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BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 36873

UNION PACIFIC CORPORATION AND UNION PACIFIC RAILROAD COMPANY
-- CONTROL --
NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY

COMMENTS OF THE AUTOMOTIVE LOGISTICS EXECUTIVE COMMITTEE AND ALLIANCE FOR AUTOMOTIVE INNOVATION

Karyn A. Booth
Jason D. Tutrone
Benjamin Idzik
Thompson Hine LLP
Suite 600
1999 K Street, N.W.
Washington, DC 20006
202.331.8800

Attorneys for the Automotive Logistics Executive Committee and Alliance for Automotive Innovation

November 18, 2026

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Pursuant to the procedural schedule issued on August 18, 2026, the Automotive Logistics Executive Committee ("ALEC") and the Alliance for Automotive Innovation ("AAI") hereby submit their comments to the Surface Transportation Board ("STB" or "Board") in opposition to the proposed combination of the Union Pacific Railroad Company ("UP") and Norfolk Southern Railway Company ("NS") (collectively "Applicants"). ALEC and AAI represent the major producers of automotive vehicles and submit these comments on behalf of their member companies who require competitive and reliable rail transportation for the distribution of finished vehicles, including cars and light trucks. These comments are supported by the attached Verified Statement of Bryan Burkhardt, Executive Director of ALEC ("Burkhardt V.S.").

The Applicants' proposed transaction is unprecedented in size, scope, and impact: the combined UP/NS rail system would span over 50,000 miles and 43 states and would control

nearly 50% of all freight rail traffic.[1] If approved, the U.S. freight rail network will be forever changed. A single entity would amass unparalleled market share and power in the already highly concentrated freight rail industry, creating an imbalance which will incentivize more freight rail mergers. ALEC's and AAI's members will lose competition at critical gateways, and face significant exposure to increased pricing power, equipment shortages, and service disruption. The loss of independent rail service providers, coupled with the structure and impacts of the transaction, provide limited options to effectively mitigate those harms.

Under the STB's 2001 Merger Rules, which will be applied for the very first time, the Applicants bear a higher burden of proof to establish that this transaction meets the public interest, including that it would *enhance* competition.[2] The Applicants have failed to meet this burden. The alleged public benefits apply primarily and too narrowly to intermodal traffic. Their claimed truck diversion benefits are minimal for automotive traffic but still exaggerated because they fail to account for important modal selection considerations. Their focus on faster single-line service fails to account for the automotive industry's priority for reliable rail service over speed and concerns that higher prices will be assessed for such service.

The Applicants have failed to adequately acknowledge or address the significant competitive foreclosure harm that captive automotive shippers will face if this transaction is approved. The application lacks any meaningful enhancements to rail-to-rail competition that would improve customers' rail options and quality of service, despite the need for such

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[1] *See* Verified Statement of Elizabeth M. Bailey, *i*n Amended Railroad Control Application, Vol. 2 (UP-40/NS-38) at 16–18, *Union Pac. Corp.—Control—Norfolk S. Corp.*, No. FD 36873 (S.T.B. filed Apr. 30, 2026); *see also* Press Release, Union Pac. Corp., Union Pacific and Norfolk Southern Create America's First Transcontinental Railroad (July 29, 2025), https://investor.unionpacific.com/news-releases/news-release-details/union-pacific-and-norfolk-southern-create-americas-first.

[2] *See* 49 C.F.R. §§ 1180.1(d), 1180.6(b)(10); *see also infr*a Section II.1.

enhancements to satisfy the Board's 2001 Merger Rules. Moreover, it is unreasonable to expect the Board, ALEC and AAI, and other rail customers and stakeholders to expend inordinate resources to determine how to fix the systemic harm that will result if the transaction is approved. Indeed, it is the Applicants' burden to identify effective and feasible remedies. However, thus far, they have demonstrated that they are unwilling to address the concerns of captive shippers of automotive and manifest traffic based on their failure to modify their application in any material way to enhance rail-to-rail competition, despite having multiple opportunities to do so.[3]

Accordingly, for the reasons explained herein, the substantial competitive harm that will flow from the transaction outweigh the alleged benefits, and the lack of any rail-focused competitive enhancements to ameliorate such harm, have caused ALEC and AAI to oppose approval of the transaction as contrary to the public interest.

I. ALEC AND AAI STATEMENTS OF INTEREST

ALEC represents major automotive manufacturers to achieve consensus in the automotive industry to drive change and process improvement in rail and highway transportation service. ALEC's effort will support a fully integrated and flexible North American rail and highway network with functionally universal equipment using common business practices, leading-edge systems and state-of-the-art conveyance technology.

AAI represents automotive manufacturers, autonomous vehicle innovators, equipment suppliers, battery producers, and semiconductor makers, an industry sector supporting 11 million American jobs and five percent of the economy. Active in Washington, D.C., and all 50 states,

[3] *See* Amended Application (UP-39/NS-37), *Union Pac. Corp.—Control—Norfolk S. Corp.*, No. FD 36873 (S.T.B. filed Apr. 30, 2026); Errata to Amended Application (UP-82/NS-80), *Union Pac. Corp.—Control—Norfolk S. Corp.*, No. FD 36873 (S.T.B. filed July 27, 2026).

AAI works with policymakers to support cleaner, safer, and smarter personal transportation that helps transform the U.S. economy and sustain American ingenuity and freedom of movement.

The automotive manufacturing sector is the largest manufacturing industry in the United States, driving over $1.5 trillion in annual economic activity and contributing roughly 3% to 3.5% of the total U.S. GDP. A robust auto manufacturing sector is vital to a healthy U.S. economy. Autos drive America forward by supporting a total of 10.95 million American jobs, or about 5 percent of private-sector employment.[4]

II. THE 2001 MERGER RULES REQUIRE THE APPLICANTS TO MEET A HIGHER BAR TO SHOW THIS TRANSACTION IS CONSISTENT WITH THE PUBLIC INTEREST

The Board is authorized to approve a major rail consolidation only if it finds that the transaction "is consistent with the public interest."[5] The Board conducts that inquiry under its General Acquisition Procedures at 49 C.F.R. Part 1180, which it last revised in 2001 ("2001 Merger Rules"). The Board revised its prior merger rules after imposing a moratorium on major railroad consolidations, recognizing that its prior rules were outdated and ill-equipped to address the impacts of expansive transcontinental transactions like the one proposed here.[6]

Under the 2001 Merger Rules, the Board weighs a transaction's public benefits against its costs to decide whether a merger is in the public interest. To that end, the Merger Rules state that the Board may find that a merger serves the public interest "only when *substantial* and *demonstrable* gains in important public benefits—such as improved service and safety, enhanced competition, and greater economic efficiency—outweigh any anticompetitive effects, potential

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[4] Alliance for Auto. Innovation, *Driving the U.S. Economy*, https://www.autosinnovate.org/initiatives/the-industry (last visited Nov. 6, 2026).
[5] 49 U.S.C. § 11324(c).
[6] *W. Coal Traffic League, et al. v. Surface Transp. Bd.*, 216 F.3d 1168, 1170 (D.C. Cir. 2000); *see also Public Views on Major Rail Consolidations,* S.T.B. Ex Parte No. 582 (March 16, 2000).

service disruptions, or other merger-related harms."[7] The burden to make this showing is on the parties seeking merger.[8] The 2001 Merger Rules also imposed a "heavier burden to show that a major rail combination is consistent with the public interest" than the Board's prior merger rules had required.[9] The Board paired the increased burden on merger applicants with "a more skeptical 'show me' attitude" toward claimed merger benefits and toward assurances that the transition would not disrupt service.[10] Because transitional service problems had delayed many of the benefits promised in prior mergers, the Board vowed to "take particular care to scrutinize future claims of merger benefits and associated time frames to determine whether the applicants' projections are well-documented and reasonable."[11]

The Board raised the bar because the prior rules had become "outdated and inadequate" to address the implications of present-day mergers.[12] It explained that rail consolidation through the 1990s left few Class I railroads, caused significant service disruptions, and eliminated the excess capacity that once justified consolidation.[13] The Board also cautioned that opportunities for future mergers to produce efficiency and service benefits had become "limited," while the risks of nationwide service disruptions and hard-to-remedy competitive harm had grown.[14] In that vein, the Board expressed "substantial concern" that the industry was approaching an "end-game" in which further consolidation could leave only two North American transcontinental

[7] 49 C.F.R. § 1180.1(c) (emphasis added).
[8] *See* 49 C.F.R. § 1180.4(c)(8).
[9] *Major Rail Consolidation Procedures*, 5 S.T.B. 539, 539, 546 (2001).
[10] *Id.* at 549.
[11] *Id*. at 560.
[12] *Id.* at 545.
[13] *Id.* at 546.
[14] *Id.* at 546, 558; *see also* 49 C.F.R. § 1180.1(c).

railroads.[15] The Board warned that, in that scenario, the price of a merger's failure to produce its anticipated benefits "would be high."[16]

The 2001 Merger Rules require applicants for a major transaction to make specific showings. Three are particularly relevant to ALEC and AAI and are addressed below:

A. Enhancing Competition

The 2001 Merger Rules require the Board to place "greater emphasis in the public interest assessment on enhancing competition" in the national rail network.[17] To that end, they call on applicants to propose conditions that enhance, not simply preserve, competition.[18] Moreover, "[t]o offset harms that would not otherwise be mitigated," applicants must "explain how the transaction and conditions they propose would enhance competition."[19] The Board took this approach because it recognized three risks of future mergers: service may break down during the transition, promised benefits may never arrive, and the Board's own conditions may fail to cure the resulting harm to competition.[20]

B. Service

The Board treats "quality of service" as "of vital importance" in deciding whether a merger is consistent with the public interest.[21] To that end, the Merger Rules require applicants to file a Service Assurance Plan identifying "the precise steps they would take to ensure adequate service."[22] The plan must provide service benchmarks, describe the extent to which applicants have agreed to compensate shippers for service failures, and establish contingency plans for

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[15] *Major Rail Consolidation Procedures*, 5 S.T.B. at 545, 549, 560.
[16] *Id*. at 560.
[17] *Id.* at 546.
[18] 49 C.F.R. §§ 1180.1(d), 1180.6(b)(10).
[19] 49 C.F.R. § 1180.1(c)(2)(iv).
[20] *Major Rail Consolidation Procedures*, 5 S.T.B. at 547.
[21] 49 C.F.R. § 1180.1(h)(1).
[22] *Id*.; *see also id.* § 1180.10.

