traveling public, Amtrak, and commuter customers need to be assured that ontime performance will not degrade further. What we really need, however, is improvements.

In the UPSP merger, the ICC approved the proposal, but clearly retained jurisdiction over the issue of ontime performance. With respect to Amtrak services, it allowed the Commission to revisit the merger if ontime performance did not meet Amtrak's stated goals. This is a good approach.

With respect to excess railroad retirement, as you know, the railroad retirement system assesses costs based on the size of the railroad's current work force, not based on actual retirees from that railroad. Specifically, Amtrak will pay \$198 million to the Railroad Retirement Board in fiscal year 1997.

Of this amount, only \$56 million, that is \$56 million of \$198 million, is attributable to benefits for employees who worked for Amtrak. The remaining \$142 million will fund the pensions of workers who never, ever worked for Amtrak, not even a single day.

This situation—pension responsibility for employees who never worked for the company—is shared by commuter authorities across the country.

The trend is, in fact, worsening. In recent years, passenger rail operations in America have been growing significantly, while freight railroads have been consolidating and shrinking their work force.

These factors: growth and passenger rail service and employment reductions in freight rail employment, and a RRTA formula that is calculated based upon current work force, has imposed enormous financial burdens on publicly funded passenger rail services in this country, including Amtrak.

Any further job losses resulting from this merger would have a continuing cumulative effect. The STB and Congress need to ensure that downsizing, as a result of this merger, is not balanced on the back of publicly funded passenger rail customers and tax-

payers. If not, both Amtrak and the commuter railroads will be back in front of this very subcommittee, seeking relief from federally imposed excess mandatory RRTA.

With respect to freight service on the Northeast corridor over the past 10 years, and, frankly, thanks in large part to Senator Lautenberg's leadership with respect to rail safety, including a sponsorship of amendments to the Rail Safety Act of 1988, we have implemented many critical railroad operating safety measures across the Amtrak system, and on the Northeast corridor in particular.

These include speed control for Amtrak, commuter, and freight trains on the NEC, random drug and alcohol testing for hours-of-service employees, improvements to engineer certification and recertification processes, and improved audit and enforcement procedures, for both the Federal Railroad Administration and the operators.

Thanks to these efforts, one of the possible potential opportunities flowing from this merger is the ability to safely support limited, selective, and compatible competitive freight access to ports along the Northeast corridor. The Northeast corridor could play a role in helping facilitate access to ports along the eastern seaboard, spur economic competitiveness and development in the region, and generate new commercial revenue for Amtrak in the context of declining Federal operating support for Amtrak.

Senator SPECTER. Could you summarize the balance of your statement, please?

Mr. WARRINGTON. Yes; as a practical matter, Senator, we believe that Amtrak's interests clearly have to be protected when considering this merger proposal, and those interests are principally around ontime performance, and not having to bear the excess railroad retirement burden associated with cost shifting from the freight railroads to Amtrak.

PREPARED STATEMENT

Senator SPECTER. Thank you very much, Mr. Warrington. We will insert your complete statement in the record.

[The statement follows:]

PREPARED STATEMENT OF GEORGE D. WARRINGTON

Mr. Chair: Thank you for this opportunity to appear before the Subcommittee to bring to your attention potential implications of the Consolidated Rail Corporation (Conrail) merger on the National Passenger Railroad Corporation, otherwise known as Amtrak.

Tom Downs, President of Amtrak, is unavoidably absent due to a previously scheduled appearance. He is currently testifying in front of the House Transportation Appropriations Subcommittee, otherwise he would be here himself. Today's hearing, I expect, is likely to focus on the effects on the Northeast of the most recent Conrail merger proposal, which is the primary reason I was selected to represent Amtrak here today. As president of Amtrak's Northeast Corridor business unit, I oversee our railroad's operations from Maine to Virginia, across New York State and through most of Pennsylvania.

As this Subcommittee knows, Amtrak owns most of the Northeast Corridor, stretching north from Washington, DC, to the northern border of Rhode Island, except for some stretches in Connecticut, then north from New Haven, Connecticut to Springfield, Massachusetts, and west from Philadelphia to Harrisburg, Pennsylvania. Amtrak controls and dispatches all freight movement on these lines.

Amtrak has been watching the events surrounding the proposed merger closely. The health and future of the freight railroad industry is critically important to Amtrak's passenger operations.

There are many potential implications of the proposed merger on Amtrak, both on and off the Corridor. The ones we have identified and which we believe deserve attention are:

I. The effect of the merger on "on-time performance" of Amtrak and commuter trains;

II. The effect on Amtrak's excess mandatory Railroad Retirement payments;

III. The effect on "flowback" rights between Conrail and Amtrak; and

IV. The effect of additional freight traffic on the Northeast Corridor.

All of the technology improvements we have done on the Northeast Corridor were done with the goal of enhancing safety and improving performance. We believe the merger could provide the opportunity for significant economic development opportunities for states and communities in the Northeast, while still preserving what is paramount: the highest level of safety and on-time performance for commuter and Amtrak trains. The most recent CSX/Norfolk Southern proposal to divide Conrail provides for multiple access to ports in the Northeast. If the four issues mentioned above are adequately addressed as part of the merger process, Amtrak believes the current proposal affords an opportunity to enhance competition and generate economic development in the Northeast, and can be accomplished while preserving the paramount concern of safety and on-time performance on the Corridor. It would also enhance the environment for a more successful intercity passenger service.

