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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36873

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

COMMENTS OF USTELECOM – THE BROADBAND ASSOCIATION

USTelecom – The Broadband Association ("USTelecom")[1] submits these comments to the Surface Transportation Board ("Board") in the above-referenced docket established to review the proposed acquisition of control of Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, "Norfolk Southern") by Union Pacific Corporation and Union Pacific Railroad Company (collectively, "Union Pacific" and, together with Norfolk Southern, the "Applicants"). USTelecom submits these comments pursuant to Decision No. 30 in the above-captioned proceeding,[2] as well as the Board's general policy of encouraging broad public participation in consolidation proceedings.[3] USTelecom's comments highlight the potential effects of the transaction on broadband infrastructure deployment in the United States.[4]

[1] USTelecom is the premier trade association representing service providers and suppliers for the communications industry. USTelecom members provide a full array of services, including broadband, voice, data, and video over wireline and wireless networks. Its broad membership ranges from international publicly traded corporations to local and regional companies and cooperatives, serving consumers and businesses across the country.

[2] *Union Pacific Corp. and Union Pacific Ry. Co.—Control—Norfolk Southern Corp. and Norfolk Southern Ry. Co.*, FD 36873, Decision No. 30 (STB served Aug. 18, 2026).

[3] *See* 49 C.F.R. § 1180.1(m).

[4] USTelecom does not take a position as to whether the Board should or should not approve the proposed merger (with or without conditions).

I. INTRODUCTION AND BACKGROUND

Broadband connectivity is essential to propelling American innovation, promoting economic prosperity and competitiveness, and protecting our national security and public safety. Throughout the first quarter of the 21st Century, the United States has advanced technologically at an unprecedent pace thanks to the availability of high-speed internet. Businesses across industry verticals, governmental entities (at the federal, state, local, and Tribal levels), and consumers all rely on broadband connectivity for commerce, telehealth, education, defense, and a host of other current and next-generation devices, applications, and uses. USTelecom members are committed to expanding and upgrading broadband networks in support of each of these public policy objectives. To that end, broadband providers invested $92.6 billion in communications infrastructure last year alone and have made cumulative investments of nearly $2.3 trillion since 1996.[5]

Permitting and access to rights-of-way are essential to broadband deployment. Railroad rights-of-way are particularly well-suited to broadband deployment as they provide well maintained, continuous corridors for long-haul fiber infrastructure.[6] In contrast to roadways, pipelines, and other public (and private) rights-of-way, railroad rights-of-way provide a singular, continuous access regime that avoids the complexity of negotiating with a multitude of different entities across a network deployment project. And broadband deployed in public rights-of-way adjacent to roadways frequently involve one or more railroad crossings.

[5] USTelecom, 2025 Broadband CapEx Report 1 (Sept. 2026), https://ustelecom.org/wp-content/uploads/2026/09/UST-1485CapexReport_2025_Final.pdf.

[6] Union Pacific and Norfolk Southern do not appear, from an initial review of the record, to have provided information or data substantively addressing their agreements with broadband providers for use of their rights-of-way for long-haul fiber infrastructure or the impacts of the proposed transaction on those agreements.

Unfortunately, broadband providers are facing significant challenges to securing and maintaining access to railroad rights-of-way. Unjustified costs, excessive delays, and unnecessary administrative burdens associated with the application processes are hampering broadband deployments. Railroad crossings can (and do) create unavoidable chokepoints in deployment projects, and rerouting around the crossing often is not a viable solution (or, alternatively, can result in additional costs and delays). Congress has recognized both the value of and the challenges associated with deploying broadband infrastructure along railroad rights-of-way, with both chambers having introduced legislation that would (1) limit railroads' review of deployments in public rights-of-way that intersect with railroad corridors, (2) implement shot-clocks for decisions on applications for use of railroad longitudinal rights-of-way, and (3) set parameters under which railroads can charge for (or deny access to) railroad rights-of-way.[7] Similarly, the Trump Administration has emphasized the need to streamline the permitting processes associated with broadband infrastructure deployments.

The present transaction has the potential to significantly exacerbate the challenges faced by broadband providers seeking to access railroad rights-of-way. Union Pacific and Norfolk Southern are key players in an already highly concentrated market.[8] The transaction would combine two major railroad networks into a single system spanning approximately 50,000 route miles across 43 states.[9] Even in places where the Applicants' routes do not overlap, their pricing can be used as a benchmark for negotiations as to license fees, terms, and other elements of the

[7] *See* Broadband and Telecommunications RAIL Act, H.R. 6046, 119th Cong. (2025); Broadband and Telecommunications RAIL Act, S. 3268, 119th Cong. (2025).

[8] *See* Verified Statement of Harold Furchtgott-Roth (*Railroad Rights-of-Way and the Nationals Telecommunications Backbone*) (Nov. 18, 2026), *attached hereto as* Exhibit A ("Verified Statement").

[9] Application, Vol. 1, at 171 (Verified Statement of V. James Vena, Chief Executive Officer of Union Pacific Corp. and Union Pacific Railroad Co. ¶ 32).

application and licensing process for rights-of-way access, specifically for broadband providers. According to available data, Union Pacific and Norfolk Southern together host approximately 116,000 miles of telecommunications fiber routes between them in their rights-of-way.[10]

As discussed in greater detail below, in several respects Norfolk Southern's fees and terms are more favorable to broadband service providers than Union Pacific's. Consolidation of the two operators will not only risk the combined entity adopting Union Pacific's more expensive and onerous application fees and terms, but also substantially increase the bargaining position of the combined entity. Indeed, the Applicants' own conduct shows how readily that bargaining power may be used. As the *Wall Street Journal* recently reported, at a private industry event in March, Union Pacific's CEO stated he would "probably increase everybody's rates that said they didn't want a seamless railroad by three or four extra percent to teach you a lesson."[11] The transaction will also introduce new uncertainties regarding existing agreements.

II. DISCUSSION

A. Union Pacific's acquisition of control of Norfolk Southern could increase the challenges faced by broadband service providers seeking to access railroad crossings and longitudinal rights-of-way.

The combined entity will have expanded market power and thus the ability—and in some cases the incentive—to delay or obstruct construction of new fiber optic facilities along railroad rights-of-way, impeding the timely deployment of critical broadband infrastructure (including infrastructure necessary to connect underserved and rural communities). If approved, the Applicants would become the only transcontinental railroad in the country, which would result in

[10] Verified Statement at 4.

[11] Esther Fung, *Railroad CEO's Loose Lips Threaten to Torpedo His $72 Billion Megadeal*, Wall St. J. (Nov. 13, 2026, 2:18 PM ET), https://www.wsj.com/business/deals/railroad-ceos-loose-lips-threaten-to-torpedo-his-72-billion-megadeal-30162207.

not only the elimination of a Class 1 railroad operator for benchmarking purposes but also the creation of an entity with significant bargaining power to leverage against broadband providers.

Moreover, Norfolk Southern, through its T-Cubed subsidiary, offers "[k]ey corridors of conduit between major metropolitan areas" throughout its 22-state network, and even competes directly with broadband providers through its own dark fiber route offering between Atlanta, Georgia and Chattanooga, Tennessee.[12] To the extent Union Pacific maintains or expands the T-Cubed line of business or otherwise views it as a potential profit center for the combined entity, it will have incentives to push broadband providers to use T-Cubed conduit versus installing their own (if not to delay or deny access to rights-of-way entirely in favor of its own fiber network). The result would be broadband providers (and, ultimately, consumers) paying the price in the form of higher costs and longer deployment timelines.