unanticipated disruptions.[23] The Merger Rules also require applicants to establish problem resolution teams to address post-merger service problems promptly.[24]

C. Downstream Effects

The Merger Rules provide that the Board will not evaluate a major transaction in isolation.[25] The Board expects applicants to explain how additional Class I mergers would affect the eventual structure of the industry and the public interest.[26] The Board also expects applicants to anticipate whether rivals will propose responsive mergers, to discuss how those mergers would affect applicants' claimed benefits, and to explain whether the Board would need to alter conditions on the transaction if it approves future mergers.[27]

III. AUTOMOTIVE FINISHED VEHICLE TRAFFIC REQUIRES COMPETITIVE AND EFFICIENT RAIL SERVICE

ALEC and AAI's members require competitive, efficient, and reliable rail transportation to move finished vehicles from assembly plants over longer distances to distribution ramps across the country. As explained by the Association of American Railroads ("AAR"): "*The rail network is the backbone of the auto supply chain. In fact, railroads are involved in all stages of auto manufacturing, from moving the iron ore and coke needed to make steel to delivering semi-finished goods to manufacturing plants where they are used to produce auto parts and moving finished parts and final vehicles.*"[28] According to AAR, nearly 75% of finished vehicle shipments move by rail.[29] And, as AAR's own statements make clear, the finished vehicle

[23] 49 C.F.R. § 1180.1(h)(1).
[24] 49 C.F.R. § 1180.1(h)(3); *see also id.* § 1180.10(i).
[25] 49 C.F.R. § 1180.1(i).
[26] *Id.*; *id.* § 1180.6(b)(12)(i).
[27] 49 C.F.R. §§ 1180.1(i), 1180.6(b)(12)(ii).
[28] Ass'n of Am. R.Rs., *Freight Rail & Automotives* (fact sheet), https://www.aar.org/wp-content/uploads/2023/07/AAR-Automotives-Fact-Sheet.pdf (last visited Nov. 6, 2026).
[29] *Id.*

transportation network has been designed with rail as the primary transportation mode, particularly for longer haul movements. Indeed, the automotive industry has built and optimized its supply chain to include rail movements of finished vehicles from production and assembly plants to rail ramps spread across the United States, where vehicles are offloaded, parked, and re-configured for final delivery by truck to dealers.[30] Thus, rail is required for high-volume, long-distance movements, and trucks are typically used for smaller loads moving shorter distances or emergency time-sensitive shipments.[31]

In their application, UP and NS have mischaracterized automotive traffic as "highly competitive" with trucks.[32] However, the Applicants are wrong. Trucks are not an effective competitive alternative to rail for finished vehicle traffic, especially for movements beyond approximately 300 miles.[33] Automotive producers do not typically substitute trucks for longer-distance rail moves of finished vehicles because they are far less economical, efficient, or practical. Trucking vehicles from automotive plants directly to dealers is used for smaller volumes, shorter distances, or in special circumstances where a shipment is time-sensitive.[34]

According to AAR, "[a] single train can move hundreds of vehicles at once" and a full train can replace well over 100 truck trips while needing only one crew.[35] The typical load factor for automotive tri-level railcars is 15 passenger cars and around 9 SUV/Trucks for bi-levels, whereas the typical load factor on a truck hauler is 9 passenger cars and 6 SUV/Trucks.[36]

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[30] Verified Statement of Bryan Burkhardt ("Burkhardt V.S.") at 2.
[31] *Id.*
[32] Applicants' Second Response to Decision No. 21 (UP-80/NS-78) at 34, *Union Pac. Corp.—Control—Norfolk S. Corp.*, No. FD 36873 (S.T.B. filed July 27, 2026).
[33] Burkhardt V.S. at 2.
[34] *Id.*
[35] Ass'n of Am. R.Rs., *supra* note 27.
[36] Burkhardt V.S. at 2. One Class I railroad advertises that it moves 24 vehicles per railcar. BNSF Ry. Co., *Move Vehicles Safely Across North America*, https://bnsf.com/ship/by-

Additional constraints that reduce the competitiveness of trucks versus rail are limits on driver hours of service[37] and the impact of driver shortages.[38] Because of the hauling capacity differences and driver limitations, trucks cannot transport finished vehicles as economically or efficiently at longer distances as compared to rail. Moreover, automotive plants usually have infrastructure designed for rail, and these facilities are not configured to load vehicles using hundreds of trucks.[39] For new plants, proximity to a rail line is an essential consideration that needs to be evaluated early in the planning stages.

Further, based on the false premise that trucks effectively compete with rail for finished vehicle traffic, the Applicants excluded this traffic from the only remedy offered to preserve rail competition at certain critical gateways (Committed Gateway Pricing) where UP/NS would interline traffic with CSX and BNSF,[40] as well as from the service ADR remedy for merger-related service failures.[41] This results in finished vehicle traffic being even more vulnerable to harmful merger impacts as compared to most other traffic. However, as explained in Section V, Applicants' proposed gateway and service concessions are inadequate to effectively address these impacts.

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method/vehicles (last visited Nov. 6, 2026) (stating BNSF moves "24 [v]ehicles per multilevel railcar").

[37] *See* 49 C.F.R. § 395.3.

[38] PLS Logistics Servs., *Truck Driver Shortage 2026: What It Means for Shippers*, PLS Logistics Blog, https://www.plslogistics.com/blog/truck-driver-shortage-2026/ (last visited Nov. 16, 2026); Angel Jones, *The Trucking Driver Shortage: What It Means for Owner-Operators and Fleets*, Marquee Ins. Grp. (Aug. 5, 2026), https://marqueeig.com/resources/the-trucking-driver-shortage-2026/.

[39] Burkhardt V.S. at 2.

[40] UP-80/NS-78 at 14–15, 31, 33.

[41] *Id.* at 118–19, 125–26 & n.235. The service ADR program excludes exempt traffic which traffic category includes finished vehicles.

IV. AUTOMOTIVE FINISHED VEHICLE TRAFFIC WILL BE HARMED BY THE PROPOSED TRANSACTION

The unprecedented market concentration of the combined UP/NS system, which will control an estimated 50% of the U.S. domestic freight rail market, is alarming on its face. Authorizing such immense market power to vest in a single entity, across a vast transnational network, presents grave risks and concerns to ALEC and AAI's members who depend on competitive and cost-effective rail service to meet the demands of domestic consumers, export markets, and the U.S. and global economies. Like other rail-dependent commodities, finished vehicle traffic often originates from production plants that are captive to only a single railroad and is destined to rail ramps controlled by a single railroad entity.[42] Economic theory establishes that increasing the concentration of monopoly power into only a few market participants is likely to result in pricing increases and service failures.[43]

A. Foreclosure of Rail Competition.

The most significant harm facing ALEC and AAI members is foreclosure of current competition that exists today for interline traffic that is captive to either UP or NS at the origin or destination, as the case may be, and can be served by either UP or NS at the other end along with another carrier. Post-merger, UP/NS will be incentivized to convert as much of this traffic as possible to single-line movements on its network, increasing its mileage, revenue, and cost recovery, while eliminating competition from other railroads who currently haul this traffic to or from gateways along the Mississippi River to interchange with either UP or NS. Specifically,

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[42] Burkhardt V.S. at 2–3. Notably, U.S. domestic assembly plants that produce automobiles are disproportionately impacted as compared to vehicle importers that have greater flexibility to select different U.S. ports based on available rail infrastructure, whereas domestic manufacturers must ship from fixed and often sole-served locations.

[43] Marc Ivaldi *et al.*, *The Economics of Unilateral Effects* 21 (Interim Report for DG Competition, European Commission, 2003), https://www.tse-fr.eu/sites/default/files/medias/doc/wp/2003/economics_unilaterals.pdf.

UP/NS will be able to foreclose interline competition by pricing its new single-line movements more favorably than competing westward and eastward interline movements. By quoting proportional rates for the interline movements that would make those movements uneconomic as compared to single-line service prices, it can eliminate the interline competition altogether. However, the more favorable pricing for the single-line movement is not the result of increased efficiency or productivity but market manipulation.

Moreover, as explained in Section V below, Applicants' Committed Gateway Pricing ("CGP") proposal, which is supposed to address this type of competitive harm for interline movements involving CSX and BNSF at four designated gateways, is not an effective solution because CGP involves a calculation that is based on actual UP/NS rates. This will allow UP/NS to manipulate its single-line pricing to almost always win the traffic. And finished vehicle traffic is excluded from CGP in any event.

UP/NS could also foreclose interline competition in favor of its single-line service by reducing services for the interline traffic, such as the frequency or quality of local spots and pulls, switches, and equipment allocation; or, in contract negotiations, it can "bundle" its rate offerings for automotive interline traffic with captive single-line service traffic as a "take it or leave it" package. Rate bundling would effectively leave the automotive shipper with no option but to agree to the single-line service routing or face higher pricing across its traffic portfolio. Even worse, there is no regulatory oversight of such unreasonable bundling practices since the STB has no jurisdiction over rail services contracts.[44]

Where single-line service is not an option, because UP or NS solely serves one end of the movement but the other end must be served by a different railroad, the combined UP/NS will be

[44] *See* 49 U.S.C. § 10709.

motivated to extend its monopoly segments (or "bottlenecks") to be as long as is possible, thereby "short-hauling" and partially foreclosing competition from the connecting railroad. Today, bottlenecks originating in the western United States at captive UP origins, or in the eastern United States on captive NS origins, end at gateways located along the Mississippi River, where traffic must be handed off to another railroad to complete the movement. If this transaction is approved, however, UP/NS will be incentivized to maximize its long-haul, extending its monopoly segments to increase its mileage and revenue (and profits) and spread its costs over greater distances. This is a serious concern because ALEC estimates that approximately 38% of its members' auto production facilities served by either UP or NS are captive.[45] In short, post-merger, UP/NS can be expected to apply its increased market power over finished vehicles traffic to reduce competition that exists for even a portion of a movement, and to maximize its pricing leverage which will only worsen over time once it captures the traffic, as past mergers have demonstrated.

