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**BY ELECTRONIC FILING**

The Honorable Cynthia T. Brown  
Chief, Section of Administration, Office of Proceedings  
Surface Transportation Board  
395 E Street S.W.  
Washington, DC 20423

**Re: Finance Docket No. 36500, *Canadian Pacific Ry. – Control – Kansas City Southern***

Dear Ms. Brown,

CSXT corrects errors in Professor Julie M. Carey's Verified Statement in CSXT-13, filed on July 12, 2022. CSXT submits a corrected version of Professor Carey's statement and an accompanying index of errors/clarifications to that statement. In the index, red highlights in the "Original" column represent items to be deleted, and red highlights in the "Corrected" column represent items to be added or substituted. Pursuant to the Protective Order, CSXT submits both a highly confidential and a public version of each document and will deliver them to the respective parties of record.

Additionally, CSXT corrects one error in the main body of CSXT-13. The first sentence of Section IV.A. on page 21 should read, "The Board's conditioning authority is granted by 49 U.S.C. § 11324(c)." This new sentence replaces the improper citation of "49 U.S.C. § 11321(b)."

If you have any questions, please contact [bmc@harkinscunningham.com](mailto:bmc@harkinscunningham.com).

Yours very truly,

/s/ Paul A. Cunningham

Paul A. Cunningham

| Component         | Location        | Original                                                                                                                                                                                                                                                                                                                                                    | Corrected                                                                                                                                                                                                                                                                                                                                                     | Type of Error |
|-------------------|-----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|
| Table of Contents | p 2             | Shreveport                                                                                                                                                                                                                                                                                                                                                  | Shreveport                                                                                                                                                                                                                                                                                                                                                    | Typo          |
| Table of Contents | p 2             | CP/KC                                                                                                                                                                                                                                                                                                                                                       | CPKC                                                                                                                                                                                                                                                                                                                                                          | Typo          |
| Table of Contents | p 3             | EONOMIC                                                                                                                                                                                                                                                                                                                                                     | ECONOMIC                                                                                                                                                                                                                                                                                                                                                      | Typo          |
| Report            | p 2             | Throughout it's pleadings, NSR attempts to suggest the MSLLC JV is procompetitive endeavour                                                                                                                                                                                                                                                                 | Throughout it's pleadings, NSR attempts to suggest the MSLLC JV is a procompetitive endeavour                                                                                                                                                                                                                                                                 | Typo          |
| Report            | p 3             | These concerns arise from the MSLLC Agreements use of perpetual Exclusivity Arrangements pertaining to transcontinental intermodal traffic and Dallas Intermodal Terminal Traffic that traverses the MSLLC Line                                                                                                                                             | These concerns arise from the MSLLC Agreements' use of perpetual Exclusivity Arrangements pertaining to transcontinental intermodal traffic and Dallas Intermodal Terminal Traffic that traverses the MSLLC Line                                                                                                                                              | Typo          |
| Report            | p 4             | NSR and KCS could have entered into a non-exclusive haulage agreement which are common forms in the railroad industry                                                                                                                                                                                                                                       | NSR and KCS could have entered into a non-exclusive haulage agreement, which are common in the railroad industry                                                                                                                                                                                                                                              | Typo          |
| Report            | p 4             | Post Transaction                                                                                                                                                                                                                                                                                                                                            | Post-Transaction                                                                                                                                                                                                                                                                                                                                              | Typo          |
| Report            | p 4             | Meridian must also be an open gateway with commercially reasonable terms and operations to ensure that competitive access across the entire MSLLC Line for traffic movements with the Southeastern and Mid-Atlantic regions                                                                                                                                 | Meridian must also be an open gateway with commercially reasonable terms and operations to ensure there is competitive access across the entire MSLLC Line for traffic movements within the Southeastern and Mid-Atlantic regions                                                                                                                             | Typo          |
| Report            | p 4             | into the Eastern U S markets particularly the Southeastern U S and Mid-Atlantic regions                                                                                                                                                                                                                                                                     | into the Eastern U S markets, particularly the Southeastern U S and Mid-Atlantic regions                                                                                                                                                                                                                                                                      | Typo          |
| Report            | p 4             | Ensuring Shreveport and Meridian gateways are open, as well as all other gateways used for traffic movements with Mexico, will act as constraint against CPKC's market power related to Mexico, and specifically in regard to originating and terminating traffic in the Southeastern U S and Mid-Atlantic                                                  | Ensuring Shreveport and Meridian gateways are open, as well as all other gateways used for traffic movements with Mexico, will act as a constraint against CPKC's market power related to Mexico, and specifically in regard to originating and terminating traffic in the Southeastern U S and Mid-Atlantic                                                  | Typo          |
| Report            | p 6             | As noted in Section I, the MSLLC Line is owned and by the Meridian Speedway LLC                                                                                                                                                                                                                                                                             | As noted in Section I, the MSLLC Line is owned and operated by the Meridian Speedway LLC                                                                                                                                                                                                                                                                      | Typo          |
| Report            | p 6, Section II | SHREVEPORT                                                                                                                                                                                                                                                                                                                                                  | SHREVEPORT                                                                                                                                                                                                                                                                                                                                                    | Typo          |
| Report            | p 7             | where it connect                                                                                                                                                                                                                                                                                                                                            | where it connects                                                                                                                                                                                                                                                                                                                                             | Typo          |
| Report            | p 7             | connects to MSLLC Line                                                                                                                                                                                                                                                                                                                                      | connects to the MSLLC Line                                                                                                                                                                                                                                                                                                                                    | Typo          |
| Report            | p 8             | termini of that line                                                                                                                                                                                                                                                                                                                                        | termini of that line                                                                                                                                                                                                                                                                                                                                          | Typo          |
| Report            | p 9             | Additionally, Shreveport is important for the efficiency gains that CPKC plans to create across its network scheduling more new blockings at Shreveport than any other part of its network                                                                                                                                                                  | Additionally, Shreveport is important for the efficiency gains that CPKC plans to create across its network. scheduling more new blockings at Shreveport than any other part of its network                                                                                                                                                                   | Typo          |
| Report            | p 12, FN 48     | [REDACTED]                                                                                                                                                                                                                                                                                                                                                  | [REDACTED]                                                                                                                                                                                                                                                                                                                                                    | Typo          |
| Report            | p 15, FN 70     | [REDACTED]                                                                                                                                                                                                                                                                                                                                                  | [REDACTED]                                                                                                                                                                                                                                                                                                                                                    | Typo          |
| Report            | p 16            | Important volumes also move to and from [REDACTED]                                                                                                                                                                                                                                                                                                          | Important volumes also move to and from [REDACTED]                                                                                                                                                                                                                                                                                                            | Typo          |
| Report            | p 16, Figure 3  | [REDACTED] are also occasionally routed through the Speedway, but at a much lower rate                                                                                                                                                                                                                                                                      | [REDACTED], which are also occasionally routed through the Speedway, but at a much lower rate                                                                                                                                                                                                                                                                 | Clarity       |
| Report            | p 16, Figure 3  | Traffic Volumes for NSR Exclusivity Traffic, DITT, Mexico Intermodal, and other types of traffic moving over the MSLLC Line -- SHOULD SAY DITT instead of Dallas                                                                                                                                                                                            | Traffic Volumes for NSR Exclusivity Traffic, Dallas, Mexico Intermodal, and other types of traffic moving over the MSLLC Line                                                                                                                                                                                                                                 | Clarity       |
| Report            | p 16, FN 73     | See Carey HC-WP "2019-2021 Meridian Volume Summary.xlsx"                                                                                                                                                                                                                                                                                                    | See Carey HC-WP 2019-2021 Meridian Loaded Volume Summary.xlsx                                                                                                                                                                                                                                                                                                 | Typo          |
| Report            | p 17            | The Meridian Speedway Notice of Exemption was crafted as an intercompany transaction and provided certain details about the assets and planned infrastructure improvements                                                                                                                                                                                  | The Meridian Speedway Notice of Exemption was crafted as an intracompany transaction and provided certain details about the assets and planned infrastructure improvements                                                                                                                                                                                    | Clarity       |
| Report            | p 17            | In basic economic terms, however, an intercompany transfer reassigns the ownership and control of an asset from one entity to another entity but remains under the ownership and control of the same parent company                                                                                                                                         | In basic economic terms, however, an intracompany transfer reassigns the ownership and control of an asset from one entity to another entity but remains under the ownership and control of the same parent company                                                                                                                                           | Clarity       |
| Report            | p 17            | To illustrate, consider subparts of a company to be gold coins, and an intercompany transfer moves a few gold coins from a person's left-side pocket to its right-side pocket In the end, the gold coins remain with the same person                                                                                                                        | To illustrate, consider subparts of a company to be gold coins, and an intracompany transfer moves a few gold coins from a person's left-side pocket to its right-side pocket In the end, the gold coins remain with the same person                                                                                                                          | Clarity       |
| Report            | p 19            | NSR's right to carry that traffic is also exclusive and has a similar economic effect as a market division                                                                                                                                                                                                                                                  | NSR's right to carry that traffic is also exclusive and has a similar economic effect of a market division                                                                                                                                                                                                                                                    | Clarity       |
| Report            | p 17, FN 78     | See Carey HC-WP "NS IM Terminals- Meridian Share.xlsx"                                                                                                                                                                                                                                                                                                      | See Carey HC-WP NS IM Terminal Meridian Share.xlsx                                                                                                                                                                                                                                                                                                            | Typo          |
| Report            | p 17, FN 78     | Carey HC-WP "NS" IM Terminals- Meridian Share.xlsx                                                                                                                                                                                                                                                                                                          | Carey HC-WP NS IM Terminal Meridian Share.xlsx                                                                                                                                                                                                                                                                                                                | Typo          |
| Report            | p 19            | which lead to lower output that would otherwise result                                                                                                                                                                                                                                                                                                      | which lead to lower output than would otherwise result                                                                                                                                                                                                                                                                                                        | Typo          |
| Report            | p 22            | In its Responsive Application, NSR raises concerns about CPKC's portion regarding open gateways across the Meridian Speedway                                                                                                                                                                                                                                | In its Responsive Application, NSR raises concerns about CPKC's portion regarding open gateways across the Meridian Speedway                                                                                                                                                                                                                                  | Typo          |
| Report            | p 22, Section V | THE PUBLIC INTEREST IS BEST SERVED BY KEEPING ALL CPKC GATEWAYS OPEN (INCLUDING THE MERIDIAN SPEEDWAY GATEWAYS)                                                                                                                                                                                                                                             | THE PUBLIC INTEREST IS BEST SERVED BY KEEPING ALL CPKC GATEWAYS OPEN (INCLUDING THE MERIDIAN SPEEDWAY GATEWAYS)                                                                                                                                                                                                                                               | Typo          |
| Report            | p 23            | This can influence first railroad to lower its rate and benefit the shippers                                                                                                                                                                                                                                                                                | This can influence the first railroad to lower its rate, thus benefiting shippers                                                                                                                                                                                                                                                                             | Typo          |
| Report            | p 24-25         | These attempts add risks to future competition and limit to economic benefits, including unforeseen events                                                                                                                                                                                                                                                  | These attempts add risks to future competition and limits to economic benefits, including unforeseen events                                                                                                                                                                                                                                                   | Typo          |
| Report            | p 25            | They lack the necessary teeth to ensure most competitive outcomes possible in the future                                                                                                                                                                                                                                                                    | They lack the necessary teeth to ensure the most competitive outcomes possible in the future                                                                                                                                                                                                                                                                  | Typo          |
| Report            | p 26            | Figure 4 below shows blue dots identifying the many customer locations (and relative revenues) that use railroad routes for traffic movements with Mexico which are dispersed across the U S , highlighting the importance to ensure that all gateways potentially available to interline with CPKC as provide alternative transportation are open gateways | Figure 4 below shows blue dots identifying the many customer locations (and relative revenues) that use railroad routes for traffic movements with Mexico which are dispersed across the U S , highlighting the importance to ensure that all gateways potentially available to interline with CPKC that provide alternative transportation are open gateways | Clarity       |

|        |                              |                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                         |            |
|--------|------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| Report | p 27, Figure 4               | Combined CP-KCS Network Map and 2019 Revenues for Mexico Movements                                                                                                                                                                                                                                                                                                     | Combined CPKC Network map and 2019 Revenues for Mexico Movements                                                                                                                                                                                                                                                                                                        | Type       |
| Report | p 28                         | expanding further the anticompetitive effect beyond what existed Pre Transaction                                                                                                                                                                                                                                                                                       | expanding further the anticompetitive effect beyond what existed Pre-Transaction                                                                                                                                                                                                                                                                                        | Type       |
| Report | p 28                         | As a corollary, the Shreveport interchange should be opened as well since this is the most advantaged route competing carriers to reach the Southeastern U S                                                                                                                                                                                                           | As a corollary, the Shreveport interchange should be opened as well since this is the most advantaged route for competing carriers to reach the Southeastern U S                                                                                                                                                                                                        | Clarity    |
| Report | p 29, FN 133                 |                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                         |            |
| Report | p 30                         | and they and traverse                                                                                                                                                                                                                                                                                                                                                  | and they traverse                                                                                                                                                                                                                                                                                                                                                       | Type       |
| Report | p 30                         | Additional inadequacies with other gateways such as Memphis and New Orleans that could potential be used for traffic movements to and from Mexico and the Southeastern U S are discussed by CSXT witness Girardot                                                                                                                                                      | Additional inadequacies with other gateways such as Memphis and New Orleans that could potentially be used for traffic movements to and from Mexico and the Southeastern U S are discussed by CSXT witness Girardot                                                                                                                                                     | Type       |
| Report | p 30                         | Similarly, Memphis movements to the Southeast are circuitous because they go further North than reversing South, and they and traverse less ideal routes with curvatures and sloped grades associated with tougher Southern Appalachia mountain terrain as compared to the flat and straight route across the Meridian Speedway                                        | Similarly, Memphis movements to the Southeast are circuitous because they go further North then reversing South, and they and traverse less ideal routes with curvatures and sloped grades associated with tougher Southern Appalachia mountain terrain as compared to the flat and straight route across the Meridian Speedway                                         | Type       |
| Report | p 31-32, FN 140, 141 and 143 | See Carey HC-WP "Mexico Cross Border Traffic - CSX NS Southeast xlsb"                                                                                                                                                                                                                                                                                                  | See Carey HC-WP Mexico Cross Border Traffic - CSX NSR Southeast xlsb                                                                                                                                                                                                                                                                                                    | Type       |
| Report | p 32                         | Because the MSLLC Line is the best route for a large volume of current and potential intermodal Mexico traffic, the Shreveport and Meridian gateways must be opened to ensure the public interest providing Mexico Traffic to and from the Southeastern and Mid-Atlantic U S has competition the most economically efficient route consistent with the public interest | Because the MSLLC Line is the best route for a large volume of current and potential intermodal Mexico traffic, the Shreveport and Meridian gateways must be opened to ensure the public interest providing Mexico Traffic to and from the Southeastern and Mid-Atlantic U S has competition the most economically efficient route, consistent with the public interest | Type       |
| Report | p 34                         | Further, due to the de minimis public benefits associated with the CPKC Transaction, it is imperative to keep open gateways to ensure the most public benefits possible                                                                                                                                                                                                | Further, due to the de minimis public benefits associated with the CPKC Transaction, it is imperative to have open gateways to ensure the most public benefits possible                                                                                                                                                                                                 | Clarity    |
| Report | p 34                         | As I discuss in Section VII below, there are significant public benefits arising from enabling competition with open gateways in general and especially with respect to the Southeastern and Mid-Atlantic U S regions                                                                                                                                                  | As I discuss in Section VII below, there are significant public benefits that arise from enabling competition with open gateways in general and especially with respect to the Southeastern and Mid-Atlantic U S regions                                                                                                                                                | Clarity    |
| Report | p 35                         | that are in the public interest (in particular with regard to the MSLLC gateways Shreveport and Meridian without the perpetual Exclusivity Arrangements                                                                                                                                                                                                                | that are in the public interest, in particular with regard to the MSLLC gateways Shreveport and Meridian without the perpetual Exclusivity Arrangements                                                                                                                                                                                                                 | Type       |
| Report | p 35                         | (and ICC predecessor)                                                                                                                                                                                                                                                                                                                                                  | (and its ICC predecessor)                                                                                                                                                                                                                                                                                                                                               | Clarity    |
| Report | p 35                         | As I understand it, the Board has the broad authority impose conditions on mergers                                                                                                                                                                                                                                                                                     | As I understand it, the Board has broad authority to impose conditions on mergers                                                                                                                                                                                                                                                                                       | Type       |
| Report | p 36                         | In approving the transaction and with respect to the requested conditions, the Board stated, "The Board finds that the open gateway commitment is vital to ensuring that the PAR System remains a competitive option, as it will allow other carriers that connect with the PAR System to continue offering competitive interline rates "154                           | In approving the transaction with respect to the requested conditions, the Board stated, "The Board finds that the open gateway commitment is vital to ensuring that the PAR System remains a competitive option, as it will allow other carriers that connect with the PAR System to continue offering competitive interline rates "154                                | Clarity    |
| Report | p 36                         | The Board also cites the importance of CSX's commitment that all gateways remain from a financial perspective as well, noting that the requirement for commercially reasonable access has been imposed as a part of open gateway conditions in prior cases                                                                                                             | The Board also cites the importance of CSX's commitment that all gateways remain open from a financial perspective as well, noting that the requirement for commercially reasonable access has been imposed as a part of open gateway conditions in prior cases                                                                                                         | Clarity    |
| Report | p 36                         | such open gateways increase the number of carriers at significant interchange points on the international rail network, thereby enhancing the benefits of competition, particularly lower rates to shippers                                                                                                                                                            | such open gateways increase the number of carriers at significant interchange points on the international rail network, thereby enhancing the benefits of competition, particularly through lower rates to shippers                                                                                                                                                     | Clarity    |
| Report | p 37                         | Post Transaction                                                                                                                                                                                                                                                                                                                                                       | Post-Transaction                                                                                                                                                                                                                                                                                                                                                        | Type       |
| Report | p 37                         | will benefit by more competitive routes into the Southeastern U S                                                                                                                                                                                                                                                                                                      | will benefit from more competitive routes into the Southeastern U S                                                                                                                                                                                                                                                                                                     | Clarity    |
| Report | p 40                         | compounding consequences to the entire MSLLC Line, which includes Meridian                                                                                                                                                                                                                                                                                             | compounding consequences to the entire MSLLC Line, which includes the Meridian gateway                                                                                                                                                                                                                                                                                  | Clarity    |
| Report | p 40                         | such as only one Eastern railroad carrier has competitively meaningful access to the highly efficient and advantaged route over the Meridian Speedway                                                                                                                                                                                                                  | such as only one Eastern railroad carrier having competitively meaningful access to the highly efficient and advantaged route over the Meridian Speedway                                                                                                                                                                                                                | Clarity    |
| Report | p 40                         | The implications of the CPKC Transaction extend to global international trade and national policies regarding onshoring or nearshoring to increase manufacturing in North America and the U S to compete with Asia                                                                                                                                                     | The implications of the CPKC Transaction extend to global international trade and national policies regarding onshoring or nearshoring to increase manufacturing competitiveness in North America and the U S to compete with Asia                                                                                                                                      | Clarity    |
| Report | p 40                         | the debate of the benefits of offshoring continues                                                                                                                                                                                                                                                                                                                     | the debate regarding the benefits of offshoring continues                                                                                                                                                                                                                                                                                                               | Clarity    |
| Report | p 41                         | invariant to the size of the company                                                                                                                                                                                                                                                                                                                                   | do not vary with the size of the company                                                                                                                                                                                                                                                                                                                                | Clarity    |
| Report | p 41                         | a Transaction, the Board should do so here                                                                                                                                                                                                                                                                                                                             | a Transaction, the Board should also do so here                                                                                                                                                                                                                                                                                                                         | Clarity    |
| Report | p 42                         | that the MSLLC JV created efficiency benefits for customers                                                                                                                                                                                                                                                                                                            | which state that the MSLLC JV created efficiency benefits for customers                                                                                                                                                                                                                                                                                                 | Clarity    |
| Report | p 42                         | such as a haulage rate or other proper pricing                                                                                                                                                                                                                                                                                                                         | such as a haulage rate or other proper pricing mechanism                                                                                                                                                                                                                                                                                                                | Clarity    |
| Report | p 43                         | in an interline movement to just one railroad                                                                                                                                                                                                                                                                                                                          | in an interline movement to service by just one railroad                                                                                                                                                                                                                                                                                                                | Clarity    |
| Report | p 43                         | As discussed in my February Verified Statement, this is sometimes referred to as double marginalization                                                                                                                                                                                                                                                                | As discussed in my February Verified Statement, this is sometimes referred to as reducing double marginalization                                                                                                                                                                                                                                                        | Clarity    |
| Report | p 44                         | The MSLLC JV limited both changes to the types of railroad service and the benefits potentially achievable from vertical integration related from the combination of the two railroads                                                                                                                                                                                 | The MSLLC JV limited both changes to the types of railroad service and the benefits potentially achievable from vertical integration related to the combination of the two railroads                                                                                                                                                                                    | Clarity    |
| Report | p 44                         | Vertical transactions that eliminate double marginalization—removal of the contribution margin of the 2nd railroad in an interline movement—and service-related quality improvements and pass along those reduced costs to shippers in the form of reduced rates produce tangible public benefits                                                                      | Vertical transactions that produce tangible public benefits eliminate double marginalization—removal of the contribution margin of the 2nd railroad in an interline movement—and include service-related quality improvements and pass along those reduced costs to shippers in the form of reduced rates                                                               | Clarity    |
| Report | p 44                         | As a result, MSLLC JV shippers face reduced competition without the potential benefits of a vertical consolidation                                                                                                                                                                                                                                                     | MSLLC JV shippers face reduced competition without the potential benefits of a vertical consolidation                                                                                                                                                                                                                                                                   | Clarity    |
| Report | p 44, FN 195                 | See Carey HC-WP "NSR Profits from Meridian Speedway.xlsx"                                                                                                                                                                                                                                                                                                              | See Carey HC-WP NSR Contribution Margin.xlsx                                                                                                                                                                                                                                                                                                                            | Type       |
| Report | p 44                         |                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                         | Correction |
| Report | p 45                         | continues to be responsible for the traffic movement Meridian to/from locations on its network                                                                                                                                                                                                                                                                         | continues to be responsible for the traffic to/from Meridian and locations on its network                                                                                                                                                                                                                                                                               | Clarity    |
| Report | p 48                         | As a result of the very limited changes to the functional railroad service there are limited economic efficiency benefits that would be common in the context of vertical integration                                                                                                                                                                                  | As a result of the very limited changes to the functional railroad service, there are limited economic efficiency benefits that would be common in the context of vertical integration                                                                                                                                                                                  | Clarity    |

|            |                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |         |
|------------|------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|
| Report     | p 49                               | Also, antitrust cases look to whether a contract follows the norm in the industry in evaluating <b>evaluate</b> the reasonableness of ancillary restraints                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Also, antitrust cases look to whether a contract follows the norm in the industry in evaluating the reasonableness of ancillary restraints                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Clarity |
| Report     | p 50                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Clarity |
| Report     | p 53                               | As discussed in the previous section, there are common ways for railroads to economically access new markets <b>orexpand</b> the use of already served markets without engaging in market division type agreements <b>as</b> contained in the MSLLC Agreements                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | As discussed in the previous section, there are common ways for railroads to economically access new markets or expand the use of already served markets without engaging in <b>the</b> market division type agreements contained in the MSLLC Agreements                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Clarity |
| Report     | p 53                               | Here, NSR and KCS could have continued to use a haulage service as <b>it did</b> prior to the creation of MSLLC and satisfied NSR's investment requirements without restrictions to competition                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Here, NSR and KCS could have continued to use a haulage service as prior to the creation of MSLLC and satisfied NSR's investment requirements without restrictions to competition                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Clarity |
| Report     | p 53                               | enabled NSR to achieve a return on and of its \$308 million investment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | enabled NSR to achieve a return on and of its \$308 million investment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Clarity |
| Report     | p 54, FN 251                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Typo    |
| Report     | p 54-55                            | This analysis is conceptually consistent with an embedded cost based rate that includes the up-front capital contribution <b>and</b> calculates the rate per unit for Transcontinental Traffic subject to haulage service over the Meridian Speedway that would be needed to recover that capital contribution, as well as a reasonable return on the capital investment and an estimate of the operating cost for the haulage service over the Meridian Speedway                                                                                                                                                                                                                                                                                                                | This analysis is conceptually consistent with an embedded cost based rate that includes the up-front capital contribution <b>It</b> calculates the rate per unit for Transcontinental Traffic subject to haulage service over the Meridian Speedway that would be needed to recover that capital contribution, as well as a reasonable return on the capital investment and an estimate of the operating cost for the haulage service over the Meridian Speedway                                                                                                                                                                                                                                                                                                                                               | Clarity |
| Report     | p 55                               | Under this analysis, as shown below in Figure 14, MSLLC could have charged any <b>shipper</b> who desired to use the MSLLC Line with an approximate / unit haulage rate in 2021 for <b>haulage</b> service over the for transcontinental traffic movements                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Under this analysis, as shown below in Figure 14, MSLLC could have charged any <b>carrier</b> who desired to use the MSLLC Line with an approximate unit haulage rate in 2021 for service over the <b>MSLLC</b> for transcontinental traffic movements                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Clarity |
| Report     | p 56                               | on this traffic to the MSLLC <b>for</b> which are                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | on this traffic to the MSLLC which are                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Clarity |
| Report     | p 57                               | traffic movements <b>based on</b> its 70% ownership interest                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | traffic movements <b>due to</b> its 70% ownership interest                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Clarity |
| Report     | p 58                               | focus on NSR's profitability regarding the new investment it argues necessitated the MSLLC                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | focus on NSR's profitability regarding the new investment, it argues, necessitated the MSLLC                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Clarity |
| Report     | p 59                               | approximately                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Typo    |
| Report     | p 63 FN 284                        | Both versions of the econometric specification quantify the customer savings by estimating the impact of an increase in the number of alternative routes are available on the rate Model 1 estimates the effect by controlling for route distance through a non-linear relationship between distance and rate (as similarly modeled in "Harbor, An Assessment of the Effect of Competition on Rail Rates for Export Corn, Soybean, and Wheat Shipments Journal of Food Distribution Research 2009) Model 2 estimates the effect by using a piecewise mapping of distance reported in 250-mile increments Both models control for the same other types of factors such as car ownership, a single line indicator, truck rate, number of interchanges, and Intermodal service code | Both versions of the econometric specification quantify the customer savings by estimating the impact of an increase in the number of alternative routes are available on the rate Model 1 <b>(active)</b> estimates the effect by controlling for route distance through a non-linear relationship between distance and rate (as similarly modeled in "Harbor, An Assessment of the Effect of Competition on Rail Rates for Export Corn, Soybean, and Wheat Shipments Journal of Food Distribution Research 2009) Model 2 <b>(band)</b> estimates the effect by using a piecewise mapping of distance reported in 250-mile increments Both models control for the same other types of factors such as car ownership, a single line indicator, truck rate, number of interchanges, and Intermodal service code | Clarity |
| Report     | P 65 Figure 18 title               | Comparison of CSXT and NSR MSLLC Line Intermodal Railroad Rates for Transcontinental and Dallas Traffic                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Comparison of CSXT and NSR MSLLC Line Intermodal Railroad Rates for Transcontinental and Dallas <b>Intermodal Terminal</b> Traffic                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Typo    |
| Report     | p 65 Figure 18 row 3 title         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Typo    |
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| Report     | p 65 Figure 18 Note 3              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Removed |
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| Report     | p 68                               | and the Meridian gateway to CSXT                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | and the Meridian gateway to CSXT,                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Typo    |
| Report     | p 69, FN 299                       | See Appendix E – Interchange Analysis                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | See Appendix E – Interchange Analysis at <b>"active"</b> and <b>"band"</b> analysis                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Clarity |
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| Report     | p 72 Figure 22 row 5 title         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Typo    |
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| Report     | p 72 Figure 22 note 2              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |         |
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| Report     | p 72 Figure 22 note 6              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Removed |
| Appendix A | Mexico Cross Border Traffic, Fig 1 | CSXT and NSR <b>Carloads</b> Originated or Terminated in Mexico Moving To or From Southeast Interchange Location (CWS 2019)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | CSXT and NSR <b>Units</b> Originated or Terminated in Mexico Moving To or From Southeast Interchange Location (CWS 2019)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Clarity |
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| Appendix B | Port Competition, Figure 3         | West Coast Port Lanes into the Southeast and MidAtlantic US on NS with Time and Distance from Shanghai                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | West Coast Port Lanes into the Southeast and Mid-Atlantic US on NSR with Time and Distance from Shanghai                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Typo    |
| Appendix B | Port Competition, Figure 4         | West Coast Port Lanes into the Southeast and MidAtlantic US on NS with Time and Distance from Shenzhen                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | West Coast Port Lanes into the Southeast and Mid-Atlantic US on NSR with Time and Distance from Shenzhen                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Typo    |
| Appendix D | Haulage Agreements, Fig 1          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Clarity |
| Appendix E | Interchange Analysis, Fig 2        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Clarity |

|            |                             |                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                          |         |
|------------|-----------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|
| Appendix E | Interchange Analysis, Fig 3 |                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                          | Clarity |
| Appendix E | Interchange Analysis, p 13  | Rebill code 2 were removed from the estimation because they could not be grouped by origin or termination.                                                                                                                                                               | Rebill code 2 were removed from the estimation because they could not be grouped by origin or termination                                                                                                                                                                | Typo    |
| Appendix E | Interchange Analysis, p 13  | The addition of non-intermodal rates, which are typically higher than intermodal rates and lack equivalent truck competition <b>and</b> short line carrier only routes could cause a misidentification of the effect of interchange competition on intermodal rail rates | The addition of non-intermodal rates, which are typically higher than intermodal rates and lack equivalent truck competition, <b>or</b> short line carrier only routes could cause a misidentification of the effect of interchange competition on intermodal rail rates | Clarity |
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| Appendix E | Interchange Analysis, Fig 1 | See Carey-HC "All Meridian Savings.xlsx"                                                                                                                                                                                                                                 | See Carey HC- <b>WP</b> All Meridian Savings.xlsx                                                                                                                                                                                                                        | Typo    |
| Appendix E | Interchange Analysis, Fig 2 | See Carey-HC "All Meridian Savings.xlsx"                                                                                                                                                                                                                                 | See Carey HC- <b>WP</b> All Meridian Savings.xlsx                                                                                                                                                                                                                        | Typo    |
| Appendix E | Interchange Analysis, Fig 3 | See Carey-HC "All Meridian Savings.xlsx"                                                                                                                                                                                                                                 | See Carey HC- <b>WP</b> All Meridian Savings.xlsx                                                                                                                                                                                                                        | Typo    |
| Appendix E | Interchange Analysis, Fig 4 | See Carey-HC "Regression Methodology.pdf"                                                                                                                                                                                                                                | See Carey HC- <b>WP</b> All Truck Displacement.xlsx                                                                                                                                                                                                                      | Typo    |
| Appendix E | Interchange Analysis, Fig 5 | See Carey-HC "Regression Methodology.pdf"                                                                                                                                                                                                                                | See Carey HC- <b>WP</b> All Truck Displacement.xlsx                                                                                                                                                                                                                      | Typo    |
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**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**DOCKET NO. FD 36500**

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**CANADIAN PACIFIC RAILWAY LIMITED; CANADIAN PACIFIC RAILWAY  
COMPANY; SOO LINE RAILROAD COMPANY; CENTRAL MAINE & QUEBEC  
RAILWAY US INC.; DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION;  
AND DELAWARE & HUDSON RAILWAY COMPANY, INC. – CONTROL – KANSAS  
CITY SOUTHERN, THE KANSAS CITY SOUTHERN RAILWAY COMPANY, GATEWAY  
EASTERN RAILWAY COMPANY, AND THE TEXAS MEXICAN RAILWAY COMPANY**

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**CSX TRANSPORTATION, INC.'S RESPONSE TO COMMENTS AND RESPONSIVE  
APPLICATIONS**

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**VERIFIED STATEMENT OF PROFESSOR JULIE M. CAREY  
NATIONAL ECONOMIC RESEARCH ASSOCIATES, INC.  
(NERA)**

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**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**DOCKET NO. FD 36500**

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**CANADIAN PACIFIC RAILWAY LIMITED; CANADIAN PACIFIC RAILWAY  
COMPANY; SOO LINE RAILROAD COMPANY; CENTRAL MAINE & QUEBEC  
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**CSX TRANSPORTATION, INC.'S RESPONSE TO COMMENTS AND RESPONSIVE  
APPLICATIONS**

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**VERIFIED STATEMENT OF PROFESSOR JULIE M. CAREY  
NATIONAL ECONOMIC RESEARCH ASSOCIATES, INC.  
(NERA)**

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## **I. INTRODUCTION AND SUMMARY CONCLUSIONS**

My name is Julie M. Carey. I am an economist and Managing Director with National Economic Research Associates, Inc. (“NERA”). I filed a verified statement in this proceeding on February 28, 2022.<sup>1</sup> Additional details regarding my professional qualifications, including my CV are provided in that filing.

I am responding to the Amended Responsive Application by Norfolk Southern Railway Company (“NSR”)<sup>2</sup> and therefore its Amended Comments<sup>3</sup> to the Amended Operating Plan regarding “contingent trackage rights on the Shreveport-Wylie Section for intermodal traffic originating or terminating at the Wylie Intermodal Terminal.”<sup>4</sup> These contingent trackage rights would expand NSR’s access through the Meridian Speedway (the “Speedway”) that connects the Southeast U.S. rail markets to the Southwest (Transcontinental) and Dallas, TX rail markets. NSR is currently a 30% owner in the Meridian Speedway LLC (“MSLLC”) joint venture (“JV”) with Kansas City Southern (“KCS”) having the remaining 70% ownership. Throughout its pleadings, NSR attempts to suggest the MSLLC JV is a procompetitive endeavor.<sup>5</sup> However, NSR principally ignores the fact that the original request to the Board for approval for the MSLLC JV was incomplete and inappropriate (and therefore I understand from the CSXT legal brief it was unlawful). Further, NSR also ignores that the perpetual nature of the Meridian Speedway’s exclusivity arrangements (“Exclusivity Arrangements”) exacerbates the negative effect on competition and the public interest, and that the CPKC Transaction compounds these issues through its impact on the east-west gateway at Shreveport and Meridian.

The MSLLC Line (Shreveport, LA to Meridian, MS) which is owned by the JV and the entire Meridian Speedway is a key route in the Post-CPKC Transaction system. The Meridian Speedway is majority owned by KCS,<sup>6</sup> and control of the Speedway will transfer to CPKC as a part of the Applicants’ proposed transaction. The Meridian Speedway is clearly an important asset in the CPKC

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<sup>1</sup> See Finance Docket No. 36500, *Canadian Pacific Railway Limited, Et Al. – Control – Kansas City Southern, Et Al.*, CSX Transportation, Inc.’s Comments and Request for Conditions (“CSXT-8, Carey V.S.”), (February 28, 2022).

<sup>2</sup> See Finance Docket No. 36500, *Norfolk Southern Railway Company – Trackage Rights – Kansas City Southern*, Amended Responsive Application of Norfolk Southern Railway Company (“NS-13”), (June 9, 2022).

<sup>3</sup> See Finance Docket No. 36500, *Canadian Pacific Railway Limited, Et Al. – Control – Kansas City Southern, Et Al.*, Amended Comments of Norfolk Southern Railway Company and Request for Conditions (“NS-12”).

<sup>4</sup> *Ibid.* at 4

<sup>5</sup> Below, I discuss NSR’s attempts to characterize the Meridian Speedway JV as a “pro-competitive” and “pro-growth.” See NS-12 at 9-21.

<sup>6</sup> See Section III *supra*.

Transaction as observable in CPKC business and marketing materials that tout the Meridian Speedway as the major east-west intermodal route on the CPKC's U.S. network (into the Southeastern U.S.). NSR also highlights the importance of the Meridian Speedway with respect to the CPKC Transaction, including the Applicants' amended operating plan which projects significant traffic increases over the Meridian Speedway, including for non-intermodal traffic.<sup>7</sup>

I also discuss the potential for competitive harm to customers in the Eastern U.S. that results from the KCS and NSR MSLLC Agreements<sup>8</sup>, and which could be aggravated as a result of the Transaction described in NSR's Responsive Application.<sup>9</sup> These concerns arise from the MSLLC Agreements' use of perpetual Exclusivity Arrangements pertaining to transcontinental intermodal traffic and Dallas Intermodal Terminal Traffic that traverses the MSLLC Line. These Exclusivity Arrangements include a market division that divides the control of certain geographic areas and products between KCS and NSR and has vertical effects that reduce competition. Further, for intermodal traffic originating or terminating in Dallas, NSR has the ability to prevent KCS from interchanging traffic with other carriers and while NSR also works directly with KCS to jointly set rates.

NSR's control of MSLLC reinforces the NSR-KCS traffic division and therefore adversely impacts competition. The MSLLC Exclusivity Arrangements provide NSR with exclusive access from Shreveport to Meridian for transcontinental intermodal traffic and Dallas to Meridian for Dallas Traffic for locations into Southeastern U.S. that are advantaged on the Meridian Speedway route. Both NSR's existing Exclusivity Arrangements and its proposed expansion of those rights are anticompetitive and distort competition between NSR, KCSR, and CSXT for NSR Traffic for whom the most efficient route is over the MSLLC Line. I present economic indicia of competitive harm in the Eastern U.S. railroad markets that arises from the MSLLC JV and the indefinite Exclusivity Arrangements. My analysis shows that intermodal traffic moving under the Exclusivity Arrangements over the MSLLC Line has [REDACTED] than [REDACTED]

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<sup>7</sup> See NS-12 at 5-6.

<sup>8</sup> "MSLLC Agreements" refers to all agreements included as exhibits to the public Notice of Exemption in FD 34822 filed January 17, 2006 as well as subsequent amendments to those agreements. These include but are not limited to the Dallas Terminal Marketing Agreement (included as Exhibit J to the 2006 notice), the NS-KCS Western Haulage agreement (included as Exhibit E to the 2006 notice), and the LLC Agreement of the MSLLC (included as Exhibit A to the 2006 notice). See FD 34822, *The Kansas City Southern Railway Company, and Meridian Speedway, LLC – Exemption for Transactions Within a Corporate Family*, Verified Notice of Exemption Pursuant to 49 C.F.R. Sec. 1180.2(d)(3) ("Notice of Exemption"), (January 17, 2006).

<sup>9</sup> See NS-13.

██████████ as well as ██████████ In addition, I conducted a statistical analysis of interchange (i.e., gateway) competition demonstrating that the existence of only one railroad alternative at a gateway results in higher rates than if more than one railroad competitor is present. These are the circumstances under the Exclusivity Arrangements.

NSR did not address the effects on competition of the perpetual Exclusivity Arrangements associated with the MSLLC Agreements with respect to the Transaction. Fully open gateways on both ends of the MSLLC Line (Shreveport and Meridian) are needed to address competitive concerns arising from the CPKC Transaction. Ensuring Shreveport and Meridian gateways are open, as well as all other gateways used for traffic movements with Mexico, will act as a constraint against CPKC's market power related to Mexico, and specifically in regard to originating and terminating traffic in the Southeastern U.S. and Mid-Atlantic. For Shreveport to adequately constrain CPKC Post-Transaction, Meridian must also be an open gateway with commercially reasonable terms and operations to ensure there is competitive access across the entire MSLLC Line for traffic movements within the Southeastern and Mid-Atlantic regions. The importance of ensuring a competitive MSLLC Line for Mexico Traffic is amplified by the large future growth in truck and rail movements into the Eastern U.S. railroad markets (including the Southeastern U.S.) and the ability of an improved interchange to potentially take these trucks off the road. Furthermore, open gateways at both ends of the MSLLC Line are required to adequately constrain CPKC's market power with respect to long hauls to and from West Coast ports (into the Eastern U.S. markets, particularly the Southeastern U.S. and Mid-Atlantic regions) as well as other transcontinental NSR Exclusivity Traffic that traverses the Meridian Speedway to or from Eastern U.S. railroad markets.

I also show that the MSLLC Agreements were not reasonably economically necessary for NSR and KCS to achieve business success in 2006, nor are they reasonably economically necessary on an ongoing basis. As discussed below, NSR and KCS could have entered into a non-exclusive haulage agreement, which are common forms in the railroad industry. In addition, the Exclusivity Arrangements appear as the prominent, new and significant feature to the MSLLC Agreements, and the general type of service and economic terms over the MSLLC Line Pre-JV world (i.e., haulage service for NSR Transcontinental Traffic and interline traffic for Dallas traffic) continued after the formation of the JV. Therefore, no material efficiency gains from vertical integration were associated with the MSLLC JV (as compared to the Pre-JV world). Furthermore, NSR's strong historical financial performance ██████████ from the MSLLC Line traffic, confirm that even if the Exclusivity Arrangements were needed in 2006, they are no longer needed.

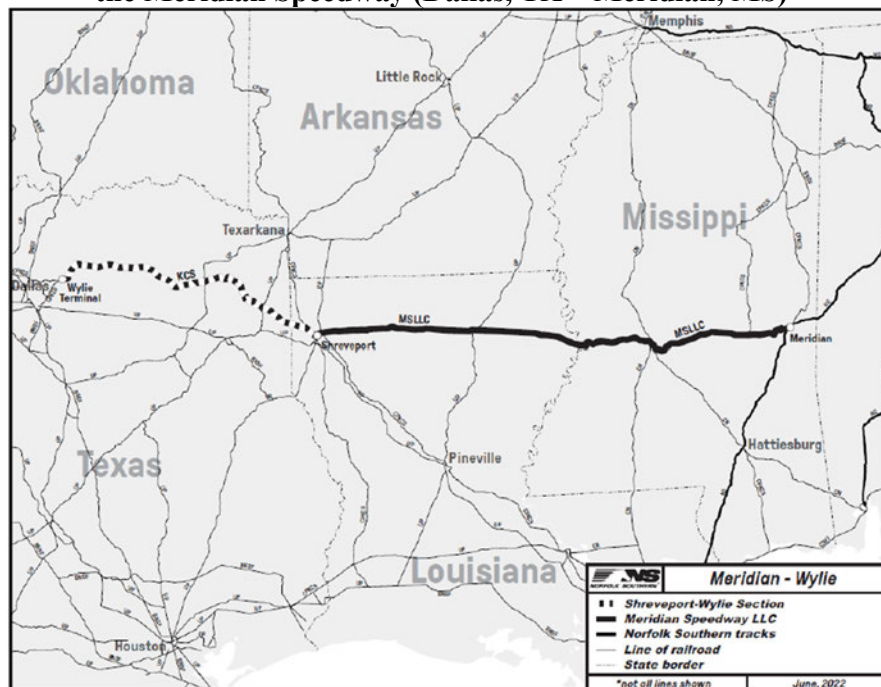
Despite claims of efficiency benefits from Meridian Speedway and the MSLLC JV, NSR fails to assess the economic implications of the Exclusivity Arrangements and the closed gateways at Meridian and Shreveport. My analysis below shows that shippers would achieve overwhelming economic benefits from the abrogation of the perpetual KCS-NSR Exclusivity Arrangements and opening of both the Shreveport and Meridian gateways to the MSLLC Line. Specifically, my annual public benefits analysis estimates customer savings ranging from \$37 to \$49 million as being achievable from the additional railroad competitor over the MSLLC Line. I conducted a statistical analysis of interchange (i.e., gateway) competition that reaffirms the well understood economic principle that increased competition constrains prices (i.e., benefiting customers with lower prices). I also looked to direct evidence of CSXT's ability to offer Eastern U.S. rail customers lower rates for intermodal traffic movements serving the same origin and destination. My analysis shows that [REDACTED] rates would result by opening both the Shreveport and Meridian gateways to the MSLLC Line. Opening both the Shreveport and Meridian gateways to the MSLLC Line enables an additional Class-I railroad to compete in the Eastern U.S. railroad markets for traffic that moves over the MSLLC Line. My annual public benefit estimates of customer savings also consider that increased railroad competition can induce shippers currently using trucks to use a rail alternative instead. Given the very modest efficiency-related benefits associated with the proposed CPKC Transaction, removing these obstacles to competition will lead to a higher level of public benefits from the Proposed Transaction and best ensure competitive railroad markets going forward.

In sum, from a public interest perspective, CPKC (and NSR's attempts) to keep certain gateways closed is an overt restraint to competition and should be disallowed. Open gateways enhance competition and can constrain a railroad from otherwise raising prices (even if the gateway is not consistently or substantially used today). The Board should not approve the Proposed Transaction without conditions to mitigate the risks it presents for competition and opening the gateways to competitive alternatives at both ends of the MSLLC Line (Shreveport and Meridian) as well as all other CPKC gateways to ensure that traffic movements involving CPKC can move over the most economically efficient routes, consistent with the public interest.

## II. THE MSLLC LINE (SHREVEPORT TO MERIDIAN) AND THE ENTIRE MERIDIAN SPEEDWAY IS A KEY ROUTE IN THE POST CPKC SYSTEM

The Meridian Speedway, from Dallas, TX, to Meridian, MS, is a major east-west gateway connecting traffic between the Southwestern and Southeastern United States.<sup>10</sup> The MSLLC Line is a segment of the Meridian Speedway that extends from Shreveport, LA in the west to Meridian, MS in the east. All traffic that enters the MSLLC Line under the MSLLC Agreements, discussed further below, traverses the entire track of the MSLLC Line that enters or exits at Meridian or Shreveport<sup>11</sup> The MSLLC Line is shown below in Figure 1 as submitted by NSR in its filings in this proceeding.<sup>12</sup>

**Figure 1: The MSLLC Line (Shreveport, LA – Meridian, MS)  
and  
the Meridian Speedway (Dallas, TX – Meridian, MS)<sup>13</sup>**



As noted in Section I, the MSLLC Line is owned and operated by the Meridian Speedway LLC, the joint venture between Norfolk Southern Railway Company and Kansas City Southern railroads.<sup>14</sup> It provides haulage services to NSR that are operated by KCS on MSLLC's behalf and trackage rights to KCS. The vast majority of traffic over the MSLLC Line and the Meridian

<sup>10</sup> Smaller amounts of traffic to and from the Northwest and Northeast of the United States is also moved across the Meridian Speedway as discussed in Section III.D *supra*.

<sup>11</sup> See NS-12 at 3.

<sup>12</sup> See NS-12 at 4.

<sup>13</sup> See NS-12 at 4.

<sup>14</sup> See NS-12 at 9.

Speedway as a whole is intermodal containers.<sup>15</sup> This traffic flows over the Speedway by two principal methods: (1) Intermodal traffic originating or terminating west of Dallas enters or exits the Speedway at Shreveport through a connection with Union Pacific (“UP”), where it connects with NSR which carries traffic (via haulage over the MSLLC line and directly over its lines) to or from locations throughout the Southeastern U.S. and Mid-Atlantic Regions; (2) KCS track from the Wylie Intermodal Terminal near Dallas, TX<sup>16</sup> connects to the MSLLC Line at Shreveport forming the “KCS Line” portion of the Speedway from Wylie to Shreveport.<sup>17</sup> KCS and NSR jointly market traffic to and from Wylie, and that traffic is carried over the Meridian Speedway to or from locations on NSR’s network in the east. The entire Meridian Speedway and its subparts, the MSLLC Line and the KCS Line, are displayed above in Figure 1.

MSLLC is nominally majority-owned by KCS,<sup>18</sup> and control of the MSLLC will transfer to the combined Canadian Pacific Railway (“CP”) and KCS (collectively “CPKC”) as a part of the transaction proposed by the Applicants. It is my understanding that NSR has the right to dissent from "major decisions" which effectively provides a 50% control, despite the fact that it only receives 30% share of income.<sup>19</sup> The Meridian Speedway is an important asset in the CPKC Transaction. This is evident from both the business and marketing materials produced by the Applicants and the Application for approval of the Proposed CPKC Transaction, including Applicants’ transaction operating plan and the amended operating plan.

For example, CP identified the Meridian Speedway as a key asset in the future CPKC intermodal network in their marketing materials discussing the strengths of a potential CPKC.<sup>20</sup> CP has touted the Meridian Speedway as the major east-west intermodal route on the CPKC U.S. network (into the Southeastern U.S.).<sup>21</sup> In this material, CP highlights the connection of UP and NSR at Shreveport, and the use of the MSLLC Line to connect to NSR at Meridian. Further, CP CEO Keith Creel has publicly commented to investors on the importance of the Speedway to the potential

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<sup>15</sup> See NS-12 at 12. 400,000 IM units / 440,000 total revenue units = 91% of traffic.

<sup>16</sup> See NS-12 at 3.

<sup>17</sup> See NS-12 at 3.

<sup>18</sup> See *infra* Section III.

<sup>19</sup> See CSXT Legal Brief at 23. “Neither the Management Committee nor any committee thereof shall authorize or effect any action that constitutes a Major Decision unless such action has received the approval of at least one of the Committee Representatives appointed by NS.” See FD 34822, *Notice of Exemption*, at 114. See also FD 34822, *Notice of Exemption*, definition of “Major Decisions,” at 95-97.

<sup>20</sup> See Canadian Pacific, “North American Rail Shippers Association,” at 6 (May 11, 2022), available at <https://www.railshippers.com/wp-content/uploads/2022/05/Brooks-CP-NARS-2022.pdf>.

