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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

CSX TRANSPORTATION, INC.'S COMMENTS REGARDING CONDITIONS

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The proposed UP/NS merger would create a single transcontinental railroad that concentrates more than half of all U.S. rail traffic under a carrier with unmatched reach across the country. A single, dominant railroad of this size and power could and would inflict pervasive structural harm on the national freight rail network. V.S. Carey at 41-45. No set of conditions can repair that structural damage, and the merger's harm to competition clearly outweighs any purported benefits. *Id.* at 143. The benefits UP/NS claim would result from their combination could largely be accomplished without a merger or would flow to UP/NS rather than to shippers. V.S. Monaco ¶¶ 134-68.[1] CSXT, along with many shippers, believes the only outcome here consistent with the governing legal standard is a finding that this merger would not serve the public interest, and therefore should be denied outright.

CSXT nonetheless recognizes the Board will want to examine potential remedies to evaluate their efficacy. We therefore discuss below certain conditions that could offset some of the most acute competitive harm the merger would cause. We raise them primarily to illustrate for the Board how utterly insufficient they are to preserve the full scope of rail competition that exists today. But in the unlikely event the Board were inclined to approve this merger, CSXT would necessarily be obligated to its customers, employees, and shareholders to consider certain targeted remedies to remain as competitive as possible as long as possible.

Under the 2001 Rules, the Board reaffirmed its authority to use its conditioning power to mitigate or offset all types of merger-related harms to the public interest—competitive, service-

[1] Unless otherwise indicated, citations herein to exhibits ("Ex.") and verified statements ("V.S.") refer to materials attached to CSX Transportation, Inc.'s Comments (CSXT-46), filed November 18, 2026, in *Union Pac. Corp.–Control–Norfolk S. Corp.*, Docket No. FD 36873. Citations identifying a particular Responsive Application submitted by CSXT refer to Exhibits and verified statements attached to that Responsive Application and are identified as "Exhibit."

related, and structural alike. *Major Rail Consolid. Procs.*, 5 S.T.B. 539, 559 (2001) ("*2001 Rules*"). Under past Board policy and caselaw, a condition is appropriate where four elements are satisfied: the consolidation may produce effects harmful to the public interest; the proposed condition will ameliorate or eliminate those effects; the condition is operationally feasible; and the public benefits from reducing or eliminating the harm outweigh any reduction in the transaction's public benefits. *Can. Pac. Ry. Ltd. —Control—Kan. City S.* ("*CP/KCS*"), Decision No. 35, FD 36500 (S.T.B. served Mar. 15, 2023), slip op. at 20-21 (citing *Burlington N., Inc.—Control & Merger—Santa Fe Pac. Corp*. ("*BN-SF"*) (Decision No. 38),10 I.C.C.2d 661, 729 (I.C.C. decided on Aug. 16, 1995)).

Although the pre-2001 standards do not apply in this case, each condition CSXT raises here satisfies those standards. Each is tailored to a specific, demonstrable harm caused directly by this transaction. Each is designed to restore a competitive option the merger would eliminate or materially degrade, not to remedy a preexisting problem or improve CSXT's competitive position beyond what it holds today. Each is operationally feasible. And the public benefits each condition would produce certainly outweigh any burden imposed on a merged UP/NS.

The conditions CSXT raises are calibrated to the reality that the risks this merger creates are broad, cumulative, severe, and likely permanent. Each targets a specific, transaction-caused harm, and together, they seek to sustain parts of the competitive integrity of today's rail network. While these conditions alone are by no means sufficient, they hopefully would support a degree of continued competition for some period of time. To this end, CSXT's conditions fall in four categories:

- Physical Access Conditions. These conditions are all the subject of responsive applications through which CSXT would obtain (1) access to Kansas City through a 50% divestiture of UP's Kansas City-East St. Louis Line, full lease of Neff Terminal, lease of up to 100% of Neff Yard, and divestiture of NS's ownership interest in the Kansas City

Terminal Railway ("KCT"); (2) trackage rights over NS between Lurgan, PA and Manville, NJ; and (3) trackage rights over NS and its NPBL subsidiary to Norfolk International Terminal.

- Conditions on Dispatch Control. These conditions address the ability and incentive of a combined UP/NS to use its post-merger control of dispatch on jointly used lines to degrade CSXT's service quality by (1) providing CSXT with control of dispatch over the Villa Grove Subdivision; and (2) creating a neutral dispatcher to oversee New Orleans gateway dispatching.
- Conditions to Preserve Joint Assets and Collaborative Arrangements. These conditions address the ability and incentive of a combined UP/NS to use its post-merger dominance over jointly owned assets and collaborative arrangements to degrade those assets for shippers and carriers that remain reliant on them, including conditions requiring (1) divestiture of sufficient BRC ownership to eliminate UP/NS's ability to form a supermajority-blocking coalition with any single co-owner; (2) reformation of the IHB governance agreements to prevent UP/NS from obtaining veto power over IHB governance; (3) appropriate governance protections for TRRA; and (4) reduction of UP/NS's TTX ownership below the threshold of effective control and a prohibition on TTX withdrawal during the oversight period.
- Elimination of the Meridian Speedway Paper Barrier. This condition addresses the ability and incentive of a combined UP/NS to use its exclusive rights over the Meridian Speedway to serve certain markets to foreclose BNSF (and potential connections to CSXT) from them, by abrogating the paper barrier that prohibits the carrier controlling the line from competing or permitting competing operations.

I. Access Conditions to Mitigate Certain Anticompetitive Conduct.

A. Kansas City – East St. Louis: 50% Divestiture of the Kansas City to East St. Louis Line, Full Lease of Neff Terminal, and Up to 100% Lease of Neff Yard.

UP's own statements leave no doubt that the merger eliminates meaningful competition on the Kansas City to East St. Louis ("KC-ESL") corridor and that a remedy is not only called for but already anticipated by UP/NS themselves. For example, at a conference in September 2026, UP's

CEO Jim Vena acknowledged the motivation behind UP's Memorandum of Understanding with CN and proposed divestiture of UP's line on the KC-ESL corridor: "[Y]ou need to deal with concentration of railroad against customers, and that is what we had. [Post-merger, UP/NS] would end up with three rail tracks between our two that we have today, plus we would take over the [NS] one. We needed to do something with that. You cannot have that."[2] In addition, on UP's second quarter 2026 earnings call, CEO Jim Vena acknowledged that UP and NS "have a significant overlap" in the KC-ESL corridor and explained that UP sought an arrangement with CN concerning that corridor because it was "prudent ... not to be too concentrated."[3] Mr. Vena further confirmed that "we knew we were going to have to do that," to which UP CFO Jennifer Hamann added: "access into Kansas City was ... part of what we knew we were probably going to have to do something to address."[4] With this context, the only question before the Board is not whether a remedy is required, but whether the remedy proposed by UP/NS—divestiture of UP's line between Kansas City and East St. Louis (the "Kansas City Line") to CN—is the best condition to offset the transaction harms and preserve competition. It is not.[5]

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[2] Transcript, *Union Pacific at Morgan Stanley Laguna Conference: Growth, Fuel, and Merger*, Investing.com (Sept. 16, 2026), https://s1.q4cdn.com/812671447/files/transcript/2026/2026-MS-Conference-Transcript.pdf(statement of J. Vena during Q&A concerning the CN agreement).

[3] Ex. 29, Transcript, Union Pac. Corp., Q2 2026 Earnings Call (Dep. Ex. 460) (July 23, 2026) (S&P Global Market Intelligence) at 8 (statement of J. Vena); *see also* Transcript, Union Pacific Corp., Remarks of J. Vena at Special Call, *Fireside Chat* (Sept. 1, 2026), https://stockanalysis.com/stocks/unp/transcripts/740977-fireside-chat/ ("UP Fireside Chat") (explaining of the UP and NS parallel lines between St. Louis and Kansas City, that "right from the very start, we knew we needed to fix that and that's what we've done").

[4] Ex. 29, Transcript, Union Pac. Corp. Q2 2026 Earnings Call (Dep. Ex. 460) (July 23, 2026) (S&P Global Market Intelligence) at 9 (statements of J. Vena and J. Hamann); *see also* Am. App. Vol. 4, at 182-83 (Exhibit 2.2, § 5.8) (Agreement and Plan of Merger, dated as of July 28, 2025) (identifying the divestiture of lines and facilities in the Kansas City-East St. Louis corridor as among the conditions UP and NS anticipated would be required.).

[5] For clarity, since CSXT is not seeking full divestiture here, CSXT would not be opposed to a joint divestiture of some kind involving CSXT and CN (or another non-merging party), with UP

A divestiture to CN would not restore the competition the merger eliminates. Today, UP and CSXT interchange approximately {{ }} carloads over the KC-ESL corridor via the East St. Louis gateway, and that interline service is the primary competitive alternative to NS single-line service from Kansas City to destinations across the East. *CSX Transportation, Inc.-Partial Acquisition, Lease and Operation-Union Pacific Railroad Company between East St. Louis, IL and Kansas City, MO* ("*KC-ESL*"), FD 36873 (Sub-No. 52) (Nov. 18, 2026), Exhibit 12B (V.S. Carey at 17). Post-merger, UP/NS would have both the incentive and the ability to divert that traffic away from CSXT interline service onto UP/NS service, eliminating the competitive check that interline service provides on NS single-line service to the East today.

CN cannot restore this competition. CN's network runs primarily north-south along the Mississippi River, and CN does not compete against NS for eastern destinations the way CSXT does. *See* Ex. 2, C. Elkins Dep. Tr. 183:8-185:6 ({{

}}). While a divestiture to CN could preserve a fraction of today's competition in the narrow area along the parallel lines, CN simply does not have the network to ensure that shippers continue to have competitive service options from Kansas City to the East. *Id.* 184:20-185:2 ({{

}}). CSXT, by contrast, serves most of the same eastern destinations as NS

divested fully of ownership but retaining trackage rights over the jointly owned line, subject to definitive agreements containing appropriate maintenance protections and service standards. CSXT only points out here that in an either/or scenario, a grant of these rights solely to CN does not address the transaction's competitive harms.

(including corridors where CN does overlap with NS),[6] and is the only carrier positioned to fully replicate the service the merger would eliminate.

As addressed in more detail in CSXT's Responsive Application (sub-docket No. 51), the reason UP and NS concede the need for a remedy on the KC-ESL corridor is their parallel lines. The NS and UP lines are the only direct routes between Kansas City and East St. Louis. CPKC's and BNSF's shortest possible routings are respectively 10% and 15% longer and compounded by directional changes and lower operating speeds—leaving NS and UP as the only carriers able to provide the efficient service that shippers using this corridor require.[7] *KC-ESL*, Exhibit 12A (V.S. Kenney at 4); *id.* Exhibit 12B (V.S. Carey at 4-8). The scale of the competitive harm that would result from combining those competitive parallel lines is not limited to traffic in that one corridor, but extends throughout the country. As detailed in economist Julie M. Carey's Verified Statement accompanying CSXT's Responsive Application (sub-docket No. 51), affected traffic involving the KC-ESL UP and NS overlap totals {{

}}. *KC-ESL*, Exhibit 12B (V.S. Carey at 12).