1. Belabored Permitting Application Processes

USTelecom members report increasing difficulties securing access to railroad crossings and longitudinal rights-of-way. Union Pacific's default review timelines are generally longer than Norfolk Southern's, meaning that, post-transaction, broadband providers will face additional delays in obtaining review and approval of access requests.

According to Norfolk Southern, it typically processes standard applications for crossings (*i.e.*, a request for access to cross the railroad company's trackage from one side of its right-of-way to the other) in approximately 30 days; standard applications for longitudinal occupancy (*i.e.*, entry into the railroad company's right-of-way for facilities that traverse the right-of-way

[12] Norfolk Southern, *T-Cubed*, https://www.norfolksouthern.com/en/rail-development-property/t-cubed (last visited Nov. 17, 2026).

for an extended distance) typically take between 30 and 60 days to process.[13] Under Norfolk Southern's processes, Norfolk Southern's vendor, RailPros, provides initial feedback on applications within four weeks of receipt, to inform the applicant whether additional information is needed or if design plans do not meet Norfolk Southern's standards.[14] Crossing applicants then have up to four weeks to provide a response, after which Norfolk Southern endeavors to review revised plans within two weeks of submittal, though "complex requests or non-compliant requests require special attention and additional time."[15]

In contrast, Union Pacific's application timelines are generally longer than Norfolk Southern's. For crossing applications, Union Pacific requires a minimum of 45-60 days to perform an engineering review *if* Union Pacific's design standards are met.[16] It then allocates an additional 90-120 days for agreement processing.[17] Consistent with these standard timelines, one USTelecom member reports that railroad rights-of-way access permits can often take up to six months. Like Norfolk Southern, Union Pacific will expedite its review of certain qualifying crossing applications for an additional (albeit significant) fee. For $6,055, Union Pacific will process a crossing application in 15 business days, and for $12,055 Union Pacific will process an

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[13] Norfolk Southern, *Pipe & Wire Program Frequently Asked Questions*, at 1 (rev. Aug. 21, 2025), https://ns.railprospermitting.com/AdditionalDocumentPreview.aspx?DocumentSystemName=RailProsFAQsREV_08212025.pdf_5f4f36cd-1acd-48ff-ab78-648facdeebd8.

[14] Norfolk Southern & RailPros, *Utility Occupancy License Application General Process and Handling*, at 2 (rev. Aug. 21, 2025), https://ns.railprospermitting.com/AdditionalDocumentPreview.aspx?DocumentSystemName=Pipe%20and%20Wire%20General%20Process%20and%20Handling.pdf_ee8c77e9-1f6d-4517-b873-f0d509166418.

[15] *Id.* For an additional fee, Norfolk Southern will expedite processing of certain crossing applications (but not applications for longitudinal access). RailPros, *Expedited Handling of Applications*, https://ns.railprospermitting.com/AdditionalDocumentPreview.aspx?DocumentSystemName=Pipe%20and%20Wire%20Expedited%20Handling%20Procedure_v2.pdf_ffbf4f78-b0f3-45eb-932d-5a51972c56a8 (last visited Nov. 17, 2026).

[16] Union Pacific, *Utility Contracts System*, https://www.uprr.com/rem/ucs/jas/#/home (last visited Nov. 17, 2026) ("Union Pacific Utility Contracts System").

[17] *Id.*

application in five business days.[18] In practice, however, payment of expedited processing fees has not guaranteed substantially quicker review and approval in at least one member's experience. Encroachment applications (*i.e.*, requests for longitudinal rights-of-way access) take a minimum of six months for Union Pacific to process.[19] Unlike crossing applications, there is no process to request expedited review of encroachment applications.[20]

Extended processing times for review and approval of rights-of-way applications delay broadband construction projects. If, post-transaction, Union Pacific applies its processing timelines to the approximately 19,200 route miles that Norfolk Southern currently operates, then broadband deployments to consumers and small businesses in Norfolk Southern's 22 states (and the District of Columbia) stand to be negatively impacted.

2. Excessive and Unreasonable Fees and Terms

USTelecom members have also observed increasing costs and more onerous terms associated with access to railroad crossings and longitudinal rights-of-way.

Norfolk Southern's fee schedule sets applications for aerial wireline crossings at $2,000 and underground wireline crossings at $2,250.[21] For longitudinal occupancy, Norfolk Southern charges an application fee of $3,500.[22] These fees are in addition to charges for insurance, flagging services, inspection services, and other services provided by Norfolk Southern, as well

[18] Union Pacific, *How to Apply for a Utility or Drainage Installation*, https://www.up.com/real-estate/utilities (last visited Nov. 17, 2026) ("Union Pacific Utility or Drainage Installation").

[19] Union Pacific Utility Contracts System.

[20] Union Pacific Utility or Drainage Installation.

[21] Norfolk Southern, Pipe & Wire Program Fees (eff. Feb. 1, 2025), https://www.norfolksouthern.com/content/dam/nscorp/rail-development-and-property/ns-property/projects-on-ns-property/pipe-and-wire/2-6-2025/Pipe%20and%20Wire%20Program%20Fees%202025.pdf (last visited Nov. 17, 2026) ("Norfolk Southern Pipe & Wire Program Fees").

[22] *Id.*

as the ultimate utility license fee (which is project specific and assessed during the application review process).[23]

Union Pacific's fees are either on par with or higher than Norfolk Southern's. Specifically, Union Pacific charges $2,055 per crossing application and $4,055 (non-refundable) for applications for longitudinal rights-of-way access.[24] This is in addition to a requirement that the applicant reimburse the railroad company for all expenses incurred for review of encroachment applications.[25] Similar to Norfolk Southern, Union Pacific's application fee is separate from the license fees for access to the right-of-way, which are only provided after the application has been reviewed and approved (but that the broadband provider must pay to Union Pacific at the time it executes and returns its encroachment agreement).[26]

Once again, the transaction will likely result in adoption of Union Pacific's more expensive fee schedule post-closing, which will create additional expense for broadband providers. The merged entity would have the ability and incentive to charge exorbitant and anticompetitive fees for the placement, maintenance, and continued use of fiber optic cables in the combined entity's rights-of-way, ultimately threatening the economic viability of portions of the network. Moreover, consolidating two major railroad systems under common control will increase the combined railroad's leverage in future negotiations and extend the reach of more restrictive or costly practices across a substantially larger geographic footprint.

By way of example, USTelecom members report increased litigation between broadband providers and railroads in response to increasingly unreasonable requests for exorbitant rates to

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[23] *Id.*

[24] Union Pacific, Encroachment Procedures, https://www.up.com/real-estate/utilities/encroach-procedure (last visited Nov. 17, 2026) ("Union Pacific Encroachment Procedures"); *see also* Union Pacific Utility Contracts System.

[25] Union Pacific Encroachment Procedures.

[26] *Id.*

renew existing rights-of-way agreements.[27] Those agreements typically set out the specific methodology for calculating the rates that will apply in a renewal period. Broadband providers negotiate these renewal terms precisely so they can make long-term investments based on predictable railroad rights-of-way access and cost. But railroads are disregarding these contractual provisions with greater frequency and, instead, are demanding renewal rates that bear no relationship to the agreed-upon methodology—in some cases seeking per-mile rate increases of 1,000 percent or more at renewal.[28] These demands are not grounded in any change in the value of the underlying right, in the railroads' costs, or even in factors such as inflation. Rather, they demonstrate how railroads can (and will) drive-up broadband deployment costs by leveraging their exclusive rights-of-way access, broadband providers' sunk investment in existing facilities, and the prohibitive cost of relocating those facilities.[29] Faced with the prospect of higher rates, providers must accept the higher deployment costs, bear the cost of relocating their facilities or of litigating the issue, or risk the loss of service.

