

TROUTMAN SANDERS LLP

A T T O R N E Y S A T L A W
A LIMITED LIABILITY PARTNERSHIP

401 NINTH STREET, NW
SUITE 1000
WASHINGTON, DC 20004-2134
WWW.TROUTMANSANDERS.COM

William A. Mullins
william.mullins@troutmansanders.com

Direct Dial: 202-274-2953
Direct Fax: 202-654-5621

June 23, 2003

VIA HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, D.C. 20423

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Re: *Kansas City Southern - Control - The Kansas City Southern Railway Company,
Gateway Eastern Railway Company, And The Texas Mexican Railway Company -
Finance Docket No. 34342*

Dear Secretary Williams:

I am enclosing herewith an original and twenty-seven copies of the Supplement to Application (**KCS-10/TM-10**) submitted on behalf of Kansas City Southern, The Kansas City Southern Railway Company, Gateway Eastern Railway Company and The Texas Mexican Railway Company in the above captioned proceeding. This is being designated as "Public" and no Confidential or Highly Confidential versions exist.

Also enclosed are an original and twenty-seven copies of the Applicant's Reply (**KCS-11/TM-11**) to the Union Pacific Railroad Company's Petition for Declaratory Order, which includes three Exhibits (Exhibit A is designated as Public; Exhibits B and C are designated as Confidential). Therefore, two versions of the Reply are being filed -- one Public and one Confidential.

A copy of each of the above filings is enclosed on separate diskettes. Copies of these filings have been served on the parties on whom the Application is required to be served, including all parties of record to this proceeding.

Please acknowledge receipt and filing of the enclosed Supplement and Reply by receipt date-stamping the twenty-sixth and twenty-seventh copies of each and returning them to the courier making the filing for return to me.

If there are any questions concerning this filing, please contact me at 202-274-2953.

Sincerely,



William A. Mullins

Enclosures

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 34342

KANSAS CITY SOUTHERN

- CONTROL -

**THE KANSAS CITY SOUTHERN RAILWAY COMPANY,
GATEWAY EASTERN RAILWAY COMPANY,
and
THE TEXAS MEXICAN RAILWAY COMPANY**

SUPPLEMENT TO APPLICATION

Kansas City Southern (“KCS” or “Applicant”), The Kansas City Southern Railway Company (“KCSR”), Gateway Eastern Railway Company (“Gateway Eastern”), and The Texas Mexican Railway Company (“Tex Mex”) hereby submit this Supplement to Application (“Supplement”) in response to the order of the Surface Transportation Board (“STB” or “Board”) issued June 9, 2003 in this proceeding (“Decision No. 2”).¹

SUMMARY

In Decision No. 2, the Board directed that KCS “supplement the KCS/TM application to reflect the implications of [KCS’s proposal to acquire a controlling interest in TFM, S.A. de C.V. (“TFM”), for competition within the U.S.,” in particular, submitting the information discussed in

¹ *Kansas City Southern - Control - The Kansas City Southern Railway Company, Gateway Eastern Railway Company, and The Texas Mexican Railway Company*, STB Finance Docket No. 34342, Decision No. 2 (served June 9, 2003), published at 68 Fed. Reg. 35474 (June 13, 2003).

49 C.F.R. §§ 1180.1(k) and 1180.11. Decision No. 2, slip op. at 11; 68 Fed. Reg. 35474, 35477 (June 13, 2003). KCS submits this Supplement in response to the Board's order.

The Board found this to be a minor transaction. Therefore, under Section 11324(d), the Board is required to approve KCS's application to control Tex Mex - the only transaction before the Board - unless the Board finds that the KCS/Tex Mex transaction, standing alone, creates a probable, substantial reduction of competition, a monopoly, or a restraint of trade in freight surface transportation within the U.S.² As the Board has often held, its focus under this standard is upon protection of competition, not protection of competitors. *See, e.g., Public Views on Major Rail Consolidations*, STB Ex Parte No. 482, 2000 STB LEXIS 143, *5 n.5 (served Mar. 17, 2000)(acknowledging the Board's mandate "to protect competition, not particular competitors").

The KCS/Tex Mex transaction is pro-competitive, and will not result in any adverse competitive effects on shippers, customers, or receivers in the U.S. That conclusion is not altered by considering whether the prospective KCS/TFM transaction will affect the KCS/Tex Mex transaction. Putting the two transactions together still yields a purely end-to-end transaction with no "two-to-one" or "three-to-two" points. Moreover, both intramodal and intermodal competition for cross-border traffic are inherent and powerful, necessitating the need

² KCS's June 9 Rebuttal is hereby incorporated by reference in its entirety. As discussed therein, the KCS/TFM transaction is beyond the Board's jurisdiction, has not been presented to the Board, has not yet even been consummated, and is subject to review and approval by the U.S. Department of Justice ("DOJ") and two Mexican government agencies. As a result, the Board has no legal authority to condition the KCS/Tex Mex transaction, based on any effects of the KCS/TFM transaction. Nevertheless, the KCS/Tex Mex transaction, even if viewed together with the KCS/TFM transaction, will not result in any adverse competitive effects, restraint of trade, or creation of a monopoly in the U.S. or Mexico.

to lower prices – not raise them – if NAFTA Rail³ is to gain market share. Although effects on competitors (as opposed to effects on competition) are not relevant to the Board’s determination, Union Pacific Railroad Company (“UP”) and The Burlington Northern and Santa Fe Railway Company (“BNSF”) have sufficient bargaining power and leverage to protect themselves. To resolve these concerns, KCS has committed to continue to work with UP and BNSF; not to cancel existing agreements prior to the end of their current term, even where it has the legal right to do so; to keep the Laredo Gateway open on commercially reasonable terms; and not to make any changes in the way the Laredo Bridge is dispatched and operated.

The KCS/Tex Mex transaction, with or without considering the KCS/TFM transaction, will enhance competition by providing a stronger and more economically viable competitive alternative for cross-border traffic. NAFTA Rail will also have enhanced ability to invest in infrastructure, equipment and technology at the Laredo Bridge and along the entire NAFTA Rail line. The Application, as supplemented herein, demonstrates conclusively that the KCS/Tex Mex transaction, either with or without KCS’s acquisition of TFM, will not result in any anticompetitive effects, restraint of trade, or creation of a monopoly in the U.S. or Mexico.

DISCUSSION

I. APPLICATION OF THE BOARD’S “TRANS-NATIONAL” REGULATIONS TO THE KCS/TEX MEX TRANSACTION

As noted, the Board directed that KCS “supplement the KCS/TM application to reflect the implications of [KCS’s proposal to acquire a controlling interest in TFM], for competition

³ Assuming KCS is able to take control of Tex Mex and consummate the TFM transaction, KCS will change its name to “NAFTA Rail.” As used in this pleading, this phrase refers to the combined KCSR/Tex Mex/TFM system under the common control of KCS.

within the U.S.,” in particular, submitting the information discussed in 49 C.F.R. §§ 1180.1(k) and 1180.11. The Board’s regulations on cross-border effects in major merger transactions are not easily applied to this proceeding. The Board’s rules at 49 C.F.R. §§ 1180.1(k) and 1180.11 only govern “major” mergers, have never before been applied to any control or merger transaction, and were never intended to apply to minor transactions, such as KCS’s acquisition of Tex Mex, the only transaction before the Board in this proceeding. Instead, Sections 1180.1(k) and 1180.11 were specifically geared towards major Canadian carriers seeking to acquire or merge with major U.S. railroads. As the Board explained in its Major Rail Consolidation Procedures Advance Notice of Proposed Rulemaking, “[C]oncerns discussed at our hearing that persuaded us that we should begin a proceeding to revise our rules governing major rail mergers now... [included] concerns that would arise if one of the two large Canadian carriers, CN or CP, sought to merge with or control a large U.S. railroad.” *Major Rail Consolidation Procedures*, STB Ex Parte No. 582 (Sub-No.1), 2000 STB LEXIS 171 at *7-8 (served Mar. 31, 2000). The Board further noted: “[W]e heard a far broader array of concerns over potential harms to the nation’s interests if a Canadian railroad proposed to merge with a large U.S. railroad,” *id.* at 21. At no time during those or any other proceedings did any party raise a concern about a U.S. carrier acquiring a foreign carrier, such as KCS’s acquisition of TFM, nor did any party, or even the Board, ever suggest that the rules should apply in such situations.

In addressing the underlying rationale for the requirement that major rail merger applicants file competitive analyses and operating plans incorporating operations in Canada and Mexico, the Board said:

[W]e heard concerns by the U.S. Department of Agriculture and by parties representing grain and lumber interests that a merger of a Canadian carrier with a large U.S. carrier could unfairly disadvantage their product in competition with Canadian grain and lumber in our domestic markets. They suggest that merger

applicants would need to submit a more detailed systemwide operating plan and competitive impacts analysis that take these concerns into account.

Id. at *23. Thus, the Board proposed and adopted Sections 1180.1(k) and 1180.11 to assure that it would receive complete and full information regarding the effects if a major Canadian carrier, all of whom already operated in the U.S. were to acquire a major U.S. carrier.⁴

A. This Transaction and the TFM Transaction Are Not Like the Transactions For Which Sections 1180.1(k) and 1180.11 Were Written.

The difficulty of applying these regulations to the KCS/Tex Mex transaction, as supplemented to include the competitive effects of the KCS/TFM transaction, is that TFM has never operated in the U.S. TFM is clearly distinguishable from the Canadian National Railway Company ("CN") and the Canadian Pacific Railway Company ("CP"). Both CN and CP currently operate in the U.S. and have done so for more than a century.⁵ Each of these carriers files reports with the STB, follows STB accounting and waybill requirements, and otherwise complies with all U.S. rules and regulations. TFM does none of these things. In addition, both of these Canadian carriers have had numerous transactions approved by the STB, and have long been subject to the Board's jurisdiction. TFM has never operated in the U.S. and is not subject

⁴ In so doing the Board was also responding to concerns echoed by the U.S. carriers themselves. For example, UP wrote, "Because huge volumes of Canadian-originating rail traffic move into the U.S., transactions that affect competitive alternatives in one part of the continent -- in one province of Canada, for example, may have an impact on U.S. shippers." UP's Comments and Initial Proposals, submitted in conjunction with Ex Parte No. 582 (Sub-No. 1), at p. 20 (filed May 16, 2000). Significantly, UP did not express similar concerns about a merger between a U.S. carrier and a Mexican carrier.

