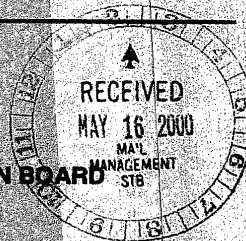


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BEFORE THE
SURFACE TRANSPORTATION BOARD



STB Ex Parte No. 582 (Sub No. 1)
MAJOR RAIL CONSOLIDATION PROCEDURES

ENTERED
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MAY 16 2000
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Public Record

COMMENTS OF BASF Corporation

And Verified Statement of

Tom O'Connor

Snively King Majoros O'Connor & Lee, Inc.
1220 L St. NW
Washington, DC 20005

Dated May 16, 2000

Ex Parte No. 582 (Sub-No. 1) May 16, 2000

BASF Corporation

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Ex Parte No. 582 (Sub No. 1)

MAJOR RAIL CONSOLIDATION PROCEDURES

COMMENTS OF BASF CORPORATION

BASF Corporation, by Counsel, respectfully submits these comments in response to the Surface Transportation Board's (Board or STB) decision of March 17, 2000 and its Advance Notice of Proposed Rulemaking (ANPR), served March 31, 2000.

BASF Corporation (BASF) is a transnational corporation and a major shipper of chemicals and chemical products by rail. BASF operates a fleet of more than 4000 rail cars that last year carried four billion pounds of product in some 22,000 outbound shipments. BASF is therefore vitally concerned that further railroad

mergers be considered in light of the short and long-term impact on rail shippers and the consuming public.

I. The Board Must Anticipate that Any Further Mergers Will Lead to a Transcontinental Rail Duopoly.

BASF supports and applauds the Board's conclusion that further rail mergers cannot be considered on a case-by-case basis under rules that were adopted following the Staggers Act of 1980. Correctly, the Board points out that it must consider "downstream" effects, including the likely strategic responses of the non-applicant carriers.

It is not difficult to speculate as to those downstream effects. Consider the strategic responses of the non-applicant railroads to the most recent application, that of the Burlington Northern Santa Fe (BNSF) to merge with the Canadian National (CN). If the CN merges with a major U.S. railroad, it cannot be long before the other Canadian line, the Canadian Pacific (CP) also seeks a U.S. partner. Moreover, since the CN stretches from coast to coast, it is unlikely that the U.S. railroads will long continue to divide themselves into eastern and western companies. They, too, will seek coast-to-coast combinations. Although the exact configuration cannot be predicted, it is virtually certain that subsequent rail mergers will ultimately result in two transcontinental and transnational systems.

Nor is it likely that any other merger would have a much different effect. If one of the western railroads merged with an eastern road, very soon thereafter, we would see the merger of the other pair. Again, the result would be two systems (although in this case possibly without Canadian partners). In any case, the Board is correct that the likely result of the next round of mergers is two national systems: a transcontinental duopoly.

In his attached Verified Statement, Mr. Tom O'Connor discusses the nature of competition in a duopoly. He argues that the competition would be weak and generally unavailable, because each duopolist has an interest in the survival of the other. If one duopolist were to drive the other from the market, then the resultant monopoly will almost certainly become the focus of government attention. For this reason, he concludes that there would be very little rail-to-rail competition. Moreover, most shippers would have access to either one or the other of the two transcontinental or transnational systems. Mr. O'Connor describes this condition as one of a "parallel monopoly."

If this is the future of the rail industry, then the Board should anticipate that fact and design a responsive plan now. In the short term, the Board should adopt policies that preserve whatever intra-modal competition now exists, and it should identify ways to protect shippers who lack access to such competition. In the longer run, the Board should consider whether it may be appropriate to modify the

structural arrangements within the railroad industry to allow new forms of competition to develop.

II. In the Short Run, the Board Must Prescribe Merger Terms that Protect and Expand Competition.

Appendix B to Mr. O'Connor's Statement shows BASF service locations that will experience a reduction in competition and some of those that are already served by only a single railroad. Unfortunately, the majority of BASF locations fall into this last category. Inter-railroad competition, once fairly pervasive, has largely disappeared, and it will effectively disappear altogether, for BASF at least, when the remaining railroads merge with each other.

Mr. O'Connor discusses a number of strategies that can preserve and even expand rail-to-rail competition. He first recommends that whatever competition now exists be retained through the application of trackage or haulage rights. Any shipper now served by multiple railroads would have the right to have his traffic carried to a competing line by means of these rights.

This ability to reach competing lines would be enhanced further by a requirement for reciprocal switching for all shippers located within the switching limits of any local area served by two or more rail carriers. This arrangement effectively opens rail service within the local switching area to rail competition.

regardless of the line on which any one shipper is located. The Canadians, who have lived with a rail duopoly for most of their history, have just such an arrangement. Termed "interswitching"; it enables shippers with access to only one carrier at origin or destination to gain access to another railroad if the shipper is located within a 30-kilometer radius of an interchange point.

Another Canadian technique for promoting competition is called "Competitive Line Rates." Any captive shipper sending traffic over a route that can be served by more than one railroad is entitled to a rate from the captive (origin or destination) point to the nearest point of interchange with the alternate or connecting carrier. The shipper would first negotiate with the connecting carrier for the competitive portion of the movement.

BASF respectfully recommends to the Board these and similar procedures, as specified in Mr. O'Connor's Verified Statement, as critical to preserving and enhancing rail-to-rail competition in an ever-consolidating industry.

III. The Board Must Alter Its Practices to Protect Shippers from Bottleneck Pricing Abuse.

As noted, most of BASF's shipping points are already captive to a single rail carrier. As a result, the forces of competition are unable to exert effective constraint on the market power of the railroad. BASF, and shippers like it, need help.

At present, captive shippers have relatively little leverage on their rail carriers. Even if there are competitive routes, the dominant carrier is often able to impose unreasonable charges for the captive, or "bottleneck" portion of the movement. Unless the non-bottleneck portion of the shipment is under contract, current Board practices do not allow shippers to challenge the bottleneck portion of the rate. The shipper must address only the total origin to destination charges. Yet, it is the bottleneck, which the shipper cannot avoid, and cannot address, that drives up the cost of the movement.

BASF urges the Board to modify its practices to allow shippers to challenge the reasonableness of the revenue recovery of the captive portions of their movements. The STB has long-standing revenue to cost ratio tests that could then be applied. This modification would be a natural accompaniment to the competitive line rates described in the previous section. Shippers would be entitled to separate, explicit rates for the captive portions of their movements, and they would then be permitted to challenge the reasonableness of those rates.

IV. The Board May Ultimately Have to Consider Restructuring the Railroad Industry.

Mr. O'Connor's statement contains descriptions of recent structural changes in the telephone, natural gas and electric utility industries that have brought

competition into activities that for decades were considered the monopoly preserve of the incumbent providers. The prevailing principle in each of these restructurings has been open access. The principle of open access requires the incumbent to permit unrelated and sometimes competing entities to use its line facilities. In each case, the incumbents have regarded open access as an intrusion into their proprietary sphere. Yet, in each case the incumbents ultimately benefited from the restructuring, as did the consuming public.

BASF respectfully submits that the time is coming for the Board to consider the public interest benefits that might be derived by applying the principle of open access to the railroad industry. Particularly if the industry shrinks to two major systems, the present structural model, whereby each railroad carries its own trains and its own traffic at its own rates cannot be considered as economically efficient. Possibly, the function of operating railroad tracks can be decoupled from that of operating railroad trains. Possibly, the rail lines can be considered analogous to the highway, waterway or airport system, whereby multiple competing users employ common rights-of-way which they collectively support.

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BASF does not necessarily recommend that the Board directly address these structural problems in this proceeding. However, if the Board proposes to allow further mergers to proceed, it should now serve notice on the railroad industry that it will consider major structural changes as part of its agenda during the coming years.

Respectfully Submitted

Eugene Striffler, Jr.
BASF Corporation, by

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Before the Surface Transportation Board

**Opening Statement
on Selected Issues in
STB Ex Parte No. 582 (Sub-No. 1)
Major Rail Consolidation Procedures
Filed on Behalf of
BASF Corporation**

VERIFIED STATEMENT OF

Tom O'Connor

Vice President

Snavelly King Majoros O'Connor & Lee, Inc.

1220 L St NW

Washington DC 20005

Dated: May 16, 2000

**Verified Statement of Tom O'Connor
Ex Parte No. 582 (Sub-No. 1) May 16, 2000**

I. EXECUTIVE SUMMARY

My name is Tom O'Connor. I am Vice President of the economic and management consulting firm of Snavelly King Majoros O'Connor & Lee, Inc. I have served as an economist with the ICC, the USRA, Conrail, the AAR and two consulting firms, including my present firm.

I have been retained by BASF Corporation to review the record of this proceeding and to analyze the Surface Transportation Board's (Board or STB) present and prospective role in the impending consolidation of the railroad industry. I have developed, in collaboration with BASF, recommendations on rule revisions designed to retain, and hopefully enhance existing intra-modal competition while avoiding the service disruptions that have characterized recent rail mergers.

BASF is a transnational chemical company that manages a fleet of more than 4,000 rail tank and hopper cars from a centralized Rail Fleet Command Center. BASF attempts to apply sophisticated supply chain management techniques to minimize transit times, inventory levels and costs to itself and its customers. Unfortunately, the service disruptions of recent rail mergers have seriously impaired this effort to maintain optimum logistical efficiency.

The STB decision of March 17, 2000 and Advance Notice of Proposed rulemaking (ANPR) served on March 31, 2000 clearly indicate that the Board intends to revise its merger rules in three respects: (1) recognition of downstream effects, (2)

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promoting and enhancing competition, and (3) maintaining efficient rail service. My statement focuses on these three issues.

With respect to downstream effects, we agree with the STB that the next round of rail mergers is likely to create a transcontinental (U.S. and Canada) rail duopoly. We recommend that the STB recognize and remedy the fact that this duopoly will provide weak intra-modal competition. In fact, given the duopoly, the STB may eventually have to reconsider the competitive structure of the industry. I discuss the analogous structural changes that have taken place in the telephone, natural gas and electric utilities industries, and I suggest that a similar restructuring may ultimately be required to create effective competition within the railroad industry.

