

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. FD 36849 (Sub-No. 1)

**KANSAS & OKLAHOMA RAILROAD, LLC—
LEASE AND OPERATION EXEMPTION WITH INTERCHANGE
COMMITMENT—UNION PACIFIC RAILROAD COMPANY**

**UNION PACIFIC'S REPLY
TO PETITION FOR EXEMPTION**

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PUBLIC VERSION

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The Board should grant the request of Kansas & Oklahoma Railroad, LLC (“K&O”) to modify the terms of its long-standing lease of the lines at issue in this proceeding, which are owned by Union Pacific Railroad Company (“Union Pacific”). In particular, the Board should authorize a modification to the lease’s interchange commitment designed to align more closely K&O’s rental payments with the lines’ value and support K&O’s continued operation of and investment in the leased lines by reducing the financial risks to K&O.

The lease modifications at issue have not foreclosed and will not foreclose interchange or otherwise reduce competitive options for shippers. The modified interchange commitment exempts substantial volumes of traffic and has not precluded K&O from interchanging large volumes of traffic with railroads other than Union Pacific. In addition, while Weskan Grain LLC (“Weskan”) claims the interchange commitment was adopted to block grain traffic from moving to its affiliate, Colorado Pacific Railroad LLC (“CXR”), the facts disprove that claim.

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In fact, Weskan does not even have any active loading facilities on the leased lines, and thus it has not and cannot currently ship traffic that would be subject to the interchange commitment. Further, Union Pacific has granted K&O a Railroad Industry Agreement waiver for any hypothetical Weskan traffic that is valid through { [REDACTED] } and which can be subsequently renewed. The lease modifications thus cause no competitive harm to Weskan. On the contrary, the lease framework benefits Weskan and other shippers by reducing K&O's financial risk, which has facilitated K&O's continued operations of and investment in the light-density lines at issue.

The interchange commitment also provides Union Pacific with appropriately tailored and fair compensation for K&O's use of its lines and thus has the incentive to continue leasing the lines. As the owner of the leased lines, Union Pacific has the right to receive fair compensation for the value of its assets. In this instance, Union Pacific and K&O agreed in an arm's-length transaction that K&O would compensate Union Pacific for use of the lines either by interchanging certain traffic with Union Pacific or by paying Union Pacific a per-car fee for traffic interchanged with other carriers. Absent an interchange commitment, Union Pacific would need to charge a flat rental fee reflecting the lines' value. Such fees are often economically infeasible because they require the short line to bear substantial upfront costs, potentially undermining the continued rail service, infrastructure improvement, and traffic growth that these transactions are designed to achieve. As detailed below, even a contingent rent provision proved financially infeasible for

K&O. A large and unexpected rental obligation under the prior lease caused Union Pacific and K&O to restructure the lease to reduce the financial risk to K&O. The restructured interchange commitment reflects a rational allocation of value and risk between sophisticated parties that has supported continued rail service, infrastructure improvements, and traffic growth.

The Board's March 2026 Decision concluded that there was insufficient evidence to address K&O's petition for exemption.¹ K&O has now fully supported its request for exemption, and Union Pacific's reply comments provide still more evidence to explain the benefits of the lease amendments and the lack of competitive harm from the interchange commitment. Union Pacific's reply comments are supported by a verified statement from Daniel McLaughlin, Vice President of Marketing and Sales Operations for Union Pacific. Mr. McLaughlin addresses the history of the lease and subsequent amendments, the development of the current interchange commitment, and Union Pacific's approach to this and other short line leases. Union Pacific's reply comments are also supported by a verified statement from Dr. Nathan Miller, Professor of Economics at Georgetown University, who explains that interchange commitments are effective and commercially reasonable tools for balancing the benefits and risks of operating low-density lines. Dr. Miller also finds that the specific interchange commitment at issue in this proceeding is "a pro-competitive contractual mechanism to permit an

¹ Decision, *Kan. & Okla. R.R.—Lease & Operation Exemption with Interchange Commitment—Union Pac. R.R.*, Docket No. FD 36849 (STB served Mar. 20, 2026) ("March 2026 Decision").

efficient, lower-cost short line to operate a railroad over assets owned by UP” and “provides reasonable compensation to UP, limits risk incurred by both parties, encourages K&O to serve and grow traffic, and incentivizes K&O to make necessary investments in the Leased Lines to sustain a viable rail alternative to shippers on that line.”²

The record fully supports a finding that K&O has met the standard for exemption under 49 U.S.C. § 10502.

I. Background and History of the Leased Lines

K&O’s petition for exemption seeks authority to continue leasing two lines from Union Pacific—the Geneseo-McCracken line and Healy-Towner line. The leased lines, along with others in the region, were acquired by Union Pacific as part of the UP-MP merger in 1982.³ The Geneseo-McCracken line and Healy-Towner line have historically been light density agricultural lines. In the late 1980s, Union Pacific adopted a line redeployment program to pursue lower cost methods of retaining rail service on light-density lines by leasing or selling those lines to short line railroad operators.⁴

In 1997, Union Pacific leased certain light-density lines, including the lines at issue in this proceeding, to Central Kansas Railway, L.L.C. (“CKR”).⁵ The 1997

² V.S. Miller ¶ 45.

³ *Union Pac. Corp., et al.—Control—Mo. Pac. Corp., et al.*, 366 I.C.C. 462, 473, 819 (1982).

⁴ V.S. McLaughlin at 6.

⁵ Notice of Exemption, *Cent. Kan. Ry.—Lease Exemption—Union Pac. R.R.*, Docket No. FD 33470 (STB served Oct. 9, 1997) (corrected Oct. 24, 1997). The notice of

lease, which was for a term of {{ [REDACTED] }}, contained an interchange commitment.⁶

Interchange commitments can take a variety of forms. In the 1997 lease, the interchange commitment took the form of a contingent rent provision. Specifically, the amount of rent owed to Union Pacific for CKR's use of the lines was contingent on the percentage of traffic that CKR interchanged with Union Pacific. Under the 1997 lease, CKR would owe no rent if {{ [REDACTED] }} or more of traffic originating or terminating on the leased lines, and originating or terminating beyond Salina, Hutchinson, and Wichita, was interchanged with Union Pacific.⁷ If CKR interchanged more than {{ [REDACTED] }} of traffic originating or terminating on the lines with other carriers, then CKR would owe rent payments that would vary based on the percentage of traffic interchanged with other carriers, from {{ [REDACTED] }}
[REDACTED]
[REDACTED] }}.⁸ Local traffic was not subject

to the contingent rent provision—that is, traffic originating or terminating on the leased lines that originated and terminated on other lines operated by CKR or other

exemption in that proceeding did not reflect the existence of an interchange commitment, as the reporting requirements relating to interchange commitments were not in place at the time.

⁶ K&O Petition for Exemption at 49–50, Exhibit B (Lease Documents), Lease Agreement §§ 2.01, 2.02.

⁷ *Id.* at 52–53, Lease Agreement § 4.01.

⁸ *Id.* at 56, Lease Agreement § 4.03.

affiliate or subsidiary of OmniTRAX.⁹ That traffic was instead subject to a fee of {{ [REDACTED] }} per carload, subject to certain exclusions.¹⁰ Under the lease, CKR would provide traffic certifications annually to Union Pacific to determine the amount of rent owed.¹¹

CKR subsequently assigned the 1997 lease to K&O pursuant to Board authorization granted in 2001.¹² Also in the early 2000s, several segments of the leased premises were abandoned and discontinued by Union Pacific and K&O or CKR, respectively.¹³

Despite the assignment and abandonment of portions of the leased premises, the parties did not formally revise the lease to acknowledge these developments until the {{ [REDACTED] }}. In 2018, Union Pacific and K&O

⁹ *Id.* at 56, Lease Agreement § 4.02. CKR was a subsidiary of OmniTRAX until 2001 when K&O (owned by Watco) purchased most of the rail lines owned or leased and operated by CKR. *See infra* n.12; *Watco Companies, Inc.—Continuance In Control Exemption—Kan. & Okla. R.R.*, Docket No. FD 34042 (STB served June 12, 2001).

¹⁰ K&O Petition for Exemption at 55, Exhibit B (Lease Documents), Lease Agreement § 4.02; *id.* at 127–28, First Supplement at 1, 2 § 1.

¹¹ K&O Petition for Exemption at 55, Exhibit B (Lease Documents), Lease Agreement § 4.03.

¹² Notice of Exemption, *Kan. & Okla. R.R.—Acquisition Exemption—Cent. Kan. Ry.*, Docket No. FD 34030 (STB served June 12, 2001).

¹³ *See Union Pac. R.R.—Abandonment Exemption—In Lane & Ness Cntys., Kan.*, Docket No. AB 33 (Sub-No. 214X) (STB served Oct. 15, 2004) (McCracken-Healy segment); *Union Pac. R.R.—Abandonment Exemption—In McPherson, Ellsworth & Rice Cntys., Kan.*, Docket No. AB 33 (Sub-No. 158X) (STB served Feb. 9, 2001) (Hoisington and McPherson Subdivisions); *Union Pac. R.R.—Abandonment Exemption—McPherson & Saline Cntys., Kan.*, Docket No. AB 33 (Sub-No. 147X) (STB served Mar. 17, 2000) (Hoisington and McPherson Subdivisions).

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amended the lease in a Third Supplement to acknowledge the assignment, reflect the abandonment of track segments, modify the term for the underlying lease arrangement, and make other modifications. The Third Supplement, dated July 20, 2018, did not modify the interchange commitment.

Prior to 2018, K&O's traffic had fallen in the {{[REDACTED]}} category such that Union Pacific was compensated for K&O's use of the lines by handling the line-haul rather than through the contingent rent provisions.¹⁴ However, in the years leading up to 2018, total reported (*i.e.*, non-exempt) carload volumes in K&O traffic certifications were declining. As a result of that decline, a smaller number of shipments could trigger the contingent rent provision (which, as described above, was based on a percentage of overall shipments). That is what occurred in 2018: although K&O reported a small overall volume of cars, K&O shipped less than {{[REDACTED]}} of traffic originating or terminating on the leased lines via Union Pacific.¹⁵ As a result, under the 1997 lease, K&O owed Union Pacific rent amounting to {{[REDACTED]}}.

As K&O explains in its petition, K&O approached Union Pacific about forbearance and amending the lease to provide for a new form of interchange commitment. On November 21, 2019, the parties reached a settlement relating to the rent liability for 2018 as well as agreement regarding lease modifications. The settlement and lease modifications were reflected in a Fourth Supplement to the

¹⁴ V.S. McLaughlin at 9.

¹⁵ Workpaper, "2018 Traffic Certification Data File".

lease. Under the Fourth Supplement, the parties switched from a contingent rent provision to an asset use fee.

Under this revised interchange commitment, K&O's rent is in the form of a per-carload fee. K&O pays the per-carload fee for certain carloads originating or terminating on the leased lines that are not interchanged with Union Pacific. (The lease excludes several traffic categories from the payment requirement, as discussed further below.) As Mr. McLaughlin describes, the fee level was developed to reflect the average margin for comparable traffic (*i.e.*, manifest grain traffic originating in the Wichita area) in a calendar year.¹⁶ In other words, the fee was designed to compensate Union Pacific for the contribution it would have earned from covered traffic moving over the leased lines if Union Pacific were operating the line instead of K&O.

When the 2019 Fourth Supplement was executed, CXR had purchased the adjacent Towner Line but was not operating the line. K&O had authority to operate the Towner Line at the time.¹⁷ In 2021, K&O and CXR allowed their operating agreement to expire, and CXR assumed operations of the Towner Line. Also in 2021, the interchange at NA Junction, which allows CXR to interchange with Union Pacific and BNSF Railway, was rehabilitated.¹⁸ Later that year, the

¹⁶ V.S. McLaughlin at 10–11.

¹⁷ Decision, *Kan. & Okla. R.R.—Operation Exemption—Colo. Pac. R.R.*, Docket No. FD 36310 (STB served June 24, 2019).

¹⁸ V.S. McLaughlin at 12; *see also* Comments of Colo. Pac. R.R., *Kan. & Okla. R.R.*, Docket No. FD 36849, at 4 (filed Nov. 20, 2025).

Soloviev Group—of which Weskan and CXR are both a part—sought to purchase the Towner-Healy line. Union Pacific declined that offer.¹⁹ In April 2024, the Soloviev Group, through CXR, again sought to purchase the Towner-Healy line, which Union Pacific again declined.²⁰ Shortly thereafter, Weskan filed its petition to revoke the K&O lease.

To the best of Union Pacific’s knowledge, Weskan does not currently have any active loading facilities on the leased lines. Therefore, no Weskan traffic has ever originated or terminated on the leased lines, and thus no Weskan traffic been subject to the interchange commitment.²¹ Nevertheless, Union Pacific has granted K&O’s requests for waivers under the Railroad Industry Agreement (“RIA”) for potential Weskan traffic destined for Weskan’s facility near Sheridan Lake, Colorado. The current waiver will remain in place until { [REDACTED] }.²²

II. The Lease Amendments Are In the Public Interest and Should Be Approved

Under established precedent, to assess whether an interchange commitment is in the public interest, the Board “must weigh the benefits of a particular interchange commitment against its potential for harm.”²³ Here, there is no potential for harm resulting from the interchange commitment in the lease

¹⁹ V.S. McLaughlin at 12; *see also* Weskan Pet. to Reopen and Partially Revoke, *Kan. & Okla.*, Docket No. FD 34030 (filed Nov. 27, 2024), Exhibit B at 2.

²⁰ V.S. McLaughlin at 12.

²¹ V.S. McLaughlin at 14; K&O Petition for Exemption at 20–21.

²² V.S. McLaughlin at 14.

²³ *Review of Rail Access & Competition Issues—Renewed Pet. of the W. Coal Traffic League*, Docket No. EP 575, at 8 (STB served Oct. 30, 2007).

amendments; the interchange commitment neither forecloses interchange nor reduces competitive options available to shippers. Meanwhile, the record demonstrates significant benefits resulting from the K&O lease amendments and related interchange commitment—including facilitating significant investment and supporting a customer-focused short line operation. The lease amendments should be approved.

A. Overview of Interchange Commitments

Nearly two decades ago, in Docket No. EP 575, the Board recognized that interchange commitments can lead to better service and better rates and can create or strengthen short line railroads.²⁴ Nonetheless, in response to concerns about potential harmful impacts of interchange commitments, the Board said that it would review interchange commitments on a case-by-case basis, instructing parties wishing to challenge such commitments that they may do so by either demonstrating a provision violates the Interstate Commerce Act or by challenging a provision during a proceeding to authorize or exempt a lease transaction.