⁵ As CN noted in its Comments, filed on May 16, 2000 in conjunction with Ex Parte No. 582 (Sub-No. 1), "CP has long owned Soo (a Class I Railroad) and has more recently acquired an ownership interest in IMRL, which operates in Illinois, Iowa, Missouri and Minnesota. Long before acquiring control of IC, CN owned Grand Trunk Western (also a Class I railroad), the Sarnia Tunnel and a 50% interest (with CP) in the partnership that owns the St. Clair Tunnel." CN's Comments at p. 47, n. 25.

to the STB's jurisdiction. Indeed, CN and CP were extremely active participants in the Board's rulemaking process, which resulted in the new major rail consolidation procedures. *See Major Rail Consolidation Procedures*, STB Ex Parte No. 582 (Sub-No. 1), 2001 STB LEXIS 546, *285-337 (served June 11, 2001).

The KCS/TFM transaction is simply different than the numerous transactions involving Canadian carriers. Here, even though KCSR will become affiliated with TFM, the two carriers are not merging nor is TFM acquiring or taking control of KCSR. TFM will continue to be operated from Mexico City, with separate officers and boards of directors from KCS and KCSR, and will remain subject to Mexican law and regulations. Nor is TFM proposing to operate in this country. While there will be significant integration of functions between KCSR and Tex Mex, integration between KCSR and TFM will be less extensive as TFM continues to be managed from Mexico City. Rather, KCSR/Tex Mex will coordinate, not consolidate, operations with TFM. While TFM will become a KCS subsidiary and a sister company of KCSR, Gateway Eastern, and Tex Mex, thereby increasing KCS's share of TFM's profits, that is not substantially different from the current situation where KCS has a 40+% interest in TFM's profits. Therefore, some of the types of changes which might occur in a CN-IC merger or a CN-BNSF merger, for example, are simply not relevant here.

Thus, it is difficult to apply the Board's regulations, designed for the situation of a major merger transaction involving a foreign carrier taking over a previously-unrelated U.S. carrier, to this situation, where a U.S. carrier is increasing its interest in a small Class II U.S. carrier while, perhaps, simultaneously gaining greater ownership of a Mexican railroad in which it already holds a substantial minority interest. Sections 1180.1(k) and 1180.11 are simply designed to deal

with different issues than any that will arise from the KCS/TFM transaction, which isn't even before the Board.

B. Background of the KCS/Tex Mex and KCS/TFM Transactions.

In applying these regulations to the KCS/Tex Mex transaction and supplementing the application to discuss the competitive implications of the KCS/TFM transaction, it is helpful to understand the process and procedures that led to the two related, but wholly independent transactions. This background is discussed in the attached Verified Statement of Gerald K. Davies, Executive Vice-President and Chief Operating Officer of KCS ("V.S. Davies").

In 1997, Grupo TMM and KCS together made a very substantial investment -- \$1.4 billion -- to acquire 80% ownership of the northeast concession of the newly-privatized Mexican rail system, now known as TFM. At the time, KCS and Grupo TMM were criticized for the amount of the bid, reputed to more than double the next highest bid.⁶ Nevertheless, KCS and Grupo TMM were confident in the prospects for growing traffic by modernizing the railroad and providing more coordinated service for the growing traffic spurred on by NAFTA.

In making their investment in TFM, the intent of KCS and Grupo TMM was to grow the working relationship of the two companies over time to form a stronger, more competitive route that would attract more NAFTA traffic. As KCS said in its 1997 Annual Report:

During the mid-1990's, while KCSR's major U.S. rail competitors focused on consolidating their east/west systems in the United States, KCSR embarked on a strategy of expanding its core network in order to capitalize on growing north/south trade between the United States, Mexico and Canada created by the North American Free Trade Agreement ("NAFTA"). KCS[] has aggressively pursued acquisitions, joint ventures and marketing agreements with other railroads, with the goal of creating the "NAFTA Railway." KCS[]'s rail network

⁶ UP, a losing participant in the bidding for the northeast concession and one of the critics of the price that KCS and Grupo TMM paid, subsequently purchased a one-fourth interest in what is now Ferromex. The total price paid for Ferromex was approximately \$565 million.

connects Midwestern, Eastern and Canadian shippers, including shippers in Chicago, Illinois and Kansas City, Missouri -- the two largest rail centers in the

United States -- with the largest industrial centers of Mexico, including Mexico City and Monterrey.

KCS's 1997 Annual Report, at 3, filed with the SEC on Mar. 17, 1998.

KCS and Grupo TMM have generally worked together over the past six years to make these goals a reality. KCS has worked hard to make the NAFTA rail corridor a smoother, more competitive operation. That venture has been a success, as traffic on KCSR, Tex Mex, and TFM has grown and the railroad has continued to improve its profitability.

Despite the success of TFM, Grupo TMM has had recent financial difficulties that have been reported by the media. These reports state that Grupo TMM owes more than \$400 million to various banks and bondholders and has been in default on \$177 million in debt since mid-May. Grupo TMM's sale of the Grupo TFM shares that it controls to KCS for cash and equity will help it raise cash while allowing it to retain an indirect interest in TFM.

Accordingly and against this backdrop, KCS did not rely on the types of analyses often performed for major U.S. mergers when it decided to move forward with acquiring a greater interest in TFM. Such studies were simply irrelevant to justify the objective of KCS, which is to acquire TFM and build NAFTA Rail. Indeed, the financial review of the proposed TFM transaction, which was relied upon by KCS, was based on a static model - no change in the existing rate of growth for traffic interchanged between KCSR or Tex Mex and TFM. Based on the need for Grupo TMM to raise cash, KCS's desire to invest in TFM for the long term future prospects, and supported by a conservative growth financial analysis, the transaction made sense for KCS, as it did for Grupo TMM. That was all that the parties needed to decide to move forward.

II. THE KCS/TEX MEX TRANSACTION, EVEN WHEN VIEWED IN THE CONTEXT OF THE KCS/TFM TRANSACTION, WILL NOT RESULT IN ADVERSE COMPETITIVE EFFECTS, RESTRAINT OF TRADE, OR CREATION OF A MONPOLY

The competitive assumptions behind the KCS/Tex Mex and KCS/TFM transactions are simple - to build a better, more coordinated railroad system. To date, over 80 parties, including shippers, ports, and governmental bodies, have expressed support for the transactions, including Daimler/Chrysler, Hub Group, the Port of Beaumont, the Mississippi State Port Authority at Gulfport, Dow Chemical, and numerous other household names. Curiously, UP and BNSF have both raised concerns, not about the Tex Mex transaction, but rather the TFM transaction. The Board has asked KCS to address those concerns. Examined closely, the concerns raised by UP and BNSF focus not on the impacts on competition of the KCS/Tex Mex transaction or the impacts on competition of the TFM transaction, but instead focus upon the impacts on UP and BNSF, the competitors of KCS. Of course, the proper focus of the STB's inquiry should not be on how the two transactions will impact UP and BNSF, but on whether or not the KCS/Tex Mex transaction, with or without the KCS/TFM transaction, will give KCS the opportunity to raise prices to shippers, create a monopoly, or otherwise restrain trade in the U.S.

As detailed in the Verified Statements of Gerald K. Davies and the Supplemental Verified Statement of Dr. Curtis M. Grimm ("Supplemental V.S. Grimm"), even if one considers the successful consummation of the TFM transaction, that transaction, combined with the KCS/Tex Mex transaction, will not allow KCS to raise prices to shippers, restrain trade, or create a monopoly, nor will it result in any anticompetitive actions toward UP or BNSF. This is true because the two transactions are entirely end-to-end and do not involve any reduction in the competitive alternatives available to shippers. In addition, there is pervasive intermodal and

intramodal competition for traffic to/from Mexico and within Mexico. Furthermore, the near monopoly of this trade by UP and the ability of UP and BNSF to divert traffic away from the Laredo gateway provide instant checks on any ability of KCS/Tex Mex/TFM to take any actions adverse to UP and BNSF. If it did, TFM would lose a substantial amount of traffic, which would not be in the interest of KCS. Thus, the Board need not be concerned about harm to competitors, especially harm to such large carriers as UP and BNSF, nor need the Board be concerned about harm to competition.

A. The KCS/Tex Mex And KCS/TFM Transactions Will Not Result In Any Reduction Of Shippers' Routing Options

Consistent with STB precedent and economic analysis of similar transactions, the Application contained a competitive analysis by Dr. Curtis Grimm, who examined the horizontal competitive effects of the KCS/Tex Mex transaction. Consistent with DOJ and Federal Trade Commission Horizontal Merger Guidelines, Dr. Grimm examined whether the KCS/Tex Mex consolidation would reduce the number of independent rail alternatives in any market. His analysis concluded that as a result of the KCS/Tex Mex transaction, there were no markets that would see a reduction in the railroad routing options available in that corridor from “two-to-one” or from “three-to-two.” The common control of KCSR and Tex Mex is purely end-to-end and has no anticompetitive horizontal effects.

If one considers the competitive impacts of the KCS/Tex Mex transaction, even in light of the KCS/TFM transaction, Dr. Grimm’s conclusion with respect to no loss of competitive alternatives has not changed. Supplemental V.S. Grimm at 2. This is true even if one were to view the two transactions as one. Placing KCSR, Tex Mex, and TFM under common control would not reduce any shippers’ routing alternatives from two-to-one or three-to-two. Supplemental V.S. Grimm at 3-4.

In addition to the potential loss of route competition from a consolidation, a rail merger, even an end-to-end transaction, can result in reduction of independent alternatives for shippers located at the junction points of merging carriers. Supplemental V.S. Grimm at 4. This can occur if a particular shipper or receiver at a particular location is able to use the same commodity from different sources located on either of the end-to-end railroads, assuming there is no “bottleneck” carrier in both routes. This type of competition is commonly referred to as “source” competition because the shipper/receiver can obtain the same or similar commodity from two different and independent railroad routings and no one carrier serves as a bottleneck carrier in both routings. In such an instance, the merger of the two end-to-end railroads could result in a reduction of the independent routings provided by the two different sources. Supplemental V.S. Grimm at 4.