The foreclosure of competitive alternatives not only harms ALEC's and AAI's members but will cause substantial harm to CSX and BNSF, and other carriers who interline traffic with both carriers. UP/NS can be expected to exercise its market power to short-haul CSX and BNSF (and others) to keep as much traffic as possible on its system, thereby substantially reducing the traffic volumes and line-haul revenue that those carriers use to cover their network costs.[46] Based

[45] Burkhardt V.S. at 3.

[46] *See* CSX Transportation, Inc.'s Motion for Summary Denial (CSXT-38) at 11–12, 36, *Union Pac. Corp.-Control-Norfolk S. Corp.*, No. FD 36873 (S.T.B. filed Aug. 6, 2026); *see also* BNSF Railway Company's Motion to Summarily Deny Amended Railroad Control Application for Failure to Present a Prima Facie Case (BNSF-46) at 3, *Union Pac. Corp.-Control-Norfolk S. Corp.*, No. FD 36873 (S.T.B. filed Aug. 6, 2026).

on the extensive overlap between the NS and CSX networks in the eastern United States, the harm to CSX would be especially profound.

Moreover, if CSX and BNSF are forced to recover fixed costs over fewer line-haul miles, inevitably they will need to raise prices or reduce services and network investments for captive traffic in response. This harm will only compound over time, weakening the ability of CSX and BNSF to remain strong competitors to the mega-UP/NS system. Conceivably, once the unprecedented market power of the UP/NS system fully takes hold several years after the transaction is consummated (and if the STB oversight period is limited as requested by Applicants), the scope of traffic for which CSX and BNSF will need to increase prices or reduce services could extend well beyond their captive traffic that is directly impacted by the transaction.

The cumulative harm to rail competition considering the already highly concentrated freight rail industry would not serve the public interest. ALEC and AAI need more rail-to-rail competition, not less, to compete effectively in the extremely competitive automotive manufacturing market and meet the demand for affordable vehicles by American consumers and the U.S. export markets.

The Applicants refuse to either acknowledge these significant adverse competitive impacts or offer meaningful enhancements to competition to address them. This is incredulous since the Board decided just over three years ago in the CPKC merger proceeding that vertical mergers can reduce competition and cause pricing increases and service declines on interline movements.[47] In that proceeding, the Board recognized that economic theory and its own

[47] *Can. Pac. Ry. Ltd.—Control—Kan. City S.*, No. FD 36500, Decision No. 35, slip op. at 46–47, 65–66 (S.T.B. served Mar. 15, 2023).

perspective regarding vertical merger harm have evolved to justify its retreat from the one-lump economic theory and determinations that vertical combinations will not cause competitive harm.[48]

Notwithstanding this recent and binding precedent, the Applicants have doubled-down on the position that this unprecedented transaction will not have material competitive impacts. Their expert witness, Dr. Israel, claims that adverse competitive impacts from vertical mergers do not apply to the railroad industry.[49] But the credibility of his position is questionable not only because of the Board's pointed CPKC decision, but because it directly contradicts UP's very position in the CPKC merger.[50]

Further, as explained in Section II above, this transaction is subject to the 2001 Merger Rules, which emphasize that mergers of precisely this type need to enhance competition to meet the public interest. In applying those rules for the very first time, the Board must make clear that enhancements to competition were intended to include intramodal rail competition. This is evident from the Board's own description of the enhancing competition factor which clearly emphasized rail-to-rail options, such as trackage rights, terminal access, and removal of paper barriers between Class I and shortline railroads.[51]

Yet, the Applicants have failed to offer any real competitive enhancements, let alone rail-to-rail services that would benefit rail customers and the public interest. The Applicants allege that their claimed public benefits, i.e., faster single-line service and truck-to-rail diversions, will

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[48] *Id.* at 46–47.
[49] Israel V.S. ¶¶ 16–17.
[50] *See Can. Pac. Ry. Ltd.*, slip op. at 60; *id.* at 178–79 (Primus, Board Member, dissenting); *see also* Union Pac. R.R. Co.'s Comments and Req. for Conditions (UP-10) at 3–6, 21–32, *Can. Pac. Ry. Ltd.—Control—Kan. City S.*, No. FD 36500 (S.T.B. filed Feb. 28, 2022); Verified Statement of Steven C. Salop at 3–5, 7–27, B-1 to D-6.
[51] *Major Rail Consolidation Procedures,* 5 S.T.B. at 554.

cause other railroads to improve their service offerings to better compete. But these claimed benefits are narrowly tailored to improve the Applicants' standing when competing with trucks for intermodal traffic, and do not involve new competitive rail enhancements. The Applicants also conflate their 2-to-1 protections, CGP, and the open gateway concession as competitive enhancements, but those offerings merely *preserve* but do not *enhance* rail competition. Without offering more, specifically access and/or pricing options that will enhance *rail* competition for captive automotive and manifest traffic that will experience adverse systemic competitive effects, the Board must find that Applicants have failed to meet their burden of proof under the 2001 Merger Rules.

B. UP/NS Would Remain TTX's Largest Shareholder and Retain Substantial Influence Over TTX Despite the Proposed Divestiture.

TTX is a railcar pooling company that is owned by seven railroads and operates under a partial exemption from the antitrust laws. ALEC and AAI members rely on TTX's railcar pooling services to obtain a sufficient supply of specialty railcars equipped with auto-racks to move automotive finished vehicle traffic. Because TTX supplies a shared pool of equipment across the North American network, TTX's fleet decisions directly affect whether automotive shippers can obtain cars when and where they need them. Thus, it is critical to ALEC's and AAI's members that TTX will not become subject to undue influence by any single member which could impact the fair and reasonable allocation of railcars amongst automotive manufacturers.

Currently, TTX ownership is as follows: UP owns 37.03%, NS owns 19.78%, CSX owns 19.78%, BNSF owns 17.4%, CN owns 3.2%, CPKC owns 2.2%, and Ferromex owns 0.6%.[52]

[52] Applicants' First Submission in Response to Decision No. 21 (UP-68/NS-66) at 49, *Union Pac. Corp.—Control—Norfolk S. Corp.*, No. FD 36873 (S.T.B. filed July 7, 2026).

Each owner appoints one director, and each director casts votes equal to the number of shares its railroad owns.[53] If the Board approves the transaction, UP/NS would own 56.81% of TTX, and the NS director seat would be eliminated.[54]

In their amended Application, UP and NS committed to divest enough of their TTX shares to reduce their combined, post-merger interest to 49%.[55] Applicants contend that, with a 49% stake, they would lack "the ability to unilaterally approve, or even block" matters submitted to TTX's board or shareholders.[56] However, a 49% interest would still leave UP/NS with a dominant position. At 49%, UP/NS would hold roughly two and a half times the shares of the next largest owner, CSX. This would give UP/NS substantial influence over TTX's management, strategy, capital allocation, and fleet decisions. UP/NS could likely carry a vote with the support of just one other railroad. UP/NS also could block any action that requires a supermajority. The Applicants' claim that they could not approve or block matters following the divestiture holds only for simple-majority votes, but it ignores coalition dynamics and the practical influence that comes with near-half ownership.

The terms of the divestiture commitment compound this problem. Applicants do not commit to divest at consummation, and they leave the timing to their own discretion. Until they divest, ALEC and AAI members, who depend on TTX equipment to move automotive traffic, would be exposed to UP/NS's influence over TTX's decisions and equipment allocation. The lack of any regular operational monitoring and oversight of TTX by the STB means that TTX's equipment allocation decisions remain hidden from scrutiny.

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[53] *Id.*; *see also id.* at 59 n.110.
[54] *Id.* at 47, 59 n.110.
[55] *Id.* at 47 & n.95.
[56] *Id.* at 60.

1. UP/NS Do Not Commit to Completing the TTX Divestiture at Consummation.

Applicants state that they *prefer* to complete the TTX divestiture simultaneously with consummation of the transaction,[57] but they do not commit to doing so. Indeed, they acknowledge that the transaction may be consummated before the divestiture is complete.[58] Therefore, under the current proposal, nothing would prevent UP/NS from holding a 56.81% majority interest in TTX for an extended period of time, resulting in a clear imbalance in ownership and influence over TTX decision-making.

The structure of the sale process makes a prolonged and uncertain divestiture likely. TTX's Restrictive Stock Transfer Agreement governs any sale of the divested shares. Under that agreement, TTX holds the first right to purchase the shares. The other TTX owners hold a secondary right. Applicants may sell to a qualifying third party only as the final step, after TTX and the other owners have declined.[59] Each step takes time, and Applicants propose no deadline for any of them. Applicants also argue that if other TTX owners are concerned about UP/NS's stake, those owners can solve the problem by buying the shares themselves.[60] That argument shifts the cost of the remedy to the carriers that the merger would harm. Those carriers would have to buy the shares at book value. Given TTX's fleet of approximately 177,000 railcars, that cost could be significant.[61] However, the 2001 Merger Rules place the obligation to "propose remedies to mitigate and offset competitive harms" on applicants, not on the carriers and shippers the merger would harm.[62]

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[57] *Id.* at 52, 56.
[58] *Id*.
[59] *Id*. at 52–54.
[60] *Id*. at 47, 58.
[61] *See id*. at 48, 55.
[62] 49 C.F.R. § 1180.1(c)(2)(i).

2. UP/NS's Commitment to Divest Ownership Shares on "Commercially Reasonable Terms" Is Vague.

Applicants' actual commitment is to divest "at such time as they are able to do so on commercially reasonable terms,"[63] and they define "commercially reasonable" as "terms that a prudent railroad company would consider fair and workable under the circumstances."[64] That framework sets no deadline and no objective criteria. It leaves Applicants with total discretion over when, and on what terms, to divest. As a result, they could reject offers as commercially unreasonable and delay divestiture indefinitely.

Applicants try to address this problem by offering to accept Board conditions that would require them to place their excess TTX shares with an Independent TTX Transferee or that would restrict their voting interest to 49%.[65] They also would accept a condition requiring them to file corporate documents showing that they have satisfied these commitments.[66] These conditions, however, do not cure the fundamental problem. Applicants offer only to accept them if the Board imposes them; they do not propose them as binding commitments of their own. Moreover, even if the Board did impose them, neither condition would set a deadline for the divestiture itself. A voting restriction would cap only UP/NS's votes, not its ownership. UP/NS would still remain as TTX's de facto majority owner, with the economic dominance that comes with that stake.

