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ENTERED
Office of Chief Counsel
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By e-filing and by email to alj.soulikias.inbox@stb.gov

The Honorable Jenifer J. Soulikias
Administrative Law Judge
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Re: Finance Docket No. 36873, *Union Pacific Corporation, et al.*—Control—*Norfolk Southern Corporation, et al.* — Letter brief of Brian S. Smith on discovery disputes with Norfolk Southern for the November 25, 2026 conference (Discovery Guidelines, Decision No. 24, Section F.1)

Dear Judge Soulikias:

Under Section F.1 of the Discovery Guidelines, I ask that the disputes below be placed on the agenda for the November 25, 2026 conference. To the extent 49 C.F.R. § 1114.31(a) applies, this letter is also my motion to compel. The relief I ask for is in Part 7. My Comments and Request for Conditions, filed November 18 ("Comments"), raise these subjects with the Board; this letter concerns only discovery. I begin with why I am asking, because I did not explain it well enough on November 13.

1. Why I am asking

I am an electrical engineer by training, not a lawyer. For more than twenty-five years I have designed and built fiber, microwave and wireless networks, in work that has covered twenty-five states. After enough of them, you learn to read a site. For most of the history of railroad regulation, a railroad's communications were wires on a pole line beside the track. We are a long way past poles and wires. Norfolk Southern tells the Board that it has "12,500 track miles with CTC, the vast majority of which is controlled wirelessly through NS's Interoperable Train Control Messaging communications network and associated infrastructure" (Safety Integration Plan at 102; NS-125, Ex. 2). CTC stands for Centralized Traffic Control, and Norfolk Southern dispatches from one center in Atlanta that "is in charge of every aspect of train operations from origin to destination" (Safety Integration Plan at 38, 139). The associated infrastructure is towers, shelters, radios and the links between them (Comments, Ex. 2, Fig. 1). It is one centralized network. It is what lets a train move or holds it. The Applicants propose to join it to a second network of the same kind.

Everything I have asked concerns that infrastructure, and I cannot find it in this record. My search of the Safety Integration Plan's text found none of the words tower, shelter, microwave, fiber, asbestos or movable bridge. When the Board's environmental staff asked about capital projects, the answer was that "[t]he PTC/CTC projects referenced in Section IV of the Service Assurance plan are not included in this submittal" (UP's Apr. 30, 2026 Response to Information Request No. 3 at 5). I do not criticize anyone's review. The reviews follow the railroad as it has always been; what runs on these sites is new. Norfolk Southern's answer, in its November 10 letter, is that the FCC "regulates the radio frequencies used by NS and, by extension, the radio equipment and structures such equipment is housed on, not the Surface Transportation Board" (NS-125 at 2 n.3). Of my 118 requests it answered two, both about the FCC: that the transaction "is subject to the FCC's authority under 47 U.S.C. § 310(d)," and that "transfer of control applications will be filed" (Nov. 5 Admission Responses at 10; First Set Responses at 26). The FCC's consent concerns the licenses. In my view, the sites on which they operate, and the safety of the people sent to work on

them, are part of the transaction before the Board. And the Applicants' own schedule puts the detailed integration plan in the two years after closing (Safety Integration Plan, Appendix 1 (rev. Aug. 14, 2026), item E.2). My questions come down to three things. If Norfolk Southern had a list for each, I would not be asking. It has not said whether it has one.

2. What I asked and what came back

Norfolk Southern has now responded to all 118 of my requests, in papers dated October 29 and November 5, 9 and 12. Besides its two answers about the FCC, it said of one request that the Safety Integration Plan "speaks for itself." To the other 115 it objected and gave no answer. Of 82 requests for admission, it admitted none and denied none. It has produced no document and promised none. In 93 responses it objects that the request seeks non-public information, citing my own instruction that I receive only public material. Under the same objections, on November 10, it gave the City of Decatur something on each of seven interrogatories, including a commitment to "conduct a reasonable search and produce nonprivileged documents" (NS's Nov. 10, 2026 Responses to Decatur at 3–12). On November 11, I limited my first two groups to structures that Norfolk Southern or its subsidiaries own, and on November 12 I sent the list of 227. At the November 13 conference I deferred the four First Set groups so that I could read the Safety Integration Plan, which Norfolk Southern's counsel sent me that day. On November 14, I asked Norfolk Southern to meet and confer on my Second and Third Sets. Its counsel offered times on November 16; on November 17, I proposed November 18 and listed every request raised in this letter. Because my Comments were due that day, I asked to move the call; it is set for November 20. I will report what it resolves in my letter of November 23 (Decision No. 44, ordering ¶ 2(d)).