With respect to competition, we have explored six policy options which are available to the STB.

The first option is maximum rate regulation, which addresses the potential abuse of market power in a highly concentrated railroad industry. I find this a limited alternative. It is inefficient, costly to all parties, and inconsistent with the recent trend of allowing markets, rather than regulators, to set efficient prices.

The second option is a more limited form of regulation that focuses on the specific points where railroads are able to exercise their monopoly pricing power. These are the "bottlenecks," usually at the origin or the termination of a movement, where only a single railroad controls the traffic. Current practices provide very limited protection to shippers against bottleneck pricing abuse. Unless the non-bottleneck

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portion of the shipment is under contract, shippers are permitted only to challenge the entire rate from origin to destination, rather than the specific charges for the bottleneck portion of the movement.

- ***We strongly recommend that the STB revise its practices to allow shippers to challenge bottleneck rates and charges specifically, without regard to the remainder of the rates for the movement.***

The third option for increasing competition is to encourage shippers or competing railroads to construct alternative routes around the bottlenecks so as to access another railroad. While quite effective in some situations, this option is infeasible for most shippers in most locations.

The fourth option is the unlimited open access to the rail system by all parties: shippers, other carriers and possibly independent train operators. This option resembles that employed in the telephone and electric industries, where previously proprietary route facilities have been opened to competitors in order that functions suitable for competition can be subjected to market forces. While conceptually appealing, this alternative is beyond the STB's current statutory authority, and would probably encounter operational and other problems.

The fifth option is actually a set of remedies. Short of full open access, there are a range of limited open access solutions to the threatened loss of intra-modal competition. These include trackage rights, haulage rights, joint facilities, shared service areas, and two concepts pioneered in Canada, interswitching and competitive line rates.

- *We recommend that these approaches, all of which are within the STB's regulatory authority, be adopted aggressively as conditions for future mergers.*

The sixth policy option is the one that the STB rightly has rejected, that of relying principally on regulatory oversight after the mergers are consummated. As a device for preserving competition oversight is both too reactive and too limited. It tends to respond to problems, rather than prevent them. Moreover, it focuses on the narrow specifics of each merger without considering the systemic decline in intra-modal competition throughout the continent.

While merger oversight is critical to ensuring that the merger does not degrade the quality of service to shippers, effective oversight must begin before the operational merger with, for example, a demonstration that the car identification and tracing programs, and the operational data and computer systems have been "merged" in a simulated setting. Additionally, the merging railroads should be required to calculate maximum tonnage densities for all major corridors, so as to identify ahead of time potential points of congestion.

- *We recommend that the STB set operating benchmarks before the merger based on normalized pre-merger performance, and refine the benchmarks to detect shortcomings at the regional and local, as well as system, levels.*
- *Finally, we recommend that the STB address potential problems created by the merger of U.S. with Canadian railroads. These problems relate to the absence of uniform reporting of operating and financial data and*

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Economic and Management Consultants

common levels of disclosure. Without continent-wide uniformity, it will be impossible to assess the financial and operating characteristics of the merged railroads.

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II. Introduction

A. Statement of Qualifications

My name is Tom O'Connor and I am Vice-President of Snavely King Majoros O'Connor & Lee (Snavely King), an economic and management consulting company. I have been engaged in the business of economic analysis for more than twenty-five years, beginning in 1973 as an economist with the Interstate Commerce Commission (ICC), predecessor of the Surface Transportation Board (STB) and later in economic analysis, transportation management and consulting positions of increasing responsibility with the United States Railway Association (USRA), Conrail, the Association of American Railroads (AAR), DNS Associates and, since 1987, with Snavely King Majoros O'Connor & Lee, an economic and management consulting company. I was Vice President of DNS Associates and have been Vice President and principal of Snavely King since joining the firm.

I have previously provided testimony in a number of proceedings before courts and regulatory commissions in the United States and Canada including US District Court for Eastern District of Virginia, the Interstate Commerce Commission, the Surface Transportation Board, The United States Railway Association, Regulatory Commissions in New York, and Pennsylvania, State Courts in Montana and Virginia, Arbitration Panels in New York and Massachusetts and a Canadian Crown Commission. A detailed statement of my qualifications is contained in Appendix A to this statement.

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B. Objective

In its March 31, 2000 Advance Notice of Proposed Rulemaking (ANPR), The STB sought public comment on modifications to its regulations at 49 CFR part 1180, subpart A (49 CFR 1180.0 -- 1180.9) governing proposals for major rail consolidations. BASF Corporation requested that I conduct an independent analysis of these issues. The purpose of this statement is to report my analysis of the issues raised in Ex Parte 582.

In collaboration with BASF, I have examined the issues, including analysis of the record developed at the STB's hearings and filings pursuant to STB Ex Parte No. 582 initiated on January 24, 2000 to obtain public views on the general subject of major rail consolidations and the present and future structure of the North American railroad industry.

I should note that a decision from the US Court of Appeals on reopening BN-CN merger is due on June 13, 2000. Since the Court is reviewing the STB's decision to defer consideration of the BN-CN merger, its decision could impact this proceeding, Ex Parte No. 582 (Sub-No. 1).

C. Background

After considering the extensive written comments, as well as the statements delivered in person at its 4-day hearing, the STB concluded that the rail community is not in a position to undertake what would likely be the final round of restructuring

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of the North American railroad industry. It further concluded that its current merger rules are not adequate for addressing the broad concerns associated with a merger process that could lead to just two large North American transcontinental railroads.

Accordingly, the STB announced that it would not accept further merger filings involving a major transaction (defined at 49 CFR 1180.2(a)) until it had the opportunity to revise its merger rules and put them in place. The principal purpose of this proceeding is to develop those new STB merger rules.

III. SUMMARY OF APPROACH

A major and diverse shipper, such as BASF, evaluates rail transportation not in isolation, but rather as part of its Supply Chain. Similarly rail rates, costs and routings are evaluated as part of its Supply Chain Management process. Supply Chain Management is the process of organizing the cost-effective flow and storage of raw materials, in-process inventory, finished goods and related information from point of origin to point of consumption in order to satisfy customer requirements. An effective supply chain joins the supplier, the producer, and the final customer in a continuum. For BASF, many of the most critical links involve the railroad system.

While mergers can create efficiencies, by definition they also reduce alternatives. As the data in Appendix B indicate, many of the BASF points are sole served by a single rail carrier. This heightens the importance of reliable rail service and limits alternatives when rail service falters.

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BASF has sustained significant and repeated failures in rail service, as a consequence of rail mergers. These service failures have caused:

- Diversions to alternative modes
- Curtailment of plant production
- Declines in equipment utilization
- Substantial added cost due to the extensive use of BASF resources to overcome service deficiencies.

The pervasiveness of the impact demonstrates the fact that rail mergers affect the entire Supply Chain process. As the STB record in the UP-SP merger and more recently the NS-CSXT-CR transaction illustrates, recent rail mergers have, at times, created service problems that have rendered effective supply chain management virtually impossible. BASF has directly experienced the adverse effects of both mergers and seeks to prevent recurrences of those defects in the future. In this regard, the data reported in Appendix B demonstrate:

- BASF points which are now served by only one rail carrier, with limited access to competitive alternatives, in part, due to recent mergers
- BASF points which are at risk of the loss of competitive alternatives due to the recently proposed BN-CN merger and the expected mergers responsive to BN-CN.

The effectiveness of supply chain management is driven by the ability of the sequence of participants (links) in the chain to coordinate their activities in the most efficient manner possible. Each link must hold if the Supply Chain is to hold. Weak links must be strengthened or replaced. The experience of past mergers emphasizes the importance of transport alternatives as a remedy for weakened and

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broken supply chain links.

Unfortunately, recent rail mergers, presumably intended to improve efficiency, have instead too often weakened the chain by eroding competitive options and diminishing alternatives. In some instances, the NS-CSXT-CR acquisition increased the number of competitive alternatives. However, BASF experience at its Wyandotte facility indicates that the mere addition of another carrier may be insufficient. Service problems have grown since the rail service moved from Conrail to a combination of NS and CSXT.

The STB has the opportunity and the duty to develop a vision of the future of the rail system that will remedy these defects and enhance the efficiency of the supply chains used by the nation's shippers. The rail merger guidelines at issue in this proceeding are the first step in implementing this vision. At a minimum, they can prevent further erosion of the rail supply chain. Hopefully, they can contribute to its strengthening. We note that the STB espouses enhancing, rather than merely preserving competition and we endorse that.

This analysis outlines, largely through analogy with other industries vested with the public interest, the structure of the rail industry most conducive to competitive efficiency. Recognizing that this ultimate structure is not achievable in the context of this merger guideline proceeding, I recommend policy options that would advance the efficiency of the rail systems and provide shippers with additional tools for their supply chain management.