<sup>21</sup> *Ibid.*

CPKC entity, speaking about the potential to expand facilities at the Dallas Intermodal Terminal (“DIT”) even further to include new lumber facilities, transloads facilities, and liquid facilities, therefore increasing the importance of the Terminal to CPKC.<sup>22</sup> This development is in addition to what Mr. Creel characterized as the already existing, substantial, traffic on the line.<sup>23</sup>

**Figure 2: CPKC Intermodal Network Map used for Business Marketing<sup>24</sup>**



The centrality of the MSLLC Line (and the Shreveport and Meridian gateways that are the termini of that line) is also evident in the Applicants’ operating plan. The MSLLC Line is situated as the center of the North-South and East-West movements on KCS’s U.S. network. Shreveport, LA is an extremely important part of CPKC’s plans for the combined network. The amended operating plan projects that by the third post-transaction year, eight of the nine scheduled intermodal trains that traverse the CPKC system will traverse the Shreveport area (North, South, East and West) which is a major location on the western end of the MSLLC Line. The Shreveport Terminal will handle more

<sup>22</sup> St. John is in New Brunswick on the Canadian Atlantic Coast shown in Figure 2. *See* Canadian Pacific, “Wolfe Research Global Transportation & Industrials Conference,” at 11 (May 25, 2022) available at [https://s21.q4cdn.com/736796105/files/doc\\_downloads/2022/05/Wolfe-2022-Conference-CP-Transcript.pdf](https://s21.q4cdn.com/736796105/files/doc_downloads/2022/05/Wolfe-2022-Conference-CP-Transcript.pdf).

<sup>23</sup> Mr. Creel even went as far as to travel the route with NSR while surveying the plans for a future merged CPKC entity. *See Id.* at 10-11.

<sup>24</sup> *See* Canadian Pacific, “North American Rail Shippers Association,” at 6 (May 11, 2022) available at <https://www.railshippers.com/wp-content/uploads/2022/05/Brooks-CP-NARS-2022.pdf>.

tons of traffic, intermodal or otherwise, than all other parts of the KCS system.<sup>25</sup> Additionally, Shreveport is important for the efficiency gains that CPKC plans to create across its network, scheduling more new blockings at Shreveport than any other part of its network.<sup>26</sup>

The amended operating plan projects about a 36% increase in density over the entire Meridian Speedway, with some segments seeing even greater increases in traffic.<sup>27</sup> The amended operating plan projects an even greater increase in traffic than was originally projected in the operating plan submitted last October.<sup>28</sup>

The importance of the Meridian Speedway to the Proposed Transaction is also apparent to NSR. NSR's request for merger conditions notes that the Applicants' plan forecasts significant traffic increases over the Speedway, and that Applicants will potentially increase the use of the Speedway for non-intermodal traffic.<sup>29</sup> In order to accommodate these changes over the Speedway, and to presumably protect what NSR sees as an important traffic segment, NSR has requested numerous changes relating to the Meridian Speedway as a condition for the transaction's approval. These conditions include a condition to ensure "NS-CPKC Gateways remain open on commercially reasonable terms and the Meridian-Wylie Route remains a viable option for intermodal shippers."<sup>30</sup>

In short, Applicants see the Meridian Speedway as a key hub in existing operational plans and as an important segment for future business development within a potential CPKC entity. Further, NSR has recognized the necessity of an open "Meridian Gateway" to facilitate efficient movement of traffic in the Southeastern U.S. rail network.

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<sup>25</sup> See FD 36500, CP-47/KCS-34, Amended Operating Plan ("AOP"), Appendix G, at 1 (May 13, 2022). Three will traverse the entire Speedway, one on the KCS Line (the section from the Wylie Intermodal terminal to Shreveport) on an east-west routing, and the remaining five through Shreveport on a north-south routing. This is based on counting the routes on CPKC's submitted train route schedule. See also AOP, Appendix T, at 11. Shreveport Terminal 1 handles over 120 GTMs in 2027, with the next densest location at about 80 GTMs.

<sup>26</sup> See AOP, Appendix F, at 2. Seven new blocks are scheduled at Shreveport, with the next highest being four at multiple locations.

<sup>27</sup> See FD 36500, CSX Transportation, Inc.'s Amended Comments and Request for Conditions ("CSXT-11"), Section II, at 6-8 (June 9, 2022).

<sup>28</sup> See CSXT-11, Section II, at 8. See also AOP, Resubmitted Workpapers, "24.1.1.9- Trains per day and Gross Ton Miles," row 281, column BI (May 13, 2022). See also AOP at 81; AOP, Resubmitted Workpapers, "24.1.1.3.18- Comparison of Meridian Speedway Segment Densities" (May 13, 2022) (Applicants' instructions for comparing AOP and OOP).

<sup>29</sup> See NS-12 at 5-6.

<sup>30</sup> See NS-12 at 7-8.

### III. NSR/KCS MERIDIAN AGREEMENT

#### A. The Prior KCS and NSR Haulage Arrangement

Prior to the MSLLC Agreements,<sup>31</sup> both KCS and NSR could move traffic over the span of track between Meridian and Shreveport (now the MSLLC Line).<sup>32</sup> [REDACTED]

First, for transcontinental intermodal traffic destined for NSR's network,<sup>35</sup> [REDACTED]

Second, intermodal traffic that originated or terminated at Dallas was operated as a standard interline movement where [REDACTED]

[REDACTED] This was confirmed by NSR witness McClellan at deposition.<sup>38</sup>

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<sup>31</sup> "MSLLC Agreements" refers to all agreements included as exhibits to the public Notice of Exemption in FD 34822 filed January 17, 2006 as well as subsequent amendments to those agreements. These include but are not limited to the Dallas Terminal Marketing Agreement (included as Exhibit J to the 2006 notice), the NS-KCS Western Haulage agreement (included as Exhibit E to the 2006 notice), and the LLC Agreement of the MSLLC (included as Exhibit A to the 2006 notice). See FD 34822, *The Kansas City Southern Railway Company, and Meridian Speedway, LLC – Exemption for Transactions Within a Corporate Family*, Verified Notice of Exemption Pursuant to 49 C.F.R. Sec. 1180.2(d)(3) ("Notice of Exemption"), (January 17, 2006).

<sup>32</sup> See FD 34822, *Notice of Exemption*, at 4 (January 17, 2006).

<sup>33</sup> [REDACTED]

NSR is one of two Class-I carriers operating throughout the Eastern United States. For a complete network map, see Norfolk Southern System Map, available at

<http://www.nscorp.com/content/dam/nscorp/maps/2016-svstem-map-print.pdf>.

<sup>36</sup> [REDACTED]

<sup>37</sup> [REDACTED]

<sup>38</sup> [REDACTED]

For both types of traffic, prior to the formation of MSLLC, KCS was also able to move the traffic<sup>39</sup> [REDACTED]

## **B. The Revisions to the Prior KCS and NSR Haulage Arrangement**

The MSLLC Agreements created the Meridian Speedway LLC, a JV with two owners. NSR contributed \$300 million in investments along the Meridian Speedway in exchange for a 30% equity interest in MSLLC JV.<sup>42</sup> KCS retained the remaining 70% equity interest, associated with its existing railroad assets, and imputed a \$1 billion valuation for the entire Meridian Speedway project at that time. Despite the numerous agreements and complexity in the JV arrangements, much of the pre-MSLLC JV functionality of the transcontinental and Dallas intermodal traffic moves remained intact, as I discuss in Section VI.A below. The major change facilitated by the MSLLC JV was the insertion of perpetual Exclusivity Arrangements that I discuss in the next section.

For the NSR transcontinental intermodal traffic (“NSR Exclusivity Traffic” or “NSR Transcontinental Traffic”) NSR continued to receive haulage after the MSLLC JV was in place, just over a shorter route.<sup>43</sup> Under the MSLLC Agreements, MSLLC (operated by KCS) performs haulage for NSR between Shreveport and Meridian, instead of between Dallas and Meridian.<sup>44</sup> In exchange for this service, NSR pays its haulage payment to the MSLLC JV (instead of KCS, which it

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<sup>39</sup> See FD 34822, *Notice of Exemption*, at 4 (January 17, 2006).

<sup>40</sup> [REDACTED]

<sup>41</sup> See “Kansas City Southern 2005 Annual Report,” at 11, available at <https://investors.kcsouthern.com/~media/Files/K/KC-Southern-IR-V2/annual-reports/annualreport2005.pdf> (“Recognizing the efficiency of the Meridian Speedway, CSX opted to enter into an agreement with KCS to reroute interchange traffic with KCS that previously moved through New Orleans onto the Meridian Speedway on a permanent basis.”).

<sup>42</sup> See Norfolk Southern, “Form 8-K,” December 2, 2005, at item 1.01, available at <https://sec.report/Document/0000702165-05-000255/>.

<sup>43</sup> See FD 34822, *Notice of Exemption*, at 8 (January 17, 2006).

<sup>44</sup> In fact, in NSR and KCS’s application to create the MSLLC JV, it asserts that the transaction would perpetuate the haulage agreement that is already in place between KCS and NSR. See FD 34822, *Notice of Exemption*, at 8 (January 17, 2006). See also [REDACTED]

previously paid).<sup>45, 46</sup> The interchange at Shreveport was a location that UP had previously served in interchange with KCS.<sup>47</sup>

For traffic that originated or terminated at Dallas and moved through the Meridian Gateway, the prior business arrangement [REDACTED] after the MSLLC JV. As to trains and crews, KCS is responsible for the entirety of the movement, from Dallas to or from Meridian where it interchanges intermodal traffic with NSR for connections to and from customer locations on its system.<sup>48, 49</sup> As to revenues, each railroad receives the benefit for its portion of the move and is responsible for the operational costs on their portions of the move.<sup>50</sup> Put more simply, the Dallas area intermodal traffic is operated as an interline move today [REDACTED]<sup>51, 52</sup> Traffic to or from Mexico ("Mexico Traffic") is [REDACTED] to or from the Dallas area<sup>53</sup> because [REDACTED] traffic is operated as an interline movement where KCS is responsible for the move west of Meridian. Traffic is interchanged at Meridian with NSR which is responsible for the portion of the moves east of Meridian to and from locations on its network.

KCS pays [REDACTED] to the MSLLC for its use of the MSLLC Line based on [REDACTED]

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<sup>45</sup> See FD 34822, *Notice of Exemption*, NSR-MSLLC Joint Use Agreement, starting at 178 (January 17, 2006). See also FD 34822, *Notice of Exemption*, at 4 (January 17, 2006).

<sup>46</sup> As discussed in Section VI *infra*, the [REDACTED]

<sup>47</sup> See Union Pacific, "Union Pacific 2001 Annual Report," at 11 (2001), available at <https://www.up.com/investors/annuals/01annual/up2001annreport.pdf>.

<sup>48</sup> See FD 34822, *Notice of Exemption*, "KCSR-MSLLC Joint Use Agreement," starting at 214 (January 17, 2006). [REDACTED]

[REDACTED] NSR committed to an adjustable volume guarantee of [REDACTED]

See [REDACTED]

[REDACTED] See FD 34822, *Notice of Exemption*, Dallas Terminal Marketing Agreement, Section 2(b), at 392 (January 17, 2006).

<sup>51</sup> See FD 34822, *Notice of Exemption*, Dallas Terminal Marketing Agreement, Section 2(b), at 392 (January 17, 2006).

<sup>52</sup> See McClellan Dep. Tr. 11:06:32-11:06:58 (July 11, 2022) [REDACTED]

[REDACTED] Henry C. Wolf," slide 3 (December 2005), available at <https://www.sec.gov/Archives/edgar/data/702165/000070216505000255/hcw-remarks1.htm>

<sup>54</sup> See 8.1.15-KCSR-HC-00013436 to KCSR-HC-00013436.pdf, The Kansas City Southern Railway Company-Meridian Speedway LLC-Joint Use Agreement, at KCSR-HC-00013436, Appendix B Section 5(1) (May 2006).

### C. The Perpetual Exclusivity Arrangements in the MSLLC Agreements

The most conspicuous change in the post-2006 KCS-NSR business arrangement is the imposition of perpetual Exclusivity Arrangements which remove the possibility for competition for two types of traffic: (1) NSR transcontinental intermodal traffic (“NSR Exclusivity Traffic”) and (2) Dallas Intermodal Terminal Traffic (“DITT”).<sup>55</sup>

For NSR Exclusivity Traffic,<sup>56</sup> the Exclusivity Arrangements in the MSLLC Agreements explicitly remove KCS as an alternative railroad transportation provider for transcontinental intermodal traffic over the Meridian Speedway.<sup>57</sup> The MSLLC Agreements state that “NSR shall have exclusive right to transport NSR Traffic” and that “MSLLC may not perform haulage services for...KCS or any Foreign railroad.”<sup>58</sup> While KCS previously was able to receive or deliver traffic movements to another eastern railroad at the Meridian interchange location,<sup>59</sup> the Exclusivity Arrangements ensure that NSR is now the only carrier permitted to take transcontinental intermodal traffic over the Meridian Speedway.<sup>60</sup> The implication of removing KCS as an alternative railroad<sup>61</sup>

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<sup>55</sup> The perpetual exclusivity arrangements which remove the possibility for “NSR Exclusivity Traffic” and “DITT” are herein referred to as the “Exclusivity Arrangements.”

<sup>56</sup> “NSR Exclusivity Traffic” refers to what the MSLLC Agreements call “NS Traffic”: “‘NS Traffic’ shall mean all intermodal traffic that: (i) originates or terminates in the United States west of Dallas/Ft. Worth (including intermodal traffic originating by steamship line at a port along the west coast of the United States) and enters or exits the Subject Trackage at Shreveport; and (ii) originates or terminates in the United States at or east of Meridian and enters or exits the Subject Trackage at Meridian; and (iii) does not consist of traffic originating or terminating at any station on the KCSR system which includes the Texas Mexican Railway Company, (including any station where KCSR, or the Texas Mexican Railway Company have trackage rights or access via reciprocal switch), as it exists on the date of the Transaction Agreement. See FD 34822, *Notice of Exemption*, NSR-MSLLC Joint Use Agreement, at 182 (January 17, 2006).

<sup>57</sup> See FD 34822, *Notice of Exemption*, KCS-MSLLC Joint Use Agreement, Section 4(a), at 221 (January 17, 2006).

<sup>58</sup> See FD 34822, *Notice of Exemption*, NSR-MSLLC Joint Use Agreement, Section 4(a) and 4(b)(ii), at 188 (January 17, 2006).

<sup>59</sup> See FD 34822, *Notice of Exemption* at 4 (January 17, 2006).

<sup>60</sup> See FD 34822, *Notice of Exemption*, NSR-MSLLC Joint Use Agreement, Section 4(a), at 188 (January 17, 2006).

<sup>61</sup> Prior to the MSLLC Agreements, KCS acted as an alternative railroad between Dallas and Meridian for certain volumes of intermodal traffic. (“KCSR participates today as a line-haul carrier in a small volume of intermodal trailer traffic that originates on BNSF in California. These trailers, which total approximately 2,600 units per year, or 50 units per week, are transferred over the road to KCSR at Dallas, are rebilled, and then subsequently moved in KCSR’s account between Dallas and Meridian in different trains than those in which NSR haulage traffic moves. At Meridian, they are delivered to NSR for subsequent movement by NSR to destination. This trailer traffic will continue to move in the same manner following consummation of the proposed transaction.” See FD 34822, *Notice of Exemption* at 4-5.) This trailer traffic does not exist today. (“Transcontinental intermodal service is currently provided across the Speedway pursuant to a haulage agreement between NSR and KCSR, which the parties entered in 2000 (the “Existing NSR Haulage Agreement”)”. See FD 34822, *Notice of Exemption* at 4.)

to NSR for the transcontinental intermodal traffic is that KCS can no longer provide these customers with railroad service as a joint line move (with interchange at Meridian). This constraint reduces potential competition between NSR and CSXT east of Meridian.<sup>62</sup> The Exclusivity Arrangements results in a market division of the traffic with a carve-out for NSR alone (not KCS) to handle transcontinental intermodal traffic. As I discuss below in Section VI, this perpetual market division creates considerably different competitive circumstances from typical railroad haulage agreements. KCS provides local service to shippers located on the line between Meridian, MS and Dallas, TX while NSR has exclusive rights to operate transcontinental, intermodal trains via haulage.<sup>63</sup>

A second unique aspect of the MSLLC JV is that it grants NSR unique privileges for DITT. When moving traffic to or from the DIT, KCS must first offer the traffic to NSR at a rate established by agreement between NSR and KCS.<sup>64</sup> If NSR declines the offer, KCS may make the same exact offer to another carrier; however, if they alter the rate offer in any way, it must be re-presented to NSR. Therefore, if KCS seeks to interchange traffic with another railroad on better terms than first presented to NSR, NSR can simply reject the request and take the traffic itself. This means NSR can always preclude KCS from interchanging DITT with other carriers serving the East. The MSLLC Agreements also coordinate rate setting by NSR and KCS for customers to and from the DIT for traffic on KCS and NSR railroad networks. NSR must post all rates for intermodal traffic to Dallas from locations on NSR's network and KCS posts rates from Dallas to points on NSR's system.<sup>65</sup> Again, the terms of the MSLLC Agreements are perpetual.<sup>66</sup>

These Exclusivity Arrangements regarding DITT are likely unique in the industry. [REDACTED]

[REDACTED] NSR stated that [REDACTED]

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<sup>62</sup> I discuss the ills arising from closed gateways in Section V, including the economic benefit of having another railroad alternative to competitively negotiate with, as well as the compounding concerns about the need for open gateways to constrain CPKC's market power post-Transaction.

<sup>63</sup> See Section III.B. *Supra*. See also Norfolk Southern, "Remarks by Henry C. Wolf," December 2005, available at <https://www.sec.gov/Archives/edgar/data/702165/000070216505000255/hcw-remarks1.htm>.

<sup>64</sup> See FD 34822, *Notice of Exemption*, Dallas Terminal Marketing Agreement", Section 2(d), at 393 (January 17, 2006).

<sup>65</sup> *Id.*, Section 2(b), at 392.

<sup>66</sup> See FD 34822, *Notice of Exemption*, at 195, 228, 397.

<sup>67</sup> [REDACTED] See KCS Responses and Objections to CSXT's Fifth Set of Discovery Requests to KCS. response to Interrogatorv 4. at 13 (June 21, 2022).

[REDACTED]<sup>68</sup> This allows NSR to develop its chosen rates to its customers with the understanding that it sits in the driver seat. NSR can accept all the business opportunities at the rate it desires without any alternative railroad competitor in the eastern rail markets. In practice, NSR [REDACTED]

[REDACTED]<sup>69</sup> The combination of the right of first refusal and rate setting collaboration are a form of exclusivity for DITT over the Meridian Speedway and has an economic effect similar to that associated with a market division. NSR has recognized the Exclusivity Arrangements' role [REDACTED]

As discussed further below (Section VI), the Exclusivity Arrangements for the NSR Exclusivity Traffic and DITT are not commonplace business practices used by railroads. More common haulage or trackage arrangements could have been used by NSR to achieve its legitimate business goals without limiting competition.

#### **D. The Nature of NSR Intermodal and Other Traffic that Uses the MSLLC Line**

The Meridian Speedway is used to transport substantial intermodal and other types of traffic volumes to/from the Eastern U.S. Figure 3 below reports all traffic traversing the MSLLC Line between its Shreveport and Meridian gateways with further movement on NSR's railroad network.<sup>71</sup> The DITT movements enhanced by the perpetual Exclusivity Arrangements give NSR its [REDACTED] traffic category across the Meridian Speedway, approximately [REDACTED] of its total traffic volumes (units/carloads) in 2021.<sup>72</sup> Compared to this, current Mexico Traffic is [REDACTED] but is expected to [REDACTED] It is particularly relevant to the CPKC transaction, as I discuss in Section V.A. below.

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<sup>68</sup> See McClellan Dep. Tr. 12:17:30 (July 11, 2022). [REDACTED]

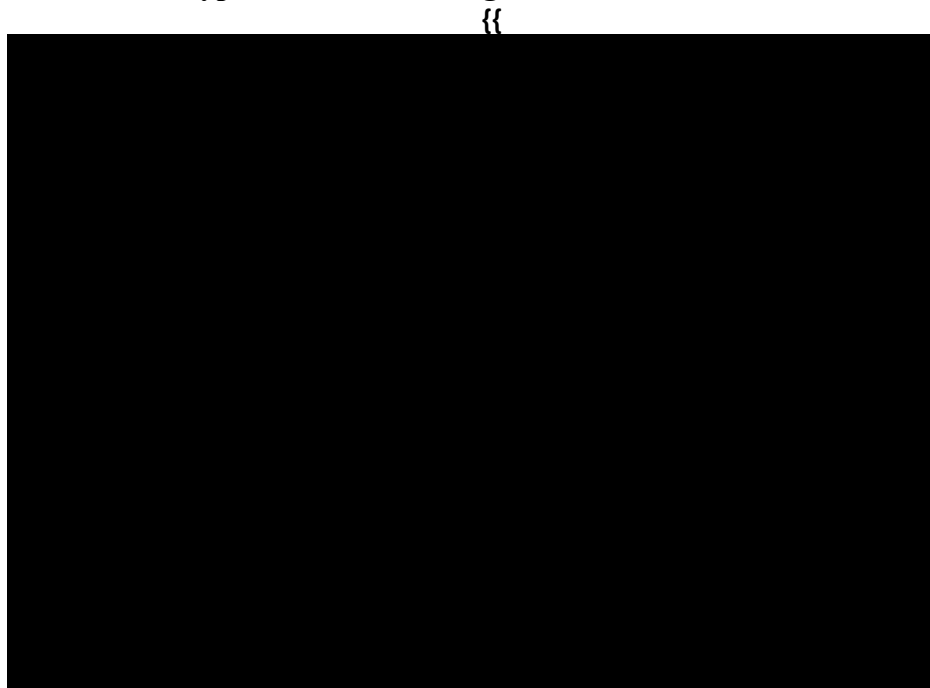
<sup>69</sup> See Carev HC-WP "2019 KCS Tapes - All Intermodal Dallas Moves.xlsx".

<sup>70</sup> [REDACTED]

<sup>71</sup> These figures exclude traffic movements that are local to the Meridian Speedway and enter or exit locations between the Meridian and Shreveport.

<sup>72</sup> [REDACTED]

**Figure 3: Traffic Volumes for NSR Exclusivity Traffic, Dallas, Mexico Intermodal, and other types of traffic moving over the MSLLC Line<sup>73</sup>**



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The intermodal traffic that moves across the MSLLC Line primarily goes to or from the Southeast U.S., with the [REDACTED]  
[REDACTED]  
[REDACTED] Regarding Transcontinental Intermodal Traffic, the Los Angeles area is the most important West Coast location. Important volumes also move to and from [REDACTED]  
[REDACTED], which are also occasionally routed through the Speedway, but at a much lower rate.

NSR's comments on the Applicants' amended operating plan discuss the increasing intermodal traffic that traverses the Meridian Speedway to and from the Southeastern U.S. region.<sup>74</sup> This discussion includes a misplaced attempt to assign investments in NSR's intermodal terminals in the

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<sup>73</sup> See Carey HC-WP 2019-2021 Meridian Loaded Volume Summary.xlsx

<sup>74</sup> "Because of NSR's investments, the Meridian Speedway today is faster and more reliable, making it a popular option for shippers as an intermodal alternative for the movement of goods to/from the southeastern United States that would have otherwise moved by highway. Intermodal traffic on the Meridian Speedway increased 340% from 2004 to 2021." See NS-12 at 12.

Southeastern U.S. to NSR's investment in the trackage along the Meridian Speedway that was agreed to in the MSLLC Agreements.<sup>75</sup> NSR's intermodal terminals in the Southeastern U.S. rely heavily on traffic from the rest of NSR's intermodal network, not only the Meridian Speedway. NSR therefore has the incentive to improve this network regardless of activity on the Speedway.<sup>76</sup> Specifically, in its Amended Comments, NSR identified \$324 million in capital expenditures made in Southeastern U.S. intermodal terminals from 2006 to 2021 which it states support the Meridian Speedway all the way from Meridian to Wylie.<sup>77</sup> However, these are not investments on the Meridian Speedway nor are they relevant to the Meridian Speedway in any meaningful way: [REDACTED]

[REDACTED]<sup>78</sup>

#### **IV. THE PERPETUAL EXCLUSIVITY ARRANGEMENTS IN THE MSLLC AGREEMENTS HARM COMPETITION AND THE PUBLIC INTEREST THAT WOULD BE COMPOUNDED BY THE CPKC TRANSACTION BUT ARE NOT ADDRESSED BY NSR**

The Meridian Speedway Notice of Exemption was crafted as an intracompany transaction and provided certain details about the assets and planned infrastructure improvements.<sup>79</sup> In basic economic terms, however, an intracompany transfer reassigns the ownership and control of an asset from one entity to another entity but remains under the ownership and control of the same parent company. To illustrate, consider subparts of a company to be gold coins, and an intracompany transfer moves a few gold coins from a person's left-side pocket to its right-side pocket. In the end, the gold coins remain with the same person. Based on my experience,<sup>80</sup> an appropriate competition analysis considers all entities operated by the parent company as being under common control by the parent (i.e., under one tent).

From an economic perspective, the MSLLC JV did not have even the limited effect of shifting parts of a company around (i.e., moving a few gold coins from a person's left-side pocket to its right-side pocket). The MSLLC JV involves two separate and non-affiliated railroads with two different

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<sup>75</sup> See NS-12 at 6-7.

<sup>76</sup> NSR has a very large overall intermodal business, totaling about 4.1 million units in 2021. See NSR 2021 Annual Report at k22, available at <http://nscorp.com/content/dam/nscorp/get-to-know-us/investor-relations/annual-reports/annual-report-2021.pdf>

<sup>77</sup> See NS-12, Exhibit 3, at 7.

<sup>78</sup> See Carey HC-WP NS IM Terminal Meridian Share.xlsx

<sup>79</sup> See FD 34822, *Notice of Exemption* at 8-10.

<sup>80</sup> I have worked on many dozens of such economic analyses for submission to a variety of different industry regulators.

networks—NSR, an Eastern U.S. railroad, and KCS, a midwestern U.S. railroad. Each of these may have distinct effects on competition. The perpetual Exclusivity Arrangements have the effect of integrating ████████ of the services provided over the MSLLC Line into NSR’s entire railroad network in the Eastern U.S., where it competes with CSXT (not KCS). The extending nature of the integration of the two networks is a vertical integration. NSR’s economist expert, Dr. John Mayo, acknowledges the economic concerns that arise from transactions involving vertical integration that can lead to vertical anticompetitive effects upstream and downstream of the service through exclusive control of input traffic.<sup>81</sup> While Dr. Mayo expresses concerns about CPKC’s vertical integration and potentially anticompetitive effects, he is silent on these issues arising from the exacerbating effects of the proposed CPKC Transaction on the MSLLC Exclusivity Arrangements.

The Meridian Speedway Exemption Notice did not include competition analysis on the relevant markets or potential benefits analyses, nor did it discuss specific public interest considerations.<sup>82</sup> Nor did the Board’s exemption address the implication of the MSLLC JV on competition or any potential benefits and public interest considerations.<sup>83, 84</sup> In the exemption proceeding, the Board was not asked to address 49 U.S.C. § 11322, which provides that rail carriers **may not pool or divide traffic** or services or any part of their earnings without Board approval.<sup>85, 86</sup> Yet, as discussed above in Section III, the MSLLC Agreements divide traffic with a carve-out for NSR alone (not KCS) to handle transcontinental intermodal traffic. By virtue of the pricing provisions regarding the DITT,

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<sup>81</sup> See NS-12, Exhibit C, V.S. of Prof. John Mayo, Ph.D, at 17-18. Dr. Mayo describes potential economic harm associated with foreclosure of “upstream rivals from access to distribution (customer foreclosure) or unilaterally to foreclose downstream rivals from access to a key input (input foreclosure),” as well as concern that arises from raising rivals’ costs.

<sup>82</sup> See FD 34822, *Notice of Exemption* (January 17, 2006).

<sup>83</sup> See FD 34821 et. al., STB Decision (February 22, 2006); See also FD 34821 et. al., STB Decision (April 6, 2006). KCS et al. mention in passing, without economic analysis regarding the exclusivity implications, that rail capacity improvements will make this route more competitive compared to other gateways Memphis, New Orleans, and Birmingham for intermodal traffic.

<sup>84</sup> Regarding the MSLLC-related transactions, the Board addressed whether environmental review was needed, but did not assess the impact on competition or other public interest considerations. See FD 34821 et. al., STB Decision (February 22, 2006); See also FD 34821 et. al., STB Decision (April 6, 2006).

<sup>85</sup> See FD 33556, *Canadian Nat’l Ry, Grand Trunk et al.—Control—IL Central Corp. et al.*, Decision No. 37, at 18 (May 25, 1999).

<sup>86</sup> The Board has defined pooling as a situation where carriers which otherwise would be competitors take a common position toward the public and divide the benefits and costs equally or by special agreement, rather than according to individual performance. First the arrangement must be between competitors and, second, the arrangement must involve some restraint or potential restraint on competition. See Interstate Commerce Commission, “Decisions of the Interstate Commerce Commission of the United States June 1990 to July 1991,” Vol. 7, 2<sup>nd</sup> Series, at 185 (discussing Union Pacific RR. Et Al. – Trackage Rights over CNW in FD 31562).

NSR's right to carry that traffic is also exclusive and has a similar economic effect of a market division.

Notably, Applicants are seeking approval to continue to divide this traffic, but they do not evaluate the competitive implications, public benefits, or public interest considerations of continuing the Exclusivity Arrangements if their Proposed Transaction is approved. NSR did not address the implications of continuing the Exclusivity Arrangements into perpetuity if the Board approves the CPKC Transaction or NSR's Responsive Application.<sup>87</sup>

Had KCS and NSR submitted a pooling application or, for the reasons discussed below, sought approval for NSR's control of MSLLC under 49 USC § 11323 for the MSLLC JV, they would have been expected to address the relevant economic aspects of the effects on competition, public benefits, and the overall public interest. By means of the intra-company exemption, KCS and NSR denied the Board the opportunity to assess these effects. As a result, NSR acquired effective control over MSLLC by the requirements in the MSLLC Agreements that MSLLC make no "Major Decisions" without NSR's consent.<sup>88</sup>

The MSLLC Exclusivity Arrangements provide NSR with exclusive access from Shreveport to Meridian for transcontinental intermodal traffic and from Dallas to Meridian for Dallas Traffic for locations into the Southeastern U.S. that are advantaged on the Meridian Speedway route. Both NSR's existing Exclusivity Arrangements and its proposed expansion of those rights are anticompetitive and distort competition between NSR, KCSR, and CSXT for NSR Traffic for whom the most efficient route is over the MSLLC Line.

NSR's control of MSLLC reinforces the NSR-KCS traffic division and therefore adversely impacts competition by allowing NSR to charge higher rates, which lead to lower output than would otherwise result. I show the commonly used railroad industry agreements that KCS and NSR could have used without restricting competition in Section VI below. In Section VIII I discuss economic indicia such as NSR's higher MSLLC rates and shares as compared to other gateways. In addition, in

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<sup>87</sup> See NS-13 at 2-4 (discussing the MSLLC and agreement but not addressing Exclusivity Arrangements); NS-12, at 9-40 (discussing the MSLLC and impacts of the proposed CPKC Transaction but not addressing Exclusivity Arrangements); NS-12, "Amended V.S. of John W. Mayo," at 24-29 (discussing the MSLLC and agreements but not addressing Exclusivity Arrangements).

<sup>88</sup> "Neither the Management Committee nor any committee thereof shall authorize or effect any action that constitutes a Major Decision unless such action has received the approval of at least one of the Committee Representatives appointed by NS." See FD 34822, *Notice of Exemption*, at 114. See also FD 34822, *Notice of Exemption*, definition of "Major Decisions," at 95-97.



In addressing earlier pooling/divisions of traffic, the Board has carefully considered the full array of public benefits achievable (beyond anticompetitive harm) to reach a conclusion whether no alternative mechanism was available that would adversely affect competition. In one such example regarding pooling of flat cars, the Board discussed the factors that it considered in approving the pooling arrangement. The Board also pointed to technological innovation,<sup>96</sup> other unique facts from all types of related parties.<sup>97</sup> Notably in this case, the Board provided for a precise, definite extension of time (from 5 to 15 years) rather than an indefinite or perpetual period.<sup>98</sup>

**“On the record before us, TTX has shown that the pooling of flatcars promotes research and development of new and innovative equipment, permits standardized fleet repair and maintenance to reduce costs for the participating railroads, allows the participating railroads to spread the risk of investment in equipment, enables the participating railroads collectively to respond effectively and efficiently to the dynamics of the North American railroad network, and produces substantial capital savings by maximizing the efficient use and distribution of pooled equipment. That record reflects and the industry’s many years of experience with the pool confirms that the full array of benefits achieved through flatcar pooling cannot readily be achieved through any other means. The benefits of pooling also clearly outweigh any anticompetitive effects that may flow from the arrangement. Based on the record, the Board believes that such anticompetitive effects (to the extent they exist) are likely to be minimal. We are aware of no alternative mechanism that would entail less restraint on competition while achieving benefits similar to those generated by the Pooling Agreement.”**

In its Comments on the Amended Operating Plan, NSR characterizes the MSLLC JV as “pro-competitive” and “pro-growth ,”<sup>99</sup> which implies that net benefits exist with respect to the MSLLC JV despite the parties not making such a showing in 2006 or since. In neither the MSLLC Exemption Notice nor NSR’s Responsive Application in the CPKC Transaction was there any demonstration or discussion of whether an alternative mechanism would have been adequate to secure the asserted

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<sup>96</sup> For example, TTX has played a major role in the ongoing evolution of the doublestack car. *See* FD 27590, “TTX Company – Application for Approval of Pooling of Car Service With Respect to Flatcars,” at 27 (January 16, 2004).

<sup>97</sup> For instance, there was overwhelming support for the agreement expressed by shippers, ports, manufacturers, suppliers among others in the TTX flat car. “In this proceeding, over 80 interested parties—DOD (through SDDC), shippers, ports, car parts suppliers, car manufacturers, and others—have written in support of continuing the TTX flatcar pool for another 15 years.” *See* FD 27590, “TTX Company – Application for Approval of Pooling of Car Service With Respect to Flatcars,” at 6 (September 30, 2014).

<sup>98</sup> For instance, in the case of TTX’s authorization for flatcar pooling, a term of 5 years followed by extensions of 10 and 15 year terms were granted. *See* FD 27590, “TTX Company – Application for Approval of Pooling of Car Service With Respect to Flatcars,” at 17-18 (January 16, 2004); *See* FD 27590, “TTX Company – Application for Approval of Pooling of Car Service With Respect to Flatcars,” at 6 (September 30, 2014).

<sup>99</sup> *See* NS-12 at 9-21.

benefits of the MSLLC transaction with less restraint on competition. Here, neither NSR nor its expert economist consider the competitive implications of the exclusivity arrangement that could be immunized from review in perpetuity upon any approval of the CPKC Transaction or NSR's Responsive Application.<sup>100</sup>

**V. THE PUBLIC INTEREST IS BEST SERVED BY KEEPING ALL CPKC GATEWAYS OPEN (INCLUDING THE MERIDIAN SPEEDWAY GATEWAYS).**

**A. All CPKC Gateways Should be Open, not just CPKC So-Called "Affected Gateways," including Meridian and Shreveport, Laredo-TX (Mexico) and others**

In its Responsive Application, NSR raises concerns about CPKC's portion regarding open gateways across the Meridian Speedway.<sup>101</sup> Specifically, NSR explains that CPKC may have the ability and incentive to divert traffic away from the Meridian Speedway to longer hauls on other sections of the CPKC network.<sup>102</sup> NSR identifies specific examples of potential diversions to CPKC routes instead of the MSLLC Line.<sup>103</sup> I discussed concerns that arise from Applicants' strategy of traffic diversions to long haul or otherwise disadvantaged railroad routes in my earlier V.S in this matter.<sup>104</sup> CPKC estimated [REDACTED] total carloads/units of diversions of traffic to the CPKC network, of which [REDACTED] will be diverted from other railroads, [REDACTED] from other growth targets for rail, and [REDACTED] port as well as truck to rail.<sup>105</sup>

While I share NSR's concerns about the importance of open gateways, and the potential of CPKC to divert traffic, the NSR Responsive Application cherry picks a few self-serving targets rather than presenting a holistic viewpoint. They fail to consider public benefits from the proposed CPKC Transaction that might ensure a more competitive railroad industry in the future were CPKC not constrained by the MSLLC Exclusivity Arrangements.

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<sup>100</sup> See NS-13 at 2-4 (discussing the MSLLC and agreement but not addressing Exclusivity Arrangements); NS-12 at 9-40 (discussing the MSLLC and impacts of the proposed CPKC Transaction but not addressing Exclusivity Arrangements); NS-12, "Amended V.S. of John W. Mayo," at 24-29 (discussing the MSLLC and agreements but not addressing Exclusivity Arrangements).

<sup>101</sup> See NS-12 at 30-33, 42-46. See also NS-12, "Amended V.S. of John W. Mayo," at 4-5, 20-21, 29-30.

<sup>102</sup> See NS-12, Amended V.S. of John W. Mayo, Appendix at 24-25, 29. [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED] See NS-12, Amended V.S. of Michael McClellan at 7-8.

<sup>104</sup> See CSXT-8, Carey V.S., at Section II.A and IV.B. (February 28, 2022).

<sup>105</sup> See CSXT-8, Carey V.S., at Section II.A and IV.B. (February 28, 2022).

In the railroad industry, the term gateway refers to a location where two independent railroads connect to interchange cars from one railroad to another. When a gateway is open, shippers have the benefit of the potential competition on both sides of the gateway. Increasing the number of railroad carriers allowed to functionally interchange traffic among other railroads enhances competition. Ensuring that interchange is available at all gateways that connect one railroad carrier to another is fundamental to railroad competition.

The mere existence of a gateway where a competitor railroad can access traffic from a carrier that it connects with offers two alternatives to shippers. This enhances competition and can constrain a railroad from otherwise raising prices. This is true even if a gateway is not consistently or substantially used. In basic economic terms, an additional railroad alternative allows for a second rate offer from the competitor railroad. This can influence the first railroad to lower its rate, thus benefiting shippers.<sup>106</sup> Economic literature recognizes that the existence of an alternative competitor facilitates negotiations and competing offers and so helps to ensure that negotiations will be competitive.<sup>107</sup> My analysis of the economics of competition of gateways/interchanges discussed in Section VII reaffirms the proposition that customer rates are reduced as more competitors take advantage of an open gateway. This highlights the importance of the treatment of open gateways on CPKC's network Post Transaction. The Board has recognized the potential of enhanced competition that arises from the ability of a customer to build out railroad tracks and facilities to connect to a

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<sup>106</sup> The "one-lump" theory, which is also referred to as "single monopoly profit" theory, suggests that a company with a monopoly in one product cannot use that monopoly power in a related market to increase its profits. However, there are circumstances in which such theory does not apply and certain end-to-end transactions can result in anticompetitive outcomes. Such circumstances exist when a monopolist upstream provider and downstream rivals lack full information about one another's cost and prices of those downstream rivals provide differentiated services. *See* CSXT-8, Carey V.S., Section II.B (February 28, 2022). *See also* Professor Salop *See* UP-10, Union Pacific Railroad Company's Comments and Request for Conditions, Verified Statement of Steven C. Salop at paragraphs 36-39, 40-59.

<sup>107</sup> Economic literature regarding negotiations identifies factors important to competitive market outcomes including similarly bargaining leverage of the two counterparties (i.e., no undue bargaining advantage), negotiations not under circumstances of duress or coercion, the ability to walk away from the negotiations (including for another alternative) that have negotiated a contract under reasonable economic conditions (i.e., relatively similar bargaining leverage, and not under circumstances of duress or undue pressure). *See* Avinash Dixit and Susan Skeath, *Games of Strategy*, 566-595 (W.W. Norton & Company, 2004), 2<sup>nd</sup> Edition; Robert Cooter and Thomas Ulen, *Law & Economics*, (Addison-Wesley, 2000), 3rd edition, at 43 and 206-7; and Kenneth Binmore, Ariel Rubinstein & Asher Wolinsky, "The Nash Bargaining Solution in Economic Modeling," 17 *Rand Journal of Economics*, 176-188 (1986).

second railroad<sup>108</sup> (i.e., importance of enhancement of competition that arises with additional competitive pressures).<sup>109</sup>

CPKC's and NSR's attempt to keep certain gateways closed is an overt restraint on competition and should be disallowed. NSR's evaluation of the potential implications of the transaction on the Meridian Speedway is incomplete because it does not address either (1) the advantages of fully open gateways on both ends of the MSLLC Line (Shreveport and Meridian) to all competitors, or (2) the concerns regarding competition at each end of the MSLLC Line arising from the CPKC Transaction.<sup>110</sup> NSR does not address CPKC's narrow and restrictive view that only gateways that it deems to be affected by the Transaction should be considered "affected gateways." It seems that CPKC does not want any of its gateway "commitments" embodied in conditions enforceable by the Board so that they might remain open physically and commercially in the future. Mr. Brooks testified in his deposition that [REDACTED]

[REDACTED]<sup>111</sup> CPKC states unconvincingly and without sufficient basis that Mexico gateways are not affected.<sup>112</sup>

CPKC's attempts, and by extension NSR's limited view, to pick and choose gateways that it deems affected and only allow CPKC's "selected gateways" required to be open in the future is flawed, incomplete, and susceptible to gaming/bias. These attempts add risks to future competition and limits to economic benefits, including unforeseen future events. They lack the necessary teeth to ensure the most competitive outcomes possible in the future. CPKC and NSR's attempts to keep certain gateways closed are an overt restraint on competition and should be rejected.

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<sup>109</sup> For instance, in evaluating a 2-to-1 merger, the Board has acknowledged competitive results can be achieved in a circumstance where merging railroads' lines run near a plant owned by an exclusively served customer and that shipper having the ability to build out to a second carrier "can provide important leverage in rate and service negotiations with the carrier providing direct service to the plant". See FD32760, *Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company—Control and Merger—Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company*, Decision No. 44, at 124.

<sup>110</sup> NS-12 at 27-28 (discussing impacts at the Meridian Speedway).

<sup>111</sup> Brooks Deposition, 94:5-7. [REDACTED]

[REDACTED] (APP VOL. 1, PAGE 20)  
[REDACTED], Railroad Control Application (CP-26/KCS-14), Vol. 1, at 205 (October 29, 2021): "The Dynamics of Mexican Gateways – and the Laredo Gateway in Particular – Are Unaffected By This Transaction."

Open gateways are needed to ensure that traffic movements involving CPKC (including the MSLLC Line) can move over the most economically efficient routes, consistent with the public interest. Shippers must be assured of the opportunity for competition on commercially reasonable terms (and service) with CPKC for all gateways. As I discussed in my February V.S. (Section III), the general and non-specific commitments offered by CP lack reliable guarantees.<sup>113</sup> While CP commits to working with shippers it does not promise concrete standards that would ensure that CP (1) sets commercially reasonable rates (and does not directly or indirectly raise rivals' costs); and (2) provides service on a non-discriminatory basis<sup>114</sup>, with no service-related distortions involving rival railroads.<sup>115</sup>

Ensuring Shreveport and Meridian gateways, and all other gateways used for traffic movements with Mexico ("Mexico Traffic")<sup>116</sup> are open will constrain CPKC's market power related to Mexico Traffic. I discussed CPKC's economic incentive and ability to foreclose this traffic in my February Verified Statement.<sup>117</sup> There, I discussed that the combined CPKC would have a unique economic opportunity and incentive to implement a pricing strategy that could harm shippers today and tomorrow which was not achievable pre-transaction regarding Mexico.<sup>118</sup>

I also discussed the substantial current and future Mexico Traffic as it is anticipated through the Laredo Gateway. This traffic flow is important for the overall efficiency of the North American railroad network to ensure that it moves over the most economically efficient routes, consistent with

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[REDACTED]

See also Brooks V.S. ¶ 42-46.

See 49 U.S. Code § 10741, "Prohibitions against discrimination by rail carriers", available at <https://www.law.cornell.edu/uscode/text/49/10741>

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[REDACTED]

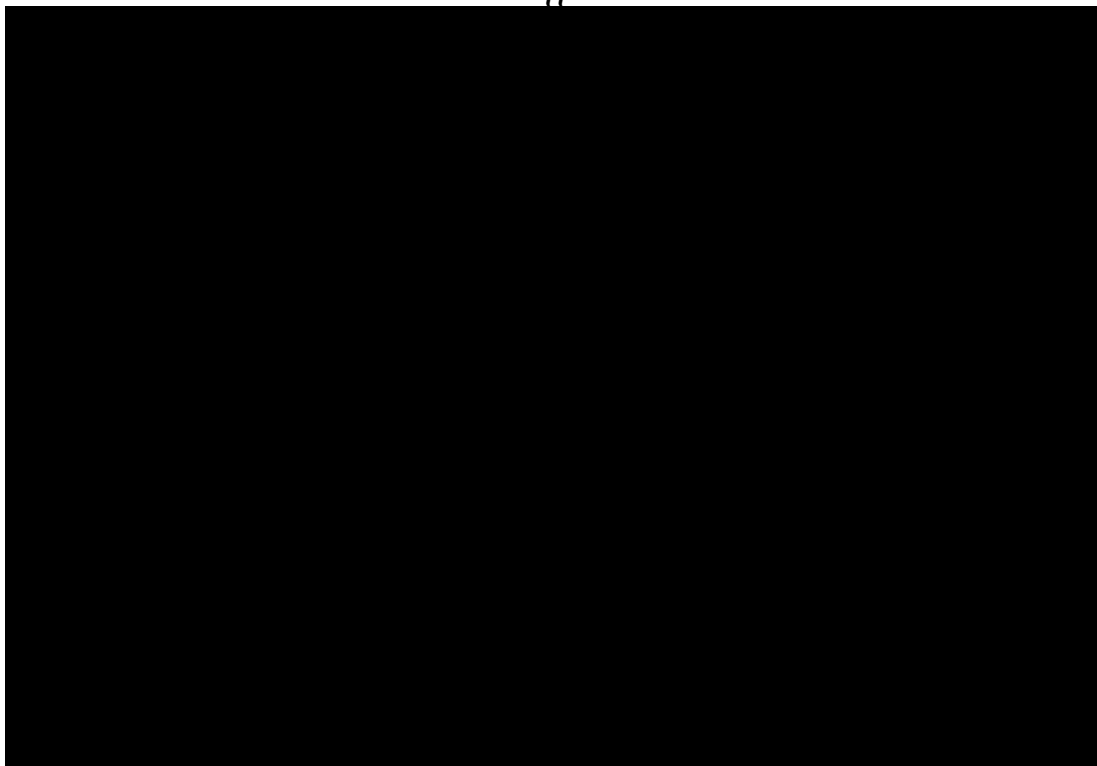
Mexico Traffic is any movement of any type of product to and from Mexico locations. I refer to the need for all gateways to remain open on commercially reasonable terms for traffic to and from the many shipper locations in Mexico in my February V.S. See CSXT-8, Carey V.S., at 3 (February 28, 2022).

<sup>117</sup> See CSXT-8, Carey V.S., at Section II (February 28, 2022).

<sup>118</sup> *Ibid.*

the public interest.<sup>119</sup> Laredo alone is not sufficient to keep as an open gateway to constrain CPKC post transaction for Mexico traffic. All gateways on CPKC’s network that currently or may in the future handle Mexico Traffic as interline movements should be required to be open. Opening all gateways will ensure competitive market responses to the unique issues regarding Mexico Traffic and avoid economic harm to competition that could otherwise result today and tomorrow. Figure 4 below shows blue dots identifying the many customer locations (and relative revenues) that use railroad routes for traffic movements with Mexico which are dispersed across the U.S., highlighting the importance to ensure that all gateways potentially available to interline with CPKC that provide alternative transportation are open gateways. The Board should give due consideration to ensure that every gateway connecting to CPKC and all railroads remain open with sufficient requirements to ensure commercial and operational aspects.

**Figure 4: Combined CPKC Network Map and 2019 Revenues for Mexico Movements<sup>120</sup>**



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<sup>119</sup> See CSXT-8, Carey V.S., at 3 (February 28, 2022).

<sup>120</sup> See CSXT-8, Carey V.S., at Section II., (February 28, 2022).and Carey HC-WP “CPKC Network Maps.png”

Regarding the particular advantages of the MSLLC Line, I agree with NSR that the MSLLC Line is a uniquely positioned efficient railroad carrier for the Southeastern U.S. railroad movements (and Mid-Atlantic region).<sup>121</sup> NSR ignores, however, the exacerbating effect the CPKC Transaction has on the harms imposed by the perpetual Exclusivity Arrangements.<sup>122</sup> And, even if the Exclusivity Arrangements are abrogated, an open gateway at both ends of the MSLLC Line would be required to adequately constrain CPKC's market power with respect to Mexico Traffic and NSR's market power over Exclusivity Traffic that traverses the Meridian Speedway to/from Eastern U.S. railroad markets.

The Proposed Transaction provides CPKC with the potential ability to adversely affect competition for Mexico Traffic Post Transaction. Particularly, with CPKC's unique market power in Mexico, Applicants have an increased incentive and ability to reduce competition and harm shippers economically through a profitable pricing strategy that forecloses rival railroads from effectively competing for the U.S. segments of these moves.<sup>123</sup> In sum, all U.S. traffic movements with Mexico, including those in the Southeastern/Mid-Atlantic U.S. regions are at risk for economic foreclosure by CPKC Post Transaction, expanding further the anticompetitive effect beyond what existed Pre-Transaction.

The CPKC Transaction could potentially lead to CPKC foreclosing the Mexico market.<sup>124</sup> As a corollary, the Shreveport interchange should be opened as well since this is the most advantaged route for competing carriers to reach the Southeastern U.S. The exacerbation of the anticompetitive effect by the CPKC Transaction would be particularly evident at Shreveport. This is because Shreveport is uniquely positioned to constrain the potential exertion of market power by CPKC Post Transaction with respect to Mexico Traffic. As shown in Figure 5 below, open gateways at Laredo and Shreveport would enable UP to be an economic alternative to CPKC for Mexico Traffic to onward movements by CSXT and NSR customers in the Southeastern and Mid-Atlantic regions. Shreveport is apparently a closed gateway today and no intermodal Mexico Traffic is interchanged at this location.<sup>125</sup> Unless it were opened, even if Laredo were an open gateway, Shreveport could not act as a constraint on CPKC's market power over Mexico Traffic. An open Shreveport gateway

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<sup>121</sup> NS-12 at 37-38 (referencing its mileage advantage relative to highways).