In reviewing such challenges, the Board evaluates “the particular facts, the competitive conditions before and after the interchange commitment, the nature of the commitment, and its actual or likely effects.”²⁵ The agency will also consider “the manner in which the interchange commitment discourages interchange with other carriers and the degree to which interchange is effectively foreclosed,” with

²⁴ *Id.* at 9.

²⁵ *Id.* at 15.

total interchange bans and commitments that “go on in perpetuity” receiving “a higher level of scrutiny.”²⁶ It explained that the competitive effects of interchange commitments should be “viewed *ex ante* (i.e., before the sale or lease of the facilities)” —so that the Board is evaluating what competitive options existed prior to the sale or lease.²⁷

The Board noted that interchange commitments were merely one way for line owners considering the sale or lease of lines with traffic that makes a revenue contribution to preserve the value of their revenue stream and thus receive compensation for the sale or lease of the line.²⁸ The Board also recognized that a carrier that uses an interchange commitment to maintain its revenue stream in lieu of rent will never receive the going concern value of the revenue stream that it would have demanded in a sale.²⁹ Against this backdrop, the Board also explained that “[a]s regulators, the Board must be very wary of the temptation to override the determination of reasonable compensation as negotiated by informed private parties.”³⁰

These principles remain true today. Interchange commitments serve a valuable function and support traffic growth on the interstate rail network. In his verified statement, Dr. Miller addresses the economics and incentives of

²⁶ *Id.*

²⁷ *Id.* at 9.

²⁸ *Id.* at 10–11.

²⁹ *Id.* at 10–11 & n.26.

³⁰ *Id.* at 11.

interchange commitments. Dr. Miller explains that negotiated agreements with interchange commitments “balance operational and financial incentives and risks among the parties” associated with operation of low-density rail lines.³¹ The lease of low-density lines to short lines requires a post-transfer relationship that incentivizes efficient operation of the assets while preserving value to both parties.³² Short lines are widely recognized as being capable of operating and managing low-density rail routes efficiently and at lower cost than Class I railroads.³³

However, as Dr. Miller notes, the future profitability of low-density rail lines may often be quite uncertain.³⁴ Both the Class I railroad and the short line bear the risk of an unconditioned sale or lease of such a line in different ways.³⁵ Beyond the simple aversion to risk, a short line may also lack the necessary capital to purchase or rent and then to improve rail lines in a manner needed to grow density.³⁶ Interchange commitments are a solution to this organizational economics problem. They provide a mechanism through which the parties “can share the risk of uncertain future values of the lines and permit transfer of the operation of the lines to a more efficient operator.”³⁷ The Class I railroad receives a return for the value

³¹ V.S. Miller ¶ 22.

³² *Id.* ¶ 20.

³³ *Id.* ¶ 19.

³⁴ *Id.* ¶ 21.

³⁵ *Id.* ¶ 22.

³⁶ *Id.*

³⁷ *Id.*

of the assets while the short line is incentivized to lease or acquire a low-density line notwithstanding any capital constraints or risk because it need not make large capital outlays for a potentially uneconomic asset.³⁸ This preservation of capital also allows the short line to make investments or expenditures, which also supports traffic growth.³⁹

Dr. Miller also explains that interchange commitments do not generally create additional market power that did not previously exist. Prior to the sale or lease of a line, the existing railroad owner is “generally in a position to exercise any existing market power that its investments in the line have created for them” by determining pricing and routings offered to customers.⁴⁰ Dr. Miller describes how a short line operator generally does not obtain new market power from a lease or sale subject to an interchange commitment that the Class I railroad did not already possess simply because it can more efficiently operate a low-density line.⁴¹ To be sure, in some cases a short line contract with an interchange commitment may be written so as to be more or less favorable to a shipper than if the Class I railroad had continued to operate the line.⁴² But as Dr. Miller explains, this does “not represent some increase in market power as a result of the agreement between the [Class I] and short line railroad. Rather, it is an example of the trade-off between

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.* ¶ 28.

⁴¹ *Id.* ¶ 29.

⁴² *Id.* ¶ 30.

allowing a more efficient short line railroad to operate the line and limitations in contracting and incentives between independent railroads.”⁴³

B. The Lease Does Not Foreclose Interchange or Otherwise Reduce Competition

In Docket No. EP 575, the Board stated that parties should expect “a higher level of scrutiny on agreements that contain a total ban on interchange with other carriers.”⁴⁴ The interchange commitment in the lease amendments do not ban interchange with other carriers. K&O may provide rates and service to all shippers that want to ship traffic to or from the leased lines, and K&O may interchange such traffic with any railroad that can interchange such traffic with K&O.

Further, the interchange commitment’s asset use fee does not apply to substantial volumes of traffic. *First*, the interchange commitment only applies to carloads originating or terminating on the leased lines that are not interchanged with Union Pacific.⁴⁵ It does not apply to bridge traffic—that is, traffic that originates and terminates on other lines but moves over the leased lines. To the best of Union Pacific’s knowledge, Weskan’s current traffic falls into the latter category, and is thus not subject to the asset use fee at all.⁴⁶

Second, the Fourth Supplement to the lease exempts local traffic from the asset use fee—that is, traffic that both originates and terminates on the leased lines

⁴³ *Id.*

⁴⁴ *Review of Rail Access & Competition Issues*, Docket No. EP 575, at 15.

⁴⁵ K&O Petition for Exemption at 150, Exhibit B (Lease Documents), Fourth Supp. § 4.01.

⁴⁶ See K&O Petition for Exemption at 20; V.S. McLaughlin at 12.

and traffic that originates on the leased lines and terminates on another line operated by K&O, or vice versa.⁴⁷ Such traffic is subject to a {{ [REDACTED] }} per carload charge with the exception of traffic {{ [REDACTED] }}
{{ [REDACTED] }}.⁴⁸ K&O pays {{ [REDACTED] }}
{{ [REDACTED] }} because K&O transports individual carloads from customers on its lines and the leased lines to {{ [REDACTED] }}
{{ [REDACTED] }} where they feed into grain shuttles that then move on Union Pacific's network. This means that any traffic originating or terminating on the leased lines that is interchanged in Wichita with the Wichita Terminal Association ("WTA") is exempted from the asset use fee and also from the {{ [REDACTED] }} per carload fee. This exemption is both consistent with the purpose of the asset use fee (described further below) and supports K&O's local movements.

Third, the Fourth Supplement to the lease expressly exempts traffic interchanged with the South Kansas and Oklahoma Railroad ("SKOL")—a subsidiary of K&O's parent company Watco.⁴⁹ This is consistent with the 1997 lease, which had exempted from the contingent rent provision any traffic moving between the leased lines and an affiliate or subsidiary of CKR's parent company, OmniTRAX. {{ [REDACTED] }}

⁴⁷ K&O Petition for Exemption at 150, Exhibit B (Lease Documents), Fourth Supp. § 4.02.

⁴⁸ *Id.*

⁴⁹ *Id.*

[REDACTED]

[REDACTED] },⁵⁰

As Dr. Miller explains, the “exempted traffic is quantitatively and economically important.”⁵¹ For example, in 2021, just {{ [REDACTED] }} out of {{ [REDACTED] }} carloads (or {{ [REDACTED] }} of all traffic) that originated or terminated on the Leased Lines were subject to the asset use fee.⁵² And as Dr. Miller points out, between 2021 and 2025, K&O interchanged an average of {{ [REDACTED] }} carloads per year of traffic originating off the leased lines—of which {{ [REDACTED] }} carloads were with BNSF and over {{ [REDACTED] }} carloads were with WTA.⁵³

Weskan has claimed that the Fourth Supplement was specifically adopted “for the purpose of making it economically infeasible for K&O to participate in the rail transportation of agricultural products originating in Kansas to points west of Towner, Colorado.”⁵⁴ This is simply not the case. As Mr. McLaughlin explains, the Fourth Supplement was adopted to address the significant liability K&O incurred in 2018 in the context of declining reported carload volumes under the prior interchange commitment and minimize the risk of large, unplanned rental payments in the future.

⁵⁰ *Id.*

⁵¹ V.S. Miller ¶ 41.

⁵² *Id.*

⁵³ *Id.* ¶ 42.

⁵⁴ Weskan Reply, *Kan. & Okla.*, Docket No. FD 36849, at 1 (filed Apr. 16, 2025).

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Further, at the time the Fourth Supplement was adopted, K&O was the authorized operator of the Towner Line. As a result, under the terms of the Fourth Supplement, any agricultural products originating in Kansas destined for the Towner Line (including Weskan's facility in Stockton) would have been exempt from the full asset use fee under Section 4.02 as traffic originating from or destined to a line operated by lessee. There was no operational interchange at NA Junction in 2019 when the Fourth Supplement was executed. Union Pacific and K&O signed an interchange agreement for NA Junction in April 2021 shortly after interchange facilities at NA Junction were rehabilitated.⁵⁵ The facts thus refute Weskan's claim that the Fourth Supplement was adopted in order to foreclose interchange or prohibit traffic from moving to the Towner Line or points west of Towner.

The facts also refute Weskan's claim that the interchange commitment effectively precludes or forecloses interchange—with CXR or any other railroad.⁵⁶ As Dr. Miller states, the asset use fee “has not precluded large portions of the traffic on the Leased Lines from interchanging with other railroads,” and “has also not prevented K&O from serving traffic subject to payment of the Asset Use Fee.”⁵⁷ With respect to traffic originating on the leased lines, K&O explains that “there have been no requests for service from any loading points on the K&O leased Lines

⁵⁵ V.S. McLaughlin at 12.

⁵⁶ Weskan Reply, *Kan. & Okla.*, Docket No. FD 36849, at 6.

⁵⁷ V.S. Miller ¶¶ 42–43.

to destinations on CXR.”⁵⁸ And Weskan has no active facilities on the leased lines and has made no claim of being unable to proceed with on-line projects because of the interchange commitment.

The Fourth Supplement adopted a more predictable compensation structure for K&O and Union Pacific by using an interchange commitment with a per-car fee, but it in no way mandates how K&O interchanges with other railroads or sets rates for traffic originating or terminating on the leased lines. And for the “limited traffic on which the Asset Use Fee could potentially be payable,”⁵⁹ it is not Weskan (or any other shipper) that pays the asset use fee. The interchange commitment is a mechanism for K&O to make a “modest and predictable payment . . . for use of the UP assets.”⁶⁰ K&O can then take into account its overall costs (which include the rental payments), as well as market conditions and other factors, when setting individual shipper rates.

As Dr. Miller explains, “[t]he current interchange commitment between UP and K&O do not represent an abuse of market power, nor does it create any new market power.”⁶¹ Since inception, the lease has contained an interchange commitment. Inclusion of an interchange commitment was important because it is likely that a short line operator would have been unable or unwilling to pay a full

⁵⁸ K&O Petition for Exemption at 24. It is Union Pacific’s understanding that K&O and CXR did not even reach an interchange agreement until April of 2026.

⁵⁹ V.S. Miller ¶ 44.

⁶⁰ *Id.*

⁶¹ *Id.* ¶ 45.

rental amount with the associated risk of volume decline.⁶² The contingent rent provision of the 1997 lease addressed that issue by allowing a short-line to avoid rental payments so long as traffic was routed to Union Pacific. While that arrangement worked for more than 15 years, the rent provision became untenable for the short line in the context of declining reported carload volumes. The parties thus negotiated a different form of interchange commitment that would allow K&O to continue operating the line without the financial risk of large, unplanned rental payments and better incentivize K&O to maintain and invest in the leased lines.⁶³

Weskan, the only complaining party, is an affiliate of the Soloviev Group, which has repeatedly attempted to gain control of the leased lines. Soloviev (through KCVN, LLC) first sought to acquire the leased lines in 2021 and again in 2024—just prior to Weskan filing its petition to revoke the K&O lease.⁶⁴ Having been unable to obtain the leased lines through private negotiation, Weskan has asked the Board to reject K&O’s request for lease authorization—perhaps because Weskan believes rejection would support Soloviev’s efforts to acquire the lines.

Weskan in particular has not suffered any reduction in competition. Weskan also has no current active loading sites on the leased lines and therefore its current traffic is not subject to the asset use fee at all. Weskan has made no requests for service from any loading points on the K&O leased Lines to destinations on CXR.⁶⁵

⁶² V.S. McLaughlin at 8; *see also* V.S. Miller ¶¶ 22, 34–35.

⁶³ V.S. Miller ¶ 38.

⁶⁴ V.S. McLaughlin at 12.

⁶⁵ K&O Petition for Exemption at 24.

And if Weskan develops an active loading site on the leased lines such that traffic originating or terminating on the leased lines would be subject to the asset use fee, K&O has obtained a waiver { [REDACTED] }.

C. The Asset Use Fee Fairly and Reasonably Compensates Union Pacific for Use of its Property While Benefitting K&O and Shippers

The Board must balance the lack of any demonstrated harm discussed above with the public benefit associated with the asset use fee. The asset use fee “permit[s] an efficient, lower-cost short line to operate a railroad over assets owned by [Union Pacific]. It provides reasonable compensation to [Union Pacific], limits risk incurred by both parties, encourages K&O to serve and grow traffic, and incentives K&O to make necessary investments in the Leased Lines to sustain a viable rail alternative to shippers on that line.”⁶⁶

As the owner of the leased lines, Union Pacific is entitled to compensation for the use of its property. One option available in leasing rail lines is to adopt a fixed annual lease payment. Under a flat fee structure, the lessee incurs fixed rental obligations that are not tied in any way to how traffic is routed or interchanged. But under such a structure, the lessee incurs the risk of any unexpected traffic loss. Because some short line operators are unable to pay fixed rental obligations, Union Pacific sometimes structures leases with short line operators through interchange commitments, which provide reduced rental rates. The reduced rental rates associated with interchange commitments allow the short line to concentrate its

⁶⁶ V.S. Miller ¶ 45.

resources on providing quality service, maintaining track infrastructure, and growing traffic, which ultimately benefits Union Pacific, the short line, and local shippers.⁶⁷ These principles are recognized by both the RIA⁶⁸ and the Board.⁶⁹

The original lease's interchange commitment was in the form of a contingent rent provision, where the level of rent owed was contingent on the volume of traffic interchanged with Union Pacific. The 1997 interchange commitment worked for many years, consistent with the goals described above. But the 1997 lease became unworkable in the context of declining overall interchanged traffic volumes, which culminated in 2018. Reported interchanged traffic that was subject to the contingent rent provision fell from {{ [REDACTED] }} carloads in 2015 to just {{ [REDACTED] }} carloads in 2018, as shown below.⁷⁰

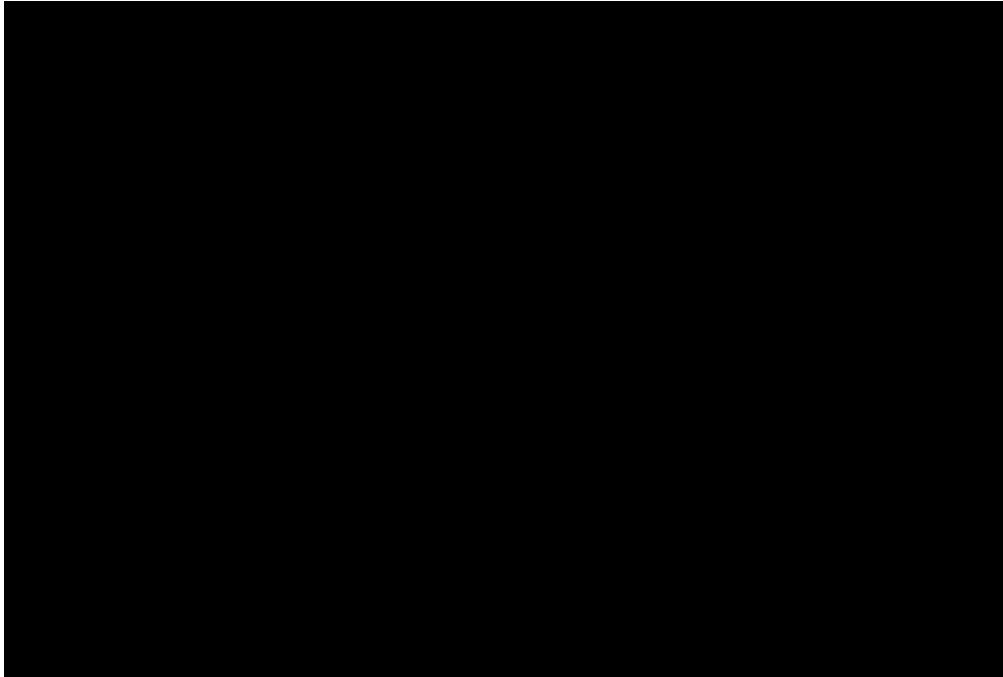
⁶⁷ V.S. McLaughlin at 4; V.S. Miller ¶ 45.