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IV. BASF's RAIL USAGE AND EXPERIENCE

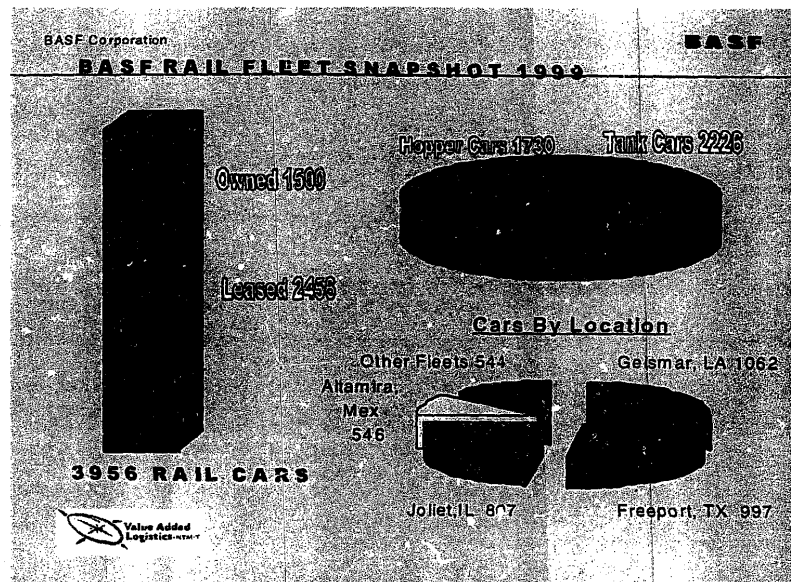
A. BASF's Rail Service Management

As noted, BASF is a major shipper and a sophisticated user of rail service. The following charts depict the Company's involvement in the rail system:

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The BASF Rail Situation



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The BASF Rail Situation



RAIL FLEET COMMAND CENTER

- 22,000 outbound shipments
- 4 Billion pounds product shipped
- 16 million miles in loaded transit
- 1.2 million car location messages (clms)



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BASF manages its rail fleet through a Rail Fleet Command Center. In addition to the traditional activities of tracking, tracing and expediting rail shipments, the Command Center has become the focal point for:

- gathering and dissemination of information,
- tactical operations,
- data analysis,
- strategic planning,
- problem solving,
- administrative functions and
- management interfaces.

Through the Center, BASF is able to conduct total fleet management by monitoring and measuring all stages of the rail fleet cycle, including loaded transit, customer layover, empty transit, plant layover, third party hold time, and maintenance out-of-service time.

The Center provides rail operating data that functions as a barometer for analyzing trends and reporting relevant information back to BASF's plants, customers and railroad vendors. This information flow allows BASF to manage proactively the transit variability and plant dwell time so as to improve the overall utilization of BASF's rail equipment.

A. BASF Experience with Rail Mergers

Despite BASF's extensive investment in rail transportation management, recent rail mergers have challenged the Company's ability to maintain the efficiency of its rail operations and consequently its entire supply chain.

On June 1, 1999, the Norfolk Southern Railway (NS) and the CSXT Railroad acquired Conrail, the largest rail carrier in the Northeast. This merger would have had a catastrophic impact on the business operations of BASF Corporation without BASF's intense and proactive planning, application of substantial additional personnel resources, constant communication, and utilization of lessons learned from the Union Pacific/Southern Pacific merger of 1997. Through this extraordinary effort, the management team at BASF's Rail Fleet Command Center was able to restrict the adverse impact of the merger.

The BASF team's action plan to prepare for the Conrail acquisition started in the summer of 1998, approximately one year prior to the actual breakup of Conrail. A detailed plan was developed that identified affected lanes of traffic, volume levels, and operations with limited transportation options. While this BASF effort reduced the impact of the NS-CSXT acquisition of Conrail, that acquisition still caused significant adverse effects. Coming so soon after the serious and prolonged damage BASF sustained in the UP-SP merger, the NS-CSXT-CR acquisition focused BASF's awareness of the need for and amplified its commitment to seeking better regulatory and public policy solutions to this recurring rail merger problem.

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V. REVIEW OF THE ISSUES

I have carefully reviewed the key issues discussed in the STB March 31 decision. Based on this review, I believe these issues can be grouped into three categories:

- Issues where STB apparently sees a need for change in the merger rules
- Issues where STB might see a need for change in the merger rules
- Issues where STB apparently does not see a need for change in the merger rules

A. Issues Where STB Apparently Does See a Need to Change Existing Merger Regulations

1. Promoting and Enhancing Competition.

The STB now appears much more receptive to altering rail merger policy to enhance, rather than simply preserve, competition. Among the competition-enhancing elements of recent mergers has been the concept of "Shared Assets Areas" which were initiated in the recent Conrail merger to open up competition between CSXT and NS. I note in passing that operations have not necessarily been made more efficient by the simple addition of another potential carrier. More work is needed in this area.

Additionally, both the UP-SP and CSXT/NS/Conrail mergers included negotiated agreements granting trackage and haulage rights to competing carriers. These options, particularly haulage rights, have proved to be of limited value in promoting competition. Haulage rights involve moving the carload shipments of one railroad in the trains and over the tracks of a second railroad. The railroad granting the haulage rights still controls the operations, and in practice can hinder the

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effectiveness of the haulage rights-based competition. Trackage rights involve moving the trains of one railroad over the trackage of a second railroad. While trackage rights typically give more control over the operation, the control exercised by the railroad granting the trackage rights can be used to limit competition.

During the hearings in Ex Parte No. 582, some parties suggested other means to promote and enhance competition in the rail industry. These candidate remedies included requiring merger applicants to:

- Open gateways for all major routings.
- Provide switching, at an agreed-upon fee, to all exclusively served shippers located within or adjacent to terminal areas.
- Offer, upon request, contracts for the competitive portion of joint-line routes when the joint-line partner has a bottleneck segment.
- Provide a new through route at a reasonable interchange point whenever they control a bottleneck segment and the shipper has entered into a contract with another carrier for the competitive segment.

Others have advocated revising the application of the so-called "one-lump" theory to rail mergers. Following that theory, the Board has declined to require access to additional carriers by exclusively served shippers whose sole carrier sought to merge with one of several connecting carriers. Shippers have urged the Board to provide exclusively served shippers with access to an additional carrier, through trackage rights, in order to promote and enhance, rather than merely preserve competition.

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Comment:

I believe that enhanced access is necessary to the preservation and expansion of competition and the consequent efficiency of the railroad system. It would be beneficial not only to shippers, but to the railroads. Subsequently in this statement, I discuss the long-term industry restructuring that the STB should be considering, and the near-term actions that might be adopted in the context of revising the merger rules.

2. Recognition of Downstream Effects.

The STB correctly recognizes that each major merger precipitates further mergers. It therefore proposes to eliminate the "one case at a time" rule and to examine "downstream" effects, including likely strategic responses to major merger proceedings by non-applicant railroads.

Comment:

As discussed in more detail in the following sections, we endorse the STB's recognition of downstream effects and we urge the agency to build in effective safeguards to protect and restore competitive alternatives put at risk by downstream effects.

3. Impact on Rail Service.

The STB recognizes that serious service disruptions were associated with recent mergers, disruptions which caused significant harm. Accordingly, the STB appears receptive to suggestions on additional service safeguards. Candidate remedies noted by STB include:

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- Performance measures to evaluate post-merger service;
- More detailed periodic reports of post merger operations;
- More detailed service integration or implementation plans, with enforceable penalties;
- Required plans for preserving service options available to small shippers;
- Assurances of acquisition of new infrastructure and capacity; and
- More detailed review of the financial terms with a view toward minimizing future service disruptions and any harm that could result from any such disruptions.

Comment:

The record of recent rail mergers is replete with the disastrous consequences on rail service. As developed in more detail in the following sections we endorse the STB's concern with the service issue and urge them to take specific remedial action.

B. Issues where the STB apparently might change existing merger regulations

1. Short Line and Regional Railroad Issues.

The STB appears interested in requiring applicants to submit plans for promoting the viability of existing regional and short line railroads. It might also consider the generic "Bill of Rights" advocated by the American Short Line and Regional Railroad Association. Among the "rights" of such railroads are the right to:

- compensation for service failures,
- interchange and routing freedom,

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- competitive and nondiscriminatory pricing, and
- fair and nondiscriminatory car supply.

Comment:

We see merit in the short line position and endorse ensuring the availability of these same protections to shippers

2. Employee Issues.

Rail labor groups have suggested that the STB require merger applicants to agree to forgo any effort to "cram down" post-merger changes in collective bargaining agreements and/or to offer their employees expanded labor protection (e.g., 10, rather than 6, years of benefits).

3. "Three-to-two" Issues.

Many parties have suggested that STB should give greater weight to competitive harm where the number of rail carrier alternatives would be reduced by a merger from three to two. It appears, however, that the STB is undecided whether to modify the regulations or handle this case-by-case.

Comment:

As the data in appendix B indicate, there are few 3 to 2 points that remain in the wake of recent mergers. The STB should try to retain and preserve the limited remaining competitive access at 2 to 1 and 3 to 2 points

4. Merger-Related Public Interest Benefits.

Many parties have suggested that STB should be more vigorous in securing public interest benefits of a proposed merger and that it should monitor the merger's implementation to ensure that the projected benefits are actually realized. Some parties have suggested that applicants demonstrate that the claimed synergies or other public interest benefits could not be achieved short of merger, for example, through marketing alliances or cooperative operating practices.

Comment:

The public interest test for mergers has involved a balancing of the public interest and the private interests of the merging parties. We recommend that the STB increase the weight given to the public interest. Adoption of the specific remedies in this report will help in attaining a more equitable balance.

C. Issues where the STB apparently does not see a need to change existing merger regulations

1. Safety Issues.

STB asserts that safety concerns will remain a primary goal in railroad merger cases, but it intends to stay with the current approach applied on a case-by-case basis.

Comment:

Safety is of paramount importance in the chemical industry. We endorse the STB commitment to keeping safety as a primary goal in merger cases also.

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As a CMA Responsible Care member, BASF takes pride in its safety record. For BASF, safety is always a priority objective.

VI. Analysis of Key Issues

Based on our experience with rail mergers, review of these issues, and illuminated by the efforts of BASF and other major shippers to respond to the adverse experience in recent rail mergers, our analysis focuses on three key issues:

- **Downstream Effects.** We believe it is critical that the STB anticipate the impact of any further merger approval on the structure of the rail industry. Based on its ANPR, STB appears ready to broaden its view on this issue, and we encourage it to do so.
- **Competition.** We agree with a significant number of shippers and smaller railroads (and apparently the STB itself) that new rules must ensure that competition is not curtailed by future mergers.
- **Service Quality.** We also agree with the many parties who argued that additional safeguards are necessary in STB merger regulations to ensure that future mergers are not accompanied by significant or prolonged service disruptions.

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Since these issues are closely linked, they will not be discussed separately but rather in the context of my analysis of the overall trends in the rail industry. We begin with downstream effects.