<sup>122</sup> See NS-13 at 2-4 (discussing the MSLLC and agreement but not addressing Exclusivity Arrangements). See also NS-12 at 9-40 (discussing the MSLLC and impacts of the proposed CPKC Transaction but not addressing Exclusivity Arrangements); NS-12 at 24-29 (discussing the MSLLC and agreements but not addressing Exclusivity Arrangements).

<sup>123</sup> See CSXT-8, Carey V.S., at Section V.B., (February 28, 2022).

<sup>124</sup> *Ibid.*

<sup>125</sup> There are a [REDACTED] at Shreveport for traffic movements involving Mexico. See Carey HC-WP "Mexico Cross Border Traffic – Speedway.xlsb".

would allow shipper to choose UP as a competitive alternative to CPKC for the important Laredo to Shreveport route. Therefore, the head-to-head competition would enable UP to act as CPKC's market power constraints for movements to and from Mexico and the Southeast US.

In addition to Shreveport, on the western end of the MSLLC Line, Meridian on the eastern end must also be open to constrain CPKC Post Transaction and afford shippers an opportunity for competition on commercially reasonable terms and service across the entire Meridian Speedway.<sup>126</sup> Today, Meridian is open only to NSR for [REDACTED] the traffic that moves over the MSLLC Line. With both Shreveport and Meridian open, shippers could request CPKC interline movements with CSXT or NSR. This would be the case both where CPKC is responsible for the Shreveport to Meridian segment and where CSXT or NSR is responsible for the portion of the move between Meridian and locations in the Eastern U.S. railroad network.<sup>127</sup> While advocating an open gateway at Meridian, NSR's Application and Comments ignore the important fact that the Exclusivity Arrangements preclude another carrier access while NSR benefits from those gateways for most of the traffic that could move to and from the east Post Transaction.<sup>128</sup>

**Figure 5: Shreveport and Meridian Gateways' Competitive Alternative to CPKC Post Transaction for Mexico Traffic with the Southeastern U.S and Mid-Atlantic Regions<sup>129, 130,</sup>**

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<sup>126</sup> Removal of the Exclusivity Arrangement and open gateways on the MSLLC Line would enable CPKC and CSXT to consider commercial arrangements such as interline and haulage service.

<sup>127</sup> The constraint of UP Laredo to and from an open Shreveport gateway would greatly enhance competition for Mexico Traffic.

<sup>128</sup> See NS-13 at 2-4 (discussing the MSLLC and agreement but not addressing Exclusivity Arrangements). See also NS-12 at 9-40 (discussing the MSLLC and impacts of the proposed CPKC Transaction but not addressing Exclusivity Arrangements); NS-12, "Amended V.S. of John W. Mayo", at 24-29 (discussing the MSLLC and agreements but not addressing Exclusivity Arrangements).

<sup>129</sup> FD 36500, Railroad Control Application (CP-26/KCS-14), Vol. 1, at 167.

<sup>130</sup> Rail distances in the map are calculated by PC Miler. UP route is set to shortest distance to route through Dallas. See Figure 6 below for the discussion on transit times.

<sup>131</sup> See Appendix B - Port Competition and the Meridian Advantage

Other gateways into the Southeastern/Mid-Atlantic U.S. are inferior to the Shreveport and Meridian gateways, and would not adequately constrain CPKC Post Transaction for Mexico Traffic to and from the Southeastern U.S. Specifically, UP's route from Laredo to Shreveport is highly advantaged and takes only approximately one day less transit time—approximately half the transit time than it currently takes KCS to move intermodal traffic from Laredo to Shreveport.<sup>132</sup> Intermodal service is a highly time sensitive business which places a premium value on the most efficient and effective delivery.<sup>133</sup>

Additional inadequacies with other gateways such as Memphis and New Orleans that could potentially be used for traffic movements to and from Mexico and the Southeastern U.S. are discussed by CSXT witness Girardot.<sup>134</sup> UP's route to Shreveport is superior to its route to New Orleans and there are other substantial challenges with New Orleans which is a slow and unpredictable route.<sup>135</sup> Similarly BNSF Corpus Christi via New Orleans is not competitive in time as it has delays throughout the entire route.<sup>136</sup> The UP economic advantage between Laredo and Shreveport is an important factor to constrain CPKC Post Transaction. Similarly, Memphis movements to the Southeast are circuitous because they go farther North then reversing South, and they traverse less ideal routes with curvatures and sloped grades associated with tougher Southern Appalachia mountain terrain as compared to the flat and straight route across the Meridian Speedway.<sup>137</sup> Figure 6 below shows estimated times and mileages for various routes to Shreveport and Chicago, highlighting the efficient UP-Laredo-Shreveport route.

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<sup>132</sup> 50% = 38 hours / 76 hours. *See* Figure 6 below. UP's Intermodal web portal reports 38 hours while KCS's Intermodal portal reports 76 hours.

<sup>133</sup> *See* V.S. of Robert Girardot, at 2 and 4 (statement on value of speed and reliability for rail intermodal moves). Note UP also has access to FXE via the Eagle Pass gateway. However, there are fewer than volumes approximately [REDACTED] of Laredo Interchange and most traffic (is Texas or Chicago and Illinois), nonetheless, the Eagle Pass, TX route to Shreveport, LA has similar route miles to the Laredo route. *See* [REDACTED]

<sup>134</sup> *See* V.S. of Robert Girardot, at 3-5.

<sup>135</sup> *See* V.S. of Robert Girardot, at 3-4.

<sup>136</sup> *See* V.S. of Robert Girardot, at 3 and 8 (discussion of issues with New Orleans gateway and lack of current competitive nature for BNSF-CSXT moves).

<sup>137</sup> *See* V.S. of Robert Girardot, at 3 (statement regarding superiority of Meridian route).

**Figure 6: Estimated/Published Route Times and Miles for Intermodal Traffic Movements To/From Laredo (for Mexico) on Key Routes (UP, KCS) to Shreveport, New Orleans and Memphis<sup>138</sup>**

| <b>Southern U.S. Routes</b> |                       |              |              |               |
|-----------------------------|-----------------------|--------------|--------------|---------------|
| <b>RR</b>                   | <b>Route</b>          | <b>Miles</b> | <b>Hours</b> | <b>Method</b> |
| (1) CPKC                    | Laredo to Shreveport  | 665          | 76           | estimate      |
| (2) UP                      | Laredo to Shreveport  | 595          | 38           | estimate      |
| (3) CPKC                    | Laredo to New Orleans | 971          | 101          | estimate      |
| (4) UP                      | Laredo to New Orleans | 732          | 57           | estimate      |
| (5) UP                      | Laredo to Memphis     | 907          | 70           | reported      |
| <b>Northern U.S. Routes</b> |                       |              |              |               |
| <b>RR</b>                   | <b>Route</b>          | <b>Miles</b> | <b>Hours</b> | <b>Method</b> |
| (6) CPKC                    | Laredo to Kansas City | 1,219        | 139          | reported      |
| (7) UP                      | Laredo to Chicago     | 1,391        | 89           | reported      |

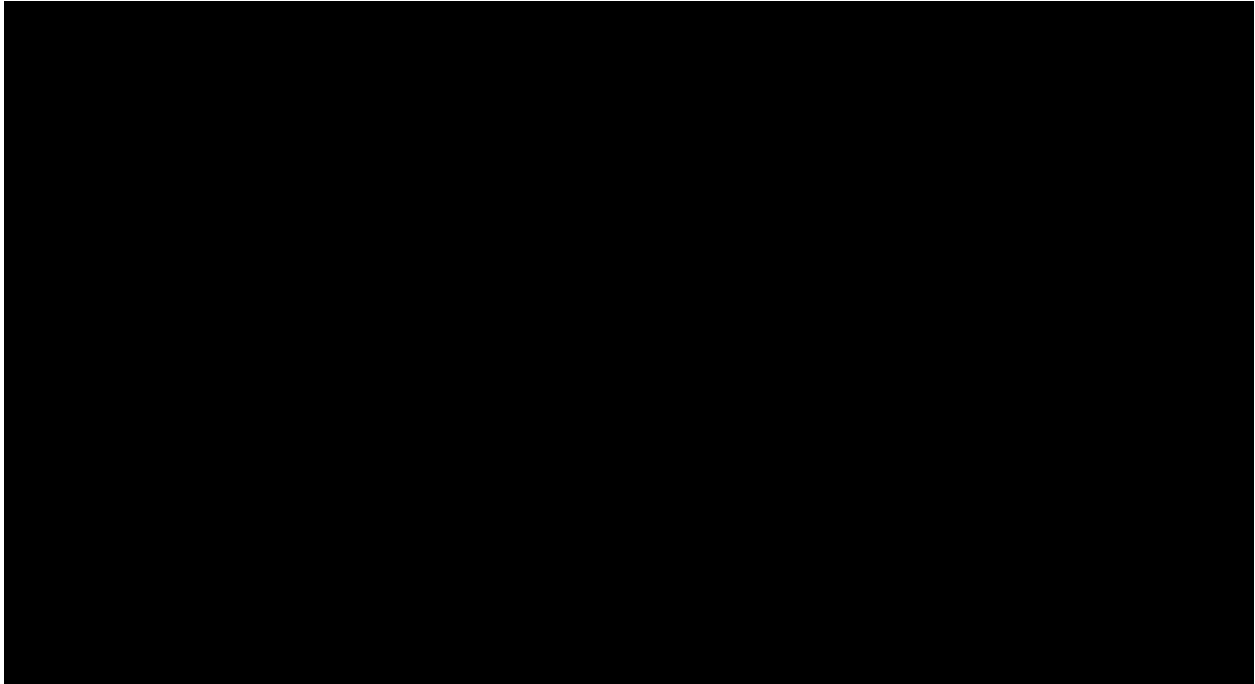
NSR’s Comments and Responsive Application and supporting economic testimony address the advantages to the MSLLC Line for Mexico Traffic to and from Southeastern/Mid Atlantic U.S. locations. They do not address the negative consequences of the KCS/NSR Exclusivity Arrangements that would unnecessarily limit its ability to constrain CPKC post transaction with respect to Mexico Traffic.<sup>139</sup> The Meridian Speedway is used for the [REDACTED] of volumes for Mexico traffic movements with locations in the Southeast US. As Figure 7 below shows, small amounts of traffic are interchanged with Memphis and far fewer cars/units rely on New Orleans into the Southeast.

<sup>138</sup> See V.S. of Robert Girardot, at 3-4 (“UP’s route between Laredo and Shreveport is better than KCS’s route”). See Carey WP “IM Delivery Times- Company Source.xlsx.”

<sup>139</sup> See NS-13 at 2-4 (discussing the MSLLC and agreement but not addressing Exclusivity Arrangements). See also NS-12 at 9-40 (discussing the MSLLC and impacts of the proposed CPKC Transaction but not addressing Exclusivity Arrangements); NS-12, Amended V.S. of John W. Mayo, at 24-29 (discussing the MSLLC Agreements but not addressing Exclusivity Arrangements).

**Figure 7: CSXT and NSR Total Carloads/Units Originated or Terminated in Mexico and the Southeast US by Gateway/Interchange Location (Meridian, Memphis, New Orleans, Other Southeast U.S. Gateways) for 2019<sup>140</sup>**

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A. More important, as shown in Figure 8 below, [REDACTED] intermodal traffic, for which competition over the MSLLC Line is especially likely to reduce prices and increase volumes, moves over the MSLLC Line [REDACTED] than other traffic) and [REDACTED] moves over Memphis.<sup>141</sup> This traffic category is especially relevant to the transaction given the large amount of growth traffic Applicants project will move to and from Mexico, and the large amount intermodal units they believe will be routed through Lazaro Cardenas after the transaction.<sup>142</sup>

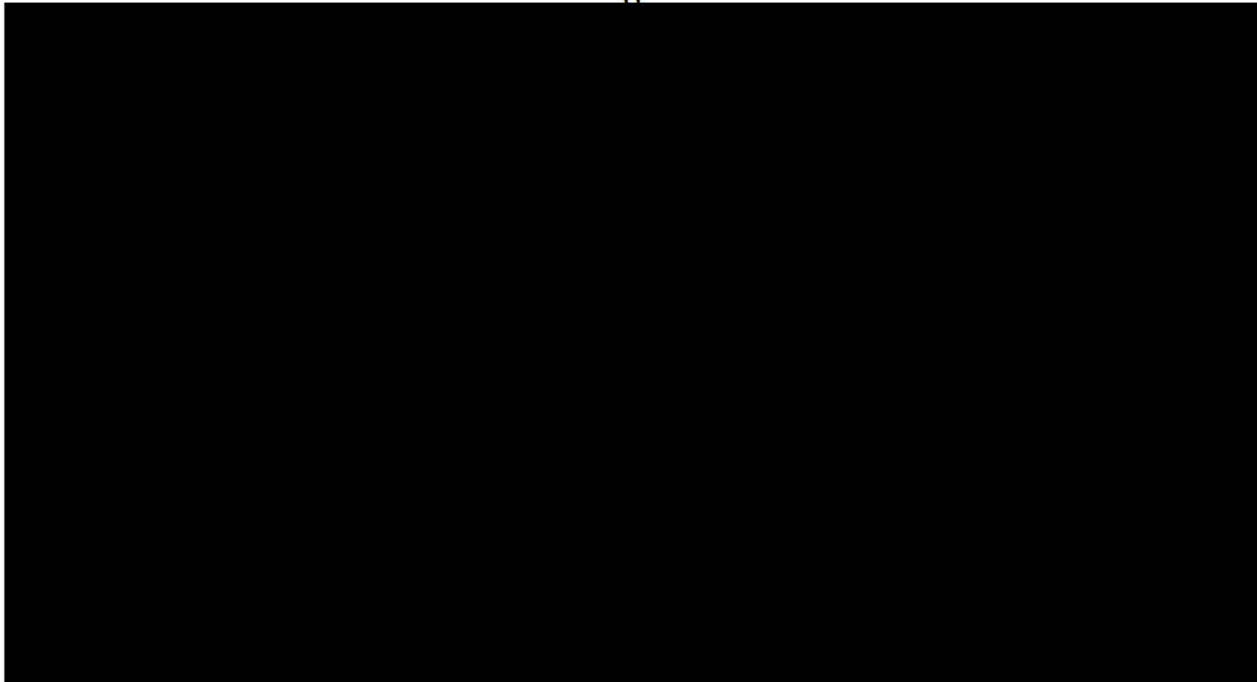
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<sup>140</sup> See Carey HC-WP Mexico Cross Border Traffic - CSX NSR Southeast.xlsb.

<sup>141</sup> See Carey HC-WP Mexico Cross Border Traffic - CSX NSR Southeast.xlsb. See also Appendix A - Mexico Cross Border Traffic.

<sup>142</sup> See Wahba and Naatz V.S. at 29.

**Figure 8: CSXT and NSR Total Intermodal Units Originated or Terminated in Mexico and the Southeast US, by Gateway/Interchange Location (Meridian, Memphis, New Orleans, Other Southeast U.S. Gateways) for 2019<sup>143</sup>**



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Because the MSLLC Line is the best route for a large volume of current and potential intermodal Mexico traffic, the Shreveport and Meridian gateways must be opened to ensure the public interest providing Mexico Traffic to and from the Southeastern and Mid-Atlantic U.S. has competition the most economically efficient route, consistent with the public interest.

The importance of opening Shreveport and by extension Meridian as uniquely positioned gateways to constrain the potential exertion of market power by CPKC regarding Mexico Traffic to and from with the Southeast and Mid-Atlantic U.S. is amplified by the expected future growth in truck and rail movements in eastern U.S. railroad markets (including the Southeastern U.S.). This is shown in Figure 9 below

[REDACTED]

[REDACTED] Further, the

[REDACTED]

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<sup>143</sup> See Carey HC-WP Mexico Cross Border Traffic - CSX NSR Southeast.xlsb .

<sup>144</sup> [REDACTED]

<sup>145</sup> More competition over open MSLLC Line gateways (Meridian and Shreveport) can be expected to shift more traffic to rail and trucks off the road. Open gateways with abrogation of the Exclusivity Arrangements would best promote full realization of the public interest in the Proposed Transaction and the Meridian Speedway.

**Figure 9: Eastern US Cross-border Market Size for Mexico Truck and Rail Movements<sup>146</sup>**

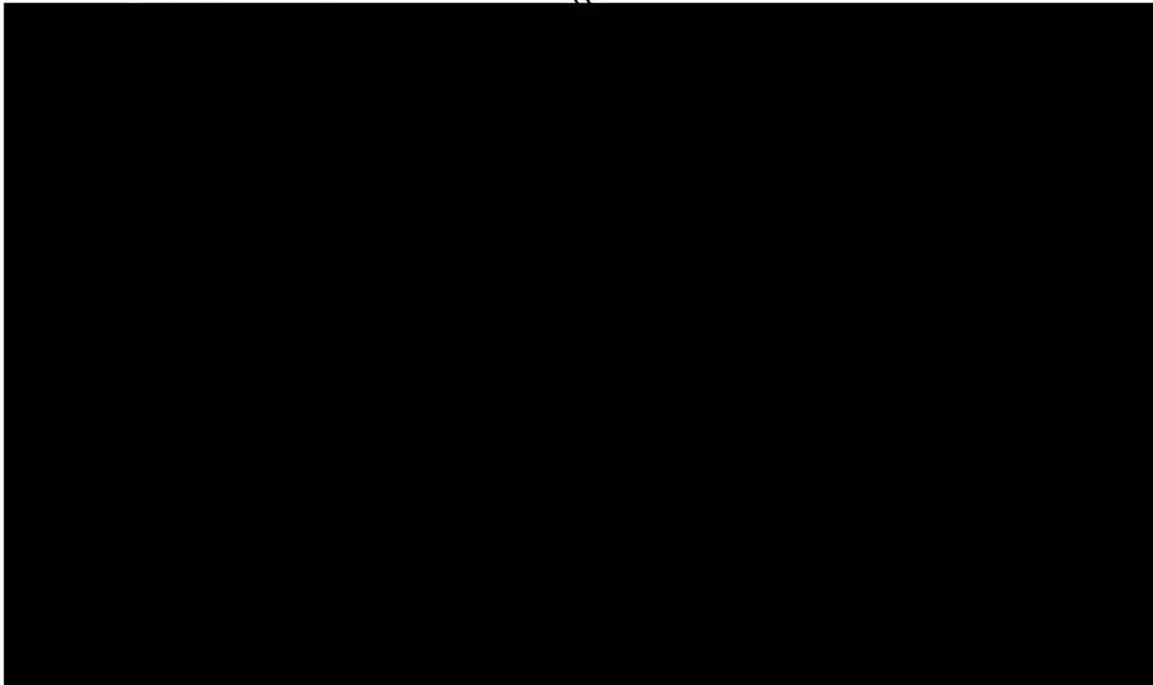


Figure 10 below reports the Department of Transportation's robust long-term forecast of truck and rail movements involving Mexico and the Southeastern U.S.'s key metropolitan areas in Georgia, Florida, North Carolina, South Carolina, Alabama and Tennessee.

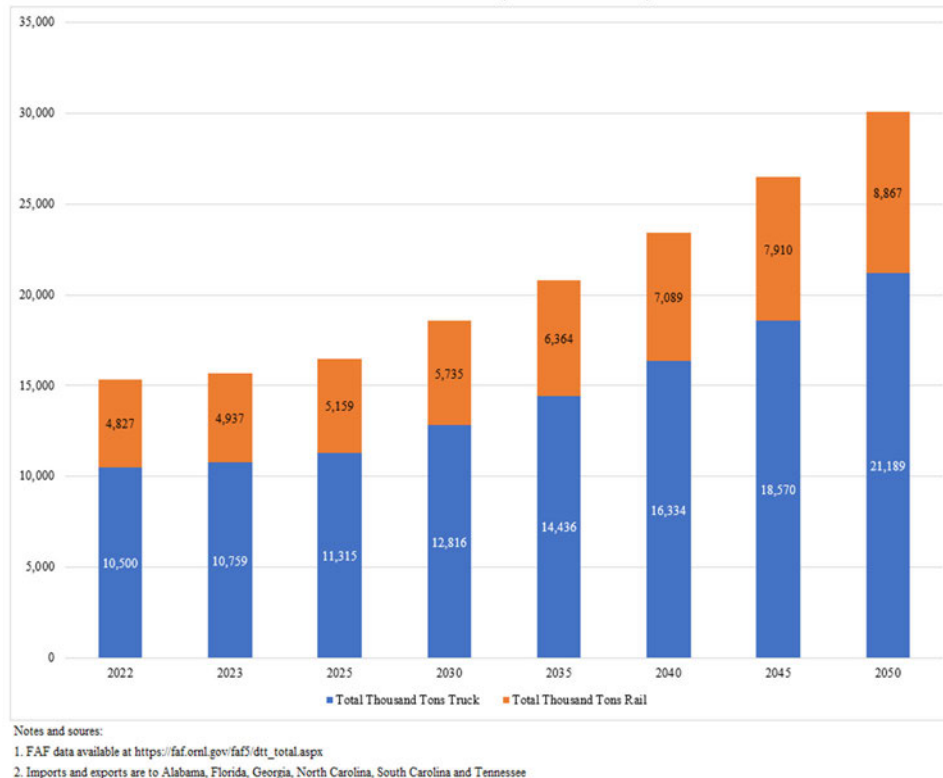
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<sup>145</sup> *Ibid.*

*See*

*Id.* at 8.

**Figure 10: Southeastern U.S Cross-border Market Size for Mexico Truck and Rail Movements, Thousand Tons (2022- 2050)<sup>147</sup>**



## **B. The Economic Importance of Open Gateways is Well Recognized by the Board (and its Predecessor ICC)**

The economic importance of open gateways is particularly relevant for a regulator that relies principally on competition instead of other forms of regulation to ensure just and reasonable rates and good service.<sup>148</sup> Further, due to the *de minimis* public benefits associated with the CPKC Transaction, it is imperative to have open gateways to ensure the most public benefits possible. The only way to do that is by ensuring competition where possible without denying carriers the benefits of legitimate entrepreneurial investments. As I discuss in Section VII below, there are significant public benefits that arise from enabling competition with open gateways in general and especially with respect to the Southeastern and Mid-Atlantic U.S. regions. This includes savings to shippers and other benefits stemming from increased competition, which is demonstrated to be statistically significant through

<sup>147</sup> See Carey WP “Mexico Truck and Rail Volumes Over Time.xlsx.”

<sup>148</sup> The Board’s predecessor agency the Interstate Commerce Commission (“ICC”) recognized this in comparing the regulation of public utilities and railroads in context of a case assessing competitive impacts of a proposed merger, including the opening of a gateway. See FD 21215, *Seaboard Air Line Railroad Company - Merger - Atlantic Coast Line Railroad Company*, (December 2, 1963). 320 I.C.C. 122, 167.

my econometric analysis of the industry.<sup>149</sup> Further, as demonstrated in Section VII.B, CSXT rates in the Eastern U.S. are over [REDACTED] less than the NSR traffic moving over the Meridian Speedway and show lower rates can be expected from opening the MSLLC Line to competition. These benefits of competition are well-understood from even the most basic microeconomics textbooks.<sup>150</sup>

As I understand it, the Board has broad authority to impose conditions on mergers, including to open new gateways and to “**promote interstate transportation in the interest of the public and commerce of the people,**” as explained by the ICC in the BN Frisco decision.<sup>151</sup> Here, the operational efficiencies and competition from opening gateways would result in substantial public benefits (as shown in Section VII)<sup>152</sup> that are in the public interest, in particular with regard to the MSLLC gateways Shreveport and Meridian without the perpetual Exclusivity Arrangements.

Indeed, in past transactions before the Board (and its ICC predecessor), railroads have often requested certain gateways to remain open or be opened. Historically, a preference for gateways to remain open occurs in most transactions that I am aware of. For example, when CSX sought approval to acquire Pan Am Railways and other railroad entities, it committed to keep all gateways open to other carriers on commercially reasonable terms and ensure that benefits of multi-carrier competition

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<sup>149</sup> My analysis demonstrates that having two competitors compared to one competitor results in substantially lower rates and benefits to railroad shippers. *See* Section VII.A *supra*.

<sup>150</sup> For a discussion of price and quantity as the number of firms enter and exit a market, *see* Greenlaw, Steven and Shapiro, David, *Principles of Microeconomics 2e*, Openstax, 2017, page 205, available at <https://assets.openstax.org/oscms-prodcms/media/documents/Microeconomics2e-OP.pdf>

<sup>151</sup> *See* 360 I.C.C. 788, 950. (“We have broad authority to impose conditions on railroad unifications. In the past we have imposed conditions to promote interstate transportation in the interest of the public and commerce of the people, to enhance competition, to improve the position of a carrier, to open new gateways, 88 to establish new single-line service, to preserve the integrity of an important switching carrier, to preclude diversion of traffic, to compensate partially a railroad for its anticipated traffic losses, to protect railroads even though they will not suffer serious anticompetitive harm, and to aid railroads not likely to be harmed by the transaction. This has been our policy in the past. However, the overriding factor governing the imposition of all conditions in the past has been the public interest. We would be remiss if we did not consider today's limits when imposing conditions on a railroad merger instead of viewing the industry as static. Although at odds with past policy, applicants' arguments relating to imposition of conditions are quite appealing. The voluntary consolidation of more than one railroad, when properly conceived and executed, is expected to yield certain benefits to that railroad. Any condition imposed on that merger tends to decrease or eliminate the merger's expected benefits. However, there are certain conditions which might not adversely offset a merger's anticipated benefits because the operational efficiencies or competition resulting from the condition are of greater benefit to the public interest than harm to the merger.”)

<sup>152</sup> *See* Section VII *infra* for my calculations of substantial public benefits from customer savings (i.e., lower rates from opening the Meridian and Shreveport gateways).

remain upon completion of the transaction.<sup>153</sup> In approving the transaction with respect to the requested conditions, the Board stated, “The Board finds that the open gateway commitment is vital to ensuring that the PAR System remains a competitive option, as it will allow other carriers that connect with the PAR System to continue offering competitive interline rates.”<sup>154</sup> The Board also cites the importance of CSX’s commitment that all gateways remain open from a financial perspective as well, noting that the requirement for commercially reasonable access has been imposed as a part of open gateway conditions in prior cases.<sup>155</sup>

A few additional case examples are helpful to show the broad discretion the Board has exercised to open new gateways that were previously closed to ensure balanced competition, economic growth and the viability of a competitive alternative. In the Seaboard Air Line Railroad merger with Atlantic Coast Line Railroad the ICC (1) removed a restriction for the Southern Railroad to northbound traffic from the Jacksonville, FL gateway,<sup>156</sup> and (2) opened 3 gateways previously closed to Southern Railroad enabling it to interchange traffic on behalf of shippers post transaction.<sup>157</sup> In Great Northern Pacific, the ICC opened previously closed gateways at 11 different interchange locations to help Milwaukee Railroad become a longhaul competitor.<sup>158</sup>

As explained, the reason that the Board often requires open gateways as a condition of long-haul transactions is, simply put, such open gateways increase the number of carriers at significant interchange points on the international rail network, thereby enhancing the benefits of competition, particularly through lower rates to shippers.<sup>159</sup> This should be the result in this case, by opening the MSLLC Line to an additional Eastern U.S. railroad carrier and allowing Eastern railroad shippers the

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<sup>153</sup> FD 36472, *CSX Corporation and CSX Transportation, Inc., Et Al. —Control and Merger—Pan Am Systems, Inc., Pan Am Railways, Inc., Boston and Maine Central Railroad Company, Norther Railroad, Pan Am Southern LLC, Portland Terminal Company, Springfield Terminal Railway Company, Stony Brook Railroad Company, and Vermont & Massachusetts Railroad Company, Amended and Supplemented Application* (“CSX PanAm Amended and Supplemented Application”), at 3-4 (July 1, 2021).

<sup>154</sup> FD 36472, *CSX Corporation et al. - Control and Merger - Pan Am Systems, Inc. et al.*, Decision, at 16 (April 14, 2022).

<sup>155</sup> *Ibid.*

<sup>156</sup> FD 21215, *Seaboard Air Line Railroad Company - Merger - Atlantic Coast Line Railroad Company*, (December 2, 1963). 320 I.C.C. 122, 124, 165, 180. 182, 267.

<sup>157</sup> *Ibid.* at 122, 180, 184-185, 188. The ICC stated that routing and gateway condition would create two balanced competitive systems that would increase competition and contribute to present and future economic growth.

<sup>158</sup> FD 21478, *Great Northern Pacific & Burlington Line, Inc - Merger, Etc. - Great Northern Railway Company, et al*, 331 I.C.C. 228, 276 (November 30, 1967). “The opening by applicants of 11 interior gateways to the Milwaukee will give many shippers a realistic choice of railroads for the first time in history.” *Ibid.* at 228, 268.

<sup>159</sup> *See infra* Section VII.

benefits of competition that were inappropriately removed by KCS and NSR in the MSLLC Agreements.

**C. Open Gateways on the Meridian Speedway (Shreveport and Meridian) would Provide an Additional Constraint to CPKC Post Transaction for Long Haul Railroad Routes from the West Coast Ports into the Southeastern and Mid-Atlantic U.S. Regions**

In addition to domestic traffic consequences, international traffic from the far east Asia Pacific region that lands in North America's west coast ports for onward transport by rail will benefit from more competitive routes into the Southeastern U.S. and Mid-Atlantic region Post-Transaction.

Regarding the particular advantages of the MSLLC Line, I agree with NSR that it is a uniquely positioned efficient railroad carrier for the Southeastern U.S. and Mid-Atlantic movements.<sup>160</sup> But NSR's position is unique principally because of the Exclusivity Arrangements and their anticompetitive effect, which will be exacerbated by the proposed CPKC Transaction and the transaction proposed by NSR's Responsive Application.<sup>161</sup> Open gateways at both ends of the MSLLC Line are required to adequately constrain CPKC's market power with respect to long hauls to and from West Coast ports (into the Eastern U.S. markets particularly the Southeastern U.S. and Mid-Atlantic region) as well as other transcontinental NSR Exclusivity Traffic that traverses the Meridian Speedway to/from Eastern U.S. railroad markets. This is a substantial concern, as noted by the three Federal Maritime Commissioners who have raised concerns about CPKC's opportunity to favor Canadian ports over U.S. routes.<sup>162</sup>

Post Transaction, Applicants will have a heightened incentive to divert traffic from today's most economically efficient routes that move to and from U.S. west coast ports of Los Angeles and Long Beach ("LA" and "LB") into the Southeastern U.S. for transcontinental traffic (including NSR

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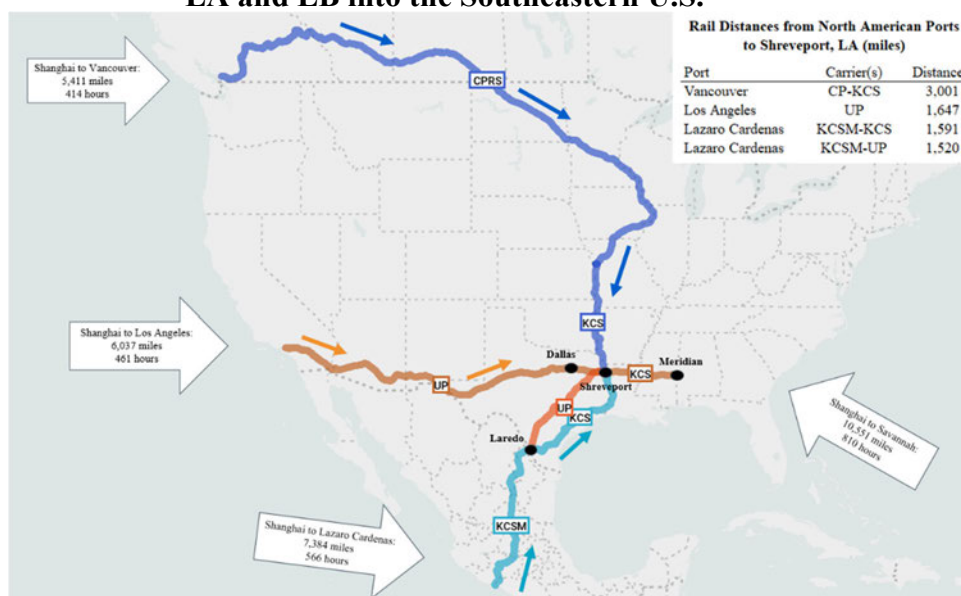
<sup>160</sup> NS-12 at 37-38 (referencing its mileage advantage relative to highways). I discussed the MSLLC Line route advantages in my February V.S. *see* CSXT-8, Carey V.S. at Section V.

<sup>161</sup> NSR fails to address the CPKC Transaction's exacerbation of anticompetitive effects stemming from the Exclusivity Arrangements. *See* NS-13 at 2-4 (discussing the MSLLC and agreement but not addressing Exclusivity Arrangements). *See also* NS-12 at 9-40 (discussing the MSLLC and impacts of the proposed CPKC Transaction but not addressing Exclusivity Arrangements); NS-12 at 24-29 (discussing the MSLLC and agreements but not addressing Exclusivity Arrangements).

<sup>162</sup> CSXT-8, Carey V.S., at 29. "The proposed merger will adversely impact U.S. ports and the primarily U.S.-based intermodal railway systems that serve our ports and would disproportionately benefit Canadian ports and the primarily Canadian-based intermodal railway systems that service Canadian ports for transportation of U.S.-bound cargo." *See* FD 36500, Comments of Federal Maritime Commissioners Carl W. Bentzel, Louis E. Sola, and Max M. Vekich, (June 21, 2022).

Exclusivity Traffic)<sup>163</sup> to either: (1) CP's west coast port (Vancouver to Chicago to Shreveport to Meridian into the Southeastern U.S.), or (2) KCS's west coast port (Lazaro Cardenas to Laredo to Shreveport to Meridian into the Southeastern U.S.). Figure 11 below shows the three primary west coast ports, with the much longer CPKC alternative routes into the Southeastern U.S. as well as the visible advantage of the direct route into the Southeastern U.S. from the LA and LB port for transcontinental traffic.

**Figure 11: West Coast Port Alternatives to UP's Route  
LA and LB into the Southeastern U.S.<sup>164,165,166</sup>**



CPKC marketing officials have emphasized the incentives and economic advantages to divert traffic from U.S. West coast ports (LA and LB) to CPKC accessible ports as a specific business strategy.<sup>167</sup> These West coast ports (LA and LB, Vancouver and Lazaro Cardenas) account for the [REDACTED] of intermodal traffic volumes to/from the Southeastern U.S. and the Far East region and global trade with North America. The Los Angeles and Long Beach ports are far and away the largest U.S. ports.<sup>168</sup>

<sup>163</sup> NSR recognizes the portion of the proposed CPKC network traversing the MSLLC Line for its strong route into the southeast U.S. and that it has observed recent growth. *See* NS-12 at 37-38 (referencing its mileage advantage relative to highways and growth in traffic).

<sup>164</sup> *See* FD 36500, Railroad Control Application (CP-26/KCS-14), Vol. 1, at 167.

<sup>165</sup> Rail distances calculated by PC Miler. UP route is set to shortest distance to route through Dallas.

<sup>166</sup> *See* Appendix B - Port Competition and the Meridian Advantage.

<sup>168</sup> *See* Appendix B – Port Competition and the Meridian Advantage.

The effects of these diversions would be exacerbated if the Board were to permit the maintenance of the Exclusivity Arrangement and closed gateways at Shreveport and Meridian. CPKC marketing officials have emphasized the incentives and economic advantages to divert traffic from U.S. west coast ports (LA and LB) to CPKC accessible ports as a specific business strategy.<sup>169</sup> Open gateways at Shreveport and Meridian are needed to ensure that the economically efficient routes that move intermodal traffic to and from U.S. West coast ports (LA and LB) into the Southeastern U.S. for transcontinental traffic (including NSR Exclusivity Traffic) can constrain CPKC's West coast port diversion away from U.S. (LA and LB) to ports in Mexico and Canada.

NSR's Application and Comments ignore the fact that its Exclusivity Arrangements are further compounded by the CPKC post Transaction.<sup>170</sup> While NSR acknowledged concerns surrounding Shreveport,<sup>171</sup> it failed to address the compounding consequences to the entire MSLLC Line, which includes the Meridian gateway.<sup>172</sup>

For the Shreveport gateway to allow shippers to choose UP as a competitive alternative to CPKC for the important transcontinental traffic, Meridian must also be open, affording shippers the opportunity to compete on commercially reasonable terms and service across the entire Meridian Speedway for movements with the Southeastern/Mid Atlantic U.S. regions.

The economic efficiency of the U.S. transcontinental traffic from UP's west coast railroad route with the Southeastern U.S. compared to CPKC's alternatives originating from west coast ports in Canada and Mexico is shown in Figure 12 below. UP is highly competitive for route miles and route times as compared to CPKC alternatives that are susceptible to diversions.

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<sup>169</sup> CPKC identified diversions from U.S. West coast port traffic to Mexico (Lazaro Cardenas, MX) for deliveries into the interior U.S. to serve U.S. markets to garner greater revenue through the longer haul on its network. *See* FD 36500, Railroad Control Application (CP-26/KCS-14), Vol. 1, at 159-160.

<sup>170</sup> *See* NS-12, at 2-4 (discussing the MSLLC and agreement but not addressing Exclusivity Arrangements). *See also* NS-12 at 9-40 (discussing the MSLLC and impacts of the proposed CPKC Transaction but not addressing Exclusivity Arrangements); NS-12 "Amended V.S. of John W. Mayo," at 24-29 (discussing the MSLLC and agreements but not addressing Exclusivity Arrangements).

<sup>171</sup> NSR expert witness Dr. Mayo cited a similar concern in his V.S., stating that the NSR Shreveport interchange is vulnerable to service degradations and identifies uneconomic diversions from the Meridian interchange to single line CPKC moves. Dr. Mayo did not cite Vancouver or Lazaro Cardenas ports as specific routes of concern as his analysis only focused on routes in which KCS-NSR currently actively interchange traffic, however the same logic applies to traffic rerouted from U.S. ports. *See* NS-12, "Mayo V.S." at 26 and 29.

<sup>172</sup> CSXT-8 at 29.

**Figure 12: Estimated/Published Route Times and Miles for Intermodal Traffic Movements To/From West Coast Ports on Key Routes (UP, KCS) to Shreveport and Chicago<sup>173</sup>**

| Routes to Shreveport |                               |       |       |          |  |
|----------------------|-------------------------------|-------|-------|----------|--|
| RR                   | Route                         | Miles | Hours | Method   |  |
| (1) CPKC             | Vancouver to Shreveport       | 3,001 | 147   | estimate |  |
| (2) UP               | Long Beach to Shreveport      | 1,665 | 82    | estimate |  |
| (3) CPKC             | Lazaro Cardenas to Shreveport | 1,591 | 203   | estimate |  |
| (4) CPKC             | Laredo to Shreveport          | 665   | 76    | estimate |  |
| (5) CPKC             | Lazaro Cardenas to Laredo     | 926   | 127   | estimate |  |
| Routes to Chicago    |                               |       |       |          |  |
| RR                   | Route                         | Miles | Hours | Method   |  |
| (6) CP               | Vancouver to Chicago          | 2,203 | 108   | reported |  |
| (7) UP               | Long Beach to Chicago         | 2,264 | 112   | reported |  |
| (8) CPKC             | Lazaro Cardenas to Chicago    | 2,650 | 291   | estimate |  |

For these reasons, Shreveport and Meridian should be established as open gateways as a condition of the CPKC Transaction. Otherwise, any limitation on competition—such as only one Eastern railroad carrier having competitively meaningful access to the highly efficient and advantaged route over the Meridian Speedway<sup>174, 175</sup>—will reduce the achievable benefits of competitive markets, such as lower rates to shippers and overall consumer welfare below otherwise attainable levels (as I discuss in Section VII).

The implications of the CPKC Transaction extend to global international trade and national policies regarding onshoring or nearshoring to increase manufacturing competitiveness in North America and the U.S. to compete with Asia.<sup>176</sup> With rising international labor costs and supply chain disruption of offshore operations, even before the pandemic, the debate regarding the benefits of

<sup>173</sup> See V.S. of Robert Girardot, at 3-4 (discussion of superiority of UP routes). See Carey WP “IM Delivery Times- Company Source.xlsx”.

<sup>174</sup> NSR acknowledges the economic advantages of the route used for the Meridian Speedway. See NS-12 at 10.

<sup>175</sup>



offshoring continues. For instance, U.S. businesses are reevaluating their offshoring plans. Major companies have scrapped offshoring plans or announced decisions to move production to the United States with new U.S. investment because of the new renegotiated NAFTA or United States-Mexico-Canada Agreement (“USMCA”).<sup>177</sup> The pandemic and recent supply chain disruption have revealed the risk in the entire value chain of the economy from offshoring.<sup>178</sup>

Plenty of signals suggest that the era of offshoring might be waning as companies build strategies to bring manufacturing back into North America (nearshoring) or into the U.S. (onshoring). Recent U.S. trade policies point in this direction. A recent survey showed that 78% of the CEOs have considered reshoring or already have returned operations to the U.S. The factors that would contribute to making reshoring decisions generally do not vary with the size of the company. The factors that have all been strengthened during the last two years with the pandemic including labor costs, delivery lead times, logistics costs, and quality of goods.<sup>179</sup> In response to the President’s Executive Order 14017, the Department of Transportation has issued policy recommendations for longer-term strength and resilience of the American transportation industrial base which relies on the freight and logistics supply chain.<sup>180</sup> The nearshoring and offshoring developments have wide ranging impacts across many sectors of the U.S. economy and highlight the importance of achieving the highest level of overall efficiency of the North American railroad network, by ensuring that traffic movements can move over the most economically efficient routes consistent with the public interest. As the Board’s predecessor contemplated the important role railroads have on the overall economy in the past in the context of a Transaction, the Board should also do so here.<sup>181</sup>

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<sup>177</sup> Robert E. Lighthizer, “The Era of Offshoring U.S. Jobs Is Over,” *The New York Times*, (May 11, 2020), available at <https://www.nytimes.com/2020/05/11/opinion/coronavirus-jobs-offshoring.html>

<sup>178</sup> Christine Griffith, “Why Onshoring is Growing in Popularity,” (October 20, 2020), available at <https://trinitylogistics.com/why-onshoring-is-growing-in-popularity/>

<sup>179</sup> Kearney, “The tides are turning. 2021 Reshoring Index,” available at <https://www.kearney.com/operations-performance-transformation/us-reshoring-index>

<sup>180</sup> White House, “Building Resilient Supply Chains, Revitalizing American Manufacturing, and Fostering Broad-based Growth. 100-Day Reviews under Executive Order 14017,” (June 2021), available at <https://www.whitehouse.gov/wp-content/uploads/2021/06/100-day-supply-chain-review-report.pdf>

<sup>181</sup> See 360 I.C.C. 788, 950. In the BN Frisco Decision, the ICC stated its ability to “[p]romote interstate transportation in the interest of the public and commerce of the people.” The ICC also indicated that “...[o]perational efficiencies or competition resulting from the condition are of greater benefit to the public interest than harm to the merger.”)

## **VI. NSR AND KCS COULD HAVE ACHIEVED BUSINESS SUCCESS FROM THE MSLLC TRANSACTION WITHOUT LIMITING COMPETITION**

In this section, I respond to the claims in the NSR Responsive Application,<sup>182</sup> its Amended Comments<sup>183</sup> and its witnesses<sup>184</sup> which state that the MSLLC JV created efficiency benefits for customers. NSR appears to assume that the anticompetitive effects of the Exclusivity Arrangements (and investments) were justified because the MSLLC JV was “pro-growth, pro-competitive, and allowed shippers to utilize a highly efficient route service.”<sup>185</sup>

I show that these claims are based on an incomplete assessment of the economic implications of the MSLLC JV and its perpetual Exclusivity Arrangements. There was no economic basis for the Exclusivity Arrangements when MSLLC was formed, and no sound economic basis for their continuation. Prior to 2006, KCS and NSR could both provide service over the Speedway.<sup>186</sup> However, the MSLLC Arrangements closed the MSLLC Line to competition for most intermodal traffic moving between Dallas and Meridian<sup>187</sup> and between Shreveport and Meridian.

Exclusivity arrangements are especially concerning to the Board<sup>188</sup> and antitrust agencies.<sup>189</sup> There is no need to limit competition with a restrictive agreement if there are other means of achieving business success without that restriction, such as a haulage rate or other proper pricing mechanism. As discussed by Dr. Shehadeh,<sup>190</sup> the restrictions embedded in the MSLLC Agreements are core elements of those agreements, and would only be determined to be reasonable by regulatory

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<sup>182</sup> NS-13 at 2-4.

<sup>183</sup> NS-12 at 9-20.

<sup>184</sup> NS-12, Amended V.S. of John W. Mayo, at 24-25; NS-12, “V.S. of Claude E. “Ed” Elkins” at 1-6; NS-12, “V.S. of Michael R. McClellan,” at 1-10.

<sup>185</sup> NS-12 at 10.

<sup>186</sup> See FD 34822 *Notice of Exemption* at 4 (January 17, 2006) [REDACTED]

See Supra Section III.C

<sup>188</sup> See *infra* Section VI.B. See also CSXT-8, Carey V.S. at 48 (February 28, 2022).

<sup>189</sup> As discussed in my February V.S., the Meridian Speedway Agreement is of the type considered to be per se illegal by antitrust agencies. That is, the agreement on its face would be anticompetitive and a violation of antitrust laws. See CSXT-8, Carey V.S. at 4 (February 28, 2022).

<sup>190</sup> See Verified Statement of Dr. Ramsey Shehadeh at Section III.B.4.

authorities if they were necessary ancillary components.<sup>191, 192</sup> Further analysis of the MSLLC Agreements should consider the overall impact on competition to determine whether the goals could be achieved without the competition-limiting Exclusivity Arrangements.<sup>193</sup> In making this determination, the Board should consider both competitive enhancements and competitive deteriorations.

Because there were limited changes to the functional services (haulage service for Transcontinental traffic and KCS/NSR interline for Dallas) resulting from the MSLLC Agreements, no efficiency related benefits to shippers from vertical integration were created by the MSLLC JV. Benefits from vertical integration arise through the removal of contribution margin and profit (i.e., revenue above variable cost) required by two railroads engaged in an interline movement to service by just one railroad. As discussed in my February Verified Statement, this is sometimes referred to as reducing double marginalization.<sup>194</sup>

The Exclusivity Arrangements appear to be the prominent, new and significant economic feature to the MSLLC Agreements. As I show below, that feature has made possible the substantial,

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<sup>191</sup> Pursuant to the Ancillary Restraints Doctrine an agreement may avoid per se condemnation and instead be considered under the Rule of Reason—a rule under which procompetitive justifications may be considered. “Under the ancillary restraints doctrine, courts ‘must distinguish between ‘naked’ restraints, those in which the restriction on competition is unaccompanied by new production or products, and ‘ancillary’ restraints, those that are part of a larger endeavor whose success they promote” *See Polk Bros., Inc., Plaintiff-appellant, v. Forest City Enterprises, Inc., Defendant-appellee*, 776 F.2d 185 (7th Cir. 1985); US Court of Appeals for the Seventh Circuit - 776 F.2d 185 (7th Cir. 1985), available at <https://law.justia.com/cases/federal/appellate-courts/F2/776/185/443156/>.

<sup>192</sup> In other words, the restriction that has anticompetitive effects cannot be the core purpose of the agreement. For the Ancillary Restraints Doctrine to apply, the market division must be demonstrated to be ancillary (i.e., it is ancillary to and promotes a larger productive endeavor such as bringing a new product to market). *See Aya Healthcare Servs., Inc. v. AMN Healthcare, Inc.*, No. 20-55679, 2021 WL 3671384 (9th Cir. Aug. 19, 2021) In my February V.S. I noted that this restraint does not have the characteristics of restraints that are considered ancillary.

<sup>193</sup> If the MSLLC Agreements were considered ancillary and assessed under the Rule of Reason, the anticompetitive and procompetitive factors of the agreement would be evaluated. Then, as a third step, a determination is made as to whether the procompetitive factor could have been achieved under a less restrictive alternative. *See Ohio v. Am. Express Co.*, 138 S. Ct. 2274, 2284 (2018). *See also Hovenkamp*, “The NCAA and the Rule of Reason,” October 14, 2017; Review of Industrial Organization (2018) 52:323–335, available at <https://doi.org/10.1007/s11151-017-9589-5>. *See also Cf. Capital Imaging*, 996 F.2d at 542-543.

<sup>194</sup> *See CSXT-8, Carey V.S.*, at Section II.A., (February 28, 2022). *See also* Scherer, F.M., and Ross, David, “Industrial Market Structure and Economic Performance,” Third Edition, at 524-527; Utton, M.A., “Market Dominance and Antitrust Policy,” Edward Elgar Publishing Limited, 1995, pp 216-219; and Carlton, Dennis W. and Perloff, Jeffrey M., “Modern Industrial Organization,” Fourth Edition, 2005, at 415-416.

supracompetitive contribution margin that NSR has made from traffic that traverses the MSLLC Line since the MSLLC Agreements were put in place; approximately [REDACTED]<sup>195</sup>

Based on my analysis below, the MSLLC Agreements were not reasonably economically necessary for NSR and KCS to achieve business success in 2006, nor are they reasonably economically necessary on an ongoing basis.

