

BEFORE THE
SURFACE TRANSPORTATION BOARD

312136

ENTERED
Office of Chief Counsel
August 31, 2026
Part of
Public Record

Finance Docket No. 36873

UNION PACIFIC CORPORATION AND NORFOLK SOUTHERN CORPORATION

CONTROL AND MERGER

**SUPPLEMENTAL VERIFIED COMMENTS OF ATLANTIC SYSTEMS ON PRIMA
FACIE SUFFICIENCY**

Introduction:

My name is **Andrew C. Robertson**, President of Atlantic Systems. I have submitted multiple comments in this proceeding since January 2026 addressing deficiencies in the Applicants' evidence and the incompleteness of the record. I write again at this juncture because the Board is now approaching a proximate and consequential determination: whether Union Pacific and Norfolk Southern have presented a **prima facie case** under 49 C.F.R. § 1180.4(c)(8). This threshold determination will shape the remainder of the proceeding, and it requires the

Board to assess not the *merits* of the proposed transaction, but whether the Application contains **sufficient factual material** to allow the Board to exercise its statutory responsibilities under 49 U.S.C. § 11324(b).

I. Summary of Applicants' Arguments

Union Pacific (UP) and Norfolk Southern (NS) assert that their Amended Application satisfies the *prima facie* standard under 49 C.F.R. § 1180.4(c)(8). They argue that:

- the merger is an end-to-end combination with minimal overlap;
- single-line service will generate substantial public benefits as defined by faster transit times, reduced handlings, and lower costs;
- diversions from trucks and other railroads demonstrate enhanced competition;
- the merger will produce significant efficiencies and safety improvements;
- open gateway commitments will prevent vertical foreclosure; and
- opponents' critiques are "merits arguments" that cannot defeat a *prima facie* showing.

Applicants repeatedly emphasize that the Board must construe their evidence "in the most favorable light" and that sufficiency—not completeness—is the standard at this stage.

II. The Prima Facie Standard Requires Sufficiency, Not Merits Determination

The *prima facie* inquiry is narrow but essential. The Application must contain enough evidence to allow the Board to exercise its statutory responsibilities under 49 U.S.C. § 11324(b). This is not a merits determination. It is a record sufficiency determination.

Applicants may not avoid scrutiny by labeling all contrary evidence as “merits arguments.” The Board must first determine whether the Application contains the facts necessary to evaluate public benefits, competitive impacts, environmental effects, and downstream consequences. Several critical areas of the Application **fall short of this threshold**.

III. Areas of Insufficiency

A. Equipment Supply: Applicants Did Not Provide the Information the Board Explicitly Requested

The Board specifically directed Applicants to provide detailed information on how the combined system, their partner IMCs and shippers will acquire the equipment needed to reach the diversion goal of “2.1 million trucks off the highway”! In January, I offered comments to the Commission on this very topic. In my comments, I noted that UP expects its IMC partners to acquire the needed containers, chassis, tractors and other infrastructure. Likewise, UP expected shippers who do not use rail today to make the substantial investment in private car fleets and facility infrastructure that would allow them to divert traffic from truck to carload service. This would require them to voluntarily make a major investment in capital and management resources to achieve UP’s diversion objectives. UP’s response to the Commission’s enquiry was to say UPNS new single line service will increase velocity, reduce cycle times and thus free up equipment.

In my January analysis, I projected a need for tens of thousands of trailers, chassis and tractors by IMCs with an estimated capital requirement of over \$2.377 billion. In my analysis, I projected equipment turns of 20 per year. When I increased turns to 22 to reflect UP’s velocity

assumption, the capital requirement only fell to \$2.228 billion. Likewise, I estimated that shippers diverting from truck to carload will need to make equipment investments of \$1.622 billion. In my calculations, I assumed 12 turns a year for private cars. If turns per year increase to 13, the investment requirement only falls to \$1.497billion. UP's handwaving that faster trains obviate the need for massive investments in equipment and infrastructure by third parties (IMCs and shippers) is clearly insufficient.

UP in the several revisions to its November 19 Application has never addressed this shortfall. UP makes the case that the procompetitive benefits are only possible with a merger because it would be too risky for UP to partner with another railroad. Yet here UP has based its entire diversions of 2.1 million trucks off the highway on the willingness of much smaller IMCs and shippers to take on enormous risks without the assurance of any financial support from UP.