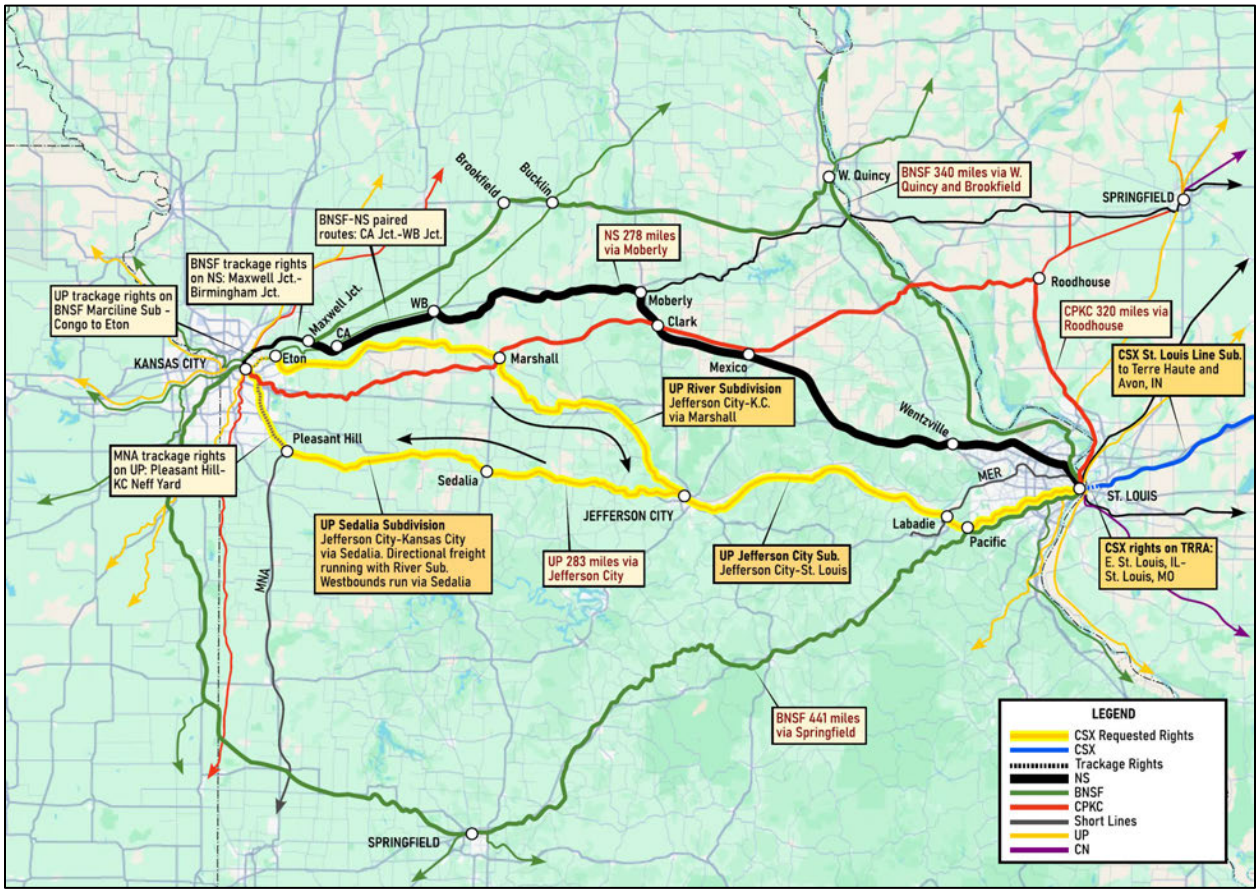
[6] For example, although both NS and CN access Detroit, Ex. 2, C. Elkins Dep. Tr. 184:1-5, so does CSXT. *See* Ex. 46, UP 1133244 at -246 {{

}.

[7] *See* Ex. 48, UP 1464394 at -398 ({

}).

Figure 1: KC-ESL Corridor



The competitive harm from combining the parallel lines would be compounded by what a merged UP/NS would be positioned to do at the East St. Louis gateway. The East St. Louis gateway is the second largest rail gateway in the country, handling approximately {{ }} in traffic annually and functioning today as a neutral interchange point for all six Class I carriers. *KC-ESL*, Exhibit 12B (V.S. Carey at 4-5). Post-merger, UP/NS would control every efficient western approach to that gateway, accounting for {{ }} of passthrough traffic by both carloads and revenue, and would have both the incentive and the ability to use that control to foreclose CSXT from competing for the traffic that currently moves over it. *Id.* Exhibit 12B (V.S. Carey at 16-18). Whereas today the gateway functions as a neutral interchange point through which CSXT

participates as a competitive interline alternative to NS single-line service, post-merger UP/NS would have every reason to steer that traffic onto its own lines through service degradation or other means, and no incentive to continue to support the interline competition that today disciplines NS pricing and service.[8]

As detailed in CSXT's Responsive Application (sub-docket No. 51), a 50% divestiture to CSXT of UP's Jefferson City, Sedalia, River and Metro lines, together with CSXT's full lease of Neff Terminal and up to 100% lease of Neff Yard, along with divestiture of NS's ownership interests in KCT, is the remedy that would help restore competition to the KC-ESL corridor, but also importantly could limit, to some extent, UP/NS's ability to foreclose CSXT at the East St. Louis gateway.

B. Eastern Pennsylvania: Trackage Rights Between Lurgan, PA and Manville, NJ to Preserve Certain Interline Competition.

According to NS, {{ }}, a fact which it {{ }} In a June 2025 presentation entitled "Intermodal Network Discussion," NS proclaimed that {{ }} and expressly identified its {{ }} as an advantage supporting its conclusion that {{ }} which was a key feature of its pitch to UP about its intermodal network as UP valued NS during merger negotiations. Ex. 95, NS_STB_00001343 at -358 ({{ }}), -375 ({{ }}).[9] Through the merger,

[8] For all of these reasons, UP's continued ownership and, more acutely, their dispatch and operational control of these lines, is particularly problematic.

[9] Ex. 10, D. Lehlbach Dep. Tr. 360:5-24 ({{ }}); *see also* Ex. 20, Y. Thomas Dep. Tr. 276:11-12 ({{ }}).

UP would acquire that {{ }} position, giving the combined carrier the ability to leverage NS's Eastern Pennsylvania franchise to favor UP's western network over competing interline partners.

Eastern Pennsylvania is among the most critical freight and intermodal areas in the country. *CSX Transportation, Inc.-Trackage Rights-Norfolk Southern Railway Company between Lurgan, PA and Manville, NJ* ("*E. Pa.*"), FD 36873 (Sub-No. 52) (Nov. 18, 2026), Exhibit 12A (V.S. Kenney at 5). It is located within a day's drive of one-third of the U.S. population, making it a hub for shippers and intermodal companies that have established major distribution and logistics operations throughout the region. Eastern Pennsylvania serves as a gateway between the East Coast metropolitan areas and the rest of the country. *Id.* Exhibit 12A (V.S. Kenney at 5).

The volume of traffic moving to and from Eastern Pennsylvania underscores the commercial significance of this region. In 2023, Eastern Pennsylvania saw {{ }} total carloads generating {{ }}. NS participated in {{ }} of all traffic in the region, and holds a {{ }} share on 17 of the top 25 Eastern Pennsylvania origin-destination lanes. *Id.* Exhibit 12B (V.S. Carey §§ II, III.A). More than {{ }} or {{ }} carloads were intermodal of which {{ }} or {{ }} units were transcontinental intermodal freight. *Id.* Exhibit 12B (V.S. Carey § II). Of the {{ }} transcon units moved by NS in 2023 {{ }} were interchanged with BNSF and {{ }} were interchanged with UP. *Id.* Exhibit 12B (V.S. Carey § IV).

NS's self-described {{ }} in Eastern Pennsylvania is structural. NS is the only Class I railroad that owns tracks serving this region, meaning that every rail movement into or out of Eastern Pennsylvania must travel on NS-owned infrastructure or be drayed significant distances

to reach an alternative terminal.[10] NS's own internal documents confirm this reality: in analyzing the merger, NS describes Eastern Pennsylvania as a {{

}}.[11] That infrastructure gap is real: CSXT's nearest lines to Eastern Pennsylvania warehouses terminate in Chambersburg—over 55 miles from Harrisburg and over 130 miles from Bethlehem—and Philadelphia—over 62 miles from Bethlehem and 106 miles from Harrisburg.[12] That distance of dray is uneconomical for most shippers and does not discipline NS.[13] *E. Pa.*, Exhibit 12A (V.S. Kenney at 5-6).

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[10] Ex. 20, Y. Thomas Dep. Tr. 280:6-10 ({{
}}).

[11] Ex. 93, NS_STB_00001303 at -327 ({{ }}).

[12] Ex. 20, Y. Thomas Dep. Tr. 268:10-24 ({

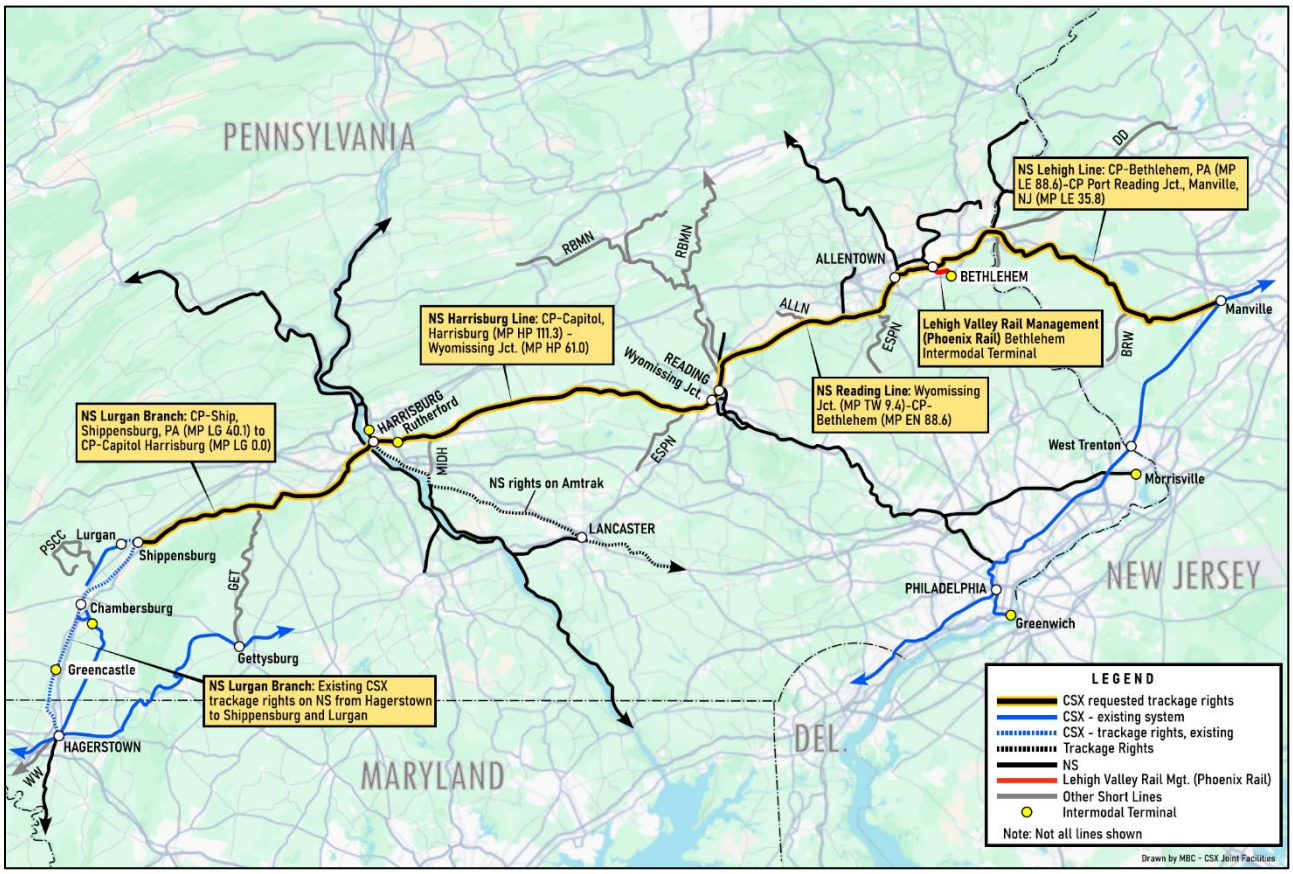
}).