**A. The Meridian Speedway Agreement Lacked Changes to Unlock Vertical-Integration Efficiencies as Compared to the Pre-JV Common Business Practice (i.e., “Business as Usual”) Approach**

Shifting from the prior business arrangement to the MSLLC JV structure did not create new economic attributes that were dramatically different in terms of quality of rail service to result in price reductions or other efficiency benefits to customers. The MSLLC JV limited both changes to the types of railroad service and the benefits potentially achievable from vertical integration related to the combination of the two railroads. The MSLLC Agreements did not include economic efficiency-related benefits commonly observed with consolidation of end-to-end transactions (i.e. vertical transactions). The principal economic efficiencies associated with vertical transactions in the railroad industry are cost reductions, including reductions in operational costs from efficiencies and reduced overhead removing the margin (above variable cost).<sup>196, 197</sup> Vertical transactions that produce tangible public benefits eliminate double marginalization—removal of the contribution margin of the 2<sup>nd</sup> railroad in an interline movement—and include service-related quality improvements and pass along those reduced costs to shippers in the form of reduced rates. MSLLC JV shippers face reduced competition without the potential benefits of a vertical consolidation.

The same or similar rail service that existed Pre MSLLC JV continued Post MSLLC JV for the NSR Transcontinental traffic as well as for the traffic that originated or terminated at Dallas and was interchanged with NSR at Meridian. Specifically, Pre MSLLC JV, [REDACTED]  
[REDACTED]

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<sup>195</sup> See Carey HC-WP NSR Contribution Margin.xlsx

<sup>196</sup> See Scherer, F.M., and Ross, David, "Industrial Market Structure and Economic Performance," Third Edition, at 524-527. See Utton, M.A., "Market Dominance and Antitrust Policy," Edward Elgar Publishing Limited, 1995, pp 216-219. See also Carlton, Dennis W. and Perloff, Jeffrey M., "Modern Industrial Organization," Fourth Edition, 2005, at 415-416.

<sup>197</sup> The margin (above variable cost) and contribution margin are terms used in the railroad industry to refer to the revenue in excess of variable cost or mark-up over variable cost. Margin or contribution margin are used to evaluate the additional monies available to the railroad above the incremental cost to serve the traffic that can contribute the overhead functions of the railroad and the broader network investment activities. For a discussion of economic efficiencies associated with vertical transactions, see CSXT-8, Carey V.S. at Section II (February 28, 2022).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] For Dallas Traffic both Pre and Post MSLLC JV, NSR has worked with KCS as an interline partner. KCS was and continues to be responsible for the traffic movement from Dallas to Meridian and NSR was and continues to be responsible for the traffic movement to/from Meridian and locations on its network.<sup>201</sup> In deposition, Mr. McClellan [REDACTED]

[REDACTED]<sup>202</sup> For these traffic movements Pre and Post-MSLLC JV, KCS and NSR each have used separate revenues and operations and costs for its segment of the route.<sup>203</sup> Post MSLLC JV, shippers continue to rely on two railroad carriers with interline traffic movements for the same segments as Pre MSLLC JV<sup>204</sup> because the same interline traffic movements continue Post JV for Dallas Traffic.<sup>205</sup> The shippers have not experienced an improved or otherwise differentiated rail service, but rather continue with the same functional railroad service which includes the exclusivity limitations.<sup>206</sup>

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<sup>198</sup> See KCSR-HC-00027738-KCSR-HC-00027755.pdf Haulage Agreement (KCS-NSR Haulage Agreement), May 21, 2000, at 1-3 (limited to Alliance, TX and Meridian)

<sup>199</sup> See 8.1.11-KCSR-HC-00013373 to KCSR-HC-00013408.pdf, "Norfolk Southern Railway Company-Meridian Speedway LLC-Joint Use Agreement," May 2006, at KCSR-HC-00013380, Section 2(b).

<sup>200</sup> See KCS Responses and Objections to CSX Transportation, Inc.'s Fifth Set of Discovery Requests to KCS, response to Interrogatories 12 and 13, at 16 (June 21, 2022).

<sup>201</sup> Dallas Traffic is to or from the Dallas Intermodal Terminal at Wylie, TX. No haulage agreement was used by KCS and NSR for Dallas origination/termination and Meridian. See McClellan Dep. Tr. 11:06:32-11:06:58 (July 11, 2022) [REDACTED]

See McClellan Dep. Tr. 11:06:32-11:06:58 (July 11, 2022) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] See FD 34822, *Notice of Exemption*, "Dallas Terminal Marketing Agreement," Section 2(b) (January 17, 2006). The Pre MSLLC JV Haulage Agreement does not identify Dallas Intermodal Terminal as haulage and therefore only interline traffic movements would be expected.

<sup>204</sup> See FD 34822, *Notice of Exemption*, "The Kansas City Southern Railway Company-Meridian Speedway LLC-Joint Use Agreement," Section 4(b) (January 17, 2006).

<sup>205</sup> NSR and KCS set rates based as an interline move interchanged at Meridian, MS. See 8.1.18-KCSR-HC-00013584 to KCSR-HC-00013597.pdf, "Dallas Terminal Marketing Agreement," May 2006 at KCSR-HC-00013586-87 Section 2(a).

<sup>206</sup> See FD 34822, *Notice of Exemption*, "Dallas Terminal Marketing Agreement," Section 2(b) and 2(d), (January 17, 2006).

In addition to continuing to use the same or similar railroad service Pre and Post MSLLC JV for NSR Exclusivity Traffic (i.e., transcontinental), a comparable haulage rate is likewise observable Pre and Post MSLLC JV. The Post MSLLC JV haulage-based rate is [REDACTED]

[REDACTED]<sup>207, 208</sup> The mileage adjustment addresses the slightly shorter route in the Post MSLLC JV.

The generally consistent and comparable rate for the same NSR Transcontinental traffic haulage service Pre and Post MSLLC JV indicates that any efficiencies gained from the two railroads working together with a haulage service arose from the Pre MSLLC haulage agreement—and not from the Post MSLLC Exclusivity Arrangements. The MSLLC JV haulage rate consisted of [REDACTED] again suggesting that potential efficiency benefits to shippers may have been realized through the Pre MSLLC JV haulage agreement (and any rate reduction agreed upon) but not the Post MSLLC. The Post MSLLC JV continuation of the prior haulage service did not create enhanced efficiencies or eliminate some of the contribution margin of two railroads to lower customer rates.

Post MSLLC JV, for the Dallas Traffic, the shippers continue to rely on two railroad carriers with interline traffic movements and, therefore, continue to pay the double margin of a standard interline movement<sup>210</sup> (as they did prior to the formation of the MSLLC JV).<sup>211</sup> Thus, no customer rate reductions from efficiency enhancing removal of one railroad carriers' contribution margin/overhead occurred for the Dallas Traffic as a result of the MSLLC JV. [REDACTED]

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<sup>207</sup> [REDACTED]

[REDACTED] NSR is a 30% owner in the MSLLC, meaning that it eventually recoups a portion of this haulage fee, however that does not change the total cost eventually passed on the shipper. Also, since substantial share of the haulage rate is operating costs, there is a limited amount that NSR receives in return.

<sup>209</sup> Average operating costs from 2006 – 2021. See Carey HC-WP “Historical NSR Rates and Operating Expenses.xlsx”.

<sup>210</sup> For Dallas Traffic on KCS's portion of the interline movement between Dallas and Meridiam KCS [REDACTED] See Carey HC-WP “KCS DITT CM.xlsx”.

<sup>211</sup> See 8.1.18-KCSR-HC-00013584 to KCSR-HC-00013597.pdf, “Dallas Terminal Marketing Agreement,” Section 2(b) and 2(d), at KCSR-HC-00013586-87 (May 2006).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

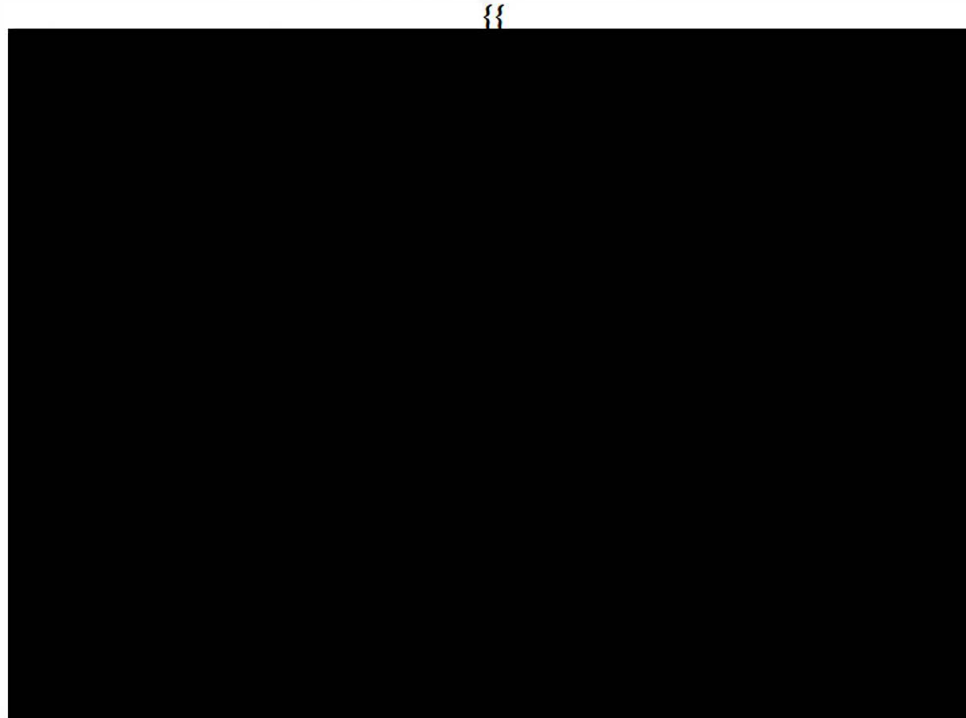
[REDACTED] See Figure 13 below for a comparison.

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<sup>212</sup> KCSR-HC-00027738-KCSR-HC-00027755.pdf, Haulage Agreement (KCS-NSR Haulage Agreement), Section 2(a) and (c), at 3 (May 21, 2000). *See* note 3 to Figure 13.

<sup>213</sup> 8.1.11-KCSR-HC-00013373 to KCSR-HC-00013408.pdf, Norfolk Southern Railway Company – Meridian Speedway LLC Joint Use Agreement, Appendix B (Commercial Appendix), Section 2.C(1) and (3) and Section (3), at 30-32.

**Figure 13: Comparison of Railroad Service and Performance Attributes of Comparison of Pre-MSLLC, Prior KCS/NSR Haulage and Business Arrangement and the MSLLC JV Haulage Service and Locations<sup>214</sup>**



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As a result of the very limited changes to the functional railroad service, there are limited economic efficiency benefits that would be common in the context of vertical integration. The MSLLC Agreements present none of the efficiency-related benefits from vertical transactions of two railroads that would customarily be presented by Applicants to the Board.<sup>215</sup>

While there has been traffic growth over the MSLLC Line since 2006, NSR has made no showing that this growth was achievable only by virtue of the competition limitations embodied in the Exclusivity Arrangements.<sup>216</sup> Indeed, greater traffic growth could have resulted from decreased

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<sup>214</sup> See Appendix C – Haulage.

<sup>215</sup> See CSXT-8, Carey V.S., Section II.A (February 28, 2022) for discussion of economic efficiencies associated with vertical transactions, including elimination of double marginalization, greater opportunities to reduce overhead and thus cost by removing redundancies across two railroads, and improved operating efficiencies of a single line movement.

<sup>216</sup> NSR stated in its Responsive Application that in 2004

[REDACTED]

In

rates arising from competition. Further, as demonstrated by Dr. Shehadeh, since the investments were in place, the transcontinental intermodal volume that traverses the MSLLC Line has grown more slowly than competitive benchmarks.<sup>217</sup>

**B. Haulage Agreements are Commonly Used in the Railroad Industry (without Exclusivity Requirements), even when Accompanied by New Investments**

Non-exclusive haulage-based arrangements were available to NSR and KCS at the time of the MSLLC JV and if undertaken would have warranted the necessary investment without unnecessarily limiting competition. By contrast, Exclusivity Arrangements such as those embedded in the MSLLC Agreements are not commonplace in the railroad industry as I show from examples below and as discussed in the *Girardot V.S.*<sup>218</sup> This is shown by the Board's decision to reject a request by NSR in another matter seeking exclusivity and the closing of gateway/interchanges to competition into perpetuity. Also, antitrust cases look to whether a contract follows the norm in the industry in evaluating the reasonableness of ancillary restraints.<sup>219</sup>

Along with joint use of rail facilities, trackage rights and run-through trains,<sup>220</sup> haulage agreements<sup>221</sup> are one of the common ways railroads economically access new markets or expand the use of already served markets without engaging in market divisions such as those contained in the MSLLC Agreements. Under a haulage agreement, the railroad owning the line grants haulage rights to another carrier. Haulage rights are "rights obtained by one railroad to have its trains operated by

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deposition. Mr. McClellan acknowledged that the [REDACTED]

<sup>217</sup> See Verified Statement of Dr. Ramsey Shehadeh at Section IV.

<sup>218</sup> See *V.S. of Robert Girardot*, at 7. See also Appendix D – Haulage Agreements.

<sup>219</sup> In cases considering whether a contract is a lawful restraint of trade, a defense to a claimed unreasonable restrictive covenant in a commercial agreement includes considering whether the contract was of standard form or commonly used in the industry. If the restriction is commonly used in the industry, under the "trading society" test, this fact weighs in favor of the covenant being deemed reasonable and thus not a violation of antitrust law. Two recent cases relied on this contract principle: *Peninsula Securities Ltd v Dunnes Stores (Bangor) Ltd* [2020] UKSC 36 at 26-27, 46, available at <https://www.supremecourt.uk/cases/docs/uksc-2018-0062-judgment.pdf>; and *Quantum Actuarial LLP v Quantum Advisory Limited* [2021] EWCA Civ 227 at 60 (iii-iv), available at <https://www.bailii.org/ew/cases/EWCA/Civ/2021/227.html>

<sup>220</sup> For instance, trackage rights and access to other rail facilities are recognized as conditions the Board may impose in merger circumstances where needed to mitigate or offset harm. See 49 CFR § 1180.1(d) "General policy statement for merger or control of at least two Class I railroads – Conditions," available at <https://www.ecfr.gov/current/title-49/subtitle-B/chapter-X/subchapter-B/part-1180>.

<sup>221</sup> For a summary of haulage agreements, see Appendix D – Haulage Agreements.

another railroad over [the operating railroad's] railroad's tracks."<sup>222</sup> In these agreements it is common that the railroad which is granted access to the operating railroad's tracks pays a per-use fee to the operating railroad to perform the haulage service.<sup>223</sup>

Based on my experience and additional review, there are many examples where interline traffic movements over a line compete with the service by a carrier receiving haulage over that same line. The combination of these two features necessarily shows that the gateways/interchanges are open to traffic movements by the line-owning carrier as well as the carrier receiving haulage. One example is CSXT's agreement to haul transcontinental, intermodal units for BNSF between Chicago and North Baltimore, Ohio. That haulage is not exclusive [REDACTED]

[REDACTED]<sup>224</sup> There are many other examples of rail lines are being used in multi-faceted ways by more than one railroad carrier through such agreements.<sup>225</sup> These real-world examples demonstrate that non-exclusive haulage or trackage agreements are common practices in the industry.

These common industry agreements may also include investments to improve the rail service or facilitate the haulage. For instance, under a 2006 intermodal haulage agreement [REDACTED]

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<sup>222</sup> See CSXT, "Railroad Dictionary," available at <https://www.csx.com/index.cfm/about-us/company-overview/railroad-dictionary/?i=H>

<sup>223</sup> See Appendix D – Haulage Agreements

<sup>224</sup> See Appendix D – Haulage Agreements. [REDACTED]

[REDACTED] See Appendix D – Haulage Agreements for traffic tape summaries and other third-party industry information. Haulage agreements are considered non-exclusive if the line owner supplying haulage services provides access for multiple carriers to move traffic over, to or from points on the haulage line.

<sup>226</sup> [REDACTED]

[REDACTED] A distance of 215 miles.  
Mileage calculated using PC Miler.

In that intermodal haulage agreement,

\_\_\_\_\_

\_\_\_\_\_

[illegible]

See 7.3.3. Cf. Rosen-Gardot, at 9.

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Another example of investments associated with non-exclusive haulage agreements is the Florida East Coast Rail (“FEC”) agreement with NSR to haul intermodal units from Jacksonville, Florida to destinations throughout Florida, including Titusville and Miami.<sup>237</sup> The CWS traffic movement data shows

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As noted above, the Board has rejected exclusive haulage arrangements. NSR and the Watco<sup>240</sup> short line operator planned to establish a joint venture railroad called the Michigan Central Railway (“MCR”) which was denied by the Board in 2007.<sup>241</sup> NSR proposed to contribute 299 miles of track in Michigan and Indiana, trackage rights, and related assets to MCR in exchange for a 33% “membership interest” and certain restrictions on MCR’s ability to interchange traffic with other carriers.<sup>242</sup> Watco would contribute \$18 million in cash and locomotives over time to MCR in exchange for a 67% membership interest in the joint venture. MCR stated that it would invest more than \$20 million in these lines over the first 3 years.<sup>243</sup>

In its NSR/Watco 2007 decision to reject the joint venture, the Board is critical of many aspects of the Application. Of relevance here, the Board states that MCR’s “ability to control these lines would also be significantly reduced through NSR’s interchange restrictions, retention of trackage

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Company, CSX\_HC\_0006430.pdf, October 12, 2006, at CSX\_HC\_0006447.33

<sup>236</sup> See Appendix D – Haulage Agreements at Figure 2.

<sup>237</sup> See Appendix D – Haulage Agreements.

<sup>238</sup> See Appendix D – Haulage Agreements.

<sup>239</sup> See NS-12, Exhibit 3 at 7.

<sup>240</sup> See Watco, “System Map”, available at <https://www.watco.com/system-map/>.

<sup>241</sup> See FD Nos. 35063-65, *Michigan Central Railway, LLC Acquisition and Operation Exemption – Lines of Norfolk Southern Railway Company Et Al.*, “STB Decision,” at 1 (December 10, 2007).

<sup>242</sup> *Id.* At 2.

<sup>243</sup> *Id.* At 2.

rights, and haulage rights.”<sup>244</sup> The Board continued, indicating that “[t]he interchange restrictions would be unusually severe as they would extend in perpetuity to existing and future traffic.”<sup>245, 246</sup>

Following the Board’s decision to reject the MCR joint venture, NSR and Watco sought an exemption for a smaller scale transaction that would enable Watco to lease NSR’s lines in Michigan and Indiana.<sup>247</sup> Watco would form subsidiary Grand Elk Railroad L.L.C. (“GER”) as the operator.<sup>248</sup> The Board approved the transaction in 2009 on the basis that, unlike MCR, GER would be operating independently of the lessor carrier (NSR).<sup>249</sup> The Board’s decision highlights the non-exclusive provisions, stating that “GER will make its own separate transportation contracts with its shippers, and GER will have the unrestricted ability to interchange traffic with other carriers with which it physically interconnects.”<sup>250</sup>

**C. NSR/KCS Could have Negotiated a Financial Structure for MSLLC Based on the Existing Haulage Arrangement and Recovered the New Investment Without Exclusivity Arrangements that Unnecessarily Limits Competition**

The perpetual Exclusivity Arrangements in the MSLLC Agreements and resulting market division was not reasonably necessary to achieve business success in 2006. As discussed in the previous section, there are common ways for railroads to economically access new markets or expand the use of already served markets without engaging in the market division type agreements contained in the MSLLC Agreements. Here, NSR and KCS could have continued to use a haulage service as prior to the creation of MSLLC and satisfied NSR’s investment requirements without restrictions to competition. They could have developed a haulage rate for use by other carriers moving transcontinental intermodal traffic across the Speedway that would have enabled NSR to achieve a return on, and of, its \$308 million investment. Had NSR and KCS set such a rate, NSR

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<sup>244</sup> *Id.* At 8.

<sup>245</sup> *Id.* At 8.

<sup>246</sup> In its decision to deny the joint venture the Board notes “The restrictions generally would bar MCR from interchanging existing or future rail traffic, either by “steel wheel or rubber wheel,” with any carrier other than NSR other than those existing at an “Interchange Point” as of the closing date, except that traffic could be interchanged if: (1) the traffic both originates and terminates on MCR’s lines; (2) the traffic is interchanged only with a Class III rail carrier and both originates and terminates within Michigan; or (3) the traffic originates or terminates at customers open to reciprocal switching in Lansing, Grand Rapids, Kalamazoo and Battle Creek.”” *Id.* at 2-3.

<sup>247</sup> See FD 35187, *Grand Elk Railroad LLC – Lease and Operation Exemption-Norfolk Southern Railway Company*, “Decision,” at 3 (November 3, 2008).

<sup>248</sup> *Id.* At 4.

<sup>249</sup> See FD 35187, *Grand Elk Railroad LLC – Lease and Operation Exemption-Norfolk Southern Railway Company*, “Decision,” at 3 (January 29, 2009).

<sup>250</sup> *Id.* At 3.

would have been compensated for its investment in MSLLC both when NSR used the MSLLC Line as well as whenever shippers selected a railroad competitor to use them.

Set appropriately, such a rate would make NSR economically indifferent to whether NSR or a competitor used the MSLLC Line. This approach ensures that NSR would recoup its investment and achieve a return on that invested capital. Whenever shippers selected a railroad competitor to use the facilities for transcontinental traffic, it would do so via unrestricted gateways at Shreveport and Meridian facilitated by KCS with interchange to another railroad; the railroad in whose account the traffic moved would pay the hypothetical haulage rate to MSLLC, and 100% of that rate would be remitted to NSR. Any additional traffic moving over the MSLLC such as the interlined DITT would be operated as standard interline movements as the parties have done in the past and do so today. The remaining Meridian Speedway traffic would not need a haulage rate as it moves (and would move in the future) by interline railroad movements on each carrier's network (and via KCS over the MSLLC Line).

Given this opportunity, there was no economic justification for KCS to grant NSR exclusive rights to DITT. That traffic could have moved, as it does today, in interchange with KCS at Meridian with either NSR or a competing carrier. Accordingly, MSLLC could have collected any additional fees required to recoup NSR's investment or otherwise continue to allow KCS to earn revenues and contribution margin for these traffic movements over the MSLLC Line and the portion of the line to and from the DIT.<sup>251</sup>

In Figure 14 below, I present a summary of my economic analysis by simulating a hypothetical haulage arrangement that could have been negotiated between NSR and KCS. Further, I quantify this haulage rate for MSLLC's services to show that KCS and NSR had an economically viable alternative to their Exclusivity Arrangements. I develop a haulage rate for the NSR Transcontinental traffic for the incremental investment of \$308 million<sup>252</sup> representing NSR's capital contribution in MSLLC.<sup>253</sup> This analysis is conceptually consistent with an embedded cost based rate that includes

[REDACTED]

<sup>251</sup> See McClellan Dep. Tr. 12:12:12 (July 11, 2022) [REDACTED]  
<sup>252</sup> \$308 million in investments made by NSR to MSLLC as of year-end 2021. See Norfolk Southern Combined Railroad Subsidiaries, "Class I Railroad Annual Report," at Schedule 310 (Investments and Advances Affiliated Companies).

the up-front capital contribution. It calculates the rate per unit for Transcontinental Traffic subject to haulage service over the Meridian Speedway<sup>254</sup> that would be needed to recover that capital contribution,<sup>255</sup> as well as a reasonable return on the capital investment<sup>256</sup> and an estimate of the operating cost for the haulage service over the Meridian Speedway.<sup>257</sup>

Under this analysis, as shown below in Figure 14, MSLLC could have charged any carrier who desired to use the MSLLC Line with an approximate [REDACTED] / unit haulage rate in 2021 for service over the MSLLC for transcontinental traffic movements. To the extent that transcontinental traffic volumes are higher than 2021 in the future, the effective haulage rate could be lower (i.e., spreading fixed costs over more units) which makes the analysis conservative. This provides a strong economic incentive for a haulage services that would support additional traffic achievable by more railroad competition over the facilities, consistent with the economic incentives associated with the Meridian Speedway when it was wholly owned by KCS.

254 [REDACTED]

[REDACTED] I assume the capital recovery period extends for 40 years, which is consistent with NSR's assumed trackage and related asset life in the 2005 time period. In 2005, NSR's annual composite depreciation rate for roadway was 2.20%, which is equivalent to a 45-year life ( $1 / 0.0220 = 45.45$ ). See Norfolk Southern, STB Class I Railroad Annual Report, 2005, Schedule 332 (Depreciation Base and Rates – Road and Equipment Owned and Used and Leased From Others), Revised, line 30, col. (d), at 34.

<sup>256</sup> My 10% cost of capital assumption is consistent with contemporaneous information available during the JV decision in early 2005, including the STB determined cost of capital (Class I railroads) for the 2001-2004 period, which ranged from 9.40% to 10.19%. See STB chart for Railroad Revenue Adequacy, 2000 to 2020, available at <https://www.stb.gov/wp-content/uploads/Revenue-Adequacy-chart-2020-2.xlsx>. In addition, NSR [REDACTED]

[REDACTED] This estimate is based on audited financial statements of MSLLC obtained from KCS in discovery. See Carey HC-WP “Historical NSR Rates and Operating Expenses.xlsx”



[REDACTED] that KCS receives from the haulage payments associated with the transcontinental intermodal traffic movements due to its 70% ownership interest in the MSLLC. As discussed in section VI.A, the [REDACTED]

[REDACTED]<sup>261</sup>

**D. NSR's Strong Historical Contributions Margins from the MSLLC Line Traffic show that even if the Exclusivity Arrangements were needed in 2006, they are No Longer Needed**

Since 2006, NSR has received unusually large amounts of contribution margin from its participation in the MSLLC JV because of the inappropriate perpetual Exclusivity Arrangements. This indicates that the Exclusivity Arrangements were unnecessary in the first instance for NSR to receive its required return and that NSR has already recouped its investment due to competitive restrictions that are no longer necessary. Even if there was initial uncertainty regarding the need for competitive restrictions to induce capacity-improving investments, NSR has more than recouped its investment in the past 15 years and the restriction is no longer justified. I focus on NSR's profitability regarding the new investment, it argues, necessitated the MSLLC. The remaining traffic over the MSLLC Line moves by interline railroad movement on each carrier's network (and via KCS over the Meridian Speedway) and will continue to do so in that manner in the future with each railroad earning its contribution margin above the variable cost of the move.<sup>262</sup>

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<sup>261</sup> For example, the current haulage rate is approximately [REDACTED]

Haulage.  
<sup>262</sup> *Id.*

[REDACTED] See Appendix C –

I estimate NSR's historical volumes, revenue, and contribution margin achieved for the 2006 to 2022 period. While CSXT asked for this information in discovery, NSR did not provide it.<sup>263, 264</sup> As shown in

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<sup>263</sup> For traffic volumes I used 2019 -2021 (NSR Traffic Tapes) and Transcontinental Traffic volumes from KCS discovery for 2008-2018. For other traffic types and 2006-2007 data gaps, I interpolated volumes based on the growth rate in NSR volumes reported by the CWS Waybill sample (by traffic type). For the revenues I used the 2019-2021 revenues from the NSR traffic tapes along with the percentage increase in NSR rates from CWS waybill sample. For the cost estimates, I used URCS costs for the specific movements on NSR's system east of Meridian by traffic type for 2020 and adjusted the unit costs by the percentage change in the adjusted RCAF for all other years. I added the haulage rate payments to the costs of the NSR Transcontinental Traffic. 2022 estimates are based on 2021.

<sup>264</sup> A data request was made to NSR for information to determine profitability (of NSR intermodal traffic on Meridian Speedway from 2007 to the present, and the NSR response was to reference NSR Waybill data that had been produced. *See* Norfolk Southern Railway Company's Amended Responses and Objections to CSX Transportation, Inc's Second Set of Data Requests, June 22, 2022, Data Requests and Responses 3 and 4. Another data request asked for information on profitability since 2007 (Data Request 5) and specific identification of responsive documents was not provided.

Figure 15 below, I estimate NSR has earned [REDACTED] dollars in contribution margin.<sup>265</sup> Consequently, NSR has more than recouped its investment of approximately \$300 million dollars and achieved a substantial return on its investment of [REDACTED].<sup>266, 267</sup> Thus, over the 17 year period of 2006 to 2022, NSR's contribution margin exceeded its approximately \$300 million investment by approximately [REDACTED] time frame and over the entire period NSR has achieved an annual pre-tax rate of return on its investment of approximately [REDACTED].<sup>268</sup> This figure is conservative as it only accounts for the intermodal traffic that NSR hauls over the MSLLC Line and not other types of traffic from which it earns additional contribution margin.<sup>269</sup>

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<sup>265</sup> See Carey HC-WP "NSR Contribution Margin.xlsx". [REDACTED]

[REDACTED] contributed \$300 million in investments along the Meridian Speedway. See Norfolk Southern, "Form 8-K," December 2, 2005, at item 1.01, available at <https://sec.report/Document/0000702165-05-000255/>.

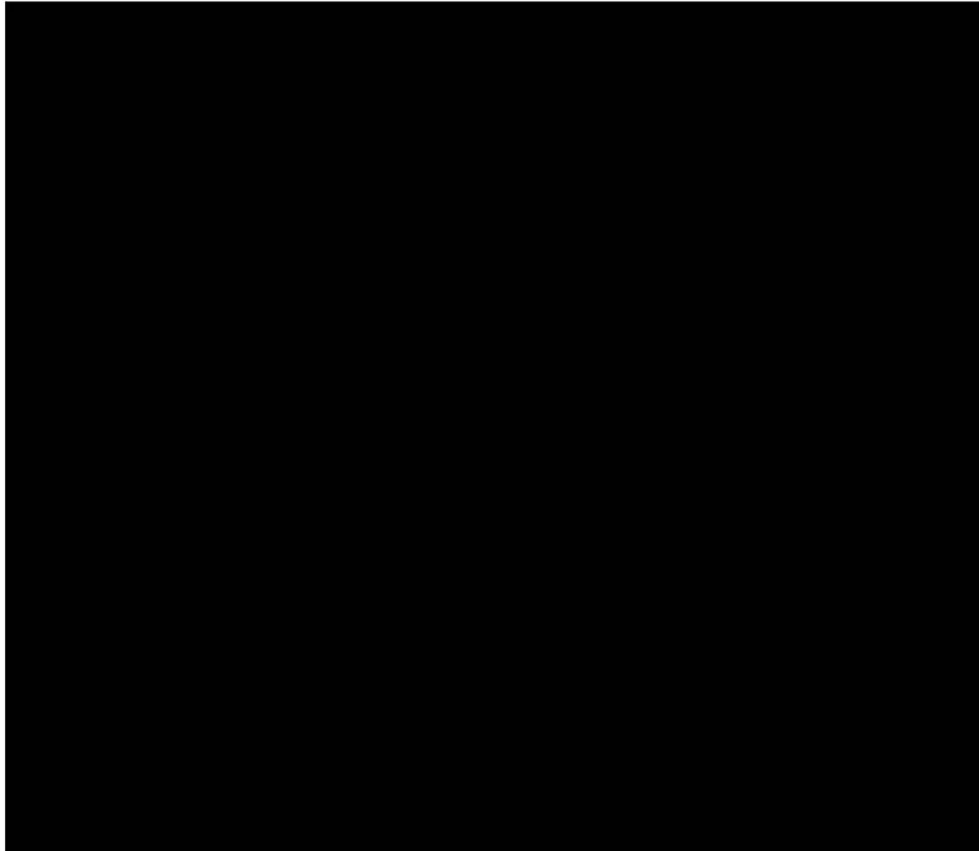
<sup>267</sup> This number is even higher if you consider any profits that have been redistributed to NSR through its 30% ownership of the Meridian Speedway.

<sup>268</sup> The analysis conservatively includes the investment at the beginning of the period instead to the later years that it was invested See Carey HC-WP "NSR Contribution Margin.xlsx".

<sup>269</sup> This analysis relies on URCS variable costs. The URCS cost procedure includes a general overhead ratio which allocates administrative and other indirect expenses to cost components. In addition, depreciation and return on investment ("ROI") are included in the linehaul cost component. See "The Railroad Cost Program", Surface Transportation Board, available at <https://www.stb.gov/reports-data/uniform-rail-costing-system/>. In addition, taxes are considered when developing "General Overhead and Constant Costs," "Property and Equipment Investment Account Adjustments," "Investment Costs," and "Operating Costs." See URCS 2020 Worktables at sheets "D8P2," "B5P3," "A4P3," "A2P4".

**Figure 15: NSR Contribution Margin for Traffic over the MSLLC Line<sup>270</sup>**

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Since NSR has already received a reasonable return on its investment, there is limited additional reason to continue exclusivity into the future.

**VII. LARGE SHIPPER AND PUBLIC BENEFITS WOULD BE ACHIEVED WITH GATEWAYS AT SHREVEPORT AND MERIDIAN OPEN TO ALLOW ENHANCED COMPETITION TO AND FROM EASTERN RAIL MARKETS**

Any unnecessary limitation on competition—such as only one Eastern railroad carrier accessing a highly efficient and advantaged route as the Meridian Speedway<sup>271</sup>—reduces

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<sup>270</sup> See Carey HC-WP “NSR Contribution Margin.xlsx”

<sup>271</sup> NSR acknowledges the economic advantages of the route used for the Meridian Speedway. See NS-12 at 10.

achievable benefits of competitive markets, such as lower rates to shippers and overall consumer welfare below otherwise attainable levels. NSR's Responsive Application claims of efficiency benefits from Meridian Speedway and the MSLLC JV fail to assess the economic implications of the Exclusivity Arrangements and the closed gateways at Meridian and Shreveport.<sup>272</sup> Despite historical increases in volumes over the Speedway since the formation of the MSLLC JV,<sup>273</sup> shippers would achieve overwhelmingly greater economic benefits from the abrogation of the perpetual KCS-NSR Exclusivity Arrangements and opening both the Shreveport and Meridian gateways to the MSLLC Line. Given the very modest efficiency-related benefits associated with the proposed CPKC Transaction,<sup>274</sup> removing these obstacles to competition will lead to a higher level of public benefits from the Proposed Transaction and best ensure competitive railroad markets going forward.

Figure 16 below summarizes the results of my customer savings analysis that quantifies the public benefit to shippers in the form of the lower rates achievable with rail competition over the MSLLC Line, in addition to the benefits of bringing trucks off the road.<sup>275</sup> These public benefits are attainable by removing the Exclusivity Arrangements and opening the gateways at Meridian and Shreveport to an additional competition. This analysis is based on two approaches using (1) actual lower CSXT rates and reaffirmed with (2) statistical analysis confirming that two competitors versus one will lower rates. Opening both gateways to the MSLLC Line would enable an additional Class-I railroad interchange partner at the gateways, increasing eastern railroad competitors from one to two and allowing UP to compete with KCS for all traffic to and from Shreveport (i.e., Transcontinental traffic as well as Mexico traffic). I show a range of additional public benefits from \$30 million to \$32 million annually achievable from the additional railroad competitor over the MSLLC Line. Public benefits can even reach as high as \$50 million a

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*Id.* NSR states "the meridian Speedway transaction was pro-growth, procompetitive, allowed shippers to utilize a highly efficient route service."

<sup>273</sup> See NS-12 at 9-15 (general discussion) and at 15-20 (Dallas).

<sup>274</sup> In my February V.S., I showed the small transactions related benefits when properly analyzed. See CSXT-8, Carey V.S., Section IV. Specifically, the Applicant's public benefits from annual cost savings approximated \$172-194 million. The majority of Applicant's claimed public benefits are private benefits (additional revenue to CPKC) and not benefits to shippers.

<sup>275</sup> My analysis is limited to the lower rates received by shippers. This is distinct from the CPKC application (CP-26/KCS-14) that attempted to include the revenue it would achieve from increased customers instead of the customer benefits of lower rates. See CSXT-8, Carey V.S., Section IV (February 28, 2022).

year when considering that increased competition can induce shippers currently using trucks to use a rail alternative instead.

**Figure 16: Annual Customer Savings (Public Benefits) Achievable through an Open Gateway/Interchange Across the MSLLC Line (Shreveport and Meridian)<sup>276</sup>**

| Annual Customer Savings Achievable through an Open Gateway<br>Across the Meridian Speedway |              |              |
|--------------------------------------------------------------------------------------------|--------------|--------------|
| Estimation Method                                                                          | Minimum      | Maximum      |
| (1) Savings from introduction of second competitor on MSLLC Line                           | \$30 million | \$32 million |
| (2) [REDACTED]                                                                             |              |              |
| (3) Saving for shippers who ship from truck to rail moves                                  | \$7 million  | \$17 million |
| (4) Saving from Line 1 plus Line 3                                                         | \$37 million | \$49 million |

**Notes and sources**

1. See Appendix E - Interchange Analysis and See Carey HC-WP “2019 Price Comparison and Savings Analysis.xlsx”

My analysis shows that just an additional railroad competitor accessing traffic across the MSLLC Line will result in substantial additional public benefits to Southeastern and Mid-Atlantic U.S. customers. Adding another railroad lowers rates and intensifies competition, taking trucks off the road.<sup>277</sup> These “cognizable efficiencies are important considerations in evaluating any transaction and ensuring the public interest.”<sup>278</sup> Since only NSR is currently able to interchange UP transcontinental traffic via the Shreveport gateway and Dallas Intermodal Terminal Traffic via the

<sup>276</sup> See Carey HC-WP “All Savings All Methods Summary.xlsx”

<sup>277</sup> This analysis is conservative for numerous reasons. First, it relies on historical 2019 intermodal traffic volumes for NSR, which have already risen substantially; this assumes that rail carriers cannot lower rates further than 2019 levels and ignores traffic increases that have accrued, and will continue to accrue, since 2019. Second, the analysis does not include other types of traffic that could also compete at the gateways and benefit shippers.

<sup>278</sup> NS-12, “Amended V.S. of John W. Mayo,” at 12-13. Dr. Mayo recognizes to ensure that the proposed merger is in the public interest, the STB should evaluate the credibility the claimed efficiencies by requiring that they are “cognizable.” “Cognizable efficiencies” refer to merger-specific efficiencies that have been verified and do not arise from anticompetitive reductions in output or service. The Agencies evaluate the magnitude and character of cognizable efficiencies against the likely anticompetitive effects, such that the merger is unlikely to be anticompetitive. See Vertical Merger Guidelines at 11 and Horizontal Merger Guidelines at 30-31.

Meridian gateways, both gateways need to be opened and the restrictions associated with the Exclusivity Arrangements removed.

NSR's comments highlight the economic importance of open gateways to best ensure competition and benefits for shippers.<sup>279</sup> I agree with NSR about the high importance of open gateways. NSR is silent, however, regarding the substantial additional benefits that I show below are achievable by removal of the Exclusivity Arrangements as well as opening the MSLLC Line gateways.<sup>280</sup>

**A. Substantial Public Benefits Could be Achieved from Opening the MSLLC Line Gateways (at Shreveport and Meridian) Allowing Two Instead of One Eastern Railroad Competitor for All Traffic that Might Efficiently Use that Line (Based on Statistical Analysis of Railroad Rate Competition at Gateways/Interchanges)**

In the next two subsections, I discuss my two estimates of the public benefits achievable from opening both gateways to the MSLLC Line that provide shippers with the choice of railroad alternatives and an additional Class-I railroad competitor. The first is a statistical analysis of railroad rates for intermodal traffic movements that involved different numbers of railroad route competitors across gateway locations (i.e., interchange locations). This analysis conducted was for the 2019 study year and included all actively used intermodal lanes across the United States.<sup>281</sup> The statistical analysis evaluates whether and to what extent the number of railroad routing competitors across gateway/interchange locations is an economically significant attribute of the railroad rates being charged. The analysis seeks to ascertain if the number of actual competitors explains some portion of the difference in the customer railroad rates.

This statistical analysis reaffirms the well understood economic principle that gateways/interchange locations with more than one railroad competitor have lower rates than

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<sup>279</sup> See NS-12, at 30-33, 42-46; NS-12, "Amended V.S. of John W. Mayo," at 4-5, 20-21, 29-30. NSR's response to the Amended Operating plan provides statistics of volume growth over the Speedway as economic indicia of procompetitive benefits. NS-12 at 11-13. Volume growth is indicative of market trends, but without other economic analysis is not sufficient alone to conclude that the transaction had a competitive benefit to shippers.

<sup>280</sup> NSR ignores the benefits of open gateways when discussing its JV, but nonetheless demands that CPKC ensure that the Meridian Speedway gateways remain open for their exclusive use. See NS-12 at 2-4 (discussing the MSLLC and agreement but not addressing Exclusivity Arrangements); NS-12 at 9-40 (discussing the MSLLC and impacts of the proposed CPKC Transaction but not addressing Exclusivity Arrangements); NS-12, "Amended V.S. of John W. Mayo," at 24-29 (discussing the MSLLC Agreements but not addressing Exclusivity Arrangements); NS-12 at 30-33, 42-46 (discussing concerns regarding open gateways); NS-12 at 4-5, 20-21, 29-30 (discussing concerns regarding open gateways).

<sup>281</sup> The data relied for the analysis is the 2019 STB CWS which includes approximately 350,000 origins and termination locations on Class 1 railroad networks. For further discussion of methodology and data see Appendix E – Interchange Analysis.

interchange locations with only one railroad. Having two competitors instead of one results in substantially lower rates and large benefits to shippers. The analysis statistically confirms that lower rates result with more competitors.<sup>282</sup> Further, my analysis demonstrates that the highest incremental benefits result from increasing from one to two competitors, which is the potential result here. I conclude shippers can expect to save about \$0.04 per car-mile with an increase of interchange railroads from one to two competitors.<sup>283</sup> I report the estimated customer savings achievable under two statistical approaches (which I refer to as Model 1 and 2 in Figure 17 below).<sup>284, 285</sup> If this level of savings is applied to the 2019 NSR traffic levels, shippers could expect to save as much as \$32.7 million dollars a year with an open MSLLC Line (Shreveport and Meridian gateways).<sup>286</sup> These public benefits savings estimates are conservative, as traffic volumes have grown since 2019 and can be expected to grow further in the future.

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<sup>282</sup> This economic analysis shows that the number of competitors at the interchange is a statistically significant factor in determining the railroad rate (i.e., it is over 99% likely that the observed effect is due to an existing relationship in the real world rather than a random quirk in the data set).

<sup>283</sup> See Appendix E – Interchange Analysis.

<sup>284</sup> Both versions of the econometric specification quantify the customer savings by estimating the impact of an increase in the number of alternative routes available on the rate. Model 1 (active) estimates the effect by controlling for route distance through a non-linear relationship between distance and rate (as similarly modeled in “Harbor, An Assessment of the Effect of Competition on Rail Rates for Export Corn, Soybean, and Wheat Shipments. Journal of Food Distribution Research. 2009). Model 2 (band) estimates the effect by using a piecewise mapping of distance reported in 250-mile increments. Both models control for the same other types of factors such as car ownership, a single line indicator, truck rate, number of interchanges, and Intermodal service code.

<sup>285</sup> I tested the econometric model across numerous specifications and the results are robust across varied specifications, meaning that even changes to the variable construction or control inputs in the model does not meaningfully change the results. This is further evidence that the observed phenomenon is not a contrivance of the model, but a causal relationship which exists in the real world.

<sup>286</sup> See Appendix E – Interchange Analysis.

**Figure 17: Summary of Annual Public Benefits Achievable for Intermodal Traffic with an Additional Competitor with Open Gateways at Shreveport and Meridian (Statistical Analysis)<sup>287</sup>**

| <b>Traffic Type</b> | <b>Savings<br/>Model 1</b> | <b>Savings<br/>Model 2</b> |
|---------------------|----------------------------|----------------------------|
| <b>[a]</b>          | <b>[b]</b>                 | <b>[c]</b>                 |
| Transcontinental    | \$21,062,081               | \$22,943,528               |
| Dallas              | \$7,208,889                | \$7,852,849                |
| Mexico              | \$1,791,442                | \$1,951,469                |
| <b>Total</b>        | <b>\$30,062,411</b>        | <b>\$32,747,845</b>        |

An additional benefit will result from the lower railroad rates for intermodal traffic from two eastern railroads competing head-to-head at the Shreveport and Meridian gateways, as shown in Figure 17 above. The lower railroad rates will make rail transportation more competitive with the current trucking transportation alternatives and the number of intermodal units carried by railroads as compared to trucks will increase. The Board has indicated that the lowered carbon emissions characteristics of freight rail movements promises yet another potential benefit to the open gateways.<sup>288</sup>

**B. Substantial Public Benefits Achievable with an Open Gateways at Shreveport and Meridian)**

In addition to my statistical analysis, I looked to direct evidence of the ability of CSXT to offer eastern U.S. rail customers [REDACTED] for intermodal traffic. [REDACTED] rates would result by opening both the Shreveport and Meridian gateways to the MSLLC Line enabling an additional Class-I railroad and increasing competitors to and from the east from one to two.

As shown below, lower CSXT intermodal rates provide a real-world estimate of achievable public benefits by making Meridian and Shreveport open gateways and allowing two versus one Eastern railroad to serve Eastern U.S. customers with lower rates.

I compared the actual rates charged by NSR and CSXT for intermodal movements serving the same origin and destination. For example, both railroads serve intermodal movements from Los Angeles, California to Jacksonville, Florida. But NSR takes the more efficient route traversing the

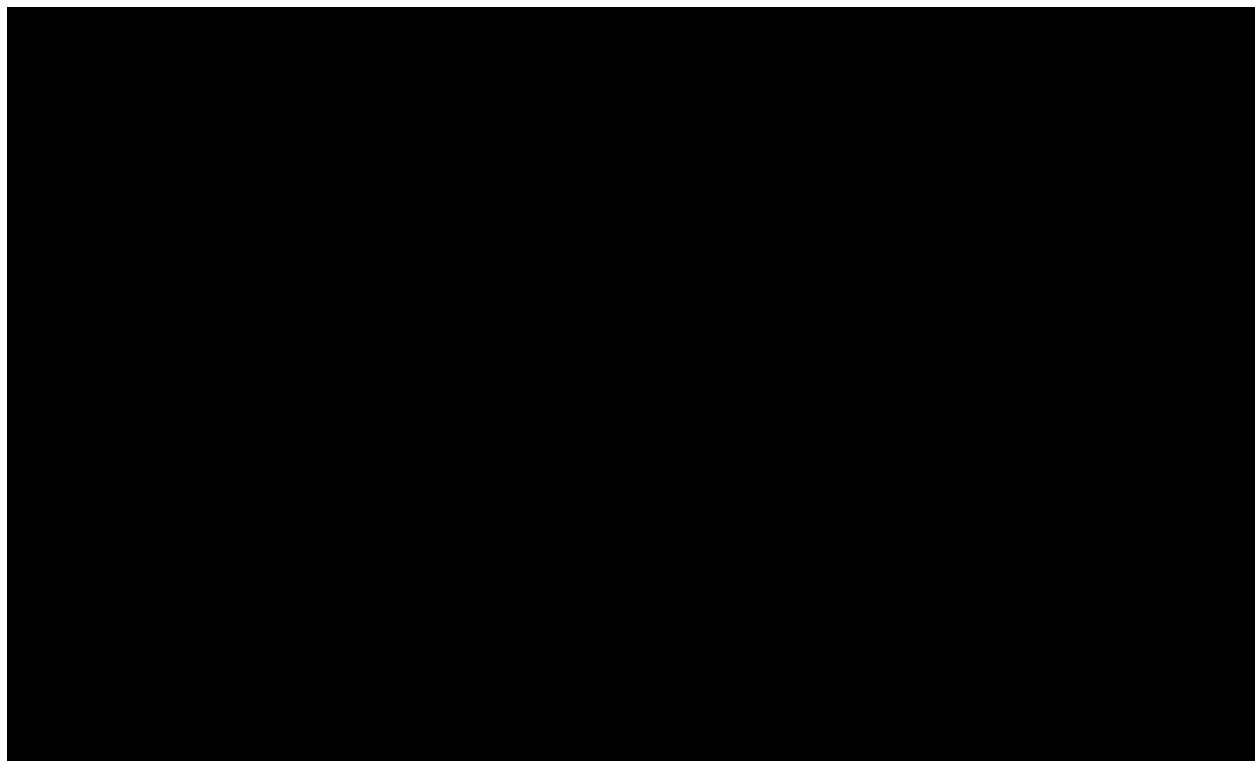
<sup>287</sup> See Appendix E – Interchange Analysis. See Carey HC-WP “All Meridian Savings.xlsx”. Other specifications were tested that show this estimate is conservative.

<sup>288</sup> See FD 36500, *Canadian Pacific Railway Limited et Al. – Control – Kansas City Southern et al.*, “STB Decision,” at 3-4 (November 12, 2021).

MSLLC Line (Shreveport - Meridian), whereas CSXT uses a route through Memphis. As shown in Figure 18 below, CSXT intermodal rates are highly competitive and [REDACTED] than NSR's intermodal rates (both on a per car-mile and per car level basis) for the same origin and destination locations that move across the MSLLC Line.

**Figure 18: Comparison of CSXT and NSR MSLLC Line Intermodal Railroad Rates for Transcontinental and Dallas Intermodal Terminal Traffic** <sup>289</sup>

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The NSR intermodal traffic across the MSLLC Line has [REDACTED] rates than the CSXT for transcontinental routes that compete with NSR. On an overall basis, the CSXT rates are [REDACTED] than the NSR rates on a rate per mile and rate per unit basis, respectively. This percentage difference is the weighted average percent difference in the rate per mile and rate per unit of the traffic movements reported.<sup>290</sup> For example, one can observe { [REDACTED] CSXT rates to and from key intermodal locations such as Atlanta, Charlotte, and Jacksonville. On average, westward transcontinental moves are about [REDACTED] on CSXT than NSR, and up to [REDACTED]

<sup>289</sup> See Carey HC-WP “2019 Price Comparison and Savings Analysis.xlsx”. The rates presented are for comparable routes only.