This dynamic will only intensify if a single railroad, and Union Pacific specifically, controls railroad rights-of-way access across both rail networks. USTelecom members report that Union Pacific is among the most aggressive railroads in pushing for higher licensing fees for longitudinal rights-of-way access. Union Pacific has attempted to charge licensees by the linear foot and, more recently, by the fiber strand—i.e., charging more for higher-capacity cabling even though it is the same dimensions (and occupies the same space) as older, lower-capacity cable. For example, Union Pacific charged one USTelecom member that sought to deploy overhead fiber in the railroad right-of-way a one-time fee of $10,000 *plus* recurring, annual fees based on

[27] *See generally* Verified Statement.

[28] *Id.* at 8.

[29] *Id.* at 9.

market value per linear foot. Union Pacific's propensity for these sorts of unreasonable negotiating positions will only increase post-transaction, as Union Pacific's leadership has already publicly expressed a willingness to vindictively raise rates for those that oppose the transaction, a tactic available only if the combined entity is immune from competitive pressure.[30]

Beyond giving one entity more control over specific corridors, the transaction could remove the pricing-disciplining function of Norfolk Southern's rates. The rates that USTelecom members pay for longitudinal right-of-way access are project-specific and are typically set through individual, often confidential, negotiations with the railroad. The absence of published, comparable rate data does not diminish the harms described above—it underscores them. Broadband providers negotiating rates today only have pricing information from their agreements with separately owned railroads (including Norfolk Southern) available as reference data, and even this is limited by confidentiality terms. After the transaction, that point of comparison will disappear across a substantially large footprint. Even in the absence of detailed, quantified rate data here, the publicly available application fee schedules discussed above show the difference between the Applicants' practices and the likely direction of the costs of the transaction.

3. Onerous and Inconsistent Administrative Requirements

Finally, USTelecom members are concerned with overly onerous and unjustified administrative requirements that gatekeep access to rights-of-way.

For example, once Norfolk Southern approves an application, "no variance from the plans, specifications, method of installation, and construction, etc. . . . will be considered or permitted without the payment to [Norfolk Southern] or its representative of additional fees for

[30] Fung, *supra* note 11.

the re-processing of the application."[31] Norfolk Southern charges $3,500 per variance request.[32] Likewise, Union Pacific puts any variance request through a secondary engineering review which "shall take a minimum of 90-120 days for review."[33] Small changes in deployment plans arise during broadband infrastructure construction and are not uncommon. In other cases, the railroads' onerous documentation requirements can cause significant delays. For example, one USTelecom member's application to access two existing splice boxes took 27 months when Union Pacific demanded it produce historical permit records from a predecessor railroad that granted the initial permit to place the boxes, along with plan revisions that bore little relevance to the proposed work.

Railroad operators that charge significant fees for, or that institute prolonged review periods of, revised plans unreasonably delay broadband providers in deploying (and maintaining) connectivity to American consumers. In instances when broadband infrastructure within a railroad's right-of-way has become damaged or services are otherwise interrupted, expedited access to the facilities with minimal administrative burden is critical to restoring broadband connectivity. In some cases, damages to the broadband infrastructure are the result of a natural disaster or other public safety or national security event in the area; restoring broadband service can impact access to safety-of-life information and services.

Accordingly, USTelecom urges the Board to consider the timelines, fees, terms, and administrative requirements the combined entity will apply to broadband infrastructure permitting requests, as part of its overall public interest review of the transaction.

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[31] Norfolk Southern, *Specifications for Wireline Occupancy of Norfolk Southern Corporation Property* § 1.6(D) (rev. Jan. 24, 2024), https://www.norfolksouthern.com/content/dam/nscorp/pdf/public-projects/Specs-wire-conduit-cable-occupations-NSCE-4%20-1.24.24.pdf (last visited Nov. 17, 2026).

[32] Norfolk Southern Pipe & Wire Program Fees.

[33] Union Pacific Utility Contracts System.

B. Broadband providers deserve certainty regarding the terms of their existing agreements with the Applicants.

At present, the Applicants have provided the Board with no details regarding the transaction's impacts on existing railroad rights-of-way access agreements. Integration will create uncertainty concerning the planned assignment or transfer of existing agreements, including the terms, conditions, permitting procedures, and future renewals or extensions of the same. Those agreements are crucial to broadband providers' ability to expand service; providers have heavily invested in broadband infrastructure in both Norfolk Southern and Union Pacific rights-of-way. The transaction cannot serve as a mechanism for the Applicants to eschew their existing licensing agreements for rights-of-way access or to otherwise attempt to renegotiate for higher fees or more favorable terms. The transaction, and Applicant's omission of any substantive discussion of how the combined entity will treat broadband providers with existing railroad rights-of-way access agreements, creates substantial uncertainty around those existing agreements.

These concerns are not hypothetical. USTelecom members report that Union Pacific has recently changed how it responds to routine access notices, including the kind previously processed without objection. Union Pacific has demanded that broadband providers submitting access notices provide other information or agree to additional operational requirements or fees that the governing right-of-way agreements do not require. As an example, at least one USTelecom member reports that railroads increasingly characterize work performed to upgrade facilities (e.g., overpulls or the addition of new splice points or laterals) as "new" installations requiring approval and new consideration, even where the governing right-of-way agreement already permits such work or requires no railroad approval at all. In these cases, railroads have withheld or delayed approval of these requests unless and until the broadband provider agrees to

pay new amounts or amounts that exceed the originally negotiated amount of compensation. Union Pacific in particular has previously prevented broadband providers from accessing, and adding incremental capacity in, their own telecommunications facilities located within Union Pacific's rights-of-way. The greater scale of a combined railroad company could create perverse incentives for these kinds of unwarranted and harmful conduct to increase.

Broadband providers need continuity and predictability in their existing agreements with railroad rights-of-way holders (including specifically the Applicants) in order to maintain their existing network deployments and plan future network investments.

III. CONCLUSION

In sum, this transaction risks higher costs and longer timelines for broadband infrastructure deployment, in contravention of federal policy aimed at expediting broadband permitting. Unreasonable application review periods, excessive fees, and untenable administrative requirements all contribute to the problem. Moreover, broadband service providers deserve clarity regarding the effect and treatment of their existing licensing agreements with the Applicants. USTelecom encourages the Board to consider the impact of the combination on consumer access to broadband services at affordable prices.

Respectfully submitted,

/s/ C. Sean Spivey

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COUNSEL TO USTELECOM – THE BROADBAND ASSOCIATION

Dated: November 18, 2026

CERTIFICATE OF SERVICE

I certify that I have this day electronically filed with the Surface Transportation Board these *Comments of USTelecom – The Broadband Association* and have caused them to be served electronically or by U.S. Mail on all parties of record in this proceeding.