For the potential reduction of source competition to exist with regard to the KCSR/Tex Mex/TFM consolidation, there would have to be a point or location where two or more of these railroads serve, albeit to or from different geographic regions. For the KCS/Tex Mex or KCS/TFM transaction, there is no such point, gateway, location, BEA, or individual shipper facility where source competition would be reduced. Supplemental V.S. Grimm at 4-5. KCSR and Tex Mex connect only via Tex Mex’s trackage rights at Beaumont, TX, with KCSR handling origination and termination at Beaumont, so there is no loss of the source competition from the KCS/Tex Mex transaction. Similarly, Tex Mex and KCSR only have tracks in the U.S., while TFM only has tracks in Mexico. As a result, KCSR/Tex Mex only connect with TFM at the Laredo Bridge. There are no shippers or receivers at that location that receive or ship goods from TFM and KCSR/Tex Mex so as to benefit from “source” competition provided by these

two carriers. Accordingly, there could be no such reduction in source competition from the TFM aspect of the consolidation. Supplemental V.S. Grimm at 5.

B. KCS/Tex Mex And KCS/TFM Cannot Raise Rates To Shippers
Because They Face Substantial Intramodal And Intermodal Competition.

Trade between the U.S. and Mexico is the fastest growing relationship in the world and future economic growth for both countries relies on competitive transportation alternatives. When the Mexican railroad system was privatized in 1996-97, the estimated rail market share both within Mexico and for cross-border traffic was less than 10%. V.S. Davies at 7. This low market share was driven by vigorous truck competition both within Mexico and for U.S./Mexico trade; easy access to deep water ports on both the Pacific and Gulf Coasts; difficult railroad operating conditions from both Mexican coasts to the interior; and a very inefficient railroad operation with low quality rail service, prior to privatization. Indeed, even today, the Mexican economy and U.S./Mexico trade continues to be very dependent on trucks and water routes. V.S. Davies at 7.

Since privatization, there have been enormous improvements in the rail system. The Mexican rail system was broken up to create three primary rail competitors: TFM, Ferromex and Ferrosur. Competition among the newly privatized rail lines and intensive port and truck competition have led the railroads to rapidly improve service, freight car availability, infrastructure, information systems and customer service. V.S. Davies at 8. The result has been a success for those shipping to and from Mexico, since rail is now a more viable alternative to other forms of transportation. Nevertheless, despite these gains, rail market share in Mexico is still only about one-third of what it is in the U.S., at the 16% to 17% range, as intermodal competition remains fierce. V.S. Davies at 8. Trucks continue to be the dominant mode of cross-border transportation; the value of annual U.S./Mexico truck traffic is approximately

\$160 billion by truck versus \$32 billion by rail. See U.S. Bureau of Transportation Statistics' *Table I-53: Value of U.S. Land Exports To and Imports From Canada and Mexico by Mode*, 2001, available at http://www.bts.gov/publications/nts/html/table_01_53.html (last visited June 22, 2003). Ship and barge competition also represent a large percentage of transportation of freight to and from Mexico, especially in certain markets; for example, 68% of corn transported from the U.S. for export into Mexico and other export destinations is transported via barge to the U.S. ports and loaded into ships for final export destination. V.S. Davies at 8.

In addition to the competition NAFTA Rail will face from trucks and water competition moving goods to and from Mexico, it also will continue to face competition with other rail lines in the U.S. Moreover, NAFTA Rail will confront stiff competition from other rail lines at the border and within Mexico. V.S. Davies at 8. The current balance between the two largest rail franchises in Mexico -- Ferromex and TFM -- will not change. In fact, Ferromex, which is 26% owned by UP, is the largest of the rail franchises in Mexico and covers more of the country than does TFM. Ferromex serves four of the six U.S. border crossings while TFM serves only two. V.S. Davies at 8. Ferromex serves all three of the largest grain destinations in Mexico while TFM serves only one. Both Ferromex and TFM serve the auto parts manufacturers and automobile plants. V.S. Davies at _____. Thus, not only is intermodal competition fierce in Mexico, but intramodal competition has also been pervasive since privatization.

Given this environment, it is clear that KCS's control of Tex Mex and TFM will not give it the ability to raise prices to shippers, restrain trade, or otherwise create a monopoly. Market forces simply would not allow NAFTA Rail to do so. Instead, NAFTA Rail can only become an effective competitor by increasing efficiencies and providing efficient single-line type service from origins in the U.S. to destinations in Mexico and vice-a-versa. Indeed, because of

enormous competitive pressures provided by truck, ship, and other railroads, NAFTA Rail will continue to face pressure to lower -- not raise -- prices to shippers to maintain and increase market share over the NAFTA Rail. It is only through this process that NAFTA Rail can become an effective competitor to trucks, barges/ships, as well as provide an effective rail alternative to the dominance of UP and its 26% owned partner, Ferromex. A brief examination of how the existence of both strong intramodal and intermodal competition will limit KCSR/Tex Mex/TFM's ability to raise prices to shippers for certain commodities provides strong evidence of these conclusions.

1. Competition For Grain

Grain is one of the most significant exports from the U.S. to Mexico, and one of the most important rail-shipped products. The intramodal competition provided by BNSF and UP, who both serve many more grain origination points than KCSR, is a powerful counterweight to KCS's ability to raise prices. V.S. Davies at 9. Furthermore, intermodal competition for transporting grain is also pervasive. Approximately 4 million tons of grain is shipped to Mexico via truck, 10 million tons by barge and 11 million tons by rail. V.S. Davies at 9.

In addition to the intermodal competition provided by trucks, for certain types of grain, water movements are the dominant transportation provider. For example, for export corn coming from U.S. grain producing regions (most of which are served by UP and BNSF and not KCSR) and destined for Mexico and other export destinations, barge moves 68%, rail moves 26%, and truck moves 6%. V.S. Davies at 9. UP itself has noted the competitive pressure from barge/water competition. As stated in its Annual Report for 2001, "[B]arge competition can be particularly pronounced, especially for grain and bulk commodities." UP's Annual Report, at 4,

filed with the SEC on March 4, 2002. Thus, intermodal competition from both truck and barge is readily apparent.

A major factor influencing the competition between rail and water for the shipment of grain is price. This competition is relatively straightforward: the better price (taking into account service issues) will win. For example, two years ago, KCS was able to win the business of Farmers Grain Terminal, LLC ("Farmers") away from barge by launching a dedicated grain shuttle train. If the pricing for the rail service were to be inappropriately raised or service eroded, Farmers could quickly and easily return to the use of barges. V.S. Davies at 10.

Farmers is not unique. The pricing for rail very much considers, and is limited by, barge pricing, either down the Mississippi (for corn, the predominant grain moving from the U.S. to Mexico) or from Vancouver (for Canadian wheat). V.S. Davies at 10.

There is a second dynamic factor in the competition for grain traffic that is less apparent. The shippers, primarily large agribusiness concerns, can effectively use their own network of grain suppliers and customer destinations to engage in what might be called "shipping arbitrage" and introduce an important element of competition into the equation. For example, instead of shipping corn from Iowa by train to Mexico, these large grain processors and elevator companies could ship corn from Illinois by barge. The customer that was to receive Iowa corn would now receive Illinois corn. By shifting the sources of supply and thereby changing the mode of transportation, the shippers can and regularly do capture very small difference in shipping costs, in the range of one-eighth of a cent per bushel (\$.00125). V.S. Davies at 10. This provides a strong competitive check on the ability of railroads to raise their price on shipments of grain. Any inappropriate price increase will eliminate rail movement of grain from that location.

Even without this strong intermodal competition, the proposed transactions would not allow KCS to adversely affect competition for grain shippers because of rail intramodal competition at the border and within Mexico. Grain is shipped to three principal destinations in Mexico: (1) Guadalajara, (2) Mexico City and (3) Chihuahua. V.S. Davies at 10. All of these destinations are served by Ferromex. TFM does not serve Chihuahua and has not used trackage rights to reach Guadalajara. Mexico City is an open switching district with origination and destination services provided to Ferromex, Ferrosur and TFM by a Mexico City terminal railroad. Hence, it should come as no surprise that most grain shipped to Mexico is handled by Ferromex, and not TFM. V.S. Davies at 11. The proposed transactions will not, and cannot, change this reality. KCS simply could not adversely affect the grain market between the U.S. and Mexico. Thus, intramodal and intermodal competition for transporting grain is and will remain fierce after NAFTA Rail is fully up and running.

2. Competition For Auto Parts And Auto Traffic

Automobiles and auto parts represent a very substantial percentage of the U.S./Mexico trade. For auto-related shipments, trucks dominate accounting for about 60% of southbound shipments (1.1 million tons by truck versus 740,000 tons by rail). V.S. Davies at 11. Indeed, with an intermodal ramp, it is relatively easy to ship to the border by train and then take the parts into Mexico by truck. The same is true with the reverse routing of finished automobiles.

As with grain, there is strong intramodal rail competition for auto-related traffic. The top two destinations for autos are Mexico City and Saltillo/Monterrey. Because Mexico City is served by a terminal railroad, all locations in Mexico City have the option of using Ferromex, Ferrosur, or TFM. With respect to Saltillo/Monterrey, competitive alternatives can be

maintained through drayage to and from TFM's and Ferromex's rail yards and through potential government regulation.⁷ TFM and Ferromex are constantly competing for auto traffic, which is price sensitive.

As with the market for transportation of grain and other commodities between the U.S. and Mexico, KCS simply could not adversely affect the rates to shippers, even if it thought it had an incentive to do so. Indeed, UP, and not TFM, is the price-setter for the shipment of automobiles and auto parts between the U.S. and Mexico. UP has exclusive contracts with logistics management companies that have contracts with the auto companies. UP therefore controls this traffic and dictates the price that TFM must accept for its portion of the carriage. For example, a year ago, UP threatened to shift about 30% of the auto parts traffic it controls from the TFM to Ferromex. TFM responded with lower prices and retained the business. V.S. Davies at 12.

Indeed, UP, and not TFM, is the price-setter for the shipment of automobiles and auto parts between the U.S. and Mexico. UP has exclusive contracts with logistics management companies that have contracts with the auto companies. UP therefore controls this traffic and dictates the price that TFM must accept for its portion of the carriage. The transactions necessary to effectuate NAFTA Rail will not change UP's role as price-setter. If KCS attempted to raise prices to shippers for these UP/TFM moves, the traffic simply would move by TFM. It is KCS's plan, however, that NAFTA Rail will finally offer shippers a viable transportation alternative to UP.

⁷ The SCT has issued various regulations concerning trackage rights compensation, interpretation of mandatory trackage rights, switching and interline rates as relates to Monterrey. These rulings are under appeal by various parties and will be decided in due time by Mexican courts.