⁶⁸ Railroad Industry Agreement § IV(3)(b) (Sept. 10, 1998).

⁶⁹ *Review of Rail Access & Competition Issues*, Docket No. EP 575, at 10–11.

⁷⁰ The traffic certifications are provided as workpapers. As Mr. McLaughlin explains at 9 n.1, the traffic certifications reported traffic subject to the contingent rent provision for stations on both the Hoisington Subdivision (Geneseo-McCracken segment) and the Towner Subdivision (Towner-Healy segment) notwithstanding the fact that the reports only mention the Hoisington Subdivision. The total reported carload volumes excluded the categories of traffic that were exempted from the contingent rent provision (*i.e.*, local traffic and traffic interchanged with Watco-affiliated carriers).

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The declining overall reported carload volume meant a small number of cars interchanged with other carriers could trigger contingent rent payments. In this context, it is understandable why the framework became “unpredictable” and difficult to administer, particularly where “minor, end-of-year fluctuations” could result in unanticipated rental obligations.⁷¹ In 2018, given the low volume of overall traffic, K&O’s shipment of only {{ [REDACTED] }} cars was sufficient to trip the {{ [REDACTED] }} threshold in the lease, which resulted in K&O incurring a {{ [REDACTED] }} rental obligation.

Given this situation, Union Pacific agreed to work with K&O to negotiate an alternative interchange commitment provision. As described in the Verified

⁷¹ K&O Petition for Exemption at 26.

Statement of Daniel McLaughlin, an alternative approach to the contingent rent payment structure is an asset use fee. The asset use fee is structured to provide compensation to the owner based on its lost margin for long-haul movements. This is how Union Pacific approached developing an alternative fee structure for K&O.

To determine the level of the asset use fee, Union Pacific's short line team undertook a quantitative analysis of traffic with similar characteristics to that originating on the leased lines. Specifically, the short line team evaluated manifest grain traffic originating in the Wichita area over one calendar year (2017).⁷² Union Pacific then determined the average margin for this traffic using Union Pacific's internal cost management system. The result, as reflected in the Fourth Supplement, is a per-carload rate of {{ [REDACTED] }}, indexed to changes in {{ [REDACTED] [REDACTED] }}, which, as discussed above, is subject to various significant exemptions.

The asset use fee correlates rental compensation to what Union Pacific could otherwise expect from long-haul traffic if it operated the leased lines and provides predictability to K&O. In two of the three years following execution of the Fourth Supplement (2019–2021), the percentage of K&O's traffic that would have been subjected to the contingent rent provision was large enough that K&O would have {{ [REDACTED] [REDACTED] }}⁷³ Instead, for that same period,

⁷² V.S. McLaughlin at 10.

⁷³ *Id.* at 14.

K&O paid an average annual rental payment through the asset use fee of only {{[REDACTED]}}. Moving to this alternative structure provides K&O with modest and predictable annual rental payments, which thus allows K&O to continue maintaining and efficiently operating the leased lines for customers and minimizes its financial risk.

The interchange commitment in the Fourth Supplement thus falls squarely within the category of interchange commitments that the Board has previously indicated are lawful and consistent with the public interest. It is a provision that enables Union Pacific to “lease . . . lighter-density lines at reduced prices” to a short line railroad in exchange for the assurance that Union Pacific would “retain[] a portion of the revenues from the traffic” on the leased line.⁷⁴ The commitment serves as “valuable consideration”⁷⁵ to Union Pacific while obviating the need for significant capital to lease the line and supporting K&O’s operations on the line.

K&O is a customer-focused short line operator that has operated the leased lines for over 20 years. As a result of the interchange commitment, K&O has been able to operate the leased lines at reduced costs, which in turn has enabled it to invest substantially and grow traffic in recent years.⁷⁶ While the 1997 interchange commitment achieved these goals as well when it was first established, it became unworkable as reported volumes declined. As K&O has described it, forcing the

⁷⁴ *Review of Rail Access & Competition Issues*, Docket No. EP 575, at 4.

⁷⁵ *Id.*

⁷⁶ *See* K&O Petition for Exemption at 16, 28.

parties back to that arrangement {{ [REDACTED] }}.77 While Union Pacific is capable of resuming its residual common carrier obligation to operate the line, Union Pacific believes the public interest is best served by allowing K&O to maintain its longstanding operations and relationships with customers in the area—a beneficial outcome the asset use fee is designed to support.

D. The RIA Waiver Process Appropriately Serves as a Backstop

The RIA is a 1998 private sector agreement among Class Is and short lines that addresses interchange commitments, among other things. The RIA establishes principles regarding interchange commitments and a framework for resolving issues that arise between carriers relating to interchange commitments. Under the RIA, legitimate interchange commitments are designed as fair payment for the sale or rental value of the line.

The RIA provides flexibility to Class I railroads and their short line partners. Parties to a lease agreement cannot predict how circumstances may change in the future. The RIA process allows parties to craft contractual provisions to the best of their abilities given current circumstances, knowing that the RIA is a backstop in the future. Union Pacific resolves many situations without use of a formal RIA waiver because Union Pacific has an interest in seeing its short line partners grow. And Union Pacific has a strong track record of granting formal waiver requests. For example, in 2025, Union Pacific received {{ [REDACTED] }} RIA waiver requests from short line

⁷⁷ *Id.* at 8.

partners and all {{[REDACTED]}} requests were granted. To date in 2026, Union Pacific has received {{[REDACTED]}} requests and {{[REDACTED]}}.⁷⁸

With respect to the leased lines specifically, Union Pacific and K&O have demonstrated an ability and willingness to adapt to different and changing market conditions, whether through modification of the lease itself or through RIA waivers. In July 2023, K&O submitted a request under the RIA for a waiver of the asset use fee for grain traffic moving to Weskan’s Stockton facility near Towner, Colorado. According to the K&O request, the relevant traffic was then moving by truck and would move from a variety of origins. Some of the locations that were listed in the waiver request are not located on the leased lines at all and thus would not be subject to the asset use fee.⁷⁹ While Weskan has facilities at Scott City, Kansas—the terminus of the leased line—those facilities are located to the east of the leased lines on K&O’s line.⁸⁰ Thus, traffic moving from those facilities is likewise not subject to the asset use fee. K&O’s waiver request also indicated that Weskan had purchased facilities and greenfield space on the K&O, though without specifying the location.⁸¹ Union Pacific granted a waiver despite these ambiguities. Because Union Pacific typically grants RIA waivers on an annual basis, K&O renewed its waiver request for Weskan grain traffic. Union Pacific again granted the request.⁸²

⁷⁸ V.S. McLaughlin at 6.

⁷⁹ *Id.* at 13–14.

⁸⁰ K&O Petition for Exemption at 2–3, 20–22; V.S. McLaughlin at 13.

⁸¹ V.S. McLaughlin at 13.

⁸² V.S. McLaughlin at 14.

At this point, it is Union Pacific’s understanding that Weskan has no active loading facilities on the leased premises and thus none of its active traffic would be subject to the asset use fee. To the extent that traffic develops in the future that would be subject to the asset use fee, Union Pacific has granted a waiver until { [REDACTED] }.⁸³

E. The Duration of the Lease Is Appropriate

In Docket No. EP 575, the Board stated that parties should “expect a higher level of scrutiny on agreements that contain a total ban on interchange with other carriers or go on in perpetuity.”⁸⁴ The Board has approved some line sale transactions that are subject to interchange commitments that last in perpetuity. *Cf. Union Elec. Co. d/b/a Ameren Mo. & Mo. Cent. R.R. v. Union Pac. R.R.*, Docket No. FD 33508, at 9 (STB served Feb. 27, 2013) (declining to revoke exemption even when “the interchange commitment is not contained in a lease, which by its terms would expire, but rather was part of a line sale.”). The interchange commitment here is not perpetual—the interchange commitment lasts only as long as the lease. Nevertheless, the Board observed in its March 2026 Decision that neither K&O nor

⁸³ K&O notes in its petition that the RIA waiver for this hypothetical Weskan traffic has not been codified in the lease. K&O admits that it was under the mistaken assumption that the asset use fee applied to Weskan’s loading sites at Scott City. *See* K&O Petition for Exemption at 2–3. While informal discussions or the RIA are designed to and sufficient to address these types of situations, Union Pacific remains open to discussing any requested modifications to the lease with K&O where appropriate and subject to ultimate STB authorization.

⁸⁴ *Review of Rail Access & Competition Issues*, Docket No. EP 575, at 15.

Union Pacific offered an explanation for the potential duration of the interchange commitment.

The interchange commitment in this case has always been tied to the duration of the lease. That is because the interchange commitment is designed to ensure compensation to Union Pacific for K&O's use of the line pursuant to the lease. Just like any landlord renting a property to any tenant, the landlord is entitled to rental payments for the full duration of a lease, no matter how long the lease extends or how many times it is renewed—that is the nature of an agreement to rent rather than buy. The term of each lease agreement is a result of negotiation between Union Pacific and its short line lessees and thus each transaction will reflect different terms depending on the circumstances. The duration of a lease may be impacted by factors such as the availability and obtainment of grant funding, how long before a short line anticipates it will earn a return on investment, and the time and effort needed to locate and develop customers on a line.

The Third Supplement modified the lease term for the underlying lease arrangement. Under the Third Supplement, the lease can be extended up to {{ [REDACTED] }} per extension if both sides agree. K&O holds the option for {{ [REDACTED] }} additional extensions. This is not materially different from the 1997 lease and actually shortens the duration of each extension.⁸⁵

⁸⁵ K&O Petition for Exemption at 49–50, Exhibit B (Lease Documents), Lease Agreement §§ 2.01, 2.02 ({{ [REDACTED] }}).

The term of the lease (and thus the interchange commitment) is appropriate in this case. Under the lease, as modified, K&O has obligations to maintain the track and provisions relating to any improvements to the track. K&O explains in its petition that the rental arrangement provides it with a predictable, long-term time horizon necessary to secure financing and amortize multi-decade capital maintenance.⁸⁶ And as Dr. Miller notes, interchange commitments are often of long duration, like many contractual arrangements covering use of rail assets in the industry.⁸⁷

K&O explains that “[o]perating and maintaining light-density, agricultural branch lines is financially challenging.”⁸⁸ The asset use fee in this case provides lower (or no) out-of-pocket costs to K&O and greater predictability in terms of those reduced costs, but to ensure that Union Pacific is compensated for the use of its property, this arrangement must be coterminous with the lease itself.

III. Conclusion

The lease amendments, including the interchange commitment, support K&O’s long-standing short line operations to customers, including significant investment and traffic growth. The interchange commitment is structured to fairly compensate Union Pacific while providing lower (or no) out-of-pocket costs to K&O and more predictability in terms of those reduced costs. The record demonstrates

⁸⁶ *Id.* at 28–29.

⁸⁷ V.S. Miller ¶ 27.

⁸⁸ K&O Petition for Exemption at 28.

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that the interchange commitment does not reduce competitive options. The Board should grant K&O's petition for exemption.

Respectfully submitted,

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Dated: June 15, 2026

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CERTIFICATE OF SERVICE

I hereby certify that, on this 15th day of June, 2026, the foregoing document was served by first-class mail or email on all parties of record in this proceeding.

/s/ Stephen S. Laudone
Stephen S. Laudone

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EXHIBIT A

VERIFIED STATEMENT OF DANIEL MCLAUGHLIN

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36849 (SUB-NO. 1)

**KANSAS & OKLAHOMA RAILROAD, LLC
—LEASE AND OPERATION EXEMPTION
WITH INTERCHANGE COMMITMENT—
UNION PACIFIC RAILROAD COMPANY**

**UNION PACIFIC RAILROAD COMPANY'S
REPLY TO PETITION FOR EXEMPTION**

**VERIFIED STATEMENT OF
DANIEL MCLAUGHLIN**

My name is Daniel McLaughlin and I am the Assistant Vice President of Marketing and Sales Operations at Union Pacific Railroad Company. I am submitting this verified statement in support of Union Pacific's Reply to Kansas & Oklahoma Railroad, LLC's ("K&O's") Petition for Exemption in this proceeding seeking Board authorization for modifications to the lease agreement between Union Pacific and K&O. I have been asked to describe Union Pacific's general practices regarding short line lease agreements, interchange commitments, and waiver requests pursuant to the Railroad Industry Agreement. I have also been asked to address the history of the lease between Union Pacific and K&O as well as concerns raised by Weskan Grain LLC ("Weskan") relating to that lease.