Did UP check the box by saying increased velocity and reduced car cycles will solve the problem? No. In the real world, IMCs and shippers will not make multimillion dollar investments without a clear idea from UP what their benefits are. If the IMCs and shippers don't make those investments, the traffic diversion study and the purported procompetitive benefits that flow from it disappear.

Is this a merits or evidence issue? As UP has given us no credible evidence on this critical issue, on this issue alone UP has failed its prima facie argument.

B. The UP–CN Memorandum of Understanding (MOU) Is Omitted From All Modeling and Analysis

In July, Union Pacific and Canadian National agreed to a MOU with published conditions that are directly relevant to the instant proceeding.:

- UP receives EJ&E access around Chicago to be used as connections to NS in the East.
- CN is given haulage/trackage rights from Memphis to Eagle Pass and thence to Mexico
- If the merger goes through, CN then will serve as the competitor-replacement in 2 to 1 and 3 to 2 UPNS common points in Illinois and Missouri.
- CN receives one of the parallel UP or NS lines between St. Louis and Kansas City.
- CN takes over from NS terminal governance roles at KCT and TRRA.
- CN withdraws its opposition to the merger.

These conditions are **tailored for this merger** even though UP has stated that it is under no obligation to suggest pro-competitive measures. The MOU was apparently the idea of Mr. Vena and was “sparked by our merger proposal”. The agreement reflects a clear alignment between UP and CN as I noted comments on the UP-CN MOU on August 17. Yet the Application itself:

- does not disclose the terms of the MOU,
- does not incorporate EJ&E operations,
- does not update diversion analysis,
- does not update competitive analysis,
- does not update environmental impacts, and
- does not address the implications of CN’s withdrawal of opposition and alignment with UP.

Is this a merits criticism or evidence? In fact, the only hard evidence we have is that UP refuses to give details about the MOU. UP states that the merger before the Board (November 19 Amended several times) is the one that is under review. The terms of the MOU although exactly tailored to UP's requirements in this merger proceeding, are off-the-table. If UP is unwilling to give us supporting evidence about the MOU, then we can conclude that this is not a merits dispute. Until we have the evidence, the Board should reject the Application on prima facie grounds.

The Board cannot evaluate the merger using **pre-MOU assumptions**. This is a **record completeness issue squarely within the prima facie standard**.

C. Applicants Present Contradictory Definitions of the Relevant Market

Applicants present two incompatible definitions of the relevant market:

1. Narrow Market Definition

Applicants argue that competitive concerns are limited to a handful of 2 to 1 and 3 to 2 locations in Missouri and Illinois, the St. Louis-Kansas City corridor and limited terminal equity swaps. Any other problems will be fixed with UP's CGP solution. In sum, UP's definition of the relevant market is:

A few cities in Illinois and Missouri, terminals in Kansas City and St. Louis and a highly select set of CSX and BNSF exclusive point traffic that move over four gateways.

2. Continental Market Definition

Applicants simultaneously claim the merger will transform:

- 10,000 interline lanes,
- 88,000 county-to-county pairs,
- transcontinental freight flows, and the
- competitive landscape across 43 states.

Both positions cannot be true.

If the relevant market is confined to simply some common points in Missouri and Illinois, trackage rights such as those being offered to CN might be considered an adequate cure. If some shippers on CSX and BNSF exclusive points can be accommodated by the CGP everything might be fine.

If on the other hand, the relevant market is defined at the transcontinental level as UP proclaims in its promotional materials, the market dominance problem moves beyond a simple solution.

If the relevant market is transcontinental, Applicants must disclose **at the national level:**

- post-merger intramodal and intermodal market shares,
- competitive impacts on other railroads and truckers,
- downstream effects on market structure, and
- the macroeconomic implications of creating a single carrier controlling ~50% of U.S. rail traffic.

UPNS—and UPNS+CN if aligned—would exceed thresholds associated with **dominant-firm oligopoly** structures in multiple commodity groups. Applicants do not provide this analysis. This contradiction prevents the Board from determining whether the merger is consistent with the public interest. On the definition of the relevant market, this **fails the prima facie test**.

D. Diversion Modeling Removes Shipper Agency and Produces Unreliable Results

Applicants' diversion model assumes that shippers will:

- abandon existing truck carriers,
- adopt new IMC-based intermodal service, or
- convert to carload service.

This removes shipper agency and replaces it with a **black box algorithm**. The projected diversion of approximately **800,000 truckloads to carload service** would be the largest truck-to-rail shift in U.S. history.