[13] *Id.* at 267:24-268:9 ({{

}}); *see also id.*
271:7-14 {{ }},
282:17-24 ({{

}}),
286:11-17 ({{
}}).

Figure 2: Eastern Pennsylvania



Under the status quo, NS does not have an incentive to favor any one interline partner for transcontinental moves. NS primarily receives traffic from BNSF and UP on the western leg and has every reason to treat each interchange partner neutrally—a dollar of revenue from a BNSF-interlined shipment is worth the same to NS as a dollar from a UP-interlined shipment. That neutrality disincentivizes NS from discriminating against any western carrier: because NS has no stake in which western railroad carries the traffic, it has no incentive to degrade service or inflate costs for interline movements in order to favor a particular interchange partner.

The merger would destroy that neutrality. For example, a combined UP/NS would no longer be indifferent between BNSF and UP on the western leg, because NS would capture revenue on both ends of a UP/NS movement and lose the western revenue entirely when a shipper chooses

BNSF. The combined carrier therefore has a direct financial incentive to discriminate against BNSF interchange—raising costs, slowing service, restricting scheduling—to divert BNSF's share of transcontinental movements onto legacy UP.

A condition granting CSXT trackage rights on NS between Lurgan, PA and Manville, NJ, with access to the independent Phoenix Rail terminal in Bethlehem, PA, would enable CSXT to compete for Eastern Pennsylvania intermodal traffic. *E. Pa.*, Exhibit 12A (V.S. Kenney at 6-7). That competition could limit to some extent UP/NS's ability to foreclose western carriers from serving this key area.

Other carriers recognize the same harm and the need for a condition. BNSF, in its Description of Responsive Applications, confirms that "BNSF and NS jointly move significant intermodal traffic from the West Coast to the Lehigh Valley in eastern Pennsylvania" and that BNSF and NS "are currently aligned on working together to provide this intermodal service to customers." BNSF-53, at 8. However, "if the Board approves the proposed merger, UP/NS would have the ability and incentive to ensure that BNSF is not a competitive option from a pricing and service perspective." *Id.* at 8-9.

While CSXT and BNSF are both acutely aware of the foreclosure harm, CSXT is best positioned to ameliorate it. The rights that CSXT seeks are significantly more limited in scope than BNSF's anticipated request. While BNSF anticipates seeking overhead trackage rights over approximately 824 route miles of NS lines from Chicago to Bethlehem, CSXT seeks only targeted 187 route miles of trackage rights between Lurgan, PA and Manville, NJ. Moreover, CSXT's eastern network would transform these rights into a more competitive remedy: Manville connects directly to CSXT's north-south mainline, enabling CSXT to offer new services to Eastern Pennsylvania shippers. *E. Pa.*, Exhibit 12A (V.S. Kenney at 6-7). Additionally, CSXT has

previously held and operated trackage rights over portions of this segment and, during that period, CSXT's operations did not reduce NS traffic volumes or impair NS's ability to serve its own customers, confirming that the rights CSXT identifies are operationally workable and would impose no meaningful burden on a merged UP/NS.[14] *E. Pa.*, Exhibit 12A (V.S. Kenney at 8-9).

C. Access to Norfolk International Terminal to Prevent Certain Foreclosure Opportunities and Preserve On-Dock Rail Competition.

Norfolk International Terminal ("NIT") is one of the most strategically significant deepwater intermodal gateways on the East Coast, a key gateway to the Midwest and inland markets, and one of the top five individual marine terminals in the country in rail-container throughput. *CSX Transp., Inc.—Trackage Rights —Norfolk S. Ry. and Norfolk & Portsmouth Belt Line R.R. Between Seabord Jct. & Norfolk International Terminal* ("*NIT Trackage Rights*"), FD 36873 (Sub-No. 53) (Nov. 18, 2026), Exhibit 12A (V.S. Kenney at 4).[15] The Virginia Port Authority ("VPA"), the owner of NIT, has committed over $1.4 billion in capital investment to expand NIT's rail and terminal infrastructure, including an $83 million Central Rail Yard expansion completed in 2024 that increased on-dock rail capacity by 31%, and a $650 million North Terminal expansion currently underway.[16] These investments reflect NIT's growing and

[14] Ex. 10, D. Lehlbach Dep. Tr. 353:5-357:19 ({{

}}).

[15] Ex. 72, NS 00122764 at -812 ({{

}); Ex. 71, NS 00119544 at -553 ({{
}}).

[16] Port of Va., *Central Rail Yard Goes to Work; Project Creates Capacity to Process 2 Million Rail TEUs Annually (Aug. 6, 2024),*, https://www.portofvirginia.com/news/central-rail-yard-goes-to-work-project-creates-capacity-to-process-2-million-rail-teus-annually; Bridget Dean, *With completion of channel dredging, Virginia Port Authority nears end of $1.4B capital investment program*, Progressive Railroading (Mar. 4, 2026),

future importance as a national gateway for intermodal traffic and will enhance NIT's reach to Midwest markets and gateways. *NIT Trackage Rights*, Exhibit 12A (V.S. Kenney at 4-5); *id.* Exhibit 12B (V.S. Carey at 4-5).

NS is the only Class I railroad with direct on-dock rail access at NIT, and through its control of the Norfolk & Portsmouth Belt Line Railroad ("NPBL"), NS controls the only rail corridor through which a competing carrier could otherwise reach NIT directly. *NIT Trackage Rights*, Exhibit 12A, V.S. Kenney at 4; *id.* Exhibit 12B (VS. Carey at 7). CSXT has long been concerned about NS's control of NPBL because NS has used it to foreclose CSXT's ability to compete on-dock, as reflected in the fact that CSXT moved {{ }} on-dock rail intermodal containers at NIT from 2015 until on-dock rail service commenced on July 21, 2026. *NIT Trackage Rights*, Exhibit 12A (V.S. Kenney at 5); *id.* Exhibit 12B (V.S. Carey at 7, 16-18, 21-22). While CSXT has previously advanced its concerns regarding the anticompetitive effects of NS's control of NPBL to the Board, the Board recently approved NS's (significantly belated) control application of NPBL. The Board conditioned NS's control on behavioral commitments that seek to prevent anticompetitive abuses by NS and subjected NS to a five-year oversight period, but declined to require terminal trackage rights or restoration of the Connecting Line as remedies for harm attributable to that control transaction. *Norfolk S. Corp. & Norfolk S. Ry.—Acquisition of Control—Norfolk & Portsmouth Belt Line R.R.*, Decision No. 14, FD 36836 (S.T.B. served Apr. 6, 2026), at 27-30.

As described in more detail in CSXT's responsive application (Sub-docket 53), CSXT does not seek to relitigate the Board's past decision. Rather, CSXT focuses here on one admittedly

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https://www.progressiverailroading.com/RailPrime/Details/With-completion-of-channel-dredging-Virginia-Port-Authority-nears-end-of-14B-capital-investment-program--76482.

small portion of the overall harm that would result from UP's acquisition of NS and NPBL. Specifically, as NIT continues to grow and expand, UP/NS would have an additional incentive to use its control of on-dock rail access to NIT to foreclose competing interline service to and from NIT. Today, NS interchanges NIT traffic with UP, BNSF, and CPKC. Post-transaction, UP/NS would have the financial incentive to divert existing interline traffic to UP, retaining both the eastern and western carriers from serving NIT traffic. Moreover, a combined UP/NS could condition effective on-dock rail access at NIT on ocean carriers using UP/NS more broadly. CSXT is not alone in these concerns—VPA supports CSXT's "equal access to facilities at the Port of Virginia" including by supporting trackage rights for CSXT and seeking its own condition requiring NS/NPBL to divest critical track adjacent to NIT to VPA. *Virginia Port Authority's and Virginia International Terminals, LLC's Description of Anticipated Responsive Application, UP/NS*, FD 36873 (Sept. 9, 2026), at 1-2.

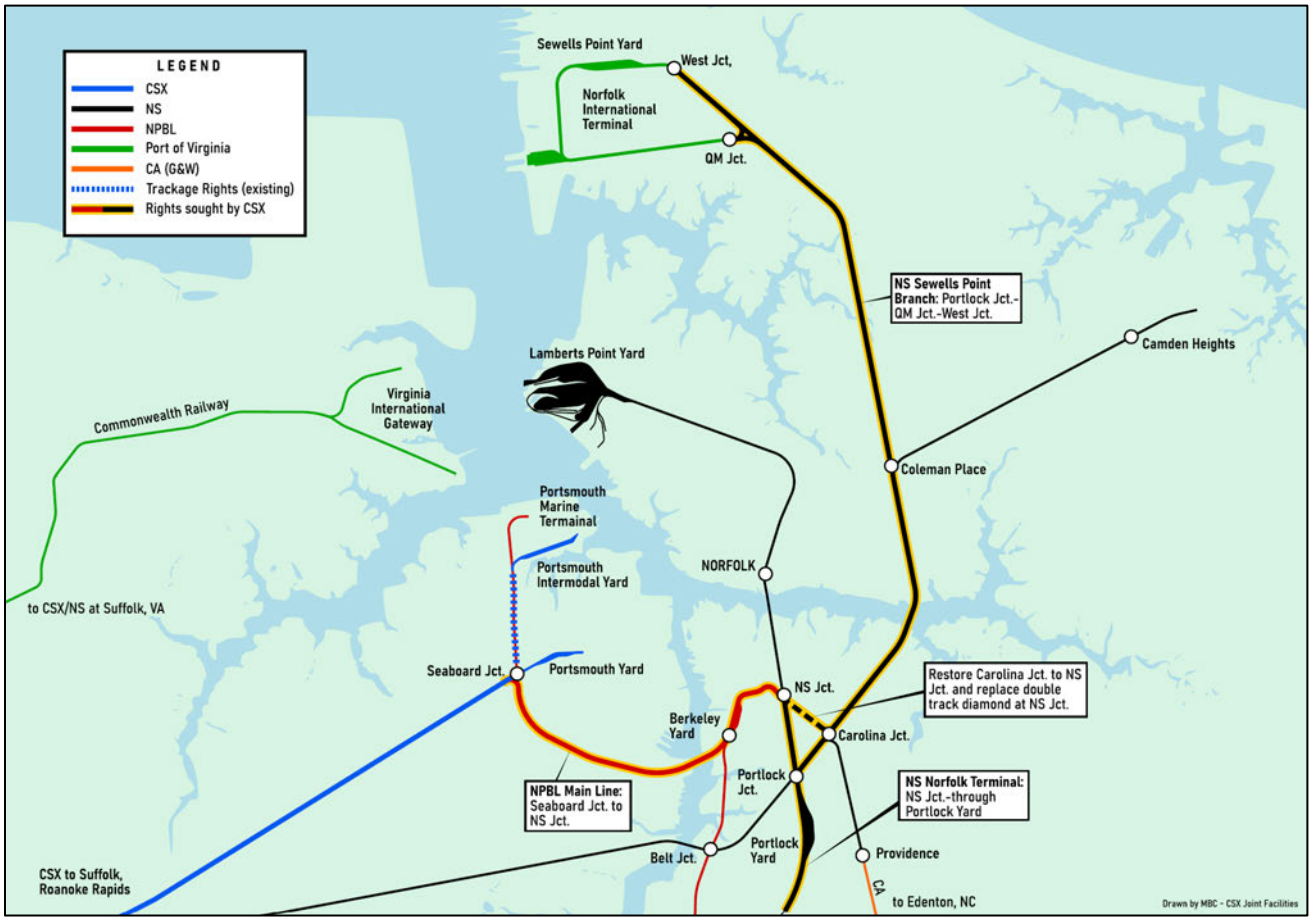
Since the Board's control decision, CSXT has been working in good faith with NPBL and NS to restore its on-dock rail access. Under the Board's supervision, CSXT has been able to increase its on-dock rail volume, from {{ }} to {{ }} containers a week, but still relies on VPA-subsidized drayage for much of its NIT traffic. The subsidy offsets part of the expense but does not eliminate the additional handling or service disadvantages. *NIT Trackage Rights*, Exhibit 12A (V.S. Kenney at 5); *id.* Exhibit 12B (V.S. Carey at 8). While CSXT has moderately increased its on-dock rail access in recent months, even during this period of direct Board supervision, operational and structural barriers, including many imposed by NS, remain. CSXT's experience at NIT demonstrates just some of the myriad ways that a competitor can use its operational control over rail access to degrade competitive service, such as implementation of a train-length cap, limited days of service, a circuitous route to NIT resulting from the unavailability of the