A. Downstream Effects

The STB states that it definitely intends to eliminate its "one case at time" rule and to consider "downstream effects" including the likely strategic responses of non-applicant railroads. The practical reality is that approval of any further mergers is tantamount to launching the final consolidation of the industry, almost certainly into two transcontinental railroads. In a few years, the STB and shippers will be confronted with a transcontinental rail duopoly.

Duopolies generate weak competition. That is because each duopolist markets its products and services with the other duopolist in mind. Any price, product or service change by one competitor will often be met by the other. This arrangement leads to very conservative marketing programs, that is, a tendency not to "rock the boat" by challenging the other duopolist too forcefully. To the contrary, duopolists are likely to engage in a pattern of tacit market sharing. That is because each participant knows that if it drives the other from the market, the government, which might tolerate a duopoly, will likely step in if threatened with a full monopoly. This is particularly true of an industry as critical to the public interest as the railroads.

In the rail industry, the weakness of duopoly competition will be amplified by the fact that most shippers will be physically located on either one or the other of the two

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systems. This provides each carrier with a long list of customers over which it has considerable market power. Indeed, in the absence of some sort of regulatory intervention, the future rail structure could be viewed less as a duopoly than as a pair of parallel monopolies, each with its own core group of captive customers.

To be sure, there is inter-modal competition. The competitive threat of the pipeline, motor carrier and barge industries does constrain railroad rates for many commodities and movements. But the economic efficiency of relying on different modes of transportation to restrain the railroad prices suffers from severe limitations. While it may encourage efficiency for some types of traffic, it also can result in cross-commodity subsidies, where the commodities/movements threatened by inter-modal competition are underwritten by those for which such competition is lacking. It provides no incentive to price rail-dominant traffic in an efficient manner.

Left alone, the new structure of the rail industry may render intramodal rail competition a thing of the past. A possible result could be a railroad system that competes only for marginal traffic, that overcharges and underserves captive traffic, and that has little incentive to enhance the efficiency of its operations.

B. Responses to Market Concentration

If a transcontinental duopoly is the inevitable outcome of the current round of mergers, then the STB should develop policies that anticipate that inevitability. The objective of these policies should be to support competition wherever possible and,

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where competition is not possible, to protect the shipping public through continued regulation. In the short run, this involves preserving the limited competition that currently exists and identifying the "choke points" where rail carriers are able to exert monopoly pricing power.

In the long run, this policy involves the injection of competition more broadly into the market. Ultimately, this approach may require opening institutional barriers that have traditionally been viewed as proprietary rights of the railroads, effectively a restructuring of the industry. This long-range view requires the explicit recognition that the railroads, once active competitors to each other, may cease to compete. Their role must be reconsidered. Rather than competitors themselves, they should be viewed as providers over which many competitors can operate. As experience in other industries indicates, this structural arrangement can produce significant benefits for the carriers as well as the shippers.

C. Examples from the Utility Industries

To understand the nature of this reconsideration, it is useful to examine the experience of other industries where the traditional proprietary controls of the incumbent providers have been relaxed so that competition, and the efficiency that it fosters, can flourish. In each of the three industries we examine, the public has benefited, and the traditional service providers have also reaped enormous rewards.

1. Telecommunications

The telephone system was once considered the classic "natural monopoly." The Bell System, controlled by the American Telephone & Telegraph Company (AT&T), owned most of the telephone handsets and other terminal equipment on customers' premises, handled virtually all of the long-distance telephone service, and operated over 80 percent of the telephone lines in the nation. Independent telephone companies were no more competitive. Each had its own franchised monopoly service territory.

All telephone prices were set by regulation. Interstate long distance rates were regulated by the Federal Communications Commission (FCC), and rates for local and intrastate service were regulated by the state public utility commissions.

In the 1960's and 1970's a number of competitive entities successfully challenged AT&T's self-asserted right to monopolize the telephone terminal equipment market, and the FCC subsequently required AT&T to divest its ownership of these assets. Almost overnight, AT&T's monopoly disappeared, regulation of telephone equipment prices ended, and the market, not regulators, determined not only the prices, but the style, makeup and technological sophistication of telephone terminal equipment.

The result of this mandated relaxation of the proprietary right of the Bell System to own and control the telephone equipment market has been an explosion of

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innovation, a dramatic reduction in prices, and a vast expansion in the range of equipment available to the public.

And AT&T also benefited from this process. It fared well even after it lost its secure, vertically integrated markets. Through a series of corporate transformations, AT&T now survives as Lucent Technologies, one of the world's most successful and profitable producers of telecommunications equipment.

The next challenge was leveled at AT&T's dominance of the long-distance market. MCI, Sprint and others demanded that they be allowed to interconnect with the Bell System first for "private line" services, and then for switched service. This effort culminated in 1984 with the breakup of the Bell system into seven local exchange telephone companies and a separate, independent entity that provided competitive long-distance service.

Again, the effect on the old monopolist was beneficial, notwithstanding its prolonged efforts to resist the intrusion of competition into its markets. During the five years following divestiture, AT&T doubled its annual plant additions, yet its return on investment skyrocketed. In 1984, AT&T's equity return was 8.03 percent. Ten years later, in 1994, it was 29.9 percent.¹

The final challenge to monopoly power in the telephone industry occurred when Congress passed the Telecommunications Act of 1996. This legislation required

¹ FCC Statistics of Common Carriers, Table 14 (1984); Table 2.9 (1994).

the incumbent local exchange telephone companies to open their systems to access by competitive providers. These pro-competitive provisions included mandatory permission to resell any telephone company service, collocation of competitors' equipment in the telephone companies' offices, and sale of "unbundled network elements" such as the telephone lines between the local switching offices and the subscribers' premises. Once the local companies opened their systems to competition, they would be allowed to re-enter the long-distance markets from which they had been excluded in 1984.

2. Natural Gas

The natural gas industry of the early 1970s was heavily regulated from the wellhead to the burnertip. Market power was firmly in the hands of the interstate pipeline companies. Pipelines purchased gas from wellhead producers at regulated rates and transported it to the "city gate" for resale to the local distribution companies, which then delivered it to end-use customers. The pipelines' price, also regulated, was a "bundled" rate that included the commodity cost, transportation, storage, handling and delivery.

Independent gas producers had virtually no market power and depended entirely on the pipeline companies to get their product to end users. Then, as now, the exploration and production of gas (and hence the level of proven reserves) depended upon the price which producers could get for their gas. As a consequence of artificially low regulated prices for interstate gas, a perceived shortage of gas developed in 1976-1977.

This crisis precipitated the Natural Gas Policy Act of 1978, which removed the regulation of the wellhead price of gas for interstate sale.

The subsequent restructuring of the natural gas industry, however, was largely in response to the initiatives of a regulatory agency, the Federal Energy Regulatory Commission ("FERC"). In FERC Orders 436 (1985) and 500 (1987), pipeline companies were given incentives to transport third-party gas, rather than the gas of their own merchant subsidiaries. In 1992, FERC promulgated Order No. 636, which made open access transportation and storage of third-party gas mandatory. This order completely separated the merchant (sales) function from pipeline transportation services. All gas, regardless of its owner, is now transported under the same non-discriminatory rates, and any party, pipeline, local distribution company, or end-use customer can buy gas at the wellhead.² As a result, a new class of participants, the gas marketer, has become an important link in the supply chain for natural gas.

The effect of this deregulation and restructuring is illuminating. Initially, gas prices tripled, but the effect was to dissipate, almost immediately, the perceived shortage of gas reserves. Once wellhead prices stabilized, they held relatively steady up to the beginning of this year, when they were influenced by the OPEC-stimulated runup in energy prices which caused them to increase again.

² In fact, most gas is purchased at market centers, of which there are several dozen.

The effect on pipelines was extraordinary. A 1999 study of the largest pipeline parent companies (representing 88 percent of all interstate pipeline revenues) revealed that the FERC's requirement to abandon the gas merchant function caused their revenues to decline by 41 percent, from \$17.9 billion to \$10.6 billion between 1992 and 1997. Their expenses, however, declined apace, from \$13.0 billion to \$5.0 billion, with the result that there was a negligible contraction in net income, from \$2.7 billion to \$2.4 billion. While there were considerable investments in the industry during these years, most related to corporate consolidation.³ Since 1996, however, the industry's construction expenditures have increased dramatically, from approximately \$1.2 billion to \$3.5 billion in 1999 and a projected \$5.0 billion in 2000.⁴

The same restructuring that occurred for interstate pipelines is now under way at the local level. Local distribution companies are being encouraged, and in some states required to open their system to gas purchased by end-use customers directly from competing marketers. This open access policy allows consumers to seek out the lowest prices both for wellhead gas and for the transportation and storage of that gas. The consuming public can expect further savings from these changes.

³ "Corporate Realalignments and Investments in the Interstate Natural Gas Transmission System," by Susanne Johnson, Jon Rasmussen, and James Tobin, Energy Information Administration/Natural Gas Monthly, October 1999.

⁴ Energy Information Administration, Financial Analysis Team, Office of Energy Markets and End Use.

3. The Electric Utility Industry

Like the telephone industry, the electric utility industry has long been considered a "natural monopoly." It has been dominated by vertically integrated entities, most of them private corporations, that hold exclusive franchises to sell electricity to all customers within their designated service territories.

A major justification for the "natural monopoly" of electric utilities was the economies of scale of power generation. In general, the size of the generating plant and the cost of the power generated were inversely related. Cheap electricity required very large power plants. However, about 1990, technological developments, most notably the development of combined cycle combustion turbines, cancelled this traditional relationship between plant size and cost. Suddenly, small plants could be built that generate power as cheaply as large ones. This meant that small, independent entrepreneurs could produce electricity competitively with the incumbent electric utilities. For the first time in history, competition could be introduced into the electric generation industry.

This potential competition immediately encountered the ownership ties of a vertically integrated system. The same incumbent utilities that controlled the existing power plants also controlled the transmission system and the distribution network. Competitors may be able to generate electricity efficiently, but they had no way of reaching their customers except over the lines of the incumbent utilities. Those utilities had little incentive to accommodate the new upstarts.

