

CP-KCS Merger Hearing

BNSF Presentation

SEPTEMBER 28-30, 2022



Statement by Roger Nober

(BNSF, Executive Vice President, Law and
Corporate Affairs, Chief Legal Officer)



CP-KCS Is Different from Other Major Mergers



- 1. Laredo Gateway Closure**
- 2. Impact in Houston**

It's All About Mexico



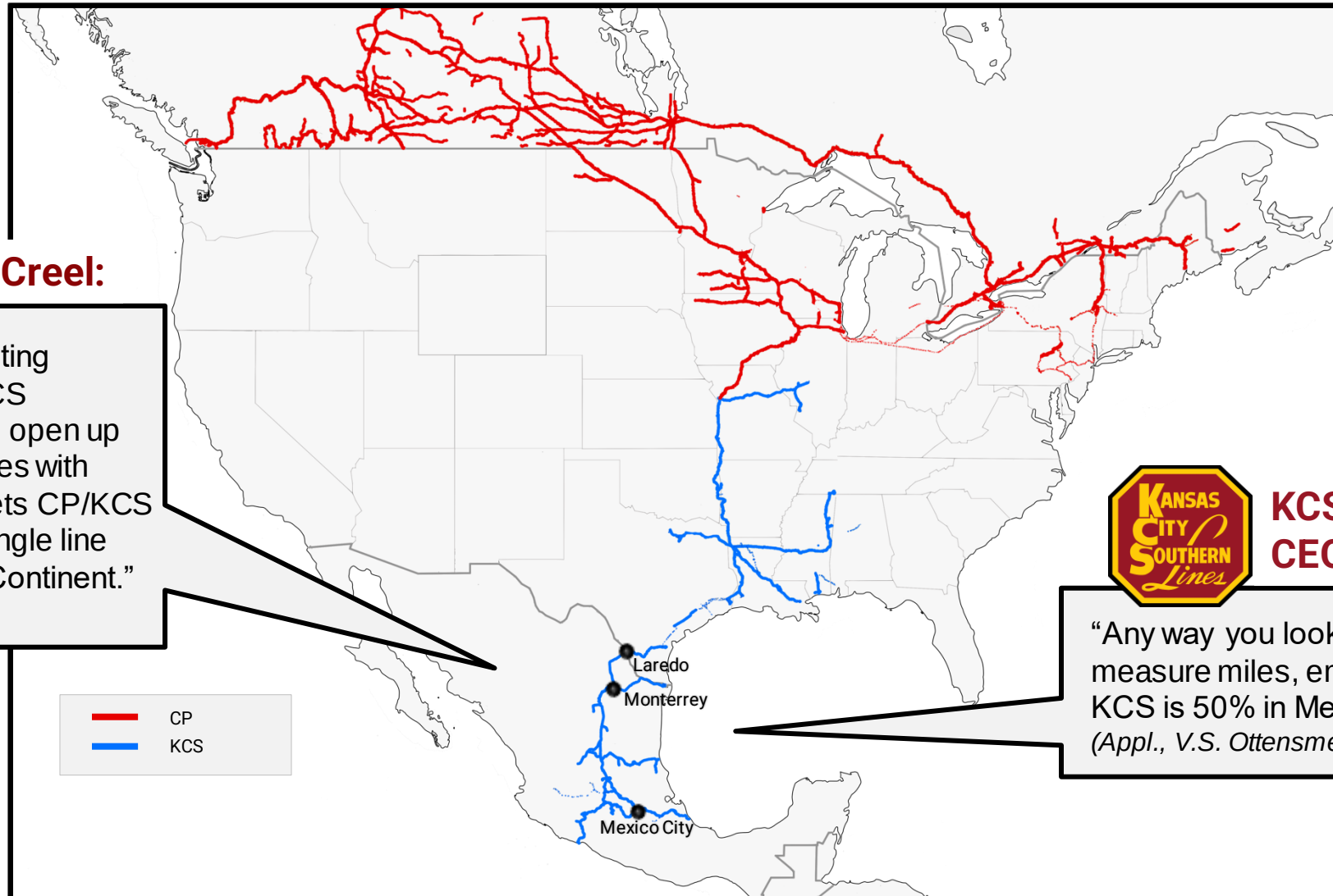
CP CEO Creel:

“One of the most exciting benefits of the CP/KCS combination will be to open up new trade opportunities with Mexico, whose markets CP/KCS will reach with new single line routes spanning the Continent.”
(Appl., V.S. Creel 10)



KCS President & CEO Ottensmeyer:

“Any way you look at us, whether you measure miles, employees, or revenues, KCS is 50% in Mexico.”
(Appl., V.S. Ottensmeyer 18)



KCS, UP and BNSF Routes to Laredo



Tex Mex Conditions Didn't Work to Preserve Competition



DATE - NOVEMBER 29, 2004

in the bound volumes of STB printed reports at a later date.

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 34342

THE KCS/TM APPLICATION

The Board approves the Company subject to employees, and sub

ABBREVIATIONS AND

INTRODUCTION

THE KCS/TM APPLICATION

DISCUSSION AND CON

Statutory Criteria

Competitive Analysis

The NITL/KCS Set

Monitoring and Ov

Labor Protection ..

Environmental Issu

UP Petition Concern

CN Petition to Vac

Status Reports ...

Effective Date ...

STB Finance D

- NITL;
- American Chemistry Council (ACC);
- Port of Houston Authority (PHA);
- Pacer International, Inc. (Pacer);
- E.I. du Pont de Nemours and Company (DuPont);
- AK Steel Corporation (AK Steel);
- Transportation Communications International Union (TCU);¹
- Brotherhood of Maintenance of Way Employees (BMWWE);
- United States Department of Agriculture (USDA); and
- United States Department of Transportation (DOT).

Applicants submitted two rebuttal pleadings (KCS-18, filed September 2, 2003, and KCS-19, filed September 22, 2003), summarized in Appendix C.

When the procedural schedule was resumed in 2004, additional comments were submitted by UP, CP, NITL, DOT, and Watco Companies, Inc. (Watco), and KCS replied. These submissions are summarized in Appendix D. The Board also received correspondence from others, listed in Appendix E.

Summary Of Decision. In this decision, we approve the acquisition by KCS of control of Tex Mex, subject to conditions (1) requiring KCS to comply with the terms of a Safety Integration Plan (SIP) developed with the Federal Railroad Administration (FRA); (2) providing affected employees the New York Dock² labor protective conditions, augmented for this transaction so that employees who choose not to follow their work to Mexico will not be deemed to have forfeited their New York Dock protections; and (3) providing for monitoring of operations at the Laredo Bridge by the Board's Office of Compliance and Enforcement (OCE). In addition, we are requiring KCS to comply with its commitment to keep the Laredo gateway open on commercially reasonable terms. Finally, in the event KCS acquires control of TFM, S.A. de C.V. (TFM), a Mexican railroad, we reserve the right to conduct oversight to examine the effects on transportation within the United States.

THE KCS/TM APPLICATION

The corporate structures of the applicants and other entities discussed in this decision are set forth in a chart in Appendix F and described more fully in Decision No. 2. Because of the complex corporate structures, a brief description is also provided here.

¹ TCU's request for leave to late-file its comments (on August 6, 2003) will be granted.

² See *New York Dock Ry.-Control-Brooklyn Eastern Dist.*, 360 U.S. 60, 84-90 (1979).

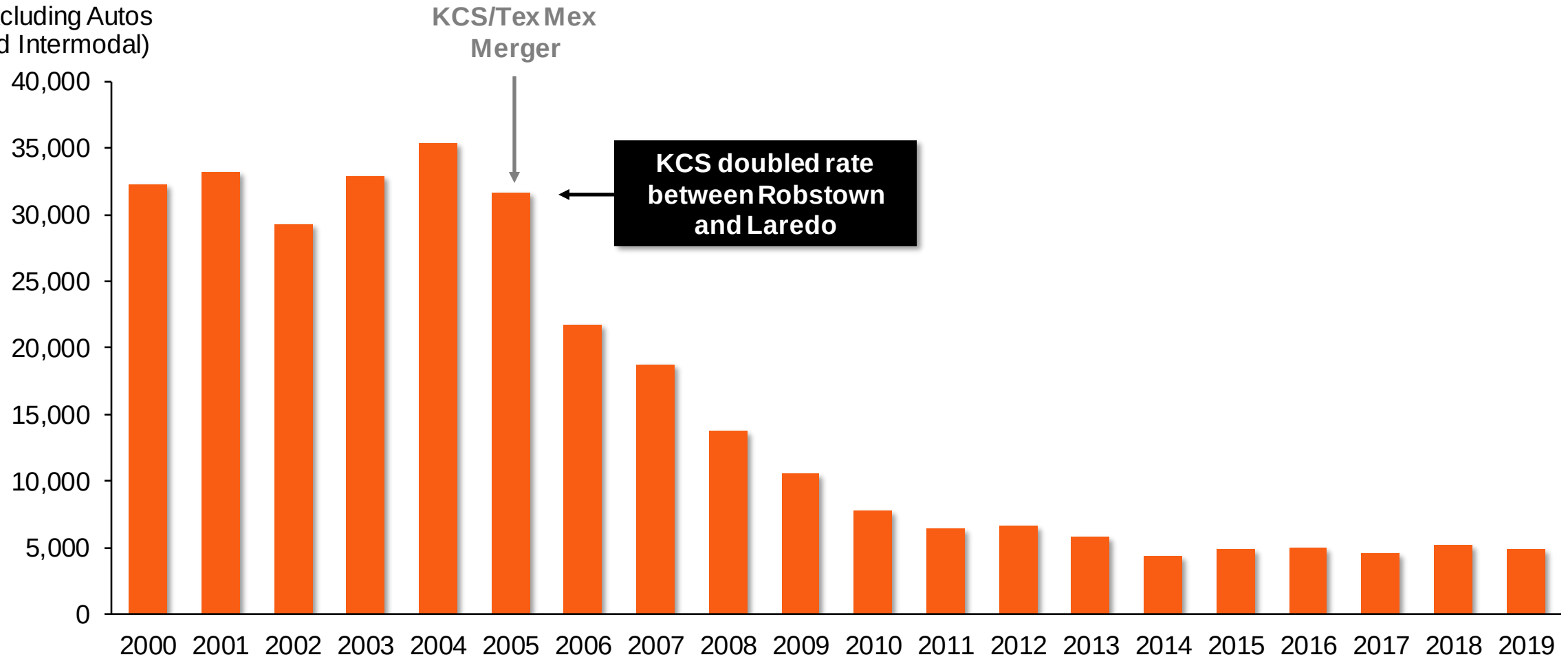
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After KCS/Tex Mex, KCS Doubled Rates and BNSF Traffic Dropped



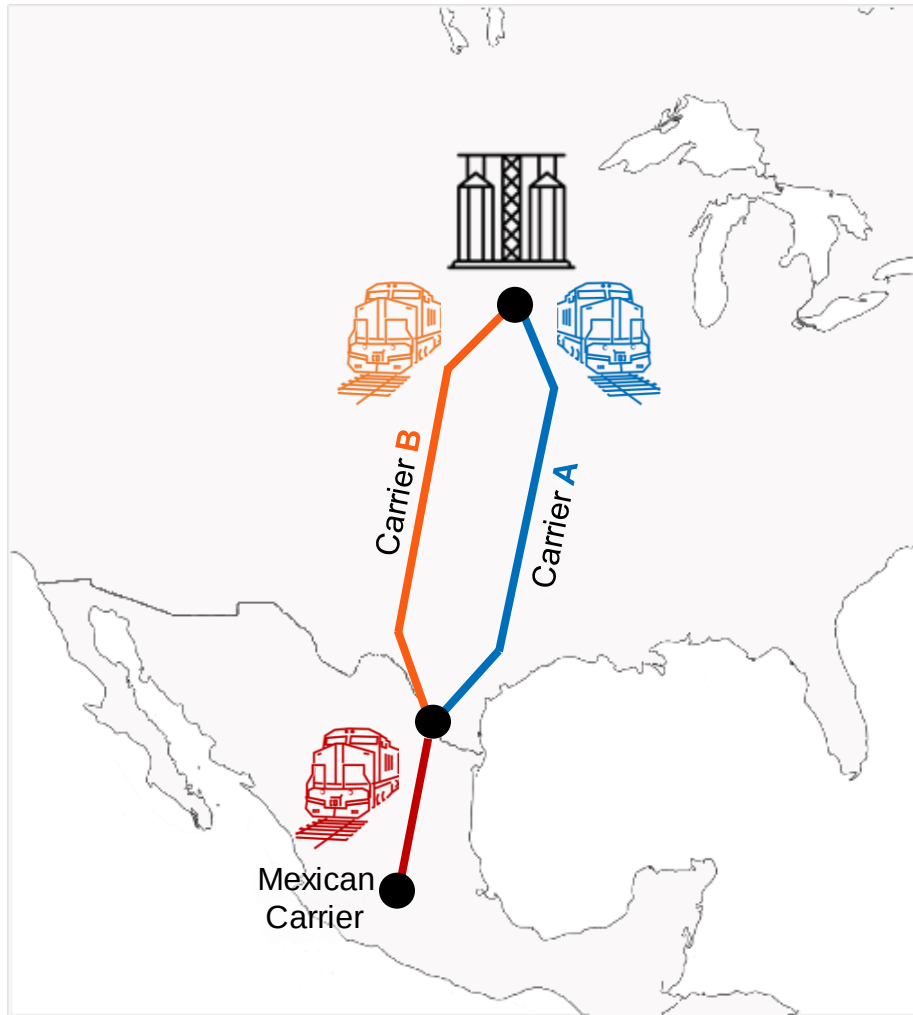
BNSF Annual Carloads (excluding Autos and Intermodal) over Laredo

Annual Carloads
(excluding Autos
and Intermodal)



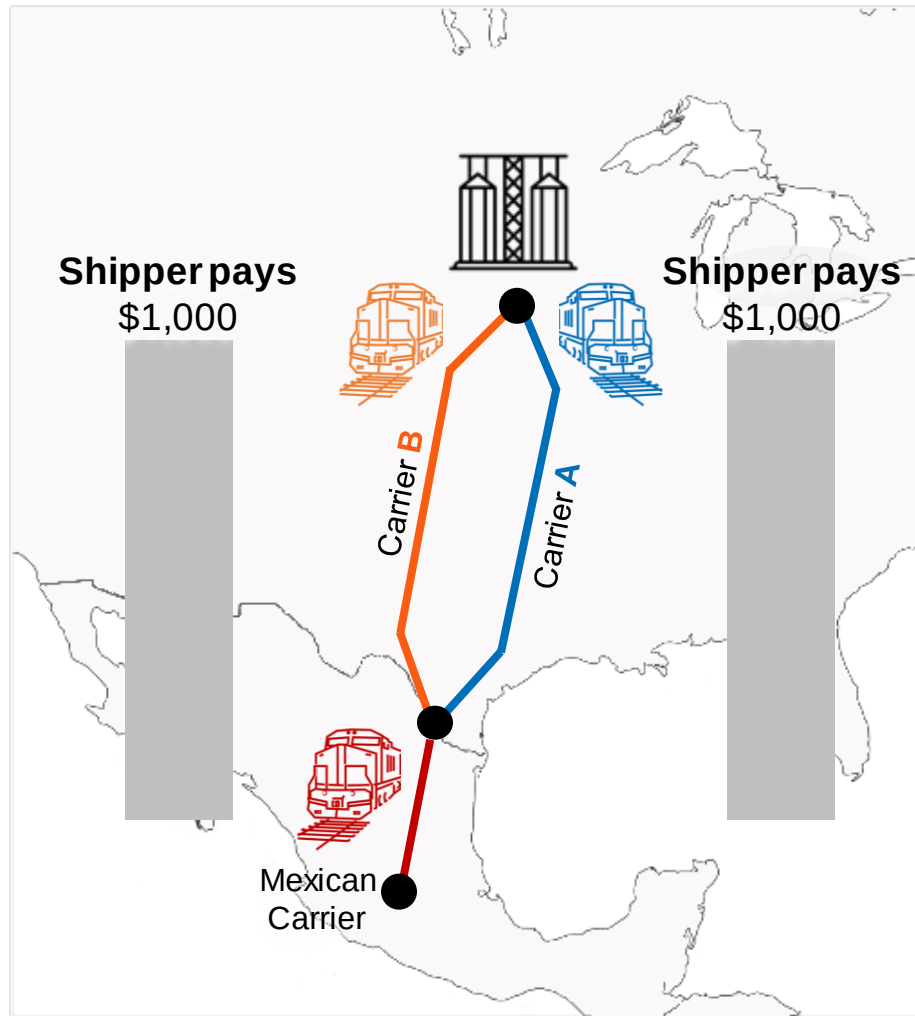
The Problem: Gateway Closure

Shipper's Pre-Merger Options



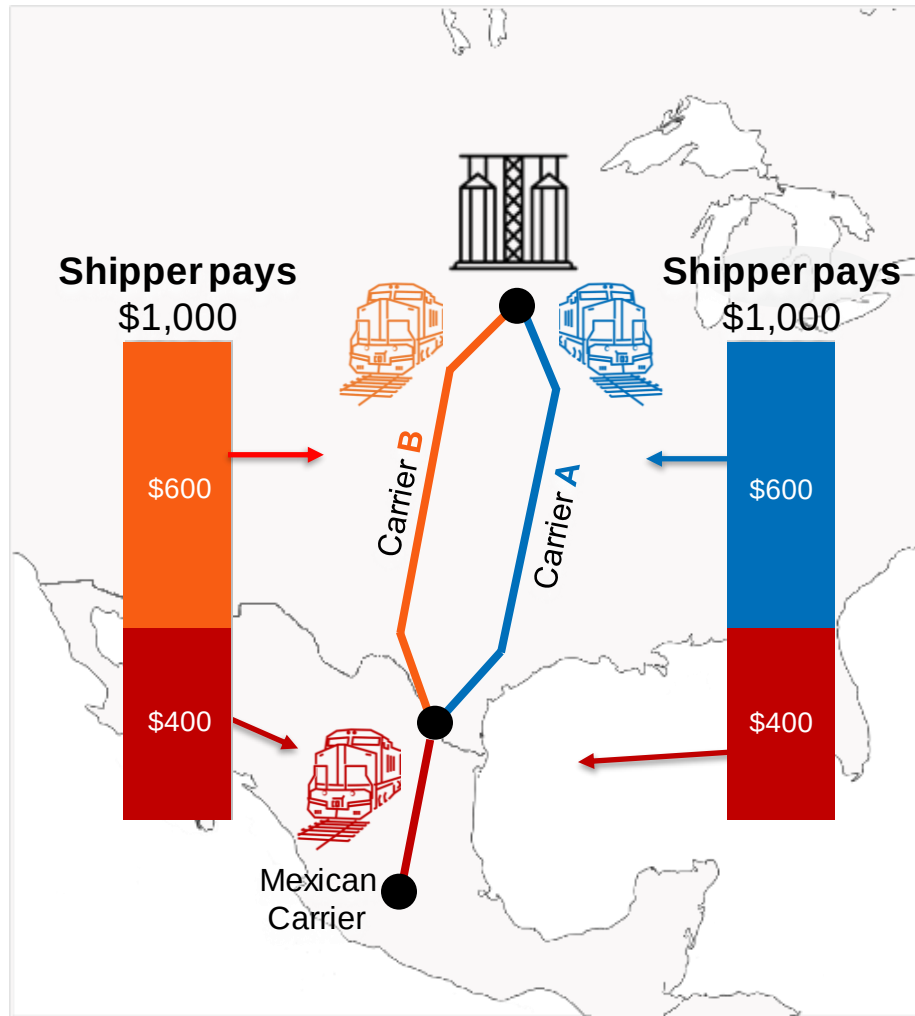
The Problem: Gateway Closure

Shipper Receives Competing Quotes
to Ship to Mexico



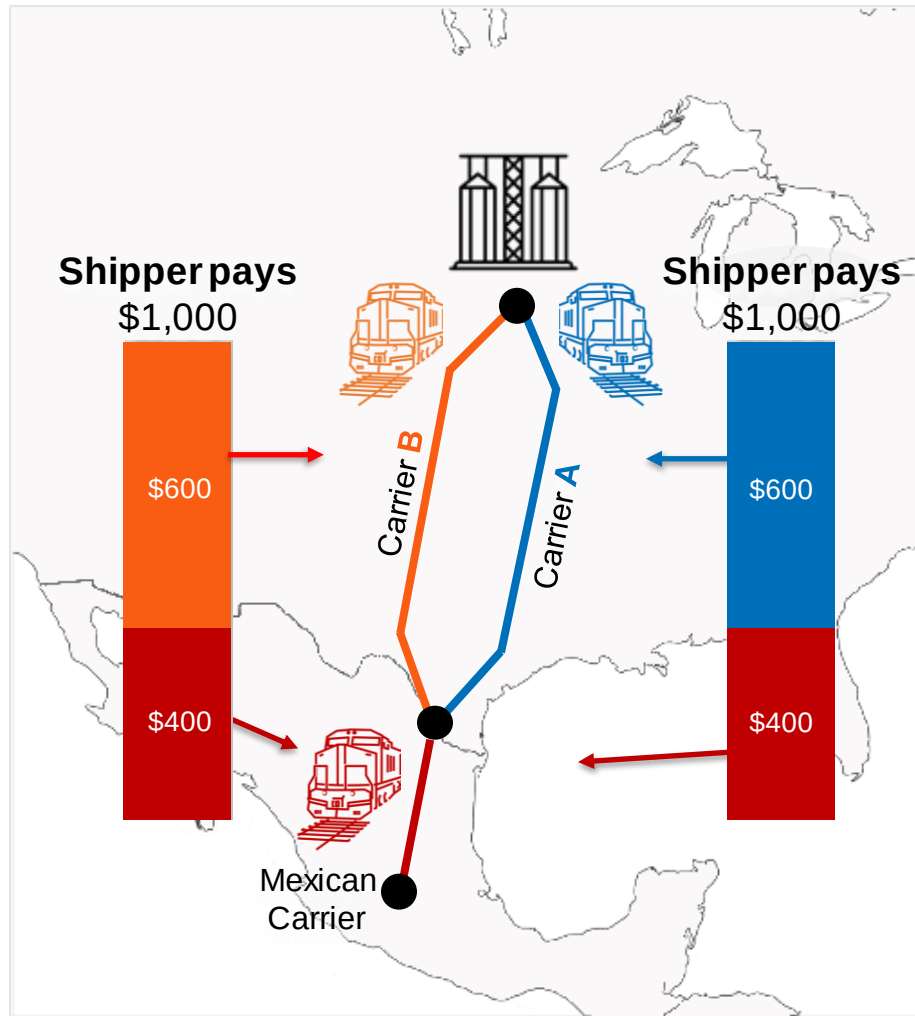
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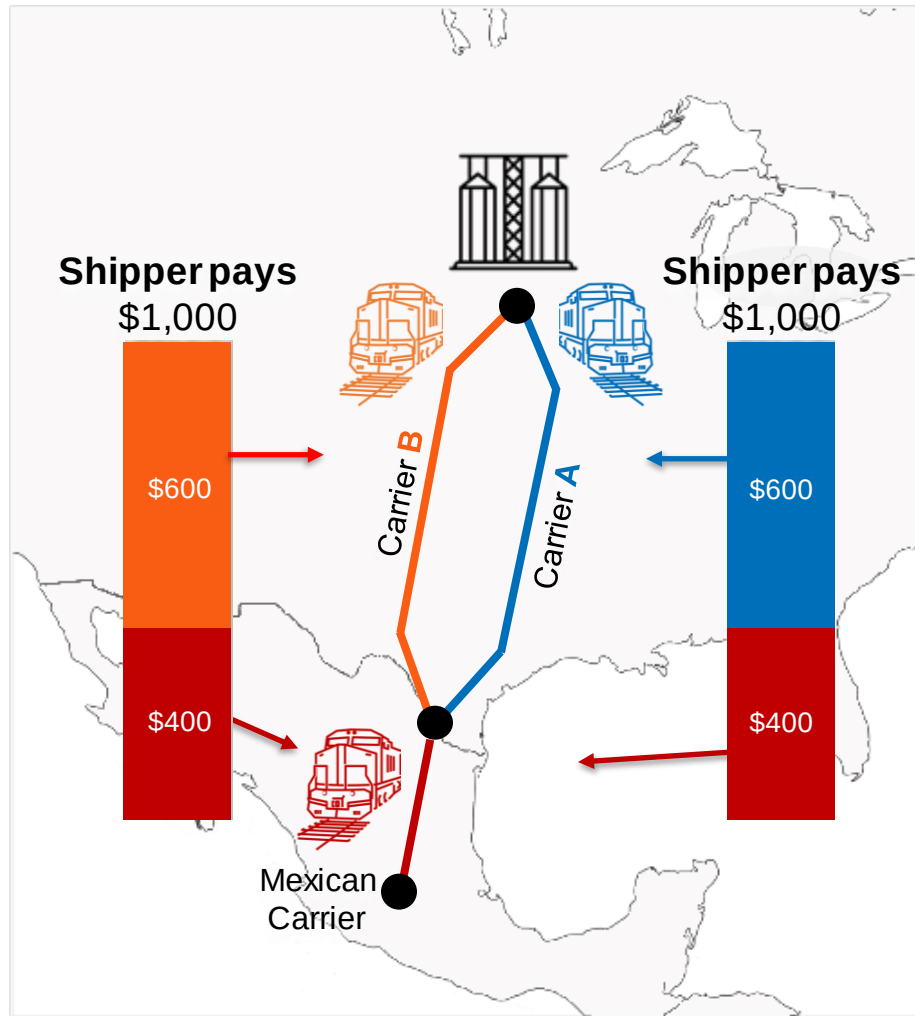
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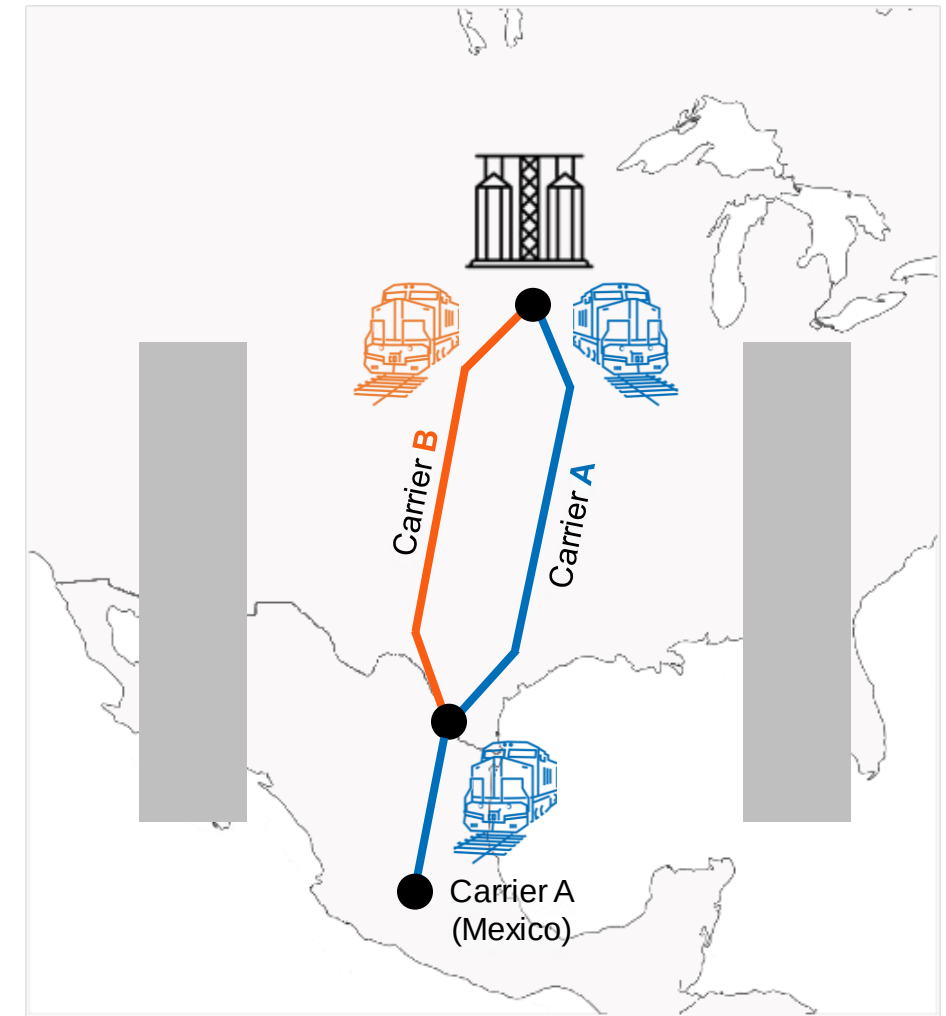
Merger

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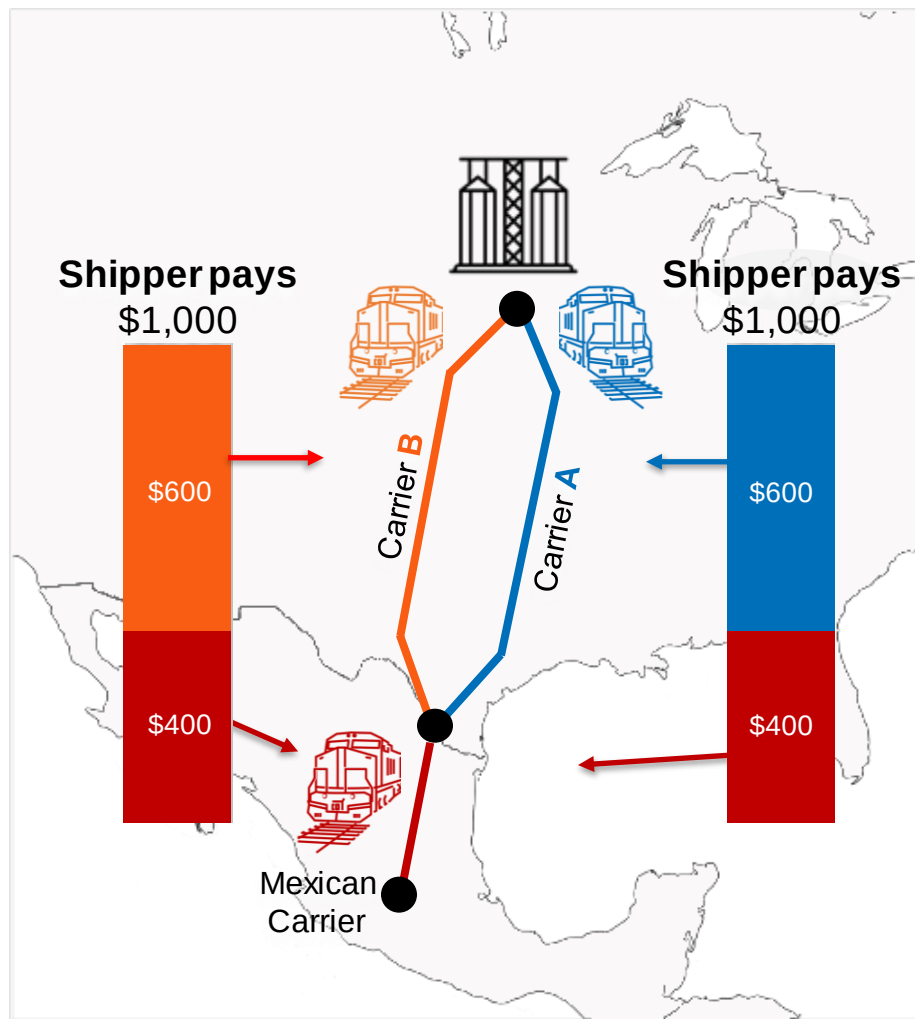