I. Background and Qualifications.

I currently serve as the Assistant Vice President of Marketing and Sales Operations for Union Pacific. I began my 25-year tenure at Union Pacific in 2001 as

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an auditor, and have held my current position since May 2022. I am responsible for five functions within Union Pacific: Short Line & Interline Marketing; Network, Economic & Industrial Development; Commercial Strategy, Planning and Communication; Shipment Quality; and Application and Information Management. Since joining Union Pacific, I have held various positions of increasing responsibility in the Marketing & Sales Department, including as Assistant Vice President of Premium Marketing (2022), Assistant Vice President of Bulk Marketing & Sales (2021–2022), Assistant Vice President of Premium Marketing Intermodal and Automotive (2017–2021), and Assistant Vice President of Grain & Grain Products (2015–2017), among others. I hold a Bachelor of Science degree in Business Administration from Creighton University.

The Short Line & Interline Marketing group that reports to me is responsible for managing Union Pacific’s relationships with short line and regional railroads. Due to my role overseeing that group, I am familiar with contractual arrangements—such as lease or operating agreements—between Union Pacific and its short line partners and the circumstances surrounding those relationships. I am also familiar with the lines that are the subject of this proceeding, K&O’s operations, and Weskan Grain from my tenure in Bulk and Grain. In preparing this verified statement, I consulted with my staff in the Short Line & Interline Marketing group who have knowledge of events concerning this proceeding.

II. Union Pacific Partners With Short Line Railroads To Operate Lower Density Lines And Maintain Access For Shippers To Union Pacific's Rail Network.

Union Pacific's short line partners are an important part of our business, providing a critical extension of our network and immense value to our customers. One of the key strategic goals of the Network, Economic & Industrial Development and Short Line groups, which I oversee, is to work with our short line partners to drive growth. Among the options available is to sell or lease rail segments—particularly inactive or light-density segments—to short lines who may be able to operate those lines with lower costs, provide bespoke service products, or develop new business, all of which provide more optionality to customers.

Union Pacific approaches each short line lease agreement individually, evaluating the specific line and situation but also bearing in mind several key principles and goals. First, we look to support each short line's ability to invest in track and facilities, provide quality local service, and build traffic density. By supporting short line growth, we build a stronger rail network that enables us to grow traffic with them. Second, Union Pacific as the owner of the line must be fairly compensated for the use of its property by the short line lessee. Union Pacific is entitled to compensation for the use of its rail lines, which can be achieved in various ways. One way to structure rental payments is through valuing the revenue margin from traffic that Union Pacific would forego by losing the long-haul. Long-haul shipments are the primary driver of railroad revenue, and federal law recognizes the importance of the long haul to the health of Union Pacific's business

and enables us to take reasonable pricing and operational measures to retain and grow our long-distance traffic.

Interchange commitments in short line lease agreements can help balance and achieve those goals. When appropriately structured, such commitments provide an opportunity for Union Pacific to generate a fair return on the value of its property while allowing the short line to obtain access to Union Pacific's property at reduced rental rates. There are often situations where short lines cannot generate a return if they had to pay the purchase price or lease rental reflecting the going concern value of rail lines. In these circumstances, the reduced rental rates associated with an interchange commitment allows the short line to concentrate its resources on providing quality service, maintaining track infrastructure, and growing traffic, which ultimately benefits Union Pacific, the short line, and local shippers.

Interchange commitments may be structured in a variety of ways. Many of Union Pacific's legacy short line agreements took the form of a contingent rent provision—*i.e.*, the amount of rent owed to Union Pacific was contingent on the amount of traffic interchanged with Union Pacific. These contingent rent provisions often took the form of a rent waiver if interchanged traffic was {{ [REDACTED] }} or more, with rent payments owed if the short line interchanged more than {{ [REDACTED] }} of traffic with other carriers.

Another approach to interchange commitments is the concept of a per-car fee (an "asset use fee"). The asset use fee approach typically imposes a per-car fee on

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defined traffic categories that originate or terminate on leased premises that interchange with other carriers adverse to Union Pacific. An asset use fee is typically structured to provide compensation to Union Pacific based on its lost margin for long-haul movements and has become the more commonly-used approach to interchange commitments over time. Union Pacific utilizes both volume requirements and per-car fees when structuring its short line arrangements and evaluates whether to include an interchange commitment in a short line lease and how to structure that commitment on a case-by-case basis.

As with any contractual provision, the configuring of an interchange commitment in a short line agreement are not set in stone. Union Pacific will reconsider and renegotiate interchange commitments upon request from a short line when circumstances warrant. Another mechanism available to Union Pacific and its short line partners is the Railroad Industry Agreement (“RIA”) waiver process.

Since 1998, the RIA has established principles regarding interchange commitments and provided a framework for resolving issues that arise relating to interchange commitments between Class I railroads and short lines. To facilitate short line growth, the RIA establishes a process by which a short line lessee may seek a waiver of an interchange commitment from the Class I lessor. The RIA waiver process thus provides flexibility to railroad participants, given that parties cannot always predict future traffic scenarios when they are negotiating lease provisions. The RIA also encourages railroads to renegotiate interchange

commitments on a voluntary basis to reflect changes in the market, operations, and other factors since the initial agreement was executed.

Union Pacific has a strong track record of granting RIA waivers. We have an interest in seeing our short line partners grow their business, including moving traffic adverse to Union Pacific or when we cannot handle the traffic. For example, in 2025, Union Pacific received {{[REDACTED]}} requests from short line partners for waiver of interchange commitments and Union Pacific evaluated and granted all {{[REDACTED]}} waiver requests. To date this year, Union Pacific has received {{[REDACTED]}} such waiver requests and similarly evaluated and {{[REDACTED]}}. Waivers granted by Union Pacific typically last one year in duration. Union Pacific conducts annual reviews of the waiver to determine whether current circumstances warrant extension, modification, or termination of the waiver.

III. Union Pacific And K&O Lease Arrangement Is Fair and Promotes The Growth Of Rail Traffic On The Leased Lines.

The original short line lessee for the lines at issue in this proceeding was the Central Kansas Railway, LLC (“CKR”), which signed the lease agreement with Union Pacific in 1997. The original CKR lease was entered into under the Union Pacific redeployment program that began in 1987. The goals of the program included pursuing lower cost methods of retaining rail service on light density lines and involved leasing or selling those lines to short line railroad operators. By doing so, Union Pacific could focus on providing line-haul transportation while the short-line focused on the work of delivering and picking up cars from customers. This enabled capital to be stretched to meet more customer needs across the Union

Pacific network. The Surface Transportation Board authorized CKR to assign the lease to K&O in 2001. Today, K&O operates two portions of the Hoisington Subdivision pursuant to lease. The first portion consists of 83 miles between milepost 747.5 at Towner, Colorado, and milepost 664.5 near Healy, Kansas, and the second portion consists of 82.98 miles between milepost 606.0 near McCracken, Kansas, and milepost 523.02 near Geneseo, Kansas.

A. The 1997 lease.

The 1997 lease was for an initial term of {{ [REDACTED] }}. The 1997 lease covered more track than is currently leased by K&O. In 2000 and 2001, Union Pacific received abandonment authority for portions of the Hoisington Subdivision east of Geneseo, Kansas and portions of the McPherson Subdivision. The segment of the Hoisington Subdivision between mileposts 664.5 near Healy, Kansas, and milepost 606.0 near McCracken, Kansas, received abandonment authority in 2004.

The 1997 lease also contained an interchange commitment structured as a contingent rent provision—referred to in the lease as a routing requirement—under which CKR’s annual rental payment would be waived for any year that {{ [REDACTED] }} or more of traffic originating or terminating on the leased lines was interchanged with Union Pacific. If CKR interchanged more than {{ [REDACTED] }} of traffic originating or terminating on the lines with other carriers, then it would owe rent payments that would vary based on the amount of traffic, from {{ [REDACTED] }}
[REDACTED]
[REDACTED] }}. Traffic that originated or

terminated on the leased premises and also originated or terminated on CKR's network was exempt.

This volume requirement was reasonable because it balanced Union Pacific's right to be compensated for the use of its rail lines with CKR's need to grow traffic and ability to pay. At the {{ [REDACTED] }} rental rate, CKR (and now K&O) would have been free to interchange with other carriers and Union Pacific would have been fairly compensated for the value of its property. The volume requirement provided CKR, and then K&O, an opportunity to lease the line for something less than the full rental value for the lines in exchange for the protection of Union Pacific's long haul. Absent this {{ [REDACTED] }} volume commitment, it is unlikely that CKR (or K&O) would have been able to lease the lines at the fair market value. Indeed, as discussed in greater detail below, even half the rental rate posed a financial hardship when K&O failed to interchange the requisite amount of 2018 traffic with Union Pacific.

The lease required CKR to submit annual reports for each segment of the leased lines certifying the amount and type of traffic originating or terminating on each segment and all of the leased lines during the prior calendar year.

The 1997 lease was assigned to K&O pursuant to STB authorization in 2001.

B. Union Pacific and K&O renegotiate aspects of the lease, including the interchange commitment, in 2018 and 2019.

Union Pacific and K&O executed a third supplement to the lease agreement on July 20, 2018. The purpose of this supplement was to amend the description of the leased lines to reflect abandonments in the early 2000s and to acknowledge the

assignment of the lease from CKR to K&O. The parties also modified provisions related to the lease term, maintenance and improvements of the leased lines, and liability and indemnification. The third supplement did not alter the interchange commitment.

The volume of traffic K&O interchanged with Union Pacific never fell below {{ [REDACTED] }} for the first 15+ years that K&O was the lessee. During that time, Union Pacific was compensated for K&O's operation of the lines by handling the line-haul rather than through the springing rent provisions under the terms of the lease. However, in the years leading up to 2018, K&O's traffic certifications, which are provided as workpapers, reported that overall interchanged traffic volumes subject to the contingent rent provision began to fall, from {{ [REDACTED] }} in 2015 to just {{ [REDACTED] }} in 2018.¹ Given the declining overall carload volumes, a relatively small number of reportable cars in 2018 resulted in K&O shipping only {{ [REDACTED] }} of traffic originating or terminating on the leased lines via interchange with Union Pacific. Under the terms of the 1997 lease, K&O's rent for 2018 was therefore {{ [REDACTED] }}.

K&O approached Union Pacific with concerns about how the interchange commitment was structured and indicated that paying the rental amount triggered by the routing requirement would be a financial hardship. Union Pacific recognized that the structure of the 1997 interchange commitment had become unworkable

¹ Although the certifications only refer to the Hoisington Subdivision (Geneseo-McCracken), they covered both that segment and the Towner Subdivision (Towner-Healy). It is my understanding that those certifications did not report carload volumes for the categories of traffic that were exempted from the interchange commitment.

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given the declining traffic volumes and that the interchange commitment should be revisited to support K&O's continued operation of the leased lines. Union Pacific therefore agreed to negotiate an alternative interchange commitment provision. The parties ultimately resolved these issues by executing a fourth amendment to the 1997 lease, which settled K&O's rental obligations for traffic moved in 2018 for {{ [REDACTED] }} and replaced the contingent rent provision with an Asset Use Fee.

As explained above, an interchange commitment is designed to compensate Union Pacific for the margin it would earn from traffic moving over a line leased to a short line in the event Union Pacific chose to operate the line instead. This is how Union Pacific approached development of the Asset Use Fee for the K&O lease. Union Pacific's short line team undertook a quantitative analysis by looking at comparable traffic. K&O's traffic originating on the leased lines is largely comprised of manifest grain traffic. So, Union Pacific first identified all manifest grain traffic originating in the Wichita, Kansas metropolitan area in 2017 using an origin revenue station of Wichita. Union Pacific did not parse the Wichita grain traffic by destination or by length of haul.

Using the company's internal cost management system and this base of comparable traffic, Union Pacific then determined the average margin for manifest grain cars originating in the Wichita area over the course of a year. This entire process yielded a per carload rate of {{ [REDACTED] }} for each carload originating or terminating on the leased lines that are not interchanged with Union Pacific.

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After evaluating the circumstances of the K&O lease, Union Pacific believed that the Asset Use Fee would appropriately compensate Union Pacific based on its margin while reducing the risks to K&O of less flexible rental terms. Union Pacific proposed this alternative interchange commitment together with an annual escalator to K&O, which K&O accepted. Union Pacific and K&O memorialized this new Asset Use Fee in the fourth supplement to the 1997 lease. Since that time, K&O has continued to submit annual traffic certifications to Union Pacific pursuant to this new form of interchange commitment.

The Asset Use Fee mitigates the risk of an unexpectedly harsh outcome present under the 1997 lease by addressing the risk of traffic fluctuations and preserves Union Pacific's right to the long haul while relieving K&O of the obligation to pay the fair market value in rent for use of the leased lines. And as illustrated in the section below, the RIA waiver process accounts for circumstances where Union Pacific would not be able to secure the long haul for new traffic originating or terminating on the leased line. These two mechanisms reflect a reasonable approach to Union Pacific's partnership with K&O.

IV. History with Weskan and its Affiliates.

I understand that Weskan Grain has raised a number of concerns about the UP-K&O lease agreement. Weskan is an agricultural and grain logistics company owned by the Soloviev Group and KCVN, LLC. Weskan operates a grain elevator complex known as the Stockton Facility near Sheridan Lake, Colorado just west of Towner, Colorado, as well as various feeder facilities. The Soloviev Group and KCVN also own the Colorado Pacific Railroad ("CXR"), which acquired a line of

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railroad in 2017 known as the “Towner Line” between Towner and NA Junction, Colorado. From 2019 to 2022, CXR contracted with K&O to operate the Towner Line. In connection with K&O’s authorization to operate over the Towner Line, K&O and Union Pacific entered into an interchange agreement for NA Junction in April 2021 shortly after the interchange facilities at NA Junction were rehabilitated.

Weskan’s Stockton Facility is located on the Towner Line and served by CXR. It is my understanding that Weskan has active facilities to the east of Scott City, Kansas on a line owned by K&O. While Weskan does have facilities or portions of facilities located along the leased lines, it is my understanding that they are not active.

I am familiar with Weskan both from my time in Bulk and Grain and also due to discussions that occurred between Union Pacific and Weskan’s parent and affiliates starting in 2021. At that time, it became clear that the Soloviev Group sought to acquire control of Union Pacific’s line between Towner and Healy. KCVN, LLC, a holding company for the Soloviev Group, and KCVN’s wholly owned subsidiary CXR sought to purchase the Towner-Healy line. Later, CXR renewed its offer to purchase the Towner-Healy line in April 2024. Union Pacific declined both purchase offers.

Unable to acquire the Towner-Healy line or force a termination of K&O’s lease, Weskan Grain later that year filed its first attempt to terminate the K&O lease through Board processes. Union Pacific’s comments and this statement

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explain why Weskan Grain's concerns about the lease are not valid. Further, Union Pacific has appropriately addressed any legitimate concerns raised by Weskan Grain through the RIA waiver process. In the first place, it is my understanding that there is no Weskan Grain traffic that would currently be subject to the Asset Use Fee, given that none of its traffic originates or terminates on the leased lines. Moreover, even if there were such traffic, Union Pacific has addressed such traffic through the RIA waiver process.