/s/ C. Sean Spivey
C. Sean Spivey

November 18, 2026

Exhibit A

BEFORE THE

SURFACE TRANSPORTATION BOARD

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UNION PACIFIC CORPORATION AND UNION PACIFIC RAILROAD COMPANY

—CONTROL—

NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY

VERIFIED STATEMENT OF HAROLD FURCHTGOTT-ROTH

November 18, 2026

Railroad Rights-of-Way and the Nation's Telecommunications Backbone

Divergent Interests, Shared Infrastructure, and the Case for Cooperation

I. Introduction and Summary

My name is Harold Furchtgott-Roth. I am president of Furchtgott-Roth Economic Enterprises, an economic consulting firm. I am the Director of the Center for the Economics of the Internet at the Hudson Institute in Washington, DC, and I served as a commissioner of the Federal Communications Commission from 1997 to 2001.[1] USTelecom—The Broadband Association has asked me to offer my views on the relationship between railroad rights-of-way and the use of those rights-of-way by critical telecommunications infrastructure of the United States. I have been asked to consider this relationship in light of the proposed acquisition of Norfolk Southern Corporation by Union Pacific Corporation, now pending before the Surface Transportation Board.

This paper does not take the side of either industry. It takes no position on appropriate renewal terms for right-of-way access, and it takes no position on the merits of the proposed merger. Its purpose is narrower and, I believe, more important. The paper explains the following: (1) why two industries with divergent economic interests share a single physical corridor on which much of the country depends; and (2) why neither can maintain, modify, or upgrade its facilities in that corridor without the other. My opinions are as follows:

1. Railroad rights-of-way are foundational to the terrestrial telecommunications networks of the United States, and have been since the telegraph.
2. The fiber networks hosted in those corridors carry traffic essential to commerce including critical industries such as finance and artificial intelligence.
3. The fiber networks hosted in those corridors also carry traffic essential to the federal government, including the Department of Defense, the Federal Aviation Administration, and the National Security Agency.
4. Railroads and telecommunications carriers have legitimate but different economic interests in the corridors they share. Agreements negotiated in the late 1990s are now reaching renewal, and the resulting disputes, invisible to the public, are governed by a patchwork of property, contract, and preemption law, with no forum efficiently designed for them.
5. Neither industry can safely maintain, modify, or upgrade its facilities in a shared corridor without the active cooperation of the other. Non-cooperation imposes costs on third parties—including the federal government—who are not at the bargaining table.
6. The federal government has a longstanding and continuing interest in the terms on which these corridors are shared, and the Surface Transportation Board's review of the Union Pacific–Norfolk Southern transaction is a timely occasion to recognize that interest.

[1] My background is further described in my curriculum vitae, attached as Appendix A.

II. Two Networks, One Corridor

A. The historical bond between rail and telecommunications

The use of railroad rights-of-way for communications networks is neither new nor coincidental. The development of rail and telegraph service in the United States was intertwined from the start, in part because federal statutes encouraged it.[2] The Pacific Railroad Act of 1862 required the aided railroads to build telegraph lines alongside their tracks, and the Act of August 7, 1888—still codified in Title 47 of the United States Code—requires those companies to maintain and to operate telegraph lines "for railroad, governmental, commercial, and all other purposes."[3] The same 1888 statute made it the duty of the Attorney General to protect the United States' interests in those lines and in the rights-of-way on which they sit,[4] and allowed any aggrieved party to seek relief from what is now the Federal Communications Commission.[5] These statutory provisions reflect that Congress has regarded the communications function of railroad corridors as a matter of national interest for more than 160 years.

The modern fiber era continues to reflect the close relationship between the industries. Southern Pacific's internal microwave and telephone system became Sprint. In 1988 Southern Pacific's new owner formed SP Telecom to lay fiber along the railroad's roughly 15,000 miles of right-of-way; it became Qwest, which completed an 18,500-route-mile national network in 1999 built largely along Southern Pacific, Santa Fe, and CSX corridors.[6] Level 3 built a network of roughly 16,000 miles, much of it along Union Pacific and other railroad rights-of-way.[7] The Telecommunications Act of 1996 opened long-distance and local markets to competition and triggered the wave of competitive fiber construction in which most of today's longitudinal right-of-way agreements were

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[2]H. Furchtgott-Roth, A. Roth, K.R. Arner, *A New Look at U.S. Communications Law* (Edward Elgar, 2026), pp. 10–11.

[3]Act of July 1, 1862, ch. 120, 12 Stat. 489 (Pacific Railroad Act), which required the aided companies to construct telegraph lines alongside their railroads; Act of Aug. 7, 1888, ch. 772, § 1, 25 Stat. 382, codified at 47 U.S.C. §§ 9–15. Section 9 requires the aided railroad and telegraph companies to maintain and operate telegraph lines "for railroad, governmental, commercial, and all other purposes."

[4]47 U.S.C. § 12 (Act of Aug. 7, 1888, ch. 772, § 4, 25 Stat. 383). This section applies to the railroad and telegraph companies "referred to in section 9," i.e., those that received federal aid under the Pacific railroad acts. Its practical application to modern fiber licensing has not, to my knowledge, been tested.

[5]47 U.S.C. § 11 (relief may be sought from the Federal Communications Commission, successor to the Interstate Commerce Commission, for this purpose).

[6]See "Qwest Communications International," *International Directory of Company Histories*, https://www.company-histories.com/Qwest-Communications-International-Inc-Company-History.html (SP Telecom formed in 1988 to build along Southern Pacific's approximately 15,000 miles of right-of-way; 1992 easement covering 11,700 miles of track; later agreements with Santa Fe and CSX; 18,500-route-mile network completed in 1999). Qwest's 1998 annual report, distributed in 1999, confirms the imminent completion of this 18,500-route-mile network: https://www.sec.gov/Archives/edgar/data/1037949/000092735699000382/0000927356-99-000382.txt.

[7]Nebraska Studies, "Advanced Communications" (Level 3's roughly 16,000-mile network built substantially along railroad rights-of-way, including Union Pacific's), https://www.nebraskastudies.org/en/1975-1999/alternative-markets/advanced-communications.

negotiated.[8] Those agreements—typically twenty- to thirty-year terms with renewal or rent-reset provisions—are the contracts now up for renewal.

B. The scale of the shared corridor today

The United States freight rail network spans nearly 140,000 miles, of which the six Class I railroads account for roughly two-thirds.[9] The four largest U.S.-headquartered Class I rail carriers (BNSF, Union Pacific, CSX, and Norfolk Southern) collectively operate on the order of 100,000 route miles.[10] Union Pacific and Norfolk Southern alone would combine roughly 50,000 route miles in 43 states.[11]

For the railroads, annual fees from telecommunications carriers for access to these corridors are low-risk, low-disruption revenues from otherwise unused portions of corridors they already own or control. For the telecommunications carriers, they are the price of the most direct, grade-separated, and continuously owned long-haul routes in the country. Data compiled from GeoTel Communications and from the North American Rail Network Lines database indicates that Union Pacific and Norfolk Southern together host approximately 116,000 miles of telecommunications fiber routes.[12] Telecommunications carriers including AT&T, Lumen, Verizon, and Zayo have built state-of-the-art fiber networks across the country with substantial portions on railroad rights-of-way.

[8]H. Furchtgott-Roth, *A Tough Act to Follow* (AEI Press, 2006).

[9]Association of American Railroads, *Freight Rail Facts & Statistics* (freight rail network is "nearly 140,000 miles"; six Class I railroads account for roughly 67% of freight rail mileage), https://www.aar.org/.