Carrier A Acquires Mexican Carrier



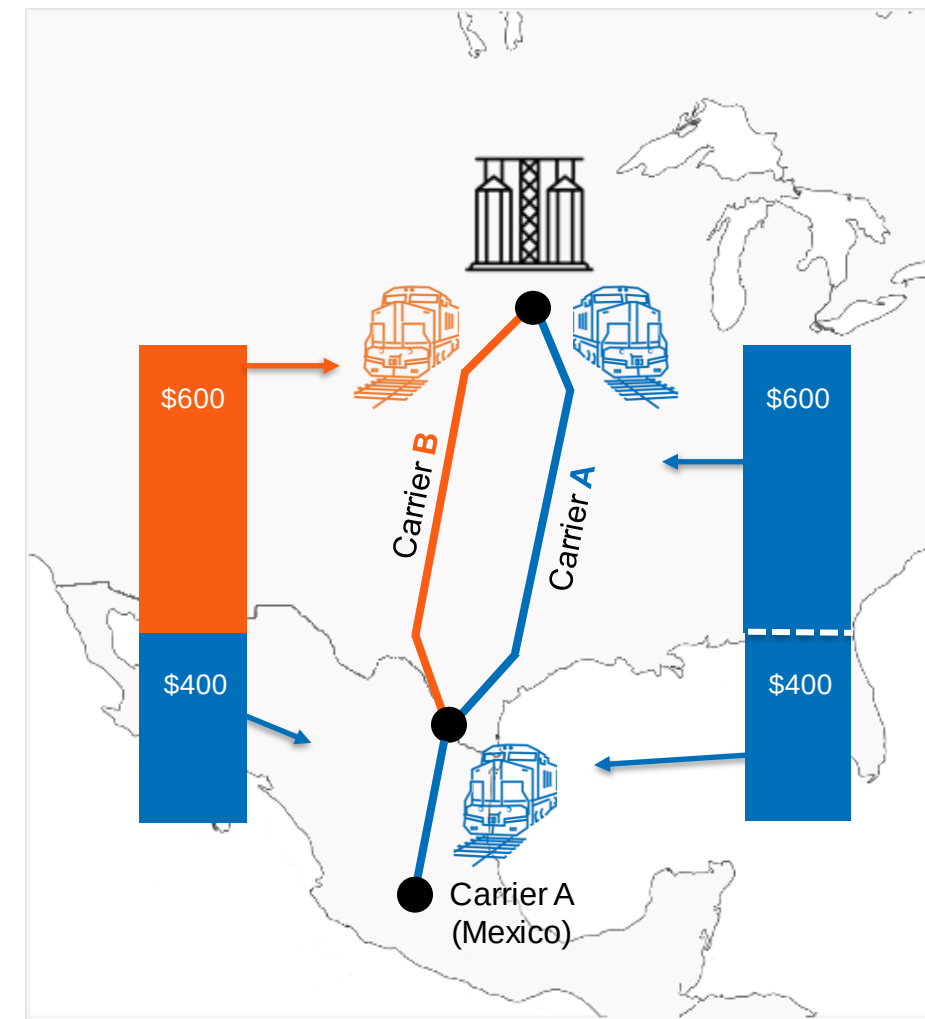
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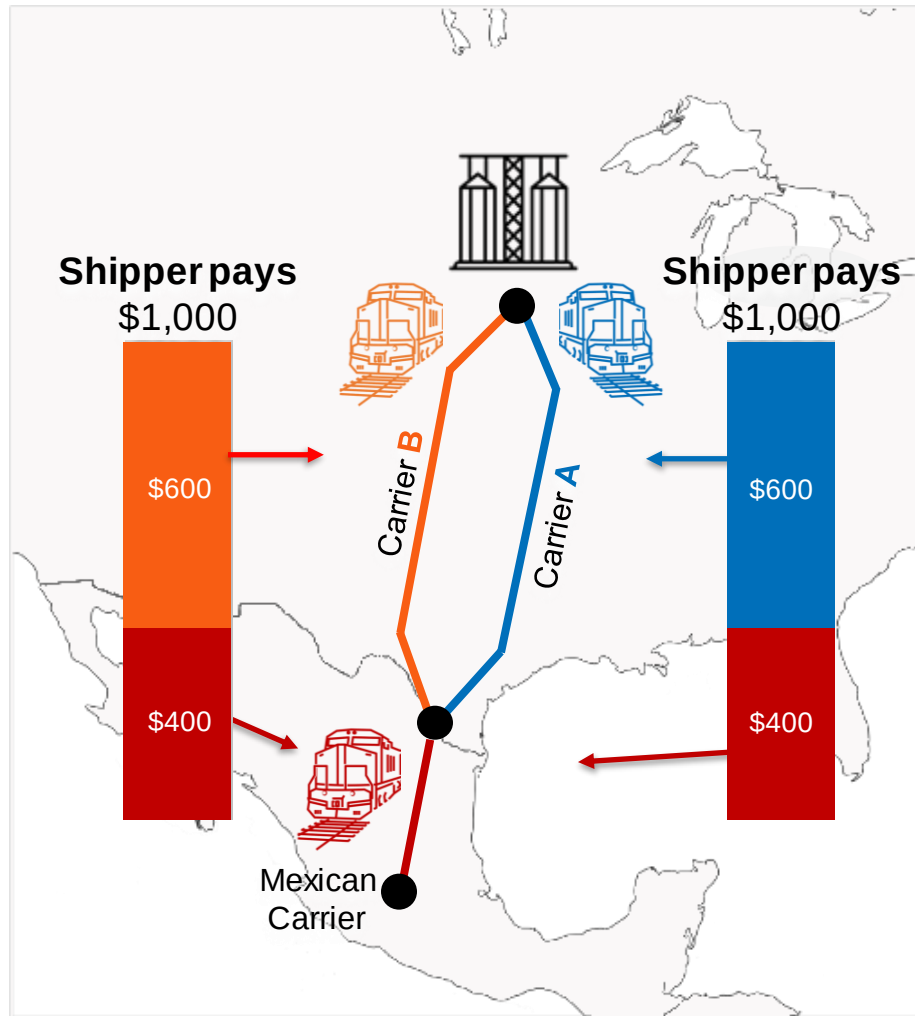
Merger

Carrier A Raises Rates on Mexico Segment

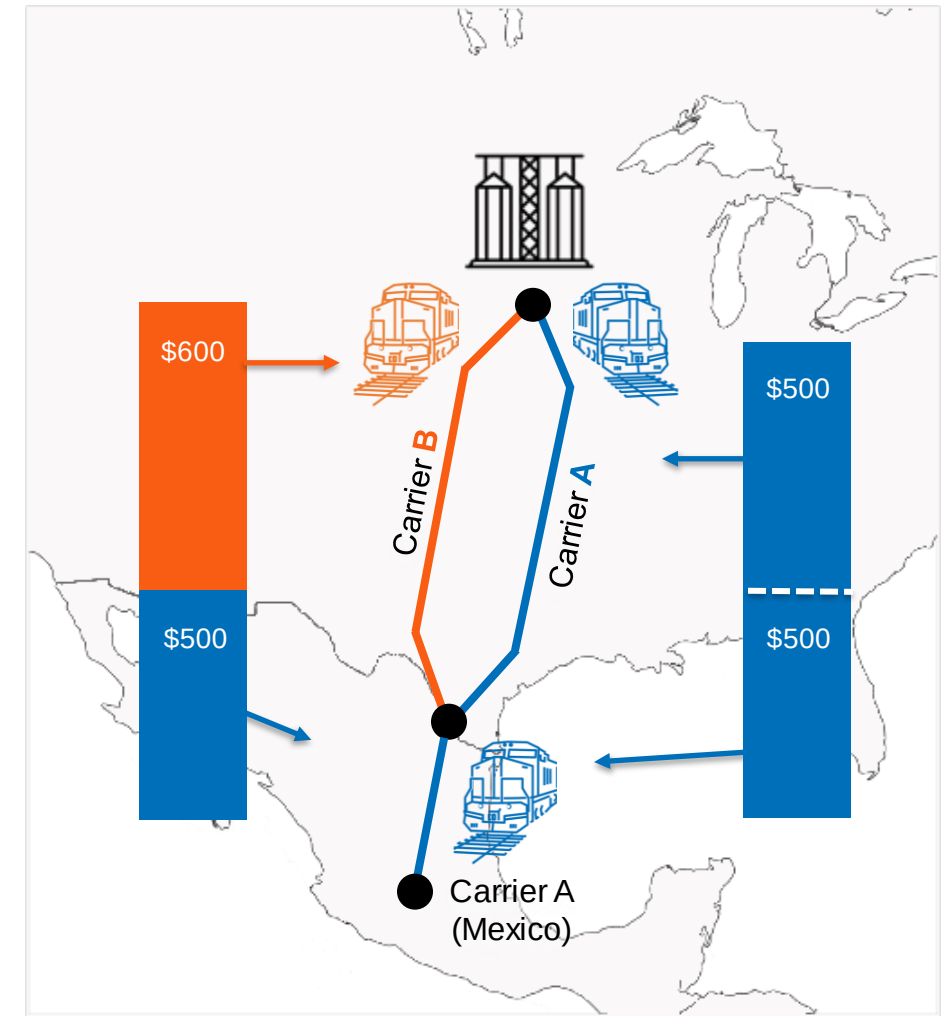


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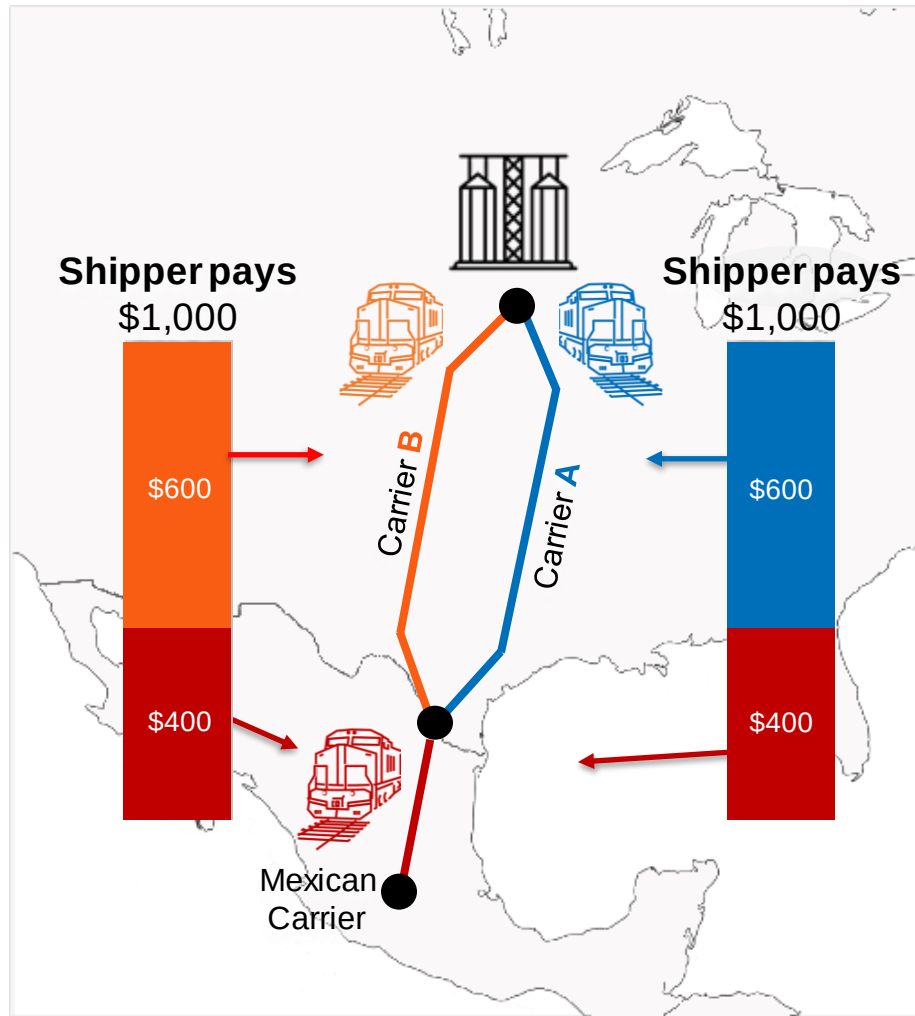


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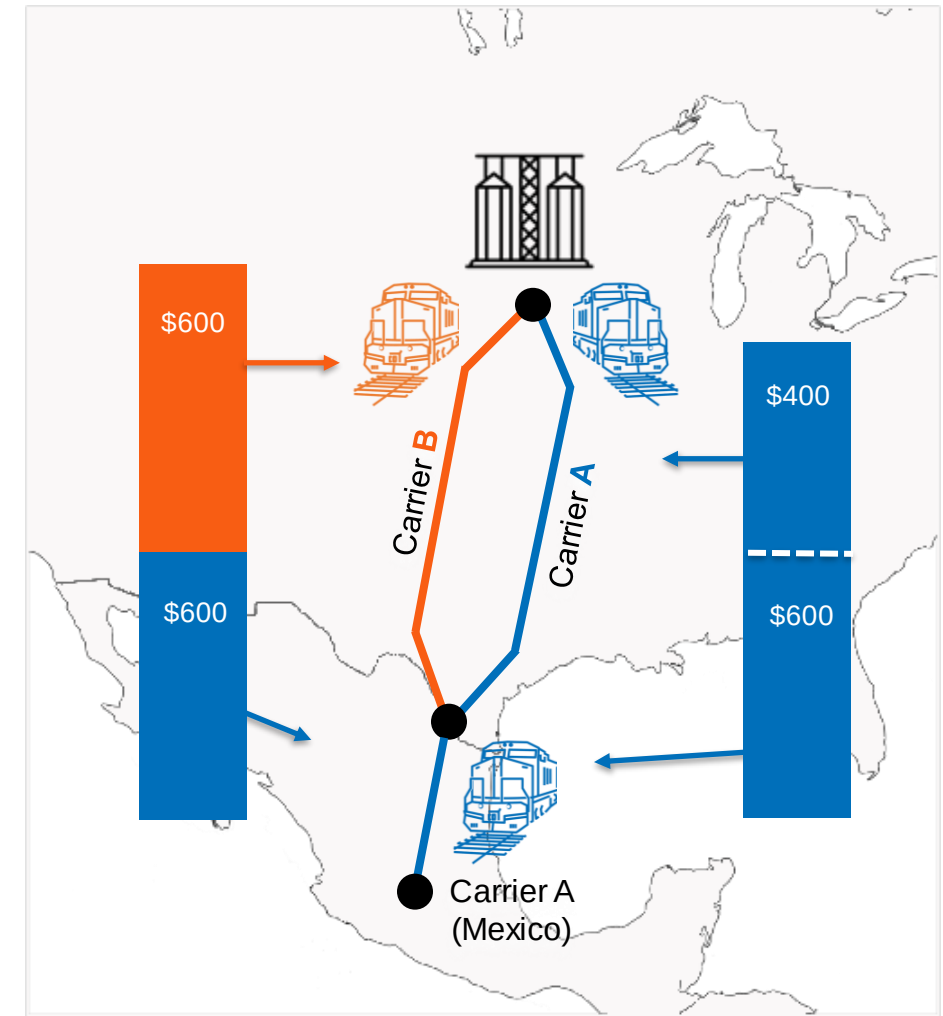


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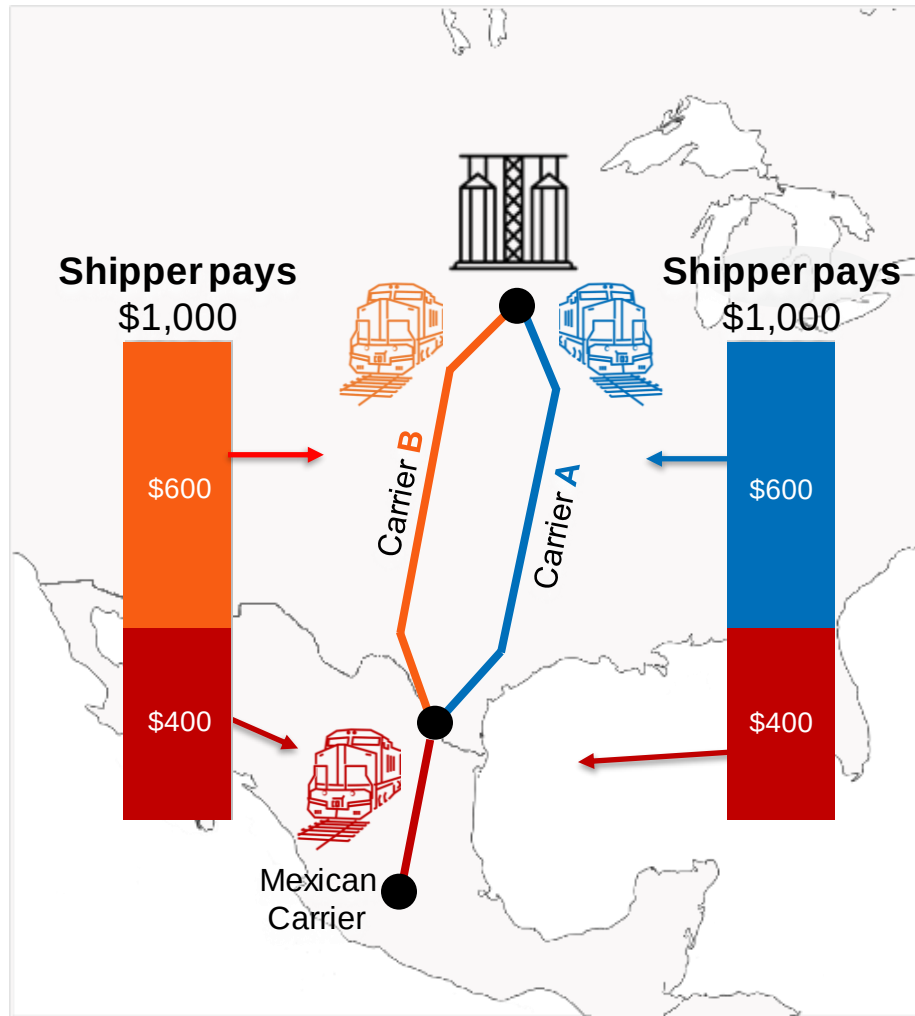


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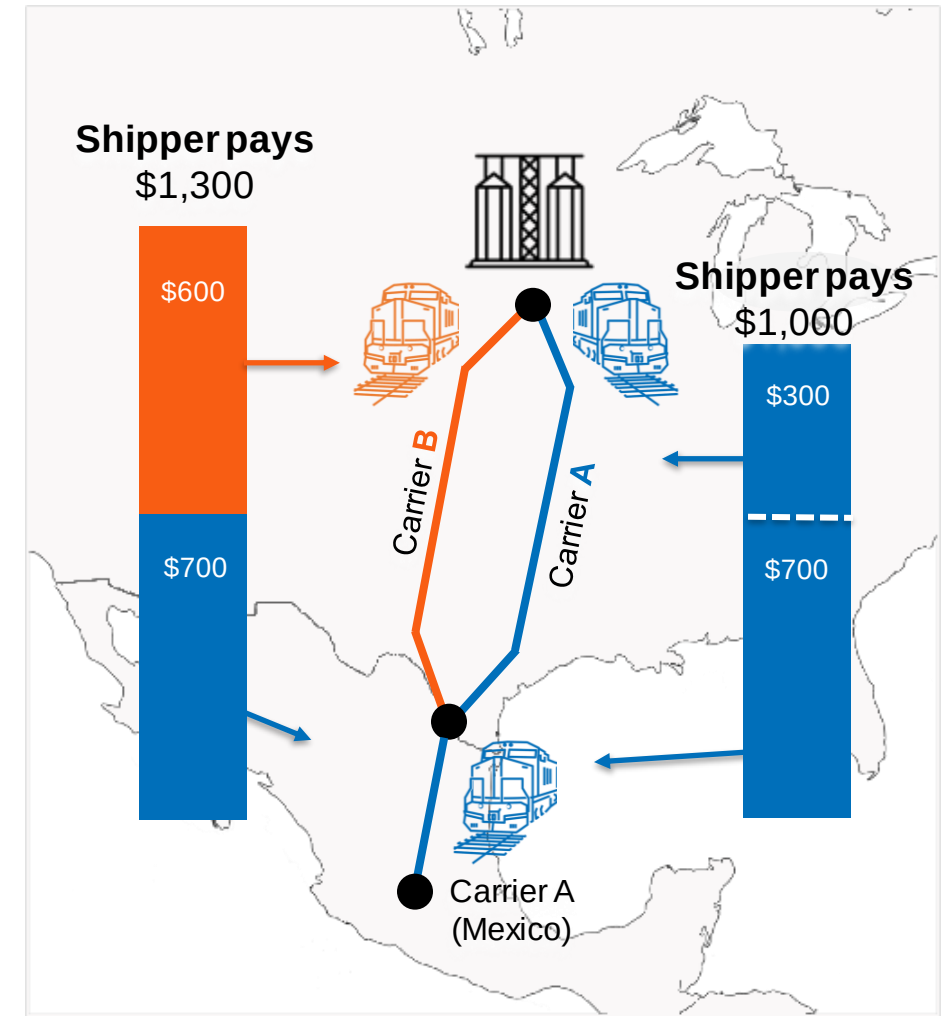
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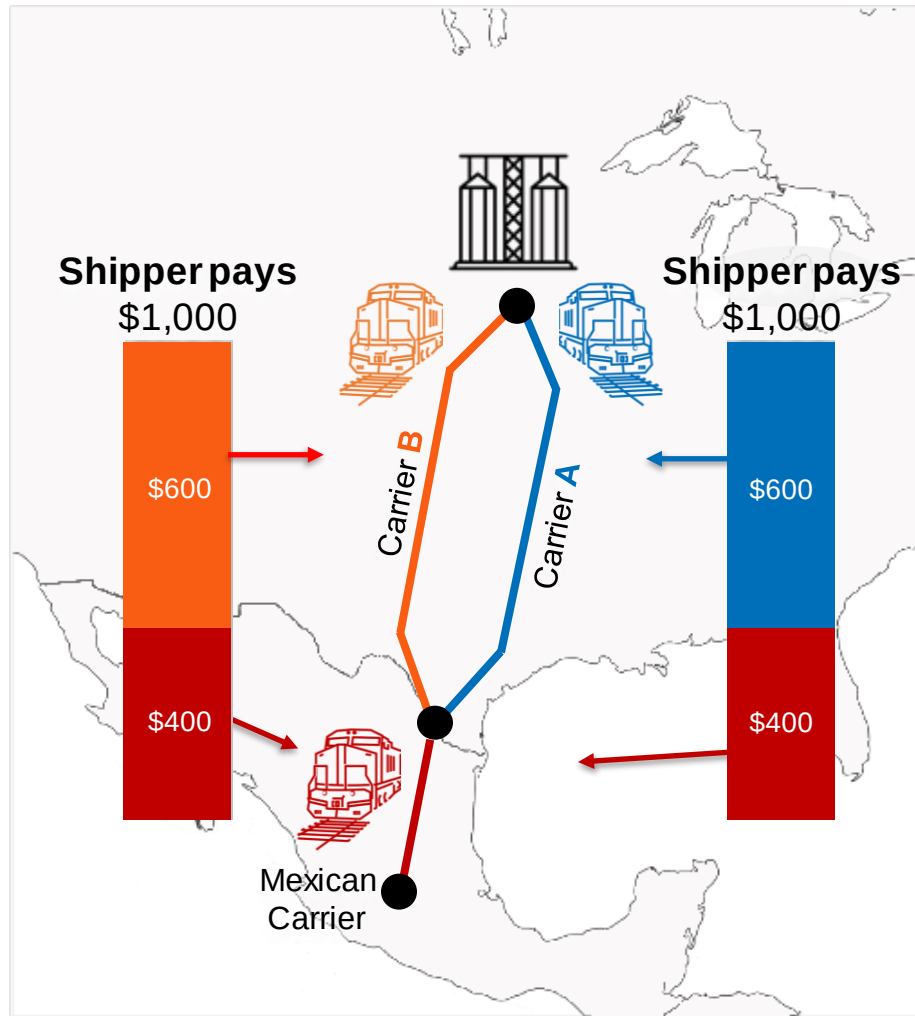
Merger

Merged Carrier Closes Gateway by Manipulating Prices in Mexico



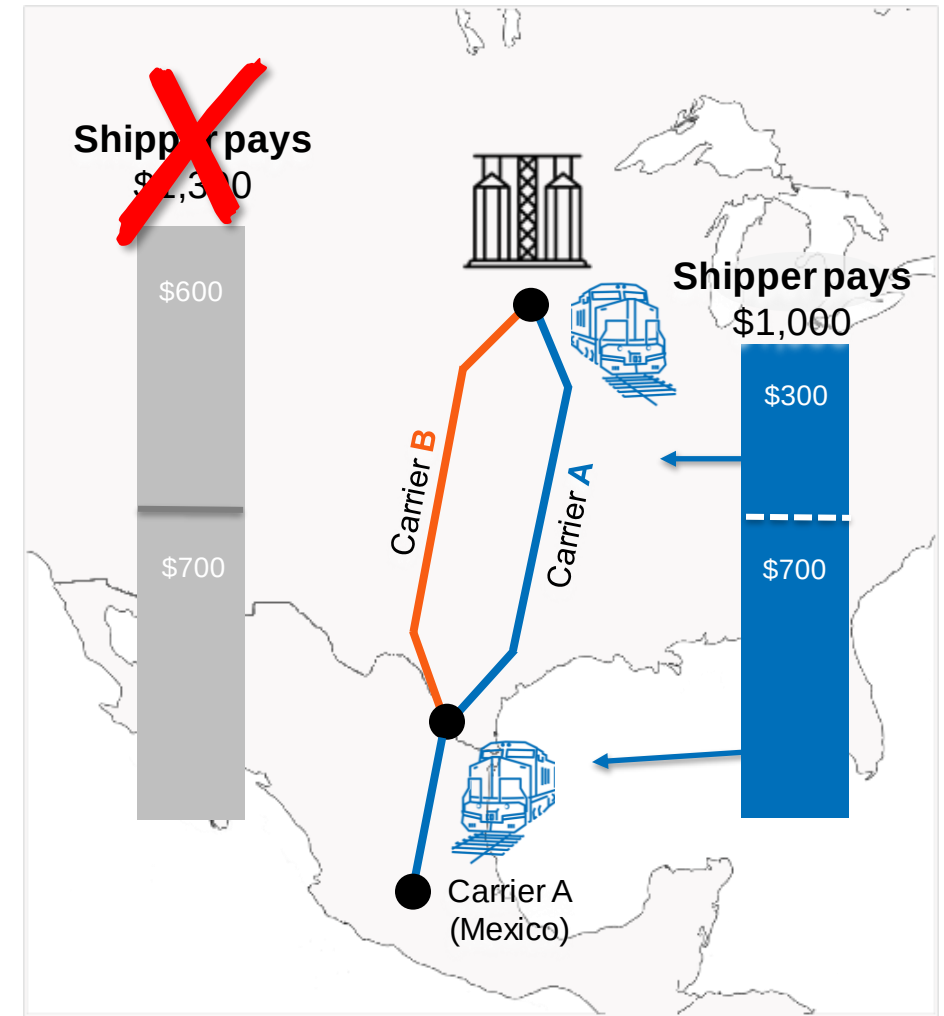
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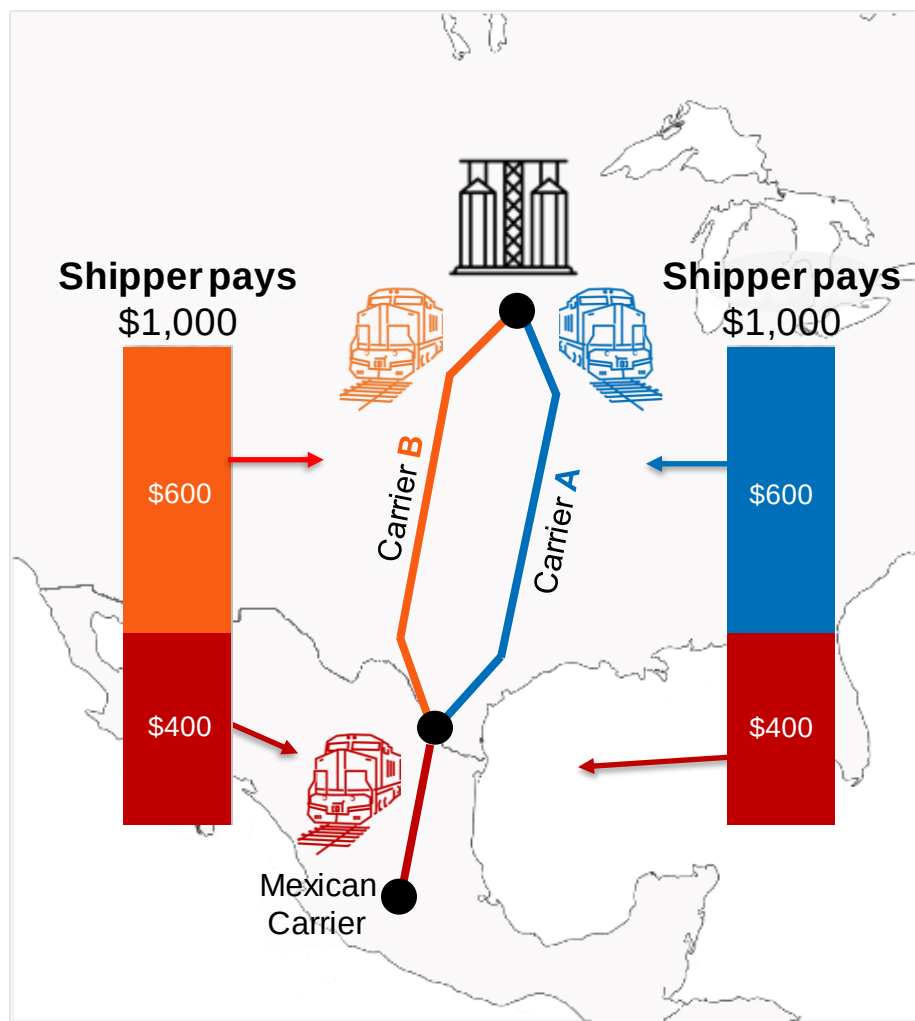
Merger

Carrier B Cannot Compete



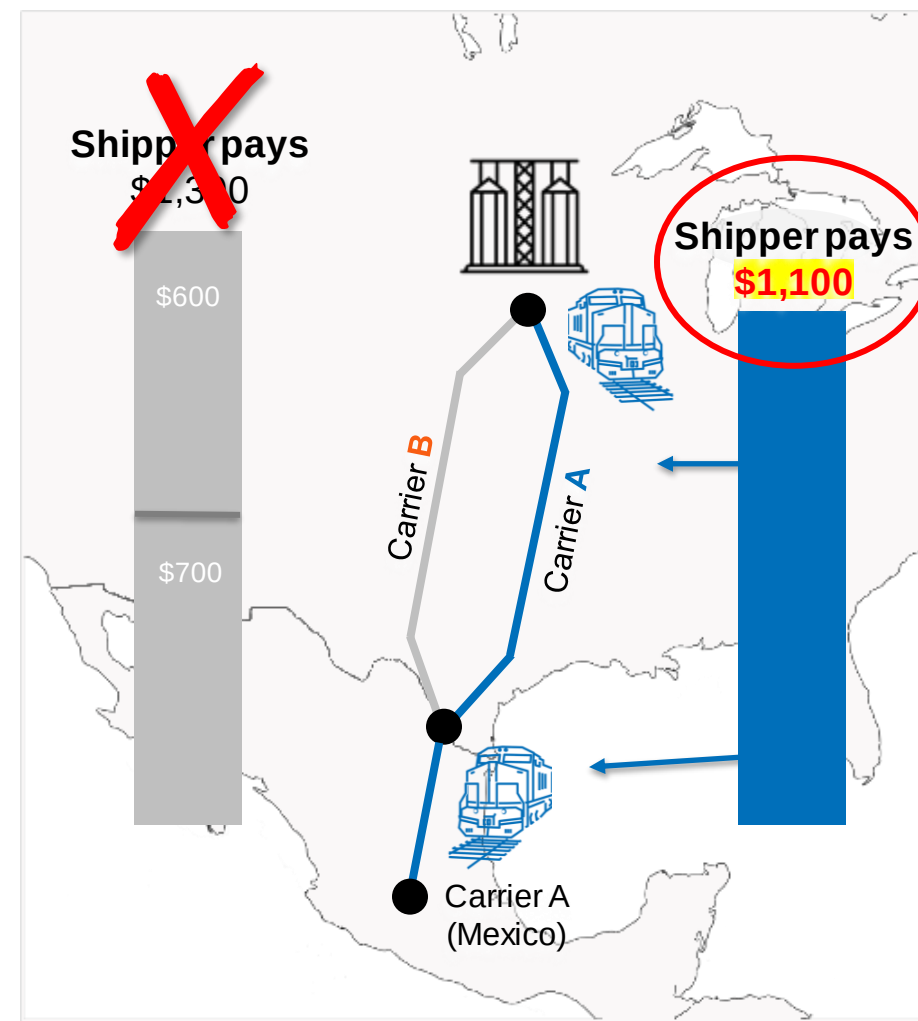
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Shipper Receives Competing Quotes
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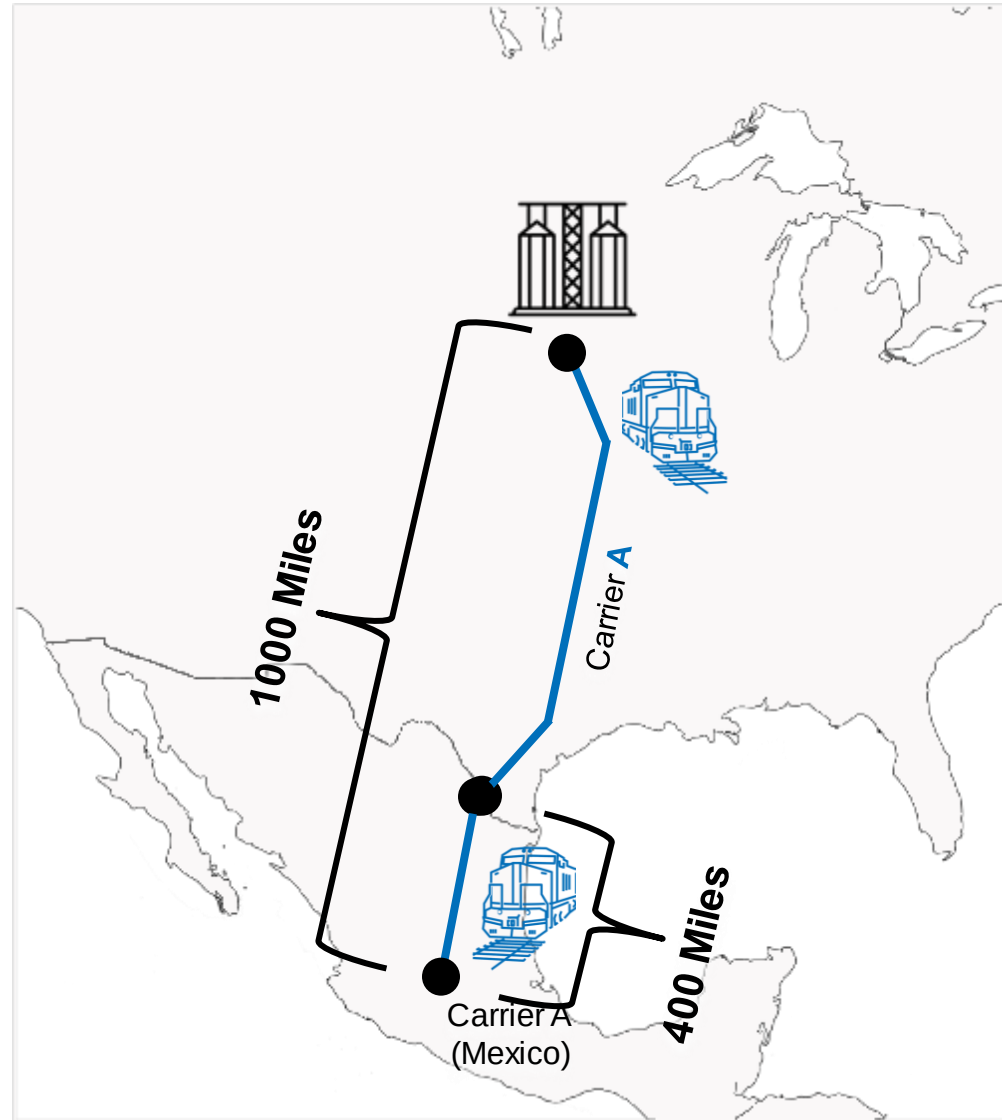
Merger