<sup>290</sup> Weighted on CSXT's traffic volumes for each of the moves.

██████████ on CSXT moving eastward.<sup>291</sup> This comparison relies on NSR intermodal movements over the MSLLC Line and compares them to CSXT intermodal movements to and from the same locations, but which necessarily utilize alternative routings and accordingly, different gateways.



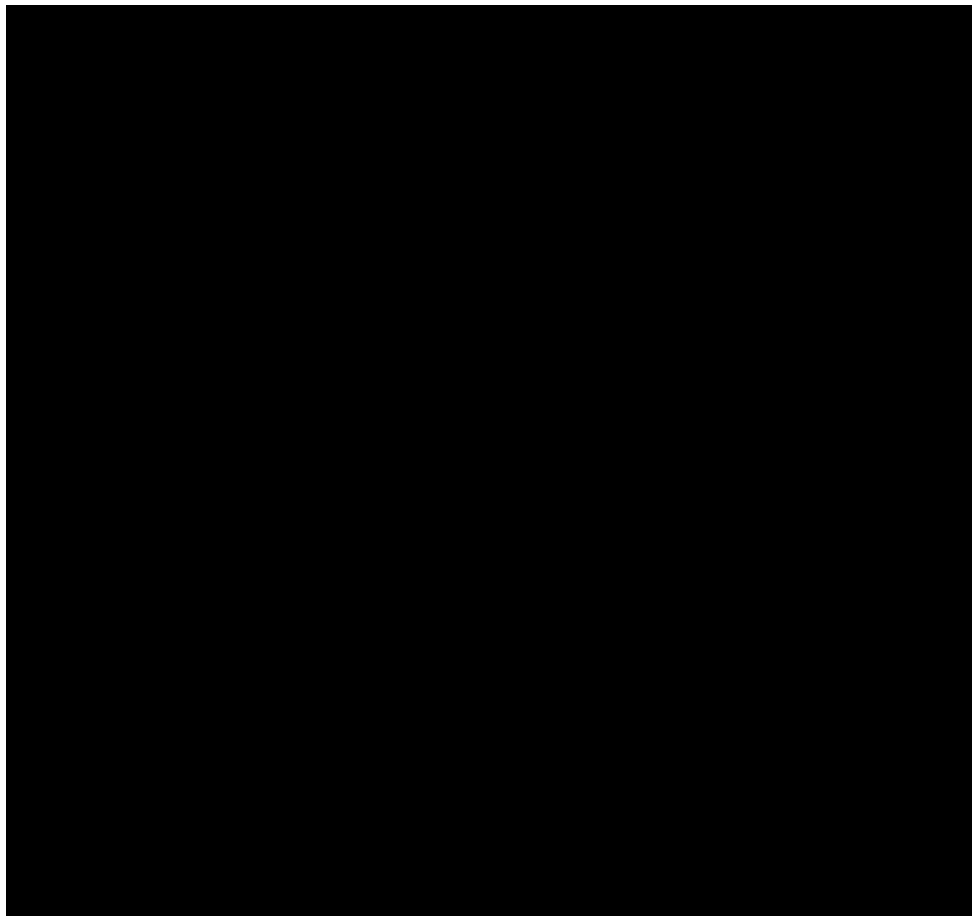
Opening the MSLLC Line’s Meridian and Shreveport gateways and removing the Exclusivity Arrangements adds an additional rail competitor and should lead to lower railroad rates for the shipper traffic opened to competition. Figure 19 below summarizes the potential public benefits achievable with open Meridian and Shreveport gateways, no Exclusivity Arrangements and CSXTs competitive railroad rates, saving shippers up to ██████████ million annually on the intermodal traffic movements in the Eastern U.S.

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<sup>291</sup> As seen in Section VII *supra*, intuitively, some of the areas with the highest NSR price premiums over CSXT, such as Jacksonville and Charlotte, also have the highest NSR market shares on transcontinental lanes. However, this too is intuitive when considering that BNSF line offers the lowest per-car mile rate and attracts the most carloads of any transcontinental routing. The BNSF per car rate is higher because it represents the rate for the entire Westcoast to Southeastern U.S. move, rather than just the Eastern segment offered by CSXT and NSR.

**Figure 19: Summary of Annual Benefits Potentially Achievable with CSXT Rates  
(instead of NSR Rates for MSLLC Line Traffic) (\$ Millions) <sup>292</sup>**

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This analysis assumes that CSXT may charge the same per-car or per-car mile rate over a potential route on the MSLLC Line that it currently charges for intermodal traffic for other movements. It then compares the difference between the potential CSXT rate and the current NSR rate and assumes that the future price will converge on the lowest existing rate. The analysis then compares the total difference in rate at 2019 traffic levels.

The results of the CSXT and NSR rate comparison are consistent with my findings from the statistical analysis (in Section VII. A.) where additional interchange railroad alternatives are shown to reduce railroad rates. These findings are robust across many different types of routes that have certain economic advantages. The CSXT and NSR rate comparison analysis is conservative because

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<sup>292</sup> See Carey HC-WP "2019 Price Comparison and Savings Analysis.xlsx". The rates presented are for comparable routes only.

it assumes that rail carriers cannot lower rates further than 2019 levels and ignores traffic volume increases that have accrued, and will continue to accrue, since 2019.

**C. Public Benefits and Lower Rates/Costs to Customers Achievable by Taking Trucks Off the Road from Heightened Railroad Competition**

The Board has stated that inducing shippers to switch from truck transportation to rail transportation is a cognizable benefit of a rail transaction.<sup>293</sup> As stated above, introducing open gateways on the MSLLC Line (at Shreveport and Meridian) and removing restrictions of the Exclusivity Arrangements will enable an additional Class-I railroad interchange partner which increases the presence of Eastern railroad competitors from one to two and will have the effect of reducing the average intermodal rate charged to customers. The enhanced railroad competition will have the additional benefit associated with lowering the prevailing intermodal rail rate as compared to the trucking alternative, which will necessarily<sup>294</sup> induce some shippers to choose rail instead of truck for their shipping options. Therefore, opening the MSLLC Line gateways will lead to additional public benefits.

Assuming the estimated rate reduction produced in the econometric study, the reduced rate will induce about half a percent of current truck volumes to travel by rail instead, which approximates 2,000 units likely to shift from truck to rail transportation.<sup>295</sup> However, the benefits do not only extend to current NSR Exclusivity Traffic. Opening the MSLLC Line gateways, including the Shreveport gateway to UP's Mexico traffic and the Meridian gateway to CSXT, will also allow CSXT to compete for Mexico Traffic to and from the Eastern U.S. Given the routing advantages enjoyed by UP from the Mexico border via Laredo (as discussed in Section V.A), the CSXT-MSLLC-UP interchange has the possibility to induce a further 4,000 to 13,000 intermodal units to convert from truck to rail when one considers both service and price improvements of the open gateway.<sup>296</sup> If one then attributes the lower rate paid by rail intermodal customers, shipper can save another \$7 million to \$17 million per year through diversions from truck to rail.<sup>297</sup>

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<sup>293</sup> See NS-12 at 20-21.

<sup>294</sup> In theory a rate reduction could be so low as to not induce any truck displacement, however, all things equal, the resulting decreased rail rate could logically never result in an increase in the use of trucks.

<sup>295</sup> See Appendix E – Interchange Analysis.

<sup>296</sup> See Appendix E – Interchange Analysis.

<sup>297</sup> See Appendix E – Interchange Analysis.

These estimates for shipments diverted from highways are a conservative estimate, as they only rely on diversions across existing traffic lanes.<sup>298</sup> However, an increase in service and decrease in price could induce shipments currently using alternative routings through the open MSLLC Line gateways. For example, a move that is currently routed from Monterrey, Nuevo Leon (Mexico) to Nashville, TN via truck could be induced to use the gateways on MSLLC Line (Shreveport and Meridian) via railroads with service and price improvements resulting from open gateway (and removed restrictions associated with the Exclusivity Arrangements), however no such diversions are considered in this study. A similar phenomenon for rail movements could also occur and are similarly not considered in this study.

**Figure 20: Railroad Expansion (and Truck Displacement) Resulting From Increased Gateway/Interchange Competition on the MSLLC Line<sup>299</sup>**

| <b>Traffic Type</b> | <b>Savings<br/>Model 1</b> | <b>Savings<br/>Model 2</b> |
|---------------------|----------------------------|----------------------------|
| <b>[a]</b>          | <b>[b]</b>                 | <b>[c]</b>                 |
| Transcontinental    | \$523,713                  | \$730,160                  |
| Dallas              | \$711,269                  | \$1,063,807                |
| Mexico              | \$15,534,082               | \$5,050,046                |
| <b>Total</b>        | <b>\$16,769,065</b>        | <b>\$6,844,013</b>         |

#### **VIII. HIGH SHARES AND NSR'S HIGHER RATES ON THE MSLLC LINE ARE ECONOMIC INDICIA OF COMPETITIVE HARM**

In this section, I discuss economic indicia of competitive harm in the Eastern U.S. railroad markets that arises from the MSLLC JV and the indefinite and perpetual Exclusivity Arrangements. I am responding to the NSR Comments on the Amended Operating Plan which claimed efficiency benefits from the MSLLC JV and show that these claims are an incomplete economic assessment of potential competitive harm.<sup>300</sup>

<sup>298</sup> See Appendix E – Interchange Analysis.

<sup>299</sup> See Appendix E – Interchange Analysis, at “active” and “band” analysis.

<sup>300</sup> See NS-12 at 9-15 (general discussion) and at 15-20 (Dallas). See also NS-12, “Amended V.S. of Michael R. McClellan,” at 2-5. See also NS-12, “Amended V.S. of Claude E. Elkins,” at 3-4.

My analysis below shows that NSR has [REDACTED] for intermodal traffic moving under the Exclusivity Arrangements over the MSLLC Line. In its recent comments, NSR removed all reference to Transcontinental traffic which was present in its initial comments,<sup>301</sup> presumably out of concern for the [REDACTED] associated with this traffic. Regarding the NSR DITT traffic, NSR acknowledges its [REDACTED] [REDACTED] I also show that NSR's rates for this traffic are [REDACTED] [REDACTED]

These economic indicia of market power over MSLLC Line should be viewed in concert with other economic analyses presented in this filing. First, this includes Dr. Shehadeh's V.S. which demonstrates that the MSLLC Line has restricted rail output across traffic movements that use the MSLLC Line and that the Exclusivity Arrangements provide NSR the ability to foreclose competitors from the MSLLC Line by raising rivals' costs to serve transcontinental intermodal traffic to and from the Southeastern U.S.<sup>303</sup> Second, this includes my previously discussed analysis (Section VII) which demonstrates the benefits achievable by removing the MSLLC Exclusivity Arrangements and opening the gateways at Meridian and Shreveport to an additional competitor; an analysis based on two approaches using [REDACTED] with statistical analysis confirming the fact that 2 competitors versus 1 gateway/interchange competitor lowers rates.

The share and NSR rate comparison below are economic [REDACTED] [REDACTED] As shown on Figure 21, NSR has near [REDACTED] share for intermodal moves to and from the Dallas area.<sup>305</sup> NSR also has about [REDACTED] share for transcontinental intermodal market share when one does not consider the competitive single line route on BNSF to Atlanta which is an unusual single line movement.<sup>306</sup> The Exclusivity Arrangements associated with this traffic along with [REDACTED]

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<sup>301</sup> See, e.g., NS-9 at 11 as compared to NS-12 at 12 (for discussion of NSR Meridian Speedway traffic).

<sup>302</sup> See NS-12 at 16. See also NS-12, "Amended V.S. of Michael R. McClellan," at 4.

<sup>303</sup> Dr. Shehadeh demonstrates empirically that shipper-customers in the [REDACTED] [REDACTED] have suffered reduced output and economic welfare. See Verified Statement of Dr. Ramsey Shehadeh at Section I.B. and Section IV.

<sup>304</sup> As discussed in my February V.S., market shares statistics are often used to evaluate the potential for competitive concerns; with larger market shares indicating increasing market concentration and heightened concerns for undue influence on a competitive outcome. See U.S. Department of Justice & The Federal Trade Commission, "Horizontal Merger Guidelines," at 18-19 (August 19, 2010). See CSXT-8, Section V (February 28, 2022).

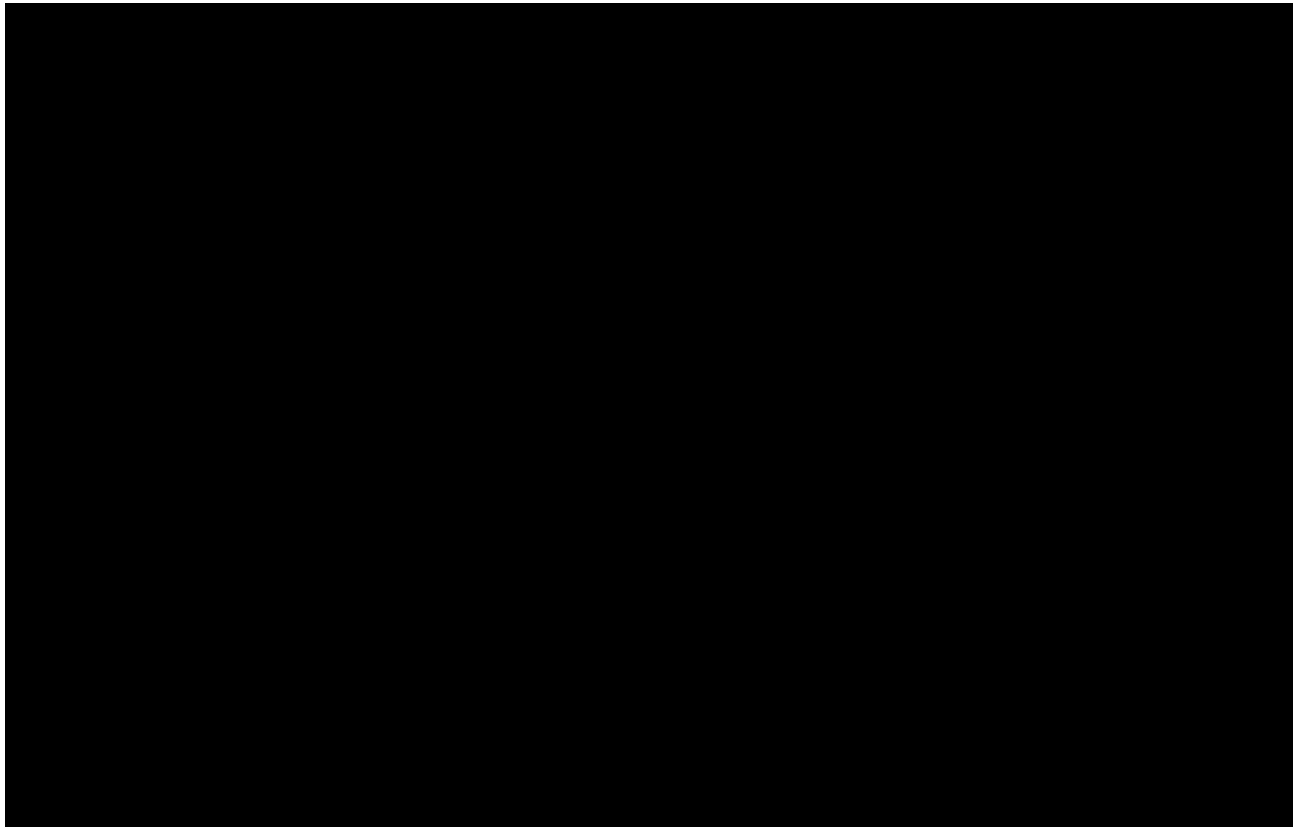
<sup>305</sup> Figure 21 at row 13 in column [c].

<sup>306</sup> Figure 21 at row 14 in column [f].

██████████<sup>307</sup> These are discussed further below.<sup>308</sup> Given the length of most moves to/from Dallas and the West Coast to these Eastern locations, trucking alternatives are less able to provide a perfect substitute for the more competitive rail alternatives.<sup>309</sup>

**Figure 21: Summary of NSR Shares for Origin and Termination Lanes Over the MSLLC Line<sup>310</sup>**

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As shown in Figure 22, NSR rates for routings over the MSLLC Line are ██████████ than the NSR rates over other equivalent origin and termination lanes. This is economic indicia of some level of NSR market power for movements over the MSLLC Line and is ██████████

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<sup>307</sup> As discussed in my February V.S., anticompetitive problems may arise when one or both levels of the integration possess market power. *See* Viscusi et al., “Economics of Regulation and Antitrust,” The MIT Press, 2nd Edition (1995) at 229, 234. *See* CSXT-8, Section V.

<sup>308</sup> My provisional February V.S. also included market shares over the Meridian Speedway calculated using the CWS. The numbers displayed in Figure 21 are calculated using railroad waybills and present and more complete understanding of real-world volumes. *See* CSXT-8, Section V, at 51.

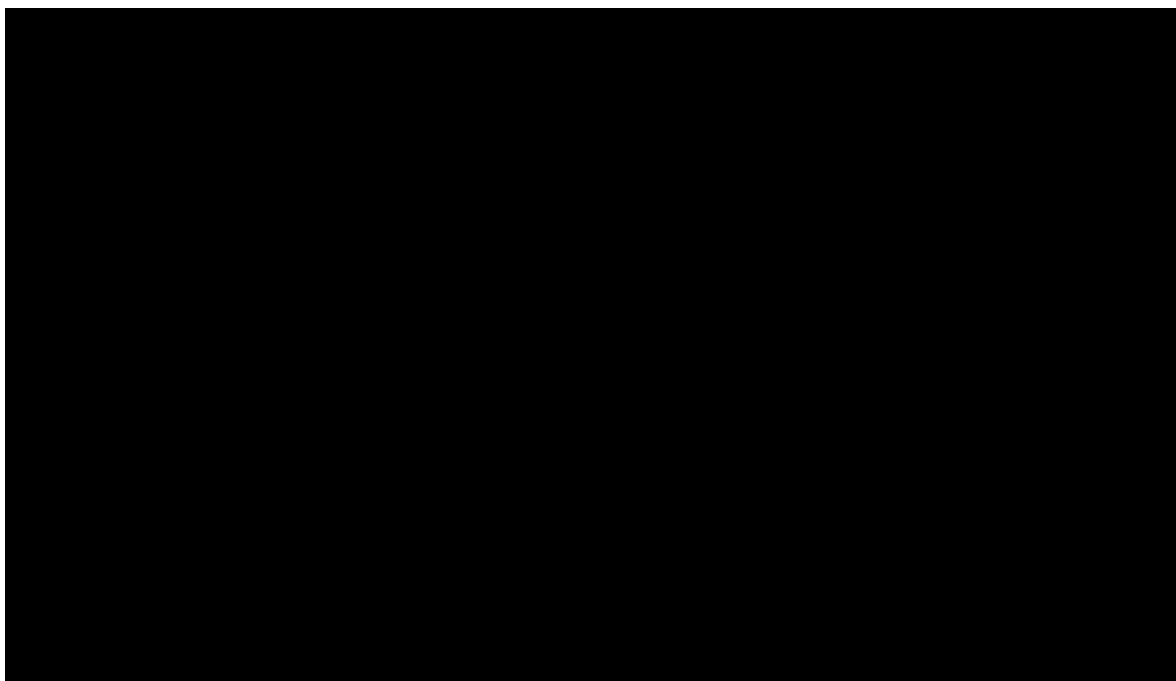
<sup>309</sup> A truck competitor for intermodal traffic is estimated to extend to routes as long as 500 miles. *See* Bernstein, “North American Transportation,” at 5 (December 2021).

<sup>310</sup> *See* Carey HC-WP “MSLLC Line Share Lane Summary.xlsx”

████████████████████ For DITT, a lane in which NSR has near ██████████ share,<sup>311</sup> NSR MSLLC Line routes are ██████████ than alternative NSR options on a per unit-mile basis. See Figure 22 at rows 3 and 4 columns [f] and [g].

**Figure 22: Summary of NSR non-Meridian and NSR Meridian Intermodal Railroad Rates for Transcontinental Traffic for 2019**<sup>312</sup>

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The rate difference can be demonstrated by comparing the rate for a move over the MSLLC Line to the rate for a movement along the same origin and destination pair that does not move over the MSLLC Line. There are ██████████ such origin-destination pairs where NSR has both MSLLC Line and non-MSLLC Line traffic to and from Dallas ██████████  
██████████ See Figure 21 at ██████████ The two MSLLC Line routes have NSR shares of ██████████ and {██████████}, respectively. While the ██████████ non-MSLLC Line route has a NSR rate per unit-mile ██████████ less than the NSR rate per unit-mile of the MSLLC Line route, and the east bound non- MSLLC Line route has a NSR rate per unit-mile ██████████ less than the NSR rate per unit-mile on the MSLLC Line route.<sup>313</sup> Similarly, the

<sup>311</sup> Figure 21 at row 13 in column [c].

<sup>312</sup> See Carey HC-WP “2019 NS Self Rate Comparison.xlsx”.

<sup>313</sup> See Carey HC-WP “2019 NS Self Rate Comparison.xlsx”.

[REDACTED] non-MSLLC Line route has a NSR rate per unit-mile [REDACTED] less than the NSR rate per unit-mile on the MSLLC Line route.<sup>314</sup> The [REDACTED] rate per unit-mile being charged for traffic on the MSLLC Line as compared to non- MSLLC Line traffic suggests a lack of competition for intermodal movements into or from the Dallas area and/or there is a competition issue for intermodal movements over the MSLLC Line.

For transcontinental intermodal moves, NSR traffic on the MSLLC Line accounts for [REDACTED] of the origins and terminations as shown in Figure 21. The NSR MSLLC Line rate per unit-mile is [REDACTED] than the rates for [REDACTED] for transcontinental movements from [REDACTED]<sup>315</sup> The rate per unit-mile is [REDACTED] for a NSR non-MSLLC Line move as compared to [REDACTED] for a NSR MSLLC Line move.<sup>316</sup> The rate per unit-mile for NSR non- MSLLC Line traffic is [REDACTED] lower rate per unit-mile as compared to NSR MSLLC Line traffic.<sup>317</sup> The [REDACTED] [REDACTED] for the NSR MSLLC Line rate per unit-mile is economic indicia for competitive concern.

Finally, [REDACTED] of [REDACTED] origin-termination pairs for intermodal for the Dallas area have a NSR MSLLC Line share of [REDACTED].<sup>318</sup> This suggests moving over the MSLLC Line is the most direct route to [REDACTED] and those routes may benefit from competition if the MSLLC Line were opened to other railroads for intermodal traffic. These advantaged routes, coupled with the Exclusivity Arrangements and [REDACTED] are further indicia of economic concerns of [REDACTED]<sup>319</sup>

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<sup>314</sup> See Carey HC-WP “2019 NS Self Rate Comparison.xlsx”

<sup>315</sup> See Carey HC-WP “2019 Price Comparison and Savings Analysis.xlsx” and Carey HC-WP “2019 NS Self Rate Comparison.xlsx”.

<sup>316</sup> See Carey HC-WP “2019 Price Comparison and Savings Analysis.xlsx” and Carey HC-WP “2019 NS Self Rate Comparison.xlsx”.

<sup>317</sup> See Carey HC-WP “2019 NS Self Rate Comparison.xlsx”

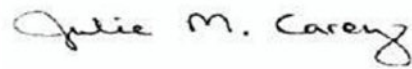
<sup>318</sup> See Carey HC-WP “MSLLC Line Share Lane Summary.xlsx”

<sup>319</sup> As noted in my February V.S., the DOJ does not set a market share threshold in its guidelines on vertical mergers it states that “levels of concentration may nonetheless be relevant. For example, high concentration in the relevant market may provide evidence about the likelihood, durability, or scope of anticompetitive effects in that relevant market.” This is particularly relevant as there are exclusivity provisions relating to upstream traffic that traverse the Speedway. See U.S. Department of Justice & The Federal Trade Commission, “Vertical Merger Guidelines,” at 3-4 (June 30, 2020). Market shares are squared to calculate HHI which is a measure of market concentration. See CSXT-8, Section V.

## VERIFICATION

I, Julie M. Carey, declare under penalty of perjury that I have read the foregoing Verified Statement, that I know the facts asserted therein, and that the same are true as stated. Further, I certify that I am qualified to an authorized to submit this Verified Statement.

Executed on July 12, 2022

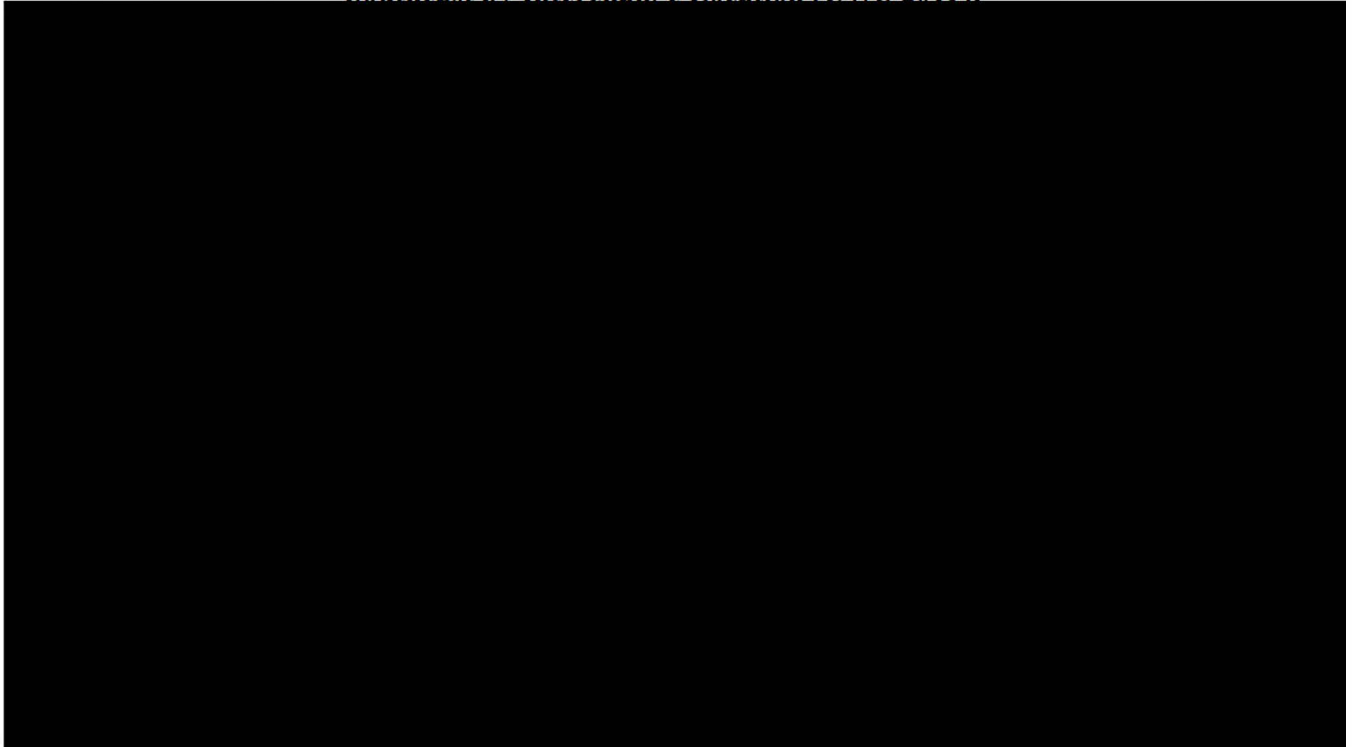
A handwritten signature in cursive script that reads "Julie M. Carey".

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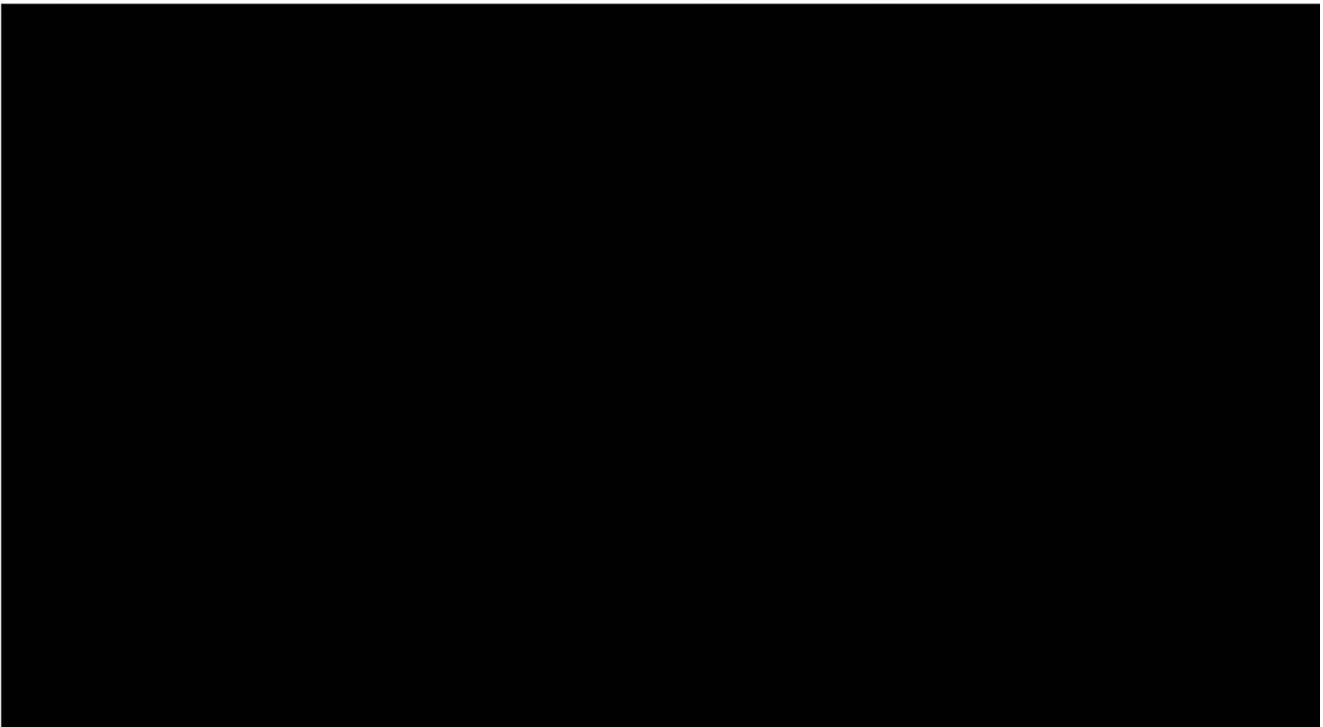
Julie M. Carey

## **Appendix A – Mexico Cross Border Traffic**

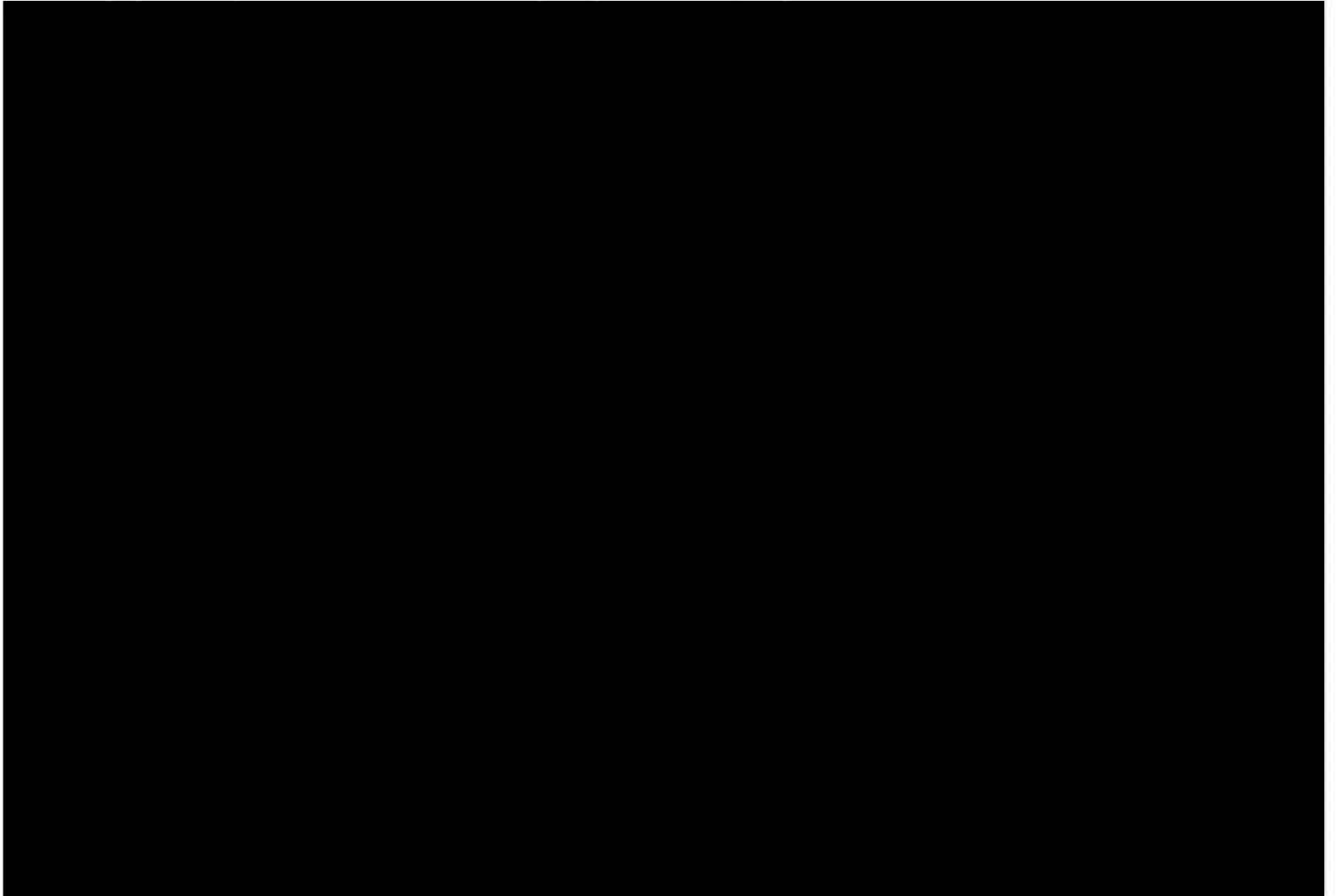
**Figure 1: CSXT and NSR Units Originated or Terminated in Mexico Moving To or From Southeast by Interchange Location (CWS 2019):**



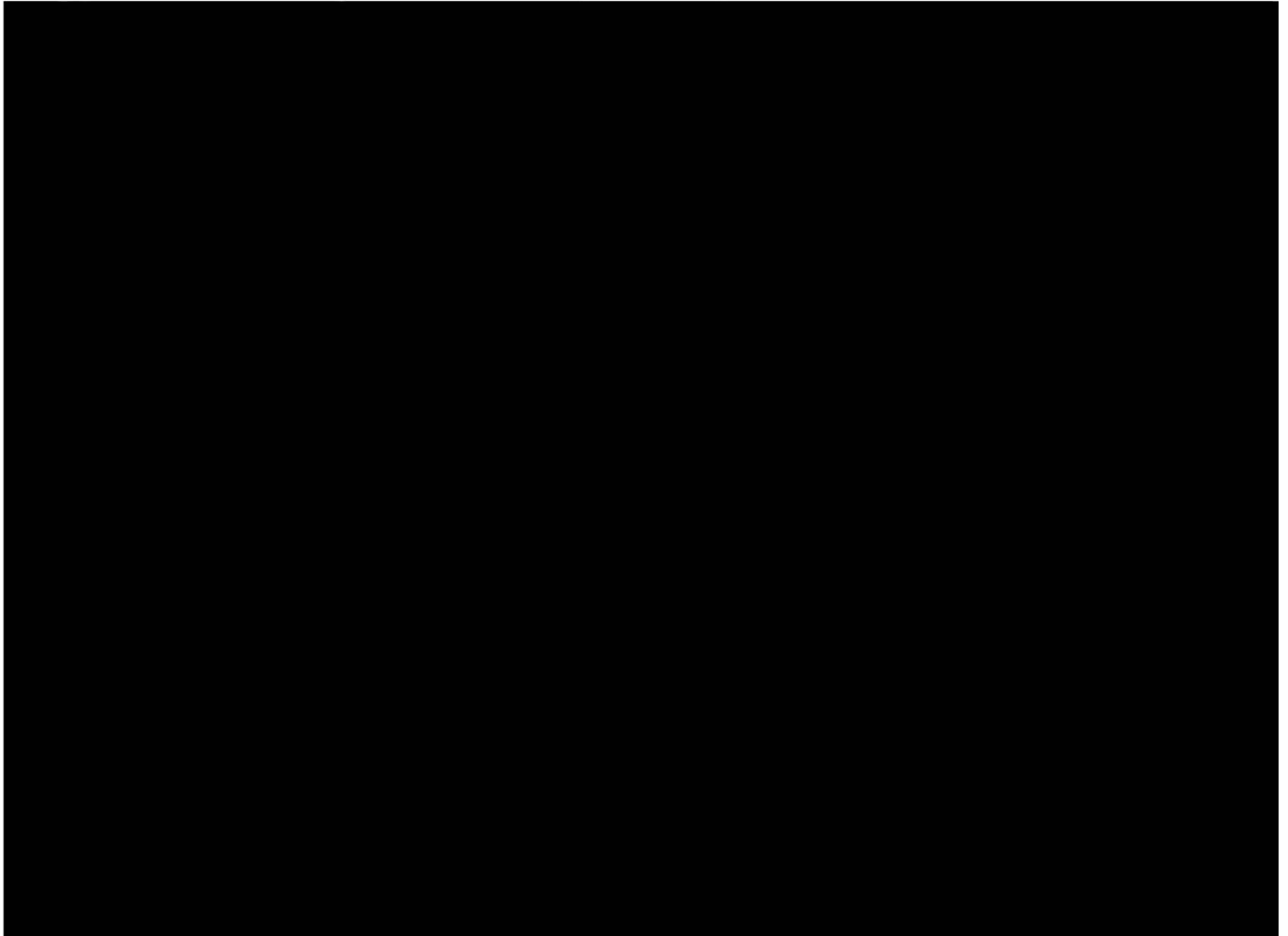
**Figure 2: CSXT and NSR Intermodal Units Originated or Terminated in Mexico Moving To or From Southeast by Interchange Location (CWS 2019)**



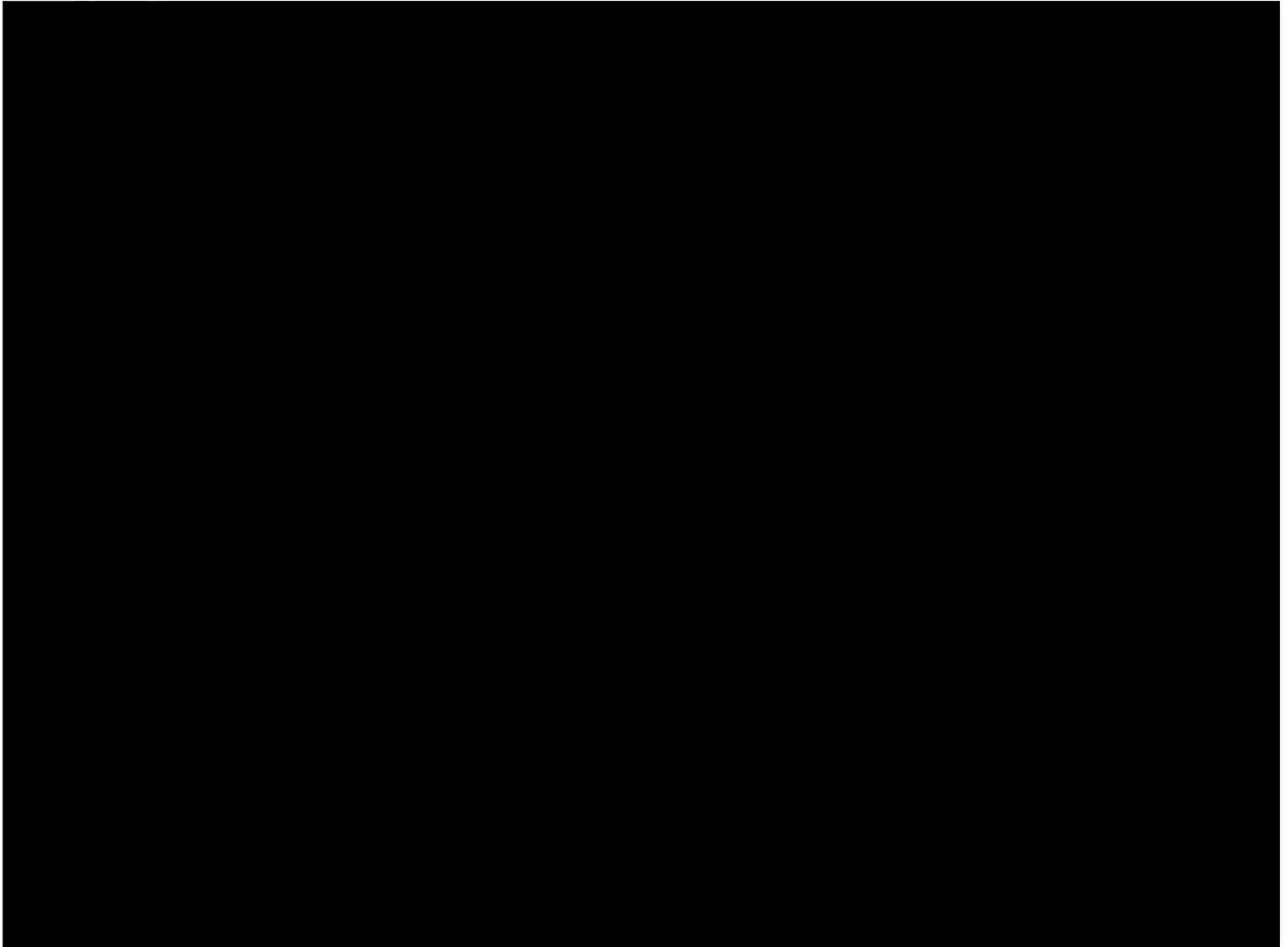
**Figure 3: CSXT Units Originated or Terminated in Mexico by Interchange Location  
(CWS 2019):**

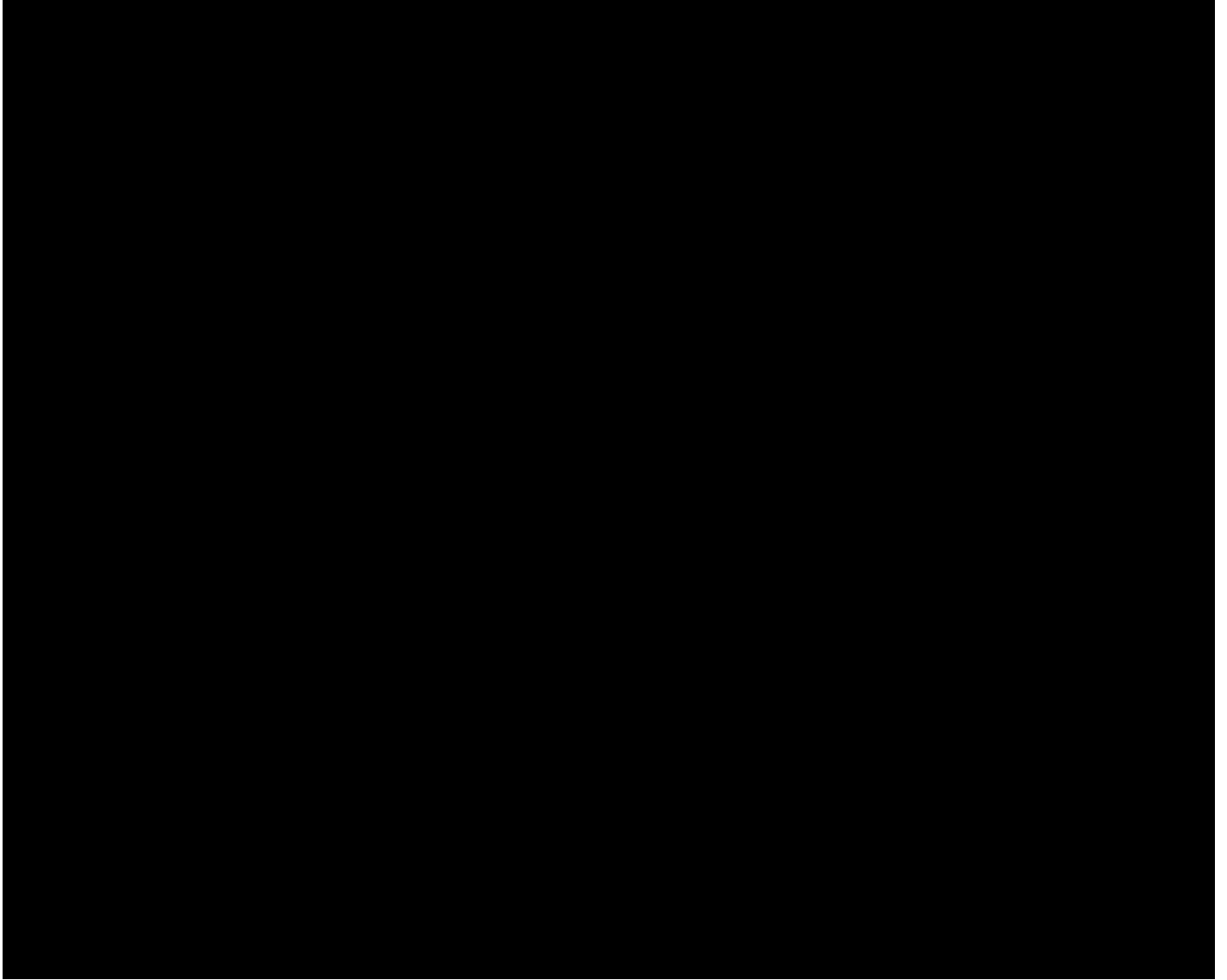


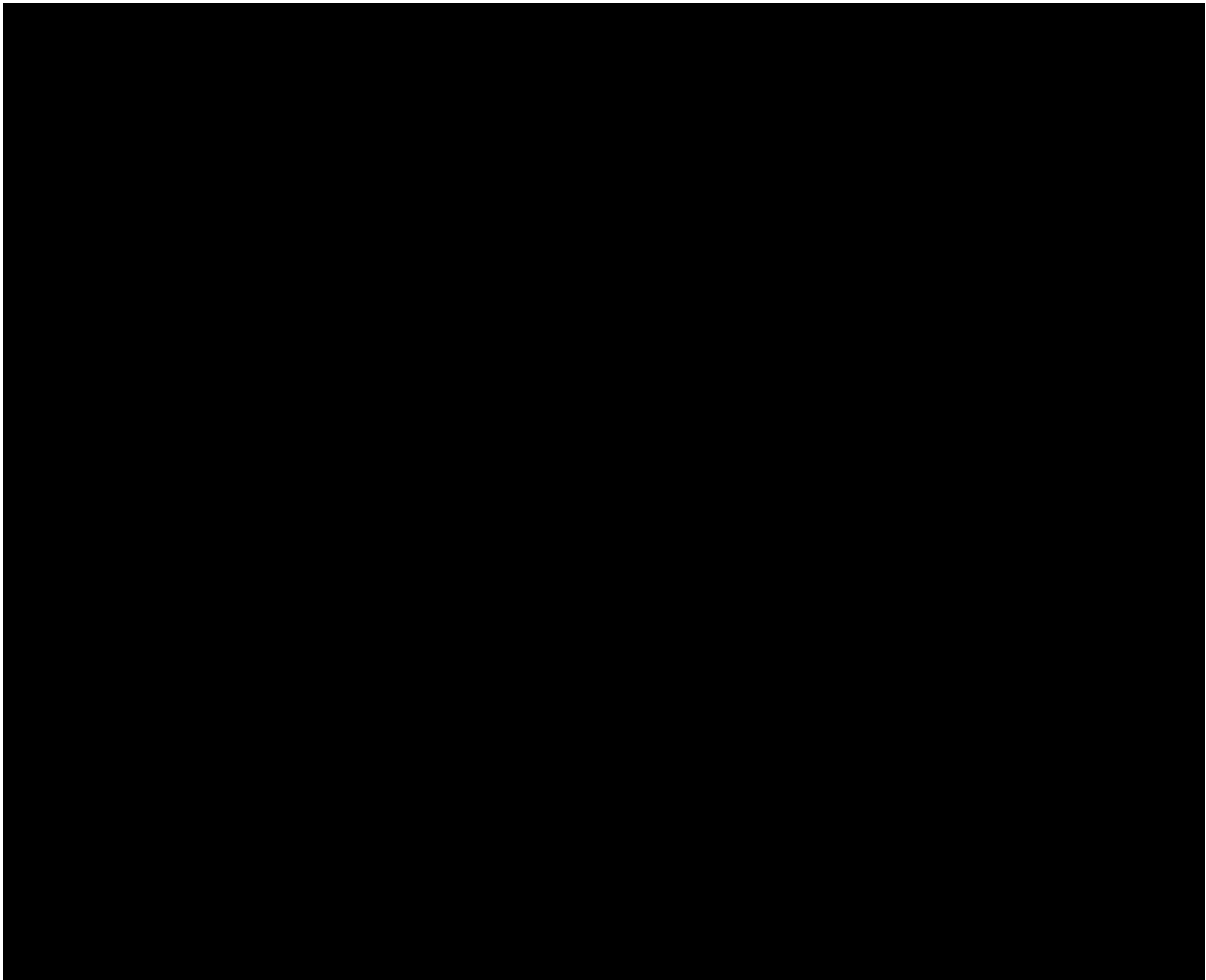
**Figure 4: NSR Units Originated or Terminated in Mexico by Interchange Location  
(CWS 2019):**