3. Competition For Other Commodities

As demonstrated by the foregoing discussion, NAFTA Rail cannot adversely effect competition in the market for transporting grain and auto parts between Mexico and the U.S. Nor is there any other product for which NAFTA Rail could adversely impact the transportation market. As with grain and autos and auto parts, rail rates for all products involved in U.S./Mexico trade are constrained by strong intermodal and intramodal competition.⁸ This competition prevents common carriers from taking actions harmful to shippers. Thus, KCS is not only unwilling, but unable, to eliminate the competitive alternatives that shippers currently enjoy. Instead, as noted above, KCS's desire is to present a more viable and competitive rail service so as to increase rail's market share for the U.S./Mexico trade.

C. Given The Pervasive Intramodal And Intermodal Competition Faced By NAFTA Rail, The Concerns Expressed By UP And BNSF Are Unwarranted.

The fears espoused by UP and BNSF -- fears that their divisions will be reduced, that their division agreements with Tex Mex and TFM will be cancelled, or that KCS will discriminate against UP at the Laredo Bridge -- are feared harms to competitors, not harm to competition and thus those fears cannot form the legal basis for the imposition of condition. In essence, these concerns by UP and BNSF are not concerns about whether competition will exist to protect shippers, but concerns that they will lose traffic to a stronger, more effective NAFTA Rail competitor. Board precedent does not call for protection against these types of concerns. In any event, the concerns are illusory and unfounded.

⁸ Intermodal traffic is, by its very nature, susceptible to the pervasive truck competition that exists for cross-border movements.

1. As An Initial Matter, Harms To UP And
BNSF Are Not Harms To Competition

The Board's focus in this proceeding must be upon competitive effects of the proposed KCS/Tex Mex transaction. *See Canadian National Railway Company, Grand Trunk Corporation, And WC Merger Sub, Inc. - Control - Wisconsin Central Transportation Corporation, Wisconsin Central Ltd., Fox Valley & Western Ltd., Sault Ste. Marie Bridge Company, and Wisconsin Chicago Link Ltd.*, STB Finance Docket No. 34000, 2001 STB LEXIS 711 (Sept. 7, 2001) ("CN/WC"). The proposed transaction is KCS's acquisition of control of Tex Mex. KCS's possible increase in its ownership share of TFM, a Mexican carrier operating solely in Mexico, is not before the Board. Decision No. 2 at 7-8, n.15.⁹

The Board must grant KCS's Application to acquire control of Tex Mex unless it finds that there likely will be substantial adverse competitive impacts that outweigh public interest factors and that cannot be mitigated through conditions. CN/WC at *20-*21. The Board's objective in evaluating Section 11324(d) applications is the protection of the public interest through the preservation of competitive transportation markets and adequate transportation to the public. Adverse impacts to be considered include significantly higher rail rates charged to shippers or significantly poorer service levels, or a likely combination of the two resulting from the transaction. *Blackstone Capital Partners L.P. - Control Exemption - CNW Corp. and Chicago And North Western Transp. Co.*, 5 I.C.C. 2d 1015, 1019 (1989).

⁹ Indeed, because the KCS/TFM transaction has not yet been consummated and in fact may never be consummated, it would be outside the Board's statutory authority to impose conditions on the KCS/Tex Mex transaction because of alleged effects arising from a transaction that had not yet occurred, and in fact may never occur. *Burlington Northern Inc. and Burlington Northern R.R. Co. - Control and Merger - Santa Fe Pacific Corp. and the Atchison, Topeka and Santa Fe Ry. Co.*, Finance Docket No. 32549, Decision No. 39, ICC LEXIS 241, *8-9 (ICC served Sept. 21, 1995).

UP and BNSF have not expressed concerns about higher rail rates to shippers, but rather concerns about possible revenue shifts from their systems to NAFTA Rail. Yet, mere shifts in revenues between carriers is not a harm to the public interest. *See id.*, 5 I.C.C.2d at 1020. (“The transfer of traffic between competing carriers is not grounds for intervention unless traffic shifting to another carrier would threaten a carrier’s ability to provide essential services.”).¹⁰ Thus, even aside from the legal issue that would arise if the Board were to condition the KCS/Tex Mex transaction on effects arising from the KCS/TFM transaction, as UP and BNSF would have this Board do, Board precedent clearly shows that the types of issues raised by UP and BNSF are not relevant to the Board’s analysis of competition under Section 11324(d).

2. UP And BNSF Possess Substantial Bargaining Leverage
Over A Combined KCSR/Tex Mex/TFM System

Even if one assumes that harm to UP and BNSF were a sufficient ground for the imposition of conditions, which it is not, and even further assuming that the intermodal and intramodal competition described above were not in and of itself sufficient to counteract any arguable increase in NAFTA Rail’s opportunities to distort competition inappropriately, there are numerous other reasons why the transactions creating NAFTA Rail cannot be anticompetitive and result in harm to UP and BNSF, let alone the shipping public.

¹⁰ *See also Rio Grande Industries, Inc., et al. - Purchase and Related Trackage Rights - Soo Line Railroad Company Line Between Kansas City, Mo and Chicago, IL*, Finance Docket No. 31505, 1990 ICC LEXIS 218, *41 (July 16, 1990)(“*Rio Grande*”), citing *Union Pacific Corp., et al. - Cont. - MO-KS-TX R. Co., et al.*, 4 I.C.C. 2d 409 (1988):

[A] showing of expected substantial harm to a particular competitor as a result of a transaction is not equivalent to a showing of harm to competition. For example, a rail or truck competitor might lose traffic precisely because a transaction promises the significant public benefit of a new, improved transport alternative. Harm to the competitor would not be grounds for rejection of a proposal or imposition of conditions unless a carrier’s ability to provide essential services is threatened.

The notion that NAFTA Rail could harm UP and BNSF is wholly implausible. UP possesses substantial market power and leverage over KCSR, Tex Mex and TFM and, consequently, over NAFTA Rail. This leverage stems from, among other things, its market dominance of U.S./Mexico traffic (including to and from many locations that cannot be served by NAFTA Rail), its access to six U.S./Mexico gateways, and its 26% ownership of Ferromex.

UP is the largest of the large; the biggest of the Class I carriers, itself accounting for over one-fourth of total rail industry revenue and almost one-fifth of total rail industry track miles. BNSF is close behind, with nearly \$9.0 billion in revenue last year, owning approximately another one-fifth of total railroad track miles in the country. That these two giants should be seeking regulatory actions against NAFTA Rail, which in its entirety would have been less than one-eighth the revenues of either of them, is preposterous.

For all traffic to and from the U.S. and Mexico, UP carries 90% of the northbound traffic and 79% of the southbound traffic, with access at all six rail gateways. At Laredo, UP controls 91% of the market share for northbound traffic and 71% of the market share for southbound traffic. From Chicago to Laredo, UP controls 98% of the rail traffic. From St. Louis to Laredo, UP controls 98% of the rail traffic. From Houston to Laredo, UP controls 86% of the rail traffic. In addition, UP has a 26% ownership in TFM's competitor in Mexico. UP is an extremely powerful competitor for cross-border traffic.

Moreover, if this substantial market power were not enough to protect UP's market leverage, UP still holds the "trump card." Tex Mex must operate over UP's infrastructure to connect TFM with KCSR. As a result, UP controls the very track that would allow KCS to connect KCSR with Tex Mex and TFM. As such, NAFTA Rail's ability to compete against UP at Laredo depends largely upon the dispatching, maintenance, and investment practices of UP.

In the end, NAFTA Rail can remain competitive only if UP is held to its promises, commitments, and agreements to provide neutral treatment to Tex Mex trains, invest in its infrastructure, and maintain service levels on the tracks used by BNSF and Tex Mex to provide a competitive alternative to UP.

There are many additional factors which provide UP with enormous power and leverage to protect itself vis-à-vis NAFTA Rail. As noted, it has access to multiple Mexican gateways, including those that link to its partly-owned affiliate Ferromex. It has a great deal of traffic tied up under contract. It has a much more extensive network in the U.S. than NAFTA Rail. Indeed, in an April 24, 2003 conference call with analysts, the following exchange occurred between Richard K. Davidson, UP Chairman, President and Chief Executive Officer, and an analyst:

Davidson: "As you well know, from a route standpoint, if you look north of the border, Union Pacific's route is, pick any point you want to -- Chicago or Kansas City -- as origin or destination, we've got about a 40 or 50% natural route advantage in terms of mileage, curvature, rise and fall and all the other physical characteristics, plus it's a lot better railroad. We've got a high speed railroad where we can provide excellent service.

Furthermore, the majority of the traffic is locked up under contract, so you take into account the service capabilities, the fact that much of the traffic is locked up under long-term contract or intermediate term contract. And, plus, TFM has got to have a strong traffic flow to and from Union Pacific to make money. We are the 80% percent market share participant there."

Question from Jim Valentine: "If they have traffic going to, let's say to Chicago and then on to Detroit or somewhere to the auto industry, is it feasible that they would say after this particular transaction gets approved, we are going to migrate this business over to our line to get it up to the Midwest -- to Chicago?"

Davidson Reply: "Jim, to the extent that it is at all service-sensitive, I don't see how that could possibly happen since we are the high service provider there. Now, if you had a low bulk commodity or something that wasn't service-sensitive and set the price low enough to attract it, you know. We worried about that, quite honestly, back in 1996, when TFM was first conveyed to TMM and KCS and it turned out to be something not to worry about. We became quite a good business partner down there, and I would anticipate that would continue."

Of course, the key point in the last statement by Mr. Davidson is not that KCS will raise rates, but that it will set the price “low enough to attract” the traffic. That is precisely the point of the KCS/Tex Mex and KCS/TFM transactions: develop single-line type, efficient service from the U.S. to Mexico so as to lower prices to shippers to compete against trucks, barges, ships, and yes, even UP and BNSF. The truth is that NAFTA Rail will compete against both UP and BNSF for NAFTA traffic, but both of these carriers have so much bargaining power, market power, and leverage that NAFTA rail will compete where it can but it also must work with each of them. Otherwise, UP and BNSF will shift their traffic away from the Laredo gateway and away from TFM; an action that would be against KCS’s self-interest.