By Eliminating Competition, Carrier A
Can Raise Rates to Shippers



The Solution: Prop Rate Establishes Commercially Reasonable Gateway Rates

Total Rate: **\$1000**
Total Miles: **1000**
Miles in Mexico: **400**



400 miles / 1000 miles =
40% of mileage

Prorating the full rate:
 $\$1,000 * 40\% =$ **\$400**

Statement by Jon Gabriel

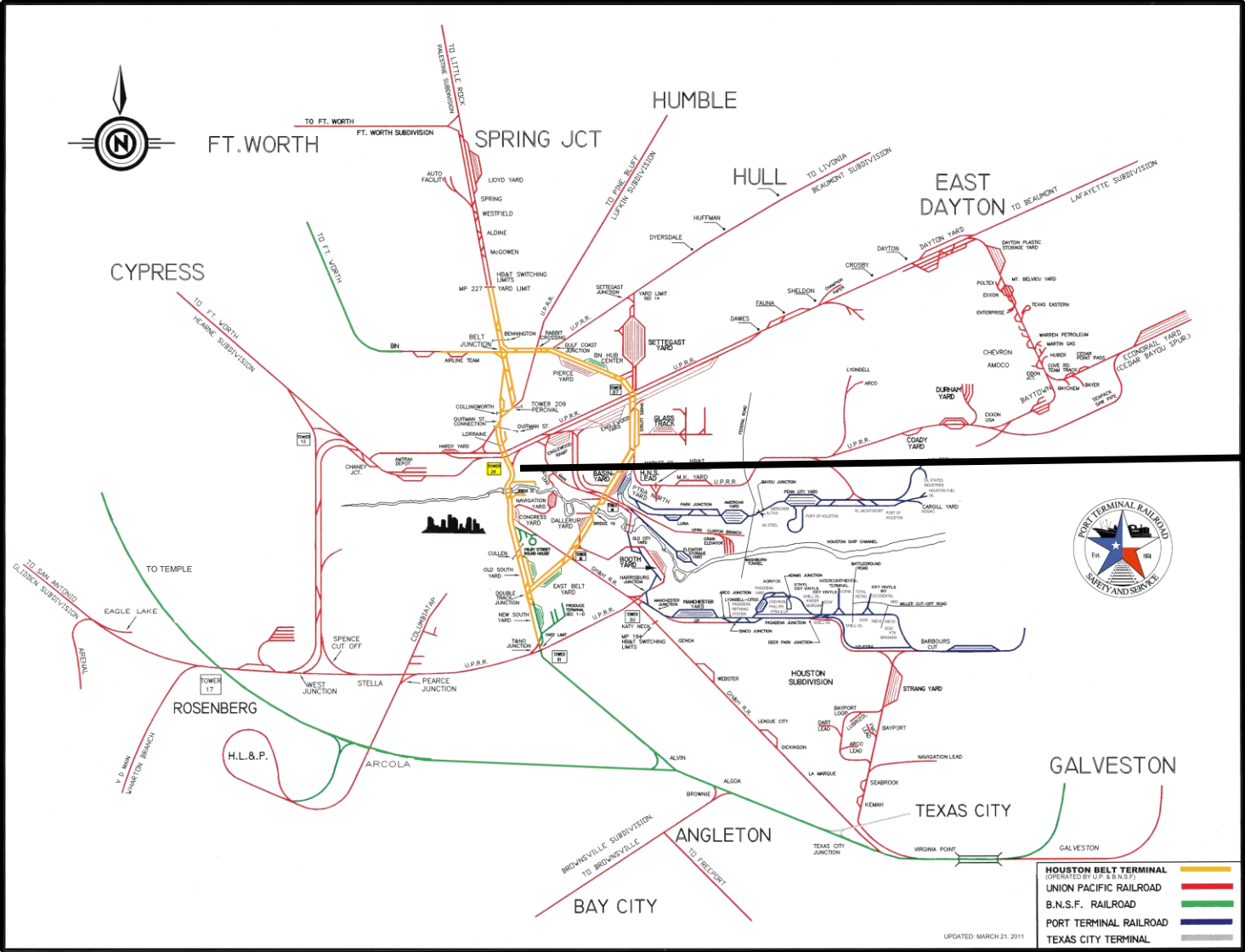
(Vice President for Service Design and
Performance, BNSF Railway Company)



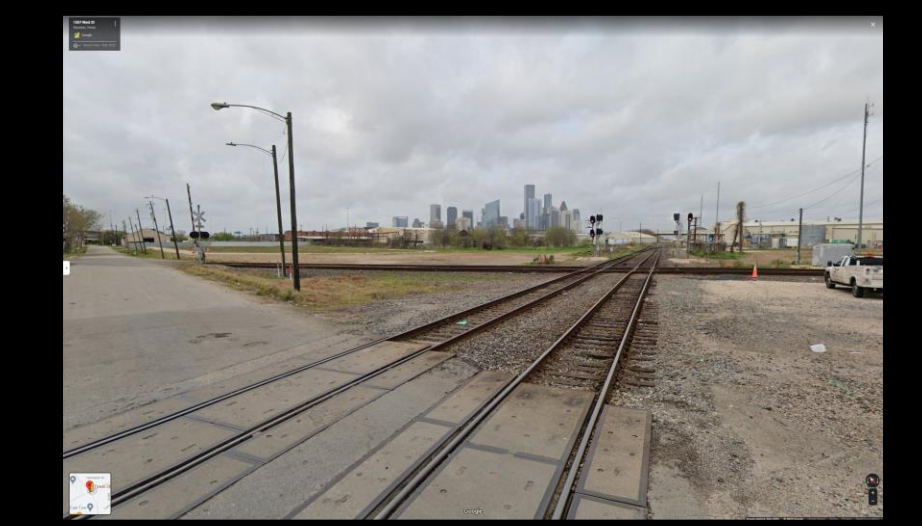
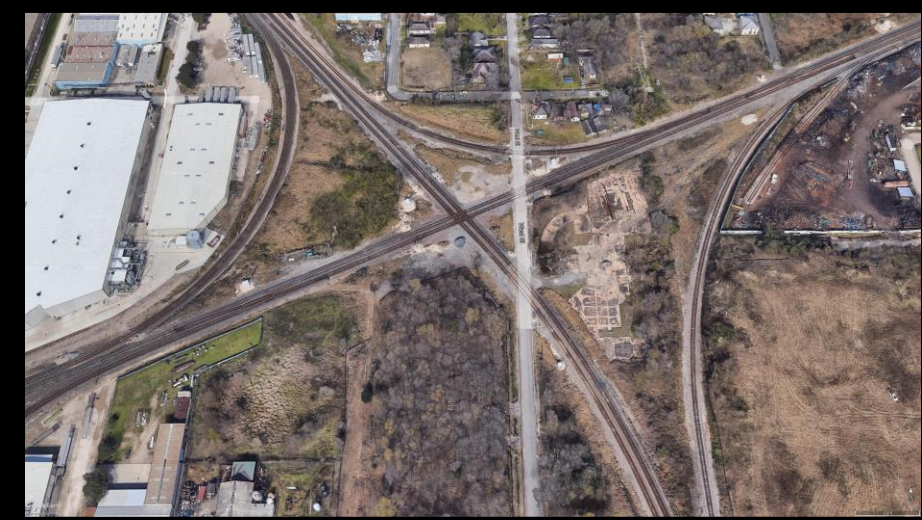
Importance of Houston

- **900** customers and a port
- In 2019, **1.25 million shipments** - representing 3.5% of all freight shipments in the Country
- **1 out of every 30 carloads** or intermodal containers shipped in the US originates or terminates in Houston
- **Shipments to/from 1,300 different locations** – representing 45 states, 8 provinces in Canada, and 40 stations in Mexico

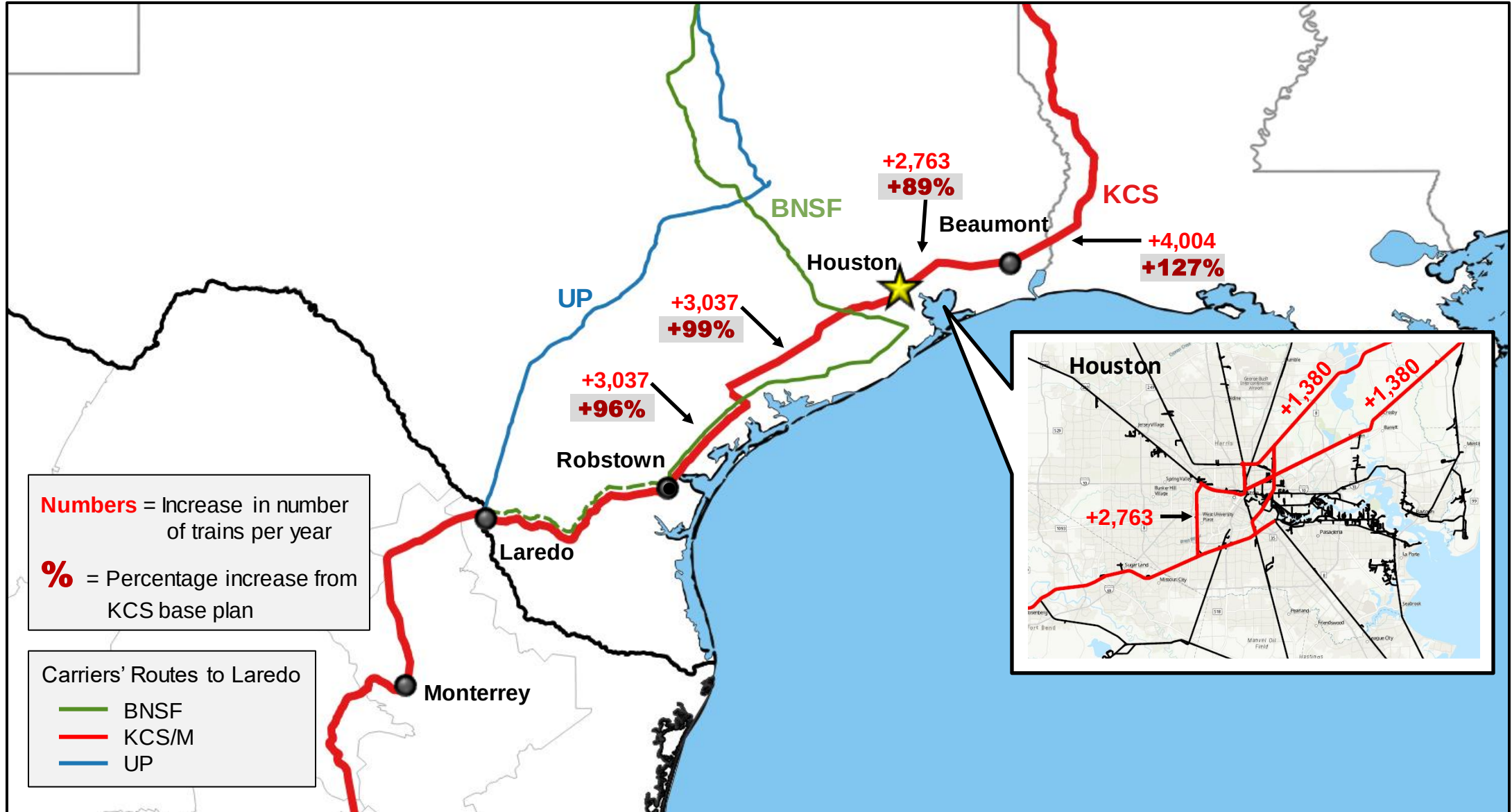
Complexity of Houston



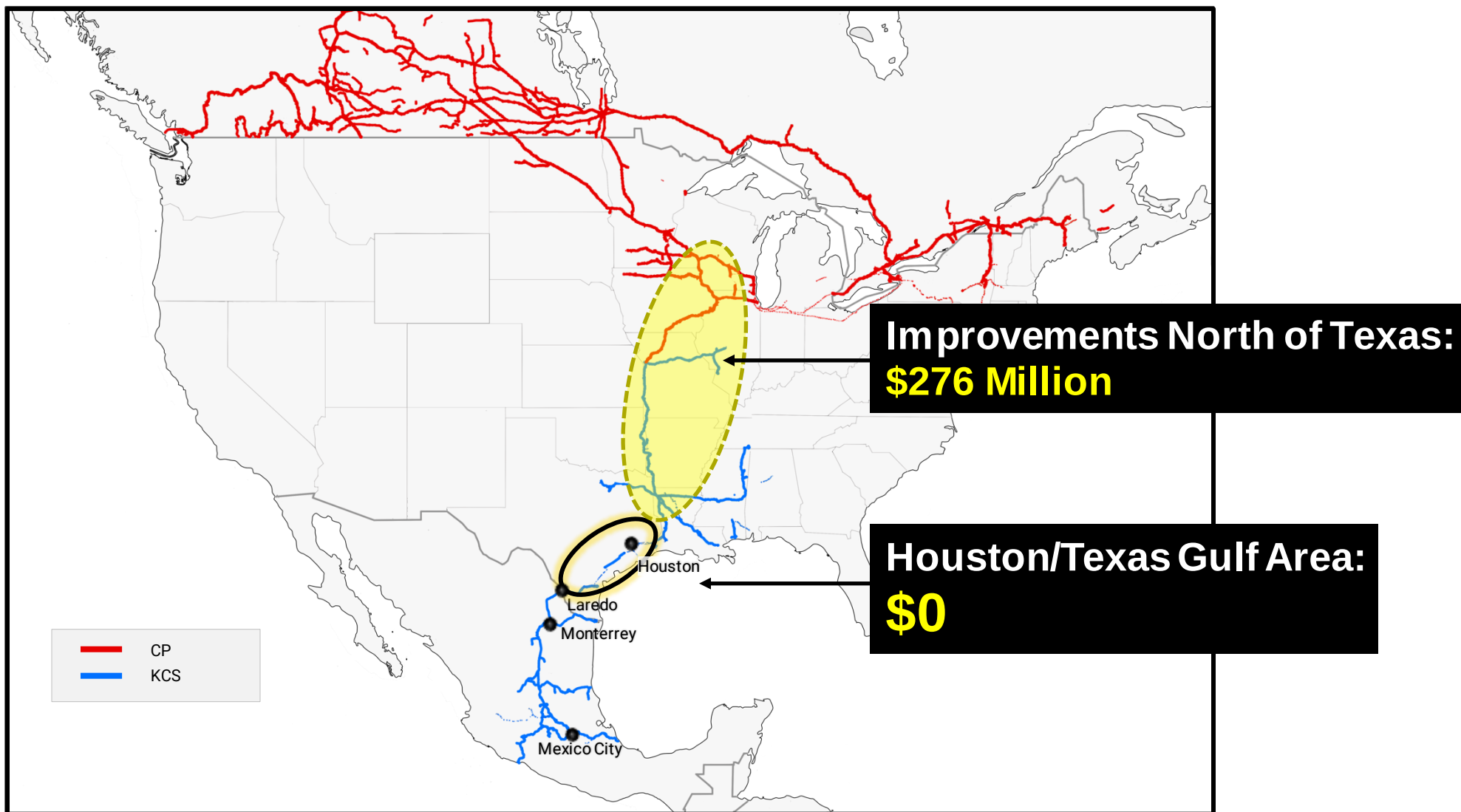
Tower 26 Crossing in Houston



BNSF and UP Bypass Houston to Mexico—CP-KCS Goes Through Houston



Applicants Propose Improvements—But Not in Texas



Impact of Traffic Increases on Houston



SERVICE DATE - AUGUST 4, 1998

FR-4915-00-P

DEPARTMENT OF TRANSPORTATION
[STB Finance Docket No. 32760 (Sub-No. 26)]
Union Pacific Corporation, U.S. Pacific Corporation, and Missouri Pacific Railroad
Southern Pacific Rail Corporation
Transportation Company, St. Louis
Company, SPSL Corp., and
Western Railroad Company
[HOUSTON/GULF COAST
AGENCY: Surface Transportation Board
ACTION: Decision No. 6, N
the UP/SP Merger for the Houston/Gulf Coast
SUMMARY: The Board is affirming the STB's decision in the UP/SP merger for the Houston/Gulf Coast

STB Finance Docket No. 32760 (Sub-No. 26)

subject to various conditions.³ Common control was consummated on September 11, 1996. We imposed a 5-year oversight condition to examine whether the conditions we imposed "effectively addressed the competitive issues they were intended to address," and we retained jurisdiction to impose additional remedial conditions if those already imposed proved insufficient. *UP/SP Merger* at 13. In our initial oversight proceeding, we determined while it was still too early to tell, there was no evidence at that time that the merger conditions that the Board had imposed, had produced any adverse competitive consequences.⁴ We indicated, however, that our oversight would be ongoing, and we would continue vigilant monitoring.⁵

Last summer, UP/SP experienced serious service difficulties caused by, among other things, severely congested UP/SP lines in and around Houston that, in turn, affected service throughout the western United States, and the Board issued a series of decisions under its emergency service order authority under 49 U.S.C. 11123, effective until August 2, 1998, to address those difficulties.⁶ In those decisions, we rejected proposals offered by certain shipper, carrier, and governmental interests that would have addressed the difficulties by requiring UP/SP to permanently afford access to certain of its lines in and around Houston.

¹ This decision embodies the Board's decision in *Union Pacific Corp.—Control and Merger—Southern Pacific Rail Corp.* (Sub-No. 28), *Barlingham No. 1* (Sub-No. 29), *Barlingham No. 2* (Sub-No. 30), *Barlingham No. 3* (Sub-No. 31), *Barlingham No. 4* (Sub-No. 32), *Barlingham No. 5* (Sub-No. 33), *Barlingham No. 6* (Sub-No. 34), *Barlingham No. 7* (Sub-No. 35), *Barlingham No. 8* (Sub-No. 36), *Barlingham No. 9* (Sub-No. 37), *Barlingham No. 10* (Sub-No. 38), *Barlingham No. 11* (Sub-No. 39), *Barlingham No. 12* (Sub-No. 40), *Barlingham No. 13* (Sub-No. 41), *Barlingham No. 14* (Sub-No. 42), *Barlingham No. 15* (Sub-No. 43), *Barlingham No. 16* (Sub-No. 44), *Barlingham No. 17* (Sub-No. 45), *Barlingham No. 18* (Sub-No. 46), *Barlingham No. 19* (Sub-No. 47), *Barlingham No. 20* (Sub-No. 48), *Barlingham No. 21* (Sub-No. 49), *Barlingham No. 22* (Sub-No. 50), *Barlingham No. 23* (Sub-No. 51), *Barlingham No. 24* (Sub-No. 52), *Barlingham No. 25* (Sub-No. 53), *Barlingham No. 26* (Sub-No. 54), *Barlingham No. 27* (Sub-No. 55), *Barlingham No. 28* (Sub-No. 56), *Barlingham No. 29* (Sub-No. 57), *Barlingham No. 30* (Sub-No. 58), *Barlingham No. 31* (Sub-No. 59), *Barlingham No. 32* (Sub-No. 60), *Barlingham No. 33* (Sub-No. 61), *Barlingham No. 34* (Sub-No. 62), *Barlingham No. 35* (Sub-No. 63), *Barlingham No. 36* (Sub-No. 64), *Barlingham No. 37* (Sub-No. 65), *Barlingham No. 38* (Sub-No. 66), *Barlingham No. 39* (Sub-No. 67), *Barlingham No. 40* (Sub-No. 68), *Barlingham No. 41* (Sub-No. 69), *Barlingham No. 42* (Sub-No. 70), *Barlingham No. 43* (Sub-No. 71), *Barlingham No. 44* (Sub-No. 72), *Barlingham No. 45* (Sub-No. 73), *Barlingham No. 46* (Sub-No. 74), *Barlingham No. 47* (Sub-No. 75), *Barlingham No. 48* (Sub-No. 76), *Barlingham No. 49* (Sub-No. 77), *Barlingham No. 50* (Sub-No. 78), *Barlingham No. 51* (Sub-No. 79), *Barlingham No. 52* (Sub-No. 80), *Barlingham No. 53* (Sub-No. 81), *Barlingham No. 54* (Sub-No. 82), *Barlingham No. 55* (Sub-No. 83), *Barlingham No. 56* (Sub-No. 84), *Barlingham No. 57* (Sub-No. 85), *Barlingham No. 58* (Sub-No. 86), *Barlingham No. 59* (Sub-No. 87), *Barlingham No. 60* (Sub-No. 88), *Barlingham No. 61* (Sub-No. 89), *Barlingham No. 62* (Sub-No. 90), *Barlingham No. 63* (Sub-No. 91), *Barlingham No. 64* (Sub-No. 92), *Barlingham No. 65* (Sub-No. 93), *Barlingham No. 66* (Sub-No. 94), *Barlingham No. 67* (Sub-No. 95), *Barlingham No. 68* (Sub-No. 96), *Barlingham No. 69* (Sub-No. 97), *Barlingham No. 70* (Sub-No. 98), *Barlingham No. 71* (Sub-No. 99), *Barlingham No. 72* (Sub-No. 100), *Barlingham No. 73* (Sub-No. 101), *Barlingham No. 74* (Sub-No. 102), *Barlingham No. 75* (Sub-No. 103), *Barlingham No. 76* (Sub-No. 104), *Barlingham No. 77* (Sub-No. 105), *Barlingham No. 78* (Sub-No. 106), *Barlingham No. 79* (Sub-No. 107), *Barlingham No. 80* (Sub-No. 108), *Barlingham No. 81* (Sub-No. 109), *Barlingham No. 82* (Sub-No. 110), *Barlingham No. 83* (Sub-No. 111), *Barlingham No. 84* (Sub-No. 112), *Barlingham No. 85* (Sub-No. 113), *Barlingham No. 86* (Sub-No. 114), *Barlingham No. 87* (Sub-No. 115), *Barlingham No. 88* (Sub-No. 116), *Barlingham No. 89* (Sub-No. 117), *Barlingham No. 90* (Sub-No. 118), *Barlingham No. 91* (Sub-No. 119), *Barlingham No. 92* (Sub-No. 120), *Barlingham No. 93* (Sub-No. 121), *Barlingham No. 94* (Sub-No. 122), *Barlingham No. 95* (Sub-No. 123), *Barlingham No. 96* (Sub-No. 124), *Barlingham No. 97* (Sub-No. 125), *Barlingham No. 98* (Sub-No. 126), *Barlingham No. 99* (Sub-No. 127), *Barlingham No. 100* (Sub-No. 128), *Barlingham No. 101* (Sub-No. 129), *Barlingham No. 102* (Sub-No. 130), *Barlingham No. 103* (Sub-No. 131), *Barlingham No. 104* (Sub-No. 132), *Barlingham No. 105* (Sub-No. 133), *Barlingham No. 106* (Sub-No. 134), *Barlingham No. 107* (Sub-No. 135), *Barlingham No. 108* (Sub-No. 136), *Barlingham No. 109* (Sub-No. 137), *Barlingham No. 110* (Sub-No. 138), *Barlingham No. 111* (Sub-No. 139), *Barlingham No. 112* (Sub-No. 140), 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Applicants Should be 100% Responsible for Merger-Related Improvements



IMPROVEMENT:

Building a **\$100M bridge** needed due to merger-related traffic growth

Effect of CP-KCS Position on Capital Cost Allocation



Proper Merger Policy Cost Allocation



Applicants Should Pay 100%

(i) UP/SP shall bear the cost of all capacity improvements that are necessary to achieve the benefits of its merger as outlined in the application filed with the ICC for authority for UP to control SP. The operating plan filed

Statement by Paul Martin Hirsch

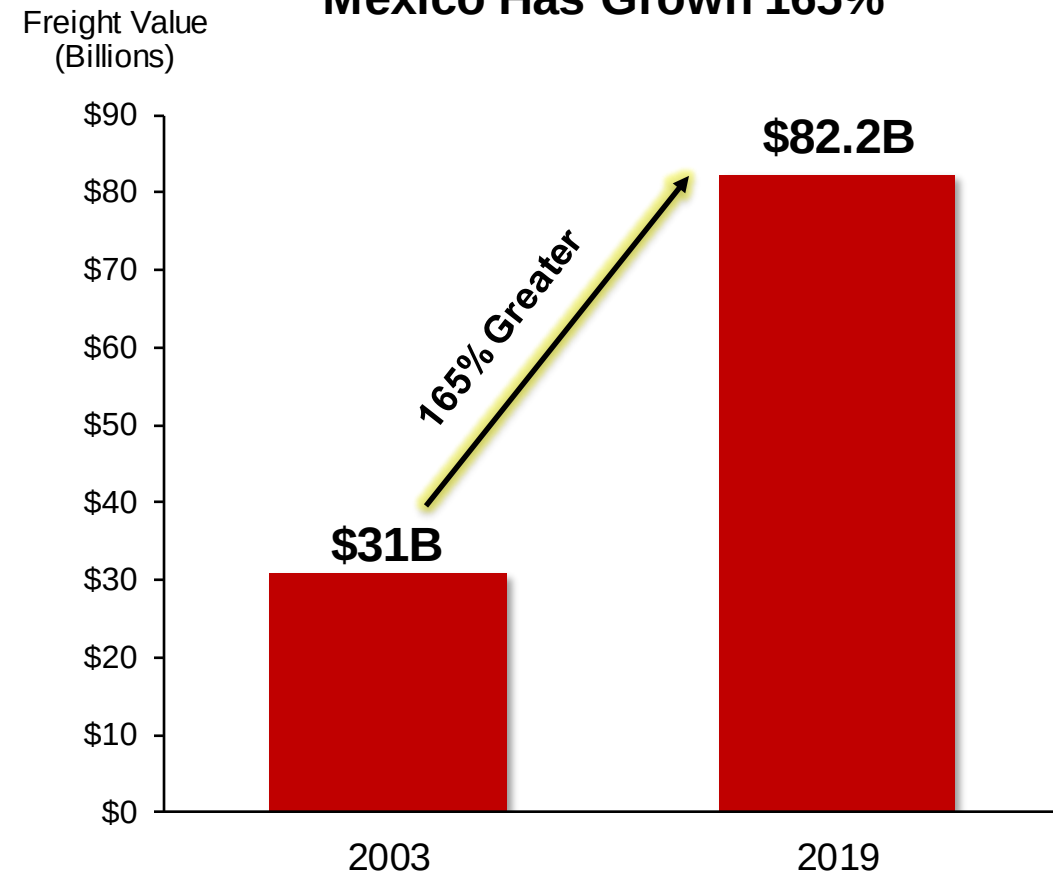
(Assistant Vice President of the Mexico
Business Unit, BNSF Railway Company)



Mexico Has Grown and Will Continue to Grow – This Is Important to U.S. Shippers and BNSF



Value of Freight of Cross Border Rail Trade Between the US and Mexico Has Grown 165%