[10]In 2025 and 2026 annual reports, company-reported route mileage is approximately 32,500 (BNSF), 33,000 (Union Pacific), 20,000 (CSX), and 19,200 (Norfolk Southern).

[11]Union Pacific and Norfolk Southern described the combined system as roughly 50,000 route miles in 43 states when the proposed transaction was announced. "Union Pacific and Norfolk Southern to Create America's First Transcontinental Railroad," July 29, 2025, https://www.up.com/press-releases/growth/norfolk-southern-transcontinental-nr-250729.

[12] This analysis compared the U.S. Department of Transportation North American Rail Network Lines database against a Geotel Communications fiber route database. Any rail section within 200 feet of GeoTel fiber (*i.e.*, the analytic "buffer" intended to capture the most likely relationship between fiber and rail vectors), excluding crossings, was considered to be coterminous with a fiber route. The total fiber miles are more than twice the number of total railroad route miles for these telecommunications carriers because any given section of rail right-of-way can and often does host more than one telecommunications provider.

III. What Rides on These Corridors

Telecommunications networks in railroad corridors are not generic. They include both commercial and governmental networks. The U.S. Departments of Defense[13] and Homeland Security[14] regularly rely upon major telecommunications networks. Norfolk Southern's corridor between Alexandria and Manassas, Virginia—in the immediate vicinity of the Pentagon and of the Northern Virginia data-center cluster—hosts a conduit carrying long-haul fiber that has itself been the subject of federal litigation.[15]

Other parts of the federal government are also major customers of the telecommunications carriers. The General Services Administration has various contracts with telecommunications carriers.[16] The Federal Aviation Administration has awarded AT&T an initial task order to begin planning and development activities for the modernization of the agency's primary telecommunications and IT network.[17] In 2018, the National Security Agency awarded a contract for IT infrastructure services to AT&T because it could "provide significant benefits in 'reliability, redundancy and reduced risk.'"[18] State governments have contracts with telecommunications carriers to provide telecommunications services.[19]All of these government contracts have terms for rates and quality of service.

Telecommunications networks also underpin commercial sectors of the U.S. economy, including the financial system. The Treasury Department's 2025 *Financial Services Sector Risk Management Plan* identifies telecommunications as a critical dependency and observes that markets would be heavily affected by any substantial telecommunications disruption.[20]

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[13] Jane Edwards, "Air Force Awards 23 Spots on $12.5B Base Area Network Modernization Contract," GovCon Wire (August 19, 2024), at https://www.govconwire.com/articles/air-force-awards-23-spots-on-12-5b-base-area-network-modernization-contract; Verizon Business Press Release, "U.S. Department of Defense awards Verizon Business with contract extension" (Nov. 11, 2024), at https://www.verizon.com/about/news/us-department-defense-awards-verizon-business-contract-extension; Lumen Investor Relations, "Lumen wins $110 million contract from Defense Information Systems Agency" (Nov. 7, 2023), at https://ir.lumen.com/news/news-details/2023/Lumen-wins-110-million-contract-from-Defense-Information-Systems-Agency/default.aspx.

[14] AT&T Press Release, "U.S. Department of Homeland Security Awards AT&T with 10-Year Contract to Support National Security and Emergency Preparedness Communications" (September 4, 2024), at https://about.att.com/story/2024/department-of-homeland-security.html.

[15]See *Norfolk Southern Railway Co. v. Zayo Group, LLC*, 87 F.4th 585 (4th Cir. 2023), lease of a utility duct running along approximately 25 miles of Norfolk Southern right-of-way between Alexandria and Manassas, Virginia.

[16] U.S. General Services Administration, Enterprise Infrastructure Solutions, https://www.gsa.gov/technology/it-contract-vehicles-and-purchasing-programs/enterprise-infrastructure-solutions?gsaredirect=eis

[17] Nextgov, "FAA brings in AT&T for network modernization program" (Aug. 2026), at https://www.nextgov.com/modernization/2026/08/faa-brings-t-network-modernization-program/415417/

[18] Nextgov, "AT&T Won Secret $3.3 Billion NSA Contract Despite More Expensive Bid," (March 2018), at https://www.nextgov.com/modernization/2018/03/t-won-secret-33-billion-nsa-contract-despite-more-expensive-bid/146853/

[19] See, e.g., CALNET, Notification 26-04, CALNET 5 Data Transport Services Contract Awards, August 19, 2026, at https://www.cdt.ca.gov/services/wp-content/uploads/sites/2/2026/08/CALNET-Notification-26-04-A11Y.pdf

[20]U.S. Department of the Treasury, *Financial Services Sector Risk Management Plan*, January 2025, p. 29, https://home.treasury.gov/system/files/216/Financial-Services-Sector-Risk-Management-Plan.pdf.

Telecommunications networks also underpin artificial intelligence. The training and inference clusters now being built across the interior of the country are useful only to the extent that they can move data to and from users. Recent analysis describes U.S. AI competitiveness as dependent on the underlying communications infrastructure.[21]

The vulnerability of telecommunications networks relying on railroad rights-of-way is not hypothetical. On July 18, 2001, a 60-car CSX freight train derailed and caught fire in the Howard Street Tunnel beneath downtown Baltimore. The fire destroyed fiber-optic cables of several major telecommunications carriers that ran through the tunnel, slowing internet traffic regionally and nationally until the telecommunications carriers completed emergency bypasses roughly a day and a half later.[22] The incident is instructive in two respects. First, it shows how much traffic can concentrate in a single corridor chosen for the same reasons by both industries. Second, it shows that the two industries' fortunes were joined: the same event that severed the telecommunications carriers' cables forced CSX to reroute its own trains hundreds of miles around the tunnel for weeks.

Terrestrial fiber networks today have many routes that do not depend on railroad rights-of-way, but for many long-haul routes there is no practical alternative path, and networks deprived of rail corridors would operate less efficiently and less robustly. Where the rail corridor is the shortest path between two points—which is often the case, because railroads were built to be the shortest practical path—traffic displaced from it moves to longer, higher-latency, more costly routes. Where the rail corridor supplies one of a small number of physically diverse paths, losing it reduces diversity and lengthens recovery from the next cut or fire. The harm is a serious degradation of infrastructure that supports many services, including those of the federal and state governments as well as industries such as the financial system and the AI industry.

IV. Why the Two Industries' Interests Diverge

A. The economics: sunk investment on someone else's land

The economic structure of the problem is well understood, even if it is rarely stated plainly in this context. A telecommunications carrier that buries a fiber network in a railroad corridor makes a large, relationship-specific, sunk investment: the fiber network has little value anywhere else and cannot be moved without substantially rebuilding it. The railroad, in turn, controls what may be the only practical continuous path between the same two points. Once the fiber network is in the ground, the telecommunications carrier is exposed: the railroad holds a position from which it can extract a share of the telecommunications carrier's quasi-rents at renewal. Economists call this the

[21] Jessica Maksimov, ARI, "The Invisible Backbone," August 20, 2026, https://ari.us/research/the-invisible-backbone/.

[22] John West, "How Long Until the Internet Breaks?" The Atlantic Monthly, October 26, 2026, https://www.theatlantic.com/technology/2026/10/internet-cloud-fragile-infrastracture/689148/.

hold-up problem, and the standard prediction is that it produces costly bargaining, litigation, and under-investment unless the parties have a credible mechanism to resolve the price.[23]

Each side has some leverage in negotiations, but the railroads likely have greater leverage because of the telecommunication carrier's sunk cost. A railroad can decline to renew, demand a rate reset, or insist on removal and restoration at the telecommunications counterparty's expense. A telecommunications carrier's options are defensive and costly: it can refuse the demand, litigate the lease language, remain in place pending adjudication, or invoke the network's public importance. Both sides are rational, but the negotiations do not necessarily result in efficient resolution of disputes.