Applicants provide no direct evidence that current truck shippers would behave in this manner. Although many current UP shippers and some IMCs have lent their general support to the UPNS merger, there is no concrete evidence that they have the resources to turn their support into diversions. Shippers who now use trucks have not been asked whether the new UPNS/IMC intermodal or UPNS carload services are attractive. A prima facie case **requires evidence describing real-world behavior**, not hypothetical algorithmic outcomes.

E. Dominance is not Competition

The Board's 2001 merger rules plainly stated that any rail merger should enhance competition. Applicants have repeatedly proclaimed that traffic diversion from other railroads and trucks is in and of itself a measure of how procompetitive the merger will be. At this point, it is important for UP to define their terms. From UP's perspective, competition is a rivalry for supremacy. From a shipper's perspective, it is the existence of multiple companies competing for their business. The Application estimates that UP with NS will indeed reach dominance in the US rail industry.¹ And further, trucks will lose substantial share to UPNS/IMC intermodal operators and direct UP carload service. While UP touts its CGP, the intramodal diversion study results were not reduced in any way. Similarly, there is no mention of shipper choice. UP must define their definition of "competition" so that it will be consistent with the public interest. UP's conflation of competition with dominance may indeed put their case in the most favorable light. However, the Board must ask UP to define its terms.

F. Downstream Impacts Cannot Be Dismissed

Applicants argue that downstream impacts are speculative and unnecessary. Further UP argues that because BNSF has expressed no interest in merging, UP is relieved of an obligation to respond to this issue. Downstream impacts arise from changes in market structure, not from the temporary preferences of individual carriers. The charts below show UP+NS market shares of carload traffic in three scenarios: current market conditions, UP+NS vs CSX vs BNSF (asymmetrical dominant firm oligopoly), UPNS vs BNSFCSX (symmetrical oligopoly). The

¹ The tension between competition and dominance could also be seen in the AFC East Division in the first 20 years of this century. Every year four teams suited up in September for the division title. However, the dominance of the New England Patriots was overwhelming. If asked, very few Jets or Dolphins fans would have agreed that their teams 'competed' with the Patriots in those years. If you would like an example from nature, you may review this article on the competition within forests between dominant and smaller trees. <https://www.sciencedirect.com/science/article/abs/pii/S0378112717318649>

impacts on the chemicals industry are particularly acute and are illustrated in the final chart.

These data come from Atlantic Systems Railshare database. Our firm has collected these data since 1986. The data with more detailed commodity categories are commercially available and can be used by Applicants and opponents of this transaction at their discretion.