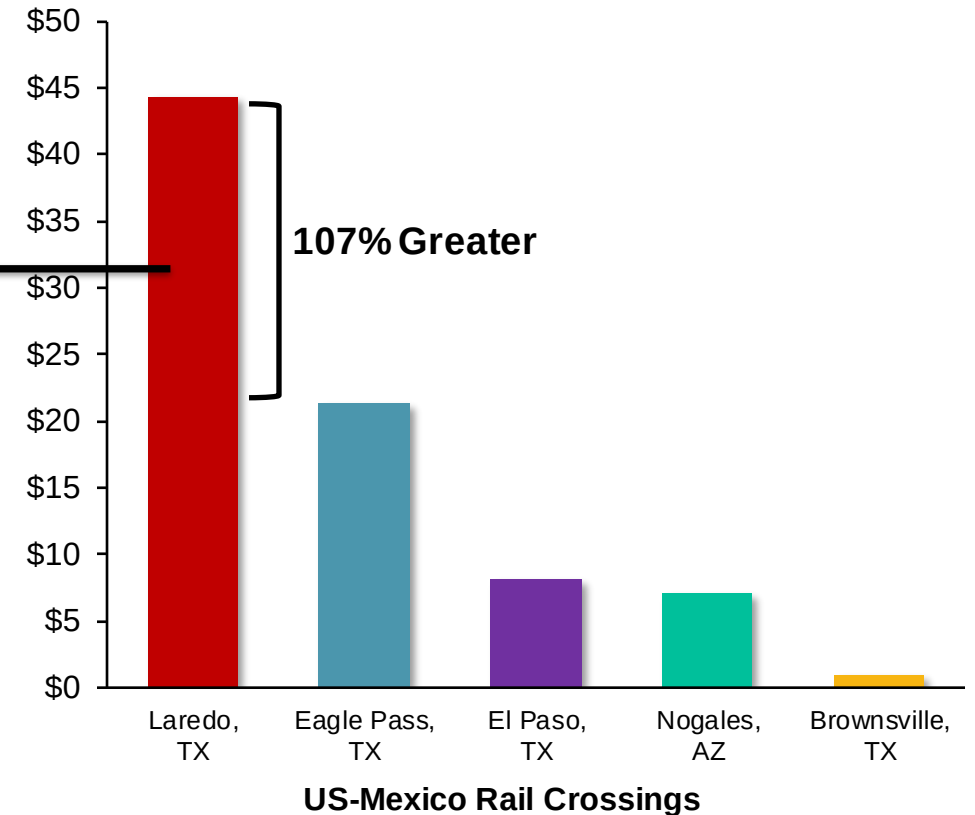


Laredo Is the Most Important Gateway to Mexico



Value of Rail Traffic over Laredo Is 107% Greater than Eagle Pass

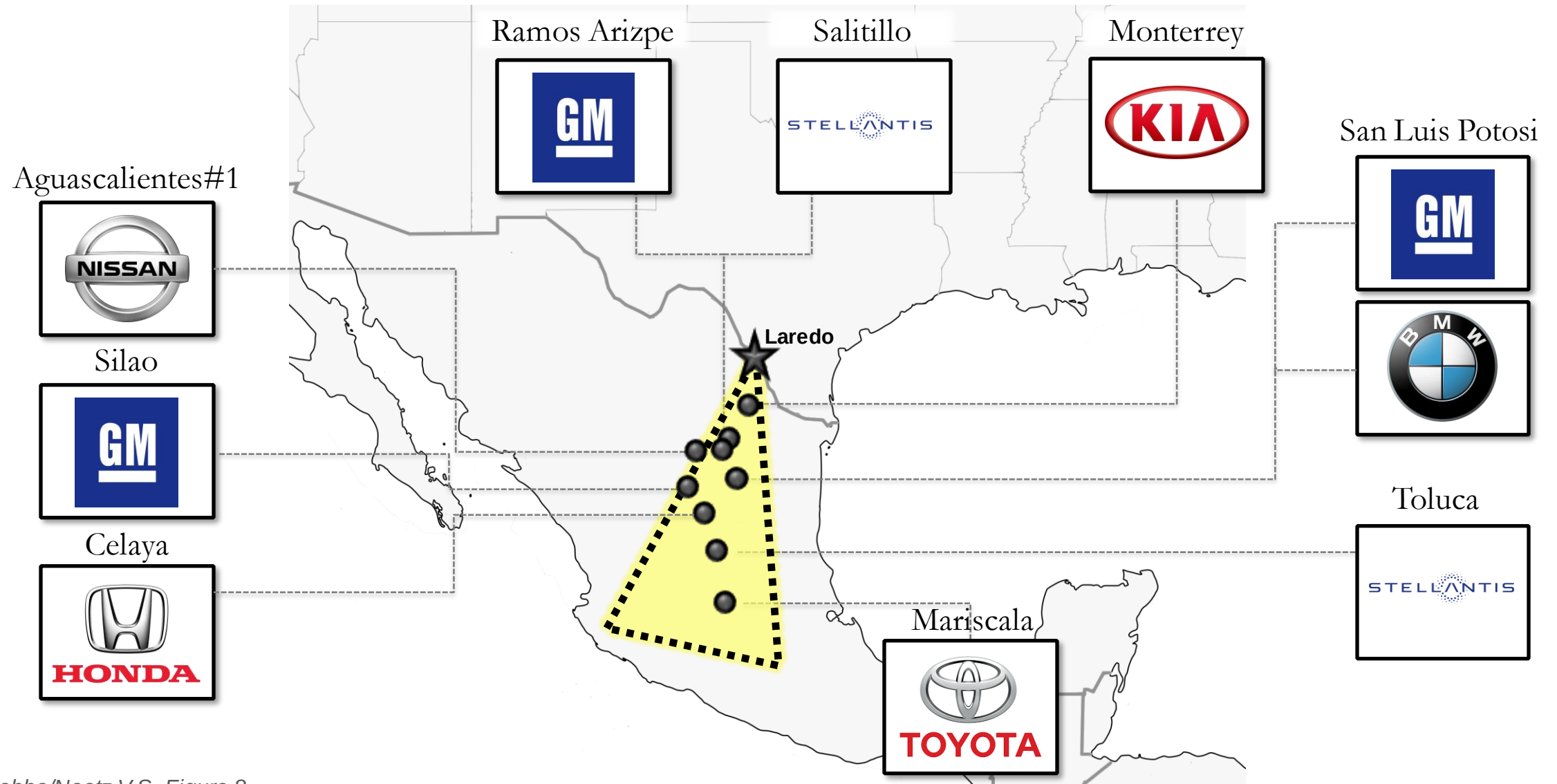
Freight Value
(Billions, 2019)



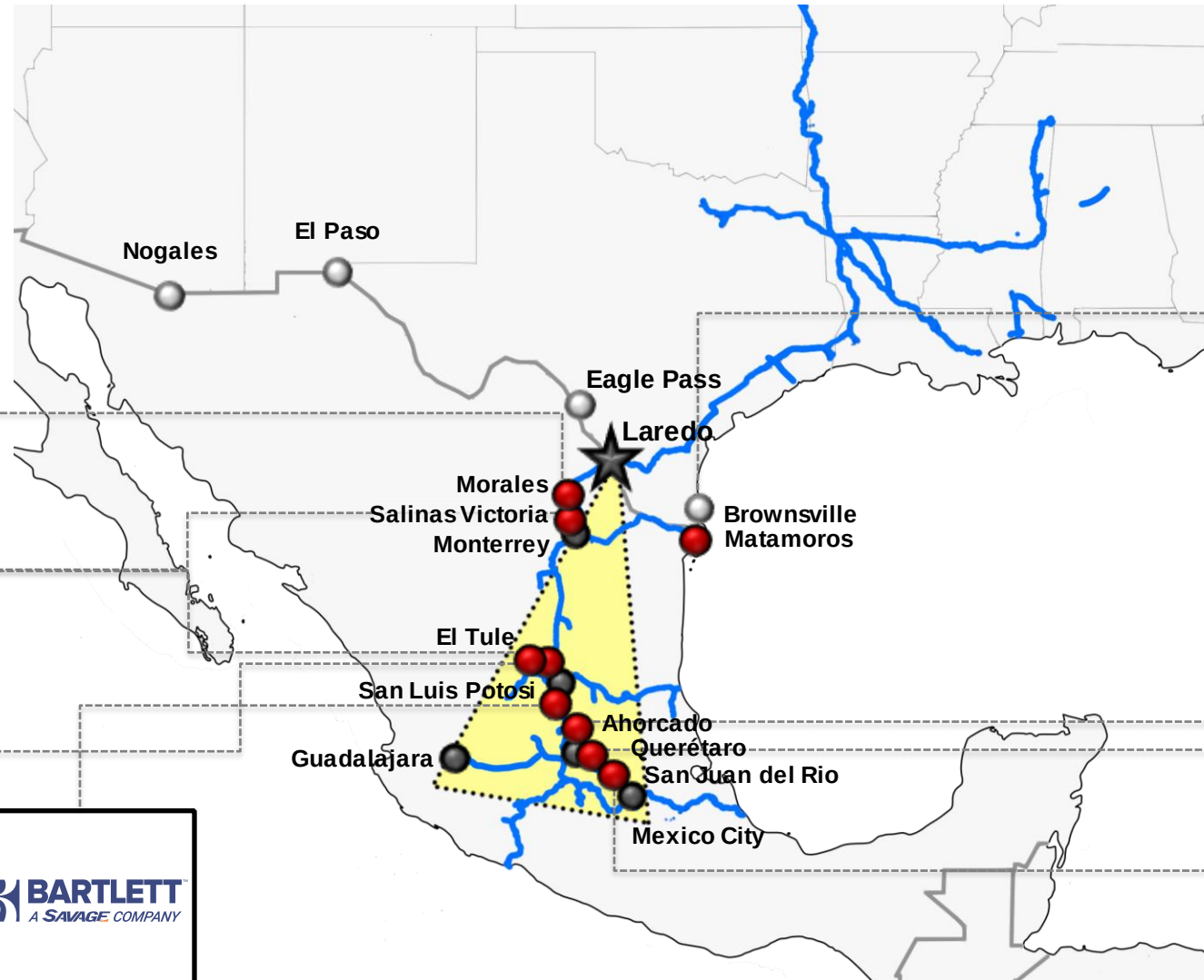
Laredo Is the Gateway to Mexico's Golden Triangle of Industry and Core Population



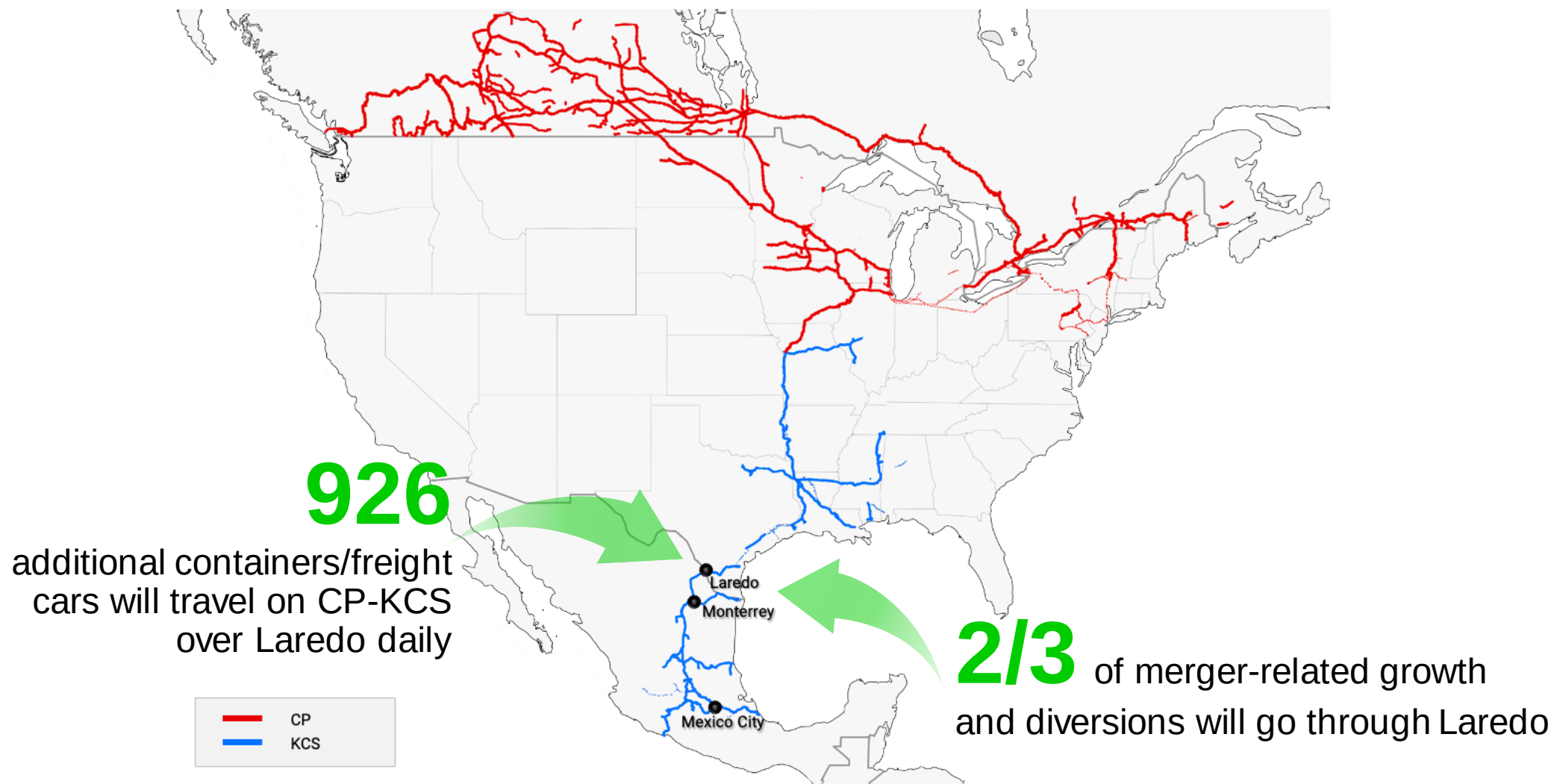
Automotive Assembly Plants Are Clustered Along KCSM Routes that Are Accessed Through Laredo



Laredo Has the Most Direct Access to the Grain Demand Centers of Mexico City and Eastern Mexico Over KCSM



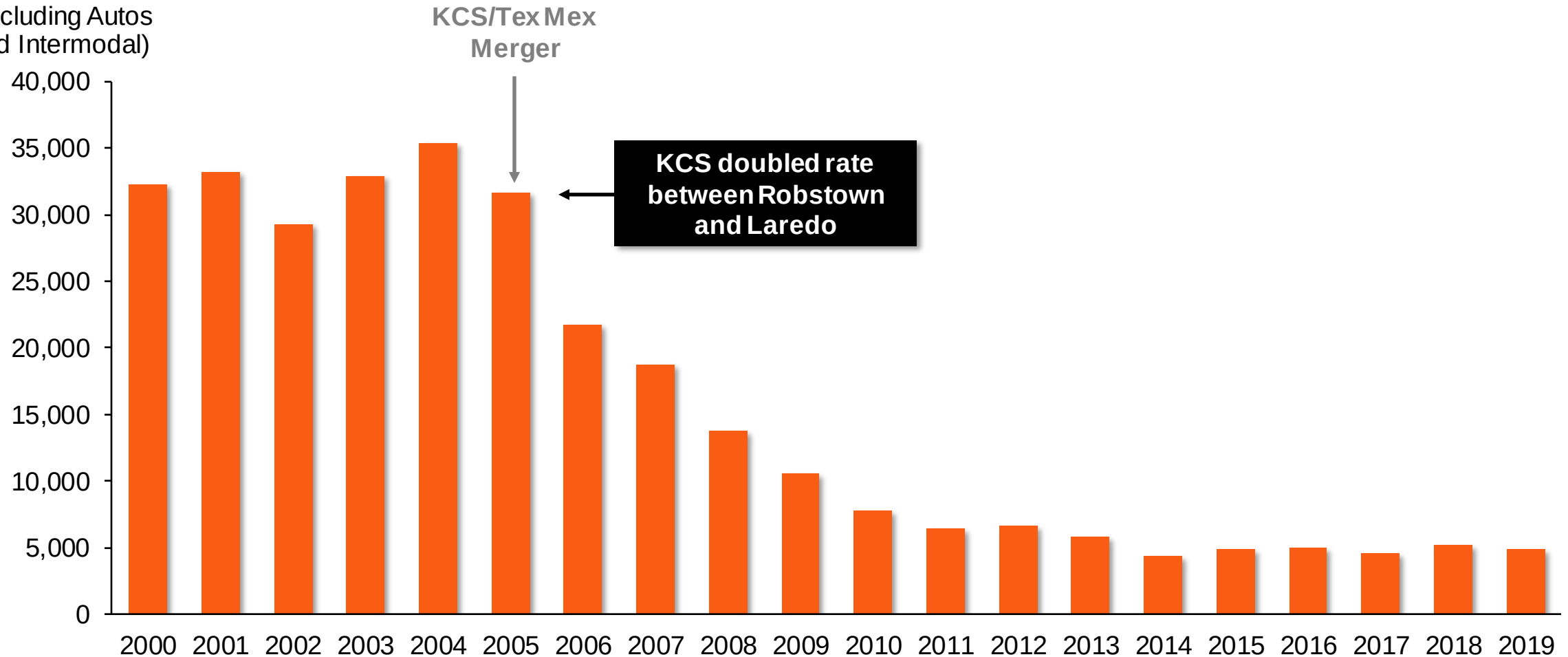
Applicants' Financial Assumptions for the Merger Depend on Significant Traffic Increases Through Laredo



After KCS/Tex Mex, KCS Doubled Rates and BNSF Traffic Dropped

BNSF Annual Carloads (excluding Autos and Intermodal) over Laredo

Annual Carloads
(excluding Autos
and Intermodal)



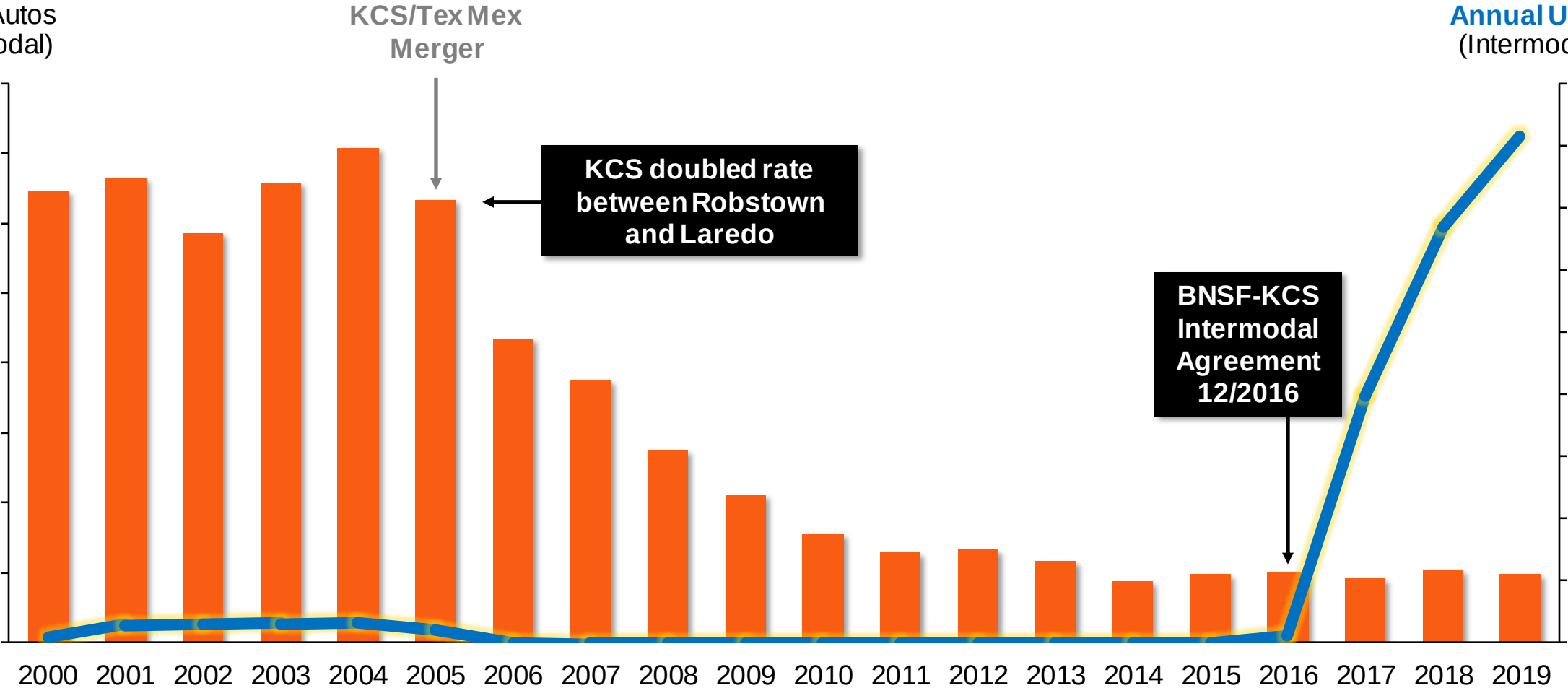
Recent Increases in Intermodal Traffic Are at Risk Post-Merger



BNSF Annual Carloads and Intermodal Units over Laredo

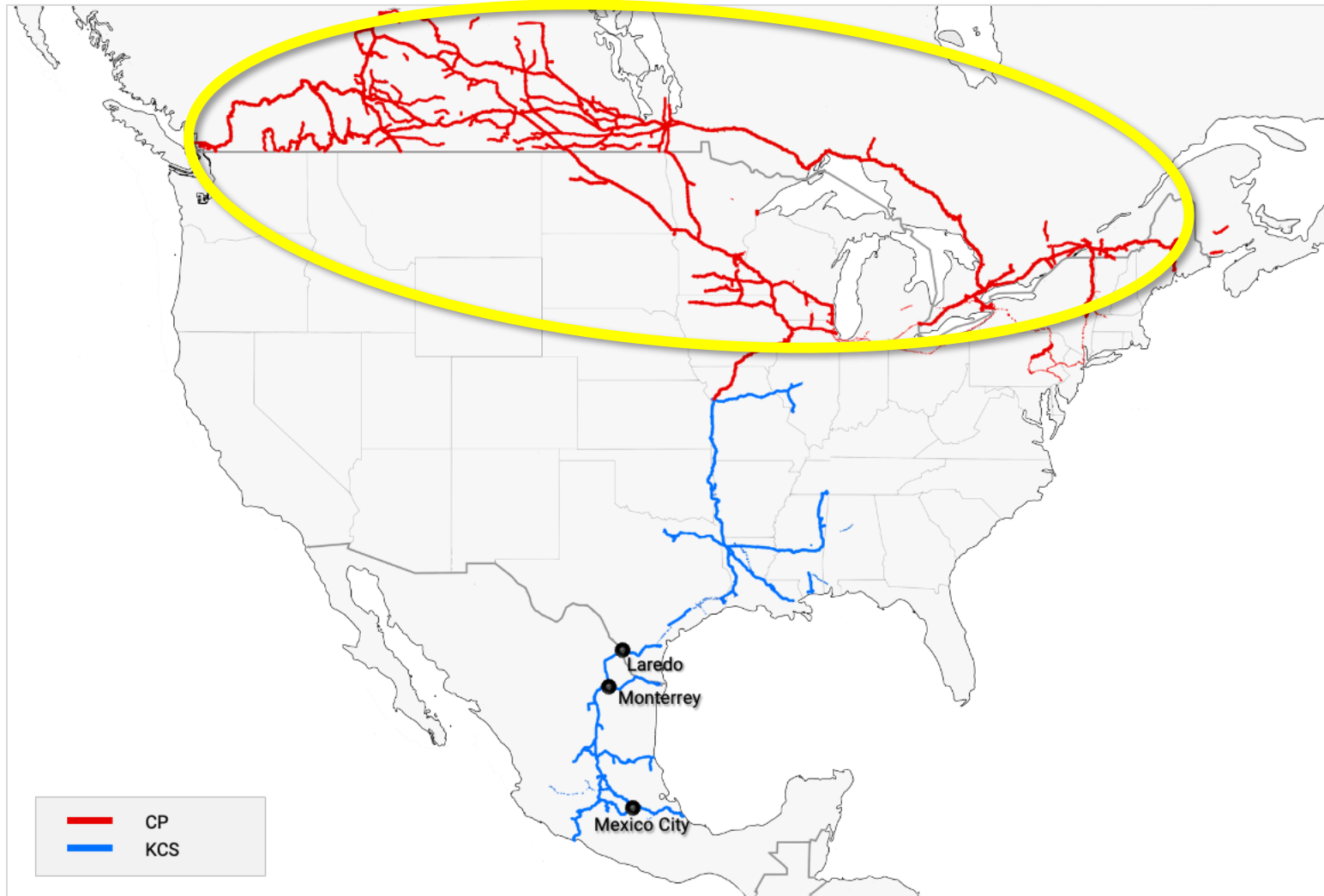
Annual Carloads
(excluding Autos
and Intermodal)

Annual Units
(Intermodal)

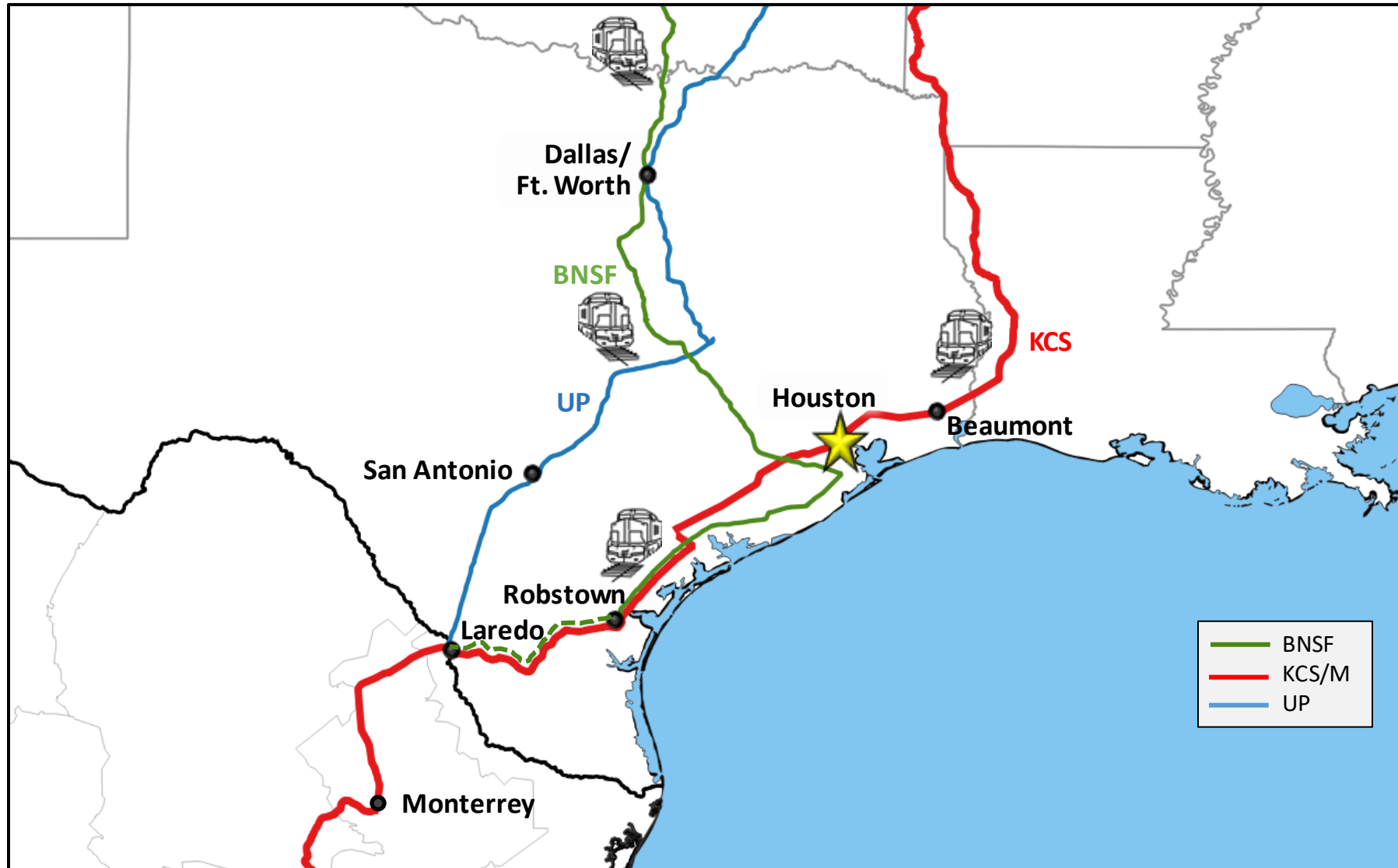


Source: V.S. Reishus, Figures 6 and 7

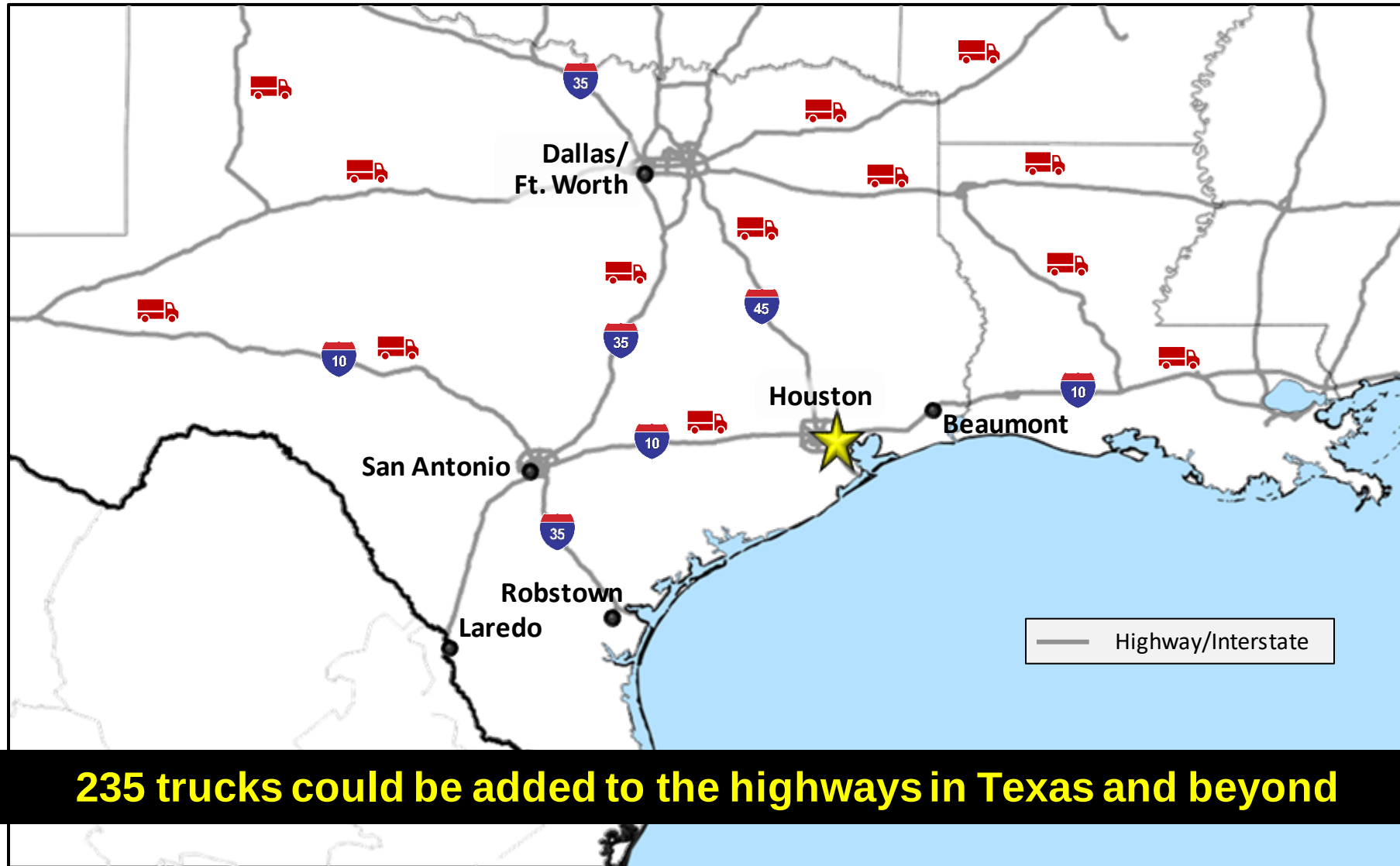
CP-KCS Trade with Mexico Will Draw on a Much Larger Network



Effect of Gateway Closure



After Merger: Effect of Gateway Closure



Statement by David Reishus, Ph.D.