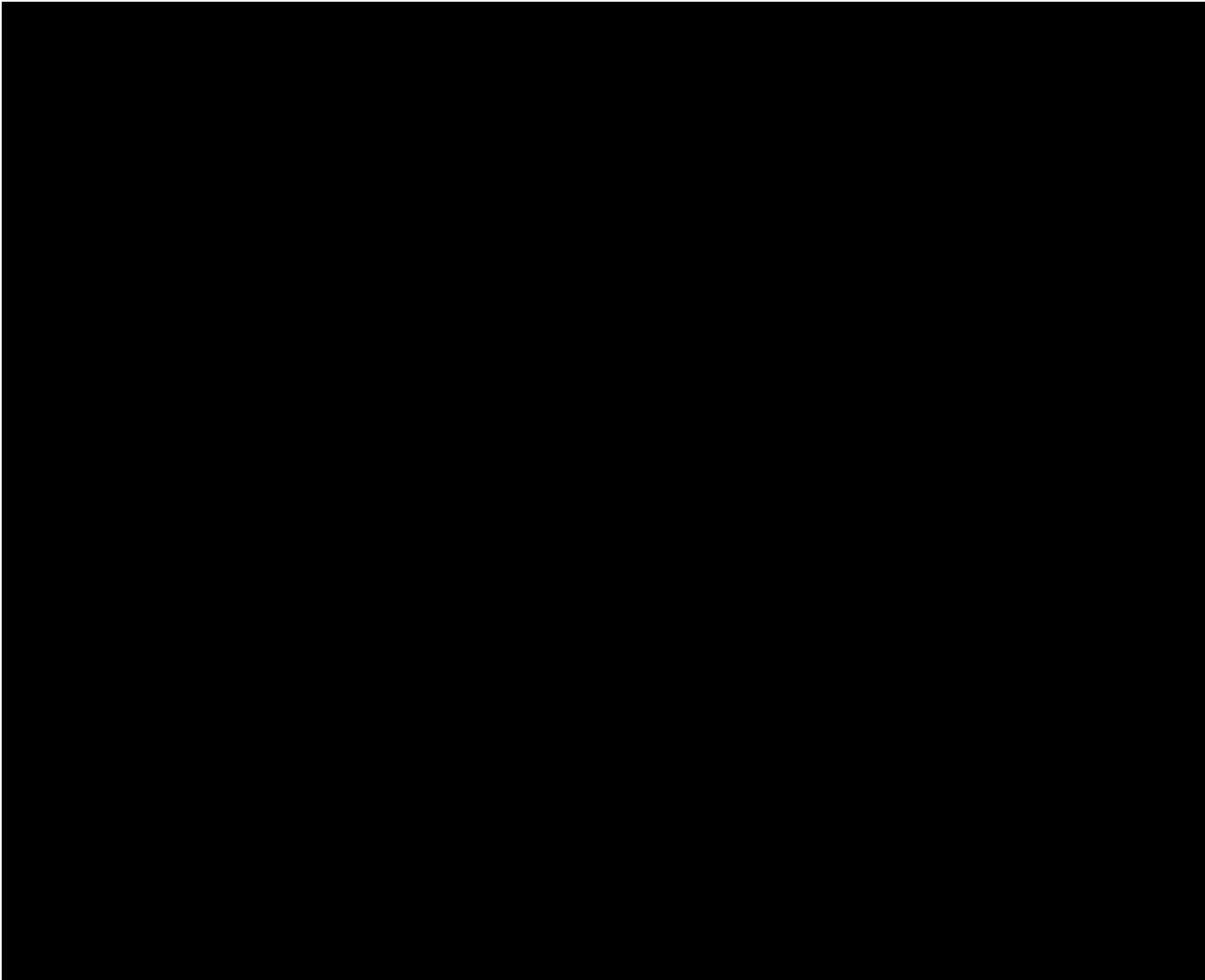


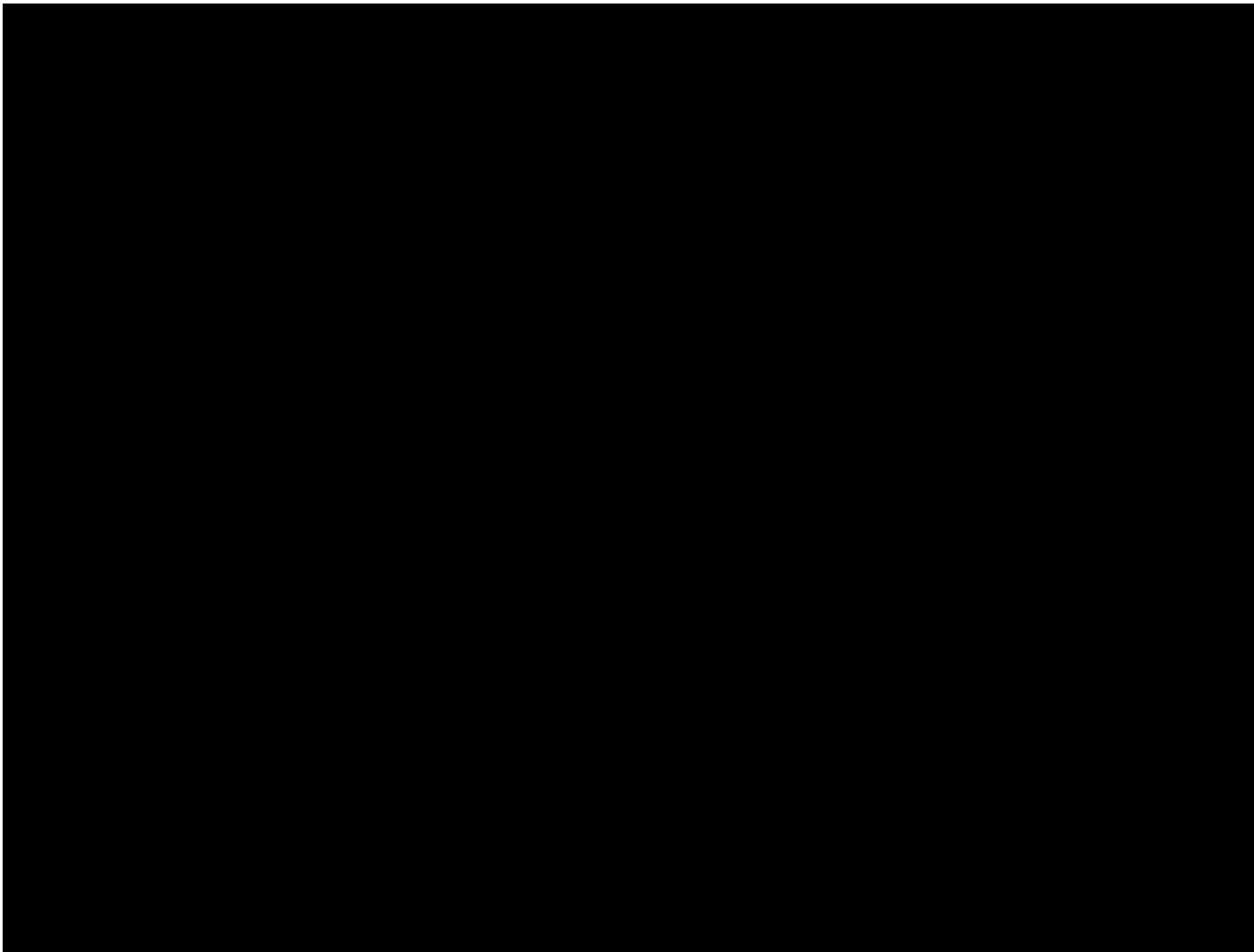
**Figure 5: Eagle Pass and Laredo Border Crossing Units By U.S. and Canada Origin and Termination Locations**

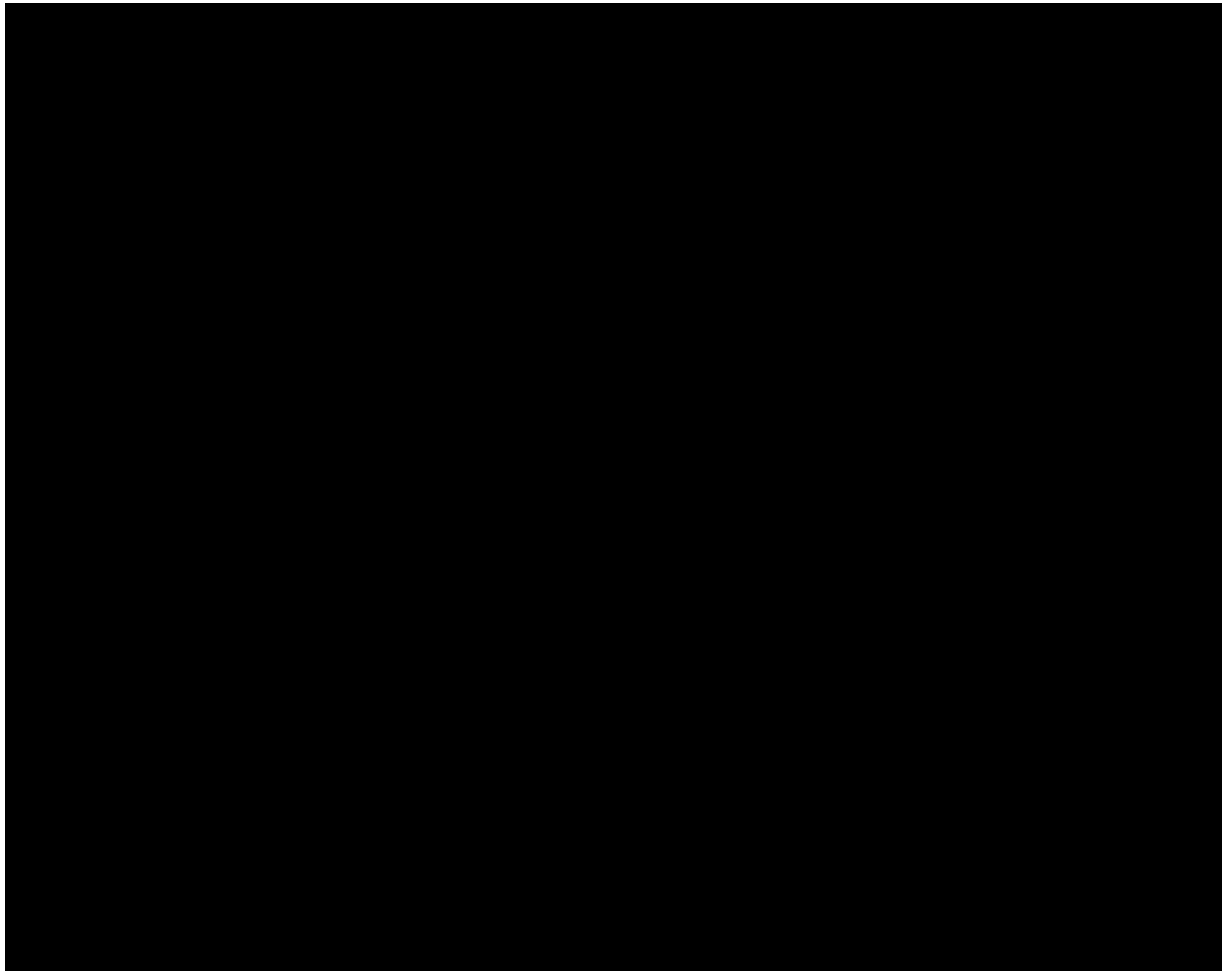




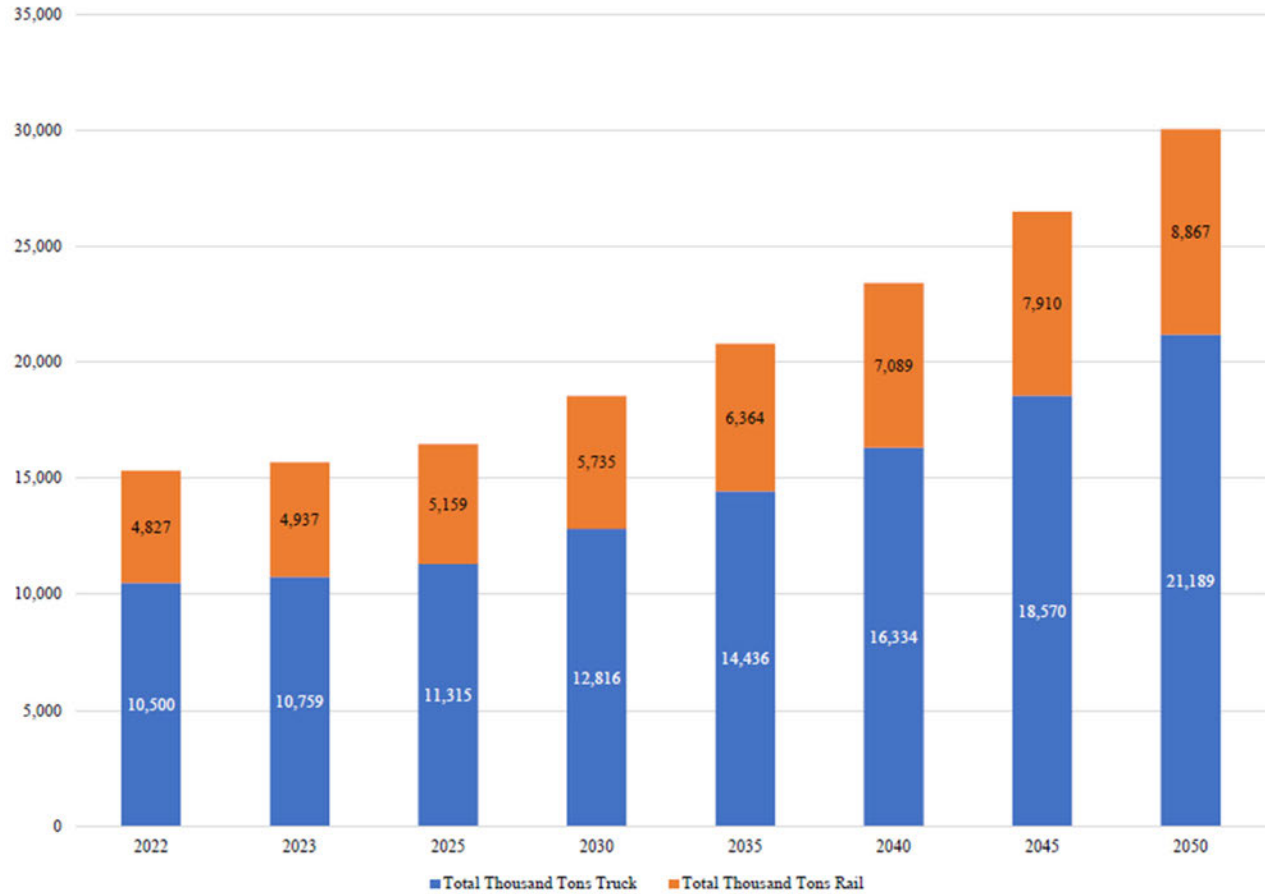








**Figure 6: Southeast-Mexico Traffic Growth by Mode, 2022-2050**



Notes and sources:

1. FAF data available at [https://faf.oml.gov/faf5/dtt\\_total.aspx](https://faf.oml.gov/faf5/dtt_total.aspx)
2. Imports and exports are to Alabama, Florida, Georgia, North Carolina, South Carolina and Tennessee
3. See Carey WP 'Mexico Truck and Rail Volumes Over Time.xlsx'

## **Appendix B – Port Competition and the Meridian Advantage**

## Overview of North American Ports:

The Port of Los Angeles and Vancouver are the largest west coast ports for intermodal traffic and both the Port of Long Beach and the Port of Lazaro Cardenas have ample capacity.<sup>1</sup> Holding 25 cargo terminals, the Port of Los Angeles moved 10.7 million TEUs in 2021.<sup>2</sup> It has been the Western Hemisphere's busiest container port since the turn of the century.<sup>3</sup> Similarly, though not on quite as large of a scale, the Port of Long Beach handles more than 8.1 million TEUs each year, an impressive mark in its own right.<sup>4</sup> With ten different piers, 22 individual shipping terminals, and over 8,000 total land and water acres at its disposal, the Port of Long Beach is able to handle considerable trade traffic.<sup>5</sup> The 21<sup>st</sup> busiest cargo port in the entire world, the Port of Long Beach was also the 2<sup>nd</sup> busiest port in the United States, as of 2020.<sup>6</sup> Taken together, the combined Port of Los Angeles and Port of Long Beach stats become even more impressive. The ports have a combined 57 shipping terminals and together they handle roughly 19 million TEUs each year. The largest port in Canada, the Port of Vancouver is also the third largest port in North America in terms of annual cargo tonnes moved.<sup>7</sup> <sup>8</sup> The Port of Lazaro Cardenas, meanwhile, is the second largest in Mexico, just behind the Port of Manzanillo. The Port of Lazaro Cardenas is also growing rapidly.<sup>9</sup>

The Port of Los Angeles is particularly susceptible to CPKC rail diversions through Vancouver ports for northern far east Asia trade routes and partners, given its status as the largest port on America's west coast and how frequently East Asian nations conduct trade with the Port of Los Angeles.<sup>10</sup> In 2021, the Port of Los Angeles' top trade partners, as measured in U.S. dollars of goods, were China and Hong Kong, Japan, Vietnam, Taiwan, and South Korea. In this same year, the port's trade with China and Hong

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<sup>1</sup> CSA Transportation, "Largest and Busiest Sea Ports in the USA and Canada," Available at <https://www.csatransportation.com/blog/largest-ports-in-the-us-canada#:~:text=1.,number%20even%20by%20global%20standards>.

<sup>2</sup> A significant improvement over its already large total of 9.2 million in 2020. The Port of Los Angeles, "Port of Los Angeles Facts and Figures Card," 2021, available at <https://kentico.portoflosangeles.org/getmedia/c39cbb51-d52e-44bd-89c8-41eba408ab12/2021-facts-figures>.

<sup>3</sup> The Port of Los Angeles, "Facts and Figures," available at <https://www.portoflosangeles.org/business/statistics/facts-and-figures>.

<sup>4</sup> The Port of Long Beach, "Port Facts and FAQs," available at <https://polb.com/port-info/port-facts-faqs#facts-at-a-glance>.

<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> Trailing only the Port of Los Angeles and the Port of Savannah. "About the Port of Vancouver," Port of Vancouver, Vancouver Fraser Port Authority, available at [https://portvancouver.metro.net/indicators/our\\_business/about/about\\_the\\_port\\_of\\_vancouver#:~:text=The%20port%20of%20Vancouver%20is,by%20three%20Class%201%20railroads](https://portvancouver.metro.net/indicators/our_business/about/about_the_port_of_vancouver#:~:text=The%20port%20of%20Vancouver%20is,by%20three%20Class%201%20railroads).

<sup>8</sup> Specifically, as highlighted in the Port of Vancouver's 2021 financial report, "overall port volume increased to 146 million metric tonnes of cargo in 2021." "Financial report 2021," Port of Vancouver, Vancouver Fraser Port Authority, available at <https://www.portvancouver.com/wp-content/uploads/2022/05/2021-Financial-Report-English.pdf>, 2021.

<sup>9</sup> In fact, the 1.69 million TEUs that the port handled in 2021 represented a 58.9% growth over the previous year.

Bhattacharjee, Shilavadra, "10 Major Ports in Mexico," Marine Insight, <https://www.marineinsight.com/know-more/10-major-ports-in-mexico/>, May 7, 2022.

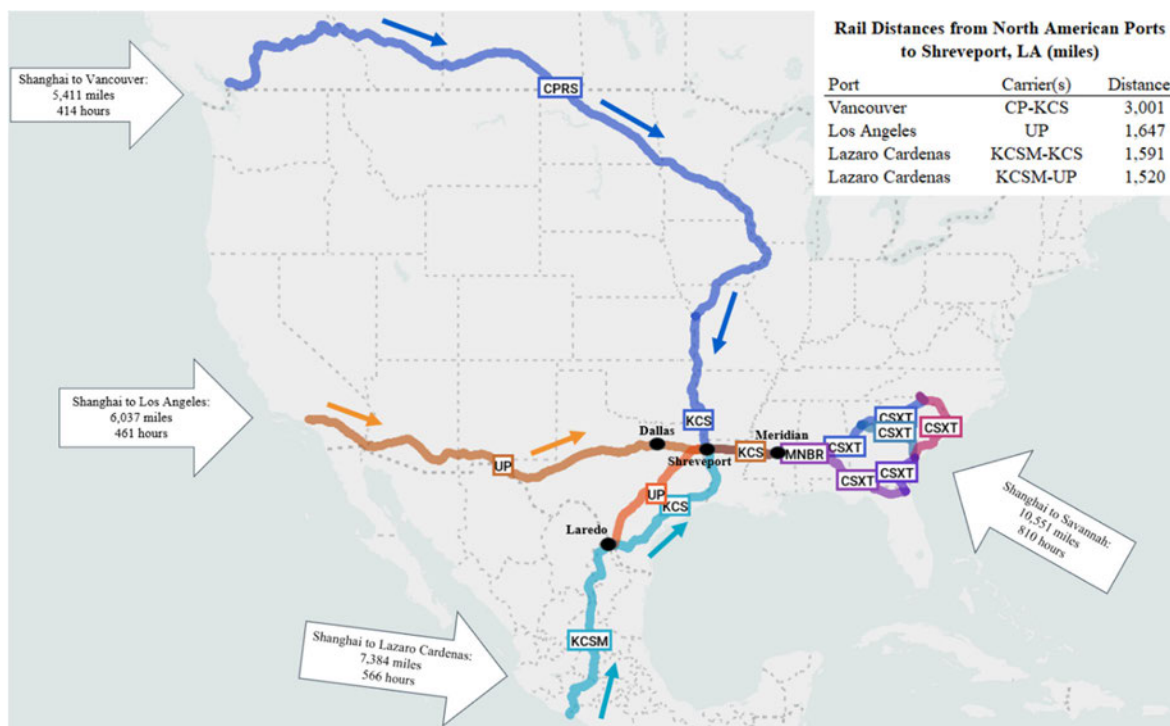
<sup>10</sup> The Port of Los Angeles, "Port of Los Angeles Facts and Figures Card," 2021 available at <https://kentico.portoflosangeles.org/getmedia/c39cbb51-d52e-44bd-89c8-41eba408ab12/2021-facts-figures>.

Kong summed to \$132 billion.<sup>11</sup> Furthermore, Northeast Asia was the Port of Los Angeles' most frequently used foreign trade route in 2021. Specifically, the port leaned on this route to handle 73% of its transportation traffic.<sup>12</sup>

The Port of Los Angeles is also susceptible to CPKC rail diversions through Lazaro Cardenas for southern far east Asia trade routes and trade partners. After the Northeast Asian route, the Port of Los Angeles most relied on the Southeast Asia route (21%), the Indian Sub-Continent route (2%), and the Northern Europe route (1%).<sup>13</sup>

The Port of Los Angeles is not alone, however. The Port of Long Beach faces many similar issues, in fact. East Asian trade amounts to a staggering 90% of shipments going through the Port of Long Beach.<sup>14</sup> By TEU quantity, China was the Port of Long Beach's top trade partner for both imports and exports, while South Korea lagged not far behind at second in exports and third in imports.<sup>15</sup> Vietnam, Japan, and Taiwan are also among the Port of Long Beach's most extensive trade partners.<sup>16</sup>

**Figure 1 – West Coast Port Lanes into the Southeast and MidAtlantic US on CSXT with Time and Distance from Shanghai<sup>17</sup>**



<sup>11</sup>The Port of Los Angeles, "Port of Los Angeles Facts and Figures Card," 2021 available at <https://kentico.portoflosangeles.org/getmedia/c39cbb51-d52e-44bd-89c8-41eba408ab12/2021-facts-figures>.

<sup>12</sup> Id.

<sup>13</sup> Id.

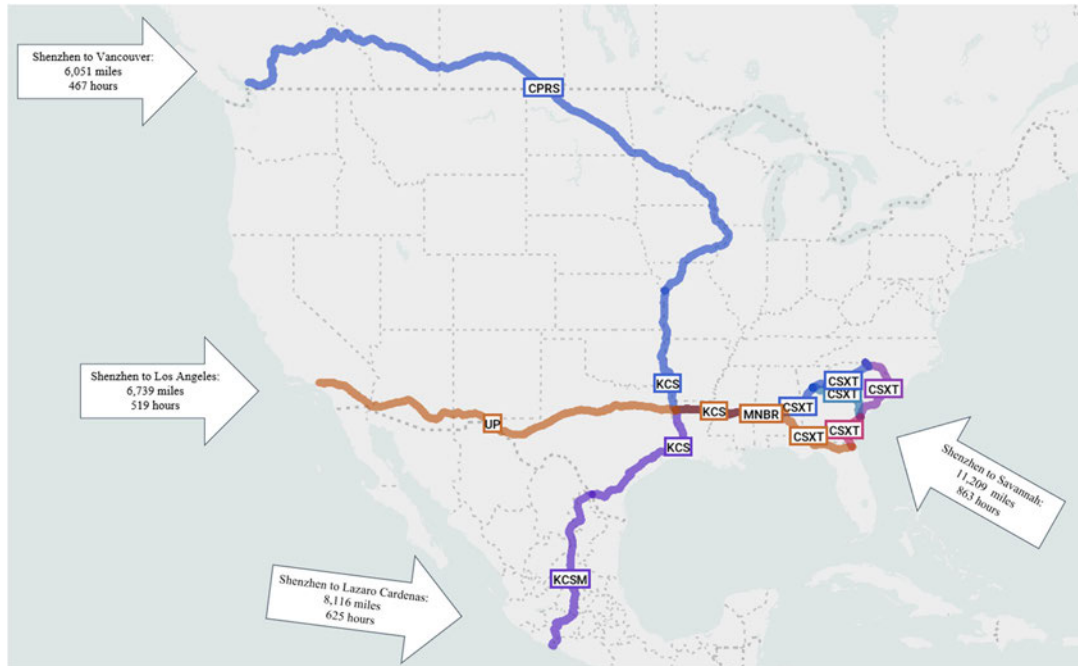
<sup>14</sup> The Port of Long Beach, "Port Facts and FAQs," available at <https://polb.com/port-info/port-facts-faqs#facts-at-a-glance>.

<sup>15</sup> Id.

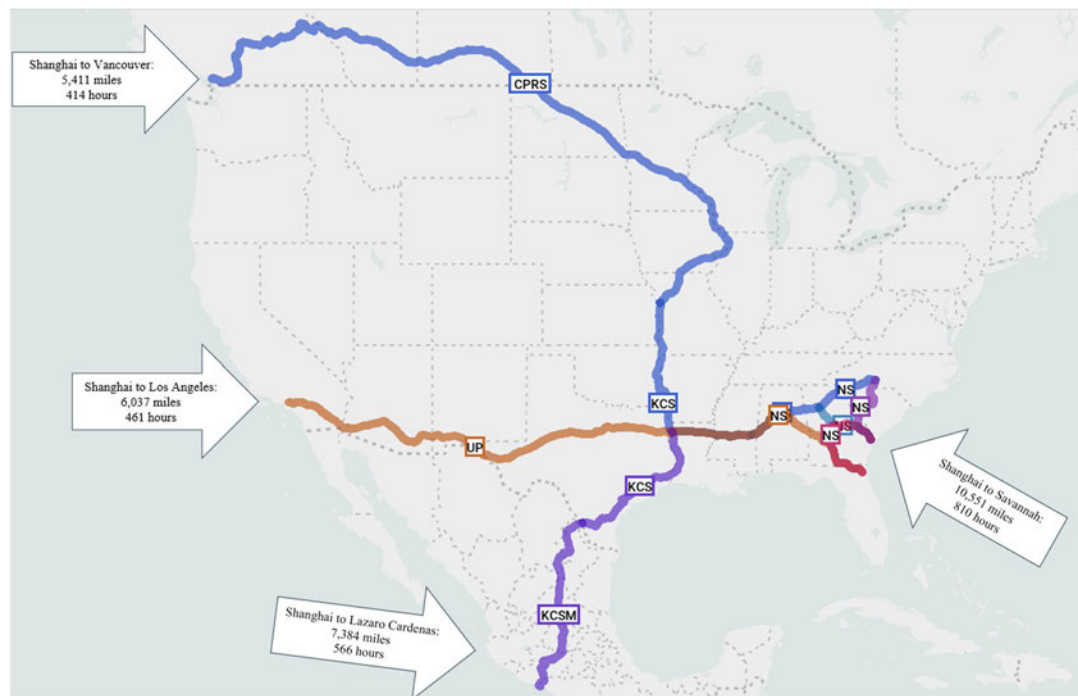
<sup>16</sup> Id.

<sup>17</sup>See Carey WP 'Shipping Distances and Times to North American Ports.pptx'

**Figure 2 – West Coast Port Lanes into the Southeast and Mid-Atlantic US on CSXT with Time and Distance from Shenzhen<sup>18</sup>**



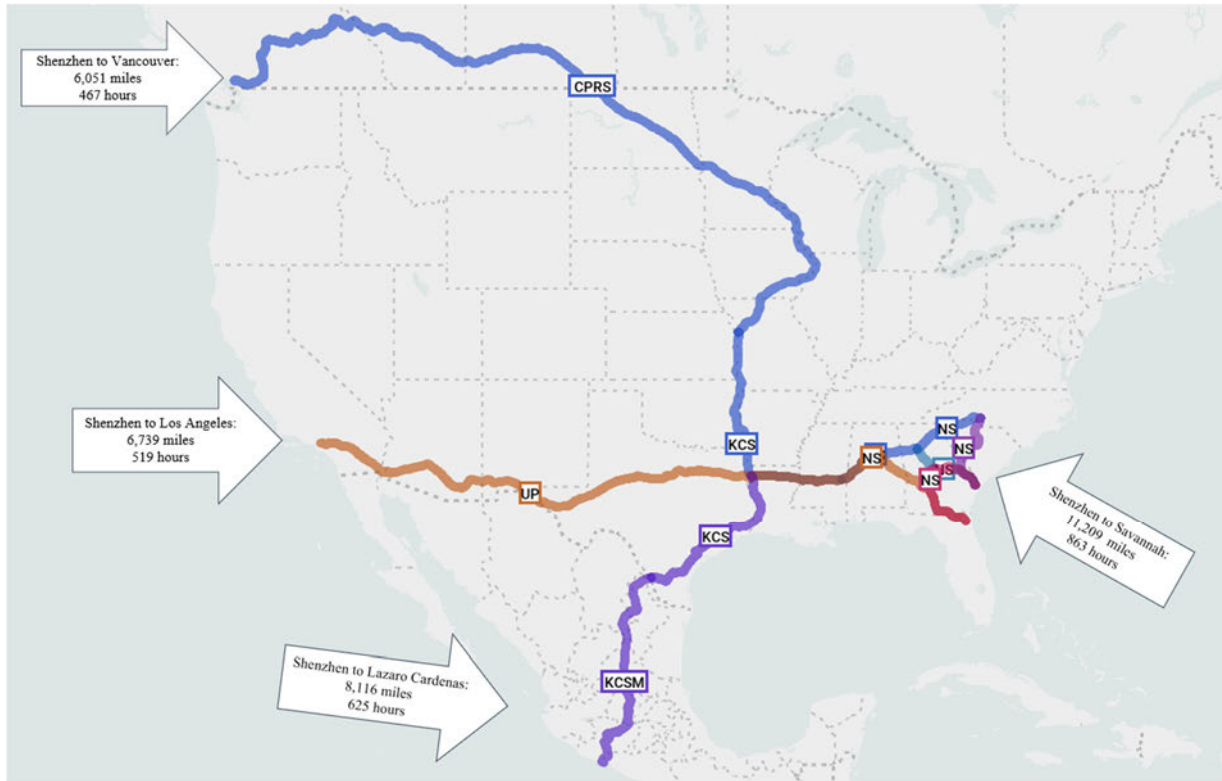
**Figure 3 – West Coast Port Lanes into the Southeast and Mid-Atlantic US on NSR with Time and Distance from Shanghai<sup>19</sup>**



<sup>18</sup>See Carey WP 'Shipping Distances and Times to North American Ports.pptx'

<sup>19</sup>See Carey WP 'Shipping Distances and Times to North American Ports.pptx'

**Figure 4 – West Coast Port Lanes into the Southeast and Mid-Atlantic US on NSR with Time and Distance from Shenzhen<sup>20</sup>**



**Figure 5 – Shreveport and Meridian Gateway’s Competitive Alternative to CPKC Post Transaction for Mexico Traffic with the Southeast and MidAtlantic US<sup>21</sup>**



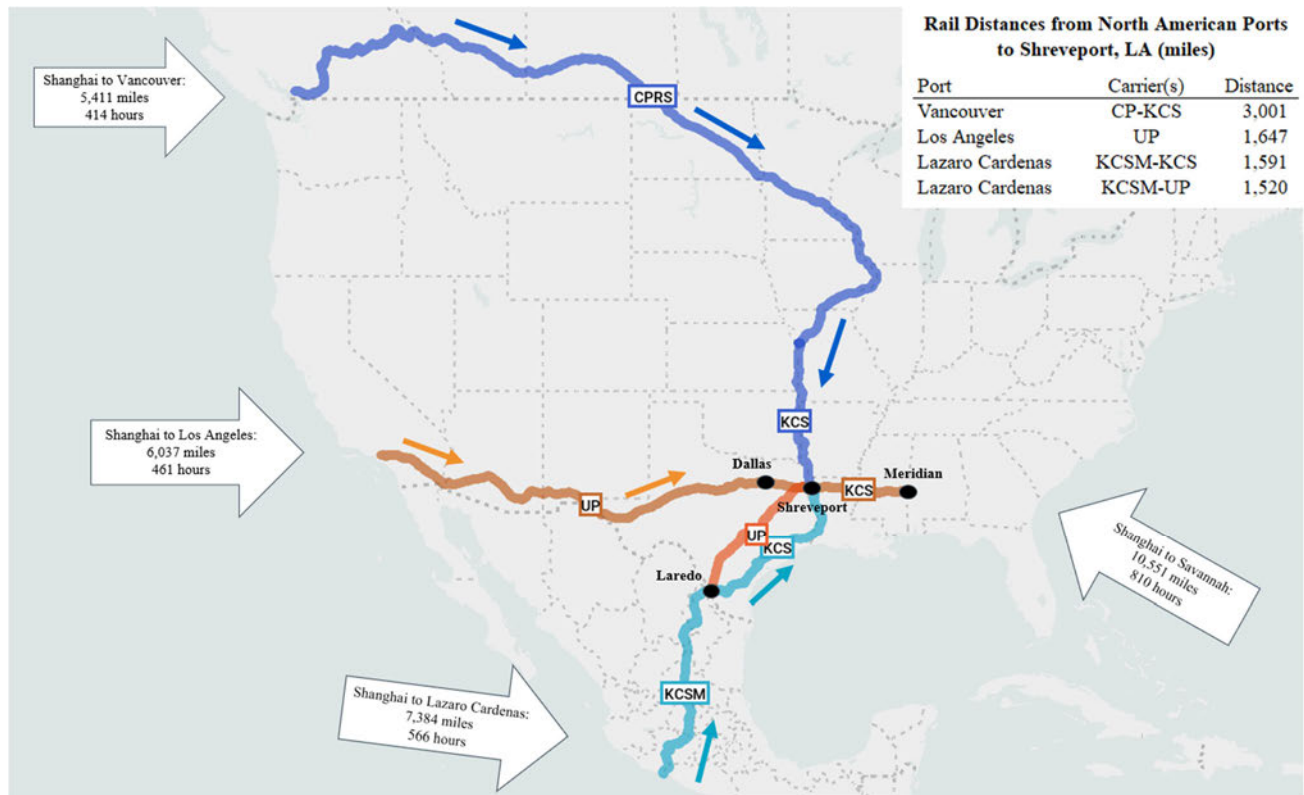
<sup>20</sup>See Carey WP ‘Shipping Distances and Times to North American Ports.pptx’

<sup>21</sup>See Carey WP ‘Shipping Distances and Times to North American Ports.pptx’

**Figure 6 – Shreveport and Meridian Gateway’s Competitive Alternative to CPKC Post Transaction for Mexico Traffic with the Southeast and MidAtlantic US<sup>22</sup>**



**Figure 7 – West Coast Port Lanes to Meridian, MS with Time and Distance from Shanghai<sup>23</sup>**



<sup>22</sup>See Carey WP ‘Shipping Distances and Times to North American Ports.pptx’

<sup>23</sup>See Carey WP ‘Shipping Distances and Times to North American Ports.pptx’

**Figure 8 – Shipping Distances and Times from Shanghai to North American Ports to Atlanta, Charlotte and Jacksonville<sup>24</sup>**

| Port            | Termination  | Sea    |            | Rail  |            | Total  |            |
|-----------------|--------------|--------|------------|-------|------------|--------|------------|
|                 |              | Miles  | Time (hrs) | Miles | Time (hrs) | Miles  | Time (hrs) |
| Vancouver       | Atlanta      | 5,411  | 414        | 3,633 | 215        | 9,044  | 629        |
| San Francisco   | Atlanta      | 5,702  | 437        | 2,959 | 174        | 8,661  | 611        |
| Los Angeles     | Atlanta      | 6,037  | 461        | 2,483 | 159        | 8,520  | 620        |
| Lazaro Cardenas | Atlanta      | 7,384  | 566        | 2,223 | 149        | 9,607  | 715        |
| Savannah        | Atlanta      | 10,551 | 810        | 279   | 65         | 10,830 | 875        |
| Vancouver       | Charlotte    | 5,411  | 414        | 3,894 | 227        | 9,305  | 641        |
| San Francisco   | Charlotte    | 5,702  | 437        | 3,219 | 185        | 8,921  | 622        |
| Los Angeles     | Charlotte    | 6,037  | 461        | 2,744 | 171        | 8,781  | 632        |
| Lazaro Cardenas | Charlotte    | 7,384  | 566        | 2,484 | 160        | 9,868  | 726        |
| Savannah        | Charlotte    | 10,551 | 810        | 326   | 67         | 10,877 | 877        |
| Vancouver       | Jacksonville | 5,411  | 414        | 3,975 | 230        | 9,386  | 644        |
| San Francisco   | Jacksonville | 5,702  | 437        | 3,300 | 187        | 9,002  | 624        |
| Los Angeles     | Jacksonville | 6,037  | 461        | 2,824 | 172        | 8,861  | 633        |
| Lazaro Cardenas | Jacksonville | 7,384  | 566        | 2,564 | 162        | 9,948  | 728        |
| Savannah        | Jacksonville | 10,551 | 810        | 449   | 72         | 11,000 | 882        |

**Notes and Sources:**

- Sea route distance and time calculated by Sea Rates mapping tool, available at <https://www.searates.com/services/distances-time/>
- Sea route to Savannah is through the Panama Canal
- Rail distances calculated using PC Miler. UP route is set to shortest distance to route through Dallas
- Rail times are calculated by dividing a given carriers segment distance by their average intermodal train speed and adding average terminal dwell for each terminal origination, termination and interchange. Performance data including average intermodal train speed and average terminal dwell time reported on 6-22-22, available at <https://www.stb.gov/reports-data/rail-service-data/#railroads-tab-6>
- For CP interchanges CP average dwell time is used. For NS interchanges NS average dwell time is used.

**Figure 9 – Nautical Miles and Shipping Times Between Large Ports Involved in Trans-Pacific Trade<sup>25</sup>**

|                  |              | Pacific Coast      |                    |                      |                      |                     |                     |                           |                           | Atlantic Coast   |                 |     |
|------------------|--------------|--------------------|--------------------|----------------------|----------------------|---------------------|---------------------|---------------------------|---------------------------|------------------|-----------------|-----|
| Country          | Country Port | Distance (miles)   | Time (hrs)         | Distance (miles)     | Time (hrs)           | Distance (miles)    | Time (hrs)          | Distance (miles)          | Time (hrs)                | Distance (miles) | Time (hrs)      |     |
|                  |              | USA<br>Los Angeles | USA<br>Los Angeles | USA<br>San Francisco | USA<br>San Francisco | Canada<br>Vancouver | Canada<br>Vancouver | Mexico<br>Lazaro Cardenas | Mexico<br>Lazaro Cardenas | USA<br>Savannah  | USA<br>Savannah |     |
|                  |              | [a]                | [b]                | [b]                  |                      | [d]                 |                     | [f]                       |                           | [i]              | [i]             |     |
| Northern Pacific |              |                    |                    |                      |                      |                     |                     |                           |                           |                  |                 |     |
| (1)              | Japan        | Nagoya             | 5,180              | 398                  | 4,849                | 373                 | 4,475               | 345                       | 6,507                     | 501              | 9,699           | 747 |
| (2)              | Korea        | Busan              | 5,633              | 433                  | 5,285                | 407                 | 4,652               | 359                       | 6,964                     | 536              | 10,160          | 782 |
| (3)              | China        | Shanghai           | 6,037              | 463                  | 5,702                | 439                 | 5,411               | 416                       | 7,384                     | 568              | 10,551          | 812 |
| (4)              | China        | Ningbo-Zhousian    | 6,043              | 465                  | 5,700                | 440                 | 5,413               | 418                       | 7,390                     | 570              | 10,628          | 819 |
| (5)              | China        | Tianjin            | 6,294              | 481                  | 5,959                | 457                 | 5,569               | 427                       | 7,626                     | 585              | 10,822          | 831 |
| (6)              | China        | Dalian             | 6,091              | 468                  | 5,755                | 444                 | 5,365               | 414                       | 7,422                     | 572              | 10,618          | 818 |
| (7)              | China        | Qingdao            | 6,045              | 465                  | 5,710                | 440                 | 5,319               | 410                       | 7,376                     | 569              | 10,572          | 815 |
| Southern Pacific |              |                    |                    |                      |                      |                     |                     |                           |                           |                  |                 |     |
| (8)              | China        | Shenzhen           | 6,739              | 519                  | 6,411                | 494                 | 6,051               | 467                       | 8,116                     | 625              | 11,209          | 863 |
| (9)              | China        | Guangzhou          | 6,801              | 523                  | 6,473                | 499                 | 6,013               | 471                       | 8,178                     | 630              | 11,271          | 868 |
| (10)             | Cambodia     | Sihanoukville      | 7,820              | 601                  | NA                   | NA                  | 7,348               | 566                       | 9,057                     | 698              | 12,183          | 938 |
| (11)             | Hong Kong    | Hong Kong          | 6,724              | 517                  | 6,396                | 493                 | 6,036               | 465                       | 8,101                     | 624              | 11,193          | 862 |
| (12)             | Indonesia    | Jakarta            | 8,154              | 626                  | 7,873                | 606                 | 7,691               | 592                       | 9,096                     | 700              | 12,132          | 934 |
| (13)             | Malaysia     | Klang              | 8,136              | 625                  | 7,846                | 604                 | 7,698               | 593                       | 9,284                     | 715              | 12,449          | 959 |
| (14)             | Malaysia     | Tanjung-Pelepas    | 7,950              | 612                  | 7,660                | 590                 | 7,511               | 579                       | 9,095                     | 701              | 12,263          | 945 |
| (15)             | Philippines  | Manila             | 6,795              | 523                  | 6,495                | 501                 | 6,324               | 488                       | 7,974                     | 614              | 11,122          | 857 |
| (16)             | Singapore    | Singapore          | 7,935              | 610                  | 7,645                | 589                 | 7,497               | 577                       | 9,080                     | 699              | 12,248          | 943 |
| (17)             | Taiwan       | Kaosiung           | 6,405              | 492                  | 6,077                | 468                 | 5,811               | 448                       | 7,781                     | 599              | 10,886          | 838 |
| (18)             | Thailand     | Laem-Chabang       | 8,043              | 619                  | 7,743                | 597                 | 7,571               | 584                       | 9,280                     | 715              | 12,407          | 956 |
| (19)             | Vietnam      | Da Nang            | 7,228              | 556                  | 6,907                | 532                 | 6,595               | 508                       | 8,486                     | 653              | 11,813          | 910 |

**Notes**

- Sea route distance and time calculate by Sea Rates mapping tool, available at <https://www.searates.com/services/distances-time/>

<sup>24</sup> See Carey WP 'Shipping Distances and Times.xlsx'

<sup>25</sup> See Carey WP 'Port Distances - Sea Routes.xlsx'

**Figure 10 – 2019 Shipment Volumes from Asia to North American Ports (Containerized Vessel SWT kg)<sup>26</sup>**

| Year<br>[a]                               | Country of Origin<br>[b] | San Francisco<br>[c] | Los Angeles<br>[d]    | Savannah<br>[e]      | Vancouver<br>[f]     | Lazaro Cardenas<br>[g] |
|-------------------------------------------|--------------------------|----------------------|-----------------------|----------------------|----------------------|------------------------|
| 2019                                      | Cambodia                 | 430,066              | 294,764,272           | 71,717,003           | N/A                  | N/A                    |
| 2019                                      | China                    | 221,527,324          | 25,525,640,823        | 5,121,995,575        | 7,479,349,000        | 187,847,000            |
| 2019                                      | Hong Kong                | 186,432              | 69,427,784            | 7,842,087            | 249,774,000          | 3,249,457,025          |
| 2019                                      | Indonesia                | 2,861,507            | 983,080,936           | 267,114,913          | 114,341,000          | N/A                    |
| 2019                                      | Japan                    | 65,434,817           | 1,970,999,585         | 585,139,091          | 303,646,000          | 65,582,000             |
| 2019                                      | Malaysia                 | 6,896,047            | 985,960,602           | 268,339,068          | 148,169,000          | N/A                    |
| 2019                                      | Philippines              | 18,527,827           | 461,793,025           | 92,386,525           | N/A                  | 10,364,000             |
| 2019                                      | Singapore                | 675,718              | 79,955,570            | 36,933,528           | N/A                  | 1,343,331,209          |
| 2019                                      | Taiwan                   | 4,729,660            | 2,067,720,593         | 355,060,068          | 572,905,000          | N/A                    |
| 2019                                      | Thailand                 | 7,614,354            | 2,019,297,574         | 456,728,156          | 406,582,000          | N/A                    |
| 2019                                      | Vietnam                  | 17,183,630           | 3,210,822,038         | 686,180,093          | 381,824,000          | N/A                    |
| <b>Total<br/>Containerized<br/>SWT kg</b> |                          | <b>346,067,382</b>   | <b>37,669,462,802</b> | <b>7,949,436,107</b> | <b>9,656,590,000</b> | <b>4,856,581,234</b>   |

Notes and sources:

1. Los Angeles Port includes pooled data from both the Port of Los Angeles and the Port of Long Beach.
2. Data for Port of Vancouver taken from <https://www.portvancouver.com/wp-content/uploads/2022/03/Stats-Overview-2019-to-2021-1.pdf>.
3. Data for Port of Lazaro Cardenas downloaded from <https://www.puertolazarocardenas.com.mx/plc25/aribo-buques-historico>.
4. Data for US ports taken from the United States Census Bureau, available at <https://usatrade.census.gov/>.