I. ON TIME PERFORMANCE

Amtrak's business and the freight business are intimately intertwined, on and off the Corridor. We have contractual relationships across the country to operate on railroad tracks that are owned, maintained and dispatched by the freight railroads, and the opposite is true on the Corridor, where we own, maintain and dispatch. Freight train interference negatively affects our on-time performance, which in turn lowers customer satisfaction. This translates into lost revenue for Amtrak.

For example, Conrail's Harrisburg-to-Pittsburgh line, which we use, has been a particularly poor performer: the two Amtrak trains that operate over this line were on time only twenty-one percent of the time in fiscal year 1996. However, the more recent proposal between CSX and NS gives us some cause for optimism, since we understand Norfolk Southern will acquire the Harrisburg-to-Pittsburgh line, and Norfolk Southern has one of the best on-time performance levels of the major railroads: Norfolk Southern achieved an eighty-one percent on-time performance for the Amtrak service it hosts in fiscal year 1996, and eighty-five percent on-time record in fiscal year 1995.

By law, Amtrak trains are supposed to receive priority over freight trains. In its contracts, Amtrak offers the host freight railroad a financial incentive for delivering our trains on time. Every year freight railroads earn between \$20 and \$25 million in on-time performance incentives but they leave another estimated \$40 million dollars in incentive payments behind due to late trains, while Amtrak estimates a loss of \$68 million per year, due directly to poor on-time performance. Dependable performance is the major driver of all of our customer satisfaction indicators, so this is a very serious concern, which can either be aggravated or improved as a result of the merger. The historical performance of the three affected railroads in delivering Amtrak's passenger trains is depicted on the attached chart. It is Amtrak's hope that the CSX performance levels improve substantially until it mirrors or surpasses Norfolk Southern's. We consider this an issue critical to our customers, critical to our bottom line, and thus critical to our survival. Therefore, Amtrak will carefully evaluate the merger from an on-time point of view and urge the Surface Transportation Board (STB) to do likewise.

II. EXCESS MANDATORY RAILROAD RETIREMENT PAYMENTS IMPACT

Perhaps the biggest single cost item that is unrelated to the operation of Amtrak trains is the mandatory payment requirement for excess Railroad Retirement Tier II (RRTA) taxes made by Amtrak to the Railroad Retirement Board. First, this should not be part of Amtrak's operating budget. It has nothing to do with the operation of passenger trains, nor does it in any way contribute to the cost of our operations. It supports railroad retirees who never worked for Amtrak. It goes directly to the Railroad Retirement Board, and is a cost the federal government will incur with or without Amtrak. It artificially inflates the size of Amtrak's operating budget, since it is appropriated as part of our operating grant. There should be a clear delineation of excess Railroad Retirement from the normal retirement contributions which are legitimately a part of the Amtrak budget.

Amtrak pays almost \$200 million per year into the Railroad Retirement Account. These payments are based on the current work force levels. If Amtrak were required

to pay for those employees that retired from Amtrak, only, its costs will be significantly lower than the \$200 million it now pays. This year Amtrak will pay \$142 million in excess payments, for retired railroad employees that have never worked for Amtrak. After a merger, these excess payments will increase for all those railroads that have had a relatively stable employment level, many of which are taxpayer supported commuter railroads and Amtrak. The last two major railroad mergers resulted in 6,000 fewer railroad employees. While this merger will undoubtedly result in fewer railroad employees, it alone would not have a significant impact on the remaining railroads. The concern is over the cumulative effect the number of recent mergers have had on the remaining railroads, especially those that depend on taxpayer support. While the overall impact of the pending merger may have positive economic results for the involved railroads, shippers and the citizens in the region, the increase of excess Railroad Retirement costs should not be at the expense of the taxpayers that support commuter and intercity rail service.

Second, it is a system where the amount of tax railroads pay is based on how much is needed to support the number of retirees, financed by a tax on industry payroll: 16.1 percent is contributed by Amtrak, 4.9 percent is the employee portion, up to a maximum salary of \$46,500. As the work force shrinks and the retiree rolls grow, a larger and larger cost is borne by those remaining railroad companies. To put it in terms, every Member of this Subcommittee could relate to, those railroads that have relatively constant levels of employment, such as Amtrak, could be considered "donors," while those freights that have greatly decreased their size over the last thirty years can be considered "donees." Those railroads that are "younger," who have a higher number of employees than they do retirees, such as the commuter agencies and Amtrak, are even more disproportionately "donors." Amtrak is by far the largest donor to the system.

The number of railroad employees paying railroad retirement taxes has declined from approximately 625,000 in 1971, the year Amtrak was formed, to about 265,000 today. Much of this decrease in employment is reflected in the size of Amtrak's excess mandatory payments, and the dollar amounts are significant. In fiscal year 1995 the cost to Amtrak was \$145 million, and the Congress provided only \$120 million, which meant the rest came from Amtrak's operating budget. In fiscal year 1996 it was \$141, and it is expected to be \$145 this year. These dollar amounts will increase as a result of this proposed merger.

According to the Surface Transportation Board, the recent mergers of the Union Pacific and Southern Pacific Railroads, and the Burlington Northern and Santa Fe Railroads, will result in the elimination of more than 6,000 railroad jobs. Since it is a per-capita for railroads and their active employees, these 6,000 less contributors to the rail retirement system means that those still paying in will have to pick up an even larger burden. In the most parochial terms, it means this Subcommittee will have to fund a larger mandatory excess RRTA amount for Amtrak. We may have a mutual goal here—to take this cost off of Amtrak's books, since it has absolutely nothing to do with the operation of intercity passenger rail service, artificially inflates the size of our budget, and will only increase as a result of mergers over which we have absolutely no control. Amtrak and the commuter railroad should be held harmless as a result of this or any other merger with respect to increased Railroad Retirement costs.