(Executive Vice President, Compass Lexecon,
Economic Expert for BNSF Railway Company)

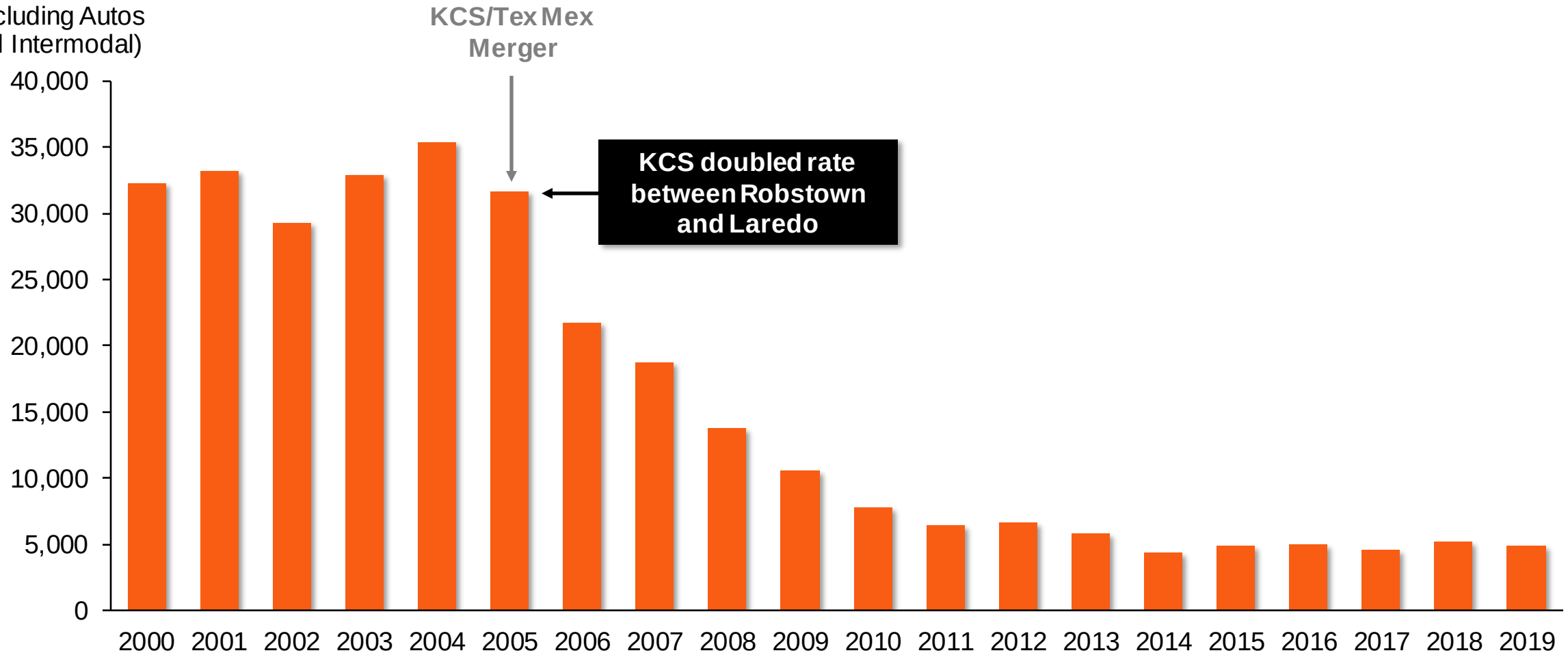


After KCS/Tex Mex, KCS Doubled Rates and BNSF Traffic Dropped



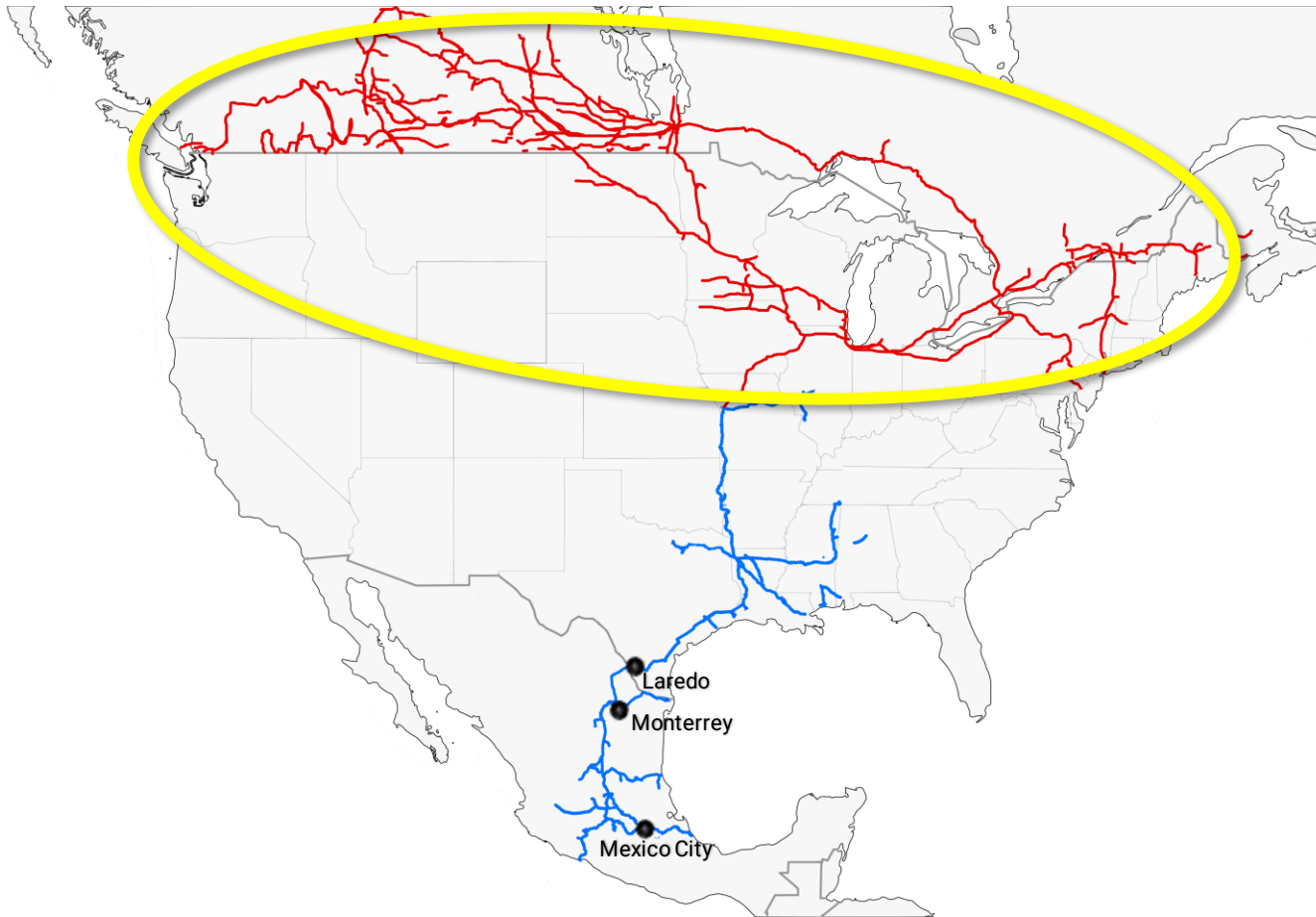
BNSF Annual Carloads (excluding Autos and Intermodal) over Laredo

Annual Carloads
(excluding Autos
and Intermodal)

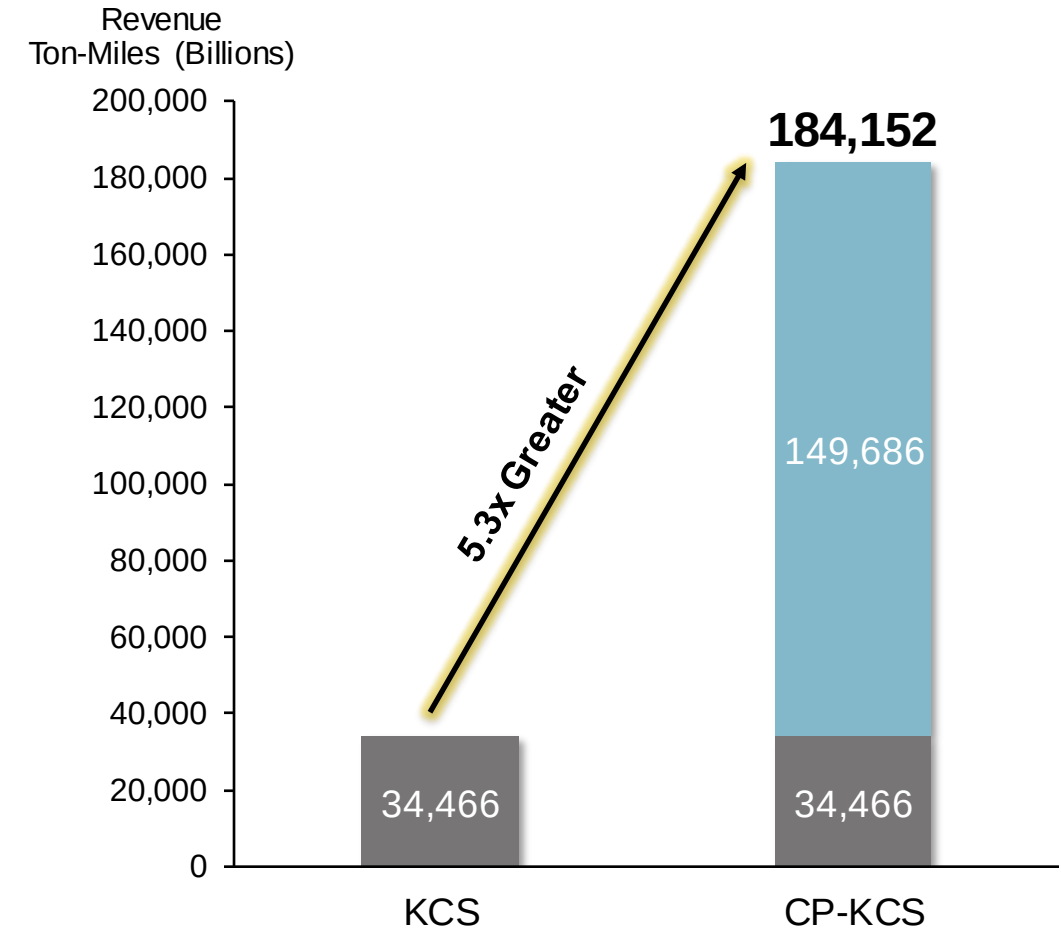


CP-KCS Trade with Mexico Will Draw on a Much Larger Network

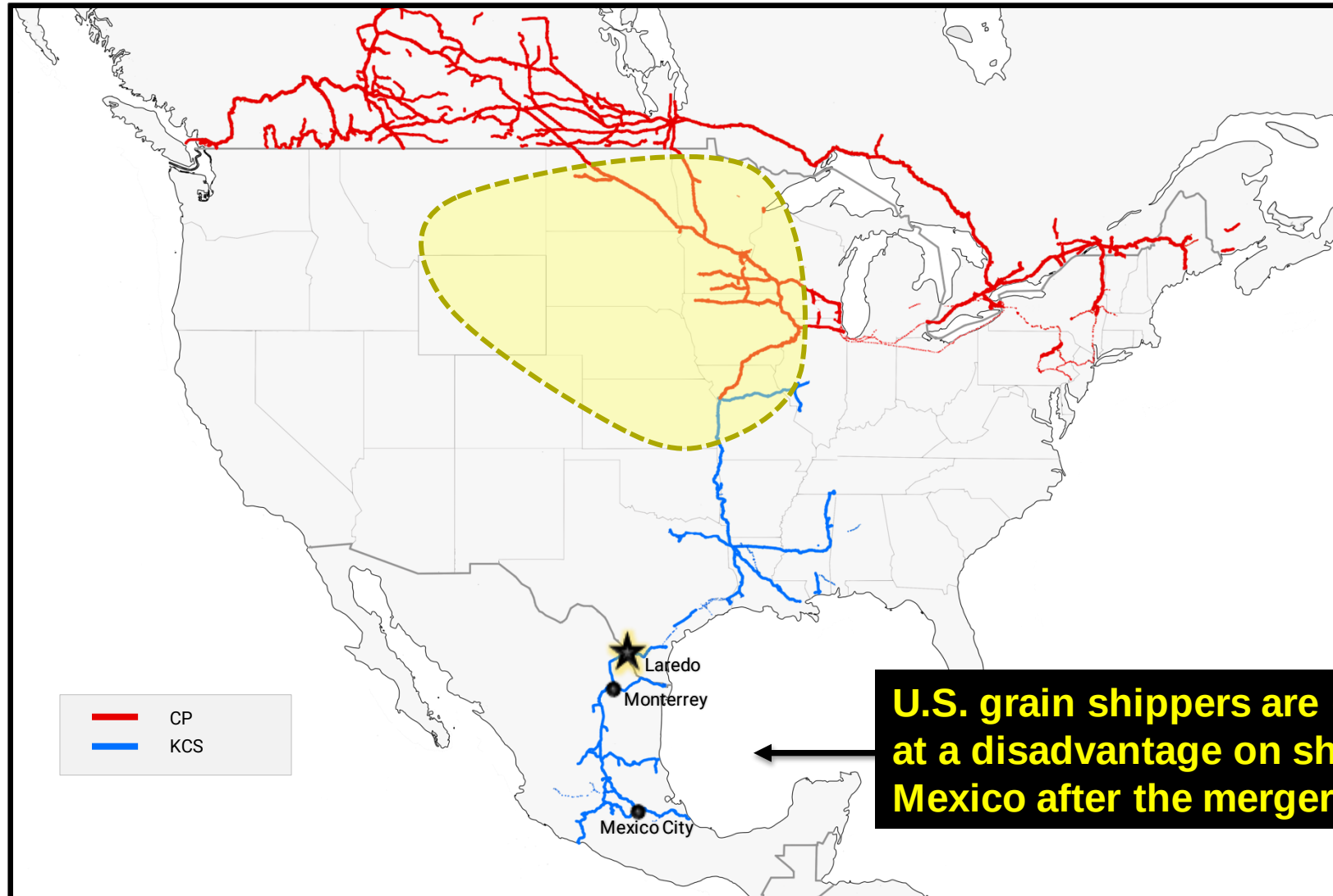
CP-KCS Will Cover Far More Territory in the United States and Canada



CP-KCS Will Operate 5.3 Times as Many Revenue Ton-Miles North of Mexico



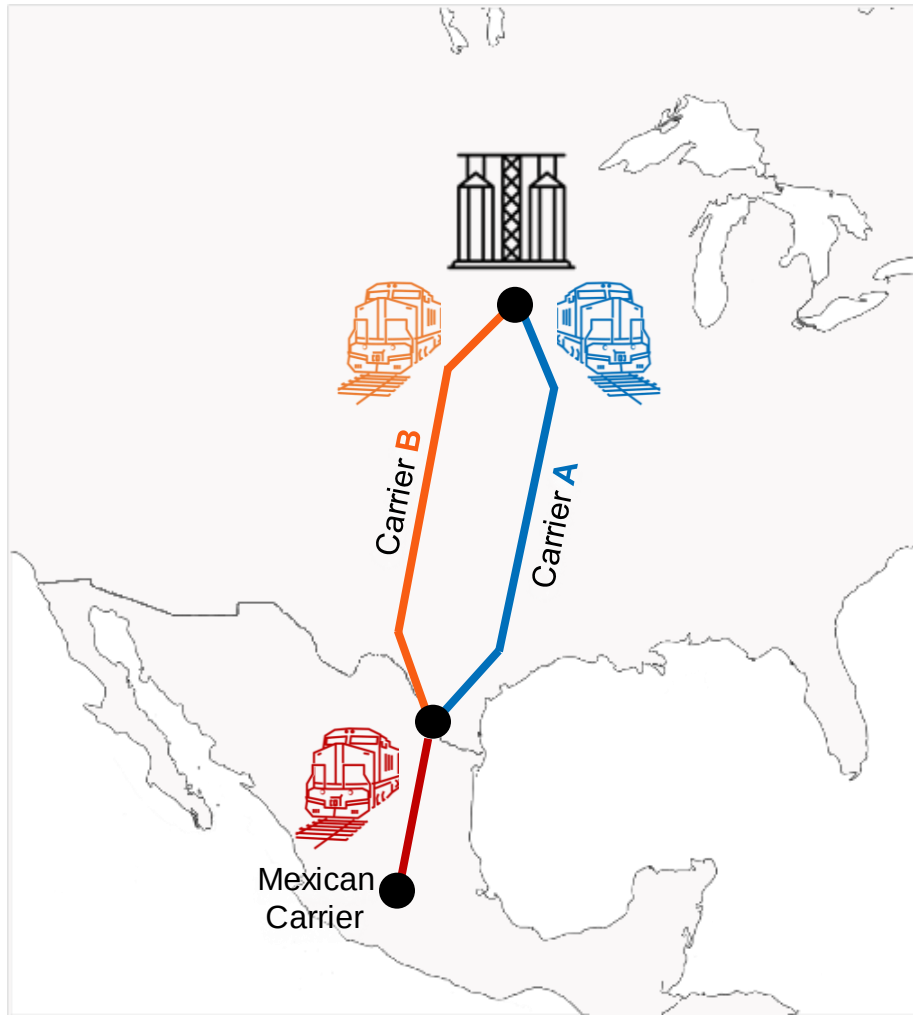
CP-KCS Will Have Greater Ability and Incentive to Exclude BNSF's Customers From Mexican Markets Through Laredo



U.S. grain shippers are going to be at a disadvantage on shipments to Mexico after the merger

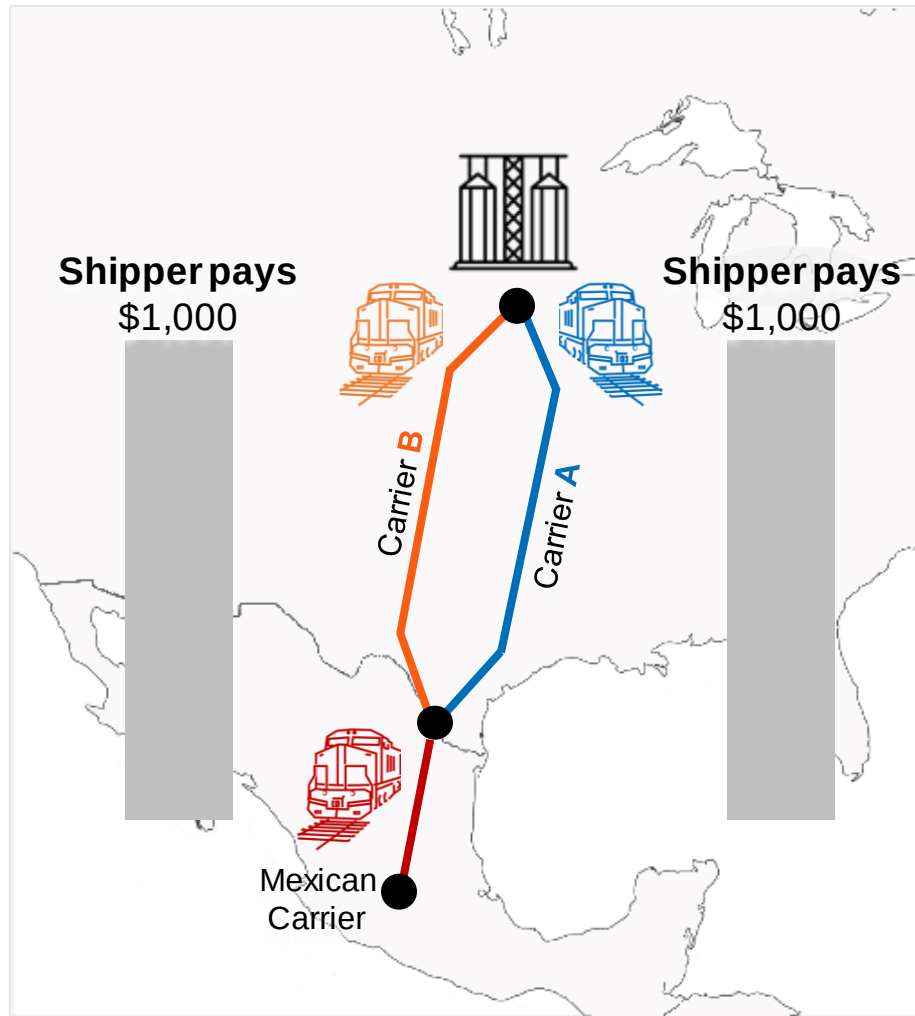
The Problem: Gateway Closure

Shipper's Pre-Merger Options



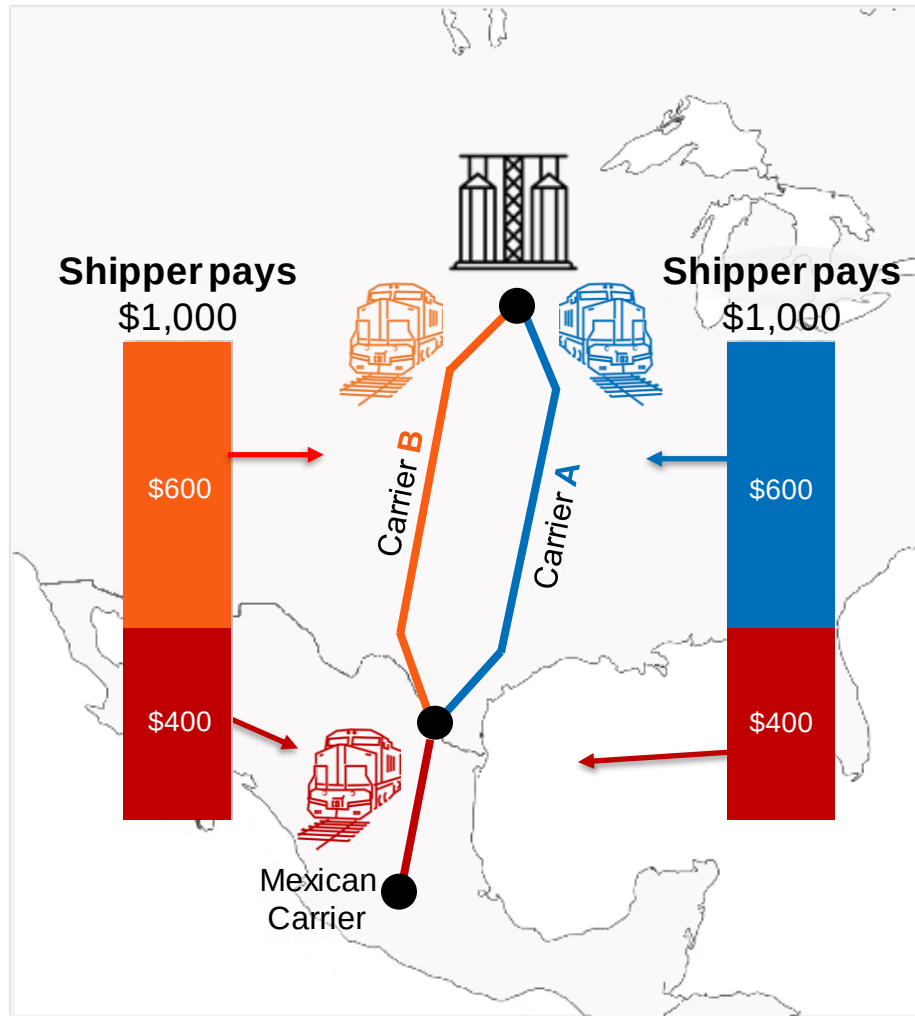
The Problem: Gateway Closure

Shipper Receives Competing Quotes
to Ship to Mexico



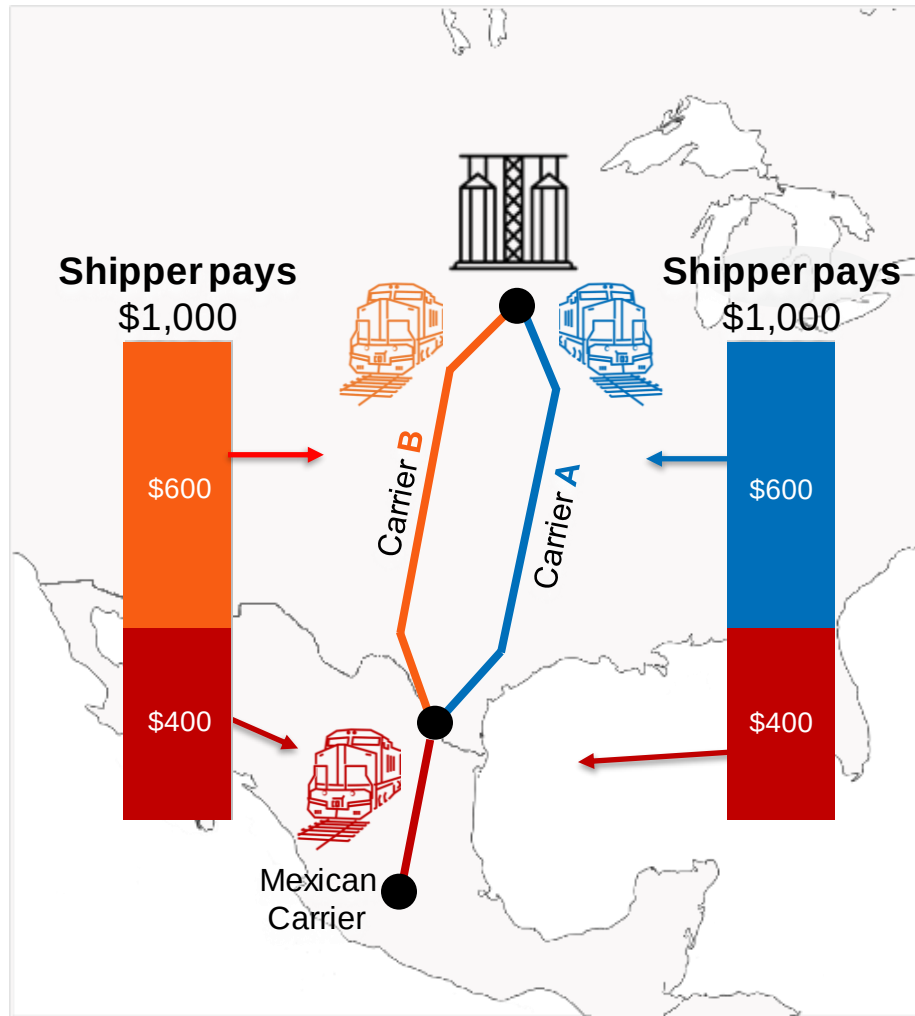
The Problem: Gateway Closure

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The Problem: Gateway Closure

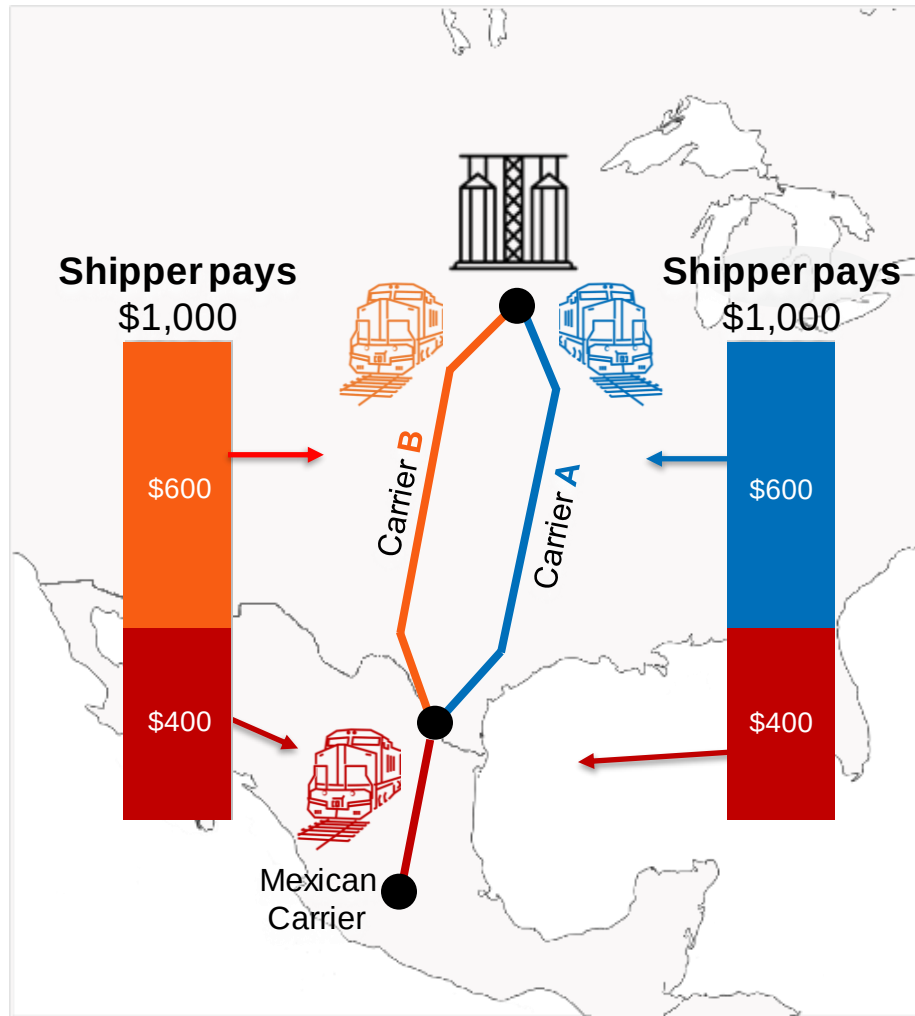
Shipper Receives Competing Quotes
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Merger