3. First: the old buildings and the people sent into them

Norfolk Southern's FCC registrations list 498 antenna structures as its own. That list is a window, not the whole portfolio. Registration is generally required only for structures more than 200 feet tall or near airports (47 C.F.R. §§ 17.4(a), 17.7; 14 C.F.R. § 77.9). Age has nothing to do with it, and Norfolk Southern itself says there "could be thousands" of structures (NS-125 at 3). Through that window, by the construction dates entered in its registrations, 227 were built before 2000 and 147 in 1980 or earlier (Comments, Ex. 1, Table 2; Ex. 2, Fig. 3). The date is the tower's, not the shelter's beside it, and a date is not a finding. But in my experience, buildings of that era were commonly built with asbestos-containing materials, and often painted with lead-based paint, because that was the standard of the time. It was not a shortcut. Federal law draws the same line: thermal system insulation and surfacing material in a building constructed no later than 1980 is presumed to contain asbestos unless rebutted, and before covered work begins the owner must determine the presence, location and quantity of that material, tell the employers bidding on the work and its own employees, and keep a record of that notice (29 C.F.R. § 1926.1101(b), (k)(1)–(2), (k)(5), (n)(6)).

The equipment is not always in a shelter of its own. It can be a room in an older building, a floor of it, or its roof, and my requests reach those places too. Interrogatory No. 16 asks for counts: how many shelters were built before 1981 or sit in buildings built before 1981, how many have been surveyed, and how many were found or presumed to contain asbestos. Norfolk Southern objected "to the extent it would require a new environmental survey, inspection, building-by-building compilation, or special study not maintained in the ordinary course of business" (First Set Responses at 21–22). I asked for no survey. Either the surveys exist and can be counted, or they do not, and the Board should know which. Interrogatory No. 5 asks about the buildings themselves, including whether any carries an unsafe, restricted-access or do-not-enter designation. Norfolk Southern objected, citing "a new comprehensive building inventory or study" (id. at 10). A count is not a study.

Then there is who goes in. The Application says the railroads "will continue existing relationships with their respective contractors for at least the first six months after the merger," and that "[a]ny NS contractors with an exemption for 49 C.F.R. Parts 219 and 243 will undergo a review to determine if the exemption will be sustained or revoked per UP's standards" (Turner V.S.

¶¶ 327–328, Rev. Appl. 2-1002 to 2-1003). Part 243 is FRA's training rule. Paragraphs 326 to 328 name no training in radio-frequency exposure or in work on communications towers. The Applicants' labor-impact table shows no communications positions abolished, created or transferred in any year (Turner V.S., Table 15, Rev. Appl. 2-979, as corrected by UP-100/NS-99, Att. 8), and I did not find where it says who will do this work.

So I asked whether contractors will do part of the integration field work (No. 18); whether Norfolk Southern requires contractors who work on its signal and communication systems to be trained and qualified under Part 243 (Nos. 33 and 35) and keeps the record that rule describes (No. 36); and whether the Safety Integration Plan identifies training for the employees and contractors who will maintain or upgrade communication systems during integration (Nos. 38 and 39). Norfolk Southern admitted or denied none, and none draws a special-study objection. To No. 18 it objected that the request calls "for speculation about future decisions that have not yet been made" (Second Set Responses at 4). On November 13, 2026, the FAA issued a nationwide ground stop. The Secretary of Transportation said the next day that a contractor had been doing routine maintenance at a remote FAA location when a router began flooding other routers in the air traffic control system with data; the FAA says the root cause is still being investigated (Comments at 11 & n.26). I cite it for one point: a problem at one remote site can spread across a network.

4. Second: the towers

The FCC's registration gives each structure's location, height and construction date. It says nothing about condition (Comments, Ex. 1, Map 1; Ex. 2, Fig. 3). An older tower is not unlawful. But antennas and lines are added and changed over a tower's life, and people climb it to do that work. Norfolk Southern's published guidelines tell its contractors to examine and test a tower before climbing it (Operating Guidelines for Contractors § 9.2 (eff. Aug. 20, 2020)). I am asking what the owner knows before the climber gets there.

For the 227, which leave out the 269 registered as built in 2000 or later, I asked for the date, standard revision and recorded conclusion of the most recent structural analysis of each, and a count of those with none (Request for Production No. 2, as narrowed). I know of no federal rule that requires such an analysis to be made or kept, which is why the count matters. And I asked six yes-or-no questions: whether integration is expected to change equipment at its sites (No. 16); whether it replaced at least one tower between May 19, 2013 and October 1, 2026 (No. 45); whether its ordinary records can show the number and cost of such replacements (No. 51); whether it requires a structural analysis before antennas or lines are added or changed on a tower (No. 53); whether it expects integration to require at least one replacement (No. 54); and whether it has estimated that cost (No. 55). None of the six draws a special-study objection. To No. 51, Norfolk Southern objected that the request "assumes NS maintains a comprehensive tower-replacement inventory" (Second Set Responses at 23). If it does not, the rule still calls for an answer: a denial, or a qualified answer stating what its records do show (49 C.F.R. § 1114.27(a)).