3. ALEC and AAI Members Would Be Exposed to UP/NS's Influence Over TTX Decisions and Equipment Allocation.

ALEC and AAI members are highly dependent on TTX's railcar pooling and allocation operations to obtain a sufficient supply of specialty autorack cars to transport finished vehicles.

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[63] UP-68/NS-66 at 52.
[64] *Id*. at 55.
[65] *Id*. at 56–57.
[66] *Id*. at 58.

To ensure reasonable TTX practices in this regard, they require TTX to remain a neutrally operated and managed entity. Applicants assert that the terms of TTX's Board-authorized pooling agreements operate as a safeguard against concerns of undue influence if this transaction is approved. Specifically, Applicants state that those agreements require TTX to operate on a cost-recovery basis, charge non-discriminatory rates, provide no preferential access to any railroad, and allow pool cars to be used at any point on any line.[67]

However, those terms prohibit overt discrimination in rates, access, and car allocation. They do not reach subtler forms of influence. As TTX's dominant owner, UP/NS could shape decisions on fleet composition, maintenance spending, and car acquisition in ways that favor its own traffic patterns without formally violating any non-discrimination clause. UP/NS also could steer decisions on technology investments, service priorities, and new pooling programs toward its own commercial interests. Automotive shippers whose traffic originates or terminates on other carriers' lines would bear the consequences.

Board oversight would not cure this harm in time. Applicants point to the Board's continuing jurisdiction over the pooling agreements,[68] but that oversight is reactive. The Board would need to investigate any alleged violation and then enforce compliance since currently there is no regular reporting by TTX to the Board. Investigations and enforcement proceedings would require costly and time-consuming administrative litigation. In the meantime, automotive shippers would absorb the effects of any equipment shortfall. Moreover, Applicants' reliance on the concept of "control" does not answer these concerns. Applicants argue that a 49% interest would not give them control of TTX.[69] This ignores that the competitive question turns on

[67] *Id.* at 60–61.
[68] *Id.* at 58, 61–62.
[69] *See id.* at 47, 51, 60.

economic power, not just formal legal control, as the 2001 Merger Rules recognize that "[a]ny railroad combination entails a risk that the merged carrier would acquire and exploit increased market power."[70] The practical implications of the transaction on the automotive car supply create the additional concern that the sheer size of the combined UP/NS will enable the carrier to hoard cars on its network, creating an imbalance and undue control.

Applicants also offer no evidence to support their claim that their TTX ownership would be competitively harmless. Their July 7 submission cites no independent economic analysis, market study, or competitive assessment of a merged UP/NS controlling, or nearly controlling, the national railcar pooling company. The Merger Rules require applicants to "demonstrate both the relevance of the markets and issues analyzed and the validity of their methodology."[71] Accordingly, Applicants have not shown that their TTX commitment would protect automotive traffic, which requires fair and reasonable equipment allocation options that are best guaranteed by ensuring TTX remains subject to more neutral control.

C. Major Rail Mergers Have Caused Severe Service Failures, and this Transaction Would Magnify that Risk.

Rail mergers have proven to disrupt service before they improve it. Major mergers in the modern era have brought severe service failures during integration, and shippers have absorbed the delays and added costs. This transaction would be larger and more complex than any prior merger, so the risk of harm is far greater.

The Merger Rules start from the same premise. They recognize that "significant service problems can arise during the transitional period when merging firms integrate their operations, even after applicants take extraordinary steps to avoid those disruptions."[72] The Board weighs

[70] 49 C.F.R. § 1180.1(c)(2)(i).
[71] 49 C.F.R. § 1180.7(a).
[72] 49 C.F.R. § 1180.1(c)(2)(iii).

that risk in deciding whether a merger serves the public interest,[73] and, as Section II explains, it views "claims that no transitional service problems would occur" with skepticism.[74] Applicants predict that their planning "will only improve service."[75] However, the history of prior mergers shows why the Board should doubt that claim.

1. Prior Mergers Show that Integration Brings Severe Service Failures.

The UP/SP merger is the clearest example. The Board approved UP's acquisition of Southern Pacific in 1996.[76] After the merger, UP's service broke down so badly that the Board ordered UP to allow shippers under contract to shift their traffic to other carriers.[77] That relief was extraordinary because contract traffic ordinarily lies outside the Board's regulatory reach.[78] The 2001 Merger Rules explain why integration is so risky. They call the fluidity of yards and terminals key to implementing a transaction and serving shippers, and they emphasize the timely integration of information systems vital to maintaining service.[79] Applicants offer no reason to think this merger will be different.

2. The Size and Scope of this Transaction Heighten the Risk.

This transaction would be far larger than UP/SP. It would combine UP and NS into a system the Board has acknowledged is "unprecedented"[80] and Applicants describe as "transformational."[81] The merger would give the industry's largest railroad roughly half the

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[73] *Id.*
[74] *Major Rail Consolidation Procedures*, 5 S.T.B. at 549.
[75] UP-80/NS-78 at 24.
[76] *Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp.*, 1 S.T.B. 233 (1996).
[77] *Joint Petition for Serv. Order*, STB Serv. Order No. 1518, 2 S.T.B. 725, 725–26 (1997).
[78] *See* 49 U.S.C. § 10709(c); UP-80/NS-78 at 126.
[79] 49 C.F.R. § 1180.10(c), (e).
[80] *Union Pac. Corp.—Control—Norfolk S. Corp.*, No. FD 36873, Decision No. 37, slip op. at 4 (S.T.B. served Sept. 18, 2026).
[81] UP-80/NS-78 at 13.

nation's traffic and a uniquely transcontinental network.[82] Applicants project a combined revenue of $41.2 billion in the first year.[83] By contrast, CP/KCS, the most recent end-to-end Class I merger, joined two systems at a single point, Kansas City, and affected only north-south traffic along one corridor. UP and NS interchange at every major east-west gateway, so integrating them would put far more traffic, at far more points, at risk of service failure.[84]

Integration would reach nearly every part of both networks at once. Applicants plan seven new premium intermodal train pairs, nine new manifest trains, and significant changes to blocking plans.[85] They plan capital projects at nine yards and terminals, on two UP main-line corridors, and on three parts of the NS network, with work stretching up to three years after closing.[86] They expect to fold NS's North Kansas City Yard into UP's Eighteenth Street Yard[87] and to cut their use of the Belt Railway Company of Chicago, the Indiana Harbor Belt Railroad, and the Terminal Railroad Association of St. Louis.[88] Meanwhile, Applicants predict nearly two million truck-to-rail diversions each year,[89] arriving in phases over the same three years.[90] UP/NS would thus absorb new traffic while it rebuilds yards, rewrites train plans, and merges systems. Each change creates a point where service can fail, and the changes would converge at the gateways where the nation's east-west traffic meets.

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[82] *See* Letter from Daniel T. Donovan, Counsel for BNSF Ry. Co., to Chief of Case Admin. (BNSF-24) at 2, *Union Pac. Corp.—Control—Norfolk S. Corp.*, No. FD 36873 (S.T.B. filed May 8, 2026); CSXT-38 at 27 n.17.
[83] UP-80/NS-78 at 78.
[84] *See* Joint Shipper Ass'ns' Motion for Summary Denial (ACC-6/ACD-6/AFPM-6/NITL-3/TFI-6) at 34, *Union Pac. Corp.—Control—Norfolk S. Corp.*, No. FD 36873 (S.T.B. filed Aug. 6, 2026) ("JSA Mot.").
[85] UP-80/NS-78 at 103.
[86] *Id.* at 87.
[87] UP-68/NS-66 at 44.
[88] UP-80/NS-78 at 136–38.
[89] *Id.* at 183.
[90] *Id.* at 88.

Automotive traffic sits directly in that path. About 58,000 of the 404,000 carloads that Applicants expect to divert to UP/NS are automotive.[91] Applicants concede that their existing network can absorb only 92% of projected automotive growth traffic on the first day, so the rest depends on projects not yet built.[92] UP and NS also generally own the automotive facilities they use, and each railroad has no more than one major automotive ramp in a region.[93] When a ramp or the yard that feeds it jams, an automaker often has no other ramp to turn to.

NS would also enter the merger already under strain. CPKC has pointed to the abrupt departure of NS's chief operating officer and several of his reports, union reports that NS lacks the crews to keep trains moving, and other problems in NS's operating performance.[94] CPKC has also said it expects to show that implementing the merger is likely to cause severe operational disruptions.[95] And when capacity runs short, UP/NS would have every reason to protect its own single-line traffic at the expense of cars it interchanges with other railroads, which is exactly how the Board has said end-to-end mergers can diminish service on interline routes.[96]

The Board should weigh this risk heavily. To that end, Board Member Kloster has already observed that Applicants "do not offer a very robust plan for how they will address competitive concerns or mitigate potential harms."[97]

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[91] *Id.* at 91.
[92] *Id.* at 86.
[93] *Id.* at 34, 355.
[94] Comments of Canadian Pac. Ry. Co. (CPKC-38) at 3 & nn.3–5, *Union Pac. Corp.—Control—Norfolk S. Corp.*, No. FD 36873 (S.T.B. filed Aug. 6, 2026).
[95] *Id.* at 12 n.20.
[96] *See Can. Pac. Ry. Ltd.*, slip op. at 65–66.
[97] Decision No. 37, slip op. at 5 (Kloster, Board Member, concurring).

V. APPLICANTS' PROPOSED CONCESSIONS DO NOT REMEDY THE HARM TO AUTOMOTIVE TRAFFIC

Applicants primarily offer four concessions to answer the harm the transaction would cause: Committed Gateway Pricing, an open gateway commitment, a Service Assurance Plan with a damages arbitration program and a Targeted Access Program, and a springing Rate ADR Program.[98] None of them protects automotive traffic. Each is narrow, temporary, or vague, and several exclude automotive traffic by their own terms.

Section II sets out the standard these concessions must meet. Beyond enhancing competition, Applicants must explain how they would, at a minimum, preserve competitive options such as "the use of major existing gateways."[99] They must also suggest a protocol for service failure claims, and the Board favors "[c]ommitments to submit all such claims to arbitration."[100] Finally, they must propose measures the Board can take if the promised benefits "fail to materialize in a timely manner."[101] Applicants' concessions fall short on each count.