US Rail Shares (Current)
Market Share by Railroad
Data from Individual Railroads
ASI-Transmatch
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Commodity	Year of Date	Railroad			
		BNSF	CSX	NS	UP
Autos	2022	17.99%	26.12%	26.12%	29.77%
	2023	19.23%	26.76%	24.92%	29.10%
	2024	19.16%	26.85%	24.86%	29.13%
	2025	19.94%	25.76%	26.33%	27.98%
	2026	20.41%	25.47%	25.83%	28.29%
Chemicals	2022	23.37%	20.69%	16.78%	39.16%
	2023	23.39%	20.23%	16.26%	40.12%
	2024	23.73%	20.70%	15.10%	40.47%
	2025	23.55%	19.72%	15.83%	40.91%
	2026	23.34%	19.37%	16.19%	41.10%
Coal	2022	42.02%	17.53%	17.80%	22.66%
	2023	40.65%	19.25%	17.89%	22.20%
	2024	38.14%	21.32%	20.49%	20.05%
	2025	37.30%	20.22%	20.10%	22.38%
	2026	35.06%	20.56%	21.83%	22.55%
Food	2022	31.19%	18.44%	17.17%	33.20%
	2023	31.97%	18.01%	16.87%	33.15%
	2024	31.32%	17.63%	16.56%	34.49%
	2025	31.39%	17.22%	16.68%	34.72%
	2026	32.11%	17.00%	16.37%	34.51%
Forest	2022	18.71%	29.93%	21.87%	29.49%
	2023	18.72%	31.11%	21.99%	28.18%
	2024	17.76%	31.99%	22.28%	27.96%
	2025	17.52%	31.18%	23.21%	28.08%
	2026	17.96%	31.22%	22.48%	28.35%
Grain	2022	47.03%	12.00%	13.03%	27.94%
	2023	44.93%	12.79%	14.34%	27.94%
	2024	46.63%	11.56%	14.41%	27.39%
	2025	46.54%	11.43%	13.70%	28.33%
	2026	46.91%	11.17%	12.43%	29.50%
Metals	2022	21.43%	29.53%	28.89%	20.15%
	2023	21.82%	30.39%	28.78%	19.01%
	2024	21.50%	29.93%	29.76%	18.82%
	2025	19.86%	30.20%	30.57%	19.36%
	2026	20.01%	31.06%	29.44%	19.48%
Stone	2022	22.36%	24.35%	17.99%	35.30%
	2023	21.78%	25.15%	17.36%	35.71%
	2024	21.68%	25.63%	18.30%	34.39%
	2025	21.21%	25.57%	18.30%	34.91%
	2026	21.13%	25.65%	18.30%	34.92%
Carload	2022	29.50%	21.36%	19.16%	29.99%
	2023	28.88%	22.13%	19.06%	29.93%
	2024	28.17%	22.58%	19.54%	29.71%
	2025	27.87%	21.91%	19.82%	30.41%
	2026	27.57%	21.89%	19.88%	30.66%
Intermodal	2022	32.65%	19.05%	25.20%	23.09%
	2023	31.15%	18.82%	26.03%	24.01%
	2024	32.96%	17.86%	25.38%	23.79%
	2025	33.10%	18.41%	24.94%	23.55%
	2026	33.50%	18.68%	24.67%	23.16%
Total	2022	31.09%	20.19%	22.20%	26.51%
	2023	29.99%	20.51%	22.47%	27.03%
	2024	30.65%	20.13%	22.57%	26.65%
	2025	30.57%	20.09%	22.48%	26.86%
	2026	30.64%	20.22%	22.36%	26.77%

% of Total Carloads broken down by Railroad vs. Commodity and Date Year. The view is filtered on Date Year and Railroad. The Date Year filter keeps 2022, 2023, 2024, 2025 and 2026. The Railroad filter keeps BNSF, CSX, NS and UP.