On July 18, 2023, K&O submitted a request under the RIA for waiver of the Asset Use Fee for wheat, milo, soybeans, and corn originating from all points on the Towner-to-Healy line segment leased by K&O and destined for Weskan's Stockton Facility. K&O represented that Weskan had recently purchased two grain facilities and greenfield space on the K&O for transporting grain by rail to Weskan's shuttle loading facility on CXR's Towner line, though without specifying the location. According to K&O, this grain traffic was currently moving by truck. If granted, the waiver would allow K&O to transport westward up to { [REDACTED] } annually for Weskan facilities located along the leased line without interchanging with Union Pacific or triggering the Asset Use Fee. Some of the locations that were listed in the waiver request are in fact located east of Scott City on a K&O-owned line and therefore not subject to the Asset Use Fee.

In some situations, it is not entirely clear whether traffic constitutes "new traffic" for purposes of the RIA. Here, there was already grain traffic being generated in places like Scott City that was moving down to Wichita and elsewhere.

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And the waiver request itself was not entirely clear on where traffic would be originating. However, to the extent that traffic would be subject to the Asset Use Fee and converted from truck to rail and would constitute new traffic, Union Pacific granted the waiver request and agreed to make an exception to the Asset Use Fee to support K&O's efforts to grow its business. The duration of the Asset Use Fee exception was one year.

K&O anticipated that Weskan would begin shipping grain from facilities along the leased line in October 2023, so Union Pacific granted the waiver and modified Asset Use Fee for { [REDACTED] }. K&O then requested that Union Pacific grant the waiver for a multi-year term rather than on an annual basis because of the uncertainty concerning when Weskan would begin shipping grain by rail and whether the traffic would materialize as predicted. Union Pacific initially declined to grant a multi-year waiver but agreed that K&O could wait to execute the initial one-year waiver until Weskan began shipping grain.

K&O renewed its RIA waiver request for grain traffic moving from Weskan facilities located along the leased line to the Stockton Facility. This time, Union Pacific agreed to a two-year waiver for covered traffic from { [REDACTED] [REDACTED] }, which coincides with the end of the current lease extension. To my knowledge, Weskan does not currently have any active loading facilities on the leased lines and therefore no Weskan Grain traffic has originated or terminated on the leased line since Union Pacific first granted an RIA waiver.

PUBLIC VERSION

VERIFICATION

I, Daniel McLaughlin, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 15th day of June, 2026.

/s/ *Daniel McLaughlin*
Daniel McLaughlin

PUBLIC VERSION

EXHIBIT B

VERIFIED STATEMENT OF DR. NATHAN MILLER

PUBLIC VERSION

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36849 (SUB-NO. 1)

**KANSAS & OKLAHOMA RAILROAD, LLC
—LEASE AND OPERATION EXEMPTION
WITH INTERCHANGE COMMITMENT—
UNION PACIFIC RAILROAD COMPANY**

**UNION PACIFIC RAILROAD COMPANY’S
REPLY TO PETITION FOR EXEMPTION**

**VERIFIED STATEMENT OF
NATHAN MILLER**

JUNE 15, 2026

PUBLIC VERSION

I. INTRODUCTION AND SUMMARY

A. Qualifications

1. My name is Nathan Miller. I am Professor at the McDonough School of Business and the Department of Economics at Georgetown University. I am also a Founding Partner at Econic Partners, an international economics consulting firm.
2. I previously served as Chief Economist of the U.S. Department of Justice Antitrust Division. As Chief Economist, I oversaw the work of more than fifty economists, statisticians, and data scientists. My portfolio covered nearly all matters in front of the Antitrust Division, including cases regarding monopolization, conduct, and mergers across a number of industries.
3. I have consulted and testified on issues of competition and antitrust in the context of mergers, including on behalf of competition authorities in the U.S. and Canada. I served as the government expert in cases challenging mergers, for example, in transportation and energy services industries. I have also provided testimony before the Surface Transportation Board on rail competition matters.
4. My research covers topics in industrial organization and antitrust economics, including oligopoly price-setting, procurement, competition with transportation costs, and strategic investment decisions. It has won numerous awards, including the Robert L. Lanzilotti Prize for Best Paper in Antitrust Economics (2015 and 2022) and Jerry S. Cohen Award for Best Antitrust Article on Merger Retrospectives (2022). I teach graduate courses on industrial organization, microeconomics, econometrics, and strategy at Georgetown.
5. I am also an editor at the Journal of Law and Economics, an associate editor at the International Journal of Industrial Organization, and a Research Associate at the National Bureau of Economic Research. I earned a Ph.D. in economics from the University of California, Berkeley, and a B.A. from the University of Virginia. My curriculum vitae is attached as Appendix A.

B. Purpose

6. I have been asked by Union Pacific Railroad Company (“UP”) to evaluate the competitive effects of the lease and lease terms between UP and Kansas & Oklahoma Railroad, LLC (“K&O”).¹ I have been asked to address the economics and incentives of interchange commitments in general. I have been asked then to address the specific interchange commitment at issue—the Asset Use Fee (and related terms) that replaced the previous Contingent Rental Agreement (and related terms). I have been asked in particular to evaluate the extent to which the Asset Use Fee represents an efficient and beneficial lease arrangement between a Class I and short line operator of the leased rail assets.

C. Summary

7. The interchange commitments between UP and K&O are an integral part of a pro-competitive arrangement by which UP can transfer operation of a low-density rail route to a short line railroad capable of providing more focused and cost-effective service to local customers. The lessor of rail assets requires some form of compensation for use of those assets. Under the interchange commitments, UP’s primary compensation for the use of its Leased Lines arises from the margins it can earn on movements of traffic between the leased rail route and the rest of the UP network. Absent an interchange commitment, alternative forms of compensation to UP for use of its lines would be required. For example, absent an interchange commitment, K&O could compensate UP in the form of fixed annual lease payments. There is no guarantee, however, that such an alternative compensation form or lease payment amount could be found that would satisfy expectations about the value of the assets by both parties. Absent an agreement on compensation, benefits from the vertical disintegration of the leased lines could be lost.
8. K&O assumed the original Contingent Rental Agreement, which allowed K&O to operate the leased lines, but that interchange commitment created significant financial risk to K&O.² When the contingent rent obligation was triggered in 2018, that significant risk

¹ K&O Petition for Exemption Pursuant to 49 U.S.C. § 10502(a), May 4, 2026 (with Correction, May 5, 2026) (“K&O Petition”), Exhibit B (“Lease Documents”)

² K&O Petition, p. 25.

materialized. The replacement of the Contingent Rental Agreement with the Asset Use Fee is an improvement as it reduced the financial risk to K&O, provided a straightforward fee structure with payments related to the opportunity cost of lost traffic, provided appropriate economic incentives to K&O for moving traffic to and from UP's Leased Lines, and provided exemptions that have allowed large volumes of traffic to interchange with other railroads.

9. UP and K&O have shown a willingness to adapt their contractual relationship to changing market conditions. In addition to the changes adopted in conjunction with the Asset Use Fee, K&O and UP have used the Railroad Industry Agreement process to develop waivers and modifications that are intended to permit the growth of new traffic.

II. BACKGROUND

10. K&O is a Class III railroad, owned by Watco, which operates in Kansas and to Towner, Colorado just over the Kansas border. In 2001, K&O acquired the rail line assets of the Central Kansas Railway, LLC ("CKRY") and took over the operations of these assets. These lines predominantly serve grain and grain products traffic. K&O has multiple interchanges in Kansas with UP and BNSF Railway Company ("BNSF"), with South Kansas & Oklahoma Railroad, LLC ("SKOL"), another Watco affiliate, and the Wichita Terminal Association ("WTA"), a terminal railroad at Wichita, and with Colorado Pacific Railroad LLC ("CXR") at Towner, Colorado.³
11. In 1997, UP leased a low-density rail route between Geneseo, Kansas and Towner, Colorado to CKRY. In 2001, K&O, as part of the larger purchase of CKRY rail assets, assumed the leasehold interest in the Leased Lines from CKRY. K&O has provided service over these lines since.⁴

³ K&O Petition (as corrected), pp. 5-6, 41.

⁴ The initial lease included lines that were abandoned in the early 2000s. See Lease Documents, Third Supplement, pp. 1-2. I use the term Leased Lines to refer to the rail assets covered under the lease. For the current agreement at issue, the Leased Lines includes only the Towner-Healy and Geneseo-McCracken lines. See K&O Petition, Appendix A for a map of the current lines both leased and owned by K&O.

12. The original interchange commitment in the lease of UP's rail lines (the "Contingent Rental Agreement") called for an annual contingent rent payment (subject to annual inflation adjustment). The amount of rent was reduced based on the proportion of certain traffic originating or terminating on the Leased Lines which travelled {{ [REDACTED] }} that was interchanged with UP. If {{ [REDACTED] }} of this traffic was interchanged with UP, the rent would be zero. Below {{ [REDACTED] }}, the annual rent would start at {{ [REDACTED] }} increasing to {{ [REDACTED] }} if none of the relevant traffic were interchanged with UP. Leased-line traffic local to K&O or another affiliate of the lessee was not included in this calculation and paid {{ [REDACTED] }}.⁵
13. In 2018, the {{ [REDACTED] }} threshold in the Contingent Rental Agreement was not satisfied and K&O triggered a rental payment of {{ [REDACTED] }}.⁶ This rental payment arose due to a total of {{ [REDACTED] }} cars interchanged with {{ [REDACTED] }}, or {{ [REDACTED] }} cars more than allowed by the {{ [REDACTED] }} threshold.⁷ In response, K&O requested and UP agreed to negotiate a supplement to the Lease that replaced the Contingent Rental Agreement with an Asset Use Fee.⁸
14. The 2019 Fourth Supplement established an Asset Use Fee of {{ [REDACTED] }} per car, indexed to changes in {{ [REDACTED] }}, for certain traffic that originates or terminates on the Leased Lines that is not interchanged with UP.⁹ Traffic originating or terminating on the Leased Lines that is local to the K&O or interchanges with SKOL pays {{ [REDACTED] }} per car. Traffic originating or terminating on the Leased Lines to and from {{ [REDACTED] }}.¹⁰ The Contingent Rental Agreement and Asset Use Fees are both interchange commitments that allow

⁵ A 1998 amendment excluded some local traffic from the {{ [REDACTED] }} per carload fee otherwise due. See Lease Documents, First Supplement to Lease Agreement, p. 2.

⁶ K&O Petition (as corrected), p. 26.

⁷ K&O 2018 Traffic Certification, Verified Statement of Daniel McLaughlin, June 15, 2026 ("McLaughlin V.S."), Workpapers.

⁸ Lease Documents, Fourth Supplement, pp. 2-3.

⁹ Lease Documents, Fourth Supplement, p. 2.

¹⁰ Lease Documents, Fourth Supplement, Sec. 2.

compensation to UP for use of the Leased Lines in a manner that avoids large fixed rental payments by K&O; they differ, however, in terms of flexibility, risk, and operation of the interchange incentives.

15. The 2019 supplement also settled the outstanding rent payment incurred under the original rental terms. UP agreed to accept {{ [REDACTED] }}, in lieu of the {{ [REDACTED] }} due under the original rental terms, to settle outstanding amounts. This amount corresponds to that which would have been incurred under the Asset Use Fee if it had been in effect when K&O failed to reach the previous {{ [REDACTED] }} threshold.

III. ECONOMICS OF INTERCHANGE COMMITMENTS

A. Organizational Economics and the Role of Short Line Railroads

16. Short line and regional railroads have come to play a critical role in the U.S. railroad industry. Roughly 600 Class II and Class III railroads operate a total of 47,500 route miles, about 29% of the total U.S. system.¹¹ Collectively, they handle one of every five railcars moving at origination and termination.¹² Most traffic handled by short line railroads are interchanged with interconnecting Class I railroads.¹³
17. The role of short lines in the U.S. rail industry greatly expanded following the regulatory reforms of the 1970s culminating in the passage of the Staggers Act in 1980. The regulatory reforms reduced the burden associated with the sale or abandonment of rail lines. Over the next decades, many tens of thousands of Class I railroads' unprofitable or marginal rail routes were abandoned, or sold (or leased) to short line railroads to operate.¹⁴ The rationalization of the Class I rail networks through abandonment and transfer of

¹¹ American Short Line and Regional Railroad Association, *The Short Line and Regional Railroad Industry*, accessed 6/6/2026, <https://www.aslrra.org/about-us/industry-facts/>. I will refer to these collectively as short line railroads.

¹² Ibid.

¹³ Ibid.

¹⁴ Mark Burton & Paul Hitchcock, "The Evolution of the Post-Staggers Rail Industry and Rail Policy," *U.S. Freight Rail Economics and Policy: Are We on the Right Track?* (Jeffrey T. Macher & John W. Mayo eds., Taylor & Francis 2019), pp. 9–10. Through abandonment or line sales, "U.S. Class I railroads reduced network route-miles by nearly 43% (184,000 to 106,000) between 1976 and 1996."

operations to short lines was a major contributor to the revitalization of the railroad industry.¹⁵

18. How economic activities are organized, either within a firm or through interactions among firms in the marketplace, is a central concern of industrial organization economics.¹⁶ At a very high level, firms make decisions, investments, and manage activities through some form of internal coordination, authority, and direction while firms in a vertical relationship interact through market transactions, formal and informal contracts, and on-going relationships. Numerous factors influence choices of what activities are integrated within a firm versus being transacted through a myriad of possible contractual and marketplace arrangements. Issues of information access, asymmetry, and transfer, incentives for efficient effort, incentives for investments and rent seeking, investments and commitments, transaction costs, risk sharing, limitations of contractual arrangements and enforcement, and more influence whether economic activity is performed within the firm or through exchange between firms.¹⁷ These considerations influence how activities are organized among firms and the degree of vertical integration observed in the marketplace: when does a firm produce its own inputs and when does a firm rely on suppliers for inputs? Both integration within a firm and use of external marketplace relationships entail tradeoffs in the benefits and burdens of conducting business in either form.
19. Short line railroads have generally proven themselves capable of operating and managing low-density rail routes efficiently and at lower cost than the large Class I railroads.¹⁸ Differences between the cost structures of the Class I railroads and short line railroads, and the ability and incentives for short line railroads to focus on the needs of local customers have made them effective operators of lower-density portions of the rail network. The U.S. transportation system—including both small and large railroads and the shippers that

¹⁵ W. Bruce Allen, Michael Sussman, and Drew Miller, "Regional and short line railroads in the United States," *Transportation Quarterly* 56.4, 2002, pp. 77-113, ("Allen et al., Short line railroads, 2002.")