A. Committed Gateway Pricing Excludes Finished Vehicles, and Even If It Included Them, CGP Would Not Remedy the Harm to Automotive Traffic or Enhance Competition.

Applicants call Committed Gateway Pricing ("CGP") "a genuine and meaningful enhancement of competition,"[102] but it is no such thing. At best, it preserves part of today's competition for a sliver of traffic, at a few gateways, for a limited time. Critically, it excludes finished vehicles altogether.

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[98] *See* UP-80/NS-78 at 8–10, 37–38, 119–20.
[99] 49 C.F.R. § 1180.1(c)(2)(i); *see also id.* § 1180.6(b)(10)(i).
[100] *Id.* § 1180.1(h)(1), (5).
[101] *Id.* § 1180.1(c)(1); *see also id.* § 1180.6(b)(11).
[102] UP-80/NS-78 at 18.

Under CGP, UP/NS would quote BNSF or CSX a price for the UP/NS leg of a movement to or from a sole-served facility.[103] UP/NS would set that price at the 70th percentile of its own rates for comparable traffic,[104] and BNSF or CSX would then use it to quote a through rate.[105] As BNSF explained, this arrangement gives no shipper access to a railroad it cannot reach today; it merely puts a price on interline routes that already exist.[106] Applicants themselves concede that CGP "was not intended to create competition with post-merger single-line traffic" and that CGP service "would not be as fast or reliable as single-line service."[107] They further concede that any railroad could offer a similar haulage program without a merger.[108] Nor do Applicants offer CGP as a cure for the transaction's harms. They leave CGP out of what they call their "comprehensive set of competition-preserving commitments,"[109] describe it as one of their "narrow ancillary commitments,"[110] and claim only that its benefits would outweigh the harms the transaction causes.[111] A measure that needs no merger, cannot match the merger's own service, and does not claim to prevent the merger's harms does not enhance competition.

1. CGP Fails to Remedy the Transaction's Harm.

CGP reaches very little traffic. As first proposed, it applied to less than 1% of all rail traffic,[112] and Applicants' expansion added only about 0.6% more.[113] Even within that small

[103] *Id.* at 15–16.
[104] *Id.* at 252–53 (Israel Supp. V.S. ¶ 9).
[105] *Id.*
[106] BNSF-46 at 14.
[107] UP-80/NS-78 at 43.
[108] *Id.* at 85.
[109] *Id.* at 184–85.
[110] *Id.* at 27.
[111] *Id.* at 41.
[112] Grand Trunk Corp.'s Comments on Completeness of Union Pacific and Norfolk Southern's Amended Application (CN-15) at 25–26, *Union Pac. Corp.—Control—Norfolk S. Corp.*, No. FD 36873 (S.T.B. filed May 8, 2026); *see also Union Pac. Corp.—Control—Norfolk S. Corp.*, No. FD 36873, Decision No. 21, slip op. at 20 (S.T.B. served May 28, 2026).
[113] BNSF-46 at 16.

universe, Applicants' own economist found that only about 104,000 of the roughly 258,000 eligible carloads would see any rate benefit.[114] That leaves about 60% of eligible carloads with no benefit at all.[115]

CGP's reach is just as narrow by gateway and by carrier. The program applies only at Chicago, St. Louis, Memphis, and New Orleans,[116] and only to connections with BNSF and CSX, leaving out CN, CPKC, and Class II and III railroads that connect with another Class I carrier.[117] It further excludes intermodal traffic, finished vehicles, shipments to and from storage-in-transit facilities and railroad-owned facilities, toxic and poison inhalation hazard materials, and dimensional loads.[118] It also leaves out any facility that begins operating after the merger closes,[119] and it can be used only for contracts of up to three years.[120] As a result, an automaker that opens a new plant on the UP/NS system after consummation would not benefit from CGP, and finished vehicles are excluded in any event.

Applicants also control the benchmark. UP/NS would compute each CGP rate from its own rates on traffic outside the program,[121] and Applicants' economist admits that UP/NS would find it "advantageous" to raise rates on that traffic to push the CGP rate up.[122] BNSF explained the consequence: by raising rates on shippers outside CGP, UP/NS can raise the cap for shippers inside it.[123] Applicants' own estimates show the effect. Their economist projects that CGP's

[114] UP-80/NS-78 at 20–21.
[115] *See id*. at 269–70 (Israel Supp. V.S. ¶ 34, Fig. 8).
[116] *Id.* at 32.
[117] *Id.* at 31–32.
[118] *Id.* at 33–36.
[119] Amended App., Vol. 1 (UP-39/NS-37) at 407 (Novak V.S.).
[120] *Id.* at 389 (Novak V.S.).
[121] UP-80/NS-78 at 253, 277 (Israel Supp. V.S. ¶¶ 9, 46).
[122] *Id.* at 277 (Israel Supp. V.S. ¶ 46).
[123] BNSF-46 at 15.

shipper benefits would fall from $86.5 million in the first period, when pre-merger rates drive the formula, to $44 million a year once the merged UP/NS sets the rates that feed it.[124] CN, working from that economist's own study, found that about 46% of the shippers he examined would pay more for rail service under CGP.[125] Applicants chose the 70th percentile so that CGP would benefit only "customers with the highest rates,"[126] yet they did no modeling to test whether that percentile was the right level.[127] Not surprisingly, the Board has already observed that CGP "may harm some shippers by incentivizing UP/NS to compete less aggressively for some traffic."[128]

CGP is also temporary. It ends with the Board's oversight period,[129] which the Board's rules set at a minimum of five years.[130] Applicants defend that end date by calling CGP a "regulatory price control" whose long-term effects should be limited,[131] and by describing the harms CGP addresses as "transitory."[132] The harms to automotive shippers are anything but transitory, because a plant served by one railroad will still be served by one railroad when oversight ends. CGP's value is uncertain even before then. Applicants concede that a BNSF/CSX merger would require the Board to reevaluate how long CGP lasts,[133] and their economist warns that two CGP programs drawing on overlapping rates could produce "compounding effects" that

[124] UP-80/NS-78 at 269 (Israel Supp. V.S. ¶ 33).
[125] CN-15 at 26.
[126] UP-80/NS-78 at 42.
[127] *Id.* at 43.
[128] Decision No. 21, slip op. at 21.
[129] UP-80/NS-78 at 37.
[130] 49 C.F.R. § 1180.1(g).
[131] UP-80/NS-78 at 40.
[132] *Id.* at 37.
[133] *Id.* at 41.

"would lead to harms" exceeding the benefits, a question on which he has reached no final conclusion.[134] Yet the transaction would push BNSF and CSX toward exactly that merger.[135]

2. CGP Excludes Finished Vehicles, and Including Them Would Not Fix the Harm.

CGP excludes shipments of finished vehicles outright.[136] Applicants reason that traffic is "already highly competitive" and is priced through multi-lane contracts.[137] They further state that UP and NS generally own the automotive facilities they use, so CGP would let CSX and BNSF use those facilities "rent-free."[138] The latter reason undercuts the former. If BNSF and CSX cannot reach UP/NS's automotive ramps, then automotive shippers at those ramps have no rail alternative to UP/NS, and Applicants designed CGP to keep it that way.

Nor would adding finished vehicles cure CGP's flaws. Applicants' economist modeled that very change and found that it would raise the number of carloads that benefit by only about 2,200, from 103.7 thousand to 105.9 thousand.[139] Worse, estimated shipper benefits in the program's first period would fall, from $86.5 million to $85.6 million.[140] That decline occurs because finished vehicles move at relatively high rates per car-mile, so adding them would materially raise the fallback CGP rates.[141]

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[134] *Id.* at 274 (Israel Supp. V.S. ¶ 39).
[135] *See infr*a Section VII.
[136] UP-80/NS-78 at 34.
[137] *Id.*
[138] *Id.*
[139] *Id.* at 271 (Israel Supp. V.S. ¶ 35(iii)).
[140] *Id.*
[141] *Id.* at 271 n.23.

B. The Open Gateway Commitment Rests on Vague Promises and Undefined Terms.

Applicants commit to keep major gateways open "on commercially reasonable terms."[142] That promise is too vague to keep gateways open for interline automotive traffic, and Applicants have done nothing to show that it would work. The Merger Rules require "effective plans to keep open major existing gateways,"[143] and Applicants' impact analyses must include "a detailed examination" of the measures they propose to preserve competition.[144] Applicants provided no such examination. Rather than predict how open gateways would affect traffic as their traffic witness relied on his understanding that the commitments would not change pre-merger traffic flows.[145] As CSX showed, Applicants offer conclusory statements but no evidence that the commitment would work.[146]

Applicants instead rely on the open gateway conditions the Board imposed in CP/KCS.[147] But, as explained above, CP/KCS joined two railroads at a single gateway, while this merger would join UP and NS at nearly every major east-west gateway.[148] And unlike in CP/KCS, no alternative gateways would remain.[149] Applicants' reliance on those conditions is all the more striking because UP's own senior commercial executive told the Board in CP/KCS that their core gateway condition was "illusory and unenforceable," yet he now calls the same condition "robust

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[142] Joint Verified Statement of Kenny Rocker and Claude E. Elkins ("Rocker/Elkins V.S.") ¶ 164, *in* Amended App., Vol. 1 (UP-39/NS-37) at 348; *see also* UP-80/NS-78 at 38.
[143] *Major Rail Consolidation Procedures*, 5 S.T.B. at 546–47.
[144] 49 C.F.R. § 1180.7(b)(1).
[145] Amended App., Vol. 2 (UP-40/NS-38) at 585–86 (Hunt V.S., App. E n.217).
[146] CSXT-38 at 27.
[147] Amended App., Vol. 1 (UP-39/NS-37) at 22, 52; Rocker/Elkins V.S. ¶ 163, *in* Amended App., Vol. 1 (UP-39/NS-37) at 348.
[148] JSA Mot. at 34.
[149] CSXT-38 at 27 n.17.

and readily enforceable."[150] That gap matters for automotive traffic. As explained above, UP/NS would have every reason to favor its single-line service over competing interline routes.[151] A promise to keep a gateway open on "commercially reasonable terms" would not stop UP/NS from pricing the gateway route so that it loses the traffic.

C. Applicants' Service Assurance Plan Fails to Protect Automotive Traffic from Service Failures.

Section IV.C details how integration would put automotive service at risk. The Merger Rules address that risk by requiring a Service Assurance Plan and favoring commitments to arbitrate "all" service failure claims.[152] Applicants' plan, however, leaves automotive traffic outside its remedies.