Dominant Firm Oligopoly
Market Share by Railroad
Data from Individual Railroads

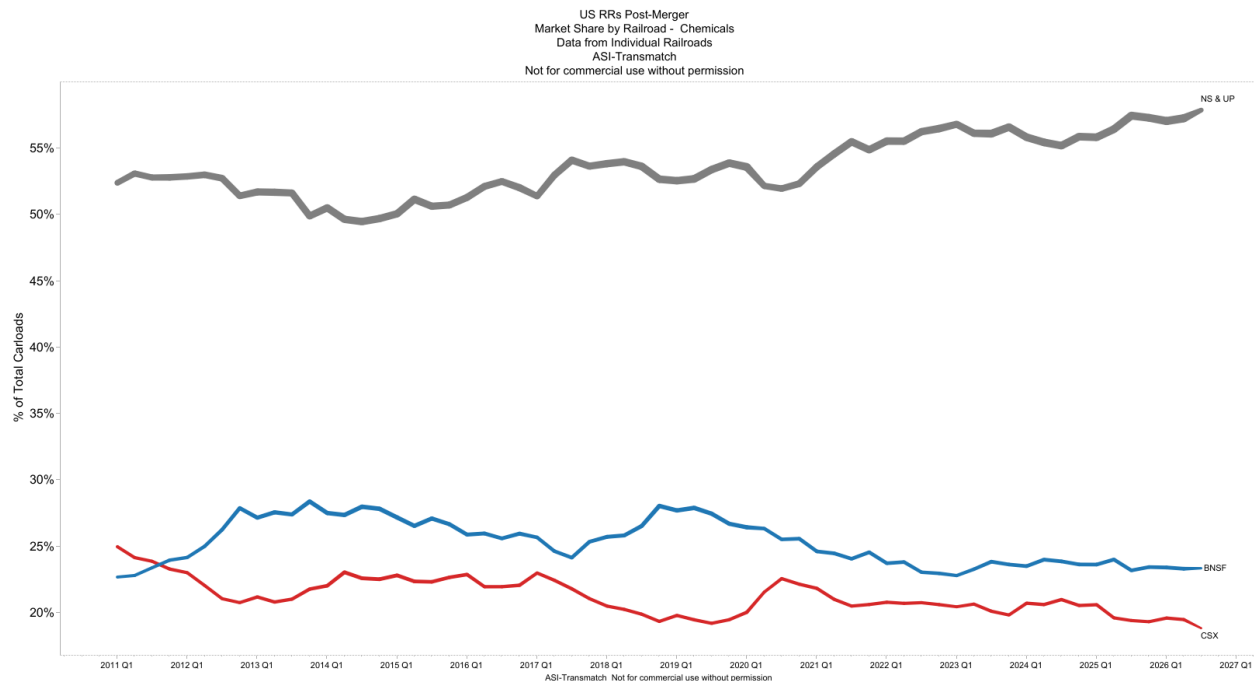
Commodity	Year of Date	RR Merged		
		BNSF	CSX	NS & UP
Autos	2022	17.99%	26.12%	55.89%
	2023	19.23%	26.76%	54.01%
	2024	19.16%	26.85%	53.99%
	2025	19.94%	25.76%	54.31%
	2026	20.41%	25.47%	54.12%
Chemicals	2022	23.37%	20.69%	55.93%
	2023	23.39%	20.23%	56.38%
	2024	23.73%	20.70%	55.57%
	2025	23.55%	19.72%	56.74%
	2026	23.34%	19.37%	57.29%
Coal	2022	42.02%	17.53%	40.45%
	2023	40.65%	19.25%	40.10%
	2024	38.14%	21.32%	40.54%
	2025	37.30%	20.22%	42.48%
	2026	35.06%	20.56%	44.38%
Food	2022	31.19%	18.44%	50.37%
	2023	31.97%	18.01%	50.02%
	2024	31.32%	17.63%	51.05%
	2025	31.39%	17.22%	51.39%
	2026	32.11%	17.00%	50.89%
Forest	2022	18.71%	29.93%	51.35%
	2023	18.72%	31.11%	50.17%
	2024	17.76%	31.99%	50.25%
	2025	17.52%	31.18%	51.29%
	2026	17.96%	31.22%	50.83%
Grain	2022	47.03%	12.00%	40.97%
	2023	44.93%	12.79%	42.28%
	2024	46.63%	11.56%	41.81%
	2025	46.54%	11.43%	42.03%
	2026	46.91%	11.17%	41.93%
Metals	2022	21.43%	29.53%	49.04%
	2023	21.82%	30.39%	47.79%
	2024	21.50%	29.93%	48.58%
	2025	19.86%	30.20%	49.93%
	2026	20.01%	31.06%	48.93%
Stone	2022	22.36%	24.35%	53.28%
	2023	21.78%	25.15%	53.07%
	2024	21.68%	25.63%	52.69%
	2025	21.21%	25.57%	53.22%
	2026	21.13%	25.65%	53.22%
Carload	2022	29.50%	21.36%	49.14%
	2023	28.88%	22.13%	48.99%
	2024	28.17%	22.58%	49.25%
	2025	27.87%	21.91%	50.23%
	2026	27.57%	21.89%	50.54%
Intermodal	2022	32.65%	19.05%	48.29%
	2023	31.15%	18.82%	50.04%
	2024	32.96%	17.86%	49.18%
	2025	33.10%	18.41%	48.50%
	2026	33.50%	18.68%	47.82%
Total	2022	31.09%	20.19%	48.71%
	2023	29.99%	20.51%	49.50%
	2024	30.65%	20.13%	49.21%
	2025	30.57%	20.09%	49.34%
	2026	30.64%	20.22%	49.13%

% of Total Carloads broken down by RR Merged vs. Commodity and Date Year. Color shows details about 2Railroads. The data is filtered on Railroad, which excludes CP, KCS and KCSM. The view is filtered on Date Year and RR Merged. The Date Year filter keeps 2022, 2023, 2024, 2025 and 2026. The RR Merged filter excludes CN and CPKC.