III. "FLOWBACK" RIGHTS FOR CONRAIL AND AMTRAK EMPLOYEES

There are statutorily mandated employee "flowback" provisions, between Amtrak, Conrail and the commuter authorities on the Northeast Corridor. Any change in employment levels on Conrail lines could impact upon Amtrak employment for employees engaged in train and engine service. At this time we are unable to estimate what threat this impact would be.

IV. THE EFFECT OF ADDITIONAL FREIGHT TRAFFIC ON THE NORTHEAST CORRIDOR

As the proposed merger goes forward, one of the outcomes Amtrak hopes for is the evolution of a more business-like relationship with the new operator of freight on the corridor, and not a relationship dictated by federal statute. For example, we would like to replace the current flat track use charge with varying rates, which would recognize and reflect the peak traffic hours of commuter and passenger trains, and encourage freight trains to operate at night. One of the reasons we want to implement varying price structures is to encourage freight traffic at night to the greatest extent possible, and to encourage freight traffic that is compatible with passenger rail.

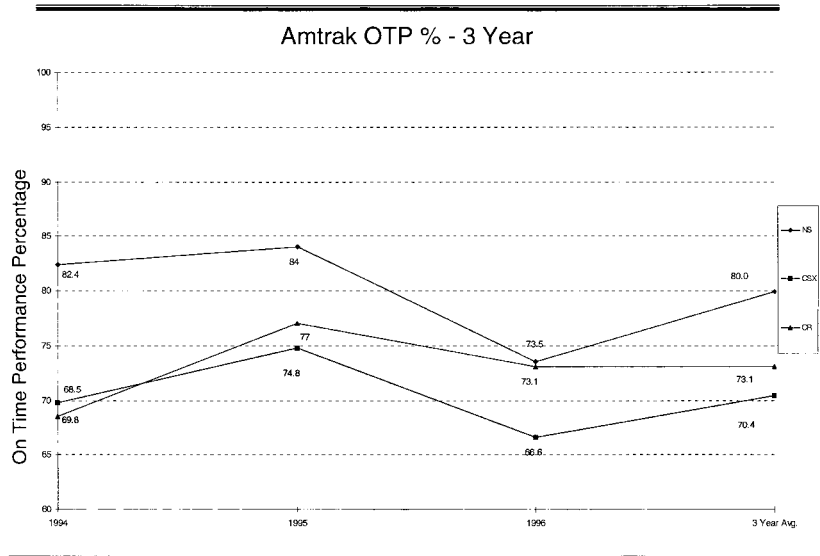
With respect to the commingling of freight and passenger rail on the Corridor technological advances made in the last twenty years have made tracks, signals,

and infrastructure safer, while accommodating increases in passenger train frequencies. Over the past twenty years there has been a significant reduction in freight volume on the corridor from 165 million car miles in 1977 to 19 million car miles in 1995, a decrease of nearly 90 percent.

Amtrak also wants the right, which it does not currently have, to grant other railroads the right to operate over the Corridor where such operations are compatible with existing Amtrak and commuter uses. This would be beneficial to both Amtrak and other railroads in that it could provide other railroads with efficient routes to reach locations such as Philadelphia, and encourage greater economic competition as well as generate additional revenues from portions of the Corridor which are underutilized, such as the line between Philadelphia and Harrisburg, PA.

In conclusion, these are the most significant anticipated impacts of the proposed merger on Amtrak that we are currently aware of. I will hasten to add that at this point in time we do not know enough about the Norfolk Southern/CSX plan to clearly assess additional impacts, but that, of course does not mean there will not be any. We believe that if on-time performance and the other concerns we have expressed are considered and adequately addressed as part of the merger process, the current merger proposal could afford an opportunity to enhance competition and generate economic development in the Northeast, and can be accomplished while preserving the paramount concern of safety on the Corridor.

On behalf of Amtrak, I appreciate the Committee allowing me to appear here today, and it is my hope that we will be able to sustain a dialogue with the Congress on these and related issues as the proposed merger moves forward.



NONDEPARTMENTAL WITNESS

STATEMENT OF MICHAEL HAWBAKER, GLEN O. HAWBAKER, INC., STATE COLLEGE, PA

INTRODUCTION OF WITNESS

Senator SPECTER. I would like now to turn finally to Mr. Michael Hawbaker, of the Glen O. Hawbaker Corp., State College, PA.

Welcome, Mr. Hawbaker, and the floor is yours.

Mr. HAWBAKER. Thank you, Senator, I appreciate being able to speak today.

Again, my name is Michael Hawbaker, and I am representing our company, Glen O. Hawbaker, Inc., out of State College, PA. A little bit about our company, we are a heavy highway construction company that also has a material supply of crushed limestone aggregates and hot-mix asphalt.

We are a third-generation company, which I am, we employ about 500 people, and our major trade area is in central and north-central Pennsylvania.

Currently, we have one operation located in the Port Allegheny area, which would be off the Harrisburg to Buffalo line, off of Conrail, currently. Last year we received around 1,400 carloads of crushed limestone aggregate at that point, at which we have a distribution yard and a hot-mix asphalt plant at that location.