1. The Damages Arbitration Program Excludes Automotive Traffic and Expires After Three Years.

The damages arbitration program does not reach automotive traffic, because it covers only claims by shippers "of non-exempt commodities under common carrier service."[153] Most automotive traffic fails both tests. The Board has exempted rail transportation of motor vehicles from most regulation,[154] and Applicants concede that automotive traffic generally moves under multi-lane contracts.[155]

Applicants respond that contract shippers keep their contract remedies and that exempt shippers can seek to revoke the exemption.[156] That response offers auto companies nothing. They

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[150] *Compare* Verified Statement of Kenny Rocker and John Turner ("Rocker/Turner V.S.") at 17–20, *in* Union Pac. R.R. Co.'s Comments and Req. for Conditions (UP-10), *Can. Pac. Ry. Ltd.—Control—Kan. City S.*, No. FD 36500 (S.T.B. filed Feb. 28, 2022), *with* Rocker/Elkins V.S. ¶ 163, Amended App., Vol. 1 (UP-39/NS-37) at 348.
[151] *See supra* Section IV.A; *Can. Pac. Ry. Ltd.*, slip op. at 65–66.
[152] 49 C.F.R. § 1180.1(h)(1), (5).
[153] UP-80/NS-78 at 119–20.
[154] *See* Amended App., Vol. 2 (UP-40/NS-38) at 70 & n.127 (Bailey V.S.).
[155] UP-80/NS-78 at 34.
[156] *Id.* at 126–27.

did not bargain for this merger when they signed their contracts, and railroads seldom accept responsibility for service claims in contracts anyway.[157] Revocation, for its part, requires a separate proceeding that the shipper must bring and win, and even then relief would be prospective only.[158] Applicants concede that if their reading of the Board's rule is wrong, they would make exempt traffic eligible,[159] and the Board should hold them to that concession.

Even qualifying claims face steep limits. The program lasts only for the three-year integration period,[160] and a shipper must prove a "substantial deterioration in service," a term Applicants leave to case-by-case judgment.[161] UP/NS then has 30 days to cure, and a problem cured before arbitration begins defeats the claim.[162] If a claim survives, recovery is limited to direct damages incurred within one year before notice, excludes lost profits, is capped at $2 million, and carries no injunctive or equitable relief.[163] For an assembly plant that stops for lack of railcars or delayed parts, those limits leave most of the harm uncompensated.

2. The Targeted Access Program Offers a Temporary Remedy Through Burdensome Procedures.

Applicants present the Targeted Access Program as a backstop against service failures,[164] while professing confidence "that this program will never need to be invoked."[165] The program's narrow reach and slow procedures make that prediction likely to come true even if service fails.

[157] JSA Mot. 55.
[158] UP-80/NS-78 at127.
[159] *Id.* at 127 n.235.
[160] *Id.* at 119–20.
[161] *Id.* at 120–21.
[162] *Id.* at 121, 124.
[163] *Id.* at 124–25.
[164] *Id.* at 9, 23–24.
[165] *Id.* at 9.

Even when invoked, the remedy is fleeting. Switching ordered in arbitration lasts only six months,[166] and the program itself ends three years after the Board approves the merger.[167] The arbitrator cannot award money,[168] and the shipper cannot leave UP/NS, because UP/NS would continue to provide first-mile or last-mile service.[169] A six-month switch also gives a competing railroad little reason to commit crews, equipment, or capital to serve the facility, because it may lose the traffic as soon as the order expires.

Most automotive traffic cannot use the program at all. Although the Targeted Access Program, unlike the damages program, reaches exempt commodities, it covers only carload traffic moving under common carrier rates and excludes contract, intermodal, and unit train traffic.[170] It also reaches only sole-served facilities in a terminal area.[171] The program's procedures compound the problem. A shipper must first request its own service metrics[172] and then show that its 12-week average on-time arrival or spot-and-pull performance fell below pre-merger levels and below 70% or 85%, respectively.[173] UP/NS then has 30 days to cure.[174] If it does not cure, the shipper has five business days to request switching, and UP/NS may respond by demanding arbitration on its affirmative defenses.[175]

Those defenses sweep broadly, covering "extraordinary surges in volume," the actions of third parties, "the customer's failure to increase its operations to help address surges in volume,"

[166] *Id.* at 24; *id.* at 194 (App. A § 9.1).
[167] *Id.* at 195 (App. A § 13.1).
[168] *Id.* at 194 (App. A § 9.3).
[169] *Id.* at 51.
[170] *Id.* at 127–28 & n.236; *id.* at 194 (App. A § 9.2).
[171] *Id.* at 23–24; *id.* at 193 (App. A § 7.1(a)-(b)).
[172] *Id.* at 190 (App. A § 1.1).
[173] *Id.* at 189, 191 (App. A, Defs. 5-6, §§ 2.2-2.3).
[174] *Id.* at 191 (App. A § 3.1).
[175] *Id.* at 191–92 (App. A §§ 3.4-3.5).

and any switch that would "require significant capital investment."[176] The arbitrator then has 90 days to decide[177] and may order discovery along the way,[178] while each side bears its own costs and an equal share of the fees.[179] Either party may then appeal to the Board as of right within 20 days, and the program sets no deadline for the Board's decision.[180] Counting only the program's own deadlines, a shipper would wait more than four months from its first request for an arbitrator's decision, and longer if UP/NS appeals.[181] A plant idled by a service failure needs relief in days, but this program offers it months later, if at all, and then only for six months.

D. The Rate ADR Proposal Is Inadequate and Highlights the Risk that Merger Benefits Will Fail to Materialize.

The Rate ADR Program does not protect automotive shippers either. The Board's rules require applicants to propose measures the Board can take if the anticipated public benefits "fail to materialize in a timely manner."[182] Applicants offer the Rate ADR Program as that measure, but it would take effect only if the Board finds, during oversight, that the benefits have not materialized in a timely manner.[183] Once triggered, the program would last only for the rest of the oversight period.[184] It is modeled on the Board's small rate case arbitration program, which is "currently not operable," and it would end if UP/NS opts into that program.[185]

Even if triggered, the program's limits are severe. It excludes contract service and exempt commodities, which leaves out most automotive traffic.[186] A shipper that does qualify must give

[176] *Id.* at 193 (App. A § 7.1(d)-(f)).
[177] *Id.* (App. A § 6.2).
[178] *Id.* at 192 (App. A § 5.2).
[179] *Id.* at 195 (App. A § 11.1).
[180] *Id.* at 194 (App. A § 10.1).
[181] *See id.* at 190–94 (App. A §§ 1.1, 3.1, 3.4-3.5, 6.2, 10.1).
[182] 49 C.F.R. § 1180.1(c)(1); *see also id.* § 1180.6(b)(11).
[183] UP-80/NS-78 at 9–10, 113–14.
[184] *Id.* at 114; *id.* at 201 (App. B § 12.1).
[185] *Id.* at 114; *id.* at 201 (App. B § 12.2).
[186] *Id.* at 114; *id.* at 199 (App. B § 8.1).

30 days' notice and attend a settlement conference before it can file.[187] It must then prove market dominance, which the program deems absent for any rate below 180% of variable cost,[188] while the arbitrator may not consider the limit price test or the revenue adequacy constraint.[189] The arbitrator has up to 180 days to decide and may order discovery,[190] and either party may then appeal to the Board, with each side bearing its own costs.[191] Relief is capped at $4 million over two years, no rate may be prescribed below 180% of variable cost, and no injunctive relief is available.[192] When a prescription ends, the challenged rate becomes a safe harbor for the rest of the two-year period.[193] And a shipper that chooses the program cannot challenge the same rate before the Board.[194]

The program also reveals something about Applicants' benefits case. As CSX put it, "[a] remedy premised on the possibility that promised benefits will not materialize is not evidence that they will."[195] Applicants built their case on projected benefits, yet their backstop for failed benefits would reach almost no automotive traffic and would expire with oversight. None of Applicants' concessions offsets the harm the transaction would cause automotive shippers, and the Board should give them little weight.

E. Applicants Bear the Burden to Fix the Harm Caused by this Transaction.

This "unprecedented" transaction would convert more than 88,000 county-to-county lanes from interline to single-line service and spread its harms across the national network. The

[187] *Id.* at 198 (App. B §§ 5.1-5.3).
[188] *Id.* (App. B §§ 6.2-6.3).
[189] *Id.* at 198–99 (App. B §§ 6.3-6.4).
[190] *Id.* at 197 (App. B §§ 2.2, 4.2).
[191] *Id.* at 200 (App. B §§ 9.1, 10.1).
[192] *Id.* at 199–200 (App. B §§ 8.3-8.4, 8.8).
[193] *Id.* at 199–200 (App. B § 8.5).
[194] *Id.* at 200–01 (App. B § 11.1).
[195] CSXT-38 at 40 n.21.

Board's rules recognize that modern rail consolidation is likely to cause anticompetitive effects "that are increasingly difficult to remedy directly or proportionally."[196] Identifying every harm in a transaction of this scale, designing a condition for each one, and testing whether those conditions would work would require economists, operating experts, and other consultants. ALEC, AAI, and other shippers do not have those resources, and they should not need them. Shippers and other railroads have already spent significant resources responding to Applicants' filings. Board Member Kloster observed that "[t]he Board should not have to sift through vague language to try and figure out where any deficiencies may be in the Applicants' proposal and what potential conditions could mitigate any harm."[197] Shippers likewise should not bear the burden to determine effective and feasible remedies that can address systemic competitive and other harms.

The law places that burden on Applicants and the Merger Rules require them, not affected parties, to "propose remedies to mitigate and offset competitive harms."[198] They must also explain how the conditions they propose would enhance competition.[199] Applicants have failed to do so.