US Duopoly
Market Share by Railroad
Data from Individual Railroads
ASI-Transmatch
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		Railroad (group)	
Commodity	Year of Date	BNSF & CSX	NS & UP
Autos	2022	44.11%	55.89%
	2023	45.99%	54.01%
	2024	46.01%	53.99%
	2025	45.69%	54.31%
	2026	45.88%	54.12%
Chemicals	2022	44.07%	55.93%
	2023	43.62%	56.38%
	2024	44.43%	55.57%
	2025	43.26%	56.74%
	2026	42.71%	57.29%
Coal	2022	59.55%	40.45%
	2023	59.90%	40.10%
	2024	59.46%	40.54%
	2025	57.52%	42.48%
	2026	55.62%	44.38%
Food	2022	49.63%	50.37%
	2023	49.98%	50.02%
	2024	48.95%	51.05%
	2025	48.61%	51.39%
	2026	49.11%	50.89%
Forest	2022	48.65%	51.35%
	2023	49.83%	50.17%
	2024	49.75%	50.25%
	2025	48.71%	51.29%
	2026	49.17%	50.83%
Grain	2022	59.03%	40.97%
	2023	57.72%	42.28%
	2024	58.19%	41.81%
	2025	57.97%	42.03%
	2026	58.07%	41.93%
Metals	2022	50.96%	49.04%
	2023	52.21%	47.79%
	2024	51.42%	48.58%
	2025	50.07%	49.93%
	2026	51.07%	48.93%
Stone	2022	46.72%	53.28%
	2023	46.93%	53.07%
	2024	47.31%	52.69%
	2025	46.78%	53.22%
	2026	46.78%	53.22%
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	2025	51.50%	48.50%
	2026	52.18%	47.82%
Total	2022	51.29%	48.71%
	2023	50.50%	49.50%
	2024	50.79%	49.21%
	2025	50.66%	49.34%
	2026	50.87%	49.13%

% of Total Carloads broken down by Railroad (group) vs. Commodity and Date Year. The data is filtered on Railroad, which excludes CP, KCS and KCSM. The view is filtered on Date Year and Railroad (group). The Date Year filter keeps 2022, 2023, 2024, 2025 and 2026. The Railroad (group) filter keeps BNSF & CSX and NS & UP.



These data are not speculative.² The emergence of a national duopoly is inevitable if the UPNS merger goes forward. The US rail industry is in rough equilibrium. A UPNS will upset the balance that exists now. Only a symmetrical duopoly (BNSF+CSX) vs UPNS will return the industry to equilibrium.

The UPNS Control Application must address the foreseeable downstream consequences of creating a dominant carrier duopoly. It does not. UP must explain why the emergence of a duopoly in the US rail industry is consistent with the public interest. It does not. UP must show that competition will be enhanced by a national rail duopoly. It does not.

IV. Conclusion: Applicants Have Not Presented a Prima Facie Case

² Using the Herfindahl-Hirschman Index for carload traffic in 2026, the HHI measure jumps from 2536 (four US railroads) to 3869 (dominant competitor duopoly) to 5002 (symmetrical duopoly). Even using Applicants' current ton-mile market shares at <https://www.up-nstranscontinental.com/competition>, produces a problematic HHI score of 3254.

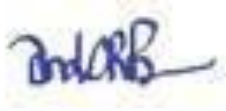
The Applicants' filing does not meet the prima facie standard because it does not contain the facts necessary for the Board to evaluate the public interest. Specifically:

- **Equipment supply** is not addressed despite explicit Board requests.
- The **UP–CN MOU** is omitted from all operational, competitive, and environmental modeling.
- The **relevant market** is defined inconsistently and incompletely.
- **Market power** implications of a transcontinental carrier controlling ~50% of U.S. rail traffic are not addressed.
- **Diversion modeling** removes shipper agency and relies on untested assumptions.
- **Downstream impacts** are dismissed without analysis.
- **There is no evidence that the UPNS merger will enhance competition or serve the public interest.**

These are not merits disputes. They are **prima facie deficiencies**. The Board cannot proceed to the merits phase until the Applicants correct these omissions and present a complete, coherent, and accurate description of the network, market, and competitive structure they seek approval for.

Prayer for Relief: Atlantic Systems respectfully requests that the STB reject Union Pacific's prima facie arguments.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "ACR", with a stylized flourish extending to the right.

Andrew C. Robertson

President

Atlantic Systems Inc.

P.O. Box 1984

New York NY 10163 917-751-1003

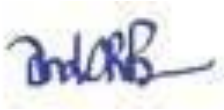
acr@transmatch.com

Date: August 31, 2026

cc. Parties of record

VERIFICATION

I, Andrew C. Robertson, verify under penalty of perjury that the statements contained in this filing are true and correct to the best of my knowledge, information, and belief. Executed on August 31, 2026.

A handwritten signature in blue ink, appearing to read "ACR", is centered on a light yellow rectangular background.

Andrew C. Robertson

Atlantic Systems Inc.

New York, NY

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