D. Given KCS’s Commitments, UP’s and BNSF’s Concerns Are Unwarranted

Notwithstanding the fact that the KCS/Tex Mex transaction, even if considered in conjunction with the KCS/TFM transaction, will not result in any adverse competitive effects, restrain trade, or allow for the creation of a monopoly, in an effort to ensure the shipping community and this Board that KCS has no intention of using the KCS/Tex Mex and KCS/TFM transactions to restrain trade or take any other adverse competitive action, KCS will take certain actions to address the concerns raised by UP and BNSF. KCS hereby pledges to continue to work with both UP and BNSF; to not cancel any existing agreements, even if it has the legal right to do so, until the end of the term of such an agreement; to abide by all existing agreements governing operations over the Laredo Bridge; and to keep the Laredo gateway open on commercially reasonable terms.

1. KCS/Tex Mex/TFM Will Continue
To Cooperate With UP And BNSF

As KCS pointed out in the Application, the TFM transaction will not alter the basic structure or operations of TFM. TFM will remain a separate subsidiary with independent officers and an independent Board of Directors, albeit with KCS as the parent company. Under this structure, TFM will continue to cooperate with UP and BNSF regarding pre-blocking rail cars, automated customs pre-clearance procedures, supplying cars, accommodating run-through train service, and promptly providing rate quotes for UP and BNSF customers. V.S. Davies at 15.

As Mr. Davidson has made clear, TFM needs UP and BNSF traffic to provide it with adequate revenues. UP serves six gateways and BNSF serves three gateways. KCSR/Tex Mex serve only one. Furthermore, there is pervasive truck and barge competition for the U.S./Mexico trade. TFM does not want to see its traffic base switch to its competitors in Mexico, such as Ferromex, which is owned 26% by UP, nor does TFM want to see this traffic switch to alternative barge and truck routings. Indeed, given UP's overwhelming marketing dominance for U.S./Mexico traffic at Laredo, NAFTA Rail will have every incentive to preserve other carriers' access to and efficient operation with TFM.

UP has itself acknowledged that TFM needs UP's cooperation to ensure an adequate revenue stream. During UP's April 24, 2003, first quarter earnings conference call to financial analysts, Mr. Davidson said: "TFM has got to have a strong traffic flow to and from Union Pacific to make money ... We became quite good business partners down there and I would anticipate that would continue." KCS could not agree more. UP has and will retain enormous market power after KCS acquires greater ownership in TFM, and UP can and will exercise its market power if KCS attempts to place a "chokehold" on UP.

2. NAFTA Rail Will Honor The
Terms Of Existing TFM Agreements

As KCS stated in its Application, it fully intends to honor the terms of all marketing and pricing agreements involving Tex Mex and TFM. KCS will allow such agreements to continue to their full term and will not seek to cancel them early, even if KCS has the legal right to do so. Indeed, NAFTA Rail will have every incentive to cooperate with both carriers on interline service in order to maintain a positive business relationship, since NAFTA Rail's financial success will be dependent on their continued flow of traffic at the Laredo gateway. However, when an existing agreement expires, KCS is not willing to simply renew such an agreement under the old terms without undertaking a good faith negotiation. KCS would not expect UP and BNSF to simply renew expired agreements without new negotiations,¹¹ and to KCS's understanding, neither UP nor BNSF has ever been required to make such an extraordinary promise in any of their various mergers.

3. All Carriers Will Be Treated Fairly At The Laredo Bridge.

One of the main reasons put forth by both UP and BNSF for the notion that the KCS/Tex Mex transaction will have anticompetitive effects is the notion that KCS will institute a "chokehold" over the Laredo Bridge by unfairly dispatching rail traffic over the bridge and

¹¹ If any party to one of these agreements is concerned about how KCS is implementing that agreement, the agreements themselves provide more than adequate remedies and the Board should not involve itself in the application and management of those agreements. *See, e.g., Dakota, Minnesota & Eastern Railroad Corporation and Cedar American Rail Holdings, Inc. - Control - Iowa, Chicago & Eastern Railroad Corporation*, STB Finance Docket No. 34178, 2003 LEXIS 200, *9-10 (served Apr. 21, 2003)(Linda Morgan, commenting)(rejecting notion that the Board will routinely engage in the interpretation or enforcement of privately negotiated contracts); *The Township of Woodbridge, N.J., et al., v. Consolidated Rail Corp.*, STB Docket No. 42053, 2000 STB LEXIS 709, *11 (served Dec. 1, 2000)("It would be inappropriate for us [the Board] to rule on the merits of the contract dispute. Such matters are best addressed by courts.").

thereby controlling an international crossing point, the Laredo Bridge. Concerns over the fact that KCS will acquire control over the Laredo Bridge are altogether misplaced. KCS has no plans to operate TFM or Mexrail, a non-carrier holding company that owns part of the bridge structure, any differently than they are currently operated. There are numerous contracts and agreements going back for over a half of century governing those operations, and Tex Mex and TFM will continue to be bound by those agreements. Furthermore, as previously explained, because UP controls the very connection that allows NAFTA Rail to be possible, it is UP that will continue to control NAFTA Rail's access to and from Mexico, not NAFTA Rail. The contracts and agreements concerning the bridge at Laredo provide remedies that parties may pursue in court if a grievance arises, though that is not expected.¹²

IV. DESCRIPTION OF MEXICAN LAWS RELATED TO RAIL OPERATIONS

In order to be responsive to the Board's request for information relating to the KCS/TFM transaction, KCS requested the law firm of Kuri Breña, Sánchez Ugarte, Corcuera y Aznar, S.C. to prepare a memorandum summarizing features of Mexican law and the TFM Concession relevant to issues arising from Sections 1180.1(k) and 1180.11. That memorandum is attached as Appendix 1 hereto. It contains color maps which are attached as Appendix 2 hereto. A brief summary of the provisions relevant to the privatization and the rights and limitations on service and pricing follows:

¹² Concurrent with the filing of this Supplement, KCS is filing a Reply to UP's Petition For Declaratory Order filed on June 17, 2003 (UP-2) with respect to Mexrail and the agreements governing operations over the Laredo Bridge. As that Reply makes clear, KCS will abide by those agreements and those agreements protect UP from any unilateral action to discriminate against UP or treat it unfairly at the Laredo Bridge.

A. Background.

In 1995, Mexico's Inter-secretarial Commission of Privatization approved a plan to bring about the restructuring and privatization of the Mexican National Railway system. Under the plan developed by the Commission, the Mexican National Railway system would be divided primarily into three regional railway systems: the Pacific-North, Northeast and Southeast. In addition, the plan created a terminal for interconnection and services in and around Mexico City that would, at formation, be owned in equal parts by the three regional railway systems and the Mexican Government.

Mexico's Railway Law states that its purpose is to "increase competition in the general system of transportation and the competitiveness of our economy." Indeed, it is noted that the Mexican Constitution was reformed to allow the privatization of the Mexican Railway System to provide for the "development of a railway system that is efficient, competitive and that provides a service that does not discriminate and that is helpful to the construction of the infrastructure that our country demands." The intent of the 1995 law and the privatization plan was to attract investors of new capital, including foreign investors, by creating "conditions that will permit them to count with certainty and legal security on their investment."

B. Rights.

TFM's rights derive primarily from its Concession Title dated December 2, 1996. Prior to that time, TFM's predecessor in interest, the Ferrocarril del Noreste, S.A. de C.V., was wholly owned and controlled by the Mexican Government. The Concession Title authorizes TFM to perform freight transportation for the public to use, operate and enjoy the rail lines, right of way, traffic control centers and signals for the operation of the railway as described in Annexes One

and Two to the Concession Title, and to use the public goods and properties described in Annex Three to the Concession Title.

1. Exclusive Rights of Use and Enjoyment

Subject to the mandatory trackage rights and haulage rights that are expressly described in the annexes to the Concession Title, TFM was granted the exclusive right to operate and use the rail lines of the Concession for freight transportation services (Sections 1.4.1 and 1.4.2 of the Concession Title). TFM's right of exclusivity lasts for the first thirty years of the Concession. Thereafter, the Mexican Government may hold hearings and consider granting additional concessions for the movement of cargo within TFM's right of way. The Government reserves the right to grant passenger concessions over the rail lines of the Concession at any time.

2. Duty To Charge Filed Rates

TFM has the right to freely set its rates. TFM's rates must be registered with the Secretariat of Communications and Transportation ("SCT") and must be applied consistent with applicable laws and regulations (Section 2.15 of the Concession Title). In the event that customers are charged a rate greater than that registered, TFM must reimburse the customer for the overcharge, plus interest.

- C. Potential Limitations On Rights.

1. General Limitation of Mexican Laws and Regulations
(Current and Future)

The Concession Title and Mexican Railway Law and Regulations provide that TFM's use and enjoyment of the Concession is subject at all times to the Railway Law ("Ley del Servicio Ferroviario") and its related regulations. The Concession Title also specifies that TFM is subject to Mexico's General Communications Law, General Law of National Property, General Law of Ecological Equilibrium and the Protection of the Environment, the Federal Law of Economic

Competition, international treaties, and other Mexican laws, regulations, decrees and official standards. If these statutes, regulations or orders are repealed, modified or supplemented, TFM will be subject to the new provisions when they take effect. (Retroactive application of laws is generally prohibited by Mexico's Constitution.)

2. Limitations on the Setting and Application of Rates

TFM may set rates that are adequate to allow it to render service that is of satisfactory quality, competitiveness and safety, and that will allow the company to remain in business. In applying its rates, TFM must abstain from tying arrangements, price discrimination or cross subsidization (Section 2.15 of the Concession Title). If a customer is not served by at least two railroads or by any other viable transportation alternative, it may challenge TFM's rates before the SCT, which shall consult with the Federal Competition Commission in setting a rate to the customer's traffic. The rate imposed by the SCT shall be maintained for so long as there is no effective competition (Article 47 of the Railway Law).

3. Service and Interchange Obligations

TFM is obligated to offer railroad services to requesting customers in a uniform and consistent manner, and on conditions that are equitable and non-discriminatory in terms of availability, quality and price (Section 2.1 of the Concession Title; Article 24 of the Railway Law). TFM must also provide terminal and interchange services at all points of interconnection with railroads of other concessionaries or with connecting railroads of other countries on conditions that are equitable and non-discriminatory in terms of availability, quality and price. Any difference in the availability of the service or in the application of the rate must be based on specific circumstances that determine the differences established (Section 2.2 of the Concession Agreement).