As already explained, the remedies Applicants have proposed fall short. Also, ALEC and AAI considered, for example, whether broad reciprocal switching could remedy the harm to automotive traffic. However, it likely cannot because the transaction's harms are too broad and systemic to be fixed by a remedy that was intended to apply to one facility at a time. To start, reciprocal switching adds a handoff. The incumbent railroad must pull the car and deliver it to

[196] 49 C.F.R. § 1180.1(c).
[197] Decision No. 37, slip op. at 5 (Kloster, Board Member, concurring).
[198] 49 C.F.R. § 1180.1(c)(2)(i).
[199] *Id.* § 1180.1(c)(2)(iv).

the competing railroad, which adds time and cost to every shipment. Applicants themselves call intermediate switching "inefficient" and count its elimination as a merger benefit.[200] They also reserve the defense that a switch would "materially degrade system fluidity."[201] A remedy that Applicants say slows the network cannot restore the competition the transaction would remove.

The switch fee poses a second problem. A switching remedy works only if the fee lets the competing railroad compete. Here, no one knows what that fee would be. In their own Targeted Access Program, Applicants would quote the switch rate themselves and leave any dispute to arbitration, using pre-merger published rates where they exist and other evidence where they do not.[202] A fee set too high would make the remedy worthless, and the parties may never agree on one.

Further, reciprocal switching cannot fix local service failures. The incumbent railroad would still pull and spot the cars, because only it reaches the facility. As Applicants explain, even with switching, the merged carrier "would still provide first-mile or last-mile service."[203] Yet local service is where rail service often breaks down.[204] As Section IV.A explains, UP/NS could also degrade local spots and pulls involving traffic to be switched to steer traffic to its single-line service. Reciprocal switching would then leave that lever in UP/NS's hands.

VI. THE ALLEGED BENEFITS OF THE TRANSACTION ARE LIMITED AND OVERSTATED

The Applicants claim that new single line service will produce significant efficiencies and other public benefits that support approval of the transaction. Specifically, they claim that

[200] UP-68/NS-66 at 34; UP-80/NS-78 at 138.
[201] UP-80/NS-78 at 193 (App. A § 7.1(f)).
[202] *Id.* at 192 (App. A §§ 3.5-3.6); *id.* at 193–94 (App. A § 7.2).
[203] *Id.* at 51.
[204] *See* JSA Mot. at 49.

eliminating interchanges will reduce transit times by an estimated 20-24 hours.[205] While faster single-line service has some appeal, especially to intermodal shippers of containerized freight moving in international commerce, for ALEC's and AAI's members shipping finished vehicles, those benefits are less critical than service reliability.[206] Adherence to Original Estimated Time of Arrivals ("OETA"), and consistent industry spot and pull performance, are the types of service benefits that are most important for finished vehicle traffic, but those assurances are absent from the application.[207] Moreover, the Applicants have made no promises that new single line service will be priced similarly to today's UP and NS interline traffic. ALEC and AAI are concerned that this service will involve price increases for finished vehicle traffic that is captive to UP/NS.

Applicants also claim that the combined UP/NS will divert an estimated 2.1 million truckloads to its rail network as public benefits that support approval.[208] Even if truck diversions would be meaningful overall, they are especially limited for finished vehicles as Applicants estimate that their service will attract only 5,000 new carloads from truck-to-rail conversions for this traffic.[209] Their diversion analysis also assumes that trucks are selected for movements at or below 250 miles, whereas ALEC and AAI's members estimate 300 miles is more typical.[210] Also, finished vehicle deliveries moving to auto dealers from rail ramps almost always move by truck because many dealers lack rail access, are located in metropolitan areas designed for truck deliveries, and receive smaller volumes compared to a train.[211] Thus, when trucks are selected

[205] Amended App., Vol. 1 (UP-39/NS-37) at 19, 42.
[206] Burkhardt V.S. at 3.
[207] *Id.*
[208] Amended App., Vol. 1 (UP-39/NS-37) at 14, 20.
[209] Amended App., Vol. 2 (UP-40/NS-38) at 405 (Hunt V.S. Ex. 2-4).
[210] *Id.* at 437 (Hunt V.S. § 4.3.1); Burkhardt V.S. at 2.
[211] Burkhardt V.S. at 2.

because a faster delivery is needed or the receiver's facility is not equipped for rail, diversion to the UP/NS system is highly unlikely.

When adopting the 2001 Merger Rules, the Board "strongly caution[ed] applicants not to exaggerate their benefit projections," demanded projections that are "well-documented and reasonable,"[212] and announced its intent "to take a more skeptical 'show me' attitude toward claims of merger benefits."[213] As explained, for finished vehicle traffic, the Applicants' single line service benefits are less critical than service reliability, and the truck diversion benefits are limited and overstated. Thus, the Board should discount these alleged benefits when evaluating the public interest.

VII. THE DOWNSTREAM IMPACTS OF THE TRANSACTION WILL LIKELY LEAD TO MORE MERGERS FURTHER REDUCING COMPETITION

A merger between UP and NS would push CSX and BNSF toward a merger of their own, and even if that merger never occurs, each carrier would be left weaker due to the tremendous market power to be gained by the combined UP/NS. Both outcomes would leave shippers with fewer competitive rail options.

As Section II explains, the 2001 Merger Rules require the Board to weigh how rival carriers will respond to the transaction.[214] Specifically, the Board must determine whether approving "not just the immediate proposal that may be before us, but others like it, would ultimately result in a rail industry structure that continues to provide at least the existing level of

[212] *Major Rail Consolidation Procedure*s, 5 S.T.B. at 560.
[213] *Id.* at 549.
[214] 49 C.F.R. § 1180.1(i).

competitive options for shippers."[215] The Board emphasized this point to Applicants in Decision No. 21.[216]

Applicants have not carried that burden. Their economic witness told the Board that she cannot now predict whether a later Class I merger would reduce geographic competition.[217] Applicants disclosed their own studies of likely downstream mergers only after the Board ordered them produced.[218] They now tell the Board that a network of "two stronger, more efficient transcontinental carriers" would be "fully aligned with the public interest,"[219] because a second coast-to-coast merger would yield benefits for the same reasons this one would.[220]

Applicants concede that, before announcing the transaction, they believed any responsive merger would likely involve BNSF.[221] They now call a BNSF-CSX merger, with or without CPKC, "the most likely structural competitive response."[222] Their own witness estimates that a BNSF-CSX merger would cut UP/NS's projected net diversions by about 692,000 carloads and intermodal units a year.[223] Yet Applicants claim that later mergers would strengthen geographic competition or leave it unaffected, and that the Board should address any harm in the later

[215] *Major Rail Consolidation Procedure*s, 5 S.T.B. at 549–50.
[216] Decision No. 21, slip op. at 30–31 (quoting *Major Rail Consolidation Procedure*s, 5 S.T.B. at 582).
[217] UP-80/NS-78 at 230 (Bailey Supp. V.S. ¶¶ 17–18).
[218] *See* UP-80/NS-78 at 71–74; CSXT-38 at 46.
[219] Amended App., Vol. 1 (UP-39/NS-37) at 96–97.
[220] UP-80/NS-78 at 273 (Israel Supp. V.S. ¶ 37 n.28).
[221] *Id.* at 71.
[222] *Id.* at 73–74.
[223] *Id*. at 328 (Hunt Supp. V.S. § 3.1), *as corrected b*y Errata to Supplemental Verified Statement of David T. Hunt (UP-103/NS-102) at 1, *Union Pac. Corp.-Control-Norfolk S. Corp.*, No. FD 36873 (S.T.B. filed Sept. 11, 2026).

proceeding.[224] That answer never addresses the merits of a two-railroad industry, which is what the Board asked Applicants to do.[225]

A. CSX and BNSF Have Been Vocal About the Competitive Harm They Expect to Experience if the Merger is Approved.

CSX and BNSF have told the Board that the transaction would harm shippers in three ways. First, UP/NS could foreclose competing interline routes. On many of those routes, UP/NS would still haul one leg of the movement while competing against the route with its own single-line service. By raising rates or degrading service on its leg, UP/NS could make the interline option less attractive and steer shippers to its single-line service.[226] Second, on routes that would remain interline, UP/NS could move the interchange deeper into CSX's and BNSF's territory, keeping the long haul for itself and leaving them only a short haul.[227] CSX told the Board that the transaction's "whole rationale" is to weaken the other Class I railroads through "diversion, short-hauling, and other exercises of their transcon-driven market power."[228] Short-hauled carriers would earn less on each shipment and would have to charge captive customers more, cut service, or both.[229] Third, BNSF warned that the transaction would reduce other railroads' incentives to invest.[230]

The scale of the transaction magnifies these harms. By BNSF's count, the combined UP/NS would hold about half of the domestic freight rail market and 53% of Class I merchandise gross ton-miles.[231] Applicants' own witness projects that BNSF, CSX, CN, and CPKC would

[224] *Id.* at 141–43, 149.
[225] *See* Decision No. 21, slip op. at 30–31.
[226] CSXT-38 11–12; *see also Can. Pac. Ry. Ltd.*, slip op. at 65–66.
[227] CSXT-38 at 36.
[228] *Id.*
[229] JSA Mot. at 31–32.
[230] BNSF-46 at 3.
[231] BNSF-24 at 2.

lose up to 4.0% of their total traffic to UP/NS, losses Applicants concede "will be meaningful."[232] Those losses set the stage for the two outcomes discussed below.

B. This Transaction Will Likely Lead to More Mergers Further Restructuring the Freight Rail Industry and Reducing Competitive Options.

It is reasonable to presume that the impacts of the transaction on CSX and BNSF would likely drive them to merge, leaving North America with two transcontinental railroads. That is the "end-game" the Board warned about when it adopted the 2001 Merger Rules.[233] Facing lost traffic and density, CSX and BNSF would have strong reasons to merge so that they, too, could secure long hauls from their captive origins to points across the country.[234] Applicants' own position makes that outcome more likely. Applicants insist that only a merger can deliver the transaction's benefits.[235] Taken at their word, Applicants leave CSX and BNSF one way to compete with UP/NS: a merger of their own.

The result would be two transcontinental railroads, each offering single-line service across its own network and hauling shipments as far as possible before handing them off.[236] No independent railroad would remain to connect shippers with both systems on even terms.[237] Applicants foresee that future and call it good for the public.[238] But they have not shown how shippers would fare with only two transcontinental railroads. That is the inquiry the 2001 Merger Rules require.[239]

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[232] UP-80/NS-78 at 133.
[233] *Major Rail Consolidation Procedures*, 5 S.T.B. at 545, 549, 560.
[234] JSA Mot. at 45.
[235] Amended App., Vol. 1 (UP-39/NS-37) at 41.
[236] JSA Mot. at 45.
[237] *Id.*
[238] Amended App., Vol. 1 (UP-39/NS-37) at 97.
[239] *See Major Rail Consolidation Procedures*, 5 S.T.B. at 549–50.