It is the only source in that area and the Port Allegheny and north-central area of Pennsylvania that has that type of quality aggregate limestone, bringing a new quality to the area.

We look to continue growing our operation with continued access to rail and rail service, but we have been prevented from doing that. We have an operation in Dubois, PA, and it sits right adjacent to the Buffalo and Pittsburgh line, but we cannot get there from our central location, our point of distribution in State College.

Our problem is, we get into a situation of what we call the three-line haul. To get out of our plant at State College, we leave a shortline, and then transfer to a class I.

We are able to keep it to a two-line haul, to our existing operation in Port Allegheny, but other operations that we have, and operations that we have made plans for, cannot be economically done, with the fact of having a three-line haul.

With this merger of Conrail, NS, and CSX, we would like to see that there would be access granted to the shortlines and/or trackage rates granted to those shortlines, so that material could be transported across the class I carrier, some kind of working relationship developed with the shortline to foster passage of more material on those lines.

Our current operation, I mentioned before, in Dubois, currently uses an excess of 200,000 tons of material per year. We have another operation we would like to put on line with the rail system,

which would account for another 100,000 tons, but at this time we are precluded from doing that, by the fact that we are in a three-line haul situation, and the shortlines are unable to work with Conrail, and in gaining access across those lines, or a grant of trackage rights to move the materials economically.

Again, as we grow as a company throughout central/north-central Pennsylvania, one of our biggest things we watch for is rail, and where can we rail material to construction sites and permanent facilities through the central portion of the State, and we are very concerned about the merger, and how that may, as we look at it, hopefully, possibly affect access and trackage rights for the shortlines that we work with.

I thank you for the opportunity of speaking today. Thank you.

Senator SPECTER. Well, thank you very much, Mr. Hawbaker, we appreciate your being here.

Are you familiar with the arrangements which have been worked out with Pennsylvania Power & Light, which would accommodate the carriage of coal from Clearfield, your area of north-central Pennsylvania?

Mr. HAWBAKER. No; I am not.

Senator SPECTER. Well, it may be that what Norfolk Southern has done, and had started on quite some time ago, in an effort to buttress their public position to deal with the proposed merger of Conrail and CSX, perhaps those lines will be of service to you, because they go very close to your area.

It would be my expectation that they would, so I would urge you to take a look at that, and if you have further problems, let us know.

Mr. HAWBAKER. Thank you.

Senator SPECTER. I would like to make a part of the record, I think some of this has been already done, but I want to make sure it is a part of the record, my letters to Chairman Morgan, dated January 21 and March 7, and her responses of January 23 and March 13, and my letter to Mr. Levan, of March 3, to Mr. Snow, March 6, and to Mr. Levan, Mr. Snow, and Mr. Goode, of March 14, and the response by Mr. Levan, March 18, and Mr. Snow and Mr. Goode on March 19.

Senator Lautenberg has rejoined us, it is now 1:05, and I am going to have to excuse myself.

And I will leave you the gavel, Senator.

Senator LAUTENBERG [presiding]. Oh, you are very kind. I hope it was not something I said.

Senator SPECTER. No; because you have not said anything. [Laughter.]

Senator LAUTENBERG. Thanks very much, Mr. Chairman, I appreciate it.

I will not keep you too long. There are a couple of things that I wanted to have a little discussion on. Obviously, when the port authority reviews what it wants to see out of the merger, out of the service that is supplied to the area, to our ports, I am very concerned and very interested.

So, Mr. Welsh, you heard perhaps before, when Mr. Goode and Mr. Snow were here, my question about how they provide the service to the area with the two lines, and how does one work that out?

I mean you cannot have them both running over the same trackage, and be able to exchange the service very easily.

I asked them about a neutral terminal railroad. Is this the solution that you think is best for the problem?

Mr. WELSH. It is one of the solutions that we have identified that should certainly be considered and studied very carefully.

The problem that we have in the New Jersey and the New York area is a problem that probably is shared in other urban areas that are served by only one railroad, and it comes about, because of the fact that for the past 20 years, our area has been served by only Conrail, and there has been a rationalization of the rail lines there, and a concentration, so it is very difficult to just take that concentrated rail line now, and split it up, or develop parallel lines, it is just too expensive to do it.

So we felt the use of the current system, by a neutral terminal railroad, promised to be the most efficient use of those assets, providing it is neutral, and provides complete competitive access to all of the people who are participating in that terminal railroad.

Senator LAUTENBERG. There is nothing that comes to mind that otherwise might serve to provide the kinds of service that we are——

Mr. WELSH. Well, there is reciprocal switching, which has certain inherent problems and open access, but both of them assume complete cooperation by competing railroads. A neutral terminal railroad assumes that you have to set up a neutral third party to control the access.

Senator LAUTENBERG. Thank you. You also, in your comments, talk about the fact that the capacity of problems in the next century will not be able to take care of the demand that we might experience.

Were these studies done, assuming that traffic increases might result from competitive rail service in the port, is that a factor that you took into consideration, as you projected what the requirements might be, the traffic load might be?

Mr. WELSH. No; it is a natural growth of the rail service in our area. We are assuming that there will be an increased demand for rail service into the New York/New Jersey area, independent of competitive factors, and that is going to overburden the current system, and we believe there is a need to increase the capacity in the future, which is one of the critical issues that we are looking at in any merger, in any acquisition.

Senator LAUTENBERG. I would ask you this, that the port authority, I assume, has been an integral part of the discussion that is taking place, in terms of examining how the port is serviced, et cetera, is that the case?