V. IMPACTS OF KCS/TFM ON U.S. OPERATIONS AND SAFETY

The Board's regulations at 49 C.F.R. § 1180.1(k) and 1180.11 address not only competitive issues, which are the only relevant issues for consideration in a minor application under 49 U.S.C. Section 11324(d), but also impacts of multi-national operations on service, safety and the environment in the U.S. The impacts of the KCS/Tex Mex transaction, which is the only transaction subject to the Board's jurisdiction and the only transaction that has already been consummated, have been fully addressed and set forth in the Application and will not change if and when the KCS/TFM transaction occurs.

If the KCS/TFM transaction does occur, there will be no transfer of operating control of U.S. carriers to Mexico. The TFM transaction, if it occurs, will have no adverse effect on service. As shown in V.S. Davies, both before and after that potential transaction, TFM will be operationally controlled from, and will operate only in, Mexico. TFM will continue to operate as a separate company domiciled in Mexico, existing in a tremendously competitive environment in which it has agreed to and, as a practical matter must, cooperate with UP and BNSF. The TFM transaction will not adversely affect rail operations in the U.S. nor will it have any adverse impact on the environment in the U.S.¹³

The TFM transaction will have no adverse effects on employees or upon safety.¹⁴ Meanwhile, actions taken in conjunction with the TFM transaction will increase rail safety. As set forth in the accompanying Verified Statement of Thomas A. Leopold, General Director of

¹³ See generally 49 C.F.R. §1105.6(c)(2)(ii) (providing that corporate changes such as changes in ownership are categorically excluded from environmental review).

¹⁴ Because no operating control of a U.S. railroad is being transferred to a foreign country, there will be no change in the current operating relationships of KCSR, Gateway Eastern and Tex Mex with the Federal Railroad Administration ("FRA").

Safety and Training for KCS, U.S. rail operations will be enhanced by the TFM transaction in three ways. First, TFM plans to implement the KCS Management Control System ("MCS") next year. This system helps assure proper placement of cars carrying hazardous material in trains, and monitors placement of those cars. In addition, it retains information about each hazmat shipment so that if an accident should occur, that information is readily available to guide accident responders in proper treatment of the accident. Second, through sharing of other best practices between KCSR and TFM, safety practices will be improved, resulting in safer trains crossing the border at Laredo as well as at Brownsville. Finally, TFM will make available for analysis of incidents and accidents on KCSR, Gateway Eastern and Tex Mex the TOES incident analysis software. This software will help KCSR, Tex Mex and Gateway Eastern better understand the causes of incidents, leading to more effective preventative measures. Thus, rail operating safety in the U.S. is expected to improve as a result of the TFM transaction.

As relates to security issues, on May 1, 2003, KCSR and Tex Mex submitted an application to become a participant in C-TPAT. C-TPAT is a Department of Homeland Security ("DHS") system by which government and industry partner to assure against terrorist incidents resulting from transportation. Also, on June 12, 2003, the new Vehicle and Cargo Inspection System ("VACIS") facility on the U.S. end of the Laredo Bridge was opened. The VACIS facility houses a state-of-the-art gamma ray imaging system that sees inside rail cars and intermodal equipment coming from Mexico. The DHS's Bureau of Customs and Border Protection, formerly known as U.S. Customs Service, installed the system, unlike any other at the U.S. Mexico border. Tex Mex built the two-story structure housing the system. This unique new system adds a new level of protection for the U.S. against terrorist activity. As NAFTA Rail

increases its competitiveness with trucks, a higher proportion of U.S./Mexico traffic will move through the VACIS facility.

CONCLUSION

The sole issue before the Board in this proceeding is whether KCS's acquisition of control of Tex Mex (not TFM) is likely to result in a substantial reduction in competition in freight transportation in the U.S. The answer to that question clearly is no. This conclusion is the same whether or not the effects of the KCS/TFM transaction are considered in conjunction with the KCS/Tex Mex transaction. Even including the KCS/TFM information voluntarily provided herein, the KCS/Tex Mex transaction will not result in any adverse effects in the U.S. on competition, service, employees, safety or the environment.

Because the concerns raised by UP and BNSF are based on the TFM transaction, not the KCS/Tex Mex transaction, and because those are concerns about harm to competitors, not harm to competition, their concerns not recognizable harms under STB jurisprudence. Nonetheless, as KCS had already done and as further discussed in this Supplement, KCS will continue to work with UP and BNSF and will not take any anticompetitive actions against them. In the end, the

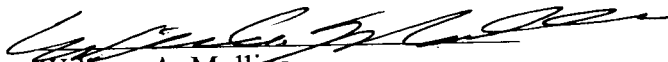
KCS/Tex Mex and the KCS/TFM transactions will not harm competition and in fact, will be pro-competitive, enhancing competition.

Respectfully submitted,



Richard H. Streeter
BARNES & THORNBURG
750 Seventeenth Street, NW
Suite 900
Washington, DC 20006
Tel: (202) 289-1313
Fax: (202) 289-1330

Attorney for The Texas Mexican
Railway Company and Mexrail, Inc.



William A. Mullins
David C. Reeves
Sandra L. Brown
Jennifer A. Kerkhoff
Elizabeth A. Martin
TROUTMAN SANDERS LLP
401 Ninth Street, NW - Suite 1000
Washington, DC 20004-2134
Tel: (202) 274-2950
Fax: (202) 654-5621

W. James Wochner
Thomas J. Healey
KANSAS CITY SOUTHERN
427 West 12th Street
Kansas City, MO 64105
Tel: (816) 983-1303
Fax: (816) 983-1227

Attorneys for Kansas City Southern,
The Kansas City Southern Railway
Company, and Gateway Eastern
Railway Company

June 23, 2003

CERTIFICATE OF SERVICE

I have this day served a copy of the foregoing Supplement to Application upon all other parties of record by depositing a copy in the U.S. mail in a properly addressed envelope with adequate first-class postage thereon prepaid or by other expeditious means.

Dated: June 23, 2003.

A handwritten signature in black ink, appearing to read 'William A. Mullins', written over a horizontal line.

William A. Mullins
Attorney for Kansas City Southern,
The Kansas City Southern Railway
Company, and the Gateway Eastern
Railway Company

**VERIFIED STATEMENT OF
GERALD K. DAVIES**

**EXECUTIVE VICE PRESIDENT & CHIEF OPERATING OFFICER,
THE KANSAS CITY SOUTHERN RAILWAY COMPANY**

**IN SUPPORT OF THE
SUPPLEMENT TO THE RAILROAD CONTROL APPLICATION
OF THE KANSAS CITY SOUTHERN RAILWAY COMPANY,
GATEWAY EASTERN RAILWAY COMPANY,
and
THE TEXAS MEXICAN RAILWAY COMPANY**

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34342

My name is Gerald K. Davies. I am the Executive Vice President & Chief Operating Officer of The Kansas City Southern Railway Company ("KCS"), and have served in this capacity since 1999.¹ I have been involved with KCS's actions to create and develop NAFTA Rail, through its acquisition of Tex Mex and TFM, and know well the anticipated operational and competitive effects of the KCS/Tex Mex transaction as set forth in the Application. I am also familiar with the Board's notice accepting KCS's railroad control Application as a minor transaction and issuance of procedural schedule as set forth in Decision No. 2, as well as the

¹ Prior to assumption of my present position, I served as Canadian National's ("CN's") Senior Vice President of Marketing for five years. Before joining CN, I was Vice President, Marketing for the Burlington Northern, where I also held senior positions in the operations and finance departments. Prior to that, I was employed at CSX, where I was Vice President, Marketing Services, responsible for price management, freight damage prevention and claims, electronic data interchange, and freight billing and collections. During the early seventies, I served as a rail industry economist with the U.S. Department of Transportation and as assistant to the President of the United States Railway Association. I earned a B.Sc. in Economics from Utah State University and a Ph.D. in Transportation Economics from Washington State University.

various parties' replies to KCS's Petition to Establish Procedural Schedule that led to issuance of Decision No. 2. Given my experience in the U.S./Mexico trade, I am intimately familiar with how railroads price to shippers or receivers and the market forces that drive those practices. As a result of that experience, I have been asked to respond to the STB's request.

The STB has requested KCS to supplement its Application to reflect the implications of the TFM transaction for competition within the U.S. To comply with the Board's directive to address the competitive effects of the TFM transaction in conjunction with the Tex Mex transaction, I will first explain the rationale for the TFM transaction and how it came together and then I will explain why that transaction, combined with the Tex Mex transaction, will not have any anti-competitive effects on shippers and is in fact pro-competitive in nature.² In conducting this analysis, I can unequivocally say that the acquisition of Tex Mex by KCS not only will not have any adverse competitive effects on shippers, customers, or receivers in the U.S., but will make the NAFTA corridor more competitive and the combined KCS/Tex Mex more efficient. This conclusion is not different when one considers the implications of the TFM transaction on the KCS/Tex Mex transaction.³

² Because it was KCS's view that the STB had no jurisdiction to approve or reject the TFM transaction, a view which was confirmed by Decision No. 2, and because the processes used by the parties who do have jurisdiction over the KCS/TFM transaction are very different than the process used by the STB, there were and are not any studies or formal analyses prepared for the KCS/TFM transaction. The competitive effects of that transaction are being reviewed by the Mexican Foreign Investment Commission and the U.S. Department of Justice. The effects were also reviewed by the Mexican Competition Commission.

³ As KCS has already consummated the purchase of Mexrail, the parent company of Tex Mex, and has placed those shares into a voting trust, it is important that the STB review and rule upon that transaction whether or not KCS consummates the TFM transaction. The TFM transaction has yet to be consummated is subject to numerous approvals from other governmental agencies, approval of the shareholders of both Grupo TMM and KCS and approval of the bondholders of Grupo TMM. Thus, it is possible that the TFM transaction may never be consummated. Nonetheless, if and when the TFM transaction occurs, that transaction will not have any adverse

I. DEVELOPMENT OF THE TFM TRANSACTION

KCS did not base its decision to increase its ownership position in TFM on traffic diversion studies, competitive analysis, revenue growth strategies, or any other strategic or financial study. Rather, KCS's financial projection analyses used to project future revenues were based on a static model with respect to cross-border traffic; that is, it was assumed that there would be no change in the existing growth rates or business plans for KCS and TFM. Of all of the numerous factors involved, two principal factors drove KCS's decision - the existing working and ownership relationship between KCS, Tex Mex, and TFM and the concern that financial difficulties at Grupo TMM could impair TFM's future operations, thereby adversely impacting service for U.S./Mexico traffic.