Connecting Line, NS priority over NPBL operations at NIT, and access restrictions at QM Junction.[17]

To help ameliorate the merger-related harms that would result from UP/NS's control of rail access to NIT, CSXT describes a condition providing it with trackage rights on NS and NPBL from Seaboard Junction to NIT, related operating rights through Portlock Yard and at QM Junction, including all three legs of the wye, and restoration of the double diamond at NS Junction and the Connecting Line to Carolina Junction. These rights are limited in scope, are designed to avoid materially impairing NS and NPBL's operations, and are narrowly tailored to help preserve the competitive interline access that western carriers and shippers currently enjoy at NIT if the UP/NS merger is approved, while enabling CSXT to offer a commercially viable on-dock rail alternative. *NIT Trackage Rights*, Exhibit 12A (V.S. Kenney at 6-8); *id.* Exhibit 12B (V.S. Carey at 22-25).

[17] *Status Report, Norfolk S. Corp. & Norfolk S. Ry. Co.—Acquisition of Control—Norfolk & Portsmouth Belt Line R.R. Co.*, FD 36836, *CSX Transp., Inc. v. , Norfolk S. Corp. & Norfolk S. Ry. Co., NOR 42183, CSX Transp., Inc.—Terminal Trackage Rights—Norfolk S. Ry. Co. & Norfolk & Portsmouth Belt Line R.R. Co.*, FD 36859, *Norfolk S. Ry. Co.—Discontinuance of Service Exemption—In Chesapeake, VA*, No. AB 290 (Sub-No. 299X), *Norfolk & Portsmouth Belt Line R.R. Co.—Discontinuance of Trackage Rights Exemption—In Chesapeake, VA*, No. AB 1024X (Oct. 5, 2026), at 4-8.

Figure 3: Trackage Rights



II. Conditions to Ensure Certain Neutral Dispatch Control.

CSXT now turns to a separate set of conditions, related to UP/NS's post-merger control of dispatch over key CSXT routes. These conditions address a distinct but likewise serious harm—the ability and incentive of a combined UP/NS to undermine CSXT's service quality through the exercise of dispatch authority over infrastructure on which CSXT depends but does not control.

Dispatch control over shared or jointly used infrastructure is one of the most powerful—and most difficult to police—tools available to a railroad seeking to disadvantage a competitor.[18]

[18] Ex. 19, Y. Thomas Dep. Tr. 263:16-21 ({{ }}); *see also id.* 263:22-264:11 ({ }).

V.S. Maffett at 3-6, 13. A landlord railroad exercises dispatch authority through thousands of routine, operationally-framed decisions each day: the order in which trains receive track warrants, the length and timing of maintenance windows, the priority assigned to trains competing for the same segment of track, and the response time to requests for operating authority. *Id.* at 3-6. None of these decisions necessarily is facially discriminatory. Each arguably can be justified in isolation by reference to operational necessity, network efficiency, or scheduled maintenance. But in the aggregate, and applied systematically over time, they can degrade a competing carrier's transit times, increase its crew costs, reduce its on-time performance, and ultimately price it out of markets where it depends on the landlord railroad's infrastructure. *See id.*

UP understands this dynamic from the inside. As UP's director of interline operations, Katherine Novak, confirmed under oath, dispatch control is a {{ }} precisely {{

}}.[19] That is not a theoretical observation—it is reflective of how UP has in fact exercised dispatch authority on lines it shares with BNSF since the UP/SP merger. *See generally BNSF Ry. Co's Supplemental Petition for Review and Enforcement of the UP/SP Merger Guidelines, BNSF Ry. Co.—Petition for Review— UP/SP Merger Conditions*, FD 32760 (Sub-No. 52) (Aug. 26, 2026).

While UP/NS may argue that non-discrimination commitments are sufficient to prevent the proposed merger's dispatch-related competitive harm, the Board has long recognized that contractual non-discrimination language alone does not neutralize the competitive risk that competitor-controlled dispatch control creates.

[19] Ex. 13, K. Novak Dep. Tr. 249:21-250:2 (Sept. 24, 2026) ({

}}).

In the *Conrail* proceeding, Illinois Central ("IC") raised the concern that CSXT, which owned and dispatched the Leewood-Aulon line over which IC held trackage rights, would have a competitive incentive post-acquisition to use its dispatch control as a "chokehold" to disadvantage IC's service and divert traffic to CSXT routings. The Board declined to order divestiture of the line to IC but found that "the public interest requires us to do what we can to prevent carrier disputes such as this one from impairing the service that the carriers provide to their shippers"—and imposed a condition requiring CSXT to meet with IC to resolve the dispatching dispute under Board oversight, expressly over CSXT's argument that IC's remedy lay entirely in the contractual non-discrimination language of the trackage rights agreement. *CSX Corp. & Norfolk S. Corp.—Control & Operating Leases /Agreements—Conrail Inc. & Consol. Rail Corp.*, Decision No. 89, 3 S.T.B. 196, 302-03 (S.T.B. served July 23, 1998).

The Board confronted a similar problem in UP/SP and went further. Rather than accepting a bare non-discrimination clause, it credited a detailed written dispatching protocol that went well beyond contractual promises—requiring each railroad to monitor in real time the handling of its trains by the other, the physical presence of BNSF supervisory employees inside UP's dispatching center, and dispute resolution through prompt arbitration and sanctions. *Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp.,* Decision No. 44, FD 32760, 1 S.T.B. 233, 403-04 (STB served Aug. 12, 1996). The Board concluded that "this protocol, together with continuing oversight, *should* ensure that dispatching discrimination does not occur"—a choice of words that is itself an implicit acknowledgment that the protocol and Board oversight were necessary precisely because a contractual non-discrimination commitment, standing alone, would not suffice. *Id*. (emphasis added).

Thirty years of experience under the UP/SP Dispatching Protocol confirm that even a detailed written protocol with embedded monitoring does not reliably prevent dispatch discrimination when the dispatching carrier has a competitive incentive to discriminate. In August 2026, BNSF filed a supplemental petition with the Board documenting a systematic pattern of UP dispatching conduct that BNSF contends violates the Dispatching Protocol's core neutrality requirements. BNSF alleges that UP has imposed calling windows that apply exclusively to BNSF trains while no equivalent restriction is applied to comparable UP trains; allocated operating slots to UP trains over BNSF trains that arrived first under the first-come, first-served protocol; denied BNSF access to jointly funded staging infrastructure while permitting UP trains to use it, giving UP a positional advantage in subsequent operating windows; and allowed BNSF trains on which crews had been on board for extended periods to go unhandled, resulting in multiple relief crew starts, nonproductive crew costs, and direct customer harm. *See generally BNSF Railway Company's Supplemental Petition for Review and Enforcement of the UP/SP Merger Conditions*, FD 32760 (Sub-No. 52) (Aug. 26, 2026).

The lesson for this proceeding is direct. UP's own conduct under the UP/SP Dispatching Protocol demonstrates that a dispatching carrier with a competitive incentive to discriminate will find ways to do so regardless of the nondiscrimination obligations in place. If UP and NS are allowed to combine, they would have a far stronger profit motive to engage in discrimination.

Because dispatch abuse is so pernicious and so difficult to patrol after the fact—operating through facially-neutral operational decisions that accumulate into systematic competitive harm—conditions are needed at the New Orleans gateway and on the Villa Grove Subdivision, where UP/NS would control dispatch over key CSXT routes, to prevent a combined UP/NS from using

its post-merger dispatch control to divert traffic to UP/NS service. Those conditions, and the specific competitive harm each is designed to address, are described in turn below.