Mr. WELSH. That is true, Senator. We have been working with both New York and New Jersey in formulating common policies where we can, with regard to the competitive rail access, or generally, the rail issues.

We are, of course, concerned with our own facilities at the port, but also with the regional concerns, but in addition, we are sharing information with other ports in the North Atlantic range.

Even though we are competitors, we find that we can share ideas, and we do have some common interest, even though we will be maintaining a competitive position with them.

Senator LAUTENBERG. So do you see a significant addition to the port's capacity to provide service with the lines going in there that we are contemplating here?

Mr. WELSH. Well, it depends on how they come in. If the lines attempt to come in and develop some sort of a parallel system, they will be breaking up the network that is in there at the present time, and it would be very difficult to create new capacity under those circumstances, because of limited areas, because of limited acreage in the area.

We feel, however, a neutral terminal railroad would give us a concentration and a more efficient use of facilities, and permit for an increased capacity in the future. It just seems to be a more efficient use of limited assets.

Senator LAUTENBERG. Mr. Scardelletti, hello to you. In your opening statement, you remark that Conrail's executives are being given fairly generous severance packages. I just looked at the headlines, it should happen to me, while the rank-and-file workers are being ignored.

There are statutory protections for railroad workers that lose their jobs as a result of rail mergers, consolidation, acquisition, but your statement implies that these employees are not entitled to these protections. You say that they must qualify for them, or prove their eligibility.

What specifically do you find to be inadequate with the way the Federal labor protection provision works in a case like this?

Mr. SCARDELLETTI. Well, it is New York Dock protection, you have to prove that you are affected by the transaction, by the merger itself. In some cases, you can do that; in other cases, it is very difficult, in many cases, it is very difficult.

All the railroads, this is something we are familiar with on a national scale, fight us tooth and nail on applying New York Dock benefits to their employees, and many times we end up in arbitration on the issue.

I remarked that in the last 13—in the arbitration procedures, the railroad, when we win, the railroad can appeal it to the STB, and the STB has authority over it, and can make a ruling.

In the last 13 times that the railroads have appealed the arbitrator's decision that was in favor of the union, the STB ruled against the union 10 times.

So it is a very difficult protection, it has a lot of loopholes, and a lot of strings attached, you have to do a lot of things to comply, and it is not Utopia, by any stretch of the imagination. It is no golden parachute, like the people I described are receiving.

Senator LAUTENBERG. Have the employees, the railroad workers been offered severance packages?

Mr. SCARDELLETTI. Well, they have not been offered anything yet. I mean there has been no—there were remarks regarding discussions with labor, there have been no discussions with labor.

I am the person they would discuss it with, with respect to my craft, but all the rail unions, we have had a meeting with Conrail,

where Conrail proceeded to tell us what a great thing this was, and now they are out of the picture.

We requested to meet with CSX and Norfolk Southern, but they do not have their operating plan, so there is no reason to meet, which those are their words. When we get to meet with them, then we will be able to see what we can negotiate. I do not know when that will be, but we have to meet with them.

Senator LAUTENBERG. Well, I trust that they will meet with you, and I will be watching to see whether or not there is an arrangement that can be worked out. It is not for me to interfere, I can tell you that, I mean it has to be settled with the parties, but the parties, I think, have to meet.

Mr. Warrington, after the Chase accident, I included provisions in the Rail Safety Improvement Act of 1988 that put a process in place for all the major users to develop recommendations to improve safety over the corridor. One of the recommendations at the time was to minimize freight traffic over the corridor. That recommendation was endorsed by the FRA.

Now, if the stated Federal policy is to minimize freight traffic on the corridor, why are we now hearing about proposals to expand freight use on the Northeast corridor, what conditions have changed that would open the subject up?

As a matter of fact, can we say, from the early examination, that there have been changes that would give a degree of comfort to the fact that this sharing might take place, without interfering with either's operation?

Mr. WARRINGTON. Senator, a couple of points. We all share your concern around safety on the corridor. You have clearly been a leader around that issue, with Amtrak, and as a result of those amendments of the 1988 act, there were a whole host of improvements in technology, operating protocols, and practices, that position us—put us in a much different position today, with respect to freight service.

You are correct, as a matter of fact, 20 years ago there were about 167 million car-miles of freight operating on the Northeast corridor, and today there are only about 19 million car-miles of freight operating on the Northeast corridor.

So it has been a significant reduction, and generally it has been a policy of Amtrak over those 20 years to minimize the extent to which freight service operates on the corridor.

The combination of those technology and operating improvements, coupled with the availability of certain windows for certain kinds of freight traffic, is something that we would like the ability to explore, but only explore and only move forward with, to the extent that we could all be satisfied that, not only from a safety point of view, this operation works, but from a commuter impact and commuter reliability point of view, it works, and if, in fact, there were any kinds of wear and tear, or useful life impacts on the asset, that Amtrak was certainly fully compensated for any of those impacts.

But what we are seeking, Senator, is the opportunity to exploit or explore limited potential for selective kinds of freight services that might generate revenue for us at a time when we are facing serious and significant declining support for Amtrak, particularly

on the operating side, and we have to clearly establish a commercial orientation, but at the same time doing that, while protecting commuter interests, and obviously, clearly supporting and assuring a safe operation.