A brief background of TFM is helpful to understand how and why KCS and Grupo TMM finally reached an agreement to bring TFM under the control of KCS. In 1997, Grupo TMM and KCS together made a very substantial investment - \$1.4 billion - to acquire 80% ownership of the northeast concession of the newly-privatized Mexican rail system, now known as TFM. At the time, KCS and Grupo TMM were criticized for the amount of the bid, reputed to be \$1 billion above the next highest bid.⁴ Nevertheless, KCS and Grupo TMM were confident in the prospects for growing traffic that would result from modernizing the railroad and providing more coordinated service for the growing traffic spurred on by NAFTA, and we continue to believe it was a fair price.

competitive effects on competition in the U.S. and will not adversely impact the KCS/Tex Mex transaction.

⁴ UP, a losing participant in the bidding for the northeast concession and one of the critics of the price that KCS and Grupo TMM paid, subsequently purchased a one-fourth interest in what is now Ferromex. The total price paid for Ferromex was approximately \$565 million.

In making their investment in TFM, the intent of KCS and Grupo TMM was to grow the working relationship of the two companies over time to form a stronger, more competitive route that would attract more NAFTA traffic. As KCS said in its 1997 Annual Report:

During the mid-1990's, while KCSR's major U.S. rail competitors focused on consolidating their east/west systems in the United States, KCSR embarked on a strategy of expanding its core network in order to capitalize on growing north/south trade between the United States, Mexico and Canada created by the North American Free Trade Agreement ("NAFTA"). KCSL has aggressively pursued acquisitions, joint ventures and marketing agreements with other railroads, with the goal of creating the "NAFTA Railway." KCS[]'s rail network connects Midwestern, eastern and Canadian shippers, including shippers in Chicago, Illinois and Kansas City, Missouri-the two largest rail centers in the United States-with the largest industrial centers of Mexico, including Mexico City and Monterrey.

KCS and Grupo TMM have worked together over the past six years to make the NAFTA rail corridor a smoother, more competitive operation. That venture has been a success, as traffic on TFM has grown and the railroad has continued to improve its profitability.

Having said that, Grupo TMM's financial struggles have been chronicled in recent media reports. According to these reports, Grupo TMM has pressing financial challenges and has been struggling to avoid bankruptcy for some time. Reportedly, Grupo TMM owes approximately \$400 million to a variety of banks and bondholders, including its recent default on a \$177 million debt repayment.

Regardless of any financial issues with respect to Grupo TMM, reaching an agreement for NAFTA Rail to purchase Grupo TMM's TFM shares made good sense for both companies. Grupo TMM's sale of the Grupo TFM shares it controls to KCS for cash and a portion of NAFTA Rail equity will help it raise cash while allowing it to retain an indirect interest in TFM. The situation offers an opportunity to further the goal of strengthening NAFTA Rail, KCS's and Grupo TMM's long term strategic vision. Bringing TFM under NAFTA Rail ownership will, for

example, reduce pressure to generate short-term cash flow from the railroad, allowing increasing re-investment that is necessary to maintain and improve service.

Accordingly and against this backdrop, KCS did not rely upon traffic diversion studies, strategic studies, market analyses, or any other similar studies when it decided to move forward with acquiring a greater interest in TFM. Such studies were simply irrelevant to achieve the objective of creating NAFTA Rail. Indeed, the financial review of the proposed TFM transaction, which was relied upon by KCS, was based on a static model - that assumed that there would be no change in the existing rate of growth for traffic interchanged between KCS and Tex Mex/TFM. Based on the need for Grupo TMM to raise cash, KCS's desire to invest in TFM for the long term future prospects, and supported by a conservative growth financial analysis, the transaction made sense for KCS, as it did for Grupo TMM. That was all that the parties needed to decide to move forward.

II. THE KCS/TEX MEX/TFM TRANSACTION WILL NOT RESULT IN ANY ADVERSE COMPETITIVE EFFECTS IN THE UNITED STATES

The competitive assumptions behind the KCS/Tex Mex and KCS/TFM transactions are simple - to build a better, more coordinated railroad system. To date, over 80 parties, including shippers, ports, and governmental bodies, have expressed support for the transactions.

Curiously, UP and BNSF have both raised concerns, not about the Tex Mex transaction, but rather the TFM transactions. The Board has asked KCS to address those concerns. Examined closely, the concerns raised by UP and BNSF focus not on the impacts on competition of the KCS/Tex Mex transaction or the impacts on competition of the TFM transaction, but instead focus upon the impacts on themselves, the competitors of KCS.

BNSF urges the Board to require KCS to address any plans to cancel any Tex Mex or TFM agreements or arrangements with other carriers once common control is achieved. BNSF

is further concerned that KCSR may prefer alternative interchange points with BNSF following the consolidation. Similarly, UP is concerned about the potential impacts on UP as a competitor, especially over how KCS will control operations over the Laredo Bridge. Fears expressed by UP and BNSF, are simply fears of facing a more capable and efficient competitor, concerns that ring rather hollow from carriers many times the size of the new NAFTA Rail with much more market power and control over U.S. Mexican traffic than KCS will ever have, even with control over Tex Mex and TFM.

Of course the proper focus of the STB's inquiry should not be on how the two transactions will impact UP and BNSF, but on whether or not the KCS/Tex Mex transaction will give NAFTA Rail the opportunity to raise prices to shippers, create a monopoly, or otherwise restrain trade in the United States. The Board has requested KCS to supplement its application to address the competitive effects of the KCS/Tex Mex transaction within the context of a possible KCS/TFM transaction. Even if one considers the successful consummation of the TFM transaction, that transaction, combined with the KCS/Tex Mex transaction, will not allow NAFTA Rail to raise prices to shippers, restrain trade, or create a monopoly, nor will it result in any anticompetitive actions toward UP or BNSF. This is true because the two transaction are entirely end-to-end and do not involve any reduction in the competitive alternatives available to shippers. Indeed, it will provide an enhanced competitive option to shippers. In addition, there is pervasive intermodal and intramodal competition for traffic to/from Mexico and within Mexico. Furthermore, the near monopoly of this trade by UP and the ability of UP and BNSF to divert traffic away from the Laredo gateway provides an instant check on any ability of KCS/Tex Mex/TFM to take any actions adverse to UP and BNSF. If it did, TFM would lose a substantial

amount of traffic, which would not be in the interest of KCS. Thus, in this instance, the Board need not be concerned about harm to competitors, much less harm to competition.

Trade between the United States and Mexico is the fastest growing relationship in the world and future economic growth for both countries relies on competitive transportation alternatives. When the Mexican railroad system was privatized in 1996-97, the estimated rail market share both within Mexico and for cross-border traffic was less than 10%. This low market share was driven by vigorous truck competition both within Mexico and for U.S./Mexico trade; easy access to deep water ports on both the Pacific and Gulf Coasts; difficult railroad operating conditions from both Mexican coasts to the interior; and a very inefficient railroad operation with low quality rail service, prior to privatization. Indeed, even today, the Mexican economy and U.S./Mexico trade continues to be very dependent on trucks and water routes.

Since privatization, there have been enormous improvements in the rail system. The Mexican rail system was broken up to create three primary rail franchises: TFM, Ferromex and Ferrosur. Competition among the newly privatized rail lines, and intensive port and truck competition, have led the railroads to rapidly improve service, freight car availability, infrastructure, information systems and customer service.⁵ The result has been a success for those shipping to and from Mexico, since rail is now a more viable alternative to other forms of transportation. Nevertheless, despite these gains, rail market share in Mexico, in terms of inter-city tonnage moved, is still only about one-third of what it is in the U.S., at the 16% to 17% range, as intermodal competition remains fierce. Trucks continue to be the dominant mode of cross-border transportation; the value of annual U.S./Mexico truck traffic is approximately \$160 billion by truck versus \$32 billion by rail. Ship and barge competition also represent a large

⁵ At TFM, for example, more than \$1 billion (U.S.) has been invested in freight cars, rail, ties, locomotives and information systems during the last 6 years.

percentage of transportation of freight to and from Mexico, especially in certain markets; for example, 68% of corn transported from the U.S. for export into Mexico and other export destinations is transported via barge to the U.S. ports where it is loaded into ships for movement on to its final destination.

In addition to the competition NAFTA Rail will face from trucks and barges moving goods to and from Mexico, it also will continue to face competition with other rail lines in the United States, as I will discuss in more detail below. Moreover, NAFTA Rail will confront stiff competition from other rail lines at the border and within Mexico. The current balance between the two largest rail franchises in Mexico – Ferromex and TFM – promotes competition. In fact, Ferromex, which is 26% owned by UP, is the largest of the rail franchises in Mexico and covers more of the country than does TFM. Ferromex serves four of the six U.S. border crossings while TFM serves only two. Ferromex serves the majority of the grain destinations in Mexico while both Ferromex and TFM serve the auto parts manufacturers and automobile plants. Thus, not only is intermodal competition fierce in Mexico, but intramodal competition has also been pervasive since privatization.

Given this environment, it is clear that KCS's control of Tex Mex and TFM will not give it the ability to raise prices to shippers, restrain trade, or otherwise create a monopoly. Market forces simply wouldn't allow NAFTA Rail to do so even if it tried. Instead, NAFTA Rail can only become a more effective competitor by increasing efficiencies and providing efficient single-line service from origins in the U.S. to destinations in Mexico and vice-versa. Indeed, because of enormous competitive pressures provided by truck, ship, and other railroads, NAFTA Rail will continue to face pressure to lower -- not raise -- prices to shippers to maintain and increase market share. It is only through this process that NAFTA Rail can become an effective

competitor to trucks, barges, as well as provide an effective rail alternative to the dominance of UP and its 26% owned partner, Ferromex. A brief examination of how the existence of both strong intramodal and intermodal competition will limit KCS/Tex Mex/TFM's ability to raise prices to shippers for certain commodities provides strong evidence of these conclusions.

A. Competition For Grain

Grain is one of the most significant exports from the U.S. to Mexico, and one of the most important rail-shipped products, so that the intramodal competition provided by BNSF, UP, and others is powerful. But, intermodal competition for transporting grain is also pervasive.

Approximately 4 million tons of grain is shipped to Mexico via truck, 10 million tons by vessel and 11 million tons by rail. And, for certain types of grain, barge is the dominant transportation provider. For example, for export corn coming from U.S. grain producing regions and destined for Mexico and other export destinations, barge moves 68%, rail moves 26%, and truck moves 6%.