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The Energy Policies Act of 1992 addressed this problem squarely, at least for the FERC-regulated wholesale markets. That Act created a new class of Exempt Wholesale Generators ("EWGs"): entities that generate power for sale but which are unrelated to any of the incumbent utilities in the region. Those entities would be entitled to equal and non-discriminatory access to the incumbents' transmission systems at tariff rates filed with the FERC.

The 1992 Act applied only to federally regulated wholesale power, that is, power generated for resale, somewhere between 10 and 20 percent of the nation's total. Retail competitive access to end-use customers is a state matter, since retail electric service is under state commission jurisdiction.

As one would expect, different states have taken different approaches to this issue. In general, the states with the highest electric rates -- northeast and California -- have addressed retail access most aggressively. Most states have required that the transmission grid be placed under independent control to deprive the incumbent of any opportunity to favor its own generators over those of its competitors. Some states gone so far as to required its incumbent utilities to divest their generating assets. At this writing, every state in the nation except South Dakota is in the process of opening its electric transmission and distribution system to some form of open access.

Surprisingly to some of the early opponents of this process, the incumbent producers have fared well. Last year, Snavely King conducted a study of the 43 sales of generating plant assets that had taken place between mid-1996 and mid-

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1999. We found that the dollar-weighted average sale price of the generating plants that had been sold was approximately twice the book value of the plants. Since the book value was the basis for the utilities' profit allowances, the effect of the sales was to double the earnings capabilities of these utility companies' assets.

Competitive access to retail electric customers has thus been a bonanza to the electric utility industry, yet it is safe to say that not one utility advocated it. The principal proponents of open access have been the industrial consumers of electricity, who recognized that the market would provide them with the leverage to create significant savings for themselves and their customers. Paradoxically, their self-interest has redounded to the benefit of the incumbents who resisted open access most vociferously.

D. Relevance to the Rail Industry

The foregoing examples drawn from the utility industries demonstrate quite forcefully that a high level of industry concentration is not necessarily inconsistent with the development of effective and beneficial competition. To the contrary, the incumbent monopolists (or duopolists) can function as enablers, rather than inhibitors of competition, and they can benefit to the same degree – if not more – as the new competitors.

In order for the incumbents to fill this role, there must be two fundamental changes in modus operandi of the industry. First, there must be a clear identification of the

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activities that can be opened to competition and a separation of them from those functions that continue to be intrinsically monopolized.

The electric utility industry affords a good example. It is universally recognized that power generation lends itself to competition but that the transmission and distribution functions continue to be natural monopolies. Power generation is opened to all competitors and is deregulated. Transmission and distribution continue to be subject to regulation. Similarly, in the telephone industry, subscriber access is recognized as the bottleneck function of the telephone industry that will continue to be dominated by the incumbent carriers. Meanwhile, long distance telephone service, for which competition is feasible, is offered separately by highly competitive firms.

Second, there necessarily must be some intrusion by governmental authority into what the incumbents have traditionally perceived as their proprietary rights. Ironically, the successful introduction of competition requires this intrusion. For example, competition in the telephone equipment market required a governmental mandate that AT&T surrender its proprietary right to own and control all equipment attached to its network. Competition in the long-distance market was possible only when the government altered the corporate structure of the Bell System. Competition in the local exchange market required the government to force the incumbents to interconnect competing carriers. Competition for gas procurement required a governmental prohibition against gas pipelines functioning as gas merchants. Competition in the electric industry can be effective only when existing

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transmission grid owners are forced to provide equal access to all generators of power.

It is not difficult to apply the utility restructuring model to the railroad industry. The railroads provide two quite distinct functions: they own and maintain railroad tracks, and they own and operate railroad trains over those tracks. Both of these functions are generally controlled entirely by the same entities, and both will become subject to the anti-competitive effects of the impending transcontinental duopoly.⁵

The ownership of railroad tracks is arguably a monopoly function. It is practically infeasible to expect competing entities to share the provision of rights-of-way.⁶ The operation of trains, however, is not intrinsically a single-provider activity. It could be opened to competition. Again, the electric utility analogy suggests itself. The transmission lines (the line haul component, like rail lines) are centrally controlled and operated by a single entity. The power that feeds onto those lines, however, is generated by a variety of competing firms. The competitors pay the transmission entity for the right to use the lines, but the power (functionally similar to rail freight) flows to customers designated by the generators at prices determined by a very competitive market.

⁵ There are other related functions such as the provision of railroad cars that are somewhat competitive already.

⁶Although, as the "Shared Asset Areas" of the northeast corridor suggest, even this assumption may be open to question.

E. Policy Options

While it is relatively simple to identify the potentially competitive functions within a monopolized rail industry, the second change required for effective competition, which is the government intrusion into the incumbents' perceived propriety rights, is a far more difficult proposition. The following discussion addresses the broad categories of policy solutions that suggest themselves. The set of summary charts in a later section of this report analyses these options using 12 different criteria.

1. Maximum Rate Regulation

If the railroads are to consolidate into two entities for the entire continent, then a persuasive case could be made for the reregulation of the industry. This reregulation would be limited to traffic that has no demonstrable intermodal competition, and it would establish only maximum rate levels. The railroads would be free to reduce rates at their discretion. It would thus be lighter-handed than the regulation that prevailed prior to the Staggers Act, but it would represent a marked increase in the regulatory role currently played by the STB.

This policy option has the appeal that it would be an effective solution to the pricing power of the railroads, but its efficiency is questionable. Moreover, it would be costly to administer for the STB, the railroads, and the shippers whom it presumably would benefit. Although I am not an attorney, I suspect that it would also require a revision to the statutes that currently govern the regulation of the railroad industry.

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In my opinion, reregulation is an outdated solution and we do not recommend it. The trend in the utility industries, discussed earlier, has been to harness the market as the most efficient form of price regulation. Heavy government regulation has particularly ill-served the railroad industry and its users.

2. Resolution of the Bottleneck Impasse

If total re-regulation is infeasible and undesirable, as we believe it is, there is a much more limited application of regulation that would substantially enhance the protection that shippers require from the pricing power of heavily concentrated railroads. It concerns what are called "Bottleneck" situations. Bottleneck situations occur when there is a movement involving multiple railroads, but at either origin or destination (or both) only one railroad can pick up or deliver the traffic. The sole originating or sole terminating railroad is termed the "bottleneck" carrier. The rate charged by this carrier for its portion of the total rail movement is defined as the bottleneck rate.

The STB has established some fairly constraining criteria that must be met before a shipper can challenge a bottleneck rate. The first criterion is operational. There must be no reasonable alternative service from another railroad or mode of transportation.

The second criterion is commercial. A rate challenge of the bottleneck rate is possible only if the balance of the total rail rate, excluding the bottleneck rate, is a contract rate. This is because, under existing regulations, the STB does not

regulate contract rates. The STB's rationale is that two parties entering into a contract do so under mutual consent, and a contract is legally binding on both parties unless certain situations occur. Therefore, if the total transportation charges are part contract and part tariff, the STB would only be able to adjudicate the non-contract portion. If the non-bottleneck portion of the haul is under a contract rate, the only rate that could be challenged would be the non-contract or tariff portion; the bottleneck rate.

In movements involving multiple railroads where the entire rate from origin to destination is a combination of proportional rates or local rates, the rate of the bottleneck carrier cannot be challenged on its own merits, in isolation from the remaining published rates. Under existing regulations, in these circumstances, all of the rates applicable to the particular movement must be challenged by the rail user. This position has been upheld by the appellate courts based on a Supreme Court decision which found that a shipper's interest in challenging a rate is on the entire rate and not a portion of that rate. Despite a widely held view in the shipper community that this was not the intended application of this principle, it is the standard currently applied.

As indicated above, the ability of a rail customer to challenge a bottleneck rate is currently available only under restricted circumstances. The next round of mergers could further reduce the number of situations under which bottleneck rates can be challenged separately from the total through rate.

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With the likelihood of combining rail systems currently transporting shipments between the east and the west, the substitution of single-line through rates for movements that are currently a combination of contract and tariff rates is a distinct probability. The merged system has only to let the contract expire and publish a joint- line or single-line rate from origin to destination. Under the current bottleneck rules, this would require the rail customer to challenge the entire rate. Agreements could also be made between the railroads to maintain the current rate levels of the individual carriers but file them collectively as a single through rate. This would protect the bottleneck carrier from having its rate challenged.

As railroads merge into larger systems they will wield more influence over shortline railroads. In many situations, shortline railroads are the bottleneck carriers. A bottleneck shortline carrier can eliminate a challenge to its effective rate by including its rate in the published through rate. If it cannot reach agreement with the connecting railroad on a division share of the through rate, it can publish its own rate. As long as the balance of the rail movement is not occurring under a contract, the shortline's individual published rate cannot be challenged separately under the current bottleneck guidelines.

If the rate cannot be challenged as a bottleneck rate, the only existing regulatory remedy available to the rail customer is to file for rate relief under the non-coal rate guidelines, Ex Parte No.347 (Sub-No.2), or the coal rate guidelines, Ex Parte 347 (Sub-No.1). However, neither of these regulatory options is particularly effective or efficient.

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The cost of a maximum rate case under the Ex Parte 347 (Sub-No.1) guidelines can easily exceed \$1,000,000. Given the fact that a significant number of such cases result in no rate relief, many shippers have dismissed maximum rate cases as a feasible course of action. The development path on the non-coal rate guidelines, Ex Parte No. 347 (Sub-No.2) has been prolonged and laborious. However, again, little if any rate relief has resulted from the process. If the cost and expected return of instituting these complex proceedings does not justify the relief sought, the rail customer is effectively precluded from any rate relief from the STB under existing regulations.

Mergers are likely to increase bottlenecks, the instance of through rates, and the corresponding vulnerability of shippers to the pricing power of bottleneck carriers. We recommend as a reasonable, and restrained application of the STB's regulatory authority that STB require, as a condition for future mergers, that shippers be permitted to challenge bottleneck rates, regardless of the nature of any other rates in the movement between origin and destination. When a railroad sets a proportional or local rate as its revenue compensation, that rate would then be subject to rate reasonableness tests on its own merits.