¹⁶ See, for example, Jean Tirole, *The Theory of Industrial Organization*, MIT Press: Cambridge, 1988, pp. 15-34.

¹⁷ See, for example, Robert Gibbons, "Four formal(izable) theories of the firm," *Journal of Economic Behavior & Organization*, 58:2, 2005, pp. 200-245.

¹⁸ Allen et al., Short line railroads, 2002.

use it—benefits when these portions of the rail network are operated more efficiently by a short line than by a Class I railroad.

20. The sale or lease of a low-density portion of Class I rail network to a short line railroad requires a transaction and post-transfer relationship that provides incentives for efficient operation of the assets while preserving value to both parties from the transaction. The very specific assets involved in these transactions—a rail route that was once part of a larger network owned and operated by a large railroad—typically entails ongoing contractual and relationship commitments on both parties. The transaction and post-transfer contractual relationships must provide a return to the Class I railroad for the value of the assets resulting from past investments in its rail network at a level and in a form on which the Class I and short line railroad can agree.
21. The future profitability of low-density rail lines may often be quite uncertain. Whether rail traffic sufficient to justify on-going operations, maintenance, and investment will materialize, and at what level, can be hard to predict. Many times, the best economic use of a low-density line is to simply discontinue service and abandon the line. Indeed, portions of the lines initially leased by UP to CKRY were found to be uneconomic and have been abandoned. In other cases, there may be ongoing and growing rail traffic located on the lines that represent substantial economic value attributable to those lines.
22. An unconditioned sale or lease of a low-density line can impose substantial risks on the parties. A short line may make substantial upfront or fixed lease payments for a line that proves to have little or no on-going value; the Class I railroad may receive compensation for its assets that turn out to have substantial on-going value at a level far below its actual worth. In these circumstances, on-going contractual and relationship compensation mechanisms can share the risk of uncertain future values of the lines and permit transfer of the operation of the lines to a more efficient operator. The short line railroad's potentially limited access to, or high cost of, capital provides additional reasons, beyond a simple aversion to the risk of paying upfront for a potentially uneconomic asset, for limiting upfront payments and for sharing risk of future value between the parties. Moreover, these contractual and relationship arrangements provide short line operators incentives to operate efficiently and make necessary on-going investments in the lines. These approaches

balance operational and financial incentives and risks among the parties. Without them, the efficiency benefits to the rail transportation system of this vertical disintegration—i.e., short line operation of the low-density lines—may not be realized.

B. Interchange Commitments Solve an Organizational Economics Problem

23. Interchange commitments in rail line sales and leases provide a solution to the economic tradeoffs in managing the spin-offs of typically low-density rail lines by Class I railroads.¹⁹ Interchange commitments consist of a variety of alternative contractual mechanisms to encourage or require a short line operator to interchange traffic originating or terminating on the spun-off lines with the Class I seller or lessor. By providing a Class I railroad an expectation that it will obtain economic value from interchanged traffic that will use its line-haul network, an interchange commitment removes the need for the Class I railroad to impose larger (or in some cases, any) upfront payments or ongoing fixed lease payments. In this way, the short line operator can preserve capital to be used for on-going investments and maintenance, risk is shared, and the magnitude of compensation earned reflects the future volume of traffic and economic value of the spun-off line. These arrangements also provide both the Class I carrier and the short line operator incentives to work together to grow traffic on the line.
24. The STB summarized the role of the widespread use of interchange agreements in facilitating the growth of short line rail industry:

According to representatives of short line railroads, these interchange commitments played an important role in the rebirth of the short line industry by providing valuable consideration by the short line to acquire or lease the rail facilities, thereby permitting start-up or very small companies to purchase or lease rail facilities with little or no upfront capital investment. The large railroad was willing to sell or lease these lighter-density lines at reduced prices because it was assured of retaining a portion of the revenues from the traffic on those lines. AAR describes interchange commitments as being “core requirements without which [spin-off] transactions would not and could not take place.” Accordingly, without interchange commitments many of today’s short lines might not

¹⁹ I use spin-off to refer to either a lease or sale of the Class I line.

exist and, as a result, many shippers might not have access to the same rail service they have today.²⁰

25. Interchange commitments provide compensation to the larger railroad for the value of its assets leased or sold as a result of the contribution (revenue above operating cost) earned by the railroad on movements originating or terminating on the spun-off lines. Rather than receiving cash payments, the larger railroad obtains value from the traffic it moved over its remaining network derived from shipments to or from customers served by the short line carrier operating its sold or leased lines. As the typical spun-off rail line was a low-density feeder line that connected to the larger integrated rail network, the economic value of the spun-off rail route derived from traffic to and from shippers located on the line rather than its role in larger network operations. If that traffic derived from the spun-off line interchanged with the selling (or leasing) railroad, then that railroad recovered value from the sale or lease in the form of contributions (i.e., margins) earned on those interchanged movements.
26. Interchange commitments also preserve capital of the short line to make any necessary investments or expenditures by reducing or eliminating upfront payments or on-going fixed lease payments. In general, these commitments provide incentives for both parties to grow traffic on the lines. They also share the risks and benefits of the ultimate value of the line between the parties. If the line turns out to be uneconomic or of low value, the short line's initial outlays would be small, and the large railroad would receive little if any compensation for the line. If the line turns out to be successful, both parties benefit through higher traffic volumes and contributions earned.
27. Interchange commitments can take different forms—from outright prohibitions on interchange with other railroads, to financial incentives to interchange with the selling or leasing railroad. These provisions are often of long duration, like many contractual arrangements covering use of rail assets in this industry. Such provisions would be expected to continue over the life of the lease, as an alternative to on-going fixed annual lease payments that would otherwise be due. The precise form of these provisions,

²⁰ STB Ex Parte No. 575 Decision, October 29, 2007, p. 4. (Footnotes omitted).

however, may be renegotiated between the parties as conditions change. The new terms are typically to the mutual benefit of both parties in response to changes in market conditions and tend to increase the efficiency or combined value of the contractual relationship.

C. Interchange Commitments Do Not Generally Create Additional Market Power

28. Prior to any spin-offs of rail routes, existing owners of a rail line are generally in a position to exercise any existing market power that its investments in the line have created for them. The railroad owner-operator is generally in a position to determine prices and routings offered to customers, including single-line routings and the long hauls on interlined traffic. For commodities like grain, for which there are typically numerous potential destinations to which the grain can be delivered, the serving railroad has the incentive to provide price and service such that the customer would choose to deliver to a location served by the railroad or at least obtain the long haul for itself.
29. A spin-off of a feeder line to a short line, through lease or sale subject to interchange commitments, generally does not create for the short line new market power that the original large railroad did not already possess.²¹ The transfer of operations to a potentially more efficient operator does not create additional market power relative to other market alternatives available to the shipper.
30. The existence of a fixed rail line with sole-served shippers creates some level of inherent market power with respect to the shippers on that line.²² Due to the inability to write and enforce complete contracts to cover all future circumstances, the vertically disintegrated large railroad and short line operator may not be able to optimally exercise the existing market power. In some cases, this may result in terms more favorable to the shipper than if the large railroad had continued to operate the line. For others, limitations in contracting may result in terms offered to a shipper that are worse than what the previously owner-

²¹ This analysis is independent of whether common operation of the spun-off route and other operations of the short line railroad may have any competitive overlap.

²² This market power may not result in above competitive rates of return on the investment, or even a level of return sufficient to justify on-going upkeep of the line.

operator railroad could have proffered. Such deviations from what a hypothetically, equally-efficient owner-operator would charge do not represent some increase in market power as a result of the agreement between the large and short line railroad. Rather it is an example of the trade-off between allowing a more efficient short line railroad to operate the line and limitations in contracting and incentives between independent railroads.

IV. THE K&O ASSET USE FEE PROVIDES REASONABLE COMPENSATION AND ENCOURAGES UTILIZATION OF THE LEASED LINES

A. The Asset Use Fee Reduced Risk and Lowers the Cost of Interchange Traffic Relative to the Original Contingent Rent Provisions

31. The original Contingent Rental Agreement provided the means and incentive to eliminate any fixed lease payment by K&O. The agreement called for a rental payment to UP of {{ [REDACTED] }} for the use of the Leased Lines, but the rent was reduced or eliminated conditional on the share of certain traffic originating or terminating on the Leased Lines interchanged with UP.²³ If a {{ [REDACTED] }} share of this traffic were interchanged with UP, then no rent would be due. Missing this target percentage, however, imposed a minimum rent of {{ [REDACTED] }}, with the amount increasing as UP's share of the relevant interchange traffic decreased.
32. The benefits to K&O of this arrangement were clear. As long as the {{ [REDACTED] }} threshold was met, K&O incurred very little financial obligation for use of the Leased Lines. The Contingent Rental Agreement provided an incentive for K&O to develop traffic that was excluded from the calculation of the interchange percentage or that interchanged with UP if it were included. If the threshold were met, UP's compensation for the use of its assets occurred only through contributions it earned on traffic to/from shippers located on the Leased Lines that interchanged with UP and not by payments from K&O.²⁴
33. The contingent rent and interchange percentage calculation was a key mechanism that provided K&O low- or no-cost access to the Leased Lines and provided compensation to

²³ See Lease Documents, 1997 Lease Agreement, Sec. 4.01(B)

²⁴ Local traffic and traffic interchanged with lessee's affiliates paid {{ [REDACTED] }} per carload under the initial lease terms. Lease Documents, 1997 Lease Agreement, Sec. 4.02.

UP through interchange traffic originating or terminating on the lines. Absent this requirement, different terms would have been required for the short line to compensate UP for access to and operation of the lines by the short line railroad.²⁵

34. The possibility of missing the {{ [REDACTED] }} threshold created significant financial risks for K&O. Depending on the volumes of relevant traffic, small misses would result in large financial consequences for K&O.
35. In 2018, that risk became a reality. Based on the K&O traffic certificates, traffic relevant for the determination of the interchange percentage calculation had been declining, from {{ [REDACTED] }} carloads in 2015 to {{ [REDACTED] }} carloads in 2018.²⁶ As a result of {{ [REDACTED] }} cars not interchanged with UP in 2018, the {{ [REDACTED] }} threshold was not met.²⁷ A rental obligation of {{ [REDACTED] }} was triggered. At anything remotely near these traffic volumes, intentionally missing the {{ [REDACTED] }} threshold would have been wholly economically irrational.²⁸
36. As a result, K&O asked for the existing agreement to be amended and requested for an “Asset Use Fee replace to replace the existing rental structure.”²⁹ UP and K&O negotiated a settlement for the 2018 rental amounts and replaced the Contingent Rental Agreement with an Asset Use Fee going forward.³⁰ The Asset Use Fee applied a per carload fee for certain traffic that was not interchanged with UP, determined similarly to the traffic that was used in the determination of the contingent rent percentage calculation. Consistent with the basic structure of the lease and interchange commitments, the Asset Use Fee encourages, but does not require, K&O to interchange traffic with UP. It limits,

²⁵ McLaughlin V.S., § 3.

²⁶ K&O 2015-2018 Traffic Certifications, McLaughlin V.S. Workpapers.

²⁷ K&O 2018 Traffic Certification, McLaughlin V.S. Workpapers.

²⁸ {{ [REDACTED] }} divided by {{ [REDACTED] }} cars is a rental payment of over {{ [REDACTED] }} per relevant carload interchanged with another railroad.

²⁹ Lease Documents, Fourth Supplement, p. 2.

³⁰ McLaughlin V.S., § 3.B; Lease Documents, Fourth Supplement.

{{ [REDACTED] }}, the amount of compensation that K&O would need to pay UP for use of the Leased Lines.

37. The Asset Use Fee greatly reduced the risk born by K&O in operating the Leased Lines while preserving the basic incentives that are at the core of the lease arrangement. K&O now had greater certainty regarding the payments that it would owe to UP for the volume of covered non-UP interchange traffic originating or terminating on the Leased Lines. And these payments were a fraction of the potential liability under the pre-existing Contingent Rental Agreement. As part of the contract renegotiations, UP and K&O settled the payment attributable to 2018 for an amount equal to what would have been incurred under the Asset Use Fee: {{ [REDACTED] }} versus {{ [REDACTED] }}, or less than {{ [REDACTED] }} of the rental payment due under the terms of the original lease.
38. The greater certainty in the value of future payments to UP under the Asset Use Fee relative to the contingent rent payment also provides increased incentives for investment by K&O in the Leased Lines. The potential for large and unplanned rental payments increases the risk and reduces the future value of the operations of the Leased Lines to K&O. In the face of more predictable returns available under the Asset Use Fee, K&O will have better incentives to maintain and invest in the Leased Lines.

B. The Asset Use Fee Is a Reasonable Compensation Mechanism as Part of the Lease that Encourages Use of the Leased Lines by K&O

39. The Asset Use Fee is structured to compensate UP for use of the Leased Lines by encouraging K&O to interchange a portion of traffic on the line with UP and provide reasonable offsetting compensation to UP for some traffic that does not. As explained by Mr. McLaughlin, UP developed the {{ [REDACTED] }} per carload fee based on the average margin for grain traffic originating from the Wichita, Kansas area.³¹ This approach makes UP roughly indifferent, on average, to whether traffic encompassed by the scope of the Asset Use Fee were shipped over UP or whether K&O paid the Asset Use Fee for traffic interchanged with other railroads. In this fashion, UP is paid for use of its Leased Lines

³¹ McLaughlin V.S., § 3.B.

either by traffic that runs over its network or by payment from K&O for covered traffic that does not.

40. The Asset Use Fee, like the contingent rent arrangement, exempts substantial volumes of traffic attributable to customers on the Leased Lines. This exempt traffic includes:³² {{

- [REDACTED]
- [REDACTED]
- [REDACTED]
[REDACTED] }}

A {{ [REDACTED] }} per carload fee is payable for the first two categories; no fee is due for the third.³³ As the traffic categories only apply to traffic originating or terminating on the leased lines, overhead traffic on the Leased Lines incurs no fee.

41. The exempted traffic is quantitatively and economically important. K&O reports that in 2021, there were {{ [REDACTED] }} carloads on the Leased Lines.³⁴ For the same period, K&O provided UP the Asset Use Fee traffic certification that analyzed non-exempt traffic interchanged with UP and other railroads.³⁵ This traffic totaled {{ [REDACTED] }} cars, or {{ [REDACTED] }} of the traffic on the Leased Lines. Nearly {{ [REDACTED] }} of the traffic from the Leased Lines in 2021 was effectively exempt from consideration under the Asset Use Fee.³⁶
42. The Asset Use Fee has not precluded large portions of the traffic on the Leased Lines from interchanging with other railroads. K&O reports that for the last five years, 2021 through 2025, an average of over {{ [REDACTED] }} carloads of Leased Lines' traffic interchanged with

³² Lease Documents, Fourth Supplement, Sec. 4.02.