Here is why I asked what Norfolk Southern has spent replacing towers and shelters, and how often (Interrogatory No. 18; Request No. 14, as narrowed). At an old site, one job seldom stays one job. Taking down an old shelter means an asbestos inspection first (40 C.F.R. § 61.145(a)). New equipment or a changed antenna means a fresh look at radio-frequency exposure (47 C.F.R. § 1.1307(b)) and at what the tower can carry. In my experience across the industry, that is often how a shelter replacement becomes a rebuild of the whole site. Norfolk Southern says there is "no nexus" between this transaction and what it has paid to replace these structures (NS-125 at 3). The nexus is this: what it has paid, and how often, is the best evidence there is of what integration work at its old sites will cost. I also asked whether other companies' equipment is on Norfolk Southern's structures and whether its structural analyses account for it (Interrogatory No. 21). I have seen, in the FCC's public license records, other companies' antennas filed at structures Norfolk Southern has registered. A filing is not proof of a lease, but in my experience an owner does not add another company's antenna without a structural analysis. Where that was done, the analysis exists and can be counted; where it was not, the owner's own records are all there is. Norfolk Southern objected (First Set Responses at 26–27).

5. Third: the bridges

The Coast Guard's drawbridge regulations provide for the remote operation of eight Norfolk Southern railroad bridges over navigable waters (Comments at 8 & n.19). I am not saying anyone broke a rule. For the Tombigbee River bridge, the regulation provides that the draw is operated remotely from Norfolk Southern's "bridge control center in Decatur, Alabama" (33 C.F.R. § 117.118(b)(3)). Asked to admit that, Norfolk Southern objected that "remotely operated" is vague and that the request seeks non-public information (Third Set Responses at 2). The Lake Pontchartrain bridge in Louisiana is also to be operated from Decatur (33 C.F.R. § 117.467(b)).

My question is an engineer's. In my professional judgment, a bridge operated from somewhere else should have two physically separate paths back to its operator, not two routes through a single router. For these bridges, some of the Coast Guard's rules name the place from which the bridge is operated and some do not; none describes the link, and I have found nothing in the public record that says what carries it. My search of the Safety Integration Plan's text found no mention of the bridges.

It matters on the water. The Coast Guard has received complaints that the remote drawtender at Norfolk Southern's Sandusky Bay bridge "ignores telephone and radio calls from mariners" (90 Fed. Reg. 13412 (Mar. 24, 2025)). I do not believe a railroad employee would knowingly ignore a call about a bridge. The drawtender for that bridge is in Toledo, not at the bridge, so a boat's call has to be carried there. From the boat, a call that does not arrive looks the same as a call that is ignored. The Coast Guard answered with a communications fix: a telephone and a radio requirement. That points to the system, and the system is what I am asking about. I ask whether integration will move the operation of any of these bridges (Request No. 81), where each is operated from and whether a change is expected (Interrogatory No. 22(a) and (d)), and how many of the eight have more than one kind of path (No. 22(b), as a count). Norfolk Southern answered none of these (Third Set Responses at 17–19).

6. One centralized network, and what integration does to it

All three turn on what integration will do, and here Norfolk Southern's two papers part ways. Its discovery responses call every integration request irrelevant. Its letter to you calls integration "a topic that is implicated in the proceeding," says the documents "largely do not exist," and adds that "the parties have exchanged some information related to integration, but not at the level of detail that the requests seek" (NS-125 at 4). That is counsel's argument. Interrogatory Nos. 6 and 7 ask for it in a signed and verified response and say, "If none exists, so state." The Safety Integration Plan says the Applicants "have already completed a detailed assessment of their respective railroad IT operations" (at 167). Whether that assessment reached the communications network is a yes or no. Interrogatory No. 17 asks whether any cost of bringing these structures, buildings or the network into compliance was identified, estimated or reflected in a valuation, due-diligence, purchase-price or synergy analysis. Its letter says there is "no transaction-specific compliance cost," without conceding that any exists (NS-125 at 3). A verified yes or no closes it.