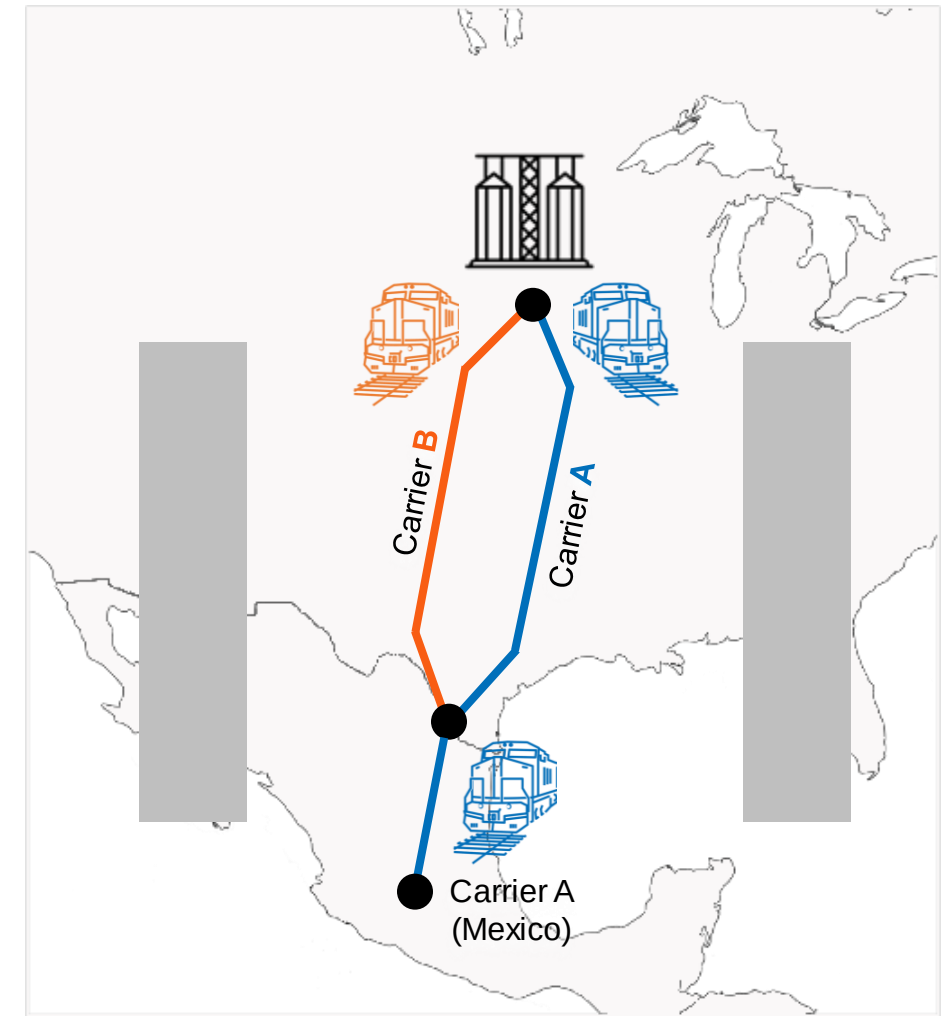
The Problem: Gateway Closure

Shipper Receives Competing Quotes
to Ship to Mexico



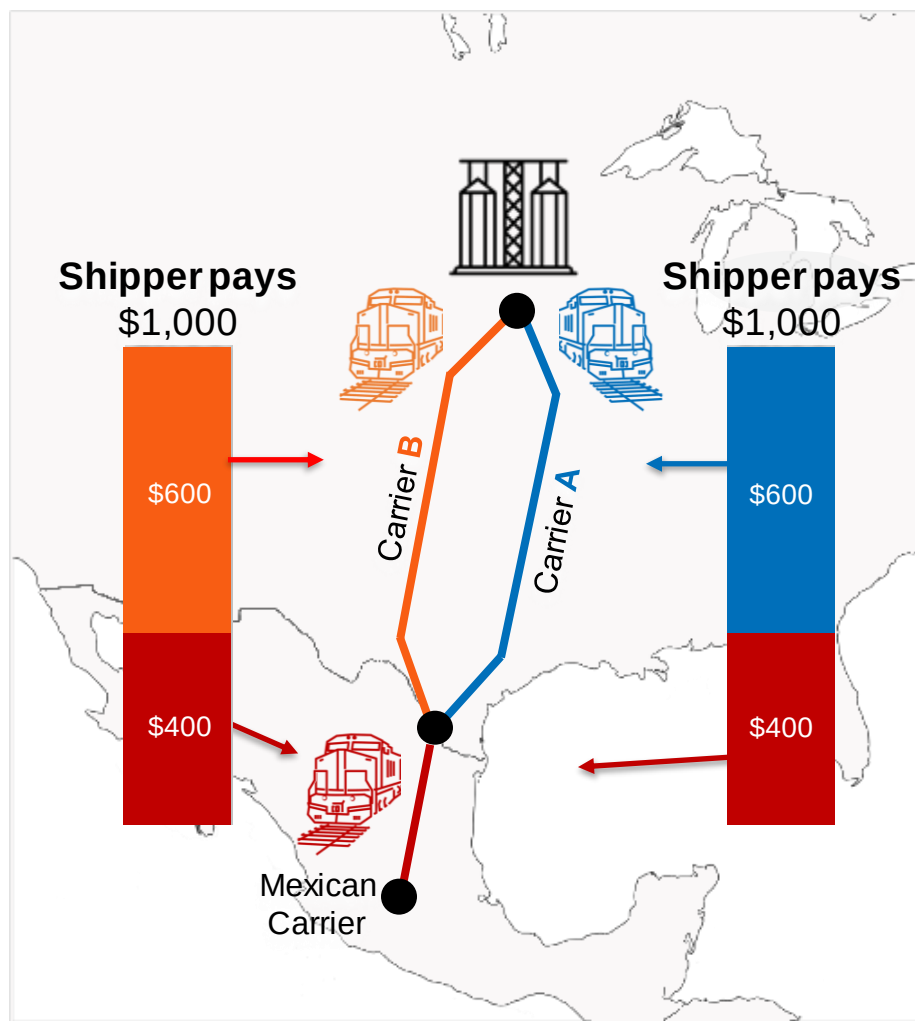
Merger

Carrier A Acquires Mexican Carrier



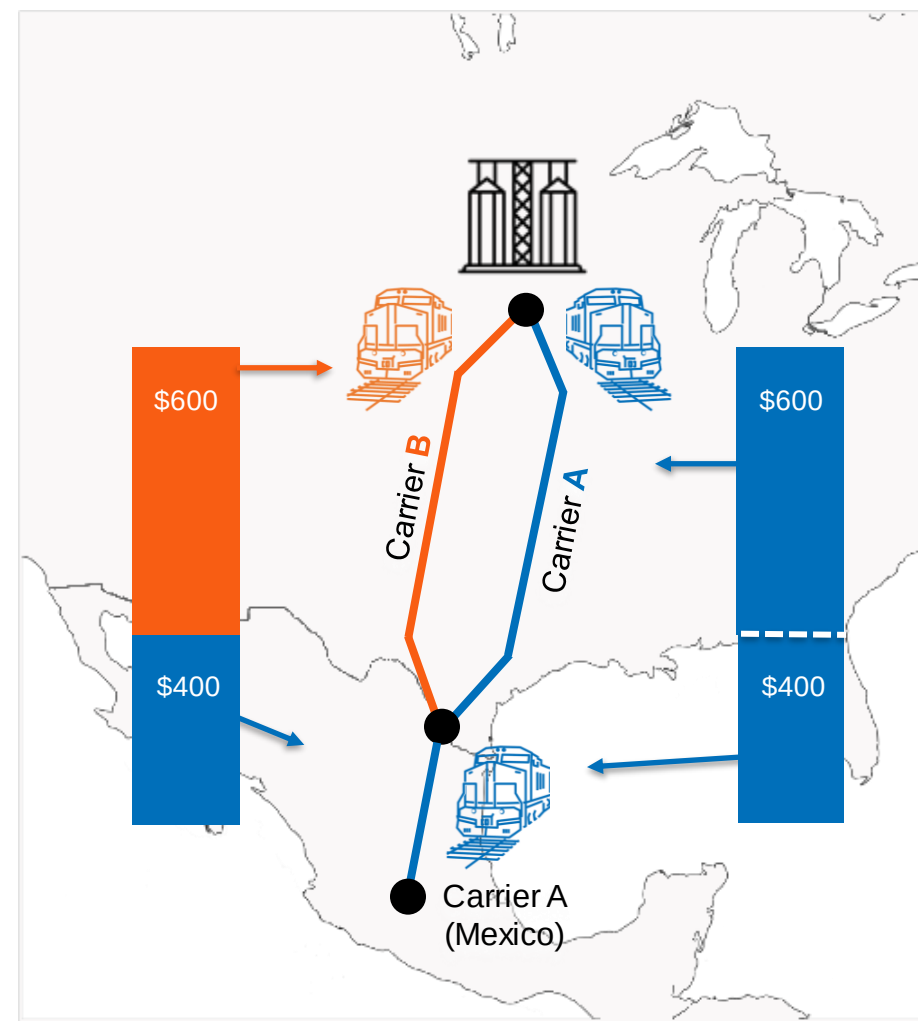
The Problem: Gateway Closure

Shipper Receives Competing Quotes to Ship to Mexico



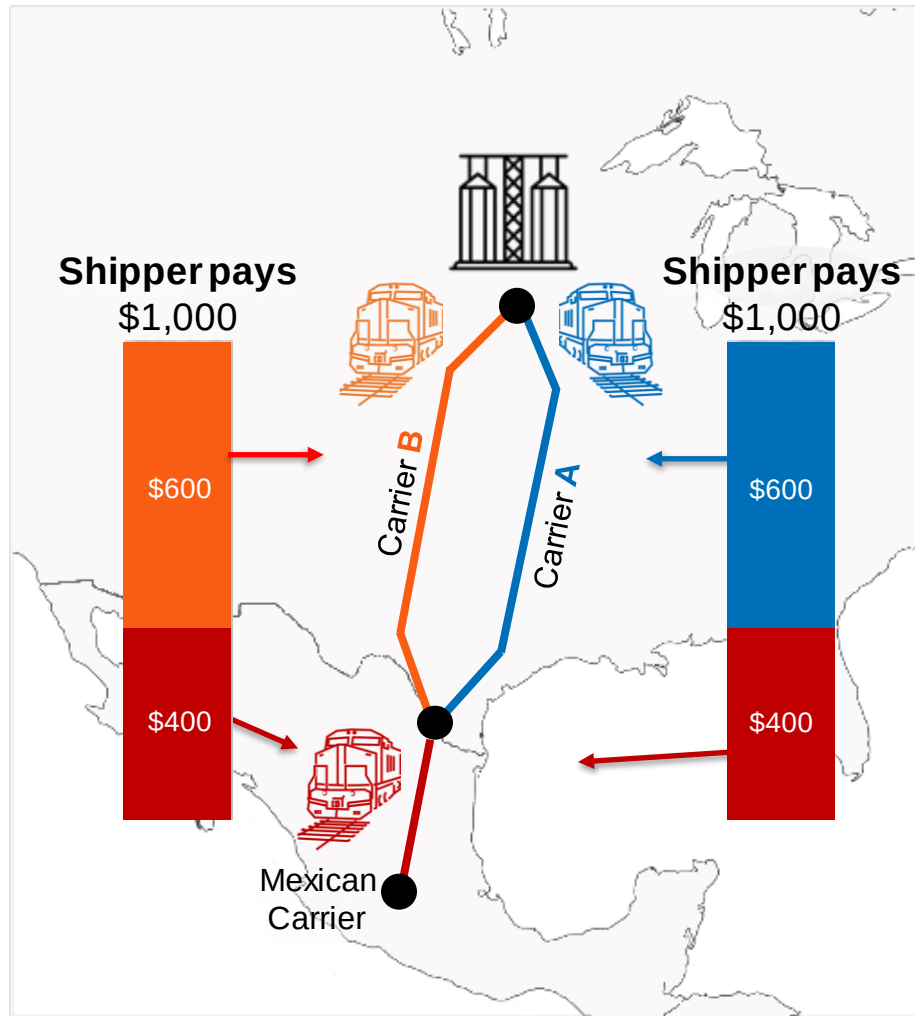
Merger

Carrier A Raises Rates on Mexico Segment

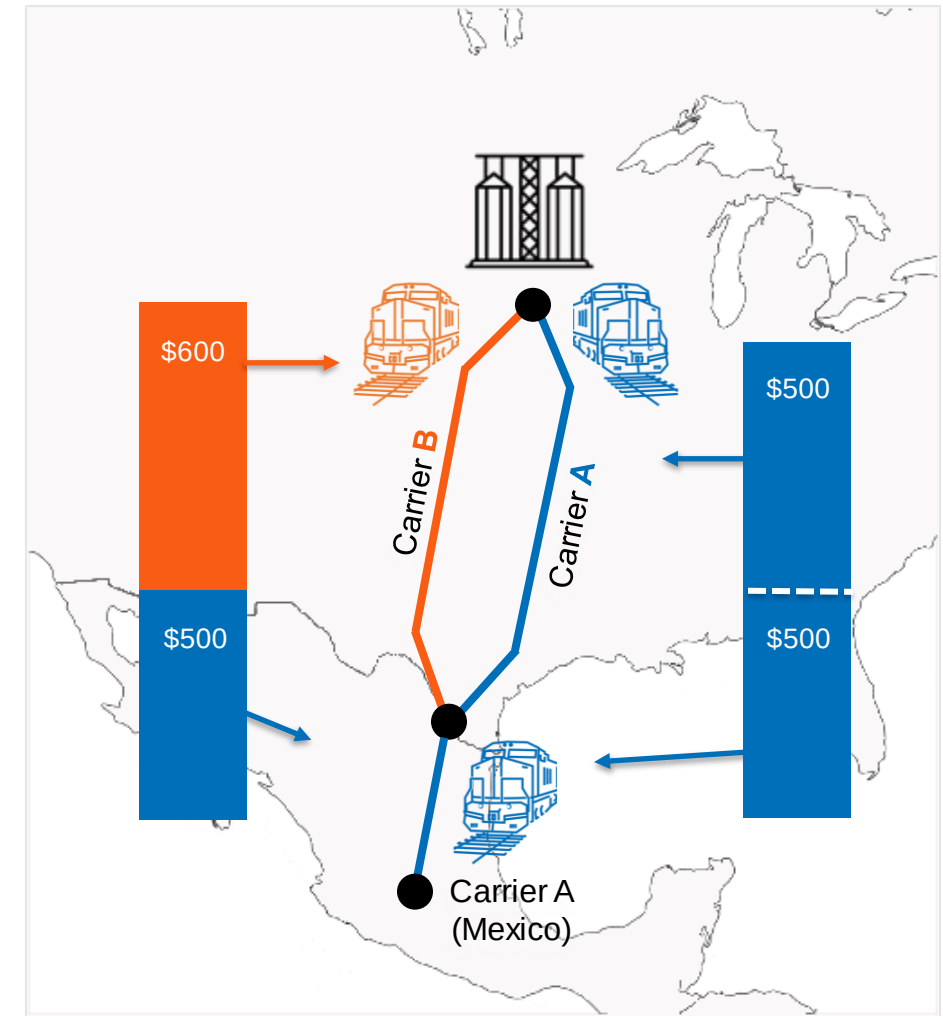


The Problem: Gateway Closure

Shipper Receives Competing Quotes to Ship to Mexico

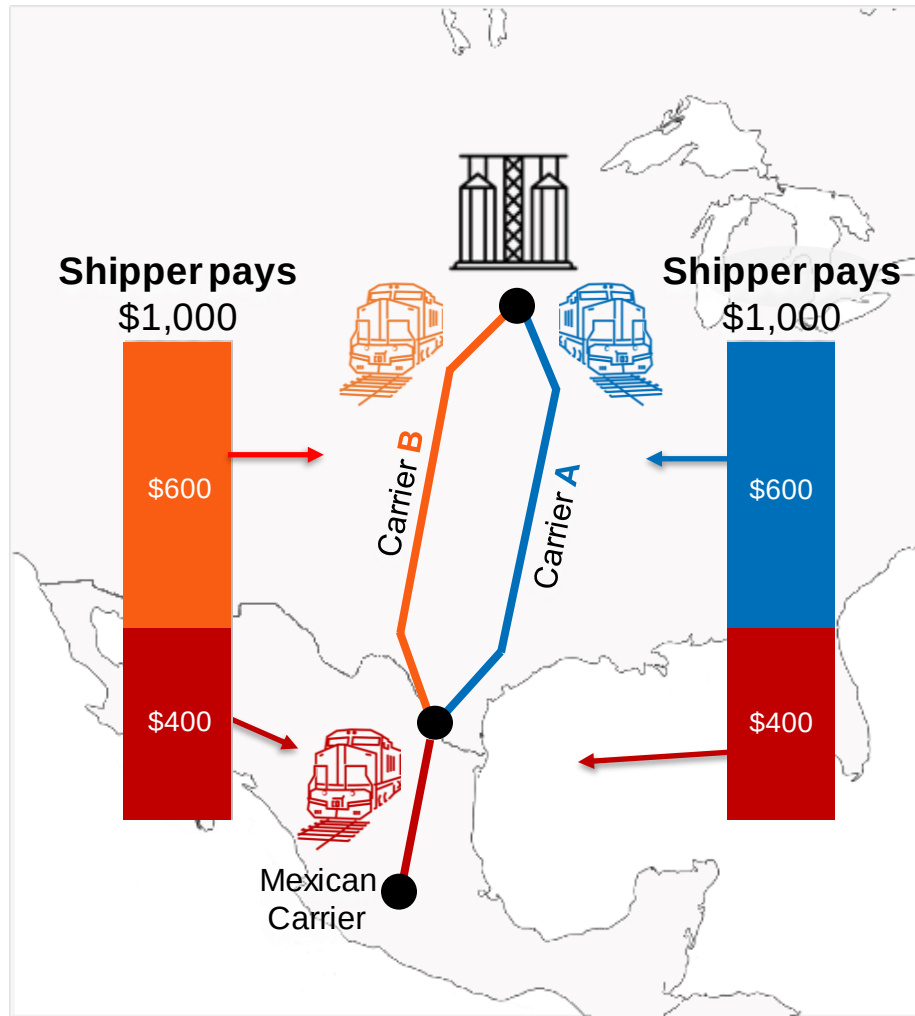


Carrier A Raises Rates on Mexico Segment

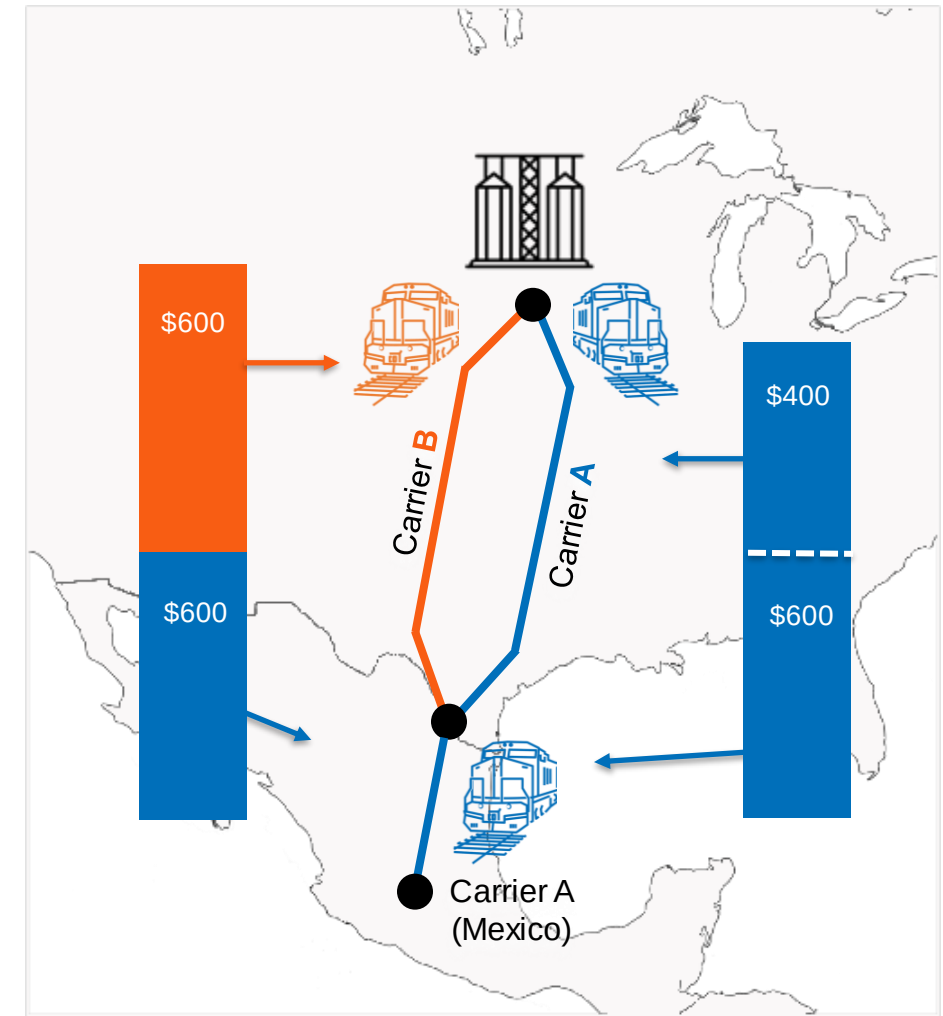


The Problem: Gateway Closure

Shipper Receives Competing Quotes to Ship to Mexico

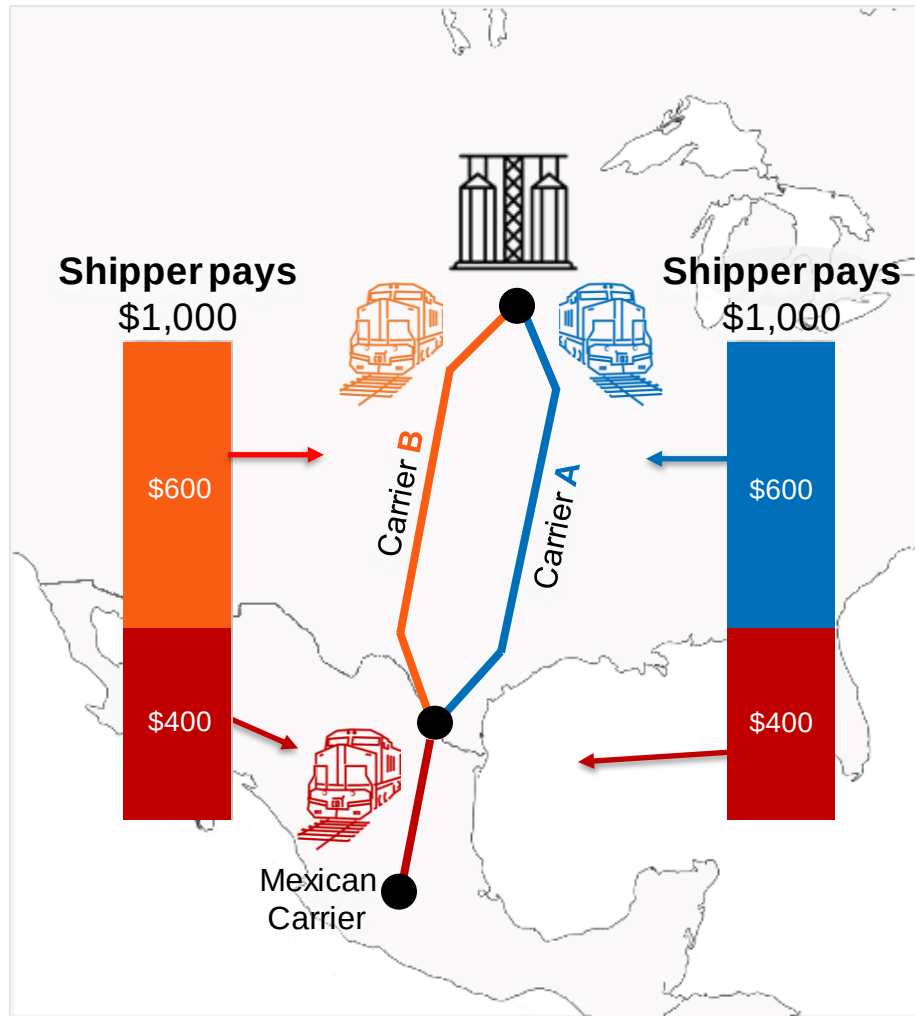


Carrier A Raises Rates on Mexico Segment



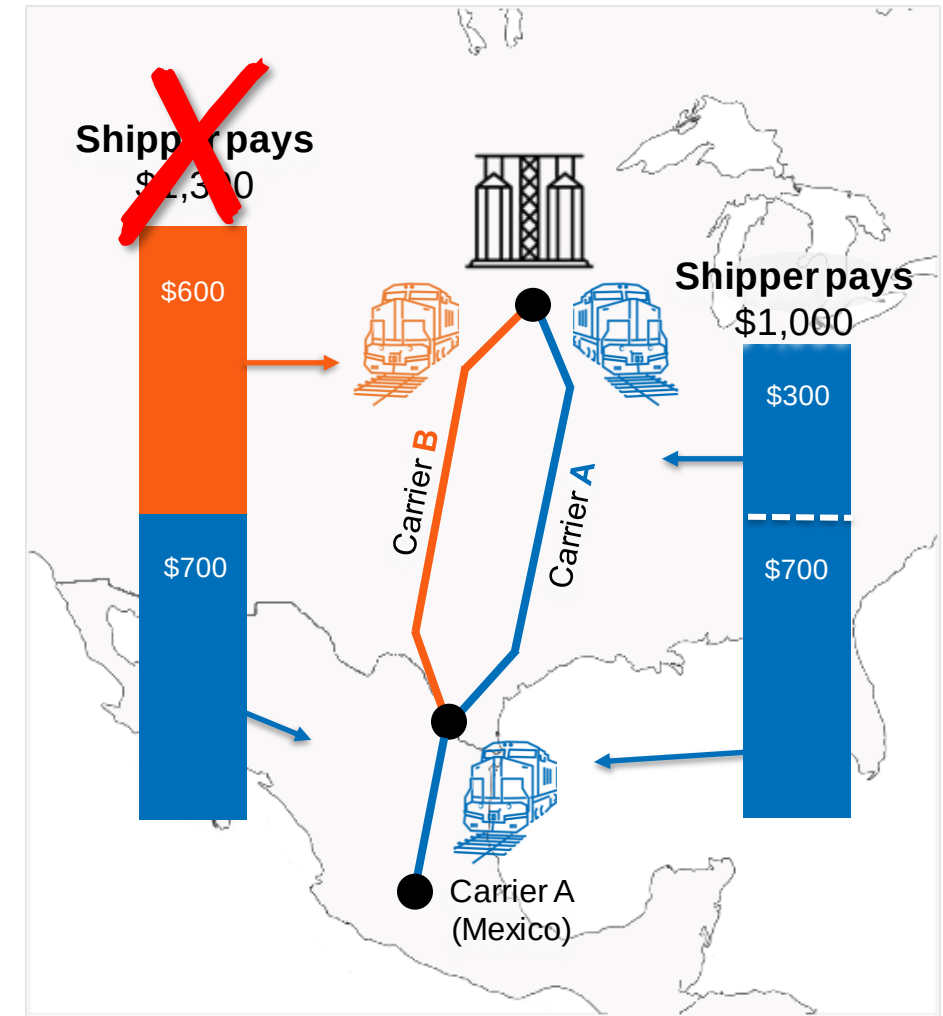
The Problem: Gateway Closure

Shipper Receives Competing Quotes
to Ship to Mexico



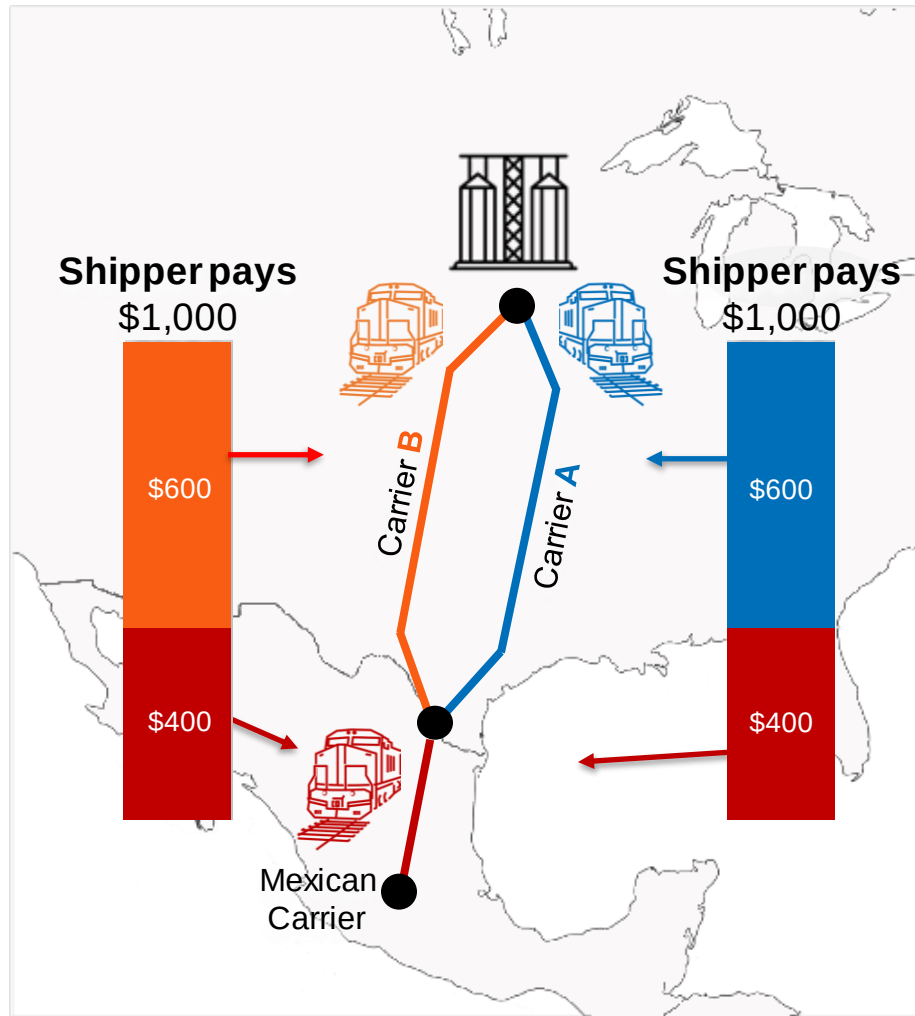
Merger

Increased Rates in Mexico Raise Costs to
Shippers Using Carrier B



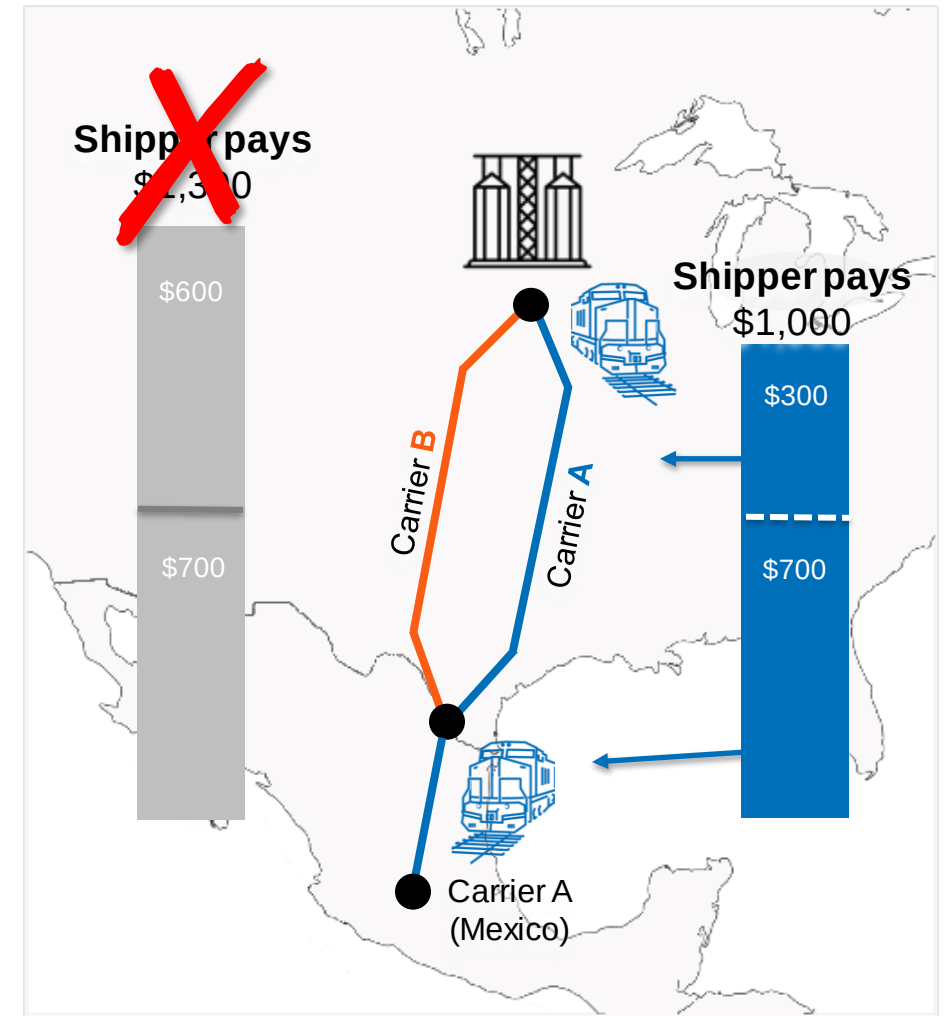
The Problem: Gateway Closure

Shipper Receives Competing Quotes
to Ship to Mexico



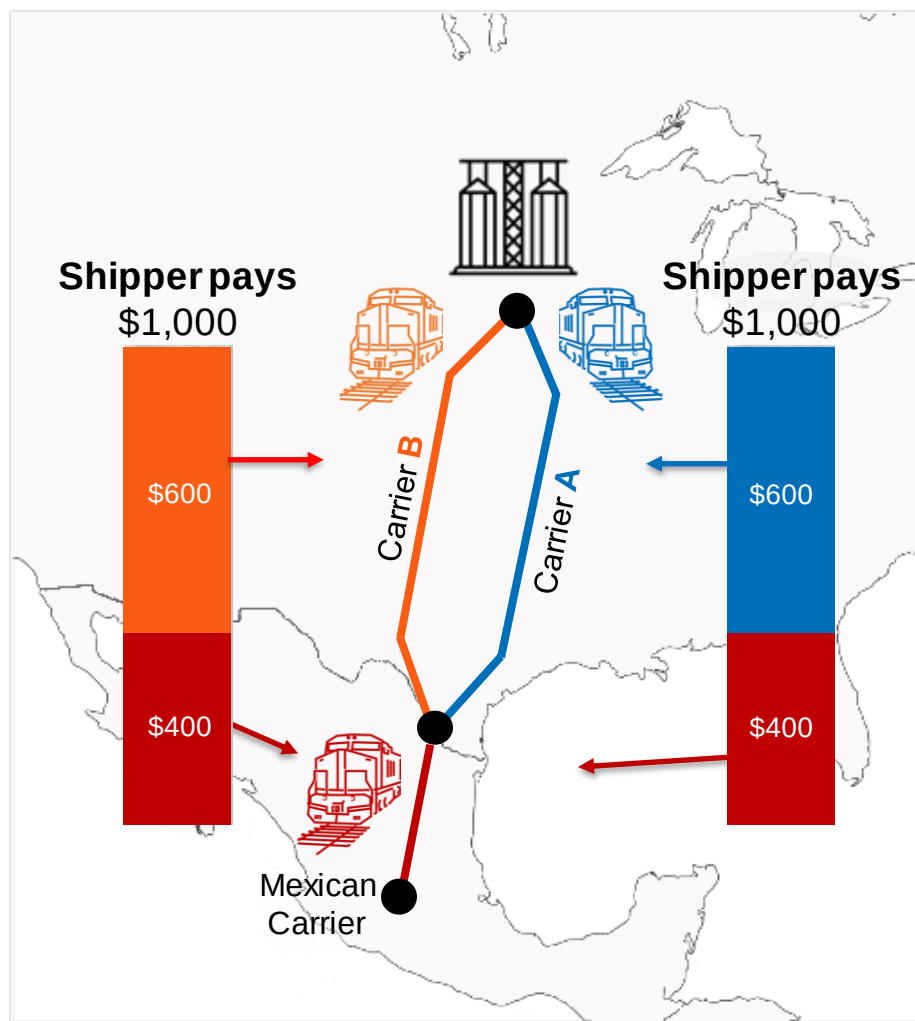
Merger

Carrier B Cannot Compete



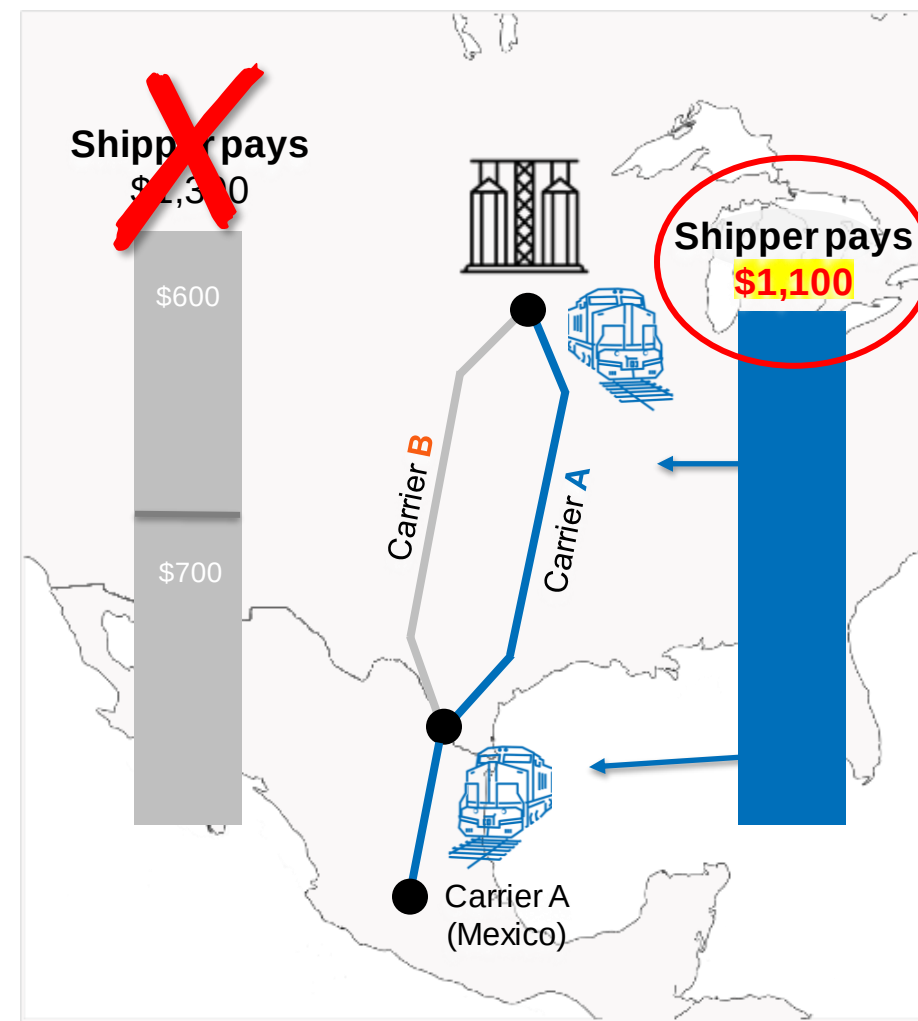
The Problem: Gateway Closure

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Merger

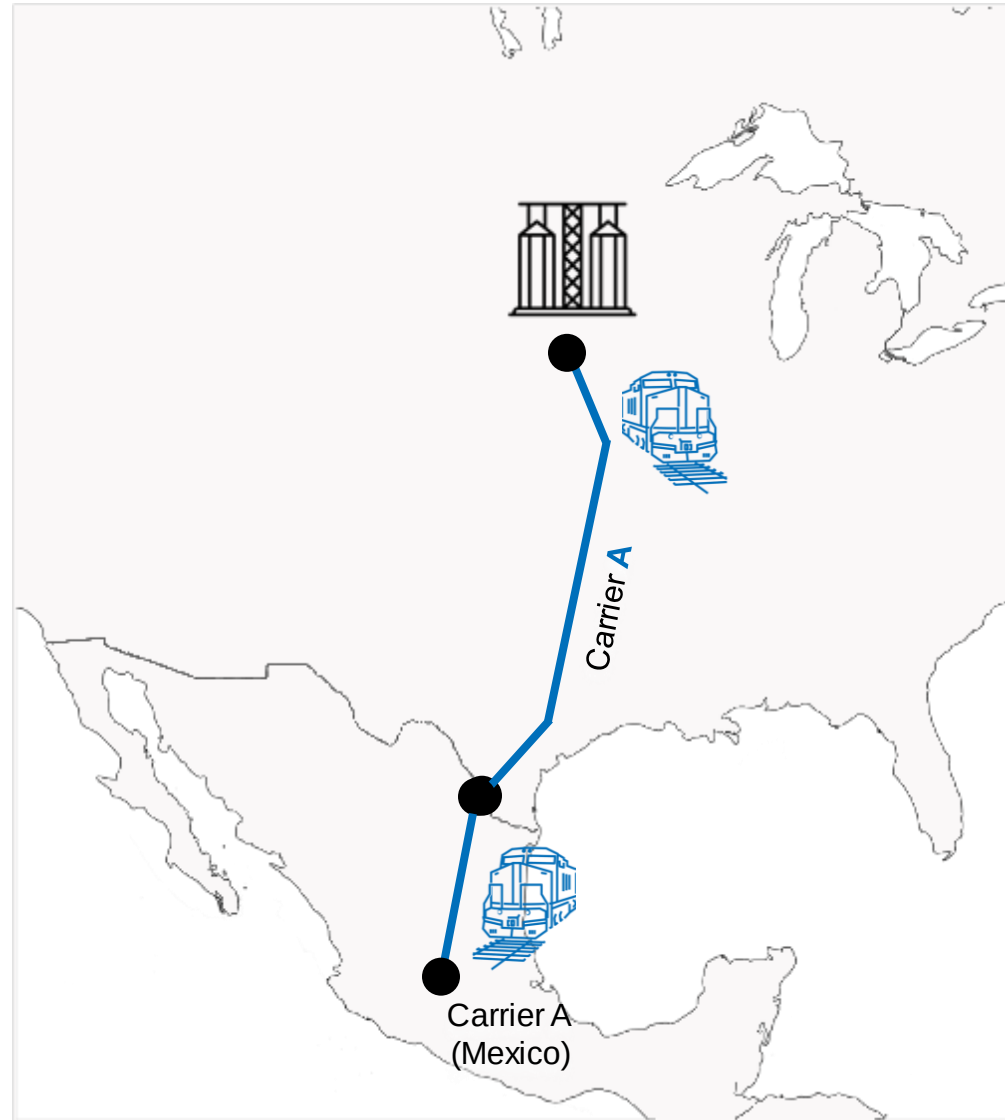