Senator LAUTENBERG. All right. Because one of the principal questions was: Can you realistically operate both kinds of service without damaging the effectiveness of either one? Of course, when we look at the passenger trains, we have a lot of people for whom we are responsible, and we want to make sure that nothing goes awry there, and the experience then was a rather bitter one, because it did involve the passenger rail and freight service.

So can we assume from your remarks that these freight carriers will have to pay a premium to operate on the Northeast corridor, and will that premium, in your view, be able to take care of the needs that Amtrak has, while at the same time providing good competitive availability to the freight carriers?

Mr. WARRINGTON. Yes; I think that is probably a fair statement, Senator. As a matter of fact, one of the things we would like to explore is opportunities for variable pricing, so that service that operates—sort of an incentive for service to operate at locations which are underutilized, particularly from a passenger point of view, like the Springfield line in Connecticut and Massachusetts, and the Harrisburg line, in Pennsylvania. We would price them in a way which would provide some incentives, for use of either underutilized track, and facilities, and assets, or priced in a way which directs that kind of service to hours of operation, where there is no passenger interference, such as late at night.

There may be some opportunities and windows there, where there could be a win-win. We could aid in the competitiveness of the Northeast and the region, and at the same time provide some desperately needed revenue for Amtrak.

CONCLUSION OF HEARING

Senator LAUTENBERG. Gentlemen, I thank you for being here.

I am told that the next hearing of the subcommittee will take place on Thursday, April 10, 10 a.m., in the same room. The topic will be the administration's NEXTEA proposal. That does not mean tea at the White House, or anything like that.

Thank you very much. That concludes the hearing. The subcommittee will recess and reconvene at the call of the Chair.

[Whereupon, at 1:18 p.m., Thursday, March 20, the hearing was concluded and the subcommittee was recessed, to reconvene subject to the call of the Chair.]

MATERIAL SUBMITTED SUBSEQUENT TO CONCLUSION OF HEARING

[CLERK'S NOTE.—The following material was not presented at the hearing, but was submitted to the subcommittee for inclusion in the record subsequent to the hearing:]

PREPARED STATEMENT OF C. ALAN WALKER, PRESIDENT AND CHIEF EXECUTIVE OFFICER, BRADFORD COAL CO., INC.

Thank you for the opportunity to present a written statement about our concerns with the proposed division of the Conrail rail system. My name is C. Alan Walker, and I'm presenting these remarks in my capacity as president and chief executive officer of Bradford Coal Co., Inc. Bradford Coal is located in Clearfield County, Pennsylvania. Our company was founded in 1935 as a bituminous coal mining and marketing operation. Like the vast majority of coal companies, we are a rail dependent organization. Our survival and our future is tied to the viability of the rail system in central Pennsylvania. Consequently, it's not quite as important to us which company ultimately controls our rail system, but the effect it will have on our ability to remain competitive.

In the way of background, our coal field was developed immediately after the Civil War when the Pennsylvania Railroad laid tracks into Clearfield County in 1868. The New York Central arrived in 1898. In the 130 years since the railroad came to the county, over one billion tons of coal have been mined in this area. Coal mining has been a major part of our heritage, and energy needed to fuel the economic expansion in the Northeastern United States from 1880 to 1930 came from coal mined in this region. Despite all the mining activity that has taken place here, geologists estimate there are still over 700 million tons of mineable coal reserves remaining in Clearfield County.

As you are aware, the rail system here became part of the Penn Central, and later Conrail. The Clearfield Cluster was historically a very profitable section of railroad for the rail operators because of the coal tonnage originating from the line. However, as a number of large deep mines were closed over the past ten years, the coal tonnage began to drop.

In late December 1995, Conrail sold the Clearfield Cluster—250 miles of rail system in Clearfield, Cambria, and Indiana Counties—to R.J. Corman, a shortline operator headquartered in Nicholasville, Kentucky. The area served by this shortline railroad represents approximately five percent of the surface area of the State. To his credit, Corman and his organization have done a superb job at operating the railroad.

Under the proposed sale of Conrail, the problem is not in who operates the railroad, but to insure that competitive rates will be established and that access to traditional markets will be maintained at these competitive rates. Currently, all rail rates in place for the Clearfield Cluster shippers set by Conrail expire no later than 1999. Our shortline operator, R.J. Corman, must interface with Conrail at Keating Junction in Clinton County. In rail terms, Keating Junction is known as a bottleneck because it's an area where two different railroads interchange. Historically, it has been easy for the larger railroad at an interchange to set high rates for tonnage coming from the smaller line because the shortline has no other options. This often forces tonnage away from the shortline railroad. We are concerned that extra revenues needed to pay for the purchase of Conrail's assets could lead to higher rates and lock us out from our traditional customers.

Currently, 75 percent of the coal shipped from the Clearfield Cluster goes to either the Montour or Sunbury Stations of Pennsylvania Power & Light Company. Montour Station is in Montour County near Williamsport, and Sunbury Station is in Snyder County near Selinsgrove. Both plants are approximately 130 rail miles from the gathering yard at Clearfield. The Clearfield County producers are geographically the closest coal mining operations to these power stations. The next clos-

est bituminous coal mining operations to these power stations are more than three times as far by rail. However, because of railroad pricing, the Clearfield Cluster rate does not enjoy its true competitive advantage. Future pricing must have some correlation with distance moved, or we can be priced out of business.