A. Villa Grove Subdivision: CSXT Control of Dispatch to Prevent Strategic Use of Dispatch Control

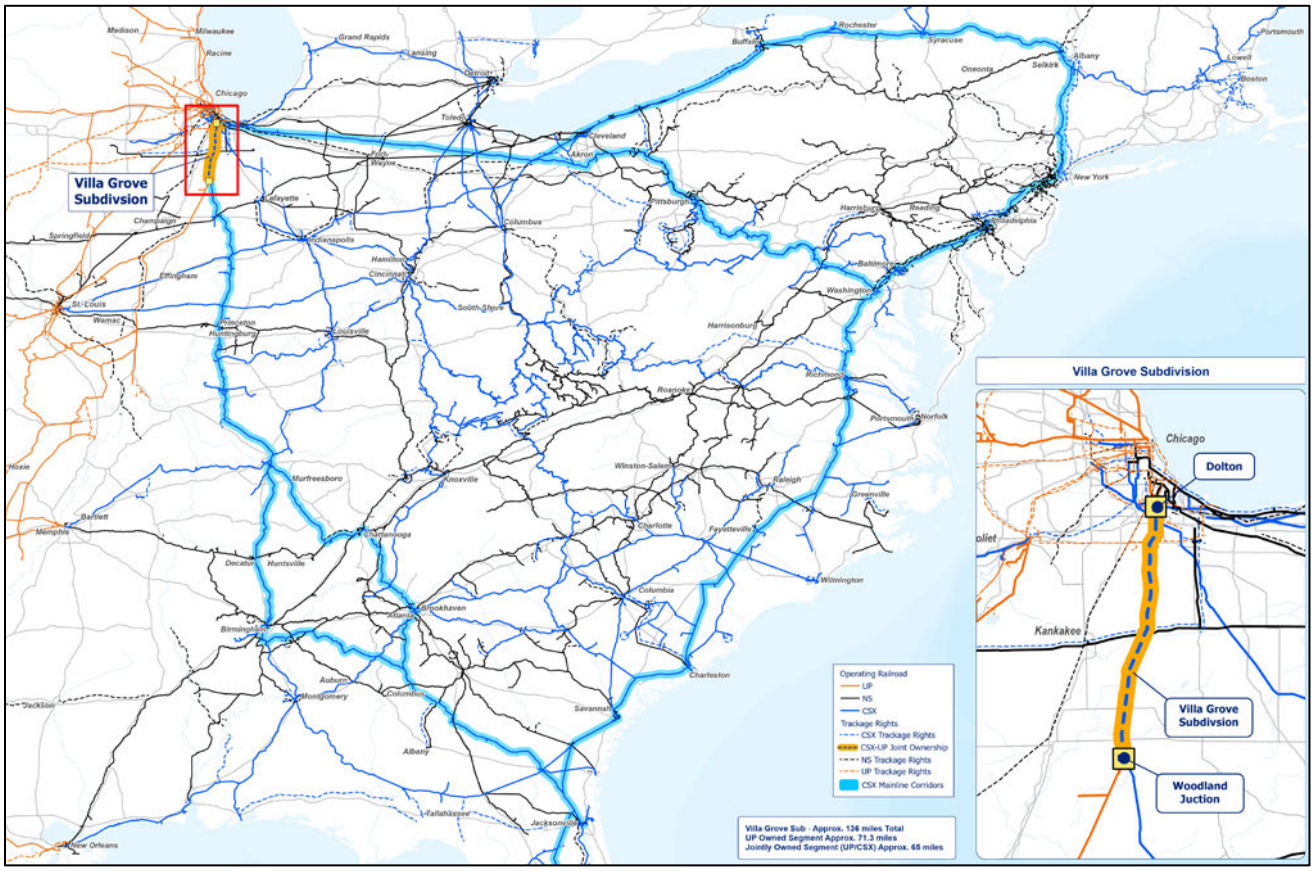
The Villa Grove Subdivision runs between Dolton, IL and Woodland Junction, IL and is the critical artery through which CSXT accesses its broader national network for traffic originating, terminating, or interchanging in Chicago. V.S. Maffett at 10-13. The Villa Grove Subdivision is jointly owned 50/50 by UP and CSXT and by historical agreement, UP is the designated operating company responsible for dispatch, maintenance, and local service.[20] *Id.* at 11-12. For CSXT, the Villa Grove Subdivision is not merely operationally important—it is a central competitive artery of its network. *See id.* at 10-11. The proposed merger would give UP/NS the incentive and ability to use its control of dispatch over the Villa Grove Subdivision to degrade CSXT's operations on the Villa Grove Subdivision to divert customers to UP/NS service.

The Villa Grove Subdivision is the initial leg of CSXT's mainline south from Chicago, connecting Chicago to its southeastern network. *Id.* Any alternative routings would add substantial miles and transit time, rendering CSXT uncompetitive in a market where schedule reliability is a decisive factor in winning and retaining business. *Id.* Unlike CSXT, UP/NS would command multiple alternative corridors south from Chicago, including UP's existing trackage rights over the Joliet line running south through Bloomington to Springfield, and NS's principal Chicago-to-Southeast route running east out of Chicago to Fort Wayne and south to Atlanta. *See id.* at 12-13. Additionally, according to their own Operating Plan, post-transaction, UP/NS would

[20] CSXT and UP are each successors to the 1969 Agreement Relating to Ownership and Maintenance and Operation of Jointly Owned Facilities and Jointly Leased Facilities between Chicago & Eastern Illinois Railroad Company and Louisville and Nashville Railroad Company ("1969 Operating Agreement"), which governs operations of the jointly owned line.

reduce the number of trains it operates over the Villa Grove Subdivision and cease using the Yard Center intermodal terminal entirely.[21]

Figure 4: Villa Grove Subdivision



To date, UP's control of dispatch on the Villa Grove Subdivision has been tolerable. While CSXT believes that UP has on occasion prioritized its own trains over CSXT's, UP currently lacks a systematic incentive to use its dispatch authority as a foreclosure tool. V.S. Maffett at 11-12. Much of CSXT's traffic on the Villa Grove Subdivision today is destined for interchange with UP, meaning that a strategy of degrading CSXT's service would harm UP's own service. More

[21] Amend. App., Electronic Appendices, Tab T at Rows 251-253, Cells L-M.

fundamentally, because UP's and CSXT's networks do not overlap, a foreclosure strategy would not result in diversion to UP.

The merger eliminates both of those constraints simultaneously. Post-merger, UP/NS would own NS's network, which overlaps directly with CSXT. By degrading CSXT's service on the Villa Grove Subdivision, a combined UP/NS could reduce the amount of traffic it interchanges with CSXT, thus successfully diverting traffic to its own service.

UP's ability to act on that incentive is built into its role as the designated operating company on the Villa Grove Subdivision. UP dispatchers control train sequencing, siding assignments, meet-and-pass decisions, maintenance windows, and local switching—each made in real time, at the discretion of UP personnel. *See* V.S. Maffett at 3-5, 11-12. Critically, because these decisions are made at the operational level in the ordinary course of railroad operations, they are largely invisible to CSXT and nearly impossible to challenge after the fact.

The adverse competitive consequences of dispatch-driven service degradation would fall directly on the shippers that depend on CSXT's Chicago-to-Southeast service. For Villa Grove Subdivision customers like {{ }} and {{ }}, even modest, recurring delays that fall short of a clear contractual violation are sufficient to erode confidence and prompt migration to an alternative carrier. *See id.* at 10-11. Post-merger, UP/NS would be positioned to absorb exactly that traffic. As shippers migrate, the harm would compound: declining volume would force CSXT to consolidate train slots, reduce service frequency, or extend transit times, creating a self-reinforcing cycle in which service degradation begets volume loss and volume loss begets further service deterioration. *See id.* at 3-5, 11-12. What begins as a dispatching problem becomes a structural competitive disadvantage and loss of optionality for shippers that is extraordinarily difficult to reverse.

To prevent this outcome, the Board could condition approval of the merger on reforming the 1969 Operating Agreement to designate CSXT as the operating company responsible for dispatch, maintenance, and local service on the Villa Grove Subdivision. These three functions are operationally integrated and are most effectively exercised when unified—dispatchers set maintenance windows that keep the railroad functioning, maintenance crews depend on those windows to safely access the track, and local switching and car placement determine whether scheduled trains can move at all. *Id.* at 12-13. Behavioral remedies, including non-discrimination commitments, even under Board supervision, are insufficient; only a transfer of operational control eliminates the risk at its source.

Unlike UP/NS, CSXT would have neither the incentive nor the ability to use its control of dispatch to foreclose UP/NS on the Villa Grove Subdivision. CSXT does not serve the locations that UP uses the Villa Grove Subdivision for and therefore has no commercial interest in the traffic UP moves over the line—there is simply no routing on which CSXT could benefit from degrading UP/NS service. *See id.* at 11-12. And even setting aside incentive, any concern about CSXT misusing dispatch authority is further undermined by the fact that UP/NS would retain its multiple alternative corridors to and from Chicago from the south, meaning it could reroute traffic and prevent any harm, disincentivizing CSXT from even trying. The competitive reality that would make a combined UP/NS's control of dispatch so dangerous for CSXT simply does not exist in reverse.

The Board should not allow the merger to convert a tolerable joint operating arrangement into a structural competitive weapon. While the Board should deny the merger because of its pervasive harm, transferring operating authority to CSXT would ensure that the Villa Grove

Subdivision continues to function as a neutral shared asset rather than a tool for foreclosing the carrier that depends on it most.

B. New Orleans Gateway: Establishment of a Neutral Third-Party Dispatcher to Prevent Strategic Use of Dispatch Control.

New Orleans is one of the most critical interchange gateways in the national rail network, particularly for chemicals traffic. All six Class I railroads have a presence there, alongside a deepwater port and connections to the Mississippi River. V.S. Maffett at 6. No other location can functionally substitute, and for the vast majority of corridors running through New Orleans, no competitive alternative routings exist. *See id.* at 6-7. The gateway is the primary conduit for Gulf Coast chemical shippers, transportation equipment shippers from Mexico, and transcontinental shippers moving goods to and from the Southeast—all of whom currently benefit from vigorous competition between CSXT and NS for eastern hauls. *See id.* at 6-9. CSXT's ability to serve this traffic depends on efficient, non-discriminatory access to interchange at the New Orleans gateway. *See id.* at 6-8. The merger would consolidate control of the essential interchange facilities under UP/NS—a carrier that would, for the first time, have both the operational authority and financial incentive to degrade its rivals' interchange service to divert traffic to its own network.

Efficient interchange at the New Orleans gateway depends on two essential facilities—the Huey P. Long Bridge ("Long Bridge") and the Back Belt. The Long Bridge, the only Mississippi rail crossing in New Orleans, is owned by the New Orleans Public Belt Railroad ("NOPB") but dispatched by UP, with control points at the West Bridge Junction, owned by UP, and the East Bridge Junction, owned by CN but also dispatched by UP.[22] V.S. Maffett at 7-8. The Back Belt is

[22] Ex. 84, NS 00331509 at -509-10 (Dep. Ex. 415) (May 11, 2025, email to M. McClellan {
}}).

owned, operated, and dispatched by NS and serves as the only efficient route to traverse the city. *Id.* The NOPB-owned Front Belt, the only alternative to the Back Belt, has size and speed restrictions and is heavily used for customer switching. It runs through the heart of the city, including the French Quarter, and is subject to numerous disruptions associated with Mardi Gras, French Quarter Fest, and major sporting events. *Id.* NS's strategic planning personnel (including one with special insight {{ }}), vividly described how CSXT would have {{

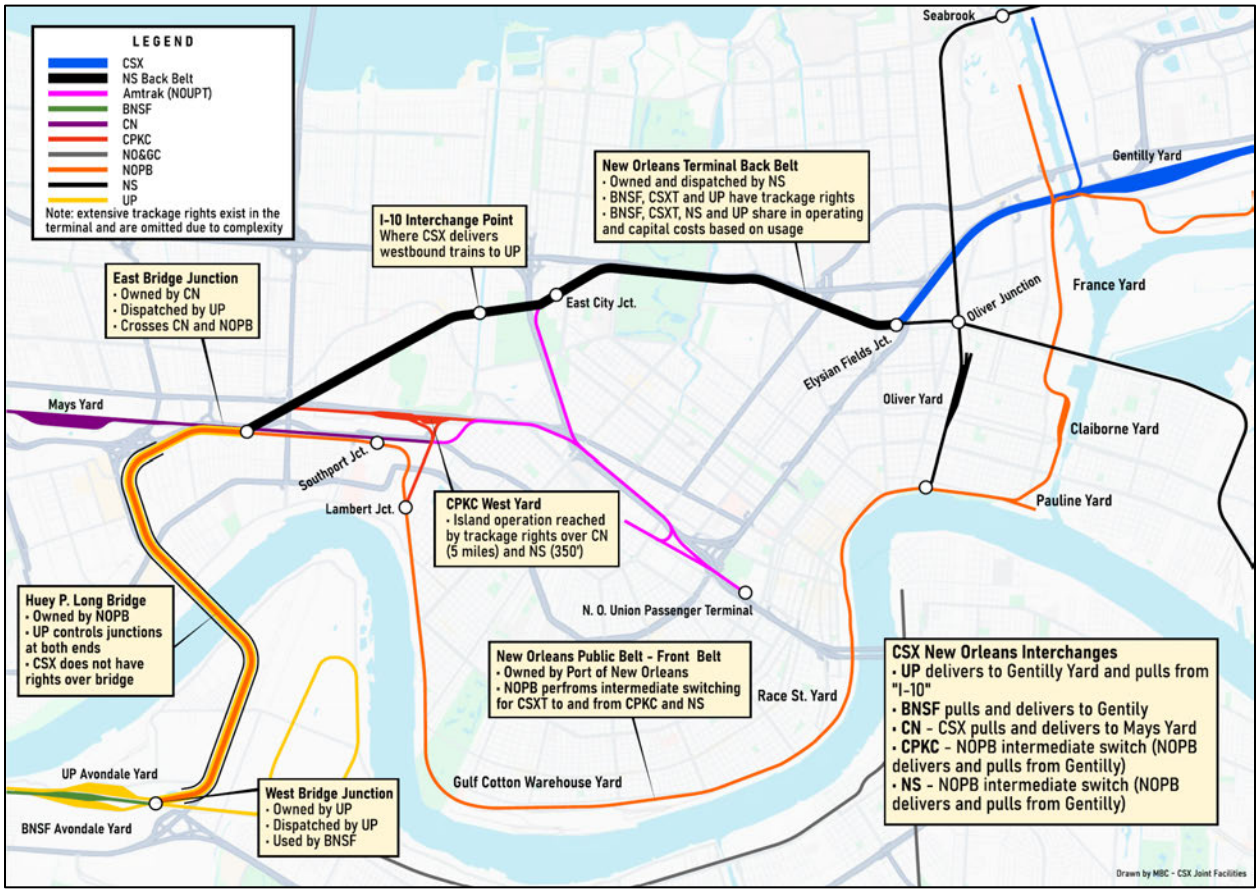
}}[23]