Bottleneck rates are unique in that they are largely shielded from regulatory review. The proposed bottleneck rate relief would remove this shield and allow the rate to be evaluated on its own merits. This policy option is immediately available to the STB, it can redound to the benefit of shipper and railroad alike, and it may increasingly be needed in the context of the final round of mergers. We recommend adoption of our proposed bottleneck rate challenge procedure.

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3. Build Out to Competing Rail

As an alternative to paying bottleneck rates, a competing railroad or a shipper can, in theory, build its own rail line. This alternative is theoretically always available to shippers seeking intra-modal competition. It should be supported by the STB as the ultimate recourse against unreasonable rail rates or inadequate rail service. It is, of course, prohibitively expensive to most shippers. Except in rare instances, it is not feasible.

4. Open Access

A case might be made for a complete restructuring of the railroad industry similar to that which was imposed on the telephone and gas industries and which is currently under way in the electric utility industry. Under this scenario, the rail line ownership function might be decoupled from the train operation function. Any party capable of operating a train would then have access to the rail rights-of-way by paying regulated access charges. If the railroads chose (or were allowed) to continue to operate trains, they would do so in competition with other railroads, with shippers, and possibly with non-rail train operators.

Again, this is a somewhat radical approach, one that would probably require legislative authority for the STB to implement. It is, however, conceptually appealing, and should be examined as a possible long-term solution. If adopted, it would need to be implemented very carefully to avoid operational problems that

could disrupt the rail system. Without a major change in attitude on the part of the railroad, such proposals would likely encounter vociferous opposition.⁷

5. Limited Open Access

Short of full open access, a number of limited open access strategies can improve the opportunities for shippers to enjoy the benefits of intra-modal competition. These strategies can be grouped functionally.

First, there are **operational** innovations such as:

- Haulage rights, where the freight of the entering carrier is hauled to serve the target market in the trains of the incumbent carrier. With haulage rights the incumbent has virtually complete operating control.
- Trackage rights, where the trains of the entering carrier reach the target market by operating over the track of the incumbent carrier. With trackage rights the incumbent has dominant operating control.
- Joint Facilities, where the entering carrier and the incumbent carrier agree to jointly build a facility or cooperatively use an existing facility, thus lowering costs and increasing service. Storage in transit facilities are an apt example.

⁷ As the history of the utility restructurings has demonstrated, the hostility of the incumbents was neither insurmountable nor in the incumbent's own self interest.

With joint facilities, control is generally shared equitably, by agreement.

As noted above, control of the competing rail service varies significantly among the operational innovations. Experience also indicates that reduced control often leads to reduced availability or diminished service quality. Thus the operational innovations are promising but may be insufficient to generate effective competition.

There are also **commercial** solutions, which include arrangements whereby marketing and rate making authority is extended into markets not otherwise competitively served.

The proposed solution to the bottleneck rate impasse is an example of a commercial solution. Other examples of commercial solutions are found in Canada, where rail duopoly has been a reality for most of the country's history. The Canada Transportation Act provides two mechanisms that better enable Canadian shippers to access either of the line-haul carriers. The first is Interswitching; the second is Competitive Line Rates.

Interswitching applies if a shipper has access to only one rail carrier at origin or destination. The shipper may have cars interswitched from the serving carrier to another railroad at prescribed rates if the shipper's siding is within a 30-kilometer radius of the point of interchange. The 30-kilometer limit is not rigid, however, and can be extended. The rate must not be less than the variable costs of moving the traffic.

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Interswitching has worked well in Canada since 1988. According to the Canadian Transportation Agency, each year 150,000 cars are switched between the two major Canadian carriers, CN and CP.

Competitive Line Rates (CLR) apply if the shipper has access to only one rail carrier at origin or destination and a continuous route between those points is operated by two or more companies. The shipper must be beyond the 30-kilometer interswitching limit. In these circumstances, the local carrier can be required to establish a competitive line rate from the origin or destination to the nearest interchange with a connecting carrier. The shipper must first agree to a rate and terms with the connecting carrier. Any portion of the move covered by an interswitching rate will use that rate. The shipper must show they will suffer "substantial commercial harm" if the Canadian Transport Agency does not grant CLR.

CLR provisions have seen very limited use due to requirements that shipper and line-haul carrier agree on rates before CLR is determined, and that the shipper show "substantial commercial harm" if CLR is not granted. However, the availability of these provisions has enhanced shippers' competitive options in the marketplace, without actual regulatory intervention.

As the Canadian experience illustrates, effective commercial access solutions are available without altering the existing regulatory framework.

6. Regulatory Merger Oversight

The final policy option is "business as usual" in the merger review process. It is to approve each merger with a series of specific conditions and requirements that are to be reviewed after the fact by the STB through its oversight process. This is the "one at a time" practice that the STB appears intent on abandoning. And for good reason.

Its effectiveness in preserving competition is limited because it requires that the merger review anticipate all possible anti-competitive outcomes from the combination. It addresses the narrow specifics of each merger without considering the systemic decline in intra-modal competition throughout the continent. Finally, it creates an after-the-fact remedial arrangement that reacts to, rather than anticipates and prevents the unexpected and adverse effects of each merger.

VII. Summary Review of Options**Monetary, Geographic and Commodity Constraints on Policy Options**

Option	Monetary Cost of solution to Shipper	Monetary Cost of solution to Railroad	Geographic constraints on Option Applicability	Commodity constraints on Option Applicability
Maximum Rate Regulation	High	High	No	Yes
Resolution of Bottleneck rate impasse	Low	High	Yes	No
Build Out to Competing Rail	High	High	Yes	No
Open Access	Low	High	Yes	No
Limited Open Access Via Haulage Rights	Low	Low	No	No
Limited Open Access via Trackage rights	Medium	Medium	Yes	Yes
Regulatory Merger Oversight	High	Low	Yes	Practical limits

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It is necessary to consider the ongoing institutional constraints on policy options

Option	STB Resource Requirement for Solution	STB ongoing involvement in Solution	Regulatory constraints on Option Applicability	Legal constraints on Option Applicability
Maximum Rate Regulation	Major	Major	Major	Major
Resolution of Bottleneck rate impasse	Major	Minor	Medium	Minor
Build Out to Competing Rail	Medium	No	Medium	Minor
Open Access	Major	Minor	Major	Major
Limited Open Access via Haulage Rights	Minor	Minor	Medium	Minor
Limited Open Access via Trackage Rights	Minor	Minor	Medium	Minor
Regulatory Merger Oversight	Major	Major	Major	Major

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The effectiveness, efficiency and track record of the policy options varies

Option	Effectiveness of Solution	Efficiency of Solution	Proven track record of Option	Experience with use of Option
Maximum Rate Regulation	High	Medium	Yes	Extensive
Resolution of Bottleneck rate impasse	High	High	Extensive in negotiations area	Extensive in Negotiations area
Build Out to Competing Rail	High	High	Yes	Extensive
Open Access	High	High	Yes	Extensive in Negotiations area
Limited Open Access via Haulage Rights	Low	Low	Mixed Reviews	Limited
Limited Open Access via Trackage Rights	Medium	Medium	Yes	Extensive
Regulatory Merger Oversight	Low	Low	Limited	Limited

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As the preceding summary charts indicate, the policy options are numerous and their attributes and implications are diverse. One of the more promising policy options is limited open access. This option can be implemented a number of ways which can meet the needs of both railroads and shippers. In the next section we discuss some of those ways.

A. Service, Reporting and Procedural Changes

1. Introduction:

Two of the primary concerns of rail shippers are competition and service. These concerns are not solely determined by rail mergers but shipper concerns have been heightened in recent years as a result of mergers.

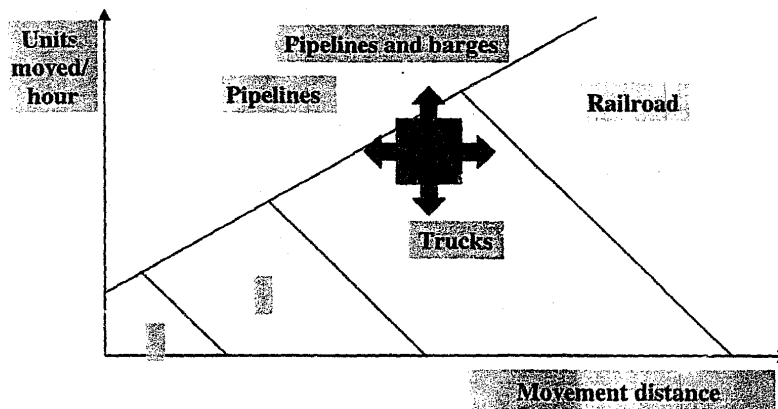
In this section we focus on service. A reasonable goal is to evolve a company's supply chain into an optimally efficient, customer-satisfying process, where the efficiency of the whole supply chain is the objective rather than individual links, whether the link is a department, supplier or transport carrier. We have noted that some rail mergers have resulted in degraded performance of that rail link, threatening the entire supply chain.

Declining performance of the rail links can lead to serious dislocations in logistics and supply chain processes as illustrated in the following chart:

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The choice of cost-effective means of transport changes during rail mergers. Rail freight is forced to other modes when rail links in the Supply Chain degrade



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2. Service Measurement

To anticipate and prevent or correct service problems, measurement of the process is essential. Rail industry measurements include car inventory, system velocity, trains held for power or crews or congestion, locomotive power availability, rail system productivity.

Measurement must include not only the metrics of importance to rail management but also those of importance to the rail customer and to their end customers. While degradation in the rail management metrics often correlates with degradation in the customer metrics, it is preferable to measure the reliability, consistency and timeliness of delivery from the customers perspective, as well as from a blocking plan or railroad timetable perspective.