C. Alternatively, if BNSF Refuses to Merge, the Outcome for CSX Is Even More Bleak, as Its Ability to Be an Effective Competitor Will Be Drastically Diminished.

If BNSF declines to merge, CSX could be left to compete alone against a far larger UP/NS, or to merge with a different partner with a more limited network than BNSF. The Board cannot assume that a responsive merger will rescue the network. As CSX explained, the Merger Rules do not allow the Board to count on a later merger to cure the harm this transaction would cause.[240] The structure the Board must weigh first is the one this transaction would create on its own: one coast-to-coast railroad, checked only by four regional Class I carriers, smaller railroads, and other modes.[241]

BNSF may well decline to merge. Applicants themselves report that BNSF has publicly disclaimed any interest in merging with another Class I railroad, and that the CEO of Berkshire Hathaway, BNSF's owner, has said that Berkshire is not interested in acquiring one.[242] CSX would then bear the greater share of the harm.[243] Because its network closely overlaps NS's in the East, CSX would see more of its traffic and revenue shift to UP/NS.[244] Those losses would feed on themselves. As more interline traffic moved to UP/NS long-haul routes, CSX's costs per mile would rise. CSX would have to raise rates or reduce service, which would push even more customers away.[245] In time, CSX would lose its ability to keep UP/NS in check in the East.[246] CPKC describes the same result: UP would dominate an unbalanced industry, and the other Class I carriers would shrink to much smaller regional railroads.[247]

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[240] CSXT-38 at 45.
[241] *Id.*
[242] UP-80/NS-78 at 71.
[243] JSA Mot. at 45–46.
[244] *Id.* at 45.
[245] *Id.* at 32.
[246] *Id.* at 46.
[247] CPKC-38 at 17.

That outcome cannot be squared with the Merger Rules' goal of "a stable and balanced rail transportation system."[248] A stable and balanced eastern network depends on a strong CSX, and Applicants' open gateway commitments would not preserve one, because a promise to keep gateways open offers little protection for otherwise competitive routes when each remaining carrier has strong incentives to protect its long hauls.[249]

D. Neither Outcome Is Desirable for the Auto Industry, Rail Customers More Broadly, or the Economy and Consumers.

Congress directs the Board to consider "whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region or in the national rail system."[250] The 2001 Merger Rules add that the Board "must ensure that any approved transaction would promote a competitive, efficient, and reliable national rail system."[251] Under either scenario, shippers would have fewer competitive options than they have today. CPKC reached the same conclusion: whether the future brings a "super-dominant UP" or a two-railroad duopoly, neither would serve the public interest.[252]

The auto industry would feel these harms directly because finished vehicles depend on rail. In the CP/KCS proceeding, two of Applicants' own witnesses told the Board that trucks are not a viable option for finished vehicles moving from Mexico to inland U.S. points, and that rail is the only option.[253] Applicants' answer to lost geographic competition is that shippers can expand or build facilities or find new suppliers and buyers.[254] However, an auto assembly plant cannot simply move to find a new railroad. Nor can a vehicle ramp and, as explained above, a

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[248] *Major Rail Consolidation Procedures*, 5 S.T.B. at 546.
[249] JSA Mot. at 46.
[250] 49 U.S.C. § 11324(b)(5).
[251] 49 C.F.R. § 1180.1(b).
[252] CPKC-38 at 5, 17.
[253] Rocker/Turner V.S. at 17.
[254] UP-80/NS-78 at 39.

region typically has only one major automotive ramp per railroad. The transaction would also pull automotive traffic off the rival networks. Applicants' witness projects that CSX's automotive volume in the New York–New Jersey area would fall 23.4%, and that BNSF's automotive volume in San Antonio would fall 30.8%.[255]

The harm would not stop with the auto industry. Captive shippers across every sector would face higher rates and weaker service.[256] BNSF warned that the merger would raise rail transportation costs, push up consumer prices, and hurt American manufacturers that compete abroad.[257] CSX added that shippers who depend on rail gain nothing from tougher competition with trucks, and that a loss of rail competition only harms them.[258] CSX also noted that Applicants have not estimated any rate reduction on existing or diverted rail traffic. When the Board asked, Applicants said only that they expect to charge market rates to the extent competitive pressure requires.[259] A two-railroad industry would leave less of that pressure.

A transaction that pushes the industry toward two transcontinental railroads, or leaves CSX to face UP/NS alone, fails both the statute and the Merger Rules.

VIII. CONCLUSION

For the foregoing reasons, ALEC and AAI do not believe that the Applicants have met their heightened burden of proof under the 2001 Merger Rules or that the transaction serves the public interest. Therefore, they request that STB to deny the Application.

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[255] *Id*. at 357–59 (Hunt Supp. V.S. § 6.8.1).
[256] JSA Mot. at 31–32.
[257] BNSF-46 at 3.
[258] CSXT-38 at 38.
[259] UP-80/NS-78 at 104–05; *see also* CSXT-38 at 5, 44.

Respectfully submitted,

/s/ Karyn A. Booth

Karyn A. Booth
Jason D. Tutrone
Benjamin Idzik
Thompson Hine LLP
1999 K Street, N.W., Suite 600
Washington, DC 20006
202.331.8800

Attorneys for the Automotive Logistics Executive Committee and Alliance for Automotive Innovation

November 18, 2026

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of November, 2026, a copy of the foregoing Comments was served by electronic mail or first class mail on the service list for Finance Docket No. 36873.

/s/ Karyn A. Booth
Karyn A. Booth

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BEFORE THE SURFACE TRANSPORTATION BOARD

Docket No. FD 36873

UNION PACIFIC CORPORATION AND UNION PACIFIC RAILROAD COMPANY
—CONTROL—
NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY

Verified Statement of Mr. Bryan Burkhardt

1. My name is Bryan Burkhardt. I am the Executive Director of the Automotive Logistics Executive Committee ("ALEC"). I have held this position since 2019. ALEC represents major automotive manufacturers to achieve consensus in the automotive industry to drive change and process improvement in rail and highway transportation service.

2. Prior to serving as the Executive Director, I served as the Chair of ALEC membership for four years while I was employed by General Motors.

3. I was employed by General Motors for 33 years, where I served in a variety of roles, including aftersales, operations, supply chain and logistics. From 2012 to 2018, I was the GM executive with responsibility over finished vehicles.

4. I am submitting this verified statement as part of the comments submitted to the Surface Transportation Board ("STB" or "Board") jointly by ALEC and the Alliance for Automotive Innovation ("AAI") in STB Finance Docket 36873, *Union Pacific Corp. and Union Pacific Ry.—Control—Norfolk Southern Corp. and Norfolk Southern Ry. Co.* The purpose of this statement is to explain the importance of rail transportation to the finished vehicle supply chain and the automotive industry's need for competitive, efficient, and reliable rail service.

5. The information provided in this statement is based on my decades of personal experience working in and on behalf of the automotive industry.

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6. The finished vehicle supply chain is highly dependent on competitive and cost-effective rail transportation for the distribution of cars and light trucks throughout North America. For domestic shipments, automotive production and assembly plants tender finished vehicles to freight railroads who transport the vehicles to distribution centers often referred to as "rail ramps" throughout the United States. The ramps are owned, operated, or accessed by the freight railroads where the vehicles are offloaded, parked, and re-configured for final delivery by truck to auto dealers.

7. Rail is used by automotive manufacturers for high-volume, longer distance movements of approximately 300 miles or more. Also, many automotive plants have infrastructure designed for rail and are not configured to load vehicles using hundreds of trucks. AAR estimates that nearly 75% of finished vehicle shipments are transported by rail.[1]

8. Trucking vehicles from automotive plants directly to dealers is used for smaller volumes, shorter-distances, or in special circumstances where a shipment is deemed critical or extremely time-sensitive. Final deliveries of finished vehicles from rail ramps to auto dealers almost always move by truck because many dealers lack rail access, are in metropolitan areas designed for truck deliveries, and are equipped to receive smaller volumes as compared to a trainload of vehicles.

9. Rail offers automotive manufacturers of finished vehicles efficiencies and economies of scale for longer distance movements. The typical load factor for automotive tri-level railcars is 15 passenger cars and around 9 SUV/Trucks for bi-levels; whereas the typical load factor on a truck hauler is 9 passenger cars and 6 SUV/Trucks.

[1] Ass'n of Am. R.Rs., *Freight Rail & Automotives* (fact sheet), https://www.aar.org/wp-content/uploads/2023/07/AAR-Automotives-Fact-Sheet.pdf (last visited Nov. 6, 2026).

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10. Reliable rail service is extremely important to automotive manufacturers to ensure that finished vehicles are distributed across the United States in a timely manner to meet the demand of auto dealers, American consumers, and the domestic and global economies. Union Pacific Railroad highlights the public benefits that it claims will occur from faster single line service if its proposed acquisition of Norfolk Southern Railway is approved. Although faster rail service can be beneficial, it is not as critical as service reliability and consistency since most vehicles go to dealer inventory. Railroads' adherence to Original Estimated Time of Arrivals ("OETA"), and consistent industry spot and pull performance, are the types of service benefits that are most important for finished vehicle traffic.

11. Automotive producers have serious concerns that the Union Pacific's proposed acquisition of Norfolk Southern would result in serious service disruptions which have occurred in prior rail mergers. This transaction is far larger in size and will involve the complex integration of rail operations and systems.

12. Automotive companies are also concerned that the transaction will lead to significantly higher freight costs. The combined UP/NS will gain massive market share and power if the transaction is approved and approximately 38% of ALEC's members' auto production facilities are sole served by either UP or NS limiting their leverage and options to mitigate significant price increases.

13. If the STB approves the transaction and automotive manufacturers who must ship vehicles on UP/NS incur significantly higher freight costs and experience service disruption there is a substantial risk that serious adverse impacts on the automotive supply chain and American consumers will occur.

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VERIFICATION

I, Bryan Burkhardt, verify under penalty of perjury that the foregoing is true and correct. I certify that I am qualified and authorized to file this statement.

Executed on this 13th day of November, 2026

Signed by:
Bryan Burkhardt
044753AA4527495...

Bryan Burkhardt