[23] Ex. 84, NS_00331509 at -509-10 (Dep. Ex. 415) ({

}}); *see also* Ex. 75, NS 00126551 at -553 ({{

}).

Figure 5: New Orleans Gateway



Because CSXT does not operate west of the Mississippi River and has no rights over NOPB, all of CSXT's interchange takes place on the east side of the river. V.S. Maffett at 7-8. Class I carrier interchange traffic at New Orleans is on the order of billions of dollars in revenue and hundreds of thousands of carloads in volume annually, with chemicals accounting for a substantial majority in both revenue and volume terms. The traffic is heavily weighted toward movements from Texas, Louisiana, and Mexico to the eastern United States—the corridors on which CSXT and NS compete most directly for eastern hauls.

Under the current competitive structure, neither UP nor NS has systemically used its respective dispatch authority as a strategic foreclosure tool because efforts to degrade a rival's

service would also harm an interline partner. For example, strategic use of dispatch control to harm CSXT's service would also be to the detriment of BNSF and UP, both interchange partners on whom NS depends. *See* V.S. Maffett at 8-9.

The merger would eliminate the interline discipline that has constrained discriminatory use of dispatch authority at both chokepoints. Post-merger, UP would assume ownership and dispatch control of the Back Belt while retaining dispatch authority over the Long Bridge, placing both essential facilities under unified control for the first time.[24] As a result, UP/NS would have both the incentive and the ability to use that unified control to ensure that traffic moves on its own network rather than via an interline partner. CSXT is not alone in these concerns. NOPB has raised concerns that the "consolidation would give the merged UP-NS system both the ability and economic incentive to favor its own traffic and restrict, delay, disadvantage, or increase the cost of NOPB movements and movements involving competing Class I railroads to and from port facilities and between the Class I railroads." *Description of Anticipated Responsive Application of New Orleans Public Belt Railroad Commission for the Port of New Orleans* (NOPB-2), *UP/NS*, FD 36873 (Sept. 9, 2026), at 4. Likewise, County Line Railroad Interests explains "[p]ost-merger, having acquired such control, the merged UP/NS railroad would have a strong incentive, and the

[24] Applicants are aware of the risks of this unified control and their changed incentives. In an email exchange between NS's John Turner and Eric Gehringer related to development of the Application, Mr. Turner advised {

}}. Ex. 47, UP_1456756 at -759-60 (Dep. Ex. 113). UP similarly understands the risk and strategized about withholding any concessions or admissions of potential harm to use as a negotiation tool with competitors to gain their support of the merger. *See* Ex. 38, UP 0607355 at -355 (Dep. Ex. 466) ({{

); *see also* Ex. 5, J. Hamann Dep. Tr. 264:10-19 ({{

}}).

physical ability, to favor moving its own traffic through the New Orleans gateway over the movement of trains by its remaining Class I competitors and Amtrak." *Description of Anticipated Responsive Application of County Line Railroad Interests, LLC*, *UP/NS*, FD 36873 (Sept. 4, 2026), at 2.

To prevent UP/NS from using its control over every efficient path of interchange at the gateway to disadvantage competing carriers and the shippers they serve, the Board could condition any approval of the transaction on the creation of an independent third-party dispatcher with authority over all train movements at the Long Bridge and the Back Belt. Non-discrimination or other behavioral commitments would not adequately address this risk, because dispatch decisions are made in real time by operating personnel, and by the time a violation is investigated and remedied, the competitive harm will have already materialized.

Neutral third-party dispatch is an appropriate remedy for this specific issue because it addresses the competitive problem at its source—placing dispatch authority in the hands of an entity with no financial interest in whose train moves first—rather than requiring the Board and affected shippers or carriers to police individual dispatch decisions after harm has already occurred.

UP understands the necessity and benefits of neutral dispatch over congested facilities shared with a competitor. In 2024, UP and BNSF transferred dispatch control over the Alameda Corridor, a 16.1-mile corridor serving the Ports of Los Angeles and Long Beach, to the Alameda Belt Line ("ABL"). ABL is a BNSF and UP joint venture created to "foster balanced and efficient train operations, [that] will promote traffic fluidity over the Line under an entity that would be equally accountable to both of the Line's users." *Alameda Belt Line – Operation Exemption – Board of Harbor Commissioners of the Port of Los Angeles et al.*, *Verified Notice of Exemption of*

Alameda Belt Line, FD 36787 (filed June 12, 2024) at 4. More recently, [BNSF] confirmed "ABL has helped streamline operations in the corridor and improve train movement efficiency through enhanced coordination among rail partners."[25]

A neutral dispatcher of the New Orleans gateway would similarly promote fair and efficient interline operations at that gateway.

III. Conditions to Preserve Certain Joint Assets and Collaborative Arrangements.

A. The Belt Railway of Chicago ("BRC").

BRC is the largest intermediate switching terminal railroad in the United States, and its strategic position within the Chicago gateway makes it a critical connector for every Class I railroad that interchanges traffic through Chicago. At the heart of BRC's operations is the Clearing Yard, a 5.5-mile facility covering 786 acres, supporting more than 250 miles of track, and dispatching more than 8,400 railcars per day. The Board has recently affirmed that "BRC's service is extraordinarily important to our nation's freight rail network" and that "the BRC's Clearing Yard is critical to the network and thus the nation's supply chain." Letter from Surface Transportation Board to Mr. Jerry Peck, President & General Manager, Belt Railway Company of Chicago, EP 724 (Aug. 3, 2026), at 1, 2. The UP/NS merger would threaten the continued competitiveness of BRC by concentrating the largest governance bloc on the BRC board in UP/NS, while at the same time, UP/NS would reduce its own reliance on BRC and would benefit competitively from the degradation of BRC.

[25] David Lassen, *Alameda Belt Line still in negotiations over rail operations at ports of Los Angeles, Long Beach (updated)*, TrainsPRO (July 17, 2026), https://www.trains.com/pro/freight/alameda-belt-line-still-in-negotiations-over-rail-operations-at-ports-of-los-angeles-long-beach.

The current BRC ownership structure is the product of successive Class I mergers over the past three decades—BN/SF, CN/IC, the CSXT-NS split of Conrail, and CP/Soo—each of which absorbed prior co-owner stakes without significantly disrupting BRC's governance equilibrium. No prior consolidation ever produced a single entity holding more than 25% of BRC. By combining NS's 25% stake with UP's existing 8.33%, the merger creates a 33.33% combined position that, under the 1990 BRC Operating Agreement's proportional board representation structure, yields four of twelve board seats for UP/NS—the single largest bloc—and concentrates governance influence in a single entity to a degree the BRC framework was never designed to accommodate. A two-thirds supermajority vote is required for capital improvements exceeding $100,000, a threshold calibrated to ensure that no single co-owner or narrow coalition of co-owners could unilaterally block capital investments on which all carriers depend. UP understands the power it would hold over BRC post-transaction, with its own internal analysis finding that {{

}}.[26]

Moreover, UP/NS tout avoidance of BRC as a significant cost saving and cast reduced usage as a network congestion benefit, and the merger would remove approximately 76,440 cars annually from BRC, with UP/NS projecting that intermediate switching demand at BRC would decline by approximately 210 cars per day and estimating millions in annual savings from reduced terminal switch fees. Am. App. Vol. 2 at 711, 809-810. UP/NS claim this diversion would improve "fluidity" at key gateways "to the benefit of all railroads," but that benefit does not extend to BRC itself, whose financial viability depends on the interchange volume UP/NS would engineer away.

[26] Ex. 37, UP_0344233 at -233 (Dep. Ex. 96) (Jan. 17, 2026 email from David Hughes, UP's Senior Manager, Joint Facilities).

Although UP/NS's four board seats alone would be insufficient to block a supermajority capital vote at BRC, the merger would create the conditions for a blocking coalition that did not previously exist. Neither CN nor CPKC relies on the BRC-owned bridges east of the Clearing Yard, which are anticipated to require significant capital improvements in the coming years, giving both carriers a financial reason to align with UP/NS against those investments. V.S. Maffett at 14-16. Moreover, the size and scale of UP/NS would further incentivize one of the Canadian railroads to align with it to access traffic that UP/NS cannot internalize.

As described in Part IV(C) of CSXT's Comment, CN is the most likely Class I to align with UP/NS. UP and CN have already entered into a binding MOU granting UP operating rights over CN's former EJ&E line which would create a pathway for UP/NS to interchange with CN outside of Chicago and further reduce those carriers' dependence on BRC and their incentive to support its capital needs. Should UP/NS and CN align, the two together would hold six board seats—more than sufficient to block any supermajority capital vote—with both the ability and the incentive to deny BRC the capital investment necessary to maintain it as a viable interchange option, allowing the terminal to atrophy while the carriers that have engineered around it capture the competitive advantage. CSXT, BNSF, and CPKC would be left dependent on an asset that half of its owners have a financial reason to see decline, and the shippers and local Chicago industries that rely on BRC's interchange function would bear the consequences.

In the event it approves UP's acquisition of NS, the Board could require UP/NS to divest sufficient BRC ownership to eliminate its ability to form a supermajority-blocking coalition with CN. While only addressing one specific mode of harm, this divestiture could help preserve BRC's governance integrity and protect the shippers, carriers, and communities that depend on BRC.

B. The Indiana Harbor Belt Railroad ("IHB").

The Indiana Harbor Belt Railroad is a terminal switching railroad whose strategic position encircling the southern arc of Chicago makes it a critical connector for Class I railroads and local industry. V.S. Maffett at 17-18. IHB is jointly owned by Consolidated Rail Corporation ("CRC") (51%) and CPKC (49%), with CRC itself jointly controlled on a 50-50 basis by CSXT and NS. *Id.* Under IHB's governance framework, CSXT and NS must vote their Conrail shares together—giving NS the ability to veto IHB actions by deadlocking the CRC vote. *Id.* As UP's own internal analysis acknowledges, {{

}}.[27]

When CSXT and NS acquired their IHB positions through the Conrail split, the unanimity requirement made sense because both carriers inherited overlapping networks that depended heavily on IHB for Chicago terminal switching. Their roughly symmetrical operational reliance on the asset meant that both had an equal interest in maintaining IHB's competitiveness, and neither had an incentive to exploit its veto power at the other's expense without harming its own service.