Norfolk Southern's other answer is that the vast majority of its structures "are unaffected by the transaction because of the extremely limited overlap of the UP and NS networks" (NS-125 at 3). Overlap is about where two networks meet on a map. Integration is about whose systems run on both. The Applicants' own plan says the two PTC back offices will be integrated "into a single PTC back-office system" (Safety Integration Plan at 106; NS-125, Ex. 2). It keeps the signal and train control systems in place until a review, after which the Applicants "will develop a plan" (Safety Integration Plan at 105). Where it does name a choice, about a dozen times, it is Union Pacific's program, standard or system; I found none that is Norfolk Southern's. In my experience, in a merger of communications systems the buyer's systems are usually the ones that stay. A change of that kind could reach any Norfolk Southern site, wherever it sits on the map.

Union Pacific has now said seventeen times, in thirteen objections to my requests for admission and in four interrogatory responses, that "integration planning is ongoing" and that final decisions about these sites, structures, shelters, equipment or the network have not been made

(UP's Nov. 6, 2026 Responses at 5–31; UP's Nov. 16, 2026 Responses at 3–8). Asked whether it received from Norfolk Southern any inventory, structural analysis or condition assessment of them, it gave no answer and objected that "the underlying materials, to the extent they exist, originate with NS and are within the possession, custody, or control of NS" (Nov. 16 Responses at 15–16). Union Pacific sends me to Norfolk Southern. Norfolk Southern's counsel wrote on November 17 that seven of the requests raised here (Second Set Nos. 16, 18, 35, 54 and 55; Third Set No. 81 and Interrogatory No. 22(d)) are among those "NS believes UP, as the buyer, has responsibility for." Each asks what Norfolk Southern itself requires, expects or has estimated; if it has made no determination, it can say so. I ask for no protected document. A yes or no, a count, or a statement that none was located does not on its face disclose "confidential or proprietary business information" (Decision No. 45 at 5–6, quoting the Protective Order), and the Discovery Guidelines provide for redacted service on a party that has not signed the undertaking (Decision No. 24 § D.2).

7. Relief requested

An order directing Norfolk Southern, in public form, within ten business days of the order for answers and admissions and within 21 days for documents (see Decision No. 24 §§ E.1–E.2), (1) to answer Interrogatory Nos. 6, 7, 17 and 18 and to produce under Request for Production Nos. 2, 4, 13 and 14 of my First Set, each as narrowed in Part 3 of my November 5 letter brief and in my November 11 letter; (2) to answer Interrogatory Nos. 5, 16 and 21 of my First Set, with counts accepted in place of building-by-building detail and without the revenue figure in No. 21; (3) to admit or deny Request for Admission Nos. 16, 18, 33, 35, 36, 38, 39, 45, 51, 53, 54 and 55 of my Second Set; and (4) to admit or deny Request for Admission No. 81 and answer parts (a) and (d) of Interrogatory No. 22 of my Third Set, and part (b) as a count of the bridges whose control link uses more than one of the listed classes of path. Interrogatory answers should be signed and verified as 49 C.F.R. § 1114.26(a) provides. Wherever a request so provides, a statement that none was located after a reasonable search, or that no determination has been made, is a complete answer. The standard is set out in Part 1 of my November 5 letter brief (49 C.F.R. § 1114.21(a)(1)–(2); Decision No. 44 at 1–3). The requests in my three sets that are not raised here are reserved, not withdrawn; I ask again that the conference confirm that Section F of the Discovery Guidelines governs the timing of any later conference on them and, to the extent 49 C.F.R. § 1114.31(a) applies, that my time to move on them be extended to a date the ALJ sets.

If Norfolk Southern keeps a list of its own structures, with what is in the buildings and what the towers were built to carry, these requests are queries and the answers are counts. If it does not, that is itself an answer the Board should have before two centralized networks are joined.

Respectfully submitted,

/s/ Brian S. Smith
Brian S. Smith
Party of Record, Finance Docket No. 36873

Enclosure: Comments, Exhibit 1, Map 1, and Exhibit 2, Figures 1–3, as filed (four pages)
cc: Counsel for Norfolk Southern (by email)