Communications law does not provide a regulated alternative. When Congress created the federal pole-attachment regime in 1978 and expanded it in 1996 to cover ducts, conduits, and rights-of-way, it expressly excluded railroads from the definition of "utility."[24] Access to railroad corridors is therefore governed by state contract and property law. That was a deliberate legislative choice, and this paper does not suggest that it should be revisited. The result is that when a renewal negotiation fails, there is no government agency with jurisdiction over the terms of the contract.

B. The railroads' interests

Railroads also have interests in rights-of-way. Much of a typical corridor lies outside the track structure and is not used for rail operations, and buried fiber placed along the edge of the right-of-way generally coexists with those operations with little disruption. Railroads nonetheless take into account how facilities in the corridor may bear on future track expansion, drainage and signal work, cost of their own capital projects, and party whose consent or coordination is needed before the railroad can dig. Railroads bear safety and liability exposure for everyone who enters the corridor, and federal roadway-worker rules require them to provide on-track safety for anyone working near the track.

Railroads also have legitimate economic and operational interests in managing their rights-of-way, including accommodating third-party infrastructure. Recent federal initiatives have recognized the potential benefits of utility colocation along transportation corridors and the importance of efficient, predictable arrangements to facilitate it.[25]

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[23]The classic treatments are O. Williamson, *Markets and Hierarchies* (1975) and *The Economic Institutions of Capitalism* (1985); B. Klein, R. Crawford & A. Alchian, "Vertical Integration, Appropriable Rents, and the Competitive Contracting Process," 21 *J. L. & Econ.* 297 (1978).

[24]47 U.S.C. § 224(a)(1) (the term "utility" "does not include any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State").

[25]The Department of Transportation, for instance, has shown a substantial interest in railroad rights-of-way as an integral aspect of United States transportation and commerce. The DOT initiative "America's Great Corridors of Commerce," launched in August 2026, is expressly designed to encourage highway and rail right-of-way owners to generate revenue through utility colocation. This program is premised on the concept that colocation contracts can be efficiently negotiated and managed; failure to negotiate and manage colocation contracts would undermine this program. *See* U.S. Department of Transportation, Build America Bureau, *America's Great Corridors of Commerce;*

C. The telecommunications carriers' interests

The telecommunications carriers have interests as well. Their investment is sunk, and it is cost prohibitive to relocate it elsewhere. Consequently, a substantial increase in annual rent at renewal is, economically, a partial expropriation of that investment, and the alternative of removal destroys it entirely. Their customers, including federal agencies, contracted for specific routes with specific diversity characteristics, and a forced reroute may breach those commitments. Step-changes in access cost at renewal raise the cost of capital for all future long-haul construction, because investors price the risk that the same thing will happen again. Because the telecommunications carriers have no regulated access alternative, their only recourse when negotiations fail is litigation under the lease itself.

D. The renewal disputes

Many long-haul or "backbone" route agreements date from the late 1990s and early 2000s and are now reaching their renewal or rent-reset dates. Telecommunications carriers report that in a number of instances the largest railroads have sought per-mile rate increases of 1,000 percent or more at renewal. The railroads would respond that those agreements contain the renewal mechanisms the parties bargained for, and that the courts have enforced them. Writing in 2007, appraiser John Schmick captured the difficulty:

> It would be one thing if, over a 10-year adjustment period, both parties could agree on a general growth rate in land values subject to local influences. . . . Where the problem comes in is when one party demands a 4000% increase or more when the general growth rate is 50%.[26]

Because the agreements are confidential, these disputes are rarely covered in the press, and policymakers see only the fraction that reaches a courthouse. Two recent examples illustrate the pattern. Norfolk Southern and Zayo Group disputed the renewal rent for a utility duct along approximately 25 miles of right-of-way in Northern Virginia under a 1999 lease; the matter required an arbitration-style appraisal, a federal district court judgment, two decisions of the Fourth Circuit in 2023, and a parallel proceeding before the Virginia State Corporation Commission, with the renewal rate ultimately set at roughly $2.34 million per year, or about $95,000 per mile per year.[27] In July 2026, Union Pacific sued Pacific Bell Telephone Company in federal court in Los

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Request for Information, 91 Fed. Reg. 57959 (Sept. 11, 2026) (Docket No. DOT-OST-2026-3269) (describing AGCC as a voluntary, applicant-driven initiative under which highway and rail right-of-way owners may generate revenue through utility colocation to fund transportation improvements).

[26]John Schmick, "Appraising Public Utility Easements in a Railroad Corridor," *Right of Way* (Mar./Apr. 2007), p. 29.

[27]*Norfolk Southern Railway Co. v. Zayo Group, LLC*, 87 F.4th 585 (4th Cir. Dec. 8, 2023) (No. 22-1554) (construing the 1999 lease's three-appraiser renewal-rent mechanism and affirming judgment for the railroad on the rent due); see also *Zayo Group, LLC v. Norfolk Southern Railway Co.*, No. 22-1837 (4th Cir. Nov. 28, 2023) (vacating on jurisdictional grounds and remanding the related eminent-domain proceeding to the Virginia State Corporation Commission); see also the March 23, 2022 district court memorandum opinion confirming the appraisal award, Norfolk S. Ry. Co. v. Zayo Grp. LLC, No. 1:21-cv-1299 (E.D. Va.).

Angeles over the renewal of licenses covering 30.93 miles of right-of-way at "$32,000 per mile per month" (*i.e.*, $384,000 per mile per year); the complaint asserts that if the licensee does not renew on those terms, it must remove its facilities and restore the property to the railroad's satisfaction.[28]

These disputes are asymmetric. For a railroad, the legal cost of pressing a large reset of rates is small relative to the potential gain. For a telecommunications carrier facing the choice between a large rent increase and the loss of a route, the exposure can run to hundreds of millions of dollars per contract. Disputes of this size, resolved contract by contract, with each outcome confidential, produce no public benchmark. It is unclear if this approach is either efficient or converges in any direction. That is a predictable consequence of the structure described above, and it is why the problem recurs.

This paper offers no opinion on what the right rate is for any given contract. The railroads and the telecommunications carriers are not, however, the only interested parties.

V. Why Neither Industry Can Operate Without the Other

The rate dispute is the visible part of the relationship. The larger part, and the part most relevant to policymakers, is operational. A fiber route in a rail corridor is not installed once and forgotten. It must be located, protected, repaired, spliced, relocated, and upgraded over a life of decades, and each of those activities requires the two industries to work together in the same physical space. The following subsections describe where that cooperation is required and what happens when it is withheld.

A. Access for maintenance and repair

Federal rules require every railroad to afford on-track safety to all "roadway workers," a term that includes employees of contractors performing work on or near the track.[29] In practice, no telecommunications carrier technician can enter the corridor to locate a fault, splice a cable, or replace a damaged section without the railroad's right-of-entry process, railroad-provided or railroad-approved flagging, and railroad-specific safety training. CSX, for example, applies its contractor safety policies to fiber-optic workers and requires roadway-worker-protection training for any contractor working within 25 feet of the rail; Union Pacific permits no one within 25 feet of any track without a railroad flagger and no mechanized excavation within 15 feet of track centerline.[30] These rules exist for good reason: trains cannot stop quickly; corridors carry

[28] *Union Pacific Railroad Co. v. Pacific Bell Telephone Co.*, No. 2:26-cv-07835 (C.D. Cal., complaint filed July 17, 2026).