The merger would eliminate the symmetry that makes the NS-CSX unanimity requirement workable. UP would assume NS's 50% voting position in CRC, making UP the co-equal governance partner with CSXT over IHB. As such, UP/NS would acquire NS's veto power while, at the same time, UP/NS would be less reliant on IHB—UP/NS intend to bypass Chicago where possible and anticipate diverting nearly {{ }} cars annually away from IHB.[28] The result is UP's ability to deadlock CRC's vote, and the financial incentive to do so—denying IHB of

[27] Ex. 37, UP_0344233 at -233 (Dep. Ex. 96) (Jan. 17, 2026 email from David Hughes, UP's Senior Manager, Joint Facilities).

[28] *See* workpaper C-ALS_BRC_TRRA_IHB Comparison VFinal.

operational or capital investment necessary to maintain it as a viable interchange option and degrading the asset on which other Class I rivals and local shippers depend, to divert traffic to UP/NS service.

The Board could address this narrow issue by requiring a restructuring of the CRC and IHB governance agreements to enable CSXT and UP/NS to vote their shares independently on IHB matters. This structural remedy would ensure that no single railroad holds veto power over IHB governance decisions by virtue of a deadlock mechanism designed for a world in which both CRC co-owners had symmetrical reliance on the asset—a world the merger would permanently eliminate.

C. TRRA.

The Terminal Railroad Association of St. Louis ("TRRA") is a terminal and switching railroad whose strategic position in the St. Louis/East St. Louis gateway makes it a critical connector for Class I railroads and local industry. TRRA owns and operates the Merchants and MacArthur Bridges across the Mississippi River, connecting railroad lines, and a switching facility in Madison, Illinois. All six Class I railroads can use TRRA to interchange traffic, and its switching services provide access to local shippers. TRRA is jointly owned by UP (42.84%) and NS, BNSF, CSXT, and CN (approximately 14.29% each), with UP appointing three of its seven voting directors and each other owner appointing one.

The UP/NS merger would threaten TRRA by combining substantial governance power with a reduced dependence on the shared services that competing carriers would continue to need. UP/NS would have both the ability and the incentive to use its shareholder and director votes to veto necessary improvements or to withhold support for reinvestment to raise rivals' costs and degrade competing interline service. At the same time, UP/NS would divert its own traffic and

reduce TRRA's usage-based revenues and shift more of the burden of sustaining its facilities to BNSF, CSXT, and CN, which remain dependent on them.

UP has acknowledged that it can block capital calls and capital expenditures requiring three-fourths approval, as well as changes to rates and fees requiring unanimity. UP/NS has further acknowledged that their proposed divestiture alternatives would preserve those rights. *Applicants' First Submission in Response to Decision No. 21* (UP-68/NS-66), *UP/NS*, FD 36873 (July 7, 2026), at 9. The issue is therefore not whether UP/NS would acquire additional corporate powers or formally control TRRA. It is whether the merger would give UP/NS new incentives to use those powers to undermine the services and facilities on which competing carriers depend.

UP/NS's operating plans demonstrate that change in incentives: UP/NS expressly plans to reroute traffic to bypass TRRA and, for some movements, the St. Louis gateway altogether. Under the Optimized Plan, UP/NS would reduce its annual use of TRRA's intermediate switching services from {{ }} cars to {{ }}, a reduction of {{ }}. The Growth Plan would deepen that reduction, lowering annual usage to {{ }} cars. *See Workpaper to* UP/68/NS-66 (TRRA Post Merger Traffic TRRA-3.xlsx.); *id.* (TRRA Financial Statements December 2023, at 10). Those diversions would reduce TRRA's usage-based revenues while lessening UP/NS's commercial interest in supporting the services its competitors would continue to need.

UP/NS emphasizes that it would remain a "significant" TRRA user and projects eventual growth in bridge traffic. UP-68/NS-66, at 34–35. But continued use of some facilities does not eliminate the incentive to block investments or degrade services on which rival interline routes depend more heavily. Nor must UP/NS discriminate expressly in its own favor: ostensibly neutral

rate increases or service deterioration could disproportionately burden competitors whose traffic cannot bypass the affected facilities.

The consequences would be particularly serious for major capital investment. TRRA's bridges require substantial, long-term commitments that UP/NS would retain the power to obstruct. Obtaining UP's agreement to help fund the $222 million Merchants Bridge rehabilitation required protracted negotiations and threats of litigation because UP did not significantly rely on that bridge. Anticipated rehabilitation of the MacArthur Bridge presents the next major funding challenge. UP/NS's ability to divert traffic would give it both less reason to support investments needed by competing carriers and greater leverage to shift their costs to TRRA's other owners. UP/NS's commitment to retain NS's existing Merchants Bridge obligations does not address that prospective harm.[29] *Id.* at 37. Preserving an existing obligation is not a substitute for ensuring that TRRA can approve and finance the investments necessary to remain an efficient, competitive terminal railroad.

UP/NS's proposed divestitures do not address these harms. To avoid formal control of TRRA, UP/NS offers a menu of five alternatives: transferring NS's shares and board of directors representation to existing owners or another railroad; returning shares to TRRA and restructuring the board of directors; placing NS's shares in a special-purpose entity; or retaining the shares while requiring the associated shareholder and director votes to follow the other owners' majority. *Id.* at 13. Its principal defense is that the proposals would leave it with no greater corporate rights than UP possesses today. *Id.* at 7–9. But the merger need not expand those rights to increase the

[29] UP/NS proposes to retain NS's Merchants Bridge guarantee obligations and acknowledges that NS, and therefore merged UP/NS, would remain responsible by operation of law for its special usage fees. *Id.* at 2–3, 37. Those existing obligations should not be treated as new protections against the merger's competitive harms.

incentive to use them to foreclose competition. *See Illumina, Inc. v. Fed. Trade Comm'n*, 88 F.4th 1036, 1051 (5th Cir. 2023). Nor is independent management or a prohibition on discriminatory treatment sufficient. UP/NS relies on those protections while expressly preserving its power to block decisions governing capital investment and rates. UP-68/NS-66, at 9–11. Avoiding formal control therefore does not resolve the competitive problem: UP/NS could retain the means to undermine TRRA's services precisely when the merger gives it greater reason to do so. Effective conditions must address that combination of power and incentives, not merely redistribute enough shares or board of directors seats to avoid a controlling interest.[30]

UP/NS has identified CN as the remedy for the competitive harm between Kansas City and East St. Louis and as a potential purchaser of NS's shares in TRRA. But placing CN in NS's position would not cure the governance problem. UP/NS treats the addition of another carrier's votes as sufficient protection without addressing whether that carrier would have an incentive to preserve the competition at risk. CN's network does not substantially overlap NS's in the eastern United States, and CN therefore does not share CSXT's commercial incentives in preserving the efficient TRRA rates and services necessary to sustain competing interline routes serving those markets. If aligned, UP's three votes and CN's two would form a majority capable of frustrating

[30] UP/NS likewise mischaracterizes the other owners' refusal to attend its proposed special meeting as an effort to "thwart resolution," invoking its offer to transfer NS's shares for nominal consideration while retaining specified financial obligations. *Id.* at 2–3. But it requested that meeting without actually proposing these two commitments or addressing board seats at all. Instead, it issued a meeting notice that solicited commitments to acquire NS's shares on unspecified terms and threatened to seek alternative purchasers if no TRRA owner agreed. *Id*. at 3, 3 n.2; *see also* Workpaper to UP/68-UP-66 (TRRA Notice of Special Meeting of Shareholders & Directors (UP) 02.4.2026). CSXT and other owners identified missing material terms—notably including the share price and NS liabilities UP/NS now rely on as evidence of good faith—noted the sale proposed might be illegal and void, and reiterated that ownership percentages alone would not resolve the competitive concerns. It would surely have been obvious to UP/NS that an "offer" addressing none of these material terms or already-raised concerns was a non-starter.

investment and operational improvements on which those routes depend. Transferring NS's shares and board of directors seat to CN would thus risk replacing an outright UP/NS majority with an aligned voting bloc capable of undermining the same competition.

Conditions to Mitigate TRRA-Related Competitive Harms

No condition can fully anticipate the ways UP/NS could use its influence over TRRA to undermine competing interline service. Nonetheless, based in part on consultation with TRRA management, CSXT requests the Board consider conditions such as the following to mitigate that specific risk in the event it approves UP's acquisition of NS.

First, restructure TRRA's ownership and board of directors to prevent a UP/NS or aligned UP/NS–CN majority. The appropriate structure depends on whether the Board approves CN as the proposed remedy carrier. If the Board denies that proposal (as it should, for the reasons above in Section I(A)), the Board should ensure UP does not have a majority, because CN would retain its independent interest in efficient, competitively priced TRRA interchange and intermediate switching. If the Board instead approves the CN proposal, additional protections would be necessary to prevent an aligned UP/NS–CN majority. UP and CN must not have a combined majority, which may require further restructuring of director votes to avoid a deadlock.

Second, amend TRRA's governance rules to eliminate effective vetoes over decisions essential to its operations and competitiveness. A number of provisions of the By-Laws, Operating Agreement, and Merchants Bridge Rehabilitation Agreement would need to be changed to permit decisions such as rate changes and capital expenditures to be made by a majority vote rather than a supermajority or unanimous vote as current rules require. In addition, the capital expenditure threshold requiring approval by the board of directors would need to be increased to allow TRRA management more flexibility to operate independently in the interests of TRRA and

its users, such as: permitting two directors to call a special meeting, replacing the three-fourths approval requirement for capital expenditures to majority approval and raising the dollar threshold requiring approval by the board of directors, and permitting majority rather than unanimous director approval for new or changed rates and fees.

Third, preserve UP/NS's appropriate contribution to anticipated capital investment, particularly the MacArthur Bridge. UP/NS's decline in use of TRRA facilities would reduce its usage-based revenue contribution, its incentive to contribute further capital as needed for the health of TRRA, and its usage-based financing obligations for the anticipated rehabilitation of the MacArthur Bridge. UP/NS should be obligated to contribute to the financial well-being of TRRA and to the rehabilitation of facilities made necessary by UP/NS's historical level of usage.

Together, these conditions would improve TRRA's ability to provide neutral, efficient service, impede UP/NS obstruction of necessary decisions, and contribute to continued reinvestment. They would retain UP/NS's fair participation in TRRA while limiting its ability to shift costs to rivals or undermine the facilities and services on which competing interline routes depend.

D. TTX.

TTX Company ("TTX") is a railcar pooling company that owns and manages, on behalf of participating Class I and Class II railroads, an extensive fleet of specialized flatcars and other equipment used across the North American rail network, including intermodal flatcars, boxcars, and multi-level cars.