CERTIFICATE OF SERVICE

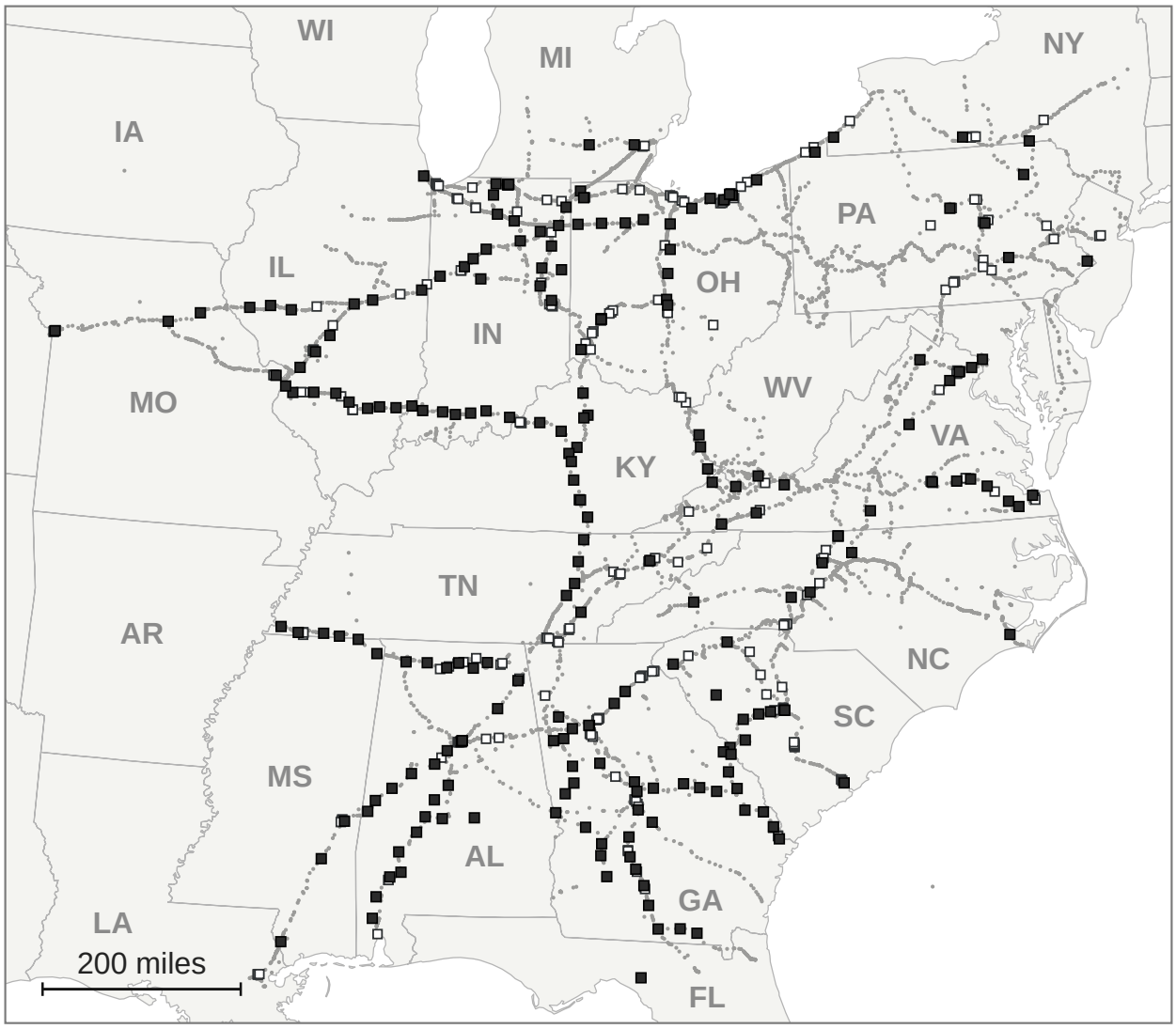
I certify that on November 19, 2026, I served the foregoing letter brief by email on Administrative Law Judge Jenifer J. Soulikias and on each party of record in Finance Docket No. 36873 with an email address on the Board's service list. I will serve it by first-class mail on November 20, 2026 on each party of record without an email address on that list, including the Secretary of Transportation and the Attorney General of the United States, and on each party of record whose email address fails to deliver, and will then file a supplemental certificate of service.

/s/ Brian S. Smith
Brian S. Smith

Every map and count in this exhibit is built from public records of the Federal Communications Commission and the Federal Aviation Administration. Anyone can download the same files and reproduce them by the method stated at the end of this exhibit.