[29] 49 C.F.R. Part 214, Subpart C (Roadway Worker Protection); Federal Railroad Administration, *Roadway Worker Protection* (employees of contractors to railroads who perform roadway-worker duties on or near track must be afforded on-track safety in the same manner as railroad employees), https://railroads.dot.gov/railroad-safety/divisions/roadway-worker-protection.

[30] CSX Transportation, *Safety Requirements* (contractor policies apply to fiber-optic workers; roadway worker protection training required for contractors working within 25 feet of the rail; certain work beyond 25 feet may

hazardous materials; and the railroads bear the liability for violations. The practical consequence is that the maintenance of telecommunications networks in railroad corridors depends heavily on the railroad.

Regardless of the safety purpose these requirements serve, their economic effect is to make the railroad the gatekeeper of every repair, splice, and upgrade on a network that the telecommunications carrier owns and has the contractual right to maintain. The mean time to repair a fiber cut in a rail corridor is determined as much by when the railroad chooses to supply a flagger, approve an entry, or process a notice as by the telecommunications carrier's own crews. A party that controls access to its counterparty's sunk investment, and is simultaneously negotiating rates with that same counterparty, has both the ability and the incentive to use access as leverage.

B. Protecting fiber from the railroad's own work

Railroads perform continuous heavy maintenance in their corridors: tie and rail replacement, ballast undercutting, ditching and culvert work, bridge and signal projects, vegetation management. Although fiber is typically placed outside zones where this work occurs, excavation by the railroad poses risk to buried cable. In many states, routine railroad maintenance within the track structure or within a fixed distance of the track itself is exempt from the one-call ("811") notification requirements that govern every other excavator, on the condition that the work is performed with care to protect facilities placed in the corridor by agreement.[31] The railroad therefore depends on the telecommunications carrier's as-built records and locate services to avoid cutting cable, and the telecommunications carrier depends on the railroad to request and to heed those locations even where the law does not compel it. The exposure is obvious: the railroad is the one excavator in the corridor that may lawfully dig without calling first.

C. Relocation for railroad capacity projects

When a railroad adds a second main track, extends a siding, replaces a bridge, or builds a grade separation, telecommunications fiber in the affected segment must occasionally be moved. The right-of-way agreement governs who pays, how much notice is given, and how long the telecommunications carrier has to comply; but the physical work requires joint engineering, a construction window acceptable to both, and often temporary rerouting of live traffic. A railroad

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proceed without flagging with local engineering approval), https://www.csx.com/index.cfm/customers/value-added-services/property-real-estate/permitting-utility-installations-and-rights-of-entry/safety-requirements/; Union Pacific Railroad, *Guidelines for Utility Potholing* (no entry within 25 feet of any track without a railroad flagger; no mechanized excavation within 15 feet of track centerline; applicants must locate long-haul fiber within the right-of-way through the railroad's own locate process in addition to calling 811), https://www.up.com/content/dam/upcom/public-projects/documents/structures-design/UPRR_Guidelines_for_Utility_Potholing.pdf.

[31] See, e.g., Miss. Code Ann. § 77-13-3 (excluding from "excavation" routine railroad maintenance within the track structure, drainage ditches, or the right-of-way up to 30 feet from the outside rail, when performed by railroad employees or contractors with care to protect facilities placed by agreement); Ala. Code § 37-15-2 and Tenn. Code Ann. § 65-31-102 (similar).

whose capacity project is delayed because a telecommunications carrier cannot mobilize bears real cost; a telecommunications carrier forced to relocate on short notice bears real cost and real outage risk. Here the interests are not opposed so much as entangled: the railroad's growth depends on the telecommunications carrier's responsiveness, and the telecommunications carrier's continuity depends on the railroad's planning.

D. Upgrades: overpulls, splice points, and laterals

Fiber capacity for a telecommunications carrier is upgraded in three ways: (1) by replacing the electronics at the ends, which requires no corridor access; (2) by pulling additional or higher-count cable through existing conduit (an "overpull"); or (3) by adding splice vaults, regeneration sites, and lateral connections to data centers and cell sites along the route. The second and third categories are where the growth in AI and data-center demand is being met, and they require access to the right-of-way. The point for policymakers is that the nation's ability to add long-haul capacity or new AI capacity on existing routes—far cheaper and faster than building new ones—runs through the same railroad managers that also handle rate renewals.

That concentration of control creates both the opportunity and the incentive for railroads to treat capacity upgrades as leverage for opportunistic behavior. Members of USTelecom report that railroads increasingly characterize overpulls, new splice points, and laterals as new installations requiring approval and new consideration, even where the governing right-of-way agreement already permits such work or requires no railroad approval at all.[32] In practice, railroads have withheld or delayed approval of these requests unless the telecommunications carrier agrees to pay amounts exceeding the compensation already negotiated by the parties.[33] Because the telecommunications carrier has already invested in the route and cannot practically relocate it, the railroad can effectively hold the upgrade hostage until its price is met. The consequence extends well beyond any individual agreement. Each delayed or abandoned overpull is long-haul and AI capacity that is not added to the nation's networks, at precisely the moment that demand from data centers and AI applications is accelerating. The transaction would give the combined entity a gatekeeping role over a substantial portion of the nation's long-haul fiber, potentially making the nation's AI-related telecommunications buildout contingent upon new payments that the relevant right-of-way agreements do not require.

E. Emergencies

Derailments, washouts, wildfires, and bridge strikes damage track and fiber together. In those moments the two industries need each other immediately: the railroad needs the corridor cleared and restored; the telecommunications carrier needs safe access to splice around the damage; and both need the other's information about what is where. The Howard Street Tunnel fire described

[32] Before the Surface Transportation Board, Finance Docket No. 36873, Union Pacific Corporation and Union Pacific Railroad Company—Control—Norfolk Southern Corporation and Norfolk Southern Railway Company, "Comments of USTelecom—The Broadband Association," § 2.B., November 18, 2026.
[33] *Id.*

above is the clearest illustration, but smaller versions occur routinely. An adversarial relationship over rates does not suspend itself for an emergency; it shows up as slower access, disputed cost allocation, and longer outages.

F. The cost of non-cooperation falls on third parties

Each of the activities above requires the two industries to act jointly. When they do not; when access is delayed as leverage in a rate dispute; when relocation is used to force renegotiation; when locations are not requested; when an overpull is held hostage to the renewal of an agreement; the direct costs fall on the parties. But the larger costs fall on the users of the network: slower repair of outages, deferred capacity upgrades, less diverse routing, and higher cost of capital for the next generation of construction. Those users include but are not limited to the public, government agencies including the Department of Defense, the financial system, and the AI industry, none of whom is at the bargaining table. That externality, not the size of any particular rate increase, is part of the government's interest in resolving any disputes.