By Eliminating Competition, Carrier A
Can Raise Rates to Shippers



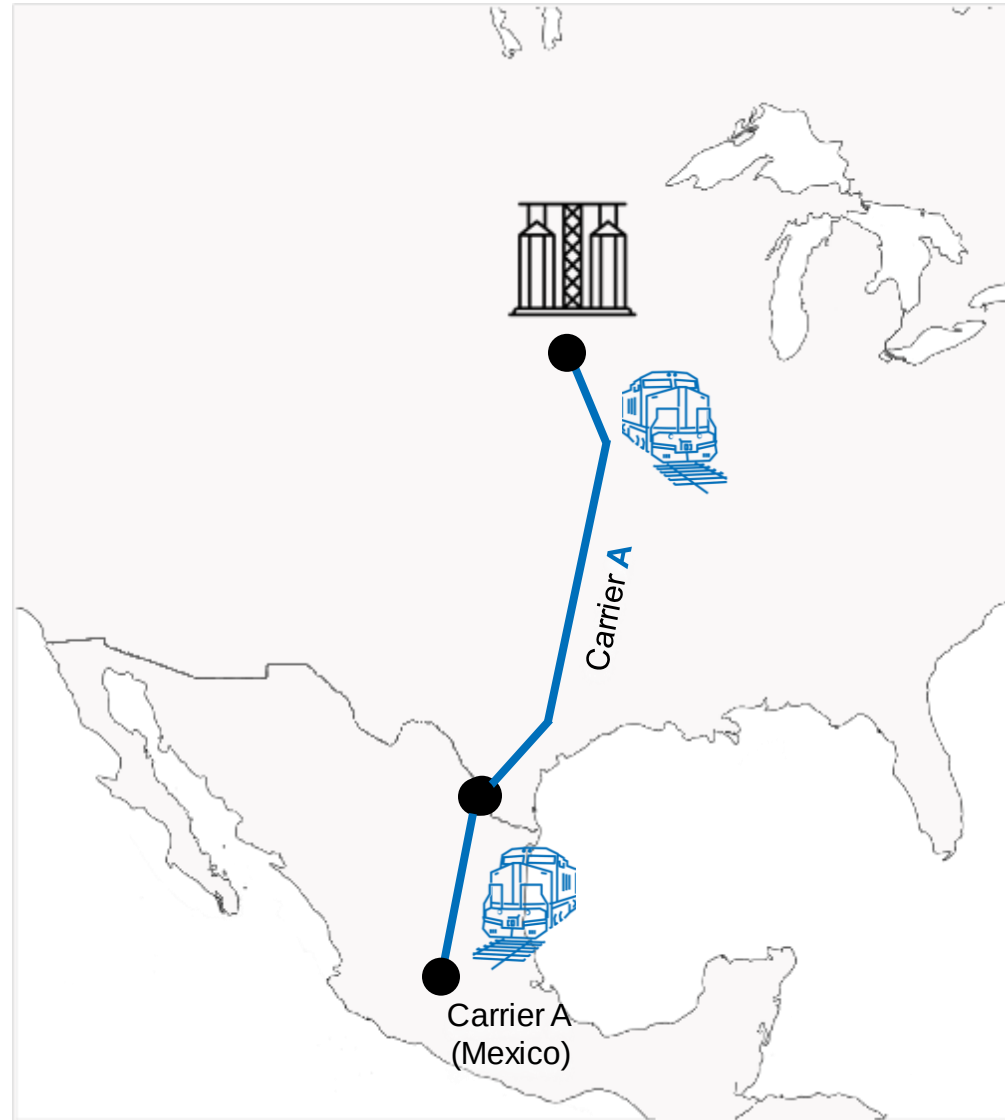
Solution to Prevent Gateway Closure



The Solution: Mileage Prorate Mechanism



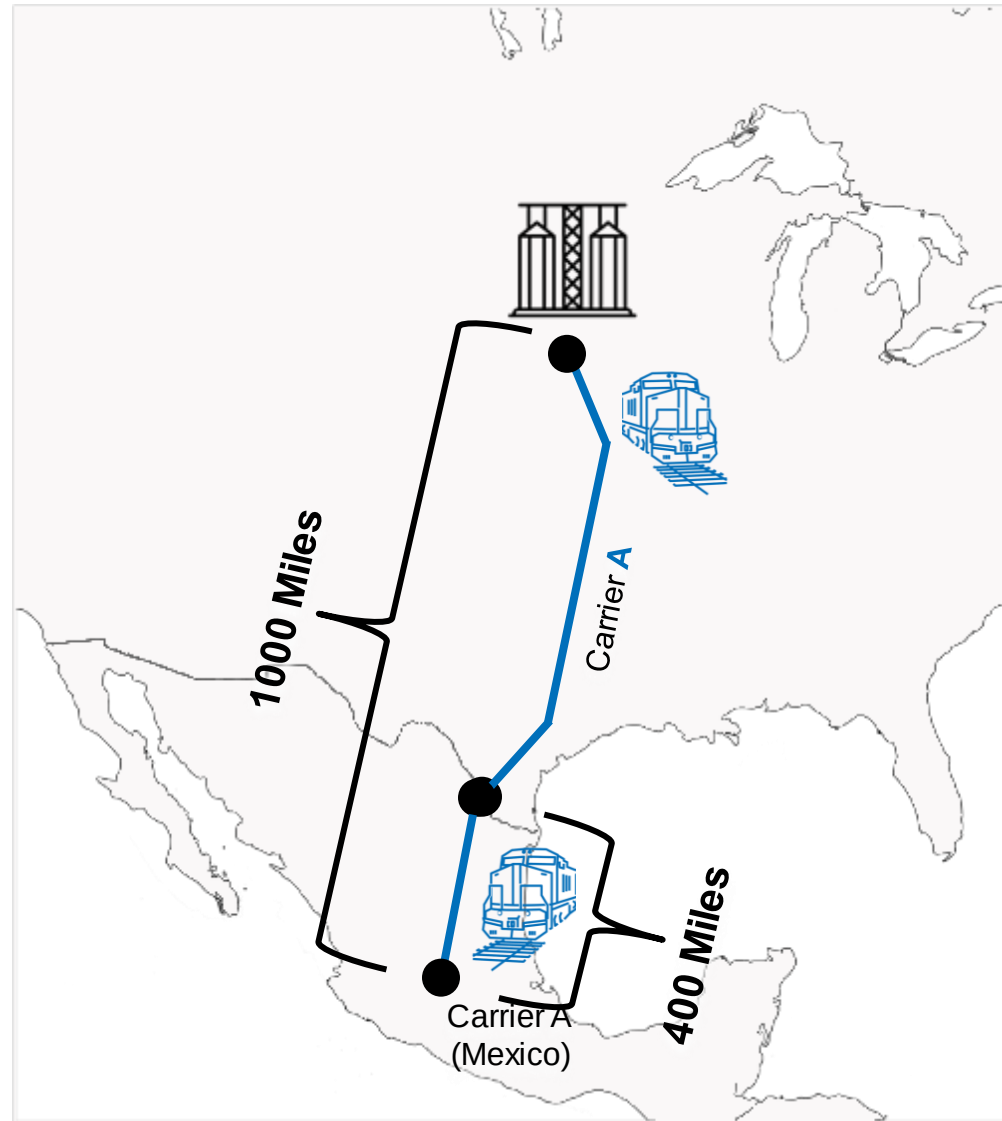
The Solution: Mileage Prorate Mechanism



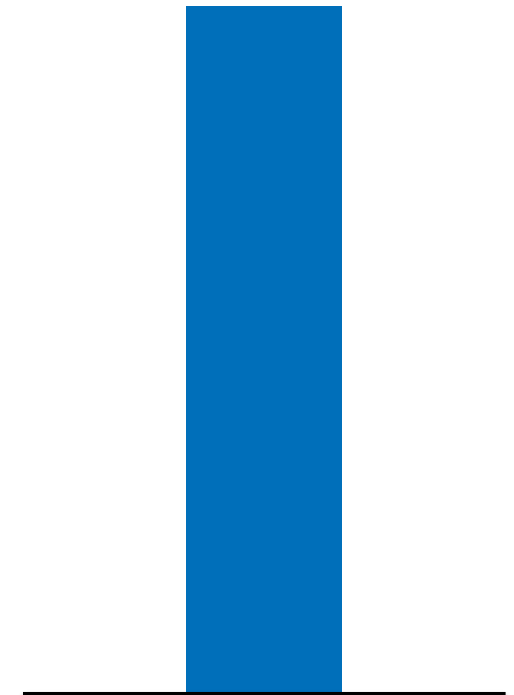
Total Rate:
\$1000



The Solution: Mileage Prorate Mechanism

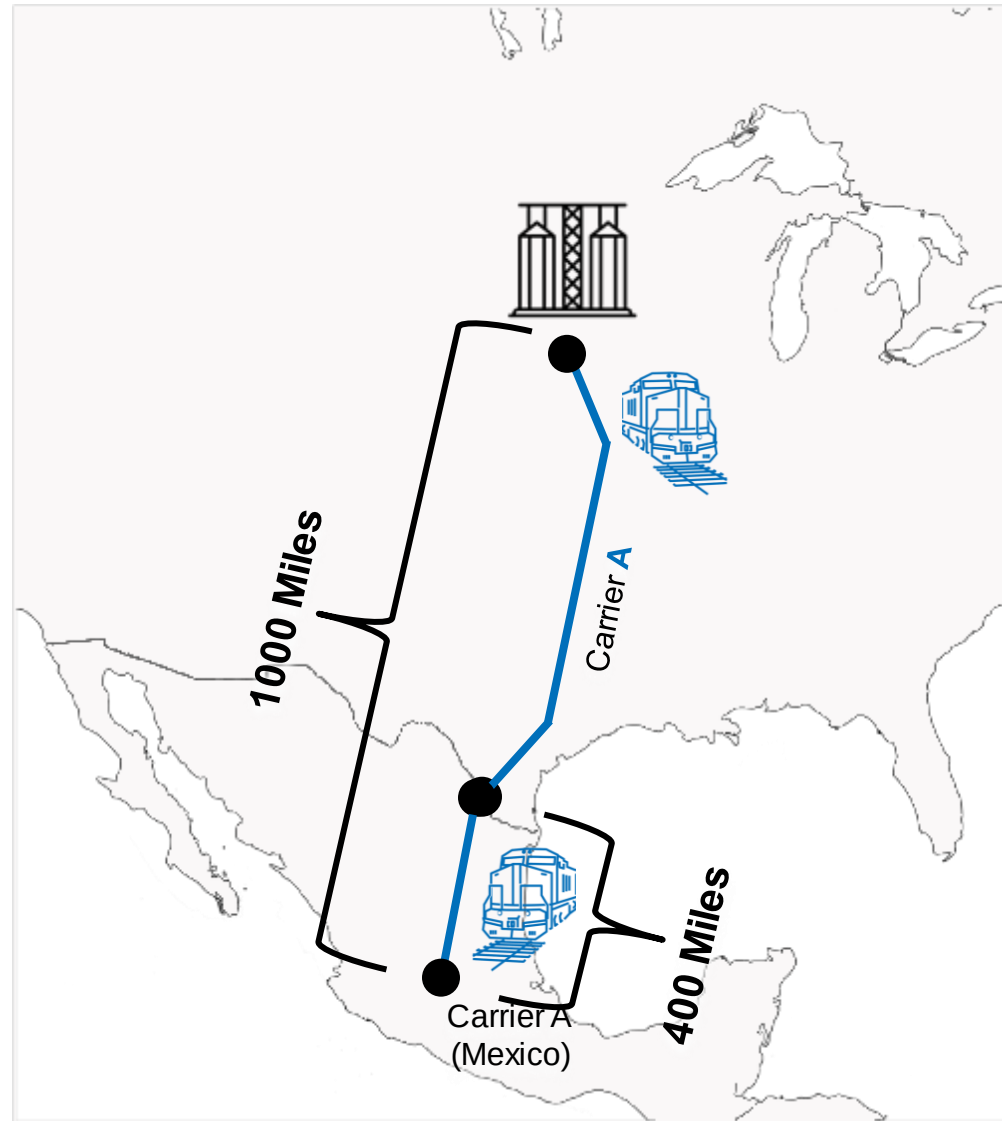


Total Rate:
\$1000



The Solution: Mileage Prorate Mechanism

Total Rate: **\$1000**
Total Miles: **1000**
Miles in Mexico: **400**

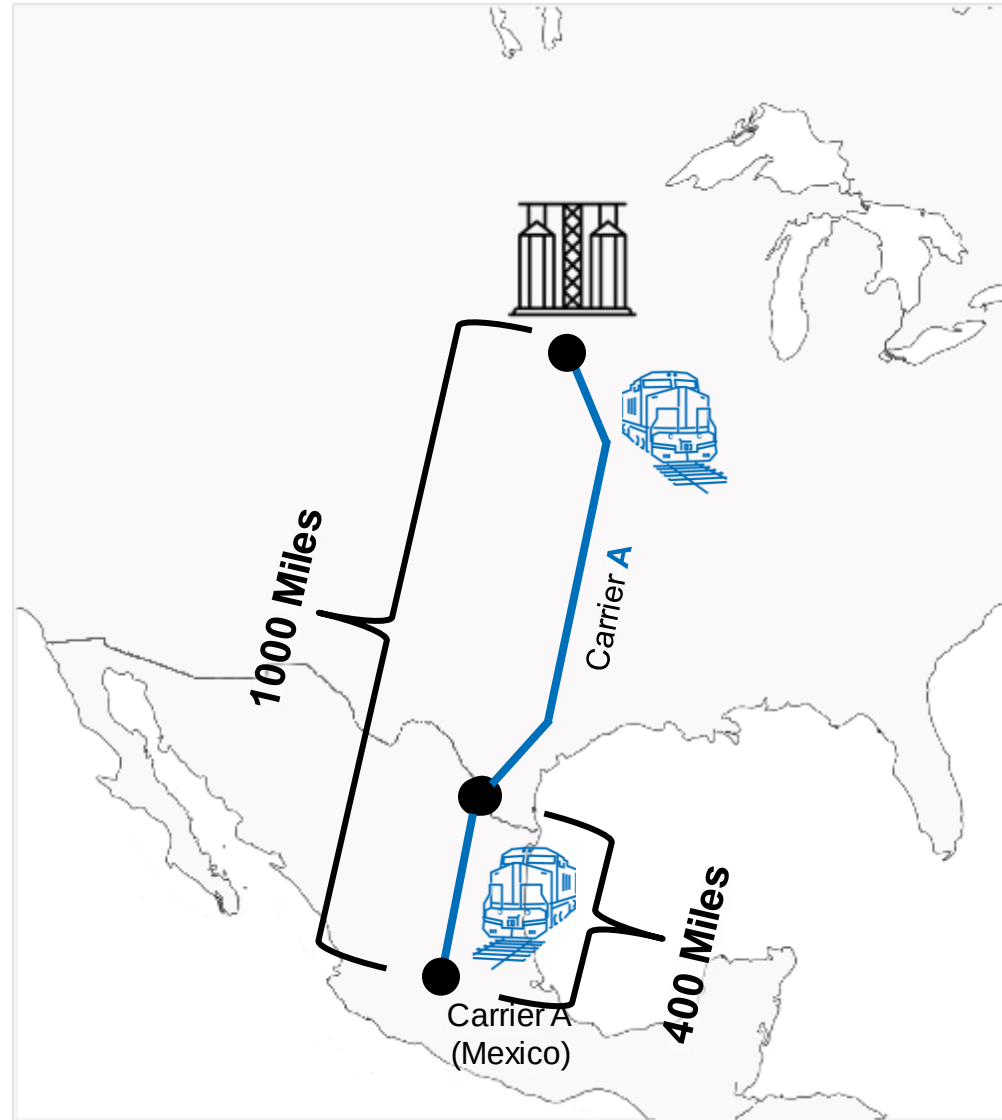


Total Rate:
\$1000



The Solution: Mileage Prorate Mechanism

Total Rate: **\$1000**
Total Miles: **1000**
Miles in Mexico: **400**



400 miles / 1000 miles =
40% of mileage

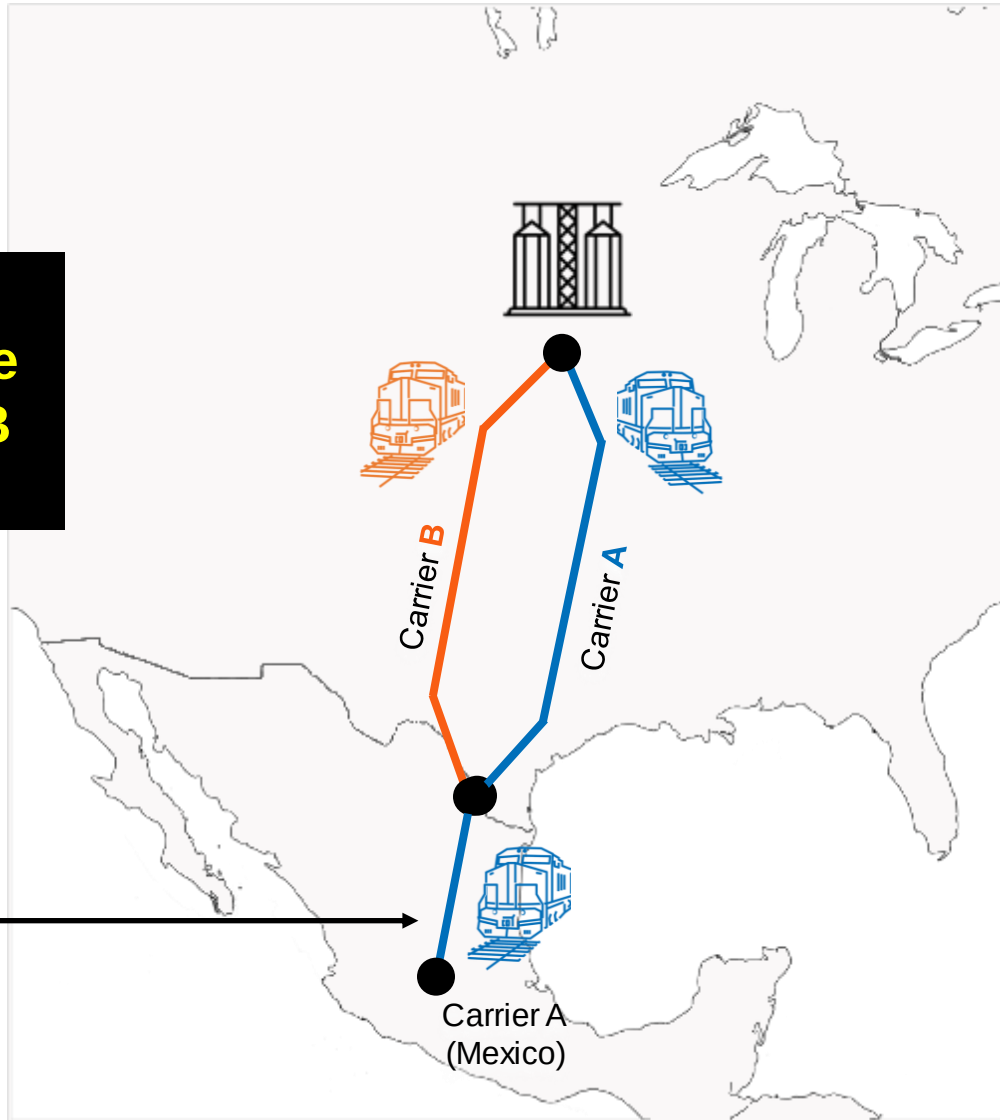
Prorating the full rate:
 $\$1,000 * 40\% =$ **\$400**

Solution: Mechanism Establishes a Commercially Reasonable Rate for Movement to the Gateway

The pro-rated \$400 rate is now the rate available to shippers on Carrier B for Mexico portion

Pro-rated Rate

\$400
Mexico

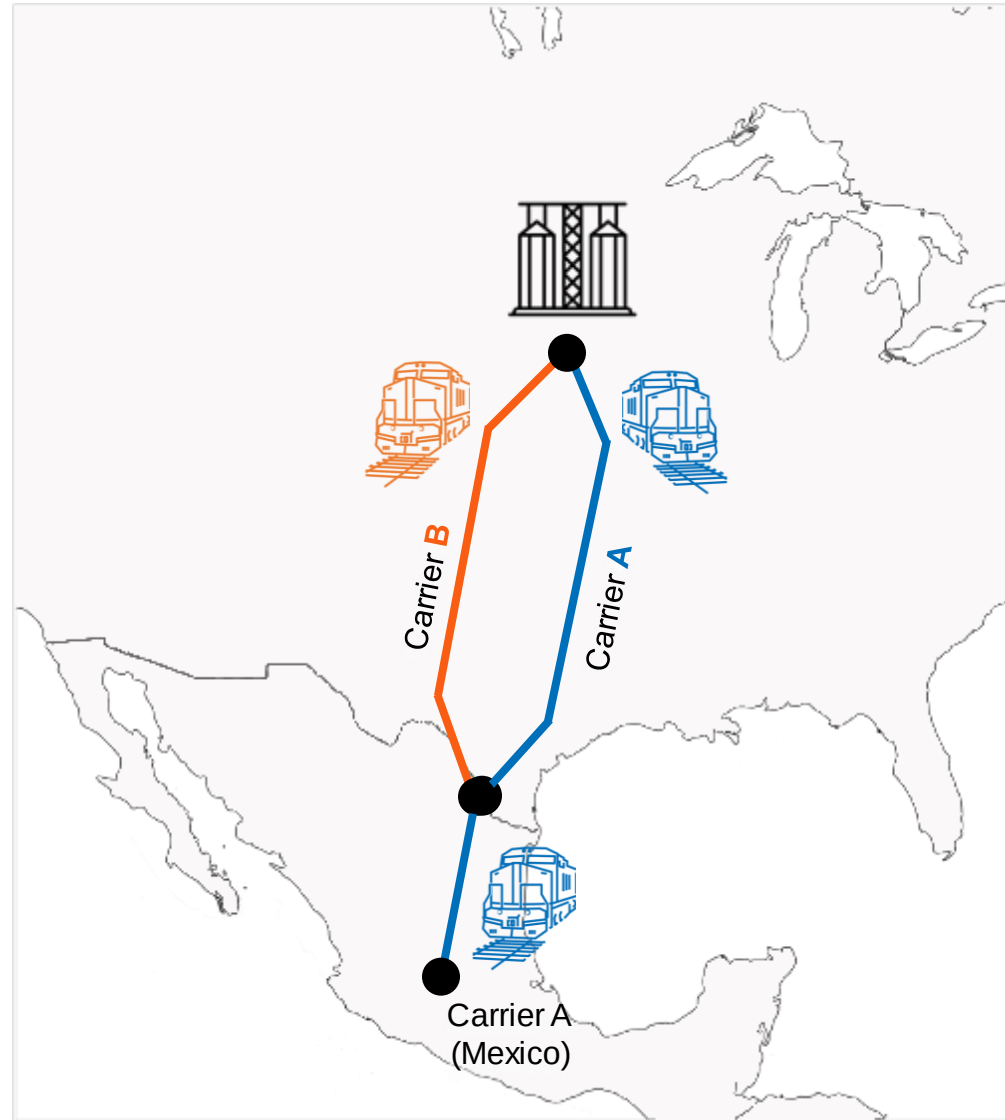


Pro-rated Rate

\$400
Mexico

Integrated Carrier Retains Incentive to Compete Under a Prop Rate Solution

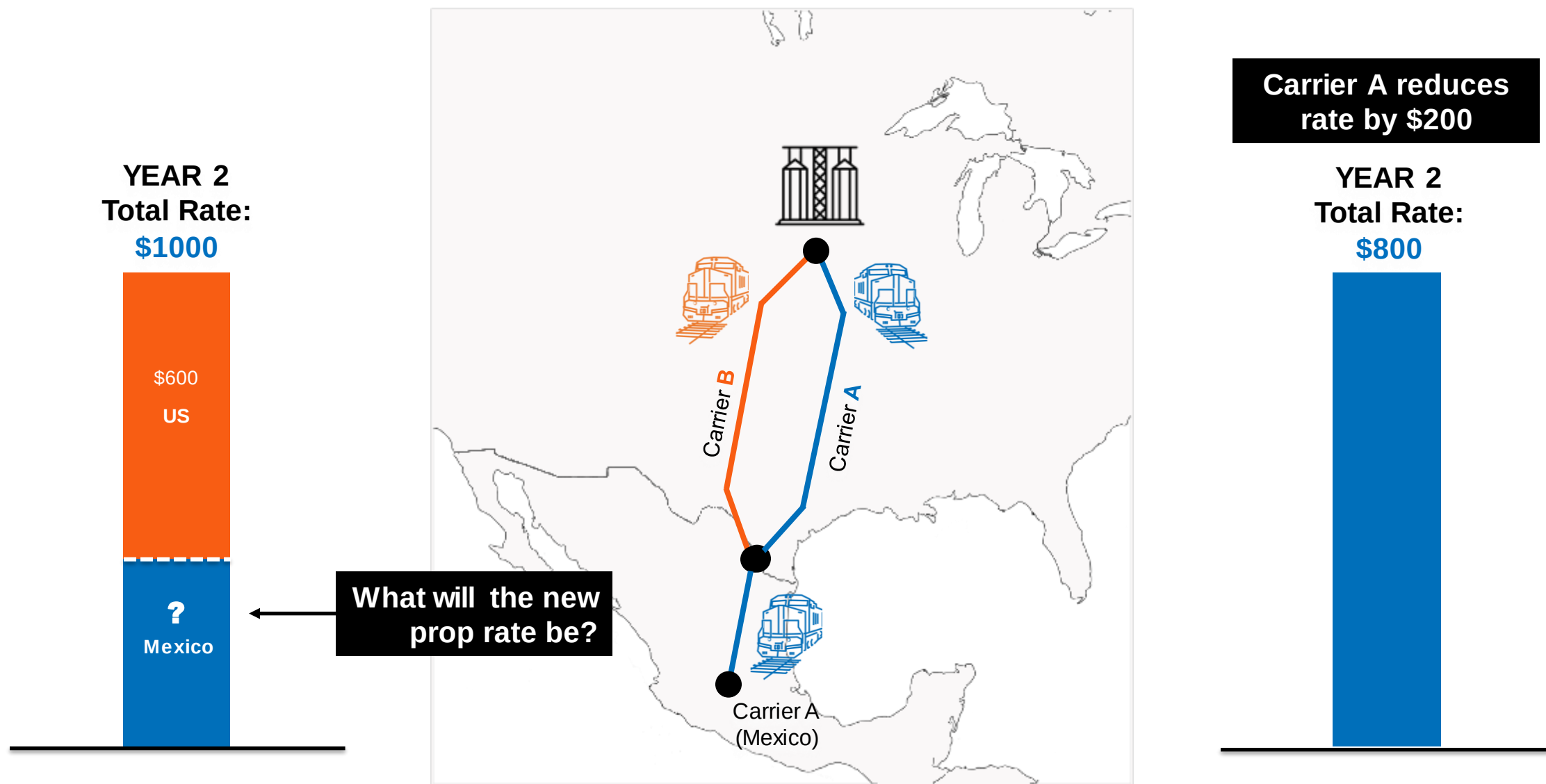
YEAR 1
Total Rate:
\$1000



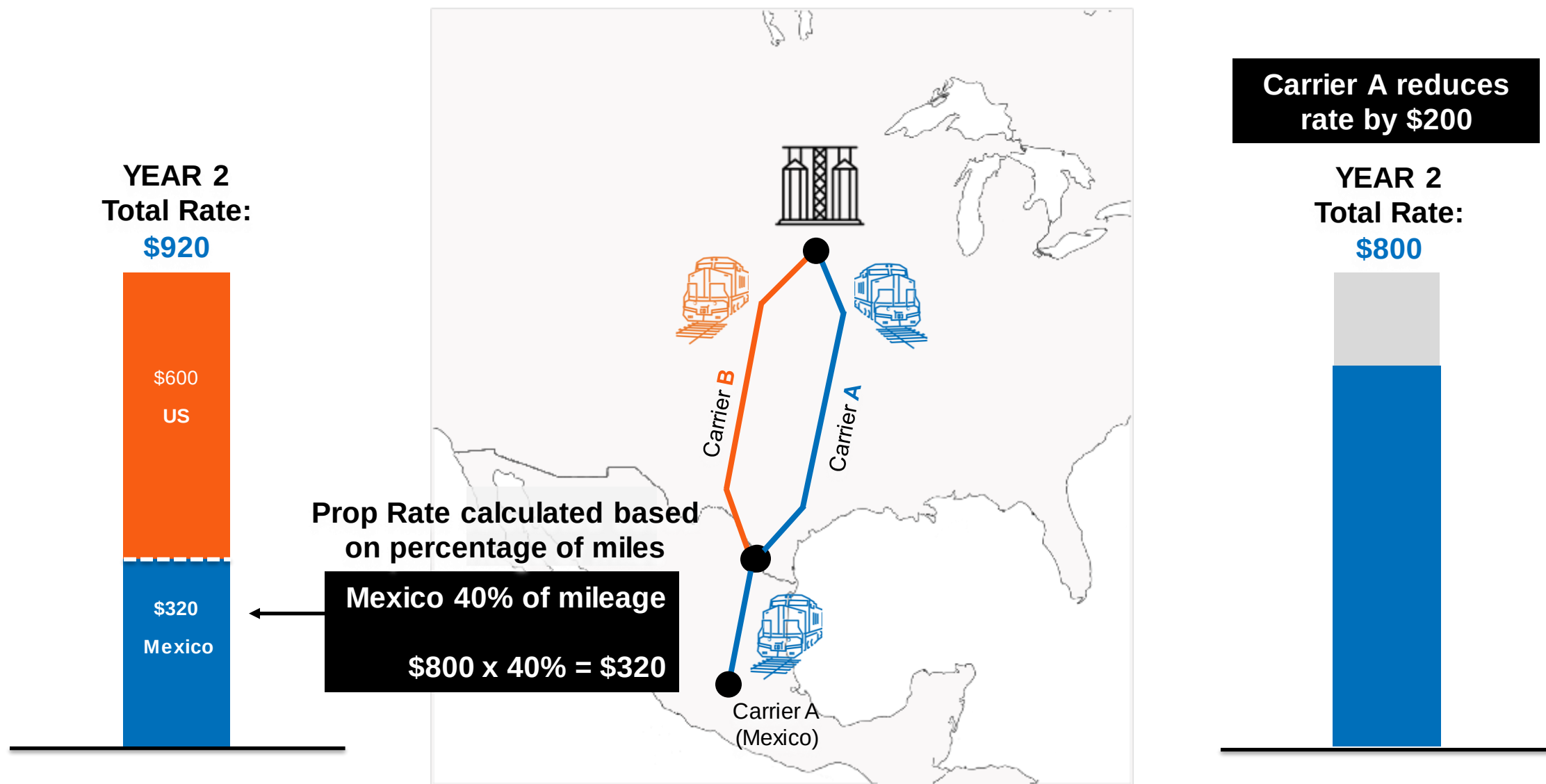
YEAR 1
Total Rate:
\$1000



Assume: Future Cost Savings by Carrier A



New Prop Rate Calculated



Carrier A Keeps the Business

Total Rate:

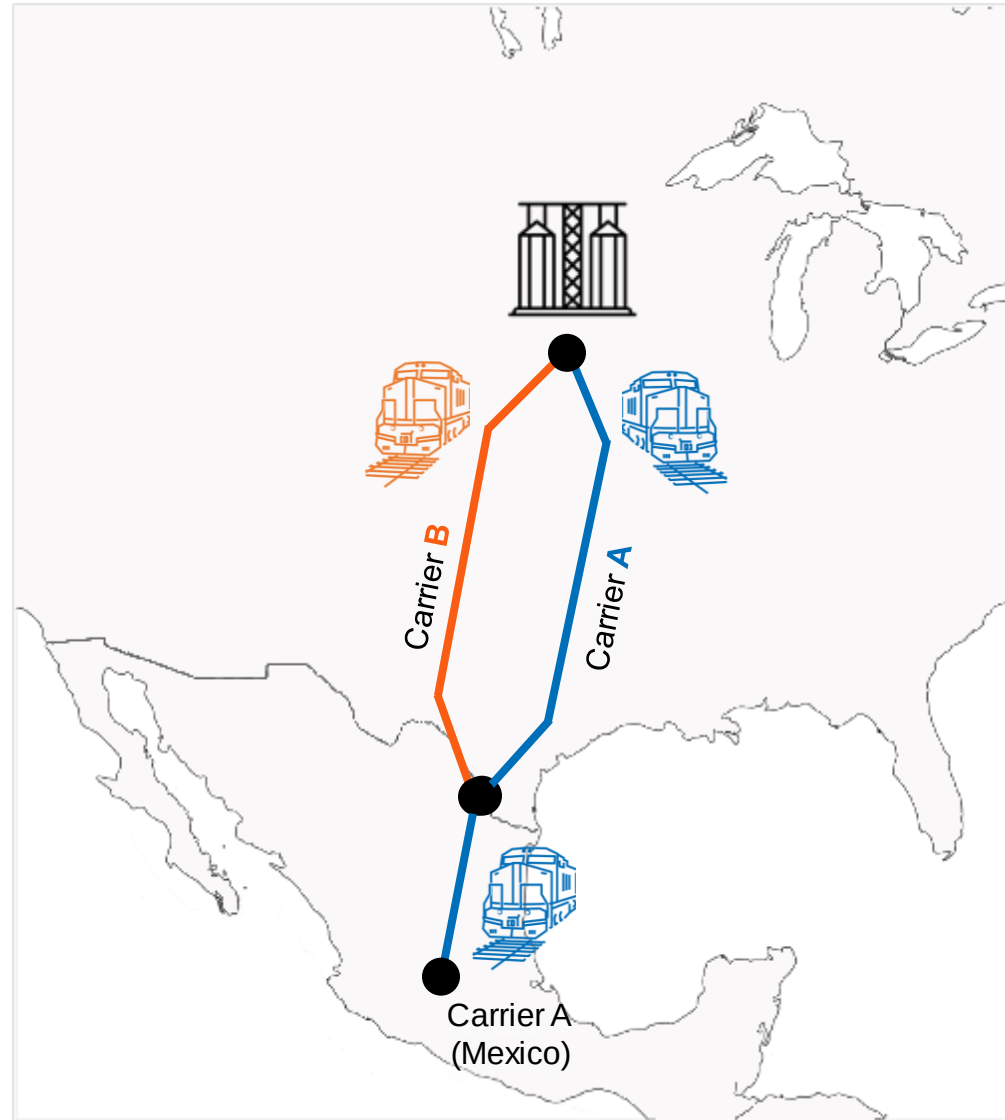
~~\$920~~

\$600

US

\$320

Mexico



Total Rate:

\$800

BNSF's Prop Rate Proposal

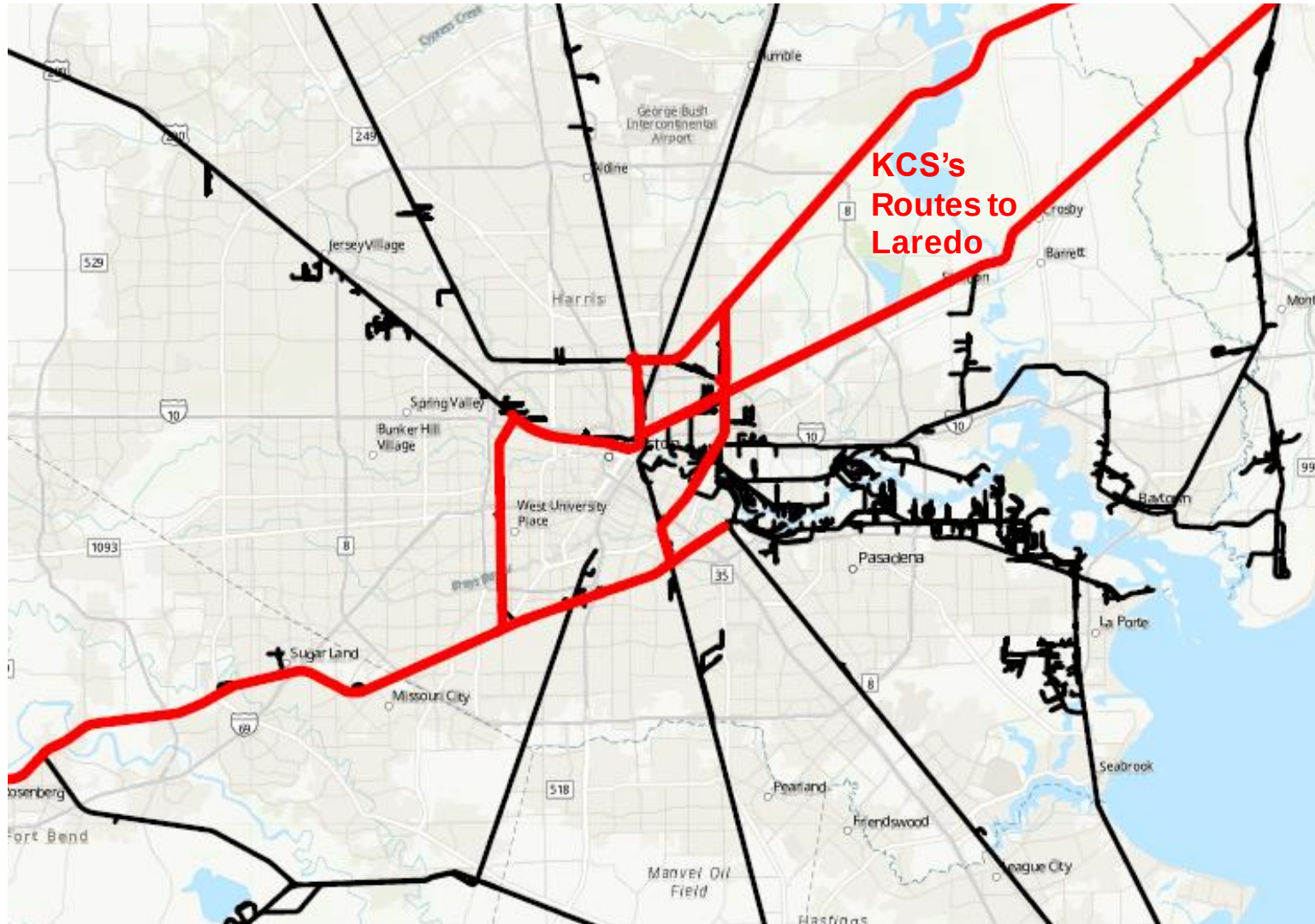


BNSF's Prop Rate Proposal Is Pro-Competitive



- Maintains Laredo gateway open using market-determined rates paid by shippers
- Provides incentives for CP-KCS and interline carriers to compete for shipper traffic
- Preserves confidentiality of shipper information
- Accounts for marketplace differences across traffic types
- Adjusts automatically to changes in market conditions

Raising Rivals' Costs at Houston



- Merger-induced congestion from additional CP-KCS traffic degrades service to shippers on UP & BNSF
- CP-KCS obtains the benefits of additional traffic while costs are borne by UP & BNSF and/or their shippers
- Efficient economic policy requires CP-KCS to internalize the costs of its merger and not shift the costs onto rival competing railroads

Closing Statement by Peter Denton

(Steptoe & Johnson LLP, Counsel for
BNSF Railway Company)



Key Conditions Requested



- **Open Gateway at Laredo:** Require Applicants to implement a proportional rate remedy and service assurances in order to maintain an open gateway at Laredo, thereby preserving effective interline competition over the critical Laredo gateway.
- **Houston Service Issues:** Require Applicants to not increase existing KCS traffic levels on shared lines in Texas if such increases would displace existing traffic or compromise fluidity, until necessary capital improvements are identified, fully funded by Applicants, and implemented.
- **Cost Allocation:** Require Applicants to fully fund any capital improvements that would not be required but for increased CP-KCS traffic on lines where KCS is a tenant.
- **Oversight:** Ensure that merger oversight allows the public to evaluate CP-KCS's compliance with conditions.

APPENDIX

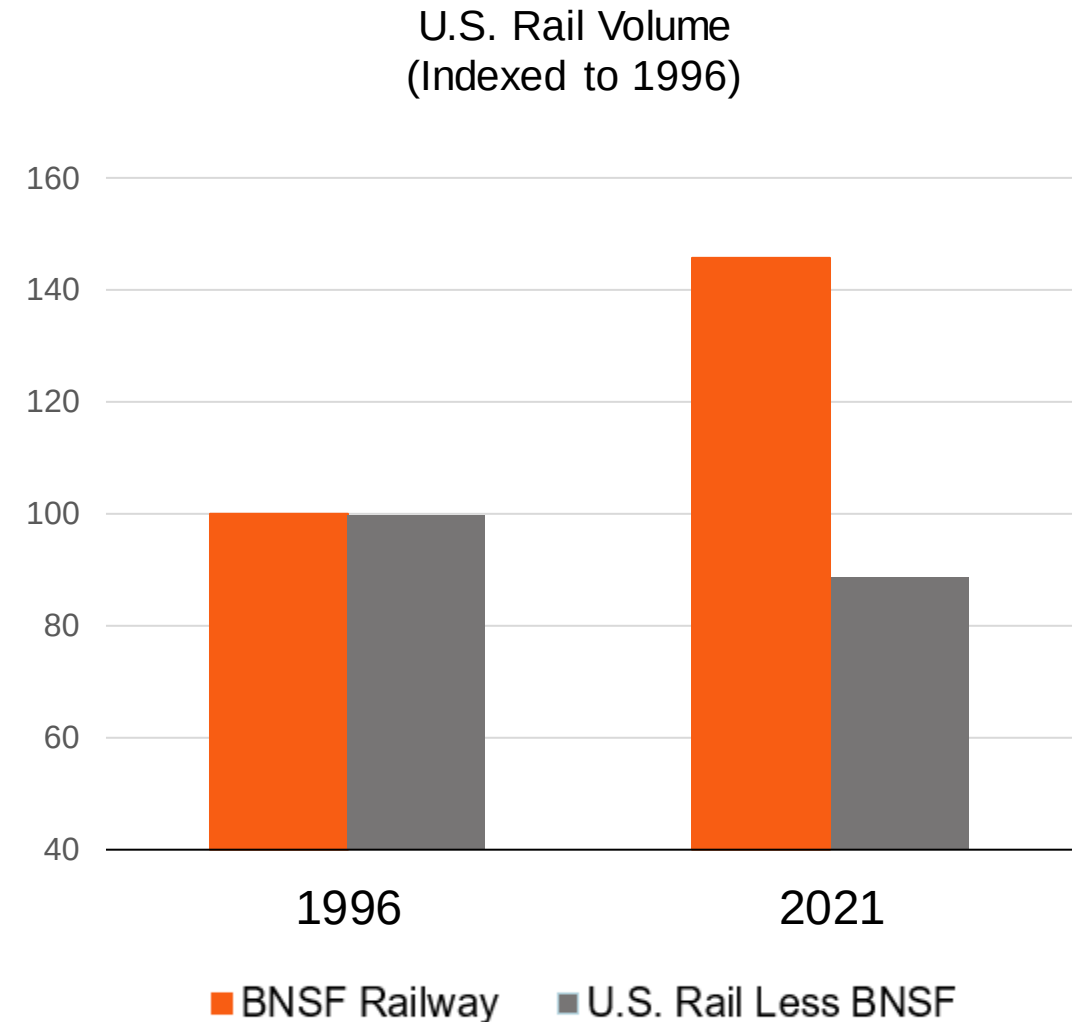


BNSF Has a Bias for Growth



Demonstrated in everything we do:

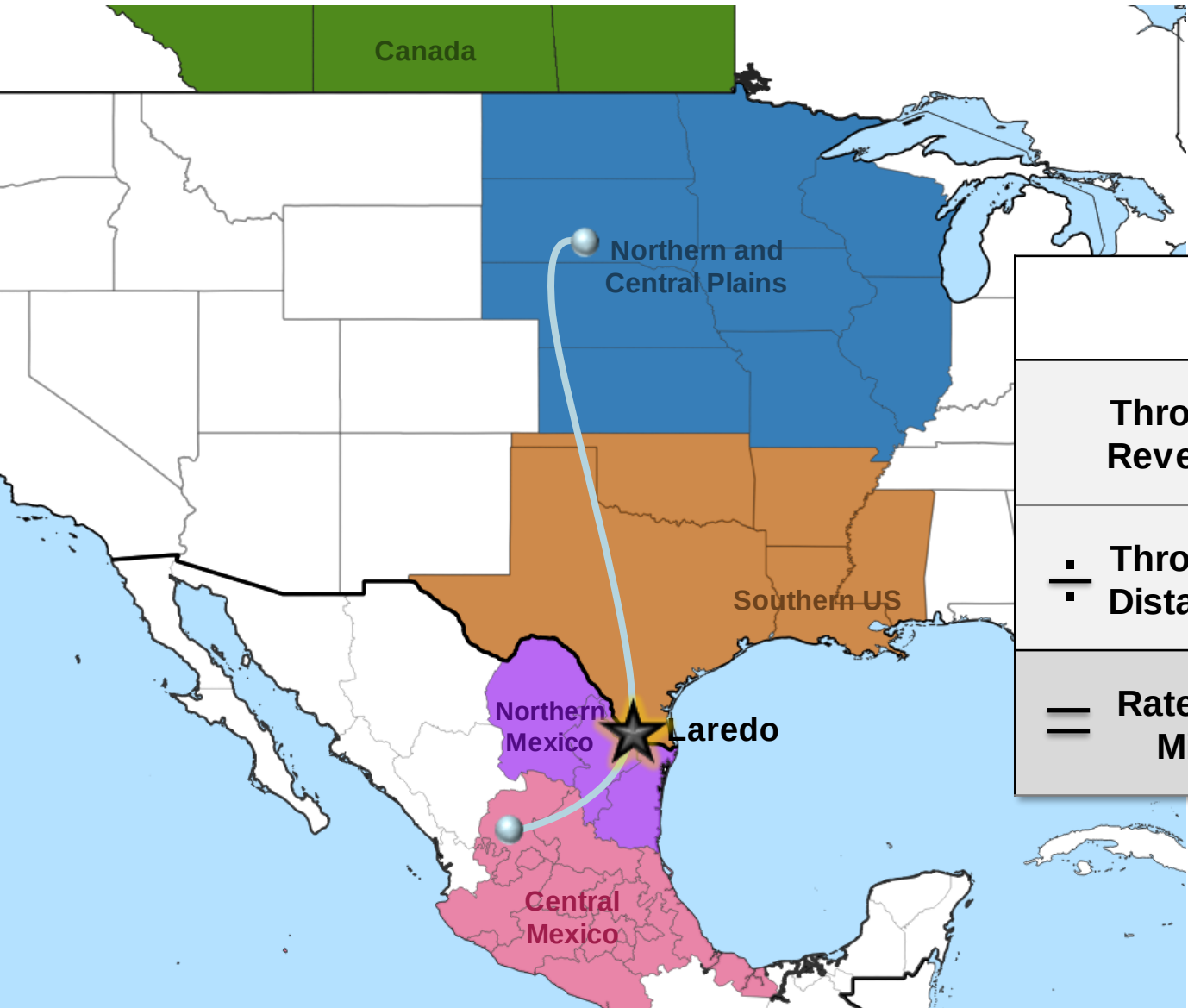
- Competitive Solutions
- Capital Investments
- Driving Efficiency
- Growing with our Customers



Mechanics of BNSF Prop Rate Solution

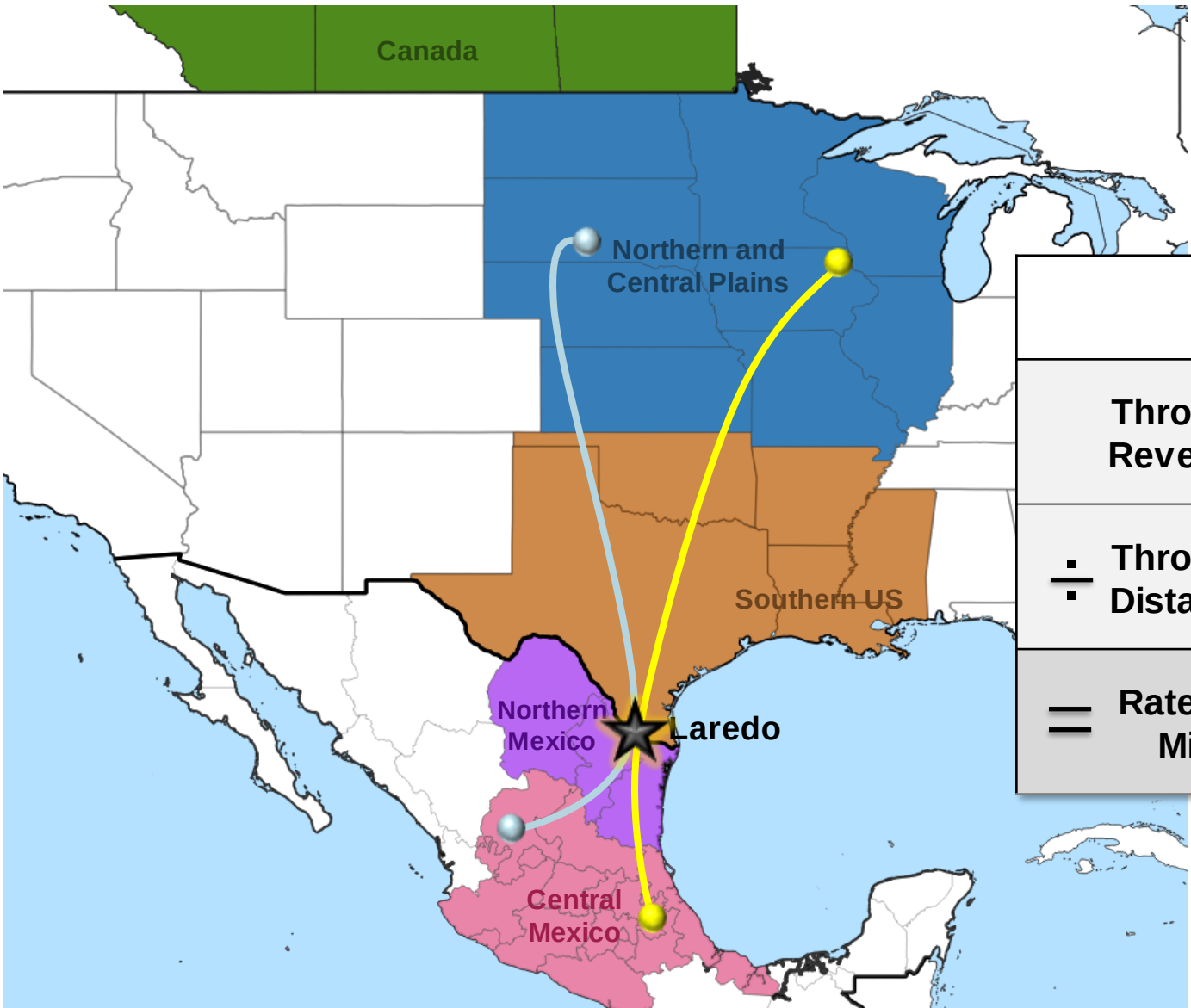


Example for Soybeans Under BNSF's Solution



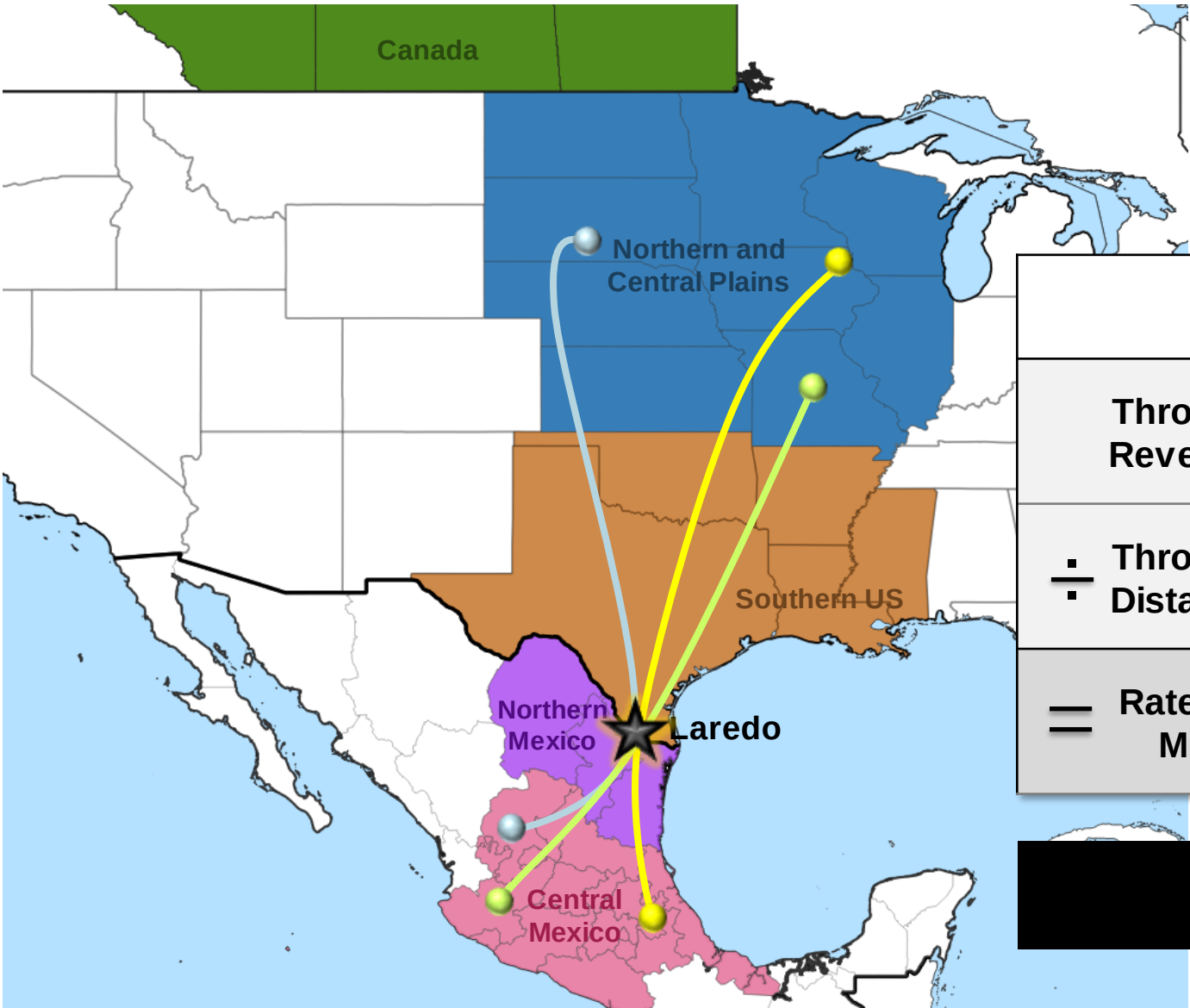
	Move #1	Move #2	Move #3
Through Revenue	\$1,000		
$\div$ Through Distance	1,000		
$=$ Rate per Mile	\$1.00		

Example for Soybeans Under BNSF's Proposal



	Move #1	Move #2	Move #3
Through Revenue	\$1,000	\$1,470	
$\div$ Through Distance	1,000	\$1,400	
$=$ Rate per Mile	\$1.00	\$1.05	

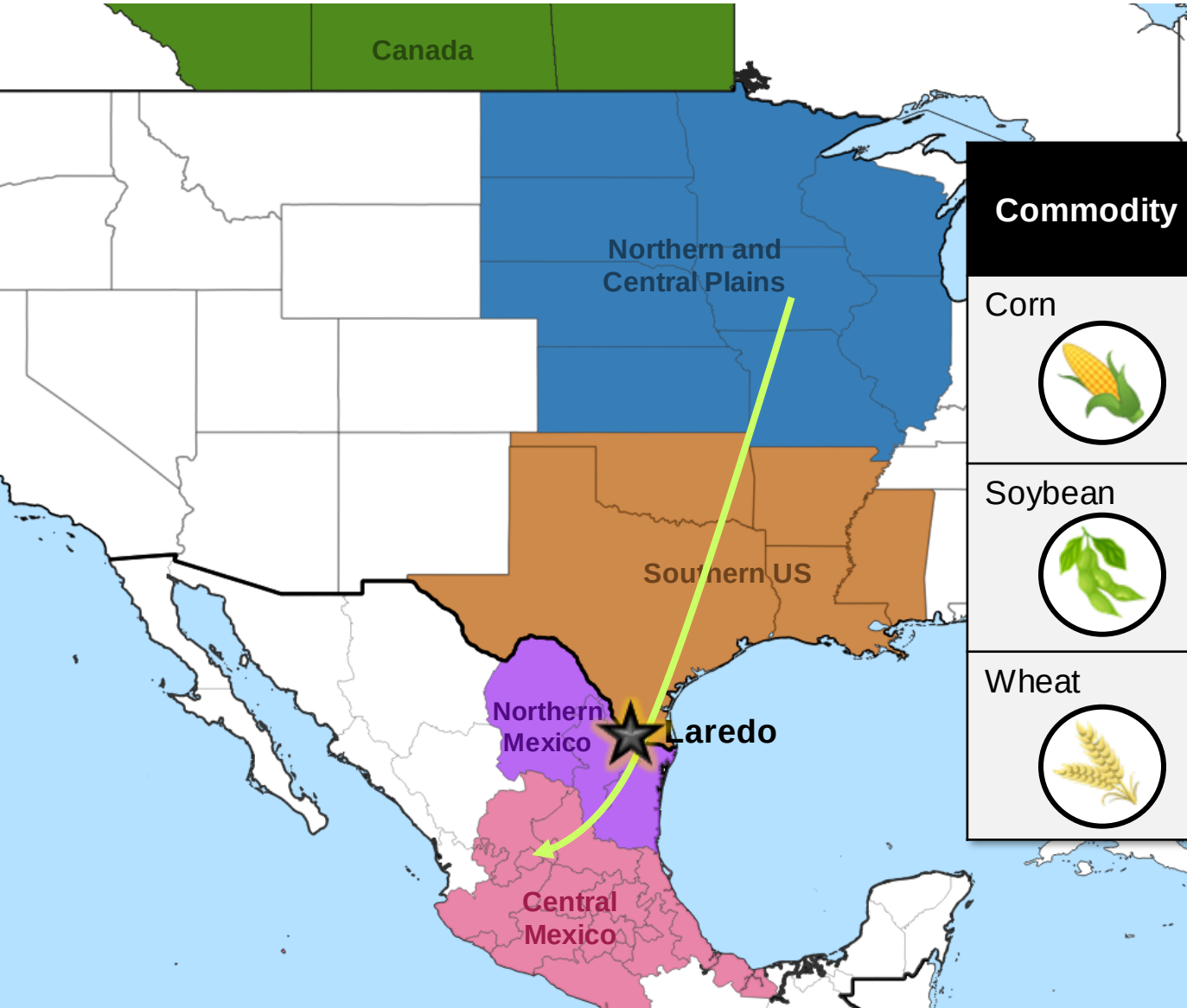
Example for Soybeans Under BNSF's Proposal



	Move #1	Move #2	Move #3
Through Revenue	\$1,000	\$1,470	\$1,140
÷ Through Distance	1,000	\$1,400	\$1,200
= Rate per Mile	\$1.00	\$1.05	\$0.95

Average = \$1.00 per mile

Proportional Rate Matrix Over Laredo Gateway for Grain Shipments



Commodity	Destination Region	Canada	Northern & Central Plains	Southern U.S.
Corn 	Northern Mexico			
	Central Mexico			
Soybean 	Northern Mexico			
	Central Mexico		\$1.00 per mile	
Wheat 	Northern Mexico			
	Central Mexico			