**Figure 11 – Transcontinental Mileage Table<sup>27</sup>**

| Interchange Location |                  | Memphis, TN |         |        |       | New Orleans, LA |         |        |       | Meridian Speedway |         |        |       |
|----------------------|------------------|-------------|---------|--------|-------|-----------------|---------|--------|-------|-------------------|---------|--------|-------|
| Railroad Combination |                  | BNSF-CSXT   | BNSF-NS | UP-CSX | UP-NS | BNSF-CSXT       | BNSF-NS | UP-CSX | UP-NS | BNSF-CSXT         | BNSF-NS | UP-CSX | UP-NS |
| Origin               | Destination      | [a]         | [b]     | [c]    | [d]   | [e]             | [f]     | [g]    | [h]   | [k]               | [l]     | [m]    | [n]   |
| Los Angeles, CA      | Greensboro, NC   | 3,016       | 2,880   | 3,093  | 2,958 | 3,026           | 2,985   | 2,897  | 2,856 | 2,832             | 2,775   | 2,690  | 2,630 |
| Los Angeles, CA      | Jacksonville, FL | 2,950       | 2,870   | 3,027  | 2,948 | 2,734           | 2,974   | 2,605  | 2,845 | 2,645             | 2,765   | 2,504  | 2,562 |
| Los Angeles, CA      | Charlotte, NC    | 2,895       | 2,789   | 2,973  | 2,867 | 2,906           | 2,894   | 2,777  | 2,765 | 2,729             | 2,684   | 2,587  | 2,539 |
| Los Angeles, CA      | Miami, FL        | 3,365       | 3,217   | 3,442  | 3,295 | 3,127           | 3,321   | 2,998  | 3,192 | 3,030             | 3,111   | 2,888  | 2,909 |
| Los Angeles, CA      | Atlanta, GA      | 2,598       | 2,520   | 2,676  | 2,606 | 2,617           | 2,633   | 2,488  | 2,504 | 2,443             | 2,423   | 2,299  | 2,278 |
| Los Angeles, CA      | Birmingham, AL   | 2,519       | 2,368   | 2,597  | 2,445 | 2,540           | 2,472   | 2,410  | 2,343 | 2,363             | 2,416   | 2,222  | 2,118 |

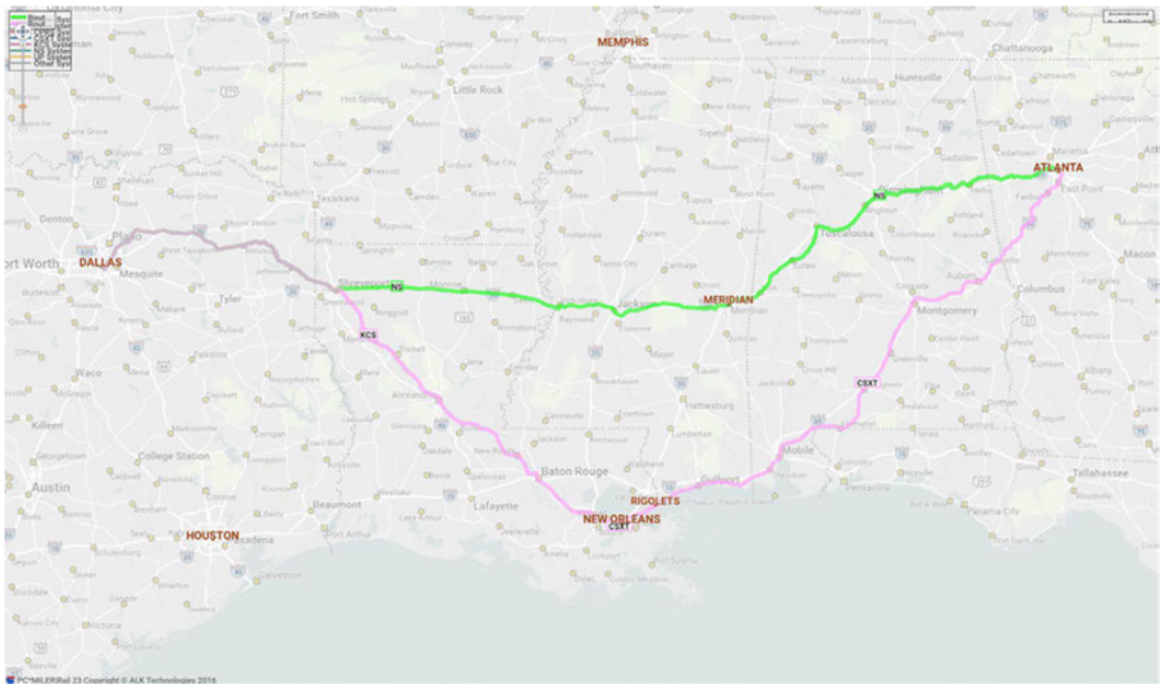
Notes/sources:

1. Mileage calculated using PC Miler
2. Meridian Speedway interchange is Dallas, TX for BNSF and Shreveport, LA for UP
3. CSXT Meridian Speedway access uses MNBR with interchange at Selma, AL
4. UP Meridian routes are set to shortest distance to route through Dallas

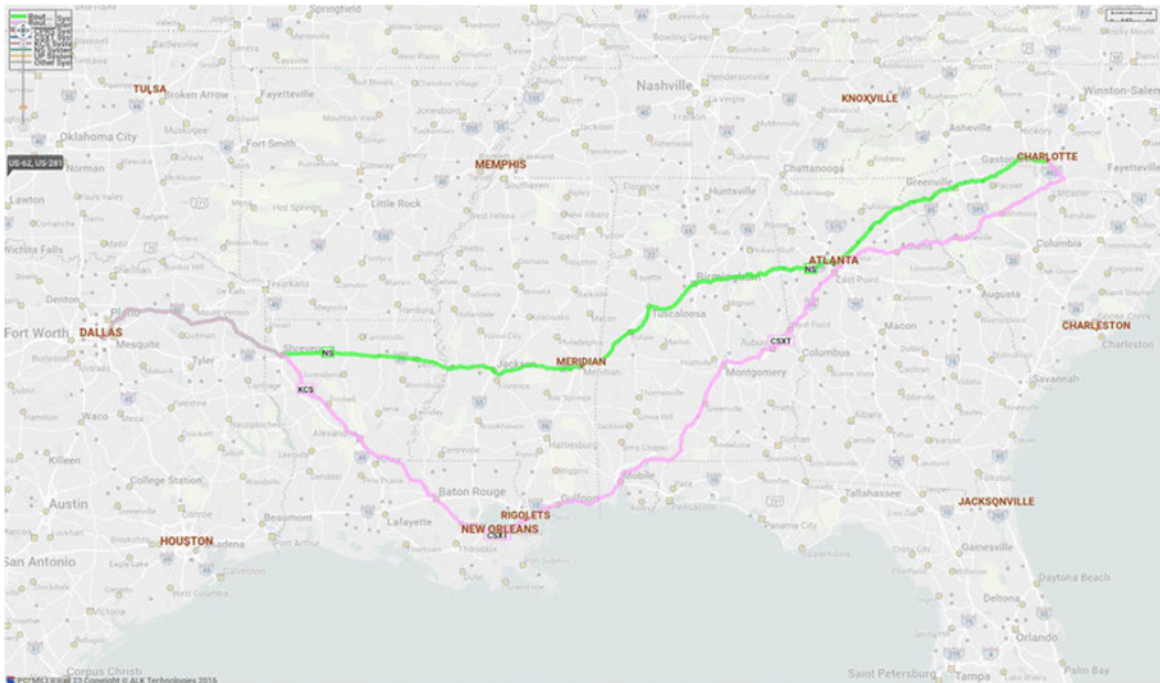
<sup>26</sup> See Carey WP 'Port-level Imports.xlsx'

<sup>27</sup> See Carey WP 'Transcontinental Mileages.xlsx'

**Figure 12 - Dallas-Atlanta over the Meridian Speedway compared to the CSXT Route<sup>28</sup>**



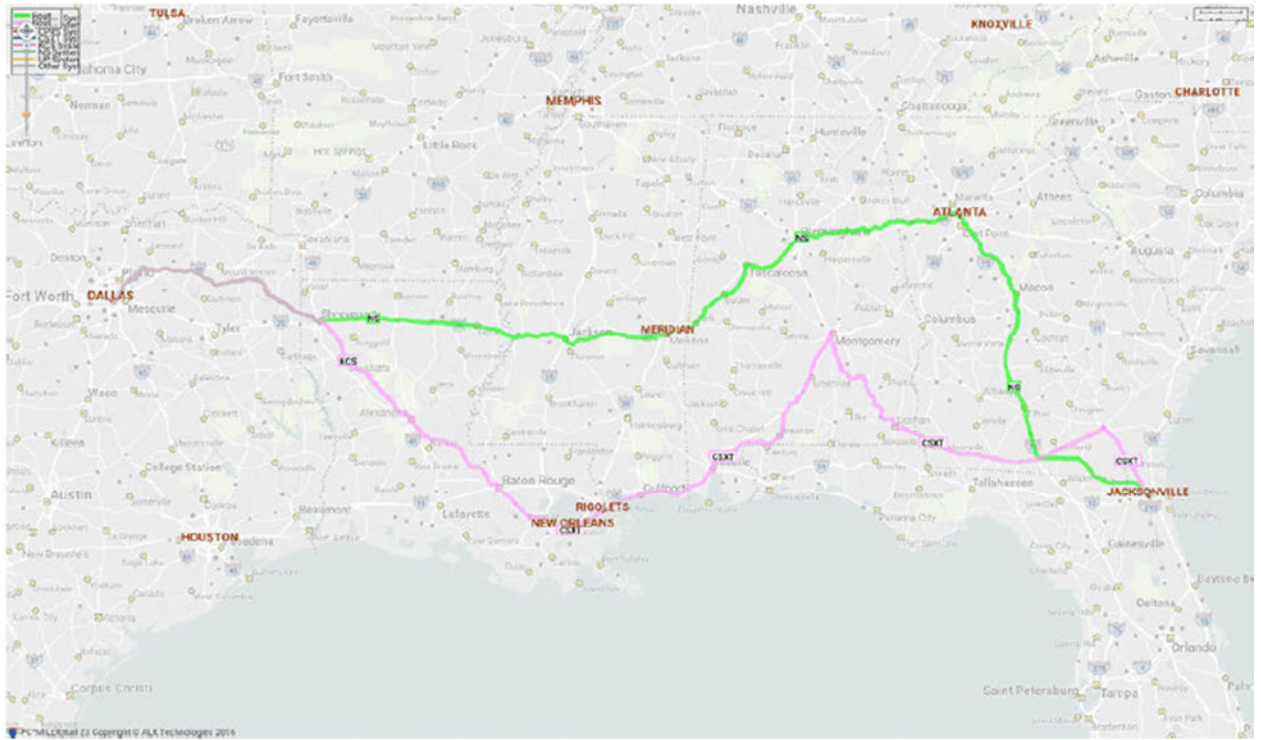
**Figure 13 - Dallas-Charlotte over the Meridian Speedway compared to CSXT Route<sup>29</sup>**



<sup>28</sup> See Finance Docket No. 36500, *Canadian Pacific Railway Limited, Et Al. – Control – Kansas City Southern, Et Al.*, Amended Comments of Norfolk Southern Railway Company and Request for Conditions (“NS-12”) at 17.

<sup>29</sup> See Finance Docket No. 36500, *Canadian Pacific Railway Limited, Et Al. – Control – Kansas City Southern, Et Al.*, Amended Comments of Norfolk Southern Railway Company and Request for Conditions (“NS-12”) at 18.

**Figure 14 - Dallas-Jacksonville over the Meridian Speedway compared to CSXT Route<sup>30</sup>**



<sup>30</sup> See Finance Docket No. 36500, *Canadian Pacific Railway Limited, Et Al. – Control – Kansas City Southern, Et Al.*, Amended Comments of Norfolk Southern Railway Company and Request for Conditions (“NS-12”) at 19.

## **Appendix C – Haulage**

Figure 1: Meridian Speedway. A diagram showing a cross-section of a road with a central lane and two side lanes. The central lane is labeled "Meridian Speedway". The side lanes are labeled [b], [c], [d], [e] = [c+d], and [f] = [(c-b)/b]. The diagram illustrates the geometry of the road and the relative widths of the lanes.

[illegible][illegible]

**Comparison of Railroad Service and Performance Attributes of Comparison of Pre-MSLLC, Prior KCS/NSR Haulage and Business Arrangement and the MSLLC JV Haulage Service and Locations**

|            |            |            |
|------------|------------|------------|
| [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] |

[REDACTED]

## Locations

[illegible]

## NSR Haulage Rates and Operating Expenses on Meridian Speedway LLC for 2006 to 2021 <sup>1</sup>

**NSR Haulage Rates and Operating Expenses Excluding Depreciation  
on Meridian Speedway LLC for 2006 to 2021<sup>1</sup>**

Figure 1: A 2D plot showing the distribution of the number of nodes in the network. The x-axis represents the number of nodes (0 to 100) and the y-axis represents the frequency (0 to 10). The plot shows a distribution that is highly skewed towards the right, with a peak at 100 nodes. The distribution is labeled [a] through [e] and [f] = [d] \* [e].

[illegible]

**Analysis of Audited Financial Statements of Meridian Speedway LLC from 2007 to 2020 <sup>1</sup>**  
**(thousands of dollars)**

|  |  | [a] | [b] | [c] | [d] | [e] | [f] | [g] | [h] | [i] | [j] | [k] | [l] | [m] | [n] | [o] |
|--|--|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
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## **Appendix D – Haulage Agreements**

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# 1. Haulage Agreement Summary Tables

The table below utilizes the 2019 CWS, 2019 CP traffic tapes and 2019 CSXT traffic tapes. Haulage agreements are deemed non-exclusive if the line owner provides access to multiple carriers to move traffic over, to or from points on the relevant haulage line.

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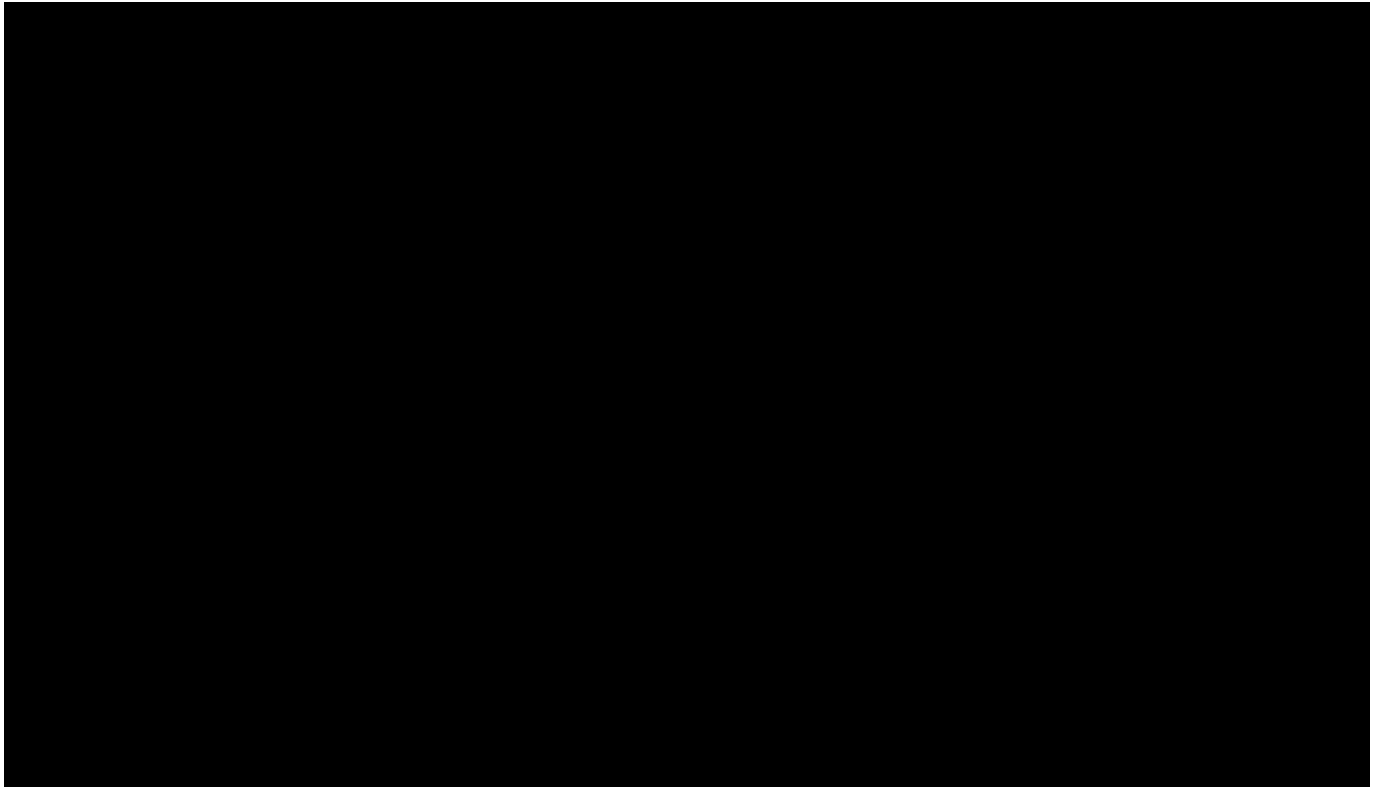


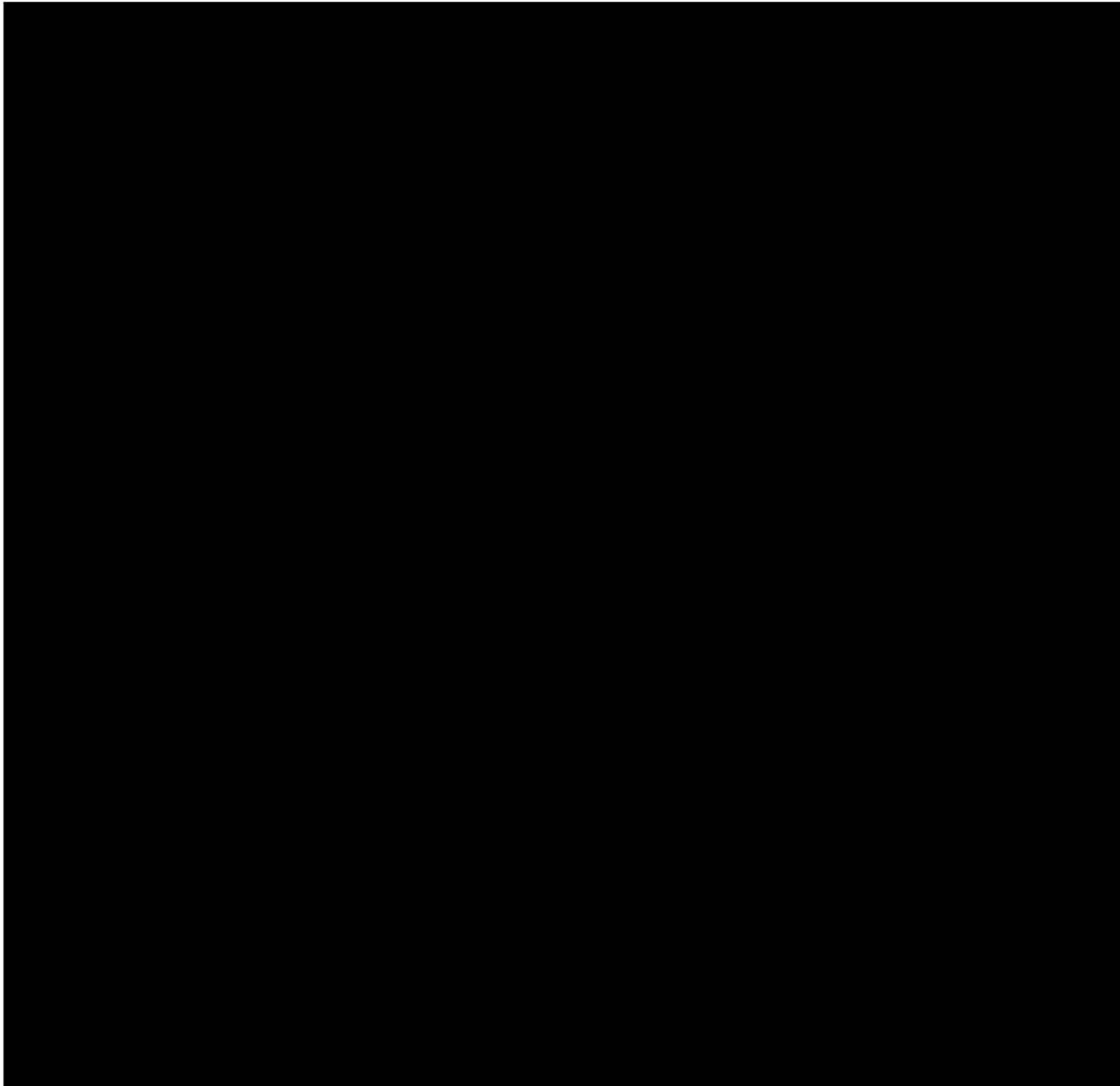
Figure 2 below identifies non-exclusive haulage agreements and indicates whether the carrier receiving haulage services made capital contributions towards the relevant line including terminal investments. Figure 1 above summarizes the exclusivity analysis.

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<sup>1</sup> [Redacted footnote content]

**Figure 2: Non-Exclusive Haulage Agreements<sup>2</sup>**



**2. Research on Exclusive Haulage Agreements**



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maintenance projects and to reimburse KCS for certain previously made capital expenditures on the JV Line. See Norfolk

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## 5. Additional Information on Haulage Agreements by Carrier

The following section provides additional information on the complete set of haulage agreements that were considered for exclusivity and investment analysis.

### 5.1.1. BNSF

- Haulage from Chicago, IL to North Baltimore, OH on CSXT
  - BNSF system map depicts this agreement:<sup>65</sup>



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<sup>65</sup> BNSF, BNSF Network Map, available at <http://www.bnsf.com/bnsf-resources/pdf/ship-with-bnsf/maps-and-shipping-locations/bnsf-network-map.pdf>

- In late 2018, CSX announced a new haulage agreement with BNSF Railway to improve western access to the Ohio region whereby CSX would haul complete BNSF trains between Chicago and North Baltimore for processing at North Baltimore.<sup>66</sup>
- Late last summer, a critical agreement was structured between two large Class 1 US railroads; CSX and BNSF Railway Company (BNSF). The haulage agreement between the two corporations significantly reduces the time of large rail shipments across the country and significantly improves efficiencies of operations for the two carriers. The new service is for direct-rail domestic and international container-only service. The agreement between the carriers provides for important efficiency improvements in the Chicago hubs for both railroads. Prior to the agreement, shipments from the Westcoast came into Chicago and then containers were transferred by truck to the CSX Chicago hub. With the new agreement, trains from the Westcoast will move through Chicago without being taken apart and then sent directly to North Baltimore. Similarly, trains from North Baltimore will also move through Chicago and travel directly to the Westcoast. Further enhancing rail shipping logistics is a change by CSX to offer intermodal service from the Ports of New York and New Jersey to the company's North Baltimore intermodal terminal. Containers will be able to move from the busy Port of New York/ New Jersey and travel to North Baltimore for distribution through the Ohio Valley.<sup>67</sup>
- Haulage from Birmingham, AL to Atlanta, GA on CSXT
  - BNSF system map depicts this agreement<sup>68</sup>



- Much like the BNSF route from Southern California to Atlanta, a portion of this new service from the Los Angeles region to North Baltimore will operate under a haulage agreement with CSX.<sup>69</sup>
- Haulage from Tulsa

<sup>66</sup> Ohio Rail Development Commission, “State of Ohio Rail Plan”, January 2019 at page 103, available at <https://www.rail.ohio.gov/static/Documents/State+of+Ohio+Rail+Plan+Final.pdf>

<sup>67</sup> Factiva, “LPO target 4.1M sf complex near CSX”, December 1, 2019 at page 6.

<sup>68</sup> BNSF, BNSF Network Map, available at <http://www.bnsf.com/bnsf-resources/pdf/ship-with-bnsf/maps-and-shipping-locations/bnsf-network-map.pdf>

<sup>69</sup> Factiva, “BNSF Launches Direct Intermodal Service between Southern California and the Ohio Valley Region”, October 2, 2018 at page 12.

- BNSF system map depicts this agreement:<sup>70</sup>



- Haulage in British Columbia on CN
  - BNSF system map depicts this agreement:<sup>71</sup>



### 5.1.2. NS

- Haulage from Shreveport, LA to Dallas, TX on KCS
  - NS system map identifies haulage from Shreveport to Dallas<sup>72</sup>

<sup>70</sup> BNSF, BNSF Network Map, available at <http://www.bnsf.com/bnsf-resources/pdf/ship-with-bnsf/maps-and-shipping-locations/bnsf-network-map.pdf>

<sup>71</sup> BNSF, BNSF Network Map, available at <http://www.bnsf.com/bnsf-resources/pdf/ship-with-bnsf/maps-and-shipping-locations/bnsf-network-map.pdf>

<sup>72</sup> Norfolk Southern, Norfolk Southern System Map, available at <http://www.nscorp.com/content/dam/nscorp/maps/2016-system-map-print.pdf>



- Twelve years ago, Kansas City Southern and Norfolk Southern entered into a haulage agreement from Meridian, Miss., to Dallas, Tex., in order to facilitate the movement of transcontinental intermodal business.<sup>73</sup>
- Jacksonville, FL to Miami, FL on FEC
  - NS system map identifies haulage from Jacksonville to Miami<sup>74</sup>



<sup>73</sup> Factiva, "Success along the Meridian Speedway (Update)", September 1, 2012, at page 16.

<sup>74</sup> Norfolk Southern, Norfolk Southern System Map, available at <http://www.nscorp.com/content/dam/nscorp/maps/2016-system-map-print.pdf>

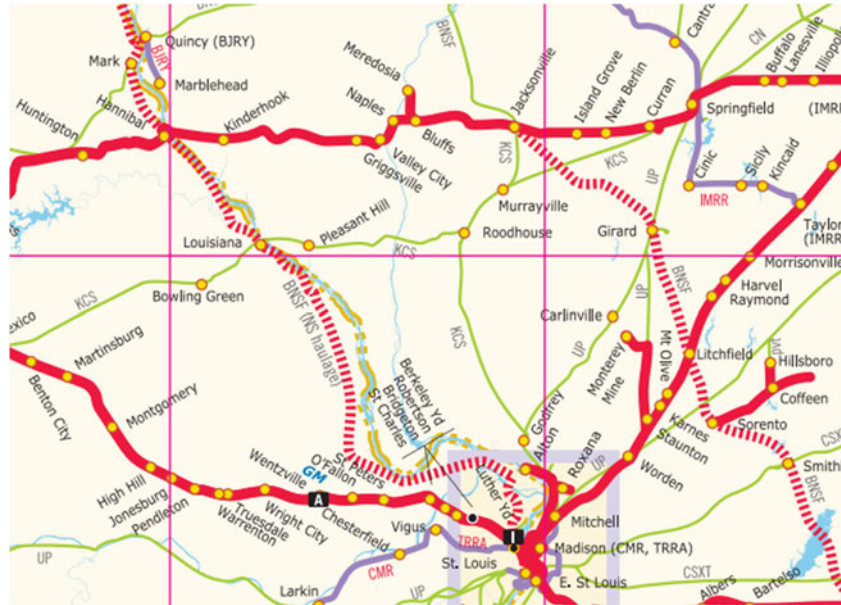
- Trackage rights agreements allow NS to operate over the approximately 53 miles of CSXT's "A Line" between Jacksonville and Palatka (where NS serves Georgia Pacific paper mill) and NS maintains a haulage agreement with FEC from Jacksonville to Miami.<sup>75</sup>
- In connection with a haulage agreement with NS, FECR also serves an approximately 100-acre facility owned by NS near Titusville, FL, which is currently used for automobile distribution.<sup>76</sup>
- STL, IL to Des Moines, IA on BNSF and Des Moines, IA to Peoria, IL on IAIS
  - NS system map identifies haulage from STL to Des Moines and Des Moines to Peoria<sup>77</sup>



<sup>75</sup> Florida Department of Transportation, "The Florida Rail System Plan", December 2010, page 2-16, available at <https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/content/rail/plandevel/documents/finalinvestmentelement/a-2010flrailplan-investmentelement.pdf>.

<sup>76</sup> Finance Docket No. 35031, "FORTRESS INVESTMENT GROUP LLC, ET AL.—CONTROL—FLORIDA EAST COAST RAILWAY, LLC", September 27, 2007, available at <https://dems-external.s3.amazonaws.com/MPD/62491/2F26E8C57AAAB44F85257364004C69FD/38382.pdf>

<sup>77</sup> Norfolk Southern, Norfolk Southern System Map, available at <http://www.nscorp.com/content/dam/nscorp/maps/2016-system-map-print.pdf>



- NS haulage rights in Iowa are maintained over the following line segments and connecting railroads: • BNSF Railway (BNSF) Des Moines Subdivision between Des Moines, Iowa, and Albia, Iowa; approximately 67.8 miles. • BNSF Railway (BNSF) Ottumwa Subdivision between Albia, Iowa, and Burlington, Iowa; approximately 98.6 miles. • BNSF Railway (BNSF) Hannibal Subdivision between Ottumwa, Iowa, and the Iowa/Missouri state line near Keokuk, Iowa.<sup>78</sup>
- NS maintains approximately 386 miles of haulage rights over two connecting railroads (BNSF and IAIS) from Des Moines, Iowa, to access the rest of the NS network at St. Louis, Missouri, and Peoria, Illinois.<sup>79</sup>
- Rouses Point, NY to Saratoga Springs, NY on CP
  - NS system map identifies haulage from Rouses Point to Saratoga Springs<sup>80</sup>

<sup>78</sup> Iowa Department of Transportation, “Iowa State Rail Plan”, December, 2021 at page 234, available at [https://iowadot.gov/iowainmotion/railplan/2017/IowaSRP2017\\_Complete.pdf](https://iowadot.gov/iowainmotion/railplan/2017/IowaSRP2017_Complete.pdf)

<sup>79</sup> Iowa Department of Transportation, “Iowa State Rail Plan Appendix A”, at page 29, available at [https://iowadot.gov/iowainmotion/railplan/2017/IowaSRP2017\\_AppendixA.pdf](https://iowadot.gov/iowainmotion/railplan/2017/IowaSRP2017_AppendixA.pdf)

<sup>80</sup> Norfolk Southern, Norfolk Southern System Map, available at <http://www.nscorp.com/content/dam/nscorp/maps/2016-system-map-print.pdf>



- CN-NSR traffic destined for the Eastern U.S. will move in CPR trains on CPR's line between Rouses Point, N.Y., and Saratoga Springs, under a freight haulage arrangement between CPR and NSR. This CN-NSR traffic will then move in NSR trains over CPR's line between Saratoga Springs and the NSR connection near Harrisburg, Pa., under a trackage rights agreement between CPR and NSR.<sup>81</sup>
- Haulage to Washington DC on CSXT
  - NS system map identifies trackage/haulage through Washington DC<sup>82</sup>



- Today, only a small volume of NS freight passes through the District via a haulage agreement with CSX, where NS cars are hauled by CSX locomotives to customers within the District. NS does not use its trackage rights through the District.<sup>83</sup>
- Haulage rights over Pan Am Railways

<sup>81</sup> Canadian Pacific, "Form 6-k", November 8, 2004, at page 1, available at <https://www.sec.gov/Archives/edgar/data/16875/000113031904000739/o14594e6vk.htm>

<sup>82</sup> Norfolk Southern, Norfolk Southern System Map, available at <http://www.nscorp.com/content/dam/nscorp/maps/2016-system-map-print.pdf>

<sup>83</sup> District Department of Transportation, "District of Columbia State Rail Plan", 2017 at page 44, available at [https://ddot.dc.gov/sites/default/files/dc/sites/ddot/page\\_content/attachments/DC%20SRP%20FinalReport.pdf](https://ddot.dc.gov/sites/default/files/dc/sites/ddot/page_content/attachments/DC%20SRP%20FinalReport.pdf)

- NS, the other major Class I carrier in the Northeast, has haulage rights over Pan Am Railways, which operates a line across northern Massachusetts. Rhode Island rail users likewise may connect to NS via the P&W at Gardner, MA.<sup>84</sup>
- The Knowledge Corridor runs north-south between milepost 183.4 at White River Junction, Vt., and milepost 0.0 at New Haven, Conn., a distance of approximately 183.4 miles. (Id., Ex. 13, Operating Plan 24-25.) The Knowledge Corridor includes segments of rail line owned by New England Central Railroad (NECR), a subsidiary of Genesee & Wyoming, Inc. (GWI), and the National Railroad Passenger Corporation (Amtrak), each of which PAS has trackage rights over, and a segment owned by the Massachusetts Department of Transportation (MassDOT), over which PAS has freight easement rights. (Id.)<sup>85</sup>

### 5.1.3. CSXT

- Mattawamkeag, ME to Saint John, NB (With PAR Acquisition)
  - The expanded market opportunities will extend to international trade. The PAR System's rail network connects to four ports in Revere MA, Portsmouth NH, Portland ME, and Saint John, New Brunswick. The PAR System connects to Saint John through a haulage arrangement with the Eastern Maine Railway and New Brunswick Southern Railway. Shippers on the CSXT/PAR System rail network will have greater access to the inbound and outbound traffic using these ports. Substantial new investment is being made in these port facilities. For example, new investment in the Port Saint John in New Brunswick is making that port an increasingly important gateway for international commerce. Rail traffic from Saint John already accounts for a substantial volume of the PAR System traffic. Improved rail access to and from Saint John and the other New England ports will provide new opportunities for rail shippers to access overseas markets<sup>86</sup>
- West Springfield, MA to North Haven, CT on Connecticut Southern Railroad / RailAmerica, Incorporated
  - CSXT system map identifies an operating agreement from West Springfield to North Haven<sup>87</sup>

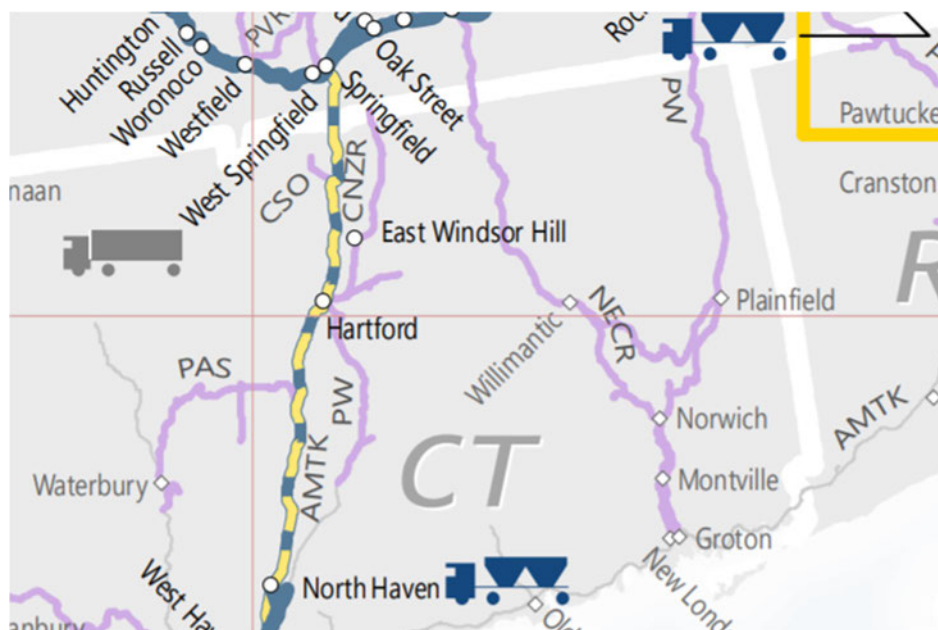
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<sup>84</sup> Department of Administration Division of Planning, "Rhode Island State Rail Plan", March 13, 2014 at page 54, available at [http://www.planning.ri.gov/documents/trans/Rail/RI\\_State\\_Rail\\_Plan\\_2014.pdf](http://www.planning.ri.gov/documents/trans/Rail/RI_State_Rail_Plan_2014.pdf)

<sup>85</sup> Finance Docket No. 36472, "CSX CORPORATION AND CSX TRANSPORTATION, INC., ET AL. —CONTROL AND MERGER— PAN AM SYSTEMS, INC.", July 30, 2021 at page 5.

<sup>86</sup> FINANCE DOCKET NO. 36472, "Verified Statement of Sean Pelkey", February 25, 2021 at page 201.

<sup>87</sup> CSXT, CSXT System Map



- Connecticut Southern Railroad / RailAmerica, Incorporated moves traffic for CSX between West Springfield, Massachusetts, and North Haven under a haulage arrangement.<sup>88</sup>

#### 5.1.4. CN

- Haulage arrangements via the New England Central Railroad (NECR) to Worcester, MA
  - Through haulage arrangements via the New England Central Railroad (NECR), Class I carriers Canadian Pacific (CP) and Canadian National (CN) have access to Massachusetts customers for commodities and intermodal shipments. The Worcester, MA, intermodal terminal on the P&W is also a CN intermodal terminal and is reached via a haulage agreement between CN, NECR, and P&W.<sup>89</sup>
- Rouses Point, NY to Saratoga Springs, NY on CP
  - CN-NSR traffic destined for the Eastern U.S. will move in CPR trains on CPR's line between Rouses Point, N.Y., and Saratoga Springs, under a freight haulage arrangement between CPR and NSR. This CN-NSR traffic will then move in NSR trains over CPR's line between Saratoga Springs and the NSR connection near Harrisburg, Pa., under a trackage rights agreement between CPR and NSR.<sup>90</sup>

<sup>88</sup> Connecticut Department of Transportation, "Connecticut State Rail Plan", 2012 at page 74, available at [https://portal.ct.gov/-/media/DOT/documents/dplansprojectsstudies/plans/State\\_Rail\\_Plan/StateRailPlanFinal11812pdf.pdf](https://portal.ct.gov/-/media/DOT/documents/dplansprojectsstudies/plans/State_Rail_Plan/StateRailPlanFinal11812pdf.pdf)

<sup>89</sup> Massachusetts Department of Transportation, "Massachusetts State Rail Plan", May 2018 at page 32 available at [https://www.mass.gov/files/documents/2018/06/14/FinalRailPlan\\_Sprng18.pdf](https://www.mass.gov/files/documents/2018/06/14/FinalRailPlan_Sprng18.pdf)

<sup>90</sup> Canadian Pacific, "Form 6-k", November 8, 2004 at page 1, available at <https://www.sec.gov/Archives/edgar/data/16875/000113031904000739/o14594e6vk.htm>

### 5.1.5. UP

- Van Buren, AR to Fort Smith AR on Arkansas & Missouri Railroad
  - Arkansas & Missouri Railroad provide haulage of UP traffic between Van Buren and Fort Smith.<sup>91</sup>
- Cedar Rapids, Iowa, to Manly, Iowa on IANR and CN
  - UP has haulage rights over the following line segments and connecting railroads: • Iowa Northern Railway (IANR) Cedar Rapids Subdivision between Cedar Rapids, Iowa, and Waterloo, Iowa; approximately 50 miles. • Iowa Northern Railway (IANR) Manly Subdivision between Cedar Falls Junction, Iowa, and Manly, Iowa; approximately 76 miles (this segment includes UP haulage rights over a 9-mile segment between Waterloo and Cedar Falls Junction, Iowa, on which IANR has trackage rights over the CN North Waterloo Industrial Lead and CN Waterloo Subdivision).<sup>92</sup>

### 5.1.6. CP

- Albany, NY to Fresh Pond, NY and Albany, NY to Philadelphia, PA
  - Canadian Pacific Railway (CP), which until 2010, operated carload train service east of the Hudson to Oak Point Yard and Fresh Pond Yard, CP has established a haulage agreement with CSX, with CSX handling CP traffic in their trains south of Albany<sup>93</sup>
  - In Canada CP services the ports of Vancouver, Montreal and Thunder Bay, while haulage agreements with other U.S. railroads provide access to the ports of New York and Philadelphia on the U.S. east coast.<sup>94</sup>
  - See Conrail Dec. No. 89, slip op. at 177, ordering paragraph 28: “CSX must attempt to negotiate, with CP, an agreement pursuant to which CSX will grant CP either haulage rights unrestricted as to commodity and geographic scope, or trackage rights unrestricted as to commodity and geographic scope, over the east-of-the-Hudson Conrail line that runs between Selkirk (near Albany) and Fresh Pond (in Queens), under terms agreeable to CSX and CP, taking into account the investment that needs to continue to be made to the line.” See also Conrail Dec. No. 89, slip op. at 18 (item 10), 82-83; Conrail Dec. No. 99; Conrail Dec. No. 102; Conrail Dec. No. 109; Conrail Dec. No. 112; Conrail Dec. No. 123; Conrail Dec. No. 132; Conrail Dec. No. 133; Conrail Dec. No. 134.<sup>95</sup>

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<sup>91</sup> Arkansas State Highway and Transportation Department, “2015 Arkansas State Rail Plan”, December 2015 at page 2-17, available at [https://www.nwarpc.org/wp-content/uploads/2021/06/AR\\_STATE\\_RAIL\\_PLAN\\_2-18-16.pdf](https://www.nwarpc.org/wp-content/uploads/2021/06/AR_STATE_RAIL_PLAN_2-18-16.pdf)

<sup>92</sup> Iowa Department of Transportation, “Iowa State Rail Plan”, December, 2021 at page 237, available at [https://iowadot.gov/iowainmotion/railplan/2017/IowaSRP2017\\_Complete.pdf](https://iowadot.gov/iowainmotion/railplan/2017/IowaSRP2017_Complete.pdf)

<sup>93</sup> New York State Department of Transportation, “New York State Freight Transportation Plan Background Analysis (Deliverable 1), June 2015 at page 43, available at <https://www.dot.ny.gov/content/delivery/Main-Projects/projects/P11618881-Home/P11618881-repository/Background%20Analysis%20Report.pdf>

<sup>94</sup> Canadian Pacific, “Corporate Sustainability Report 2016”, 2016 at page 10, available at [cp-csr-2016.pdf \(cpr.ca\)](https://www.cpr.ca/cp-csr-2016.pdf)

<sup>95</sup> Finance Docket No. 33388 (Sub-No. 91), “CSX CORPORATION AND CSX TRANSPORTATION, INC., NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY — CONTROL AND OPERATING LEASES/AGREEMENTS — CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION”, February 1, 2001 at page 55, available at <https://dcms-external.s3.amazonaws.com/MPD/62491/F7558217D7696587852569E0004EE4D1/31512.pdf>

- Saint-Leonard, NB to Millinocket, ME and Brownville Jct, ME to Saint John, NB
  - With the acquisition of CMQ, CP received haulage depicted below<sup>96</sup>



- Additionally, the improved service will extend market reach for CP and CMQR customers, providing them direct access to markets on each other's systems, including the import and export markets served by the deep water ports of Searsport and (via haulage) Saint John.<sup>97</sup>
- Buffalo, NY to Chicago, IL
  - Canadian Pacific owns a route between Montreal and Buffalo coupled with a haulage arrangement on CSX tracks between Buffalo and Chicago.<sup>98</sup>
- Chicago, IL to Jeffersonville, OH
  - A haulage agreement with Genesee & Wyoming Inc., provides intermodal service to Jeffersonville, OH<sup>99</sup>
  - Canadian Pacific Railway announced a new partnership with Genesee & Wyoming Inc. and Bluegrass Farms of Ohio that will open up the Ohio Valley to CP intermodal customers and further extend its reach into key North American heartland markets. The Calgary-based carrier said it has an exclusive agreement with Bluegrass Farms to use its 90-acre intermodal facility in Jeffersonville, Ohio, on the I-71 corridor, to serve the Columbus, Cincinnati and Dayton markets. The farm consortium will continue to own the facility, and will operate it on behalf of CP. At the same time, CP has also come to an agreement with G&W, which services the site through its Indiana & Ohio (IORY) line.<sup>100</sup>
- White Hall, NY to New London, CT
  - New England Central Railroad (NECR) is a subsidiary of RailAmerica, Incorporated and operates on its own line between New London and Stafford (55.8 miles) and on to East

<sup>96</sup> FINANCE DOCKET NO. 36368, "SOO LINE CORPORATION – CONTROL – CENTRAL MAINE AND QUEBEC RAILWAY US INC.", December 17, 2019 at page 44.

<sup>97</sup> FINANCE DOCKET NO. 36368, "SOO LINE CORPORATION – CONTROL – CENTRAL MAINE AND QUEBEC RAILWAY US INC.", December 17, 2019 at page 25.

<sup>98</sup> Canadian Pacific, "2020 Annual Report", 2020 at page 51, available at [https://s21.q4cdn.com/736796105/files/doc\\_financials/2020/ar/CP\\_AnnualReport2020\\_SECURED.pdf](https://s21.q4cdn.com/736796105/files/doc_financials/2020/ar/CP_AnnualReport2020_SECURED.pdf)

<sup>99</sup> Canadian Pacific, "2020 Annual Report", 2020 at page 51, available at [https://s21.q4cdn.com/736796105/files/doc\\_financials/2020/ar/CP\\_AnnualReport2020\\_SECURED.pdf](https://s21.q4cdn.com/736796105/files/doc_financials/2020/ar/CP_AnnualReport2020_SECURED.pdf)

<sup>100</sup> Railway Age, "CP, G&W in Ohio Intermodal Pact", October 2017, available at <https://www.railwayage.com/news/cp-gw-in-ohio-intermodal-pact/>

Albany, Vermont, and a distance of 326 miles, where it connects with the Canadian National Railway. It also interchanges with CSX at Palmer, Massachusetts, Pan Am Southern at Millers Falls, Massachusetts and Canadian Pacific via Bellows Falls, Vermont. The NECR is unique in that it offers Connecticut businesses access to all four Class I railroads<sup>101</sup>

- Through haulage arrangements via the New England Central Railroad (NECR), Class I carriers Canadian Pacific (CP) and Canadian National (CN) have access to Massachusetts customers for commodities and intermodal shipments. The Worcester, MA, intermodal terminal on the P&W is also a CN intermodal terminal and is reached via a haulage agreement between CN, NECR, and P&W.<sup>102</sup>
- Canadian Pacific has haulage rights over the Vermont Rail System from Whitehall, New York through Rutland to Bellows Falls and then further south into New England via the New England Central Railroad.<sup>103</sup>

#### 5.1.7. KCS

- Lincoln to Omaha, Nebraska to Council Bluffs, Iowa, to the Iowa/Missouri state line near Hamburg, Iowa to Kansas City, Kansas on BNSF and UP
  - KCS has haulage rights over the following railroad segments in Iowa: • Union Pacific Railroad (UP) Omaha Subdivision between the Iowa/Nebraska state line at Council Bluffs, Iowa, and Council Bluffs, Iowa; approximately 4.0 miles. • BNSF Railway (BNSF) Council Bluffs Subdivision between BN Junction (Council Bluffs), Iowa, and Pacific Junction, Iowa; approximately 18.4 miles. • BNSF Railway (BNSF) Napier Subdivision between Pacific Junction, Iowa, and the Iowa/Missouri state line near Hamburg, Iowa; approximately 33.0 miles.<sup>104</sup>
  - As a result of the 1988 acquisition of the Missouri-Kansas-Texas Railroad by UP, KCSR was granted (1) haulage rights between Kansas City and each of Council Bluffs, Iowa, Omaha and Lincoln, Nebraska and Atchison and Topeka, Kansas.<sup>105</sup>

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<sup>101</sup> Connecticut Department of Transportation, “Connecticut State Rail Plan”, 2012 at page 75, available at [https://portal.ct.gov/-/media/DOT/documents/dplansprojectsstudies/plans/State\\_Rail\\_Plan/StateRailPlanFinal11812pdf.pdf?la=en](https://portal.ct.gov/-/media/DOT/documents/dplansprojectsstudies/plans/State_Rail_Plan/StateRailPlanFinal11812pdf.pdf?la=en)

<sup>102</sup> Massachusetts Department of Transportation, “Massachusetts State Rail Plan”, May 2018 at page 32 available at [https://www.mass.gov/files/documents/2018/06/14/FinalRailPlan\\_Sprng18.pdf](https://www.mass.gov/files/documents/2018/06/14/FinalRailPlan_Sprng18.pdf)

<sup>103</sup> Atlantic Northeast Rails & Ports, “G&W: Haulage Rights Offered to Vermont Rail System”, May 6, 2021, available at <https://railsandports.com/2021/05/haulage-rights-offered-to-vermont-rail-system/>

<sup>104</sup> Iowa Department of Transportation, “Iowa State Rail Plan”, December, 2021 at page 232, available at [https://iowadot.gov/iowainmotion/railplan/2017/IowaSRP2017\\_Complete.pdf](https://iowadot.gov/iowainmotion/railplan/2017/IowaSRP2017_Complete.pdf)

<sup>105</sup> Kansas City Southern, “2003 Annual Report”, 2003 at page 24, available at <https://investors.kcsouthern.com/~media/Files/K/KC-Southern-IR-V2/annual-reports/annualreport2003.pdf>

## **Appendix E – Interchange Analysis**

**Figure 1: Savings Under Increased  
Interchange Competition on the Meridian  
Speedway by Grouping  
(CWS 2019 and FAF)**

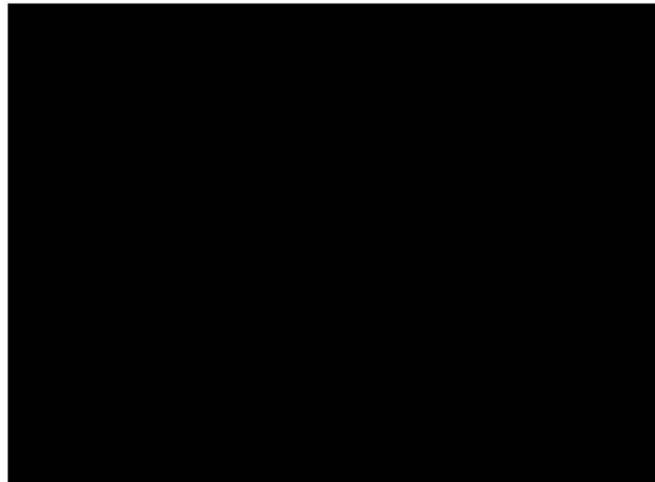


Figure 2: Domestic Savings Under Increased Competition to, from, and over the Meridian Speedway by Lane (CWS 2019 and FAF)