VI. The Federal Interest and the Pending Merger

Union Pacific and Norfolk Southern announced their proposed combination on July 29, 2025. The Board found the transaction "major" in August 2025, rejected the original application as incomplete in January 2026, accepted a revised application on May 28, 2026, and on August 18, 2026 adopted a procedural schedule.[34] The Board has observed that this is the first proceeding in which it will apply its 2001 major-merger rules, which place a heavier burden on applicants to demonstrate that a transaction is in the public interest.[35] Under the governing statute the Board must consider, among other things, the effect of the transaction on the adequacy of transportation to the public and on competition.[36] Comments, protests, and requests for conditions are due November 18, 2026; responses and the applicants' rebuttal are due February 16, 2027; final briefs are due May 28, 2027, with a public hearing to be scheduled.[37]

This paper offers no opinion on whether the merger should be approved. It makes a narrower point. A combined Union Pacific–Norfolk Southern would be the counterparty on a very large share of the nation's long-haul fiber right-of-way agreements—approximately 116,000 fiber route miles

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[34] *Union Pacific Corp.—Control—Norfolk Southern Corp.*, Docket No. FD 36873; see Decision No. 3 (STB served Aug. 28, 2025) (finding the transaction "major" under 49 C.F.R. § 1180.2(a)); Decision No. 9 (served Jan. 16, 2026) (rejecting original application as incomplete, without prejudice); Decision No. 21 (served May 28, 2026) (accepting Revised Application filed Apr. 30, 2026; holding proceedings in abeyance); Decision No. 30 (served Aug. 18, 2026), published at 91 Fed. Reg. 53927 (Aug. 20, 2026) (removing proceedings from abeyance and adopting procedural schedule).

[35] 91 Fed. Reg. 53927, 53931 (Aug. 20, 2026) (noting that the Board will apply its 2001 major-merger rules for the first time and citing *Major Rail Consolidation Procedures*, 5 S.T.B. 539, 546 (2001), as placing a heavier burden on applicants).

[36] 49 U.S.C. § 11324(b) (factors the Board must consider in a major transaction, including the effect on the adequacy of transportation to the public and on competition); 49 U.S.C. § 11324(c).

[37] 91 Fed. Reg. at 53932–33 (Appendix, Procedural Schedule).

across the two systems—and would hold that position across a transcontinental footprint in which many telecommunications carriers have no comparable alternative corridor. The Board's public-interest inquiry is, by statute, broader than rail-to-rail competition; it extends to the adequacy of transportation and to the transaction's effect on the public. The interdependence described above is part of that public context, and the merger record is the one place in the federal system where it is currently being examined.

More broadly, the federal interest does not depend on the merger. Because the public at large, various federal agencies, the financial system, and the artificial intelligence industry depend on terrestrial fiber; and because that fiber depends in substantial part on railroad corridors; the federal government has a continuing interest in seeing that the two industries can complete their renewals in good faith and conduct their day-to-day operations cooperatively. Recent initiatives, such as the Great Corridors program, show that policymakers have noticed the deployment side of the problem. The contract-renewal and operations issues remain unaddressed.

VIII. Conclusion

As in many contract renewals, the railroads and the telecommunications carriers will continue to negotiate contract terms. The federal government and the public have no specific interest in the outcome of any specific contract. But the federal government and the public have an interest in seeing contract outcomes that do not degrade the maintenance, repair, and quality of service of infrastructure on which the country depends.

VERIFICATION

I, Harold Furchtgott-Roth, declare under penalty of perjury, that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement.

/s/_*Harold Furchtgott-Roth*
Harold Furchtgott-Roth

Appendix A

Harold Furchtgott-Roth

Ph. D, Stanford University, Economics, 1986
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Experience

2003–present	***Furchtgott-Roth Economic Enterprises:*** President
2011–present	***Hudson Institute:*** Senior Fellow; Founder and Director, Center for Economics of the Internet
2014–present	***Brooklyn Law School***, Adjunct Professor of Law, teaches class on Communications Law
2022-present	***University of Baltimore Law School,*** Adjunct Professor of Law, teaches class on Law and Economics and scheduled to teach class on antitrust law.
2017–2019	***Utilicom Advisors, LLC:*** Partner
2011-2012	***American Arbitration Association,*** arbitrator, (File No. 50 125 T 00245 11), Macquarie Terminal Holdings LLC v. Voting Trust of IMTT Holdings Inc. and IMTT Holdings Inc.)
2004-2008	***New York Sun***, Business columnist
2001-2003	***American Enterprise Institute***, Visiting Fellow
1997-2001	***Federal Communications Commission,*** Commissioner: One of five commissioners responsible for U.S. communications policy, rule making, enforcement, and adjudication. Among other responsibilities, reviewed all major mergers in communications sector. For statements, speeches, and other information, see: http://www.fcc.gov/commissioners/previouscommish.html

1995-1997	***U.S. House of Representatives, Committee on Commerce,*** Chief Economist: One of the principal staff for the Telecommunications Act of 1996, Balanced Budget Act of 1995, and electricity deregulation legislation for the 105th Congress.
1988-1995	***Economists Incorporated***, Senior Economist
1984-1988	***Center for Naval Analyses,*** Research Analyst
1980-1983	***Stanford University,*** Research Assistant, Teaching Assistant for public finance,
1981-1982	***U.S. Department of Energy, Conservation and Renewable Energy Program,*** Research Assistant
Summer 1980	***Office of Management and Budget,*** Intern
1978-1979	***Congressional Budget Office,*** Assistant Analyst
Summer 1977	***U.S. Department of Labor, Pension and Welfare Benefits Program,*** Intern
1976-1978	***MIT, Center for Transportation Studies***, Research Assistant
Summer 1976	***U.S. Senate Committee on Appropriations***, Internship sponsored by MIT Political Science Department

Education

1986	Stanford University, Ph.D. in Economics
1978	Massachusetts Institute of Technology, S.B. in Economics
1973-1974	University of South Carolina

Honors

1997-2001	Awards for FCC achievements from various civic and business groups
Summer 1984	Visiting Fellow, University of Warwick
1983-1984	Research Fellow, Brookings Institution
1974	National Merit Scholar, Massachusetts Institute of Technology

Professional Societies

American Economics Association

Federalist Society

Boards

Corporate

2006-2009	MRV Communications
2006-2017	Oneida Broadband

Advisory Boards

2009 - present	Catalyst Investors, Operating Partner
2019-present	Pacific Dataport, Advisory Board
2012 – 2015	Telcare, Advisory Board
2017- 2018	Yippy, Advisory Board
2019-2025	Tachus, Advisory Board
2021-2023	WCO, Advisory Board

Advisory Committees

2003-2004	National Security Agency, Member of panel to support study, "Protecting the U.S. Telecommunications Infrastructure—The Way Forward"
2009-2016	Department of Commerce, Commerce Spectrum Management Advisory Committee

Other

2007 - present	Hudson Institute, Senior Fellow
2003-present	Washington Legal Foundation, Legal Policy Advisory Board
	Telecommunications Policy Research Conference:
2005-2007	Chairman
2004-2008	Board Member

Books

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Cable TV: Regulation or Competition, with R.W. Crandall, (Washington, DC: The Brookings Institution), 1996.

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International Trade in Computer Software, with S.E. Siwek, (Westport, Connecticut: Quorum Books), 1993.

Book Chapters

"Executive Interference with a Supposedly Independent Agency: The Federal Communications Commission," chapter in Liberty's Nemesis, ed. by Dean Reuter and John Yoo, Encounter Books, 2016.

Other Publications

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"The EU's December 2025 Changes to CS3D: Quantifying Costs to U.S. Industry," January 12, 2026, at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6065548

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