TTX's pooling model eliminates inefficiencies of individual railroad equipment ownership. Because TTX cars are free-running, they flow seamlessly across the network without the costly process of routing empty cars back to their owning carrier. This improves utilization, lowers costs, and expands service opportunities for all participating railroads and their shippers. The

fundamental premise behind TTX—and the basis on which the STB has repeatedly reauthorized TTX's pools—is that TTX operates as a neutral, collectively-governed platform that serves the interests of all participating railroads equitably. *TTX Co., et al.—Application for Approval of Pooling of Car Service with Respect to Flatcars*, FD 27590 (Sub-No. 4) (S.T.B. served Oct. 1, 2014), slip op. at 6 (renewing pooling authority based on shared investment risk, collective responsiveness to network needs, and efficient use and distribution of pooled equipment); *TTX Co., et al.—Application for Approval of Pooling of Car Service with Respect to Flatcars*, FD 27590 (Sub-No. 3) (S.T.B. served Aug. 31, 2004), slip op. at 10, 14 (renewing pooling authority based in part on the pool's enabling member railroads "collectively to respond effectively and efficiently" to network dynamics, and finding standardized pricing "an integral and critical aspect of the TTX pool" that ensures "pooled equipment is highly fungible"). If the transaction is approved, that premise would be fundamentally undermined.

UP and NS currently own 37.03 percent and 19.78 percent of TTX, respectively. Their combined ownership would therefore exceed 50 percent. Even if reduced through divestiture to 49 percent, UP/NS would be the largest shareholder by far. Reducing its equity interest below a majority would not eliminate the risk of harm.

If the transaction is approved, UP/NS would have both the ability and the incentive to exploit pooled equipment to the detriment of other participating railroads and their shippers. In particular, UP/NS could self-preference access to TTX intermodal flatcars by hoarding or retaining equipment needed by other carriers, coordinating its use across the combined network, and paying penalties rather than complying with directives to release cars. This risk is not hypothetical: UP is already retaining cars above its entitlement, failing to fulfill requests, and paying assessed penalties instead of supplying equipment. V.S. Maffett at 22-23. Within the past month, NS also began

engaging in similar behavior (which has been especially notable given it has historically been consistent and timely in releasing TTX pool equipment). The merger risks entrenching this exploitation by enlarging the network on which equipment can be retained. Such hoarding would protect UP/NS's service while impairing competitors' ability to serve shippers.

Separately, UP/NS could reduce participation in, or withdraw entirely from, one or more of the various pools. For example, with their substantial combined equipment holdings and the broader geographic reach of the merged network, UP/NS could become less dependent on the bi-level auto pool and have an incentive to withdraw, reserving equipment for their own traffic rather than sharing the benefits of pooling with competing carriers. Withdrawal by the combined carrier could materially impair TTX's fleet utilization and the efficiencies of pooling. CSXT would likely have to reposition empty cars over longer distances, increasing costs and potentially delaying delivery of empties to automobile shippers. Whether by self-preferencing access to pooled equipment or withdrawing from pooling agreements, UP/NS could turn its participation in TTX pools into a competitive weapon against other railroads and their shippers.

The Board could address this specific issue by imposing appropriate conditions to mitigate these harms and protect equitable access to pooled equipment and UP/NS's continued participation in the pools.

IV. Remove Paper Barrier on the Meridian Speedway

The Meridian Speedway is a rail line between Meridian, MS and Shreveport, LA owned by Meridian Speedway, LLC ("MSLLC"). *See* NS *CP/KCS* Comment at 3 n.7.[31] NS has perpetual

[31] NS has used the term "Meridian Speedway" inconsistently to refer to either this line or the entire Meridian-Dallas route over the MSLLC property and CPKC's "Speedway" Division. *See*, *e.g.*, *Request Additional Stay of Proceedings*, *Kans. City S.—Exemption for Transactions within a Corp. Family*, FD 34822 (Feb. 17, 2006), at 1. CSXT herein adopts its more recent usage.

exclusive rights to use the Meridian Speedway for all overhead intermodal or automotive traffic originating or terminating (a) in the U.S. at or east of Meridian and (b) in the U.S. west of Fort Worth other than on the legacy-KCS system ("NS-Exclusive Traffic"). *See Verified Notice of Exemption Pursuant to 49 C.F.R. § 1180.2(d)(3)*, *Kans. City S.—Exemption for Transactions within a Corp. Family*, FD 34822 (Jan. 17, 2006) ("MSLLC Notice of Exemption"), at 6.

This exclusivity results from a 2005-2006 transaction in which NS contributed $300 million and KCS contributed the Meridian Speedway line to a newly-created joint venture owned 70% by KCS and 30% by NS, converting existing KCS property into a Class III shortline and earmarking $240 million for line improvements. *See generally* Exhibit 2 to MSLLC Notice of Exemption ("MSLLC Transaction Agreement"). In turn, the agreements appended to the MSLLC Transaction Agreement as exhibits (together the "MSLLC Agreements") (1) granted NS perpetual haulage rights over the Meridian Speedway for NS-Exclusive Traffic, to be performed by KCS as MSLLC's designated operator; (2) perpetually prohibited anyone from moving NS-Exclusive Traffic over the line in any other way; and (3) required NS consent for any exceptions to or modification of this arrangement.[32] This effects a perpetual, total ban on interchange with carriers other than NS. *See Disclosure of Rail Interchange Commitments*, EP 575 (Sub-No. 1) (S.T.B. served Oct. 30, 2007), slip op. at 15 ("Parties should expect a higher level of scrutiny on agreements that contain a total ban on interchange with other carriers or go on in perpetuity.").

[32] The relevant agreements appended to the MSLLC Transaction Agreement include the "MSLLC Company Ag." as Ex. A; the "MSLLC Op. Ag." as Ex. B; the "MSLLC-NS Joint Use Ag." as Ex. C.; and the "MSLLC-KCS Joint Use Ag." as Ex. D. For definitions of NS-Exclusive Traffic, see MSLLC Company Ag. at 13; MSLLC-NS Joint Use Ag. at 5, 11; and MSLLC-KCS Joint Use Ag. at 4-5. For NS's relevant haulage and veto rights, see MSLLC Company Ag. at 11, 29; MSLLC Op. Ag. at 5-6, 12-13, 22; MSLLC-NS Joint Use Ag. at 8-10; and MSLLC-KCS Joint Use Ag. at 6-7, 8. For NS's exclusivity including restrictions on MSLLC's and KCS's use of the line, see MSLLC Company Ag. at 11, 29; MSLLC Op. Ag. at 6; MSLLC-NS Joint Use Ag. at 9-10, 11; and MSLLC-KCS Joint Use Ag. at 6-7, 8.

CSXT has previously explained that, for critical categories of traffic, this agreement gave NS exclusive use of a competitively-critical line, which it has used to foreclose competition for NS-Exclusivity Traffic, harming shippers. *CSX Transp., Inc.'s Comments & Req. for Conditions*, *CP/KCS* (Feb. 28, 2022); *CSX Transp., Inc.'s Resp. to Comments & Responsive Applications*, *CP/KCS* (July 12, 2022). In *CP/KCS*, the Board determined the issue was "not tied to any Transaction-related harm" and denied CSXT's conditions requests related to NS's exclusivity. *CP/KCS*, slip op. at 134-35. In short, the Board ruled any foreclosure of CSXT resulting from NS's exclusivity was due to the underlying MSLLC Agreements, not the CP/KCS transaction. *See id.*

But here, UP's acquisition of NS's existing exclusivity and market power would foreclose parties other than CSXT, particularly BNSF. Today, NS has no reason to use its exclusivity to favor UP over BNSF. And though NS's primary commercial relationship for Meridian Speedway traffic has long been with UP, its incentive to turn to BNSF to obtain better terms and provide more competitive interline service is an example of the dynamic competitive forces that discipline UP. Post-merger, those incentives would shift; UP/NS would have incentives *not* to switch to BNSF, and instead to use their exclusive control of NS-Exclusivity Traffic over the Meridian Speedway to exclude BNSF as a competitive option for western shippers of that traffic.

This is not a hypothetical risk, nor is it anything other than a straightforward, merger-specific harm. NS's documents are explicit that {{

}} Ex. 79, NS_00181115 at -116, 119 (Dep. Ex. 234) ({{

}}).

NS's Meridian Speedway exclusivity is thus a tool UP/NS would use to cause merger-specific harm to competition and shippers. In the event the Board approves their merger, they should give up that tool. Though UP/NS have many such tools to foreclose, this is one particularly easy to eliminate without harming UP/NS's operations or giving anyone a windfall. For many reasons, it is the lowest-hanging fruit available to partially mitigate foreclosure.

First, NS's exclusive rights to use of the Meridian Speedway are a paper barrier on interchange with what is effectively a shortline carrier. Eliminating the paper barrier would preserve other carriers' ability to compete on the merits to serve traffic in interline with MSLLC and its owner CPKC. In particular, permitting MSLLC to interchange with CSXT at the eastern end would permit BNSF to restore precisely the competitive service UP/NS would acquire new incentives to foreclose.

Second, the carrier that owns and controls the line would retain complete autonomy and not be forced to take unwilling action. MSLLC owns the line, and NS's consistent position has been that it does not control the MSLLC; only CPKC does. Anything that happens to the Meridian Speedway would thus be determined not by the condition here requested or any Board action, but by the party that owns and controls it.

Third, removing exclusivity would not harm UP/NS's operations or plans—other than anticompetitive ones. UP/NS would not lose NS's haulage rights over the line, only the right to exclude competitors from it. The condition would not even give UP/NS's competitors any access; they would have to negotiate for that with MSLLC and CPKC, which would have strong incentives to prevent other carriers' uses of the line from producing congestion that harms service. Those incentives would be a structural, private sector mechanism to prevent usage that impairs UP/NS's Operating Plans, while simultaneously preventing anticompetitive foreclosure.

Fourth, NS's perpetual exclusivity over a line it does not own or control can serve no procompetitive purpose at this point. As the Board has explained, it examines such perpetual interchange restrictions with "a higher level of scrutiny." *Disclosure of Rail Interchange Commitments*, slip op. at 15. As CSXT has previously demonstrated, for years now, NS's rates for NS-Exclusivity Traffic have been higher, its output of that traffic has been lower, and its reinvestment in the Meridian Speedway has been less robust than observed in comparable competitive markets. *See CSX Transp., Inc.'s Resp. to Comments and Responsive Applications, CP/KCS*, *V.S. Shehadeh*, *CP/KCS*, FD 36500 (July 12, 2022), at 17-27. NS is not using its exclusive control to compete more aggressively. It is using that exclusivity to do exactly what its internal documents said it would do in 2005: {{

}} Ex. 91, NS_00961646 at -659 (July 26, 2005 NS Board of Directors presentation titled, {{ }}). Such anticompetitive market power should not continue indefinitely when it would now be used to foreclose yet more competition and dominate yet more markets.

Last, though CSXT would benefit from the condition, that benefit would not be a "windfall" of the kind the Board disfavors. The proposed condition would not grant CSXT assets, operating rights, or direct access to traffic. The only right CSXT would obtain—as would other carriers—is the right to compete on the merits and preserve interline competitive options for shippers by negotiating a joint service arrangement with the line's owner.

As with the other conditions outlined here, while this elimination of a paper barrier would address only a small part of the harm from the proposed merger, it could help preserve some aspects of the competition threatened by this transaction.

Respectfully submitted,



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REDACTED VERSION – TO BE PLACED ON PUBLIC RECORD

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of November 2026, I have caused the foregoing document to be served electronically or by first-class mail, postage pre-paid, on the Secretary of Transportation, the Attorney General of the United States, Applicants' representatives, Administrative Law Judge Jenifer Soulikias, and all parties of record in this proceeding.



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