In addition, we're concerned about what happens to Conrail's fleet of open top hopper cars after the merger. This fleet is currently at 19,000 cars, and it's a fairly good match for Conrail's 60 million tons of coal moved annually. However, should these hopper cars be split unfairly or used to supplement the fleet of one of the surviving railroads at the expense of the traditional Conrail shippers, a car shortage could develop, which again has the potential to disrupt traditional shipper-customer relationships. This sensitive balance could be easily manipulated to favor one region over another.

In conclusion, I would like to urge this committee to ask for guarantees from the new railroad owners that will protect Conrail's present shippers. Before we can fully support the sale and split-up of Conrail, we need detailed information about how rates will be set in the future, how access to traditional markets will be affected, and how the open top hopper car fleet will be managed.

PREPARED STATEMENT OF MICHAEL J. SABIA, SENIOR VICE PRESIDENT AND CHIEF FINANCIAL OFFICER, AND GERALD K. DAVIES, SENIOR VICE PRESIDENT, MARKETING, CANADIAN NATIONAL RAILWAY CO.

My name is Michael Sabia, and I am Senior Vice President and Chief Financial Officer of the Canadian National Railway Company ("CN"). My colleague, Gerald Davies, Senior Vice President, Marketing, joins me in this statement for consideration by the Transportation Subcommittee of the Senate Appropriations Committee in the context of its inquiry into the nature and consequences of the breakup of Conrail.

CN applauds this Committee for seeking to probe beneath the surface of this deal. There should be no rush to judgment, particularly since many of the details of this transaction have yet to be disclosed. However, CN believes that there exist serious competitive issues affecting the Northeast and Midwest to which this Committee and others should be alerted before reaching any final conclusions. We have excerpted portions of our recent testimony before the New York State Department of Transportation which identify one set of issues that arise in that region served by Conrail. Further study and analysis as facts become more clear are likely to uncover other problems beyond those in New York.

1. INTRODUCTION

We have three objectives:

- we want to describe the new Canadian National, particularly our operating capabilities and financial strengths;
- we want to share our views, and concerns, on the dismemberment of Conrail; and
- finally, we would like to secure your support for what we believe to be major opportunities—for the state of New York and for CN—flowing from the breakup of Conrail.

2. WHO WE ARE AND WHAT WE DO

Canadian National is Canada's largest railroad and North America's sixth biggest. We operate a transcontinental system, the only railroad in either Canada or the United States to do so. Our business base produced revenues of more than \$4 billion (CDN) in 1996, almost \$2 billion of it from operations in the eastern part of North America.

In the geography affected by this transaction, our railroad is the only one generating a significant volume of traffic between Canada and the U.S., the world's largest trading partners. Canada-U.S. trade represents one-third of our business and is our fastest growing segment at ten percent a year.

In the U.S. we own the Detroit-based Grand Trunk Corporation, which manages a 1,000-mile network that is a Class I railroad in its own right. It employs 2,000 people, generates revenues approaching \$400 million annually, and has presence in Illinois, Michigan, Ohio, Wisconsin, Minnesota, and Indiana. We also enjoy strategic connection to all major U.S. railroads; operating through important gateways at Chicago, Detroit, Buffalo, and Massena.

Our business base is made up of commodities that are important to the people of New York and the northeastern U.S. Last year we handled 100,000 carloads of

traffic via the Buffalo and Massena gateways, almost two thirds of all rail traffic crossing the state's northern frontier. The automobile parked in a New Yorker's driveway is likely to have come from Michigan or Ontario and to have been moved on a CN train, and the newspaper read every morning is likely to have been printed on newsprint delivered in a CN railcar.

In 1995 Canadian National moved its ownership from the government to the private sector in the most successful public share offering in Canadian history. Today, the company is 100 percent investor-owned. We are publicly traded on the New York Stock Exchange, and U.S. investors, own two thirds of the company.

In 1996, our first year as a publicly traded company, operating income increased by 34 percent to \$610 million, and we currently have a debt-to-equity ratio of 38.6 percent. CN owns one of the strongest balance sheets in the North American railroad industry, affording us an opportunity to grow our business.

3. CONRAIL BREAKUP: PROBLEM DEFINITION

In some quarters, the pending division of Conrail's network by Norfolk Southern and CSX is being promoted as the return to true Class I rail competition in the northeastern United States.

We believe the CSX/NS plan falls well short of that goal.

As reported by the media, the breakup of Conrail would create competition between CSX and Norfolk Southern for some traffic from New Jersey and Pennsylvania to portions of the Midwest and the southeast. It would not produce a competitive balance for traffic moving into New York and New Jersey from the north and from the west.

This lack of competitive access for railroads operating on New York's western and northern borders will not merely mirror the extraordinary market dominance which Conrail currently enjoys, it will bring with it a threat to the future viability of a number of key New York rail lines.

A. Future of Montreal/Syracuse ("Massena") Line at Risk

Both the Norfolk Southern and the CSX are southern railroads. The incentive for each will be to exploit long-haul opportunities by sourcing traffic from the southeastern United States, thus limiting choice for shippers and receivers in New York.

Newsprint produced in Quebec for markets in New York, Pennsylvania, and New Jersey, for example, would likely be replaced by product from southeastern sources. And plastics and petrochemicals from Ontario and Alberta would give way to producers from the Gulf of Mexico.

But this is not simply about the sale of Canadian goods, nor about traffic volumes for Canadian railroads. The many in New York industry who ship or consume Canadian goods want and deserve choice of product. And shortline railroads in the state deserve an opportunity to carry the product that New York industry judges to be the most competitive, from the standpoint of either quality or price.