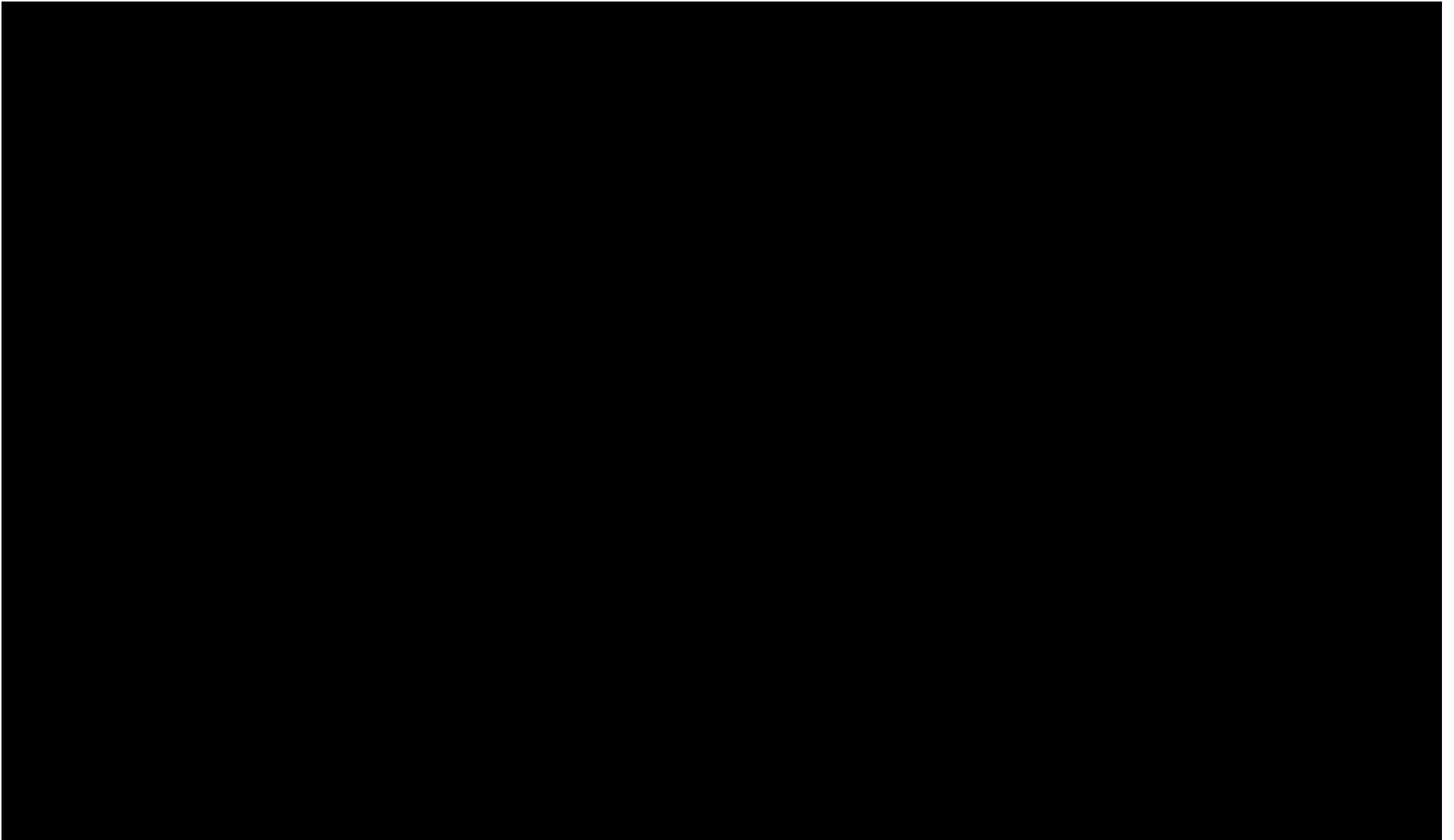
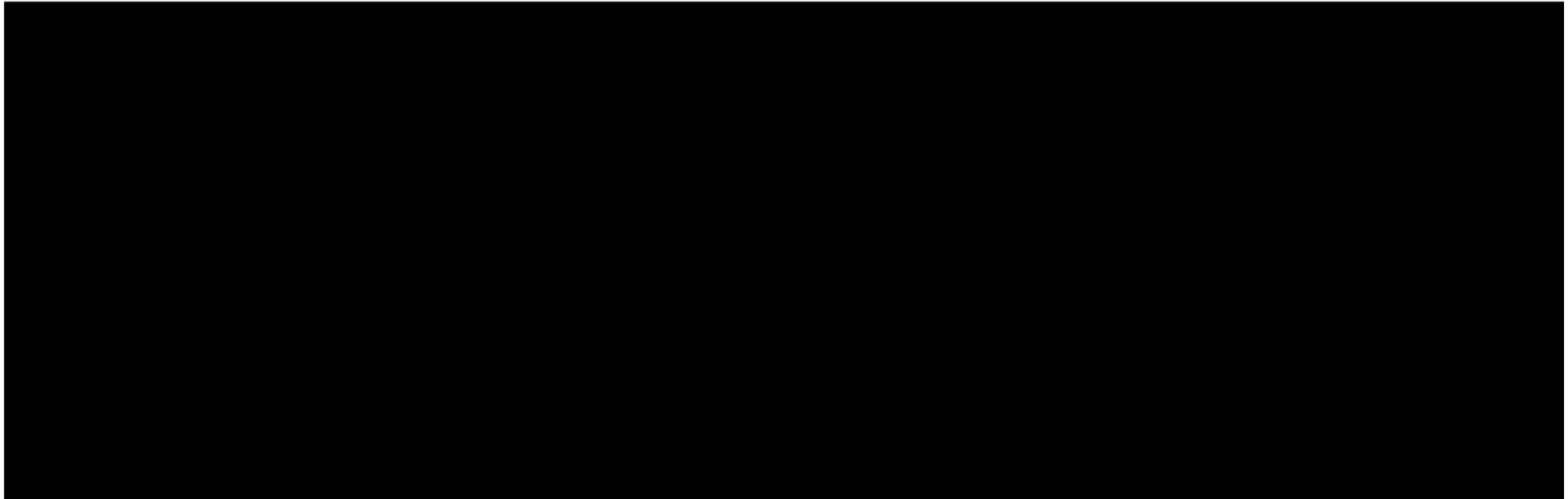
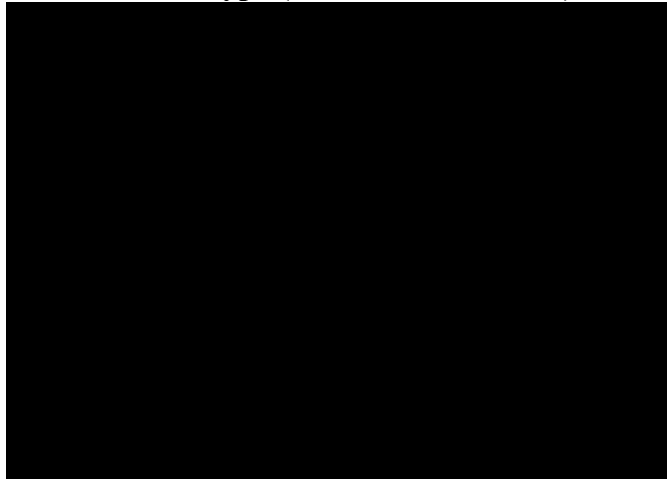


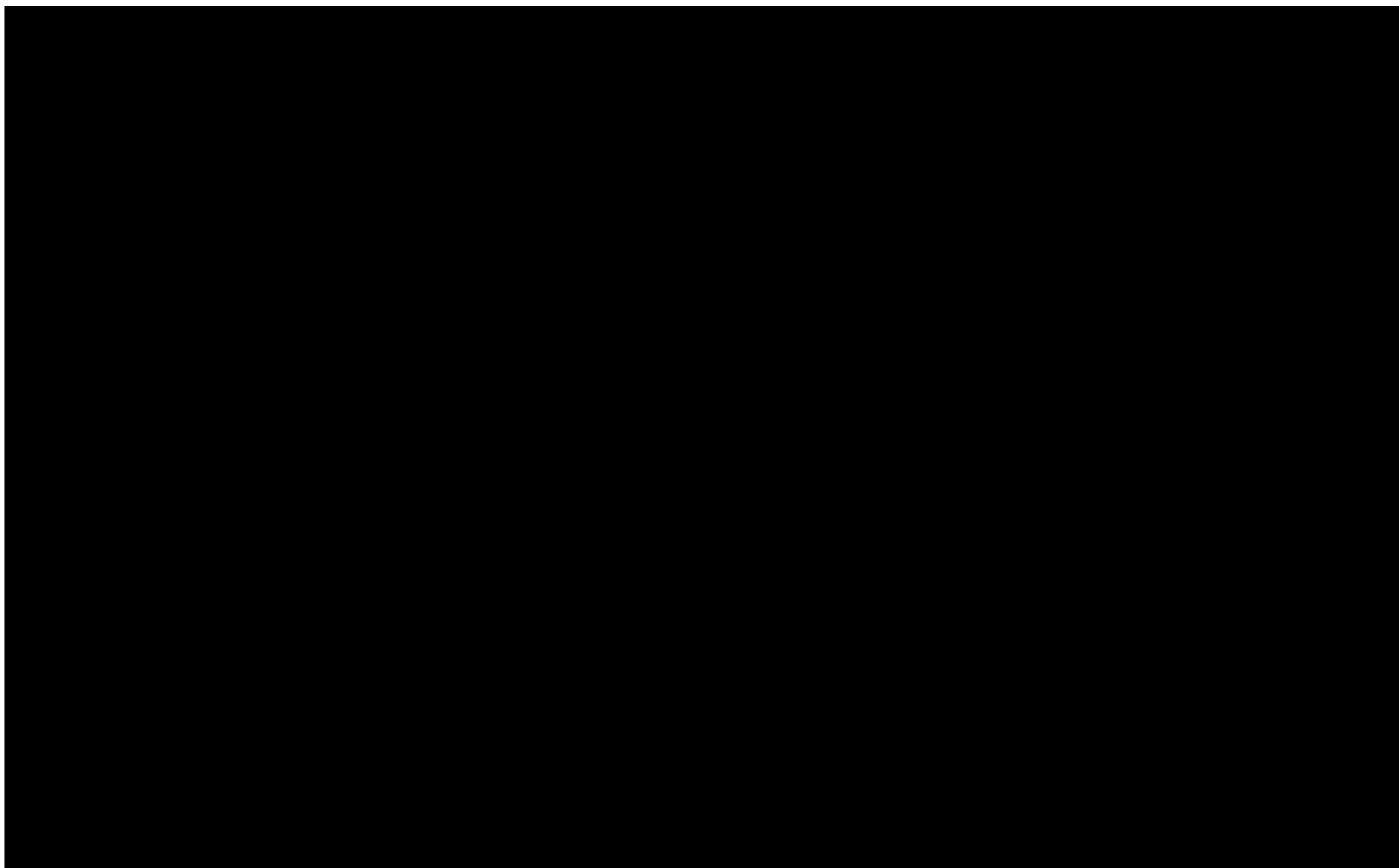
Figure 3: Mexico Savings Under Increased Competition to, from, and over the Meridian Speedway by U.S. Segment (CWS 2019 and FAF)



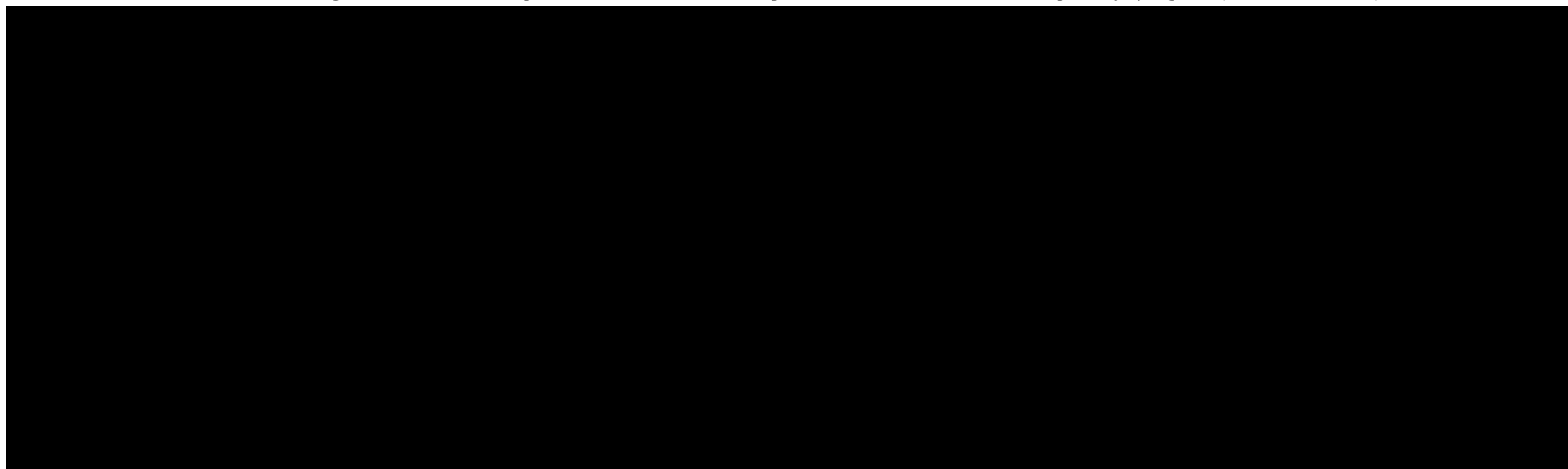
**Figure 4: Truck Displacement Under  
Increased Competition  
to, from, and over the Meridian Speedway by  
Traffic Type (CWS 2019 and FAF)**



**Figure 5: Domestic Truck Displacement Under Increased Competition to, from, and over the Meridian Speedway by Lane (CWS 2019 and FAF)**



**Figure 6: Mexico Truck Displacement Under Increased Competition to, from, and over Meridian Speedway by Segment (CWS 2019 and FAF)**



## **A. Data Preparation**

### **2019 Confidential Waybill Sample**

My analysis evaluating the impact of an increase in interchange competition on the freight rail rate begins with the 2019 Confidential Waybill Sample (CWS), produced by the Surface Transportation Board (STB). The CWS is a “stratified sample of carload waybills for all U.S. rail traffic submitted by those rail carriers terminating 4,500 or more revenue carloads annually”<sup>1</sup>. The CWS is considered a reliable source for data on the rail industry<sup>2,3</sup>. The 2019 CWS is used because 2019 is the base of analysis in this Transaction<sup>4</sup>. Model specification was considered after a review of existing literature on the effect of competition on the rail rate<sup>5</sup>

### **Creation of CWS Covariates**

The CWS was used to generate the following covariates:

#### ***i. Car Ownership***

Car ownership is included as a control to account for costs associated with using rail cars. The CWS identifies three different types of car ownership: Privately owned, Rail owned, and Trail Train.

#### ***ii. Number of Interchanges***

The number of interchanges was determined at the individual level by counting the number of non-missing values using the Interchange Rule 260 1-6 fields provided by the CWS.

#### ***iii. Route Distance***

PCMiller Rail was used to determine route distances. 98% of all moves in the CWS returned one route distance, the remaining 2% were assigned the shortest possible route.

#### ***iv. Class 1 Origin/Termination Access***

I calculated the accessibility of class 1 carriers at the origin and termination points of a move for the regression specification that utilizes interchange competition as a treatment.

The calculation was broken into two sections:

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<sup>1</sup> Carload Waybill Sample, Surface Transportation Board, available at <https://www.stb.gov/reports-data/waybill/>

<sup>2</sup> Comprehensive Truck Size and Weight Limits Study – Modal Shift Comparative Analysis Technical Report, Appendix C: Intermodal Transportation and Inventory Cost Model, U.S. Department of Transportation, available at [https://ops.fhwa.dot.gov/freight/sw/map21tswstudy/technical\\_rpts/mscanalysis/app\\_c\\_cost\\_model.htm](https://ops.fhwa.dot.gov/freight/sw/map21tswstudy/technical_rpts/mscanalysis/app_c_cost_model.htm)

<sup>3</sup> Carload Waybill Sample Reference Guide, Surface Transportation Board, available at <https://www.stb.gov/wp-content/uploads/2019-STB-Waybill-Reference-Guide.pdf>

<sup>4</sup> See Application Volume 1, p. 8

<sup>5</sup> See Babcock, Michael W. “Impacts of Intramodal Competition on 2012 Rates for Wheat,” December 2015, Kansas State University. See also Harbor, Anetra L. “An Assessment of the Effect of Competition on Rail Rates for Export Corn, Soybean, and Wheat Shipments, Transportation Services Branch U.S. Department of Agriculture, 2009. See also Macdonald, James M., “Competition and Rail Rates for the Shipment of Corn, Soybeans, and Wheat,” The RAND Journal of Economics, Spring, 1987, Vol. 18, No. 1 (Spring, 1987), pp. 151-163

(1) Calculate number of Class 1 Carriers that have active access to the Origin SPLC for non-intermodal moves based on the number of distinct Class 1 Carrier names at that Origin SPLC in the CWS.

(2) Calculate the number of Class 1 Carriers that have access to the Origin BEA for intermodal moves based on the number of distinct Class 1 Carrier names at that Origin BEA in the CWS.

(3) Steps (1)-(2) were duplicated for Termination Access

#### ***v. Single Line Moves***

All moves with 0 interchanges were classified as single line moves. Rebilled moves incorrectly assigned a single line indicator value of 1 were reassigned values later, as described in the Rebill Adjustments section.

#### ***vi. Intermodal Service Code***

The STB recodes intermodal service codes provided by carriers into alphabetic categories comprising “A” - “R”, with an additional code of “X” for unknown service codes. Like the car ownership in the CWS, this field was simply recoded as a factor variable before being used in estimation, so that during regression estimation, each service code was treated as a discrete variable.

#### ***vii. Revenue Per Car-Mile***

Two variations on revenue per car-mile were calculated to estimate the regression. One variation on the estimation uses the revenue per car-mile calculated at the individual route level based on the following formula:

$$RPC_i = \frac{ETR_i + FS_i}{(EC_i * RD_i)}$$

Where  $RPC_i$  is the revenue per car-mile,  $ETR_i$  is the Expanded Total Revenue,  $FS_i$  is the fuel surcharge rate,  $EC_i$  is the expanded carloads, and  $RD_i$  is the route distance as calculated from PCMiller, all for individual route  $i$ .

The second variations controls for masked revenues<sup>6</sup>. After the data was cut to only contain observations used for estimation, a variation on the revenue per car-mile was generated using the subset data. When the STB<sup>7</sup> receives route information from carriers, some revenues are masked using a scaling factor to either inflate or deflate the revenue. A masked revenue is identified using the “Calculated Rate Flag” field. In my final dataset used for estimation, approximately 10% of the data had revenues that were not masked. I

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<sup>6</sup> “For this study, the revenues and variable costs of all records of the same four-digit STCC commodity, moving the same distance between the same origin and destination in the same rail car type are combined and divided by the car-miles generated by those moves to calculate consistent revenue and variable costs per car-mile for the analysis. This treatment provides a transportation cost that is consistent with the single truck rate applied to all moves in the same equipment type between the same origin and destination.”, Comprehensive Truck Size and Weight Limits Study – Modal Shift Comparative Analysis Technical Report, Appendix C: Intermodal Transportation and Inventory Cost Model, U.S. Department of Transportation, available at [https://ops.fhwa.dot.gov/freight/sw/map21tswstudy/technical\\_rpts/mscanalysis/app\\_c\\_cost\\_model.htm](https://ops.fhwa.dot.gov/freight/sw/map21tswstudy/technical_rpts/mscanalysis/app_c_cost_model.htm)

<sup>7</sup> “Beginning with the 1986 Sample, railroads were allowed to disguise their contract revenues through factoring them by a scalar value at the three digit STCC level.”, Carload Waybill Sample Reference Guide p. 186, Surface Transportation Board, available at <https://www.stb.gov/wp-content/uploads/2019-STB-Waybill-Reference-Guide.pdf>

calculated an average rate for routes grouped by four-digit STCC code, origin BEA area, termination BEA area, and car type to produce a rate less effected by masked rates.

#### ***viii. Number of Active Routes***

One of two versions of the treatment variable, the number of active routes represents the number of existing routing permutations a shipper can use to get from one BEA to another. The number of active routes was determined in two steps. First, the origin railroad name, all six interchange railroad names, and the termination railroad name were concatenated into one string separated by dashes. For instance, if a move originated on UP and terminated on NS, the resulting field would look like:

*“UP-----NS”*

For an interchanged move, such as the route above along with the addition of an interchange between NS and FEC, would result in the following:

*“UP-----NS-FEC”*

The CWS was then grouped by origin and destination BEA area. The number of distinct strings was counted and assigned to each origin-destination BEA pair. The inclusion of junction names in determining active routes was excluded as certain routes with the same carriers may proceed through different interchanges. However, it is unreasonable to assume that routes with the exact same carriers compete

#### ***ix. Carrier Options at Interchange 1-3***

The second version of the treatment evaluates competition at each interchange; therefore, competition is only determined for interline moves at points within a route.

Interchanges were determined iteratively. The CWS was split into four separate datasets by the number of interchanges on a given route, 0-3.

After this division, all single line moves (routes with zero assigned from (iii)) were given an interchange competition value of 0 for interchange 1, 2, and 3.

For moves with one interchange, the number of interchange competitors was calculated by grouping the data at the first interchange and termination BEA area. The number of distinct termination carriers was then calculated based on this grouping.

Moves with two and three interchanges were handled differently. Competition values calculated for single interchange moves were assigned to all final interchange-termination BEA pairings in the set. The objective in using this method was to capture all theoretical alternatives in each route. For instance, a two interchange move whose ultimate segment of Chicago to Atlanta was assigned the competition value for single interchange moves that interchange at Chicago and terminate in Atlanta. In the case where a final interchange was only present in the set of data containing more than one interchange (or more than two interchanges), the competition value was computed the same way as with single interchange moves. Additional competition values were calculated between interchanges for multiple interchange moves. These were determined by grouping either two or three interchange moves by consecutive Interchange Rule 260 variables (i.e., Interchange 2 Rule 260 and Interchange 3 Rule 260) and counting the number of distinct interchange carriers at the

ending interchange in the segment. Finally, full competition values for two and three interchange moves were calculated row-wise based on the following formulas:

**Two Interchange Moves:**

$$\text{Options at 1st Interchange} = \max\{Comp_{1,2}, Comp_{1,term}\}$$

$$\text{Options at 2nd Interchange} = Comp_{2,term}$$

**Three Interchange Moves:**

$$\text{Options at 1st Interchange} = \max\{Comp_{1,2}, Comp_{1,3}, Comp_{1,term}\}$$

$$\text{Options at 2nd Interchange} = \max\{Comp_{2,3}, Comp_{2,term}\}$$

$$\text{Options at 3rd Interchange} = Comp_{3,term}$$

Where  $Comp_{i,j}$  is the competition between interchange  $i$  and point  $j$ , which can be either another interchange or the termination BEA area.

***x. Origin/Termination BEA HHI***

To better assess the impact of a change in the interchange competition on the rail rate for intermodal moves, a covariate of interest is the market concentration of intermodal containers in each Origin-Destination BEA pair. To incorporate truck volumes, I used the FAF (Freight Analysis Framework), a dataset produced every five years jointly by the Bureau of Transportation Statistics and Federal Highway Administration that “integrates data from a variety of sources to create a comprehensive picture of freight movements among states and major metropolitan areas by all modes of transportation”<sup>8</sup>. Two versions of the FAF were used to determine volumes and weight. The 2018-2019 FAF 5.3 contains regional estimates of weight and value for exports, imports, and domestic movements by origin-destination FAF region or state pairs. The 2017 and 2022 FAF 5 contains weight and daily trips but does not include detailed information on the origin-destination pairs of each observation. To estimate yearly truck trips (i.e., movements), an overall weight per car was calculated using the midpoint of the 2017 and 2022 FAF 5 overall weight per car. Daily truck trips in the FAF 5 were multiplied by 365 to determine yearly movements.

Once the midpoint of the weight per car from the 2017 and 2022 FAF 5 was calculated, the value was then used to estimate yearly trips using the actual 2019 total tons from the 2018-2019 FAF 5.3.

Steps were taken to adjust the FAF to be compatible with the format of the CWS, as well as to allow analysis at the BEA level<sup>9</sup>. First, the raw FAF data was subset to only include observations whose value in any *mode* field contained was labeled as truck.

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<sup>8</sup> Freight Analysis Framework, U.S. Department of Transportation, available at [https://ops.fhwa.dot.gov/freight/freight\\_analysis/faf/](https://ops.fhwa.dot.gov/freight/freight_analysis/faf/)

<sup>9</sup> After the data was subset to only include these observations, the origin and destination FAF regions for each shipment were assigned a BEA area based on the closest match between a FAF region code (which is the coded equivalent of the CFS Metropolitan Area Names) and BEA name using the primary city in both the BEA and FAF region code. Of all the BEA names, the FAF region codes had successful matches with 68 BEAs. Observations used in estimation were ones that had perfect BEA OD matches to the FAF. These observations contained major BEA OD pairs.

For my estimation procedure using the interchange competition as treatment, I controlled for market concentration at either end of a move. I employed the Herfindahl-Hirschman Index (HHI). HHIs were calculated separately for origin and destination BEAs within an origin-destination lane BEA pair. This was done to avoid double counting rail cars from the CWS. In my regression, I include an interaction between the origin and termination HHI to simulate a lane concentration covariate.

HHIs were calculated using the following formula:

$$HHI_k = \sum_{i=1}^7 r_i^2 + \sum_{l=1}^N t_l^2$$

Where for origin or termination BEA region  $k$ ,  $r_i^2$  are the squared market shares for all seven Class 1 Carriers, calculated as:

$$r_i^2 = \left( \frac{\sum_{m=1}^w \text{expanded\_carloads}_m}{\sum_{a=1}^b \text{expanded\_carloads}_a + \sum_{g=1}^j \text{truck\_volume}_g} \right)^2$$

Where the numerator is the sum of expanded carloads for all moves carrier  $i$  handles in BEA area  $k$  and the denominator is the sum of expanded carloads all Class 1 carriers handle in BEA area  $k$  plus the total truck volumes handled in BEA area  $k$ .

The second summation term is the sum of squared market shares for  $N$  truck competitors, where  $N$  is large enough such that for  $0 < t < 1$  we have that

$$\sum_{l=1}^N t_l^2 = s$$

Where  $s$  is a very small number close to zero. In essence, my HHI calculation assumes an infinite/very large number of truck competitors such that the truck competitors are not seen to increase the HHI. This assumption does not restrict a uniform distribution of market shares across truck competitors, but instead only assumes that each individual truck competitor has a very small market share.

### **Van Spot Truck Rates**

Truck rates were the final component to be added to the CWS. Truck rates were provided to us at the city origin-destination level and rates were assigned to a unique BEA OD pair. Truck rates were combined with their fuel surcharge rates to determine a new, fuel surcharge inclusive rate.

### **Rebill Adjustments**

The STB describes the rebilling process and the issues it poses in its reference guide for the CWS<sup>10</sup>. In some cases, the STB receives moves directly from carriers marked for Rule 11 and splits the move into two separate routes. Steps were taken to adjust rebilled data to better represent the reality of the full moves these segments are a part of.

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<sup>10</sup> Carload Waybill Sample Reference Guide pp. 184-185, Surface Transportation Board, available at <https://www.stb.gov/wp-content/uploads/2019-STB-Waybill-Reference-Guide.pdf>

Addressing the rebilling issues in the CWS meant first separating the data into four subsets:

- (1) Rebill Code = 0: local shipment*
- (2) Rebill Code = 1: Originated-Delivered*
- (3) Rebill Code = 2: Received-Delivered*
- (4) Rebill Code = 3: Received-Terminated*

No changes were needed for moves with rebill code 0.

I utilized a SPLC-Junction name crosswalk from PCMiller to determine the junction names at either end of the rebilled move. This step allowed me to further separate the data into data rebilled at a junction and data not rebilled at a junction. Moves that had unsuccessful SPLC-Junction merges were assumed to be rebilled local moves, and if there were no interchanges involved in the rest of the route, these moves were reassigned a single line move value of 1. Origin and termination access and HHIs were also adjusted accordingly. The portion of the rebilled move which was not the ultimate origin or termination was assigned an average of the access and HHI for the same carrier. These averages were calculated using the non-rebilled moves. There were some cases where either a junction or a carrier (in the case of short line carriers) did not appear in the portion of the CWS that was not rebilled. These moves were removed from the estimation as they could not be effectively assigned an origin or termination carrier profile.

For moves rebilled at a junction, the number of interchanges was increased by one and the interchange competition was shifted depending on the rebill code. In the cases where a move rebilled at a junction was classified as a single line move, the value was changed to 0. For moves rebilled at the termination, interchange competition values were shifted backward by one interchange, and for moves rebilled at the origin, competition values were shifted forward by one. In addition to this shifting for moves rebilled at the termination, average competition values were calculated by origin BEA area and junction from the non-rebilled CWS data, since there was no certainty behind the ultimate destination point of moves whose termination point was rebilled. The competition values calculated in section B were then assigned to the relevant junctions for moves with termination rebills as interchange 1 competition.

Rebill code 2 were removed from the estimation because they could not be grouped by origin or termination. This accounted for less than 1% of observations.

### **C. Final Dataset**

The estimation was performed on intermodal moves containing at least one Class 1 Carrier at either the origin or termination point. This was done to ensure that the estimation data most closely represented the study data. The addition of non-intermodal rates, which are typically higher than intermodal rates and lack equivalent truck competition, or short line carrier only routes could cause a misidentification of the effect of interchange competition on intermodal rail rates.

My final dataset after all these conditions contained approximately 380,000 observations.

### **B. Regression Estimation Methodology**

I ran three regressions, once with the individual revenue per car-mile, and twice with the grouped rate. The general form of these equations is:

$$Rate_i = \alpha + \beta_1 \text{interchange\_1\_competition}_i + \sum_{k=1}^n \gamma_k x_i + \varepsilon_i$$

$$Rate_i = \alpha + \beta_1 \text{active\_routes}_i + \sum_{k=1}^n \gamma_k x_i + \varepsilon_i$$

Where  $Rate_i$  is either the revenue per car-mile for route  $i$  or the grouped rate for move  $i$ ,  $\beta_1$  is our treatment of interest, and the vector  $\sum_{k=1}^n \gamma_k x_i$  is a vector of controls depending on the model specification. For models containing the “active\_routes” as treatment, origin and termination variables are omitted to avoid issues of collinearity/endogeneity.

Each version of the active routes model includes different controls for route distance. The first is a non-linear treatment of route distance which accounts for the increased efficiencies of long routes. The second is a piecewise mapping of distance bands through the inclusion of eleven dummy variables. The mapping is as follows:

$$distance\_band_i = \begin{cases} 1, 0 < route\_distance_i \leq 250 \\ 2, 251 < route\_distance_i \leq 500 \\ \vdots \\ 11, 2500 < route\_distance_i \end{cases}$$

### C. Additional Analyses

Two supplementary analyses were conducted using the results of the regression: estimated savings for shippers on the Meridian Speedway and total Truck Displacement.

#### Savings on the Meridian Speedway

An obvious outcome of the reduction in rate due to an increase in interchange competition along the Meridian Speedway would be direct savings to shippers. I calculate savings using both versions of the active route model by directly comparing fitted rates from my model to predicted rates under increased interchange competition. In other words, I calculate the difference between the existing rate and the theoretical rate through increased competition at savings on a per-car-mile basis. I then expanded these values into total savings using distance and actual NS volumes over all lanes over the Meridian Speedway.

Estimated total savings were calculated at the BEA origin-destination level using the following regression model:

$$Rate_i = \alpha + \beta_1 \text{active\_routes}_i + \sum_{k=1}^n \gamma_k x_i + \varepsilon_i$$

After this regression was estimated, I subset the dataset used in the regression to only contain Meridian interchange moves with BEA origin-destination pairs of interest. These include:

(1) *Transcontinental to/from Charlotte, Charleston, Greensboro, Atlanta, New York, Jacksonville, Harrisburg, and Savannah*

(2) *Dallas to to/from Charlotte, Charleston, Greensboro, Atlanta, New York, Jacksonville, Harrisburg, and Savannah*

(3) *Mexico to/from Atlanta, New York, Jacksonville, and Harrisburg*

After the CWS was subset to only contain routes with these BEA combinations, I adjusted the number of active routes from 1 to 2 (i.e., the theoretical increase in active routes if CSXT were to be given access to Meridian to deliver to the same locations). I then predicted the new rates using my fitted model with the adjusted treatment.

After I predicted the new rate under increased interchange competition, I calculated savings using both versions of the active routes regression and compared the newly predicted values to the fitted values from each regression. The difference between the fitted and predicted value was then multiplied by the full route distance and the actual NS volume by lane to construct total savings by lane. These savings were further collapsed into three groups, Transcontinental, Dallas, and Mexico moves, and savings were summarized up to the level of these groups

### **Truck Displacement**

An indirect effect of the reduction in rate along the Meridian Speedway is the chance for shippers currently using trucks to become rail customers due to decreased rates. The displacement effect from the change in rate was calculated in a two-step process. First, current rates and theoretical rates were calculated. After this, these rates were both used as inputs in a regression estimating the intermodal rail share. The difference in intermodal rail share pre and post CSXT access to Meridian was then applied to current truck volumes along all Meridian Speedway lanes to determine total trucks displaced.

Estimating total truck displacement involved the estimation of an additional regression. Modifying Dr. Bengt Muten's intermodal share regression to account for rates, I estimate the following linear probability model twice<sup>11</sup>:

$$\begin{aligned} \text{Rail\_IM\_Share}_i &= \beta_1 \text{rate}_i + \beta_2 \text{single\_line\_avail}_i + \beta_3 \text{truck\_miles}_i + \beta_4 \text{distance\_diff}_i \\ &+ \beta_5 \text{tot\_tons}_i + \varepsilon_i \end{aligned}$$

Where  $\text{rate}_i$  is the fitted grouped rate from either of the active routes regression,  $\text{single\_line\_avail}_i$  is an indicator for if there is a single line move currently active at the BEA OD level,  $\text{truck\_miles}_i$  is a weighted average distance calculated by first converting the ton-miles variable from the FAF into miles, and then weighting by yearly trips,  $\text{distance\_diff}_i$  is the difference between the rail and truck miles, all for move  $i$ , and  $\text{tot\_tons}_i$  is the combined total intermodal rail and truck weight at the BEA OD level.  $\text{Rail\_IM\_Share}_i$  is created by first grouping by origin-destination BEA area pairing, and then calculating the following formula:

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<sup>11</sup> See Verified Statement of Bengt Muten, Application Volume 2 p. 221

$$Rail\_IM\_Share_i = \frac{\sum_{i=1}^n rail\_im\_cars_i}{\sum_{i=1}^n rail\_im\_cars_i + \sum_{i=1}^n truck\_cars_i}$$

Where  $rail\_im\_cars_i$  is the total intermodal cars for a given BEA OD pair and  $truck\_cars_i$  is the total truck cars for a given BEA OD pair.

For domestic truck displacements, I took the difference between the fitted shares and the predicted shares, where the predicted shares used the predicted rates under increased interchange competition as an input. For moves that involved KCS, a mileage reduction was included in the rail distance to simulate the increase in operational efficiency from a KCS to UP switch on the new route including CSXT. This mileage reduction was calculated using the estimated hours to reach Shreveport from Laredo<sup>12</sup>.

Once the difference in shares was calculated for all moves, trucks displaced were determined for the same BEA OD pairs from the savings analysis by multiplying the difference in shares by the estimated FAF truck volume for a given BEA OD pair (in the case of Mexico moves, these displaced volumes were determined at the Port-BEA OD pair, i.e., Laredo or Eagle Pass). These displacements were further collapsed into three groups, Transcontinental, Dallas, and Mexico moves, and displacements were summarized up to the level of these groups.

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<sup>12</sup> See Carey HC "IM Delivery Times- Company Source.xlsx"

## Summary of Results

The analysis estimates that an increase in routing competition reduces the rail rate. This result persists regardless of the treatment specification and the controls, and the treatment estimate is robust in its direction and always statistically significant. The coefficients of interest in the final specification of the analysis can be seen in Table 1, row two, and the coefficient can be seen to represent the change in dollar per car-mile rate through increased routing competition. Specifically, my analysis shows an approximately \$0.04 per unit mile lower rate.

The models used in the final analysis can be broadly grouped as follows:

- *Active*: Regression model that estimates the effect of the number of active routes on the rate. The model includes a non-linear distance term (the square root of the distance) along with the linear term for distance to control for the diminishing marginal returns of an increase in distance on the rate. In other words, this specification was used to account for the fact that as the distance of a move increases, the rate does not increase proportionally with the distance, but instead steadily has a weaker, continuous effect as the distance gets very large. Columns in Figures 1-5 that are labeled with “Active” contain the estimates using this regression model.
- *Band*: Regression model that estimates the effect of the number of active routes on the rate, using a piecewise mapping of distance in 250-mile increments. This specification was created to instead model the relationship between distance and rate in steps. In this specification, a move that is 250 miles would be estimated using the “Distance Band 2” coefficient<sup>1</sup>. If that same move increased in distance to 251 miles, the rate would instead be estimated using the “Distance Band 3” coefficient<sup>2</sup>. Columns in Figures 1-5 that are labeled with “Band” contain the estimates using this regression model.

All versions of my treatment display the same intuitive result, that as the number of competitors increases, the rate decreases. The treatment variables are defined as “Active Routes” and “Options at First Interchange”<sup>3</sup>, where “Options at First Interchange” is defined as the number of available carriers at the first interchange in a move. An increase in carrier options at the first interchange leads to the rate falling by the coefficient for “Options at First Interchange”<sup>4</sup>. In my model using active routes as my treatment, an increase in the number of available routing options by one leads to the \$0.04 per car-mile decrease in rate, i.e., the coefficient assigned to Active Routes<sup>5</sup>. The fact that regardless of specification, my treatment of interest does not change in its direction (i.e., it is always negative), supports the claim that as competition increases, prices will fall.

In addition to the robustness of the direction of my treatment, the R-squared values for all six versions with a range of 0.55 to 0.60, which are reasonable results when using real world data. The R-squared is valuable in determining the explanatory power of the variables

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<sup>1</sup> See Table 1: Interchange Regression Results, row 28

<sup>2</sup> See Table 1: Interchange Regression Results, row 29

<sup>3</sup> See Table 1: Interchange Regression Results, rows 2 and 3

<sup>4</sup> See Table 1: Interchange Regression Results, row 3

<sup>5</sup> See Table 1: Interchange Regression Results, row 2

included in a model but does not imply that a model is accurately estimating the causal effect of a variable. A higher R-squared implies that the variables included in a model explain the variation in the output variable well.

All six specifications display a statistically significant negative relationship between the rate and the number of interchange competitors/number of active routes. First, the coefficients for my treatments are at least double their respective standard errors<sup>6</sup>. This check is a heuristic, as the implication of this relationship is that a t-test of the coefficient (i.e., a test to determine if the coefficient being observed is not zero in reality) would result in a value of 1.96. This t-statistic value corresponds to a 95% significance level, meaning that the observed coefficient is 95% likely to not exist randomly and would be replicated using another similar sample of data<sup>7</sup>. Another way of confirming the statistical significance of my treatment is by utilizing the p-values produced from the estimation procedure. The p-value reflects the highest possible likelihood that the coefficient produced in estimation is not observed by chance. All six versions of my model produce p-values for my treatment that corresponds to a 99% significance level, in other words, it is 99% likely that the coefficient we are observing is not due to random chance<sup>8</sup>.

When estimating a regression, one of the outputs of the model is the residuals. The residuals are the real values of the output variable that do not fall on the line estimated in a linear regression. It is possible that the residuals of a model (also called the errors) take on an unidentified functional form, which causes misestimation of standard errors and test statistics. This phenomenon is called heteroskedasticity and is prevalent in models with grouped variables, models that utilize observational data, or large datasets (all of which are characteristics of the data I use in estimation)<sup>9</sup>.

To prevent misidentification of statistical significance and to correct for heteroskedasticity, Breusch-Pagan tests were conducted on all models reported (including rail intermodal share regressions), and heteroskedasticity-robust standard errors are displayed<sup>10</sup>. The Breusch-Pagan test is a standard method for testing the presence of heteroskedasticity that takes the squared residuals from a model and regresses these newly squared regressors against the response variables (inputs) from the primary regression model<sup>11</sup>. A chi-squared statistic is then calculated for this model, and if the p-value for this statistic is at or above 95% significance, there is heteroskedasticity present in the model<sup>12</sup>. The Breusch-Pagan tests identified heteroskedasticity in all models. Due to the presence of heteroskedasticity in all models, White Standard Errors<sup>13</sup> and heteroskedasticity-robust t-statistics were used instead of traditional standard errors and t-statistics to account for heteroskedasticity. After adjusting

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<sup>6</sup> See Table 1: Interchange Regression Results, rows 2 and 3, standard errors reported in parentheses below coefficient

<sup>7</sup> Jeffrey M. Wooldridge, *Introductory Econometrics*, Appendix G

<sup>8</sup> Jeffrey M. Wooldridge, *Introductory Econometrics*, Appendix G

<sup>9</sup> Jeffrey M. Wooldridge, *Econometric Analysis of Cross Section and Panel Data*, MIT Press, 2001, Chapter 4

<sup>10</sup> See Table 1: Interchange Regression Results and Table 2: Intermodal Rail vs Truck Share Regression Results, standard errors reported in parentheses below coefficient

<sup>11</sup> Jeffrey M. Wooldridge, *Introductory Econometrics*, Chapter 8

<sup>12</sup> Jeffrey M. Wooldridge, *Introductory Econometrics*, Chapter 8 and Appendix G

<sup>13</sup> Jeffrey M. Wooldridge, *Econometric Analysis of Cross Section and Panel Data*, MIT Press, 2001, Chapter 6

for heteroskedasticity the statistical significance of my estimates were unchanged from the original results<sup>14</sup>.

Finally, the savings and displacement estimates were calculated in two steps. First, the fitted values (the values that the model estimates without any adjustments to competition) from both the Active and Band versions of the model were compared to the predicted values from both the Active and Band versions of the model (the values that the model estimates after an increase in the number of active routes by one). The difference between these two estimated rates is the coefficient for Active Routes, my treatment variable<sup>15</sup>. For my estimation of truck displacement, the fitted values from my rate specifications were used as an input in the intermodal share regressions<sup>16</sup>. Figures 1 and 2 display both the fitted and predicted value from each specification used with a “Fitted” or “Predicted” column header. In Figures 3-5, the difference between the fitted and predicted values of the rail intermodal share, by model, are displayed with a column header beginning with “Change”. Similar to the estimation of rail savings, this difference is equivalent to taking the difference between the coefficient of my treatment variable in the intermodal share regression multiplied by both the fitted and predicted rate for a given BEA OD lane<sup>17</sup>.

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<sup>14</sup> See Table 1: Interchange Regression Results and Table 2: Intermodal Rail Share vs Truck Share Regression Results, *Notes* section

<sup>15</sup> See Table 1: Interchange Regression Results, under Grouped Rate, Active and Band, row 2

<sup>16</sup> See Table 2: Intermodal Rail Share vs Truck Share Regression Results rows 2 and 3, “Band Regression Fitted Values” and “Active Regression Fitted Values”

<sup>17</sup> See Table 2: Intermodal Rail Share vs Truck Share Regression Results rows 2 and 3, “Band Regression Fitted Values” and “Active Regression Fitted Values”

**Table 1: Interchange Regression Results**

|                                                 | Rate              |                   |                   | Grouped Rate      |                   |                   |
|-------------------------------------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|
|                                                 | <i>Simple</i>     | <i>Active</i>     | <i>Band</i>       | <i>Simple</i>     | <i>Active</i>     | <i>Band</i>       |
| (1) Constant                                    | 5.721<br>(0.087)  | 5.734<br>(0.079)  | 1.988<br>(0.021)  | 5.019<br>(0.079)  | 5.442<br>(0.075)  | 1.847<br>(0.019)  |
| (2) Active Routes                               |                   | -0.050<br>(0.004) | -0.056<br>(0.004) |                   | -0.048<br>(0.004) | -0.044<br>(0.003) |
| (3) Options at First Interchange                | -0.285<br>(0.009) |                   |                   | -0.312<br>(0.008) |                   |                   |
| (4) Railroad Owned                              | -0.074<br>(0.004) | -0.060<br>(0.003) | -0.043<br>(0.003) | -0.110<br>(0.004) | -0.044<br>(0.003) | -0.028<br>(0.003) |
| (5) Trail Train                                 | -0.036<br>(0.004) | -0.013<br>(0.004) | 0.016<br>(0.004)  | -0.043<br>(0.004) | 0.001<br>(0.004)  | 0.030<br>(0.004)  |
| (6) Origin HHI                                  | 0.000<br>(0.000)  |                   |                   | 0.000<br>(0.000)  |                   |                   |
| (7) Termination HHI                             | 0.000<br>(0.000)  |                   |                   | 0.000<br>(0.000)  |                   |                   |
| (8) Options at Second Interchange               | -0.552<br>(0.023) |                   |                   | -0.531<br>(0.021) |                   |                   |
| (9) Options at Third Interchange                | -0.427<br>(0.027) |                   |                   | -0.567<br>(0.021) |                   |                   |
| (10) Distance                                   | 0.002<br>(0.000)  | 0.002<br>(0.000)  |                   | 0.002<br>(0.000)  | 0.002<br>(0.000)  |                   |
| (11) $\sqrt{\text{Distance}}$                   | -0.214<br>(0.004) | -0.206<br>(0.003) |                   | -0.202<br>(0.004) | -0.200<br>(0.003) |                   |
| (12) Class 1 Origin Access                      | -0.033<br>(0.001) |                   |                   | -0.034<br>(0.001) |                   |                   |
| (13) Class 1 Termination Access                 | -0.049<br>(0.001) |                   |                   | -0.047<br>(0.001) |                   |                   |
| (14) Single Line Move                           | -1.341<br>(0.057) | -1.510<br>(0.04)  | 0.139<br>(0.018)  | -1.133<br>(0.057) | -1.323<br>(0.039) | 0.225<br>(0.017)  |
| (15) Number of Interchanges                     | 0.683<br>(0.025)  | -0.025<br>(0.004) | 0.052<br>(0.006)  | 0.816<br>(0.024)  | 0.026<br>(0.004)  | 0.103<br>(0.006)  |
| (16) Truck Rate                                 | 0.053<br>(0.001)  | 0.055<br>(0.002)  | 0.058<br>(0.002)  | 0.050<br>(0.001)  | 0.052<br>(0.001)  | 0.055<br>(0.002)  |
| (17) Origin HHI*Termination HHI                 | 0.000<br>(0.000)  |                   |                   | 0.000<br>(0.000)  |                   |                   |
| (18) $\sqrt{\text{Distance}}$ *Single Line Move | 0.034<br>(0.001)  | 0.039<br>(0.001)  |                   | 0.031<br>(0.001)  | 0.037<br>(0.001)  |                   |
| (19) STB IM Code E                              |                   | -0.012<br>(0.04)  | -0.198<br>(0.045) |                   | 0.004<br>(0.023)  | -0.180<br>(0.028) |

**Table 1: Interchange Regression Results**

|                                     | Rate              |                   |                   | Grouped Rate      |                   |        |
|-------------------------------------|-------------------|-------------------|-------------------|-------------------|-------------------|--------|
|                                     | Simple            | Active            | Band              | Simple            | Active            | Band   |
| (20) STB IM Code H                  | -0.604<br>(0.013) | -0.430<br>(0.011) | -0.241<br>(0.01)  | -0.320<br>(0.01)  | -0.140<br>(0.008) |        |
| (21) STB IM Code K                  |                   | -0.406<br>(0.331) | 0.108<br>(0.269)  | -0.205<br>(0.467) | 0.280<br>(0.409)  |        |
| (22) STB IM Code M                  | -0.323<br>(0.012) | -0.186<br>(0.01)  | -0.106<br>(0.01)  | -0.142<br>(0.008) | -0.066<br>(0.008) |        |
| (23) STB IM Code P                  | -0.161<br>(0.016) | -0.190<br>(0.017) | 0.014<br>(0.015)  | -0.256<br>(0.012) | -0.068<br>(0.01)  |        |
| (24) STB IM Code Q                  | -0.473<br>(0.012) | -0.338<br>(0.01)  | -0.241<br>(0.01)  | -0.250<br>(0.009) | -0.156<br>(0.009) |        |
| (25) STB IM Code R                  | -0.586<br>(0.016) | -0.390<br>(0.014) | -0.246<br>(0.014) | -0.433<br>(0.011) | -0.304<br>(0.01)  |        |
| (26) STB IM Code X                  | -0.355<br>(0.011) | -0.209<br>(0.009) | -0.115<br>(0.01)  | -0.155<br>(0.008) | -0.062<br>(0.008) |        |
| (27) Active Routes*Single Line Move |                   | -0.152<br>(0.005) | -0.111<br>(0.006) | -0.164<br>(0.005) | -0.124<br>(0.005) |        |
| (28) Distance Band 2                |                   |                   | -0.704<br>(0.018) |                   | -0.716<br>(0.016) |        |
| (29) Distance Band 3                |                   |                   | -0.969<br>(0.013) |                   | -0.968<br>(0.012) |        |
| (30) Distance Band 4                |                   |                   | -0.997<br>(0.013) |                   | -1.000<br>(0.012) |        |
| (31) Distance Band 5                |                   |                   | -0.988<br>(0.013) |                   | -0.982<br>(0.012) |        |
| (32) Distance Band 6                |                   |                   | -0.976<br>(0.014) |                   | -0.984<br>(0.013) |        |
| (33) Distance Band 7                |                   |                   | -0.982<br>(0.012) |                   | -0.980<br>(0.011) |        |
| (34) Distance Band 8                |                   |                   | -1.081<br>(0.013) |                   | -1.075<br>(0.012) |        |
| (35) Distance Band 9                |                   |                   | -1.058<br>(0.013) |                   | -1.076<br>(0.011) |        |
| (36) Distance Band 10               |                   |                   | -1.148<br>(0.013) |                   | -1.134<br>(0.012) |        |
| (37) Distance Band 11               |                   |                   | -1.038<br>(0.014) |                   | -1.026<br>(0.012) |        |
| <i>Notes</i>                        |                   |                   |                   |                   |                   |        |
| White Standard Errors               | Yes               | Yes               | Yes               | Yes               | Yes               | Yes    |
| Degrees of Freedom                  | 350116            | 376865            | 376137            | 351416            | 378290            | 377562 |
| R <sup>2</sup>                      | 0.60              | 0.57              | 0.55              | 0.60              | 0.57              | 0.55   |
| Adjusted R <sup>2</sup>             | 0.60              | 0.57              | 0.55              | 0.60              | 0.57              | 0.55   |

*Standard Errors Reported in Parentheses*

**Table 2: Intermodal Rail vs Truck  
Share Regression Results**

|                                     | <i>IM Rail Share</i> |                   |
|-------------------------------------|----------------------|-------------------|
|                                     | <i>Active</i>        | <i>Band</i>       |
| (1) Constant                        | 0.297<br>(0.004)     | 0.282<br>(0.003)  |
| (2) Band Regression Fitted Values   |                      | -0.069<br>(0.001) |
| (3) Active Regression Fitted Values | -0.076<br>(0.001)    |                   |
| (4) Single Line Availability        | 0.339<br>(0.003)     | 0.345<br>(0.003)  |
| (5) Truck Distance                  | 0.000<br>(0.000)     | 0.000<br>(0.000)  |
| (6) Rail Distance-Truck Distance    | 0.000<br>(0.000)     | 0.000<br>(0.000)  |
| (7) Total IM Tons                   | 0.000<br>(0.000)     | 0.000<br>(0.000)  |

**Notes:**

|                         |        |        |
|-------------------------|--------|--------|
| White Standard Errors   | Yes    | Yes    |
| Degrees of Freedom      | 358625 | 357904 |
| R <sup>2</sup>          | 0.40   | 0.39   |
| Adjusted R <sup>2</sup> | 0.40   | 0.39   |

*Standard Errors Reported in Parantheses*