EXHIBIT 1

Map 1. Norfolk Southern's Licensed Sites and Registered Antenna Structures



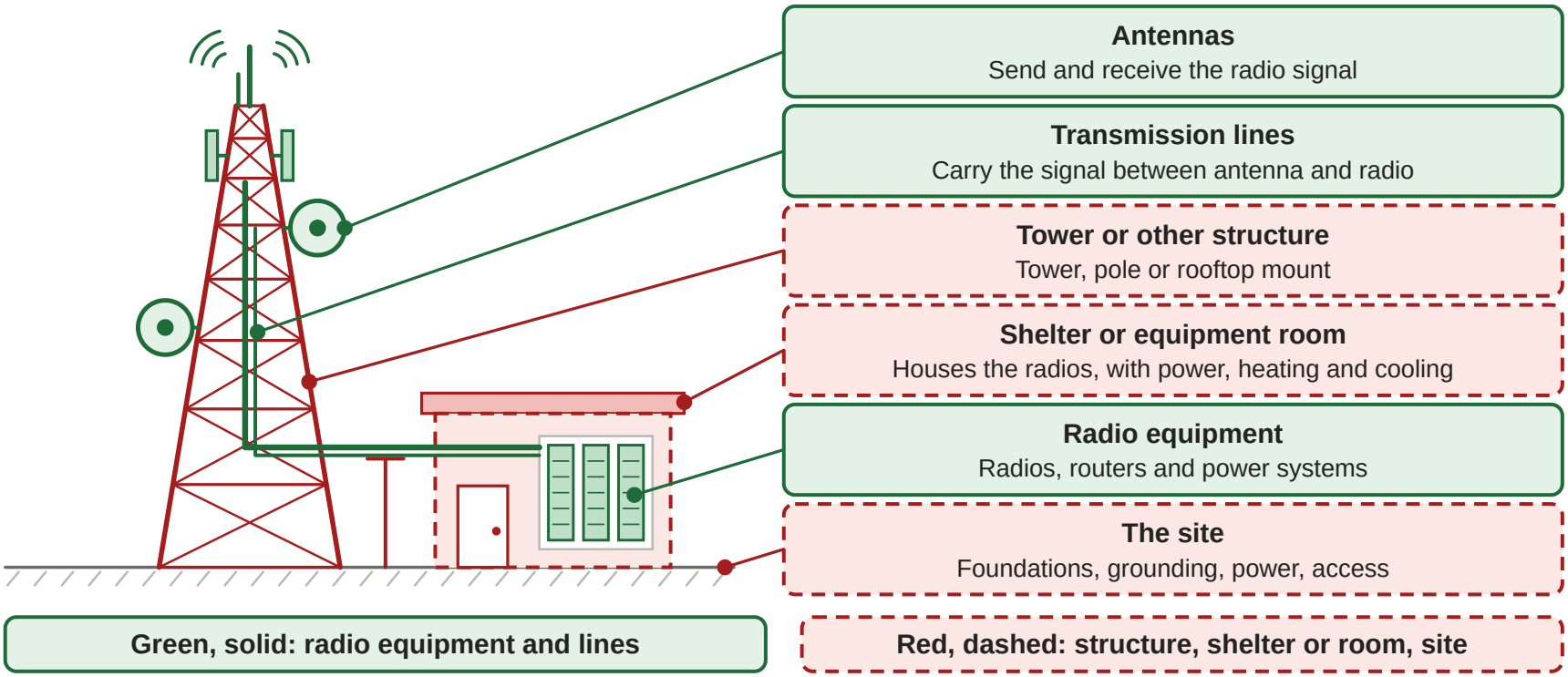
- Licensed site: a fixed location, or a group of fixed locations each within 50 meters of another, on active FCC licenses held by Norfolk Southern (6,364 sites).
- ■ Antenna structure registered to Norfolk Southern, construction date before 2000 (227).
- □ Antenna structure registered to Norfolk Southern, construction date 2000 or later (269) or none on file (2).

Locations are plotted as filed with the FCC; one licensed location plots offshore at its filed coordinates. No paths or routes are shown. Construction dates are those the owner entered. A filled square marks only a construction date before 2000. It says nothing about a structure's condition or its compliance with any rule.

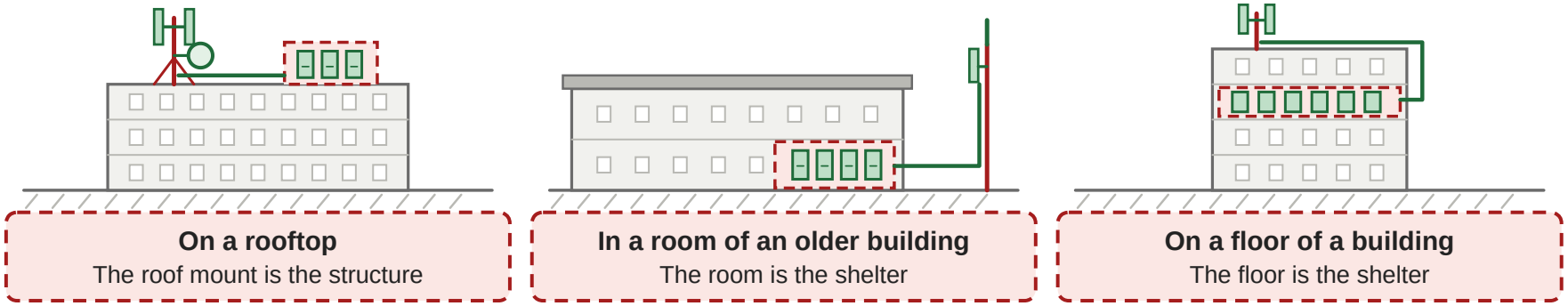
Figure 1 is a schematic. Figure 2 is drawn from the Applicants' filings at the pages it cites. The counts in Figure 3 are those in Exhibit 1.