Canadian traffic now moving over the Massena line generates two trains per day and accounts for 80 percent of the line's total traffic base. Without this freight some 33,000 carloads a year—the line would be difficult to sustain, as would the 100 jobs associated with its operation and maintenance.

B. Viability of Southern Tier Route in Doubt

As seen by us, Norfolk Southern's share of the Conrail network will include the choice "Pennsylvania" main line connecting New York, New Jersey, and Pennsylvania to Cleveland, Detroit, and Chicago, as well as the "Southern Tier" route running through upstate New York to Buffalo.

Of the two, the Pennsylvania route is markedly superior in quality, grade, and density. Conrail has never moved much business over the Southern Tier route, nor does it currently. And indeed, at the time of both CSX's and Norfolk Southern's bids for Conrail, there was wide speculation that both would divest the line, judging it to be unnecessary to core operations.

It stands to reason, therefore, that Norfolk Southern will concentrate its east-west traffic on the Pennsylvania line.

The implications for the Southern Tier route are similar to those for the Montreal to Syracuse line.

Without a consistent and constant volume of freight—made worse by a paucity of traffic from the north and west—the line's existence as a core rail route, as a generator of jobs, and as an engine of economic development, seems difficult to imagine.

C. Shortline Railroads Remain Vulnerable

For several years Conrail's market dominance in the northeastern United States has made it difficult for shortline railroads to perform. Their ability to develop and

create transportation alternatives has been compromised by restricted access to industry, and by the denial of direct and efficient connections with Class I carriers.

In Buffalo, a critical gateway whose rail interchanges are controlled by Conrail, the Buffalo and Pittsburgh Railroad has been prevented direct connections with our railroad.

In New York City, the New York and Susquehanna Railroad relies on CSX for one half of its total business. Were CSX to inherit Conrail's New York Central route, its incentive would be to move this traffic over that line—with, we suspect, dire consequences for the Susquehanna.

The Long Island Railroad, a shortline with enormous potential to move rail freight into metropolitan New York, has Conrail as its only available connection.

Without expanded access to industry, and to friendly connections with Class I railroads, the future of shortline railroads in the state of New York is placed very much in doubt. The hundreds of shippers and receivers which they serve risk having to move product by truck or not at all.

4. OUR SOLUTION: THE NEW YORK NETWORK

When created in 1976, Conrail was awarded extraordinary market dominance on the assumption that the economic geography of the area could not support rail competition. Evidence that such is no longer the case—if it ever was—is offered by the price being tendered for the Conrail network by both NS and CSX.

Since introduction of the North American Free Trade Agreement on January 1, 1994, Canadian exports to the United States have increased by more than 40 percent.

Transborder rail volumes have also grown by more than 40 percent over the period. We continue to project healthy growth in this area, reflecting both the strong trade flows created by NAFTA and the strength of economic growth in both the U.S. and Canada.

In the state of New York, however, while transborder business has grown, rail's share of the market continues to take a beating from trucks. Only 23 percent of southbound transborder traffic is handled by rail, down significantly from 37 percent in 1991. The impact is clear, congested highways, higher public expenditures, and more and more concern about safety.

This trend will not reverse, New York industry and consumers will not benefit from the economies of competitive choice, and New York State will be denied the chance to preserve its existing railroad network unless the opportunity presented is seized.

If acted upon we are positioned to contribute two vital elements to the reality of effective rail competition for the northeastern United States.

First, we are prepared to participate financially either through ownership, co-ownership, access arrangements, or other mechanisms in establishing and then maintaining, a high quality rail system capable of providing competition to the New York market from the north and from the west.

Second, our existing and growing transborder traffic volumes would serve as the necessary "anchor" for such a network.

We have tried to outline the basic architecture of the proposed system in the map accompanying this statement. The system would be founded on three core components: a network of routes, the substantial broadening of access for competing railroads at the all important Buffalo gateway, and effective alliances' with shortline railroads.

a. The route network would comprise:

- the Southern Tier route from Buffalo, through Binghamton, to New Jersey;
- the "Montreal Secondary" route from Montreal to Syracuse, and extending on to Binghamton;
- the route from Montreal to Albany via Palmer connecting down the east side of the Hudson River, to New York City; and
- possibly, to promote east-west traffic, the route from Binghamton to Albany.

b. Competitive access would be extended to:

- shippers in Buffalo, Albany, and New Jersey;
- the Buffalo and Pittsburgh Railroad, Canadian National, and Canadian Pacific at Buffalo;
- the Norfolk Southern and CSX at all intersections; and
- all serving railroads at Albany.

c. To enhance the efficiency and effectiveness of the system, we propose to share its operation with a network of shortline operators already present in the region. Collectively, their routes would, after all, represent the substance of the network,

and their entrepreneurial skills are well suited to the communities in which they operate and the local industries they serve.

A rail network capable of providing competition to the New York market from the north and from the west would, of course, establish a future for the Massena-to-Syracuse line, and generate the traffic necessary to ensure the financial viability of the Southern Tier route. More importantly, it would benefit development in the state of New York and enhance the efficiency and effectiveness of northeastern industry.

We urge this Committee and the Surface Transportation Board to support the Conrail merger transaction only if the rail networks so created ensure competitive rail access to the New York market from the north and from the west.

You have a one-time opportunity to establish competitive rail service for markets in the northeast, delivered by operationally and financially strong railroads with connections to markets that matter to New York.

Thank you very much for providing CN the opportunity to present its views to this Committee.

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