Incentives and disincentives can be built into the process based on the metrics. The design of the process is important. Customer service issues particularly need well designed measurements. And customer service includes many discrete issues, some of which are not easily measured. Some of the most important service issues include:

- continuity in understanding of customer's needs and wants
- ability to deliver necessary customer service levels
- variations between operating plans and actual implementation
- effective communications with the customers
- identifying and resolving differences among supplier's, railroad's and customer's perceptions of satisfactory service levels.

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One of the major benefits asserted by railroads involved in a merger is the efficiency gains associated with single line service. However, single line operations are often accompanied by declines in both competition and service. The number of railroads involved in handling the shipment between origin and destination is of minor concern to most rail customers. Typically, the rail customer is more concerned with the competitive alternatives to the serving railroad, particularly whether alternative rail service is available. The second concern, and in many instances the most important, is service.

Shippers that are not producing or receiving time sensitive freight are primarily concerned with maintaining service at consistent reliable levels. Large fluctuations in transit times, both inbound and outbound, have severe impacts on the elements in a shipper's supply chain. Past mergers have resulted in interruptions in production, lost sales, increased inventory costs and plant shutdowns. The issues discussed below are suggestions on how to minimize or even eliminate service failures such as occurred as the result of past mergers. We also identify actions that could reestablish some of the competition that has been lost between rail carriers during the merger process.

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3. Operational Alternatives:

a) Line-Haul Service

The next round of mergers will create two transcontinental rail systems. Shipper options into and out of the major gateways will be severely reduced and in some instances eliminated. The major gateways can be broadly defined as those locations where four or more railroads currently interchange traffic or there is a switching railroad that handles the pickup and delivery of rail cars within the switching limits of the locality.

The major gateways that will be impacted by the formation of transcontinental rail systems will include Chicago, IL, St Louis, MO including East St. Louis, Memphis, TN, Kansas City, MO and New Orleans, LA.

The newly merged systems will attempt to maximize their length of haul in order to capture the highest possible portion of the line-haul revenue. This will be especially true of commodities that yield the greatest revenue margins, such as coal and chemicals. As the options at the origin and destination points have been continually reduced with each merger the serving carrier has gained more control over the line-haul routing of the shipment. As the data in Appendix B show, BASF would sustain this curtailment of options with the next round of mergers.

As a condition of all future mergers, especially those resulting in transcontinental railroads, the STB should establish a mechanism that will set reasonable rates separately into and out of the major gateways when the railroads fail to allow for interchanges at major gateways. The creation of transcontinental railroads will sharply reduce or eliminate a rail shipper's ability to negotiate separate rates into and out of major gateways. Even under the current structure of the railroad

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systems there are at least two railroads into and out of virtually all major gateways. An example would be a movement from northern New Jersey to Houston, TX. Currently a shipper could choose CSXT or NS into East St. Louis or Memphis and then BNSF or UP into Houston, TX. If CSXT merged with UP, it is doubtful that CSXT would interchange the traffic to BNSF. The shipper would be limited to a choice of using one of the merged systems from origin to destination. Under this situation the shipper may not be able to choose the most direct and efficient route but only one of the merged systems.

b) Local Service

Mergers have continually reduced the number of locations with multiple carrier service options. This trend can be reversed by opening up shippers in a locality to service by another railroad through reciprocal switching. Shippers that are located within the switching limits of a locality only served by one railroad and have the line-haul service to that locality provided by another railroad would have an invisible termination railroad. The reciprocal switching charge would be set at a reasonable level by the STB if the two railroads involved cannot reach an agreement.

The reciprocal switching charge might well be less than the terminating railroad's division of the through rate. However, the carrier granting access and receiving the reciprocal switch charge at point A could be granted the same reciprocal rights at point B, another locality now solely served by the other carrier. In order for the arrangement to be fair to both carriers, the difference in switching rates per car and the volume handled under the two facility agreement should offset to the greatest extent possible. All reciprocal switch charges would be absorbed by the line-haul railroads through the rate.

Providing access by using this mechanism is preferable to trackage rights in high density traffic areas, especially industrial yard locations. Under this type of

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operation the carrier owning the switching facility does not have to accommodate the trains of another railroad on its system. Scheduling trains with trackage rights can lead to operating problems in terminals with a high traffic density. If the trains operating on trackage rights are either late or early this can lead to delays for both the owning railroad and the carrier operating on trackage rights. The Houston area is a high density operation which took months of intensive effort to regain adequate service levels after the UP-SP merger. This solution involved a joint dispatching facility, based at Spring Texas.

To the greatest extent possible the railroads involved in the agreement should work out the locations, operating details and the level of charges. This approach will also ease the problems shippers incur when service levels are reduced in a post merger environment.

A second possible solution is the incorporation of joint agencies or terminal switching railroads that are owned by the line-haul railroads that serve the locality. Railroads such as the PTRR in Houston, TRRA in St. Louis and the service provided in the Shared Asset Areas by Conrail provide examples of this. In certain circumstances this type of organization is more efficient in its operations and provides the rail customer better service.

B. Pre-Merger Safeguards:

With the exception of the CN-IC, and BN/ATSF, mergers in recent years have resulted in severe service disruptions with major adverse impacts on the operations of rail customers.

Operational planning exercises were carried out by the merging railroads in each instance and were intended to eliminate the service disruptions that occurred. The STB through its oversight procedure has monitored the operations of the railroads in the post-merger environment. Identified below are some of the more important areas of a newly merged system often appearing as the cause of service problems. The procedures identified in each area may reduce or eliminate similar service disruptions in future mergers.

1. Rail Car Tracing and Identification

Car tracing and car identification systems in the merged system have been a major problem to shippers in that knowledge as to the current location of their cars has been unattainable on many occasions. Shipper cars have been shown as empty and returned to the shipper when they were actually loaded, having never reached their destination nor been unloaded. Moreover, railcars have been lost by the railroads, creating serious problems for both shippers and receivers.

In the future, the STB should be presented with documented evidence that the systems of the merging railroads have successfully been "merged" in a simulation setting and also run simultaneously with the systems of the individual railroads. This will demonstrate to the railroads, shippers and the STB the compatibility of the different systems and can increase the probability that the merged system will be functional on day one of the post-merger environment, contrary to what BASF experienced with the Conrail acquisition.

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2. Computer and Data Systems

The electronic transmission of operating data is often cut over to the combined system on a piecemeal basis. If the merged system is to operate and conduct business as a single unit, compatible systems are needed for every facet of integration. The integration of the different systems must be tested in a real time setting. In the past, merging railroads have conducted tests of the new system more often in a simulated or laboratory setting. A true test of the merged system can be developed by applying it to the entire operations of the merged system using actual data. When such systems have been tested in the past, the volume of through put data has often been on a limited scale with the full scale test occurring during actual operations. Perhaps larger scale or full scale test results along with the outputs should be provided to the STB as proof that the systems will function as required in the post-merger environment.

BASF's experience with the Conrail acquisition indicates performance has fallen considerably short of the goal. Immediately following the Conrail acquisition, BASF phone calls to both NS and CSXT were often placed on hold for as long as 60 minutes and sometimes simply went unanswered. These aspects of the rail communication system simply were not up to the task on the cut over day.

While the railroads usually rise from the ashes eventually, it seems preferable, and in the best interests of all the affected parties, to apply more planning and testing before the live cut over and generate less need for crisis management after the cut over.

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3. Establishment of Operating Benchmarks

The current procedures of the STB's oversight of mergers are to establish operational benchmarks such as train speed, cars in the system, dwell time and car throughput in major terminals, etc. The train speed and cars in the system data should be developed for major operating divisions of the system in addition to the system as a whole. As the merged rail systems increase in size, statistics for the entire system may not reveal problems in specific geographical areas or high density traffic corridors until the problem begins to adversely impact the entire system or rail network.

In order to develop statistics that will give early indications of trouble spots within the merged system, benchmarks should be developed and established in a pre-merger environment. This is based on the assumption that the carriers operating in a pre-merger situation are operating at a normal level without any major delays or problems, other than those normally experienced in daily operations. Changes in these benchmarks post-merger would alert the operations personnel and the STB to potential problems that could be developing.

Along these same lines, the development of tonnage densities should be computed for all major traffic corridors. As railroads have continued to merge while rationalizing their infrastructure the problem of capacity constraints could become an issue in the next round of mergers. Rail transportation in certain commodity groups has shown continued growth. This was cited as one of the underlying causes for the congestion on rail lines exiting from northern New Jersey, in the NS-CSXT-CR merger. The maximum density and the current density should be computed for all major corridors in order to assure the STB that the capacity exists for future growth. This could also be used to evaluate the train operation and dispatch plan presented by the merging railroads.

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In connection with tonnage density, data should be developed for the top ten commodities or commodity groups and the system as a whole for each of the merging railroads. This data should illustrate the trends for these products over the last five years for which the data is available. The months of the current calendar year for which data is available should also be included. The data should include the number of tons, loaded car miles, and the total ton-miles. Increases in these statistics could be translated into increased requirements for motive power, train crews and rail cars. The data could also be compared with the traffic projections included in the application.

Some would take the position that the railroads already perform all these functions as part of their merger planning process. But recent history of service disruptions has shown clearly that the railroads' procedures in these areas were insufficient to the task.

4. Procedural Time Frame

The mergers filed with the STB and ICC in recent years have been handled under increasingly ambitious time frames. The time frame for future mergers should allow sufficient time for the issuance and handling of a scoping order by the STB. This order would consider addressing issues raised with the market analysis, operating plan, labor, traffic diversion study, and other aspects of preparation and testing by the railroads. The merging railroads would then be given adequate time to respond to the questions raised by the STB or other parties to the proceeding. This could help identify and resolve issues when they are at the stage of potential problems, before they emerge as crises.

5. Oversight Requirement

The STB's oversight procedures are currently imposed as a condition of approving the merger application. We recommend that oversight procedures should be made a standard requirement for merger approval, rather than a possible condition.

The oversight should continue for a period of three years beginning with the effective date of the merger approval. The STB could extend the oversight period depending on the conditions prevailing in the aftermath of an approved merger.