EXHIBIT 2

Figure 1. A Communications Site



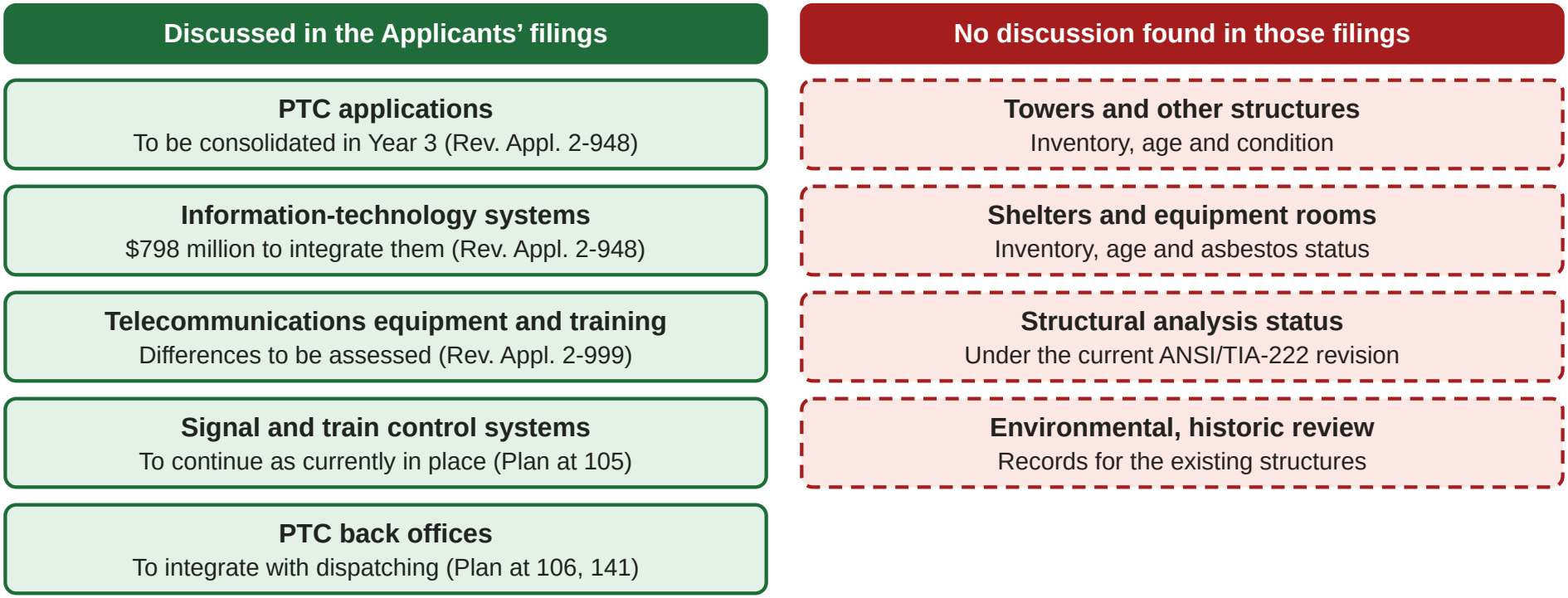
The same equipment is not always at a tower with a shelter of its own. It is also found:



Schematic from general engineering practice; not to scale and not a drawing of any actual site or building. The smaller drawings show other places the same equipment is found. The terms follow the definitions in my First Set of Discovery Requests to Norfolk Southern (Nos. 5 to 7, 9 and 10).