³³ {{ [REDACTED] }} K&O Petition, pp. 23-24.

³⁴ K&O Petition, p.13.

³⁵ K&O 2021 Traffic Certification, McLaughlin V.S. Workpapers.

³⁶ Some portion of this {{ [REDACTED] }} would have paid a {{ [REDACTED] }} per car fee.

non-K&O-affiliated, non-UP railroads:³⁷ {{ [REDACTED] }} carloads were with BNSF and over {{ [REDACTED] }} carloads were with the WTA. Based, for example, on the 2021 Traffic Certification, {{ [REDACTED] }} the Asset Use Fee.³⁸

43. The Asset Use Fee has also not prevented K&O from serving traffic subject to payment of the Asset Use Fee. Over the years 2019 through 2021, a small portion of the non-UP interchange traffic K&O carried incurred the fee. While the volumes were not large, as a percentage of traffic potentially subject to the fee, in {{ [REDACTED] }} the percentages were large enough that K&O would have {{ [REDACTED] }}
[REDACTED]
[REDACTED] }}
44. The current fee arrangement between K&O and UP has proven to be a reasonable compensation arrangement that has encouraged efficient use and operation of UP's leased assets. The fee structure provides modest and predictable payment from K&O for use of the UP assets. Most interchanged traffic incurs no fee, and significant volumes of traffic to and from customers on the Leased Lines interchange with UP and other railroads as well. The modest {{ [REDACTED] }} per car fee for K&O local and some SKOL-interchanged traffic does not represent a significant burden. For traffic interchanged with UP, UP earns its margins on its line-haul attributable to traffic to and from customers located on the Leased Lines. For the limited traffic on which the Asset Use Fee could potentially be payable, K&O has the incentive to encourage use of UP interchanges. Where the use of non-UP interchange partners is sufficiently more efficient to cover the opportunity cost to UP of losing that traffic, however, K&O has the incentive and ability to move that traffic to the other interchange railroads.
45. The current interchange commitment between UP and K&O does not represent an abuse of market power, nor does it create any new market power. Rather, it is a pro-competitive contractual mechanism to permit an efficient, lower-cost short line to operate a railroad

³⁷ Some additional traffic was interchanged with SKOL.

³⁸ K&O 2021 Traffic Certification, McLaughlin V.S. Workpapers.

over assets owned by UP. It provides reasonable compensation to UP, limits risks incurred by both parties, encourages K&O to serve and grow traffic, and incentivizes K&O to make necessary investments in the Leased Lines to sustain a viable rail alternative to shippers on that line.³⁹

V. UP AND K&O HAVE DEMONSTRATED THE WILLINGNESS TO ADAPT TO CHANGING MARKET CONDITIONS

46. UP and K&O have shown the ability and willingness to adapt to different and changing market conditions. They have adopted multiple amendments to the contract, including the major change from the Contingent Rental Agreement to the current Asset Use Fee with multiple exemptions for different categories of traffic. Similarly, their experience with the Railroad Industry Agreement (“RIA”) process also demonstrates the ability to adapt the existing contractual relationships to unanticipated market opportunities.
47. K&O and UP have requested and provided, respectively, waivers under the Railroad Industry Agreement (“RIA”) process for potential new traffic. The RIA establishes principles by which large and small railroads can modify existing interchange agreements to support the development of new traffic where the modifications or waivers would not have unreasonable negative impacts on the larger railroad.⁴⁰
48. I understand that Weskan Grain (“Weskan”), specifically, has raised objections regarding the interchange commitment. Weskan owns the Stockton Facility grain elevator on the CXR located a short distance west of the end of the Leased Lines at Towner, Colorado. It also owns facilities along the Leased Lines as well as facilities east of the Leased Lines located on the K&O.⁴¹
49. Starting in 2023, K&O requested under the RIA for a waiver for grain from the Leased Line to the Stockton Facility.⁴² UP agreed to the request and provided a modified Asset

³⁹ K&O made {{ [REDACTED] }} of investments over the ten-year 2012-2021 period. K&O Petition, p. 28.

⁴⁰ RIA, pp. 1, 3, and 9.

⁴¹ K&O Petition, pp. 2-3; McLaughlin V.S., § 4.

⁴² McLaughlin V.S., § 4.

Use Fee for this traffic. Due to uncertainty about when grain would ship, the implementation of the waiver had been delayed. K&O renewed the request and UP provided the waiver from September 2025 to the end of the current lease term in August 2027.⁴³ While the waiver has been in place for most of a year, UP is unaware that Weskan has any active loading facilities on the Leased Lines or that any traffic has moved under the waiver.⁴⁴

50. Despite the initial confusion over whether Weskan was originating any traffic on the Leased Lines, the Weskan example demonstrates how K&O and UP can and will adapt the existing interchange commitments to changing market conditions. K&O has the incentive to grow new traffic regardless of the interchange partner, and UP has shown a willingness to accommodate new traffic on its Leased Lines that does not otherwise harm UP's existing economic value in the lines. The RIA process provides K&O and UP with additional flexibility to make pro-competitive adaptations of the existing contract terms to changing market conditions.

⁴³ McLaughlin V.S., § 4.

⁴⁴ McLaughlin V.S., § 4.

PUBLIC VERSION

VERIFICATION

I, Nathan Miller, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on June 15, 2026

/s/ Nathan Miller

Nathan Miller

PUBLIC VERSION

APPENDIX A

PUBLIC VERSION

Nathan H. Miller

Georgetown University
37th and O Streets, NW
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Updated June 2026

POSITIONS

Current Positions

Professor, Georgetown University, 2022–
 McDonough School of Business (primary)
 Department of Economics (secondary)
Senior Policy Scholar, Georgetown Center for Business and Public Policy, 2017–
NBER, Research Associate, 2024–
Founding Partner, Econic Partners, 2025–
Associate Editor, *International Journal of Industrial Organization*, 2022–
Editorial Board, *Review of Industrial Organization*, 2019-2024, 2025–

Previous Positions

Georgetown University

Provost's Distinguished Associate Professor, 2021-2022
Saleh Romeih Associate Professor, McDonough School of Business, 2019-2022
Affiliated Professor, Economics Department, 2019-2022
Associate Professor, McDonough School of Business, 2017-2022
Assistant Professor, McDonough School of Business, 2013-2017

Other Positions

Editor, *Journal of Law and Economics*, 2021-2025
Chief Economist, U.S. Department of Justice, Antitrust Division, 2024
Visiting Professor, Toulouse School of Economics, 2019-2020
Economist, U.S. Department of Justice, Antitrust Division, 2008-2013

DEGREES

Ph.D., Economics, University of California at Berkeley, 2008
B.A., Economics and History, University of Virginia, 2000

PUBLICATIONS AND RESEARCH PROJECTS

Refereed Publications

“Mergers, Entry, and Consumer Welfare” (with Peter Caradonna and Gloria Sheu), *American Economic Journal: Microeconomics*, Vol. 17, No. 3, 103-130 (2025).
“Rising Markups and the Role of Consumer Preferences” (with Hendrik Döpper, Alexander MacKay, and Joel Stiebale), *Journal of Political Economy*, Vol. 133, No. 8, 2462-2505 (2025).
“Estimating Models of Supply and Demand: Instruments and Covariance Restrictions” (with Alexander MacKay), *American Economic Journal: Microeconomics*, Vol. 17, No. 1, 238-281 (2025).
“Industrial Organization and *The Rise of Market Power*,” *International Journal of Industrial Organization*, Vol. 98, 103131 (2025).

- “A Price Leadership Model for Merger Analysis” (with Ryan Mansley, Gloria Sheu and Matthew Weinberg), *International Journal of Industrial Organization*, Vol. 89 (2023).
- “Oligopolistic Price Leadership and Mergers: The United States Beer Industry” (with Gloria Sheu and Matthew Weinberg), *American Economic Review*, Vol. 111, No. 10, 3123-3159 (2021).
- “Finding Mr. Schumpeter: Technology Adoption in the Cement Industry” (with Jeffrey Macher and Matthew Osborne), *RAND Journal of Economics*, Vol 52, No. 1, 78-99 (2021).
- “Forward Contracts, Market Structure, and the Welfare Effects of Mergers” (with Joseph Podwol), *Journal of Industrial Economics*, Vol. 68, No. 2, 364-407 (2020).
- “Understanding the Price Effects of the MillerCoors Joint Venture” (with Matthew Weinberg), *Econometrica*, Vol. 85, No. 6, 1763-1791 (2017).
- “Pass-Through in a Concentrated Industry: Empirical Evidence and Regulatory Implications” (with Matthew Osborne and Gloria Sheu), *RAND Journal of Economics*, Vol. 48, No. 1, 69-93 (2017).
- “Upward Pricing Pressure as a Predictor of Merger Price Effects” (with Marc Remer, Conor Ryan and Gloria Sheu), *International Journal of Industrial Organization*, Vol. 52, 216-247 (2017).
- “Pass-Through and the Prediction of Merger Price Effects” (with Marc Remer, Conor Ryan and Gloria Sheu), *Journal of Industrial Economics*, Vol. 64, December, 684-709 (2016).
- “Spatial Differentiation and Price Discrimination in the Cement Industry: Evidence from a Structural Model” (with Matthew Osborne), *RAND Journal of Economics*, Vol. 45, No. 2, 221-247 (2014).
- “Modeling the Effects of Mergers in Procurement,” *International Journal of Industrial Organization*, Vol. 37, November, 201-208 (2014).
- “Automakers’ Short-Run Responses to Changing Gasoline Prices” (with Ashley Langer), *Review of Economics and Statistics*, Vol. 95, No. 4, 1198-1211 (2013).
- “Why Do Borrowers Pledge Collateral? New Empirical Evidence on the Role of Asymmetric Information” (with Allen Berger, Marco Espinosa-Vega, and Scott Frame), *Journal of Financial Intermediation*, Vol. 20, No. 1, 55-70 (2011).
- “Strategic Leniency and Cartel Enforcement,” *American Economic Review*, Vol. 99, No. 3, 750-768 (2009).
- “Debt Maturity, Risk, and Asymmetric Information” (with Allen Berger, Marco Espinosa-Vega, and Scott Frame), *Journal of Finance*, Vol. 60, No. 6, 2895-2923 (2005).
- “Does Functional Form Follow Organizational Form? Evidence from the Lending Practices of Large and Small Banks” (with Allen Berger, Mitchell Petersen, Raghuram Rajan, and Jeremy Stein), *Journal of Financial Economics*, Vol. 76, No. 2, 237-269 (2005).
- “Credit Scoring and the Availability, Price, and Risk of Small Business Credit” (with Allen Berger and Scott Frame), *Journal of Money, Banking, and Credit*, Vol 37, No. 2, 191-222 (2005).

Shorter Refereed Publications

- “New Frontiers in Research on Industrial Decarbonization” (with Kenneth Gillingham, Lint Barge, Sarah Armitage, Dallas Burtraw, Jonathan Colmer, Laure de Preux, Jonathan Hawkins-Pierot, Charles Holt, Valerie J. Karplus, Asa Lofgren, Mirabelle Muûls, Matthew Osborne, Edson Severnini, William Shobe, Gretchen Sileo, Vladimir Smirnyagin, Thomas Stoerk, Aleh Tsyvinski, Katherine Wagner, Ulrich Wagner, and Xi Wu), *Science*, Vol. 390, 338-340 (2025).

- “On the Misuse of Regressions of Price on the HHI in Merger Review” (with Steven Berry, Fiona Scott Morton, Jonathan Baker, Timothy Bresnahan, Martin Gaynor, Richard Gilbert, George Hay, Ginger Jin, Bruce Kobayashi, Francine Lafontaine, James Levinsohn, Leslie Marx, John Mayo, Aviv Nevo, Ariel Pakes, Nancy Rose, Daniel Rubinfeld, Steven Salop, Marius Schwartz, Katja Seim, Carl Shapiro, Howard Shelanski, David Sibley, and Andrew Sweeting), *Journal of Antitrust Enforcement*, Vol. 10, No. 2, 249-259 (2022).
- “Bias in Reduced-Form Estimates of Pass-Through” (with Alexander MacKay, Marc Remer and Gloria Sheu), *Economics Letters*, Vol. 123, No. 2, 200-202 (2014).
- “Consistency and Asymptotic Normality for Equilibrium Models with Partially Observed Outcome Variables” (with Matthew Osborne), *Economics Letters*, Vol. 123, No. 1, 70-74 (2014).
- “Using Cost Pass-Through to Calibrate Demand” (with Marc Remer and Gloria Sheu), *Economics Letters*, Vol. 118, No. 3, 451-454 (2013).
- “The Entry Incentives of Complementary Producers: A Simple Model with Implications for Antitrust Policy” (with Juan Lleras), *Economics Letters*, Vol. 110, No. 2, 147-150 (2011).

Book Chapters and Non-Refereed Publications

- “Rising Market Power: Evidence from Industry Studies” *National Law Network* (2025).
- “Rising Markups, Rising Prices?” (with Chris Conlon, Tzolmon Otgon, and Yi Yao), *AEA: Papers and Proceedings*, Vol. 113, 279-283 (2023).
- “Recent Advances in Economic Methodology for Coordinated Effects” (with Jamie Daubenspeck, Kate Maxwell Koegel, and Joseph Podwol), *Antitrust Chronicle* (2023).
- “Price-Fixing Allegations in the Canned Tuna Industry: A Look at the Data” (with Minhae Kim, Ryan Mansley, Marc Remer, and Matthew Weinberg), *Antitrust Bulletin*, Vol. 68, No. 1, 154-163 (2023).
- “Mergers – Countervailing Effects” (with Gloria Sheu), *The Elgar Encyclopedia on the Economics of Competition, Regulation and Antitrust*, Michael D. Noel (editor). Cheltenham, UK: Edward Elgar Publishing (2024).
- “Quantitative Methods for Evaluating the Unilateral Effects of Mergers” (with Gloria Sheu), *Review of Industrial Organization*, Vol. 58, No. 1, 143-177 (2021). Special Issue: The 2010 Horizontal Merger Guidelines after Ten Years.
- “How the MillerCoors Joint Venture Changed Competition in U.S. Brewing” (with Matthew Weinberg), *Microeconomic Insights*, 2017.
- “Ex Post Merger Evaluation: How Does It Help Ex Ante?” (with Daniel Hosken and Matthew Weinberg), *Journal of European Competition Law & Practice*, 2016.
- “Choosing Appropriate Control Groups in Merger Evaluations” (with Aditi Mehta), in *More Pros and Cons of Merger Control*, Konkurrensverket 2012.