C. Inclusion of Canadian Railroads:

Canadian railroads have been included in mergers with U.S. railroads in the past. As evidenced by the application of the BNSF and CN-IC, Canadian railroads will in all likelihood be included in future mergers involving U.S. railroads. As those systems become more integrated, the cost of operating the merged system will tend to be more heavily influenced by the characteristics of the Canadian operators.

In adjudicating a rate proceeding involving a merged system which includes CN or CP, the STB and the non-railroad party must have accurate cost and operating data.

If the operations are truly merged the financial and operating data for the merged system should be filed with the STB in the same manner and format as is currently required of the U.S. railroads. For example, if the shipment is handled in the U.S. over lines of both the BNSF and CN, under a single through rate, there is now no method to subdivide the through rate and challenge the BNSF portion separately.

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Publishing single line rates, involving both Canadian and U.S. railroads, can make it impossible for shippers to contest what they perceive to be unreasonable rates. As a condition of allowing the merger of Canadian and U.S. railroads, the STB should require that all financial and operating data be filed for the combined system on the basis currently required of U.S. railroads. Having only the U.S. portions of the merged system file separate reports will not produce accurate costs that are representative of the combined operation.

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VIII. Conclusion

The next round of mergers will almost certainly lead to the final consolidation of the railroad industry into two transcontinental systems. Without clear policy direction from the STB, this duopolized industry will lose its competitiveness and efficiency. Based on my review of the rail industry and similar concentrated industries, I recommend that the STB should adopt three policy options.

The first policy option would increase protection for shippers by permitting them to challenge a bottleneck rate on its own merits without masking the bottleneck rate in the rates and charges for the other segments of the movement.

The second policy option would adopt a range of strategies for increasing access by shippers to alternative rail carriers. These include haulage and trackage rights, interswitching, and competitive line rates.

The third policy option would develop and apply meaningful service benchmarks, incentives and guarantees as part of the merger review and monitoring process.

Failure to adopt these and similar pro-competitive policy initiatives, combined with the effects of the final wave of railroad mergers would seriously hinder a wide range of shipper industries and ultimately redound to the disadvantage of the railroads themselves.

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The essential test of the regulatory policies is how efficiently and effectively they generate competitive alternatives. If the regulatory policy enables the creation of competitive alternatives, market forces will complete that process and generate mutually satisfactory solutions.

As shown in this statement, policy options are now available to the STB which can remedy the detrimental effects of the coming wave of rail mergers while promoting financial health of the entire supply chain; supplier, shipper, customer and railroad. I recommend that STB adopt the following responsive and effective policy options:

- **Bottleneck rates** Extend the proven regulatory threshold costs tests to enable challenging bottleneck rates.
- **Competitive Access.** Adopt a range of strategies for increasing access by shippers to the alternative rail carrier, including haulage rights, trackage rights, interswitching, and line haul access modeled on the Canadian competitive line rates.
- **Service.** Adopt relevant and meaningful service guarantees, particularly for firms like BASF, with limited access to competitive rail and non-rail options, for whom rail service failures can be very damaging.

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IX. Appendix A: Qualifications

Experience

Snavelly King Majoros O'Connor & Lee, Inc., Washington, DC

• **Vice President (1988-Present)**

Mr. O'Connor has more than twenty five years experience in the transportation industry. His experience includes key and increasingly responsible management and policy positions with government agencies and private industry.

Mr. O'Connor, in recent years has conducted analyses for the Government of Canada used to shape policy for freight transportation transport policy. He also has developed the Master Plan for Management Information Systems and computer facilities to measure, manage and monitor both rail freight and rail passenger transportation for the Bulgarian State Railways, in Bulgaria and the Balkan Peninsula. He has created and managed numerous computerized transport management and regulatory systems and is a widely recognized expert on costing and economics.

Mr. O'Connor has analyzed more than 45 rail merger scenarios and cases. He has provided expert testimony before state and federal courts and commissions in the U.S. and Canada on economic and policy issues. He has also testified as an expert on computerized transportation analytical systems, rail operations, anti trust issues and transportation costing. Mr. O'Connor also has served as an impartial and expert monitor of data and processes at issue in litigation on transportation.

Within the litigation arena, Mr. O'Connor has also conducted management audits of

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railroads, focused on identifying the cause and effect relationships underlying claimed cost incidence. The management audits were directed toward testing the cost basis of bills submitted by major railroads.

DNS Associates Inc., Washington, DC

• **Vice President (1982 - 1988)**

Mr. O'Connor directed and participated in numerous projects including merger analyses, transportation infra-structure analyses, plant and network rationalization and feasibility studies. He designed and implemented mainframe and microcomputerized systems for analyzing rail, truck and barge logistics. The computerized cost systems Mr. O'Connor created are in widespread use throughout the United States and Canada.

Mr. O'Connor also advised the U.S. Rail Accounting Principles Board on the costing aspects of regulatory reform policies. He also provided expert testimony on computerized data bases and cost systems and related rail cost issues before the Interstate Commerce Commission.

Association of American Railroads, Washington, DC

• **Assistant Vice President, Economics (1979 - 1982)**

Mr. O'Connor designed and managed major economic analysis projects. He helped formulate industry economic policy positions culminating in the Staggers Rail Act of 1980. He submitted expert testimony on behalf of the railroad industry in numerous

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cases before the Interstate Commerce Commission and state regulatory commissions. He also appeared regularly in national forums on economic issues.

Mr. O'Connor directed the most significant computerized industry Costing System project in 40 years, URCS, the cost system now used by all major US railroads. He also conducted industry seminars on URCS and related economic issues.

Mr. O'Connor also testified before the Interstate Commerce Commission on the design and application of this pathbreaking rail cost system since adopted by the Commission and the rail industry.

He also directed development and installation of a commercial computerized economic and market analysis system now used by virtually all major US railroads.

Consolidated Rail Corporation, PA

• **Assistant Director, Cost & Economics (1977 - 1979)**

Mr. O'Connor was responsible for all Conrail management and regulatory cost analyses in both freight and passenger areas. He testified before the ICC on the development of subsidy standards now widely used in the US railroad industry. He also finalized the design, and implemented and managed Contribution Simulator and Calculator (COSAC), a computerized internal management economic analysis system at Conrail. The COSAC system uses specific management accounting data to develop economic costs. COSAC replaced earlier systems and was used to guide virtually all transportation management decisions.

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Mr. O'Connor also participated in cost allocation negotiations between Amtrak and Conrail on cost sharing of joint facilities on the North East corridor. He initiated and directed profit maximization and plant rationalization programs. He also designed and implemented computerization and improvement of a wide range of economic and cost analysis systems used to manage this multi-billion dollar corporation.

R.L. Banks & Associates Inc., Washington, DC

• **Consultant (1976 - 1977)**

Mr. O'Connor conducted and directed numerous transportation-related projects in the U.S. and Canada ranging from national logistics analyses to site-specific studies. He specialized in costing systems and appeared as an expert witness on such systems in a precedent setting proceeding before a Canadian Crown Commission.

U.S. Railway Association, Washington, DC

• **Manager, Local Rail Service Planning (1974 - 1976)**

Mr. O'Connor developed, computerized and implemented the light density lines cost analysis system, which defined Conrail. He served as liaison with congressional staffs and shipper groups, as well as federal, state, and local governments, and planning agencies. The system he created was a major element in the design and implementation of the streamlined Midwest-Northeast regional rail system. Mr. O'Connor subsequently appeared as an expert witness to present and defend the operation of the USRA costing system.

Interstate Commerce Commission,

- **Economist, Washington, DC (1973-1974)**

Mr. O'Connor served as a staff economist and authored a report analyzing industry investment patterns and ICC regulatory policy, including ICC use of cost evidence.

Education

- University of Massachusetts, Amherst, B.A. Economics
- University of Wisconsin, Graduate Course Work, Economics
- University of Delaware, Graduate Course Work, Business Management
- The American University, Graduate Course Work, Computer Science

Professional Organizations

- Transportation Research Board
 - Former Chairman Surface Freight Transportation Regulation Committee
- Transportation Research Forum
 - Former President of the Cost Analysis Chapter
- National Defense Transportation Association
 - Member of Board of Directors, National Capital Chapter
- Phi Beta Kappa academic honors society
- Phi Kappa Phi academic honors society

Military

- U.S. Army; Sergeant, Combat Engineers

Security Clearance

- Secret

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X. Appendix B: Data and Analysis

Economic and Management Consultants

BASF						
Merger Scenarios - Analysis of Moves						
	Origin Points	Origin Points		Destination Points	Destination Points	
	2 to 1	3 to 2	Comment	2 to 1	3 to 2	Comment
BNSF with CN/IC	None	None		None	None	
BNSF/CN-IC with NS	None	None		Decatur, IL	None	
UP with CSXT	None	None		None	None	
UP with NS	None	None		None	None	
BNSF/CN-IC with CSXT	None	None		Decatur, IL	None	

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Representative BASF Origin Points Currently Sole-Served

<u>Railroad</u>	<u>Origin Points</u>
NS	MCINTOSH, AL WASHINGTON, NJ WHITESTONE, SC
BNSF	LORENZO, IL/JOLIET, IL
UP	FREEPORT, TX
CSXT	MONACA, PA
KCS	

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SK Snavely King Majoros O'Connor & Lee
1220 L St NW Wash, DC 20005
Economic and Management Consultants

VERIFICATION

I, Tom O'Connor, declare under penalty of perjury that the foregoing statement is true and correct and was prepared by me or at my direction. Further, I certify that I am qualified and authorized to file this statement. Executed on May 15, 2000.

Tom O'Connor

Tom O'Connor

Subscribed and sworn to before me this 15th day of May, 2000 in the District of Columbia.

Jane R. Taylor

Notary Public

My Commission expires:

April 30, 2001

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Notice of Service

Copies of this Verified Statement and the accompanying Comments were served by first class mail on the Parties of Record for Ex Parte 582 (Sub No. 1).

Tom O'Connor

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