EXHIBIT 2

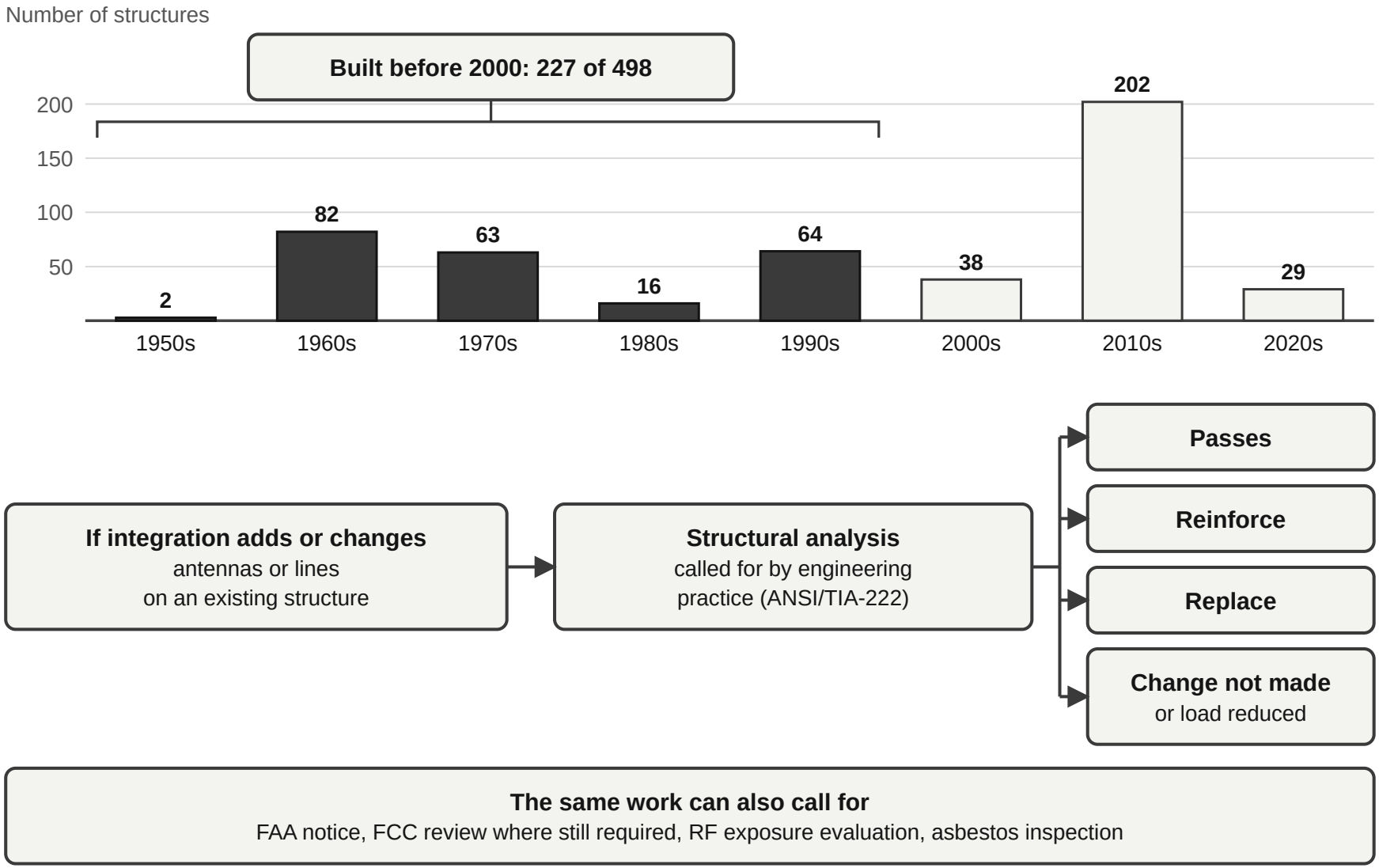
Figure 2. What the Applicants' Filings Discuss, and What They Do Not



Sources: Revised Application at 2-948 and 2-999 (Turner V.S. ¶¶ 183, 184, 317); Safety Integration Plan at 105, 106 and 141. A search of Volumes 1 and 2 of the Revised Application and of the Safety Integration Plan found no discussion of the structures, shelters and sites those systems run on. Terms not found in Volumes 1 and 2 include "microwave," "radio" (other than inside "radioactive"), "shelter," "TIA-222" and "Section 106." The Revised Application speaks to historic properties generally at 1-72; the last row concerns review records for the existing communications structures. A red, dashed row means only that no discussion was found. It says nothing about any structure's condition or its compliance with any rule.

EXHIBIT 2

Figure 3. When Norfolk Southern's Registered Structures Were Built, and What an Equipment Change Sets in Motion



Construction dates are those the owner entered in its FCC antenna structure registrations (file of November 4, 2026); two of the 498 structures carry none, and only registered structures are counted. Dark bars: built before 2000. A bar shows only when structures were built; it says nothing about any structure's condition. The flow shows engineering practice. I know of no federal rule that requires the analysis; whether Norfolk Southern requires it is the subject of my Request for Admission No. 53 to Norfolk Southern. RF means radio-frequency.