Working Papers and Research Projects

- “Technology and Market Power: The United States Cement Industry, 1974-2019” (with Matthew Osborne, Gloria Sheu and Gretchen Sileo), 2026.
- “Phoning Home: The Procurement of Telecommunications Services for Prison Systems in the United States” (with Marleen Marra and Gretchen Sileo), 2026.
- “The Rise of Market Power and the Macroeconomic Implications: Comment” (with Lanier Benkard and Ali Yurukoglu), 2026.

PUBLIC VERSION

- “Rejoinder to ‘The Rise of Market Power and the Macroeconomic Implications: Reply to the Comment of Benark, Miller and Yurukoglu (2025)’ ” (with Lanier Benkard and Ali Yurukoglu), 2025.
- “The Dynamics of Emissions Pricing and Technology Adoption” (with Sarah Armitage, Matthew Osborne, and Gretchen Sileo), in progress.
- “Can Divestitures Lessen Competition? Analyzing the Reynolds/Lorillard Merger and Divestitures” (with Aviv Nevo, Kenneth Rios, Ted Rosenbaum), in progress.
- “Modeling the Effects of Mergers in Procurement: Addendum,” Working Paper, 2017.
- “Cumulative Innovation and Competition Policy” (with Alexander Raskovich), EAG Discussion Paper 10-5, 2010.
- “Competition when Consumers Value Firm Scope,” EAG Discussion Paper 8-7, 2008.

Grants and Awards

- Jerry S. Cohen Award for Best Publication on Unilateral Effects in Merger Analysis, 2025
Mergers, Entry, and Consumer Welfare
- Robert F. Lanzillotti Prize for Best Paper in Antitrust Economics, 2022
Rising Markups and the Role of Consumer Preferences
- Jerry S. Cohen Award for Best Antitrust Article on Merger Retrospectives, 2022
Oligopolistic Price Leadership and Mergers: The United States Beer Industry
- Washington Center for Equitable Growth Grant, AWD-7774872, \$75,278, 2021-2022
Buyer Power in the Beef Packing Industry
- Concurrences Antitrust Award: Best Academic Economics Article, 2021
Mergers, Entry, and Consumer Welfare
- National Science Foundation Grant, SES 2117197, \$59,436, 2021-2022
An Empirical Study of Inmate Telecommunication Services
- Washington Center for Equitable Growth Grant, AWD-7774249, \$51,750, 2020-2021
The Evolution of Market Power in the Cement Industry
- National Science Foundation Grant, SES 1824318, \$88,635, 2018-2020
Market Power in Differentiated Products Industries
- Association of Competition Economics Best Paper Award, 2017
Understanding the Price Effects of the MillerCoors Joint Venture
- Robert F. Lanzillotti Prize for Best Paper in Antitrust Economics, 2015
Understanding the Price Effects of the MillerCoors Joint Venture
- Assistant Attorney General’s Award of Distinction, AT&T/T-Mobile merger, 2013
- Jerry S. Cohen Award for Antitrust Scholarship, Honorary Mention, 2009
Strategic Leniency and Cartel Enforcement
- COMPASS Prize for Best Paper in Antitrust Economics by Graduate Students, 2007
Strategic Leniency and Cartel Enforcement
- UC Berkeley Dean’s Normative Time Fellowship, 2006-2007
- UC Berkeley Competition Policy Center Dissertation Award, 2006
- UC Berkeley Institute of Business and Economic Research Mini-Grant, 2006

ACADEMIC PRESENTATIONS

Invited Seminar Presentations

- 2008-2013: Bureau of Economic Analysis, Bureau of Labor Statistics, DOJ (×3), College of William and Mary, Drexel University, Duke University, FTC, Georgetown University (×2), George

PUBLIC VERSION

Washington University, Johns Hopkins University, Michigan State University, Stony Brook University, University of British Columbia, University of Iowa, University of North Carolina (Chapel Hill), University of Virginia

2014: DOJ; University of California, Berkeley; UCLA; University of Virginia

2015: Clemson; FTC; Indiana University; University of Colorado, Boulder; Yale

2016: Boston College; Columbia University; Federal Reserve Board; Harvard University; London School of Economics; University of British Columbia; University of Texas, Austin; University of Toronto

2017: FTC; University of Kentucky; University of Pennsylvania; University of Wisconsin–Madison

2018: FTC; MIT; Texas A&M; Penn State University; University of Maryland

2019: Harvard University; Toulouse School of Economics; MINES ParisTech; KU Leuven; University of Mannheim; Berlin Applied Economics

2020: Research Institute of Industrial Economics (RIFN); Sciences Po; University of Düsseldorf (DICE); Directorate-General for Competition of the European Commission (DG COMP); Hong Kong University of Science and Technology

2021: CBO, Washington University at St. Louis; George Mason University; Joint DOJ/FTC; West Virginia University; FTC; University of Maryland

2022: University of California, Berkeley; University of Pennsylvania; University of Virginia; Iowa State University; Indiana University; University of Delaware; University of Michigan; University of North Carolina; University of Connecticut

2023: University of Rochester; University of Massachusetts Amherst; Pomona College; UCLA

2025: Yale, Chicago Fed

2026: Arizona State University, Clemson, University of British Columbia, University of Florida

Conference Presentations

AEA (2023); APIOS (2018, 2022); Association of Competition Economics (2018); Barcelona GSE Summer Forum (2018); DC IO Day (2020); EARIE (2019); ESEM (2019); FTC Microeconomics (2010, 2014, 2021); Georgetown Railroad Conference (2017); Hal White Antitrust (2013, 2014, 2017, 2019); HEC Montreal–RIIB Conference on IO (2025); IEF Applied Microeconomics (2016); IOOC (2008, 2009, 2013, 2015, 2016, 2018, 2022); MaCCI Summer Institute (2024); NASMES (2019); NBER IO (2023); Northwestern Antitrust (2013, 2015, 2022); SEA (2013, 2018, 2023); SITE (2025); Triangle Microeconomics (2016)

Conference Discussions

AEA (2015); Cowles Foundation (2024, 2026); DC IO Day (2015); FTC Micro Conference (2025/2026); HEC Montreal–RIIB Conference on IO (2018); IOOC (2008, 2009, 2013, 2015, 2016, 2018, 2021, 2022, 2025); Northwestern Antitrust (2018, 2023); NY IO Day (2020); RIDGE IO (2021); SEA (2013, 2018, 2023); Toulouse Digital Economics Conference (2020); WCEG (2020)

Keynotes

University of Zurich Workshop on Market Power and the Economy, 2023
Association of Competition Economics (ACE) Conference, 2023
Applied Economics Workshop (AEW), 2024
RIDGE Industrial Organization Forum, 2024
Competition & Regulation European Summer School and Conference (CRESSE), 2025

Panels and Other Invited Talks

- “Upward Pricing Pressure and Simulation in Merger Review,” Economists’ Roundtable with the Canadian Competition Bureau, 2017
- “Institutional Shareholdings: Is There an Antitrust Issue?” Concurrences Global Antitrust Conference, 2018
- “Digital Mergers: Need for Reform?” Concurrences International Mergers Conference, 2020
- “Making Competition Work: Promoting Competition in Labor Markets,” Joint Hearings of the Department of Justice and Federal Trade Commission, 2021
- “Reforming America’s Food Retail Markets,” Yale University, 2022
- “Amendments to the Competition Act,” Canadian Economic Association Meetings, 2022
- “Buyer Power in the Beef Packing Industry,” R-Calf National Convention, 2022
- “Coordinated Effects of Mergers,” ICN Chief Economist Workshop, 2023
- “Evolving Approaches to Mergers Between Rivals,” DOJ/FTC Merger Guidelines Workshop, 2023
- “Recent Advances in Conduct Estimation,” University of Düsseldorf (DICE), 2023
- “Agency Economists Roundtable,” Fordham Conference on Antitrust Law and Policy, 2024
- “Overseeing Big Tech: Antitrust vs. Regulation,” Northwestern Conference on Antitrust Economics and Competition Policy, 2024
- “The Use of Structural Presumptions in Antitrust,” OECD Best Practice Roundtable on Competition, 2024
- “Regaining Competitiveness—Boom or Bust for Competition Policy?” Annual CRA Brussels Conference, 2024
- “Making Sense of the Monopoly Broth,” University of Southern California, 2025
- “Antitrust Policy Discussion,” Triangle Microeconomics Conference, 2025
- “Inflation and Antitrust,” ABA Panel, 2025
- “Merger Remedies: What Works Best and How Can We Improve?” ABA Panel, 2025
- “Market Power in EU and US: What Does the Empirical Evidence Show?” CRESSE Panel, 2025
- “Digital Economy and Competition Policy: What’s Next?” APIOC Panel, 2025
- “Perspectives from Former Federal Antitrust Economics Leaders” National Association of Business Economists Panel, 2026
- “Clear Skies?” ABA Panel on Airlines, 2026
- “How are Agencies Rethinking Merger Remedies to Reflect Sustainability and Efficiency Objectives?” Concurrences International Mergers Conference Panel, 2026

TEACHING, ADVISING, AND SERVICE

Courses

Firm Analysis and Strategy, MBA Core Curriculum

Managerial Economics, MBA Core Curriculum

Industrial Organization, PhD Economics

Strategic Pricing, MBA Elective

Microeconomics, Executive Education

Causal Inference, MSBA Core Curriculum

Ph.D Advising and Dissertation Committees

Francisco Garrido (co-advisor), 2020, ITAM

Yanyang Wang (committee), 2021, Amazon Web Services

Peter Caradonna (committee), 2022, California Institute of Technology

Ryan Mansley (co-advisor), 2023, Department of Justice Antitrust Division

PUBLIC VERSION

Gretchen Sileo (co-advisor), 2023, Temple University
Kyle Monk (committee), 2024, Meta
Tianshi Mu (co-advisor), 2024, Tsinghua University
Pedro Roje-Larrebourg (co-advisor), 2024, Banco Central de Chile
Yidi Wu (committee), 2024, Cornerstone Research
Chengjun Zhang (committee), 2024, Morgan Stanley
Cam Healy (advisor), 2025, Congressional Joint Economic Committee
Yi Yao (advisor), 2025, Charles River Associates
Zhentao Jiang (advisor), 2026, postdoc
Chris Johns (committee), 2026 Office of Management and Budget
Tsolmon Otgon (advisor), 2026, Charles River Associates
Pranjal Rawat (committee), 2026, Uber
Zhongxuan Wang (advisor), 2026 Charles River Associates
Kaitlyn Wilson (advisor), 2026, Cornerstone Research

Service

Co-organizer, NBER Winter Meetings, 2026
Organizer, DC IO Day, 2017
Program Committee, DC IO Day, 2015-2016 and 2018-2019
Program Committee, International Industrial Organization Conference, 2019-2021

Referee Reports

American Economic Review; Econometrica; European Economic Review; International Journal of Industrial Organization; Journal of Economics & Management Strategy; Journal of the European Economics Association; Journal of Finance; Journal of Industrial Economics; Journal of Law and Economics; Journal of Political Economy; Management Science; National Science Foundation; The RAND Journal of Economics; Review of Economic Studies; Review of Economics and Statistics; Review of Industrial Organization; Quarterly Journal of Economics, others.

CONSULTING AND TESTIMONY

Recognition

Outstanding Antitrust Litigation Achievement in Economics, American Antitrust Institute, 2023.
U.S. and Plaintiff States v. American Airlines Group Inc. and JetBlue Airways Corp.

Selected Industry Experience

agriculture, airlines, consumer products, distribution networks, energy and electricity, health insurance, industrial metals, office products, telecommunications, railroads, hazardous waste, oilfield waste, others

Live Testimonial Experience

Testified on behalf of CSX Transportation in *Norfolk Southern Railway Company—Acquisition of Control—Norfolk & Portsmouth Belt Line Railroad Company*, Finance Docket No. FD 36836.
Deposition: October 30, 2025.

Testified on behalf of U.S. Department of Justice, *United States et al. v. American Airlines Group Inc. and JetBlue Airways Corporation*, U.S. District Court, Eastern District of New York, Case No. 1:22-cv-07374-AMD-TAM. Deposition: August 17, 2022. Trial testimony: October 2022.

PUBLIC VERSION

Testified on behalf of Competition Bureau Canada, *Canada (Commissioner of Competition) v. Secure Energy Services Inc. of Tervita Corporation*, Canadian Competition Tribunal, Case No. CT-2021-002. Trial testimony: May 2022.

Testified on behalf of Competition Bureau Canada, *Canada (Commissioner of Competition) v. Rogers Communications Inc. and Shaw Communications Inc.*, Canadian Competition Tribunal, Case No. CT-2022-002. Trial testimony: November 2022.

Testified on behalf of Competition Bureau Canada, *Canada (Commissioner of Competition) v. Parrish & Heimbecker, Limited*, Canadian Competition Tribunal, Case No. CT-2019-005. Trial testimony: January 2021.

Expert Reports, Declarations, and Verified Statements

Smart Communicaiton Protest to RFP 46700-GDC0001179 Offender Communications Services, Department of Administrative Services, State of Georgia. Expert Declaration: March 6, 2026.

Norfolk Southern Railway Company—Acquisition of Control—Norfolk & Portsmouth Belt Line Railroad Company, Finance Docket No. FD 36836. Verified Statements: June 19, 2025 and September 18, 2025.

Canada (Commissioner of Competition) v. Rogers Communications Inc. and Shaw Communications Inc., Canadian Competition Tribunal, Case No. CT-2021-002. Expert Report: September 26, 2022. Rebuttal Expert Report: October 19, 2022.

Canada (Commissioner of Competition) v. Secure Energy Services Inc. of Tervita Corporation, Canadian Competition Tribunal, Case No. CT-2021-002. Expert Report: February 28, 2022. Expert Rebuttal Report: April 11, 2022. Affidavit: July 19, 2021.

Canada (Commissioner of Competition) v. Parrish & Heimbecker, Limited, Canadian Competition Tribunal, Case No. CT-2019-005. Expert Report: September 11, 2020. Reply Expert Report: October 23, 2020.

Selected Other Experience

Consulted for Veolia on acquisition of Clean Earth, 2025-2026

Consulted for LS Power on transaction with NRG Energy, 2025-2026

Consulted for Alaska Airlines and Hawaiian Airlines during successful merger, 2024

Consulted for FTC on the abandoned acquisition of Harry's by Edgewell, 2019-2020

Consulted for FTC on the abandoned acquisition of TriZir by Tronox, 2020

Consulted for FTC on the acquisition of Services Group of America by US Foods, 2019

Consulted for Cigna and Express Scripts during successful merger, 2018