A major factor influencing the competition between rail and water for the shipment of grain is price. This competition is relatively straightforward: the better price (taking into account service issues) will win. For example, two years ago, KCS was able to win the business of Farmers Grain Terminal, LLC ("Farmers") away from barge by launching a dedicated grain shuttle train. If the pricing for the rail service were to be inappropriately raised, Farmers could quickly and easily return to the use of barges. Farmers is not unique. The pricing for rail very much considers, and is limited by, barge pricing, either down the Mississippi (for corn, the predominant grain moving from the U.S. to Mexico) or from Vancouver (for Canadian wheat).

But there is a second dynamic factor in the competition for grain traffic that is less apparent. The shippers, primarily large agribusiness concerns, can effectively use their own network of grain suppliers and customer destinations to engage in what might be called

“shipping arbitrage” and introduce an important element of source competition into the equation. For example, instead of shipping corn from Iowa by train to Mexico, these large grain processors and elevator companies could ship corn from Illinois by barge. The customer that was to receive Iowa corn would now receive Illinois corn. By shifting the source of supply, the shippers can and regularly do capture very small differences in shipping costs, often in the range of one-eighth of a cent per bushel (\$.00125). This provides a strong competitive check on the ability of railroads to raise their price on shipments of grain. Any inappropriate price increase will eliminate rail movement of grain from that location.

Even without this strong intermodal competition, the proposed transactions would not allow KCS to adversely affect competition for grain shippers because of rail intramodal competition at the border and within Mexico. Grain is shipped to three principal destinations in Mexico: (1) Guadalajara, (2) Mexico City and (3) Chihuahua. All of these destinations are served by Ferromex. TFM does not serve Chihuahua and has not used trackage rights to reach Guadalajara. Mexico City is an open switching district with origination and destination services provided to Ferromex, Ferrosur and TFM by a Mexico City terminal railroad. Hence, it should come as no surprise that most grain shipped to Mexico is handled by Ferromex, and not TFM. The proposed transactions will not, and cannot, change this reality. KCS simply could not adversely affect the grain market between the U.S. and Mexico. Thus, intramodal and intermodal competition for transporting grain is and will remain fierce after NAFTA Rail is fully up and running.

B. Competition For Auto Parts and Auto Traffic

Automobiles and auto parts represent a very substantial percentage of the inter-U.S./Mexico trade. For auto-related shipments, trucks dominate with about 60% of southbound shipments (1.1 million tons by truck v. 740,000 tons by rail). With an intermodal ramp, it is

relatively easy to ship to the border by train and then take the parts into Mexico by truck. The same is true with the reverse routing of auto parts or finished automobiles.⁶

As with grain, there is strong intramodal rail competition for auto-related traffic. The top two destinations for autos are Mexico City and Saltillo/Monterrey. Because Mexico City is served by a terminal railroad, all locations in Mexico City have the option of using Ferromex, Ferrosur, or TFM. With respect to Saltillo/Monterrey, competitive alternatives can be maintained through drayage to and from TFM's and Ferromex's rail yards and potential government regulation.⁷ TFM and Ferromex are constantly competing for auto traffic, which is price sensitive.

As with the market for transportation of grain and other commodities between the U.S. and Mexico, KCS simply could not adversely affect the rates to shippers or of any rail competitor, even if it thought it had an incentive to do so. Indeed, UP, and not TFM, is the price-setter for the shipment of automobiles and auto parts between the U.S. and Mexico. UP has exclusive contracts with logistics management companies that have contracts with the auto companies. UP therefore controls this traffic and dictates the price that TFM must accept for its portion of the carriage. For example, a year ago, UP threatened to shift about 30% the auto parts traffic it controls from the TFM to Ferromex. TFM responded with competitive prices and retained the business.

⁶ In fact, I understand that this is precisely what the UP planned to do to overcome certain potential problems with Ferromex: it planned to truck finished automobiles up to the Mexican border at Arizona where they would be loaded on railcars to complete the movement.

⁷ The SCT has issued various regulations concerning trackage rights compensation, interpretation of mandatory trackage rights, switching and interline rates as relates to Monterrey. These rulings are under appeal by various parties and will be decided in due time by Mexican courts.

Indeed, UP, and not TFM, is the price-setter for the shipment of automobiles and auto parts between the U.S. and Mexico. UP has exclusive contracts with logistics management companies that have contracts with the auto companies. UP therefore controls this traffic and dictates the price that TFM must accept for its portion of the carriage. The transactions necessary to effectuate NAFTA Rail will not change UP's role as price-setter. If KCS attempted to raise prices to shippers for these UP/TFM moves, the traffic simply would move by different means. It is KCS's plan, however, that NAFTA Rail will finally offer shippers a more viable transportation alternative to UP.

C. Competition For Other Commodities

As demonstrated by the foregoing discussion, NAFTA Rail cannot adversely affect competition in the market for transporting grain and auto parts between Mexico and the United States. Nor is there any other product for which NAFTA Rail could adversely impact the transportation market. Rail rates for all products involved in U.S./Mexico trade are constrained by strong intermodal and intramodal competition. This competition prevents common carriers from taking actions harmful to shippers. Thus, NAFTA Rail is not only unwilling, but unable, to eliminate the competitive alternatives that shippers currently enjoy. Instead, as noted above, NAFTA Rail's desire is to present a more viable and competitive rail alternative than is currently available to shippers engaged in U.S./Mexico trade.

Even if such competition were not in and of itself sufficient to protect shippers from any arguable adverse effect from the proposed transactions, there are numerous other reasons why NAFTA Rail cannot be anticompetitive. UP possesses substantial market power and vertical leverage over KCS, Tex Mex and TFM, and will possess substantial leverage over NAFTA Rail. This leverage stems from, among other things, its market dominance of U.S./Mexico traffic

(including to and from many locations that cannot be served by NAFTA Rail), its access to six U.S./Mexico gateways and its 26% ownership of Ferromex.

Rather than limiting competition, the proposed transactions enhance competitive options for shippers in the growing NAFTA trade corridor. It is for this reason that sophisticated, non-captive shippers and intermodal marketing companies such as Daimler/Chrysler, Dow Chemical, Atofina, Mead Westvaco and Hub Group have all expressed support for the proposed transactions. Indeed, KCS has received support letters from over 80 parties.

III. THE CONCERNS EXPRESSED BY UP AND BNSF ARE UNWARRANTED

As noted, not one shipper has yet expressed opposition to the KCS/Tex Mex or KCS/TFM transactions. The only specific concerns have been expressed by UP and BNSF. Despite the fact that neither UP nor BNSF have shown that the KCS/Tex Mex transaction will adversely impact shippers, KCS will address the BNSF's and UP's specific concerns and establish why their concerns are unwarranted. In fact, the KCS/Tex Mex transaction, either with or without the KCS/TFM transaction, will promote competition and serve the public interest.

KCS has every incentive to maintain a positive business relationship with UP and other carriers using TFM, since NAFTA Rail's financial success will depend on the continued flow of traffic from various carriers at the Laredo Gateway.⁸ TFM must retain UP's and BNSF's business in order to be financially successful. These two carriers control 90% of the rail traffic in the entire Western United States and have much more extensive coverage than KCS. UP carries 90% of the northbound traffic and 79% of the southbound traffic between Mexico and the U.S. via all U.S./Mexico gateways. By comparison, KCS/Tex Mex carry just 3% of the

⁸ KCS is also committed to and has every incentive to work with TFM's Mexican competitors, Ferromex and Ferrosur, in good faith to resolve promptly outstanding issues among the parties, most urgently on trackage rights.

northbound traffic and 9% of the southbound traffic. BNSF also has a significantly higher market share than KCS/Tex Mex for transportation to Mexico, carrying 12% of all southbound traffic. UP has access to six Mexican gateways and BNSF has access to three. In contrast, KCS/Tex Mex has only one gateway to Mexico at Laredo, and it depends on trackage rights over approximately 350 miles of UP in Texas to reach this gateway. UP and BNSF have direct access to Ferromex; KCS/Tex Mex do not. Thus, KCS has no intention, nor incentive, to change the way TFM is operated so as to drive away UP and BNSF interchange business. Nonetheless, to ensure this Board and the shipping community that KCS will not take actions to reduce shipper's alternatives, KCS will make the following pledges.

A. KCS Will Continue To Work With UP and BNSF

As noted above, KCS, assuming it takes control of TFM, will have every economic incentive to continue to provide reasonable interchange conditions with both UP and BNSF. UP, in particular, has expressed concern that TFM will no longer continue existing operating practices that UP and TFM have developed over the past years. KCS commits that the basic structure and operations of TFM will not change except through negotiations. TFM will remain a separate subsidiary with independent officers, albeit with NAFTA Rail as its parent company. Under this structure, KCS further commits that its carriers will continue to cooperate on pre-blocking rail cars, improving automated customs pre-clearance procedures, supplying cars for shipments, accommodating run-through train service, providing excellent service, and promptly quoting rates. In general, because of the near rail monopoly on U.S./Mexican trade held by UP and the ability of UP and BNSF to utilize alternative gateways and Ferromex, KCS, if it is successful in consummating the TFM transaction, must continue to cooperate with UP, BNSF

and other rail carriers on interline services. Indeed, such cooperation has been and will continue to be a railroad business necessity.

B. KCS Will Honor All Existing Tex Mex and TFM Agreements

KCS also fully intends to honor the terms of all marketing and pricing agreements involving Tex Mex and TFM. KCS will allow such agreements to continue to their full term and will not seek to cancel them early, even if KCS has the legal right to do so. In plain English, this means that if an agreement is for a 15 year term and the agreement is in year 7, KCS will continue to honor that agreement for another 8 years, even if there is a provision in the contract that allows KCS to cancel that agreement upon appropriate notice before expiration of the 15 year term. This commitment should put to rest any notion that KCS has plans to disrupt service and change existing arrangements.⁹

C. KCS Will Keep The Laredo Gateway Open On Commercially Reasonable Terms

To alleviate any concerns by shippers that KCS intends to no longer quote rates to the Laredo gateway or provide service only to or from the Laredo gateway, KCS commits that it will keep the Laredo gateway open on commercially reasonable terms. This is the same commitment that was made in the CN/WC and CSX/NS/Conrail merger cases and KCS will live by those commitments. In conjunction with this commitment, KCS will provide the same level of service to UP and BNSF as they have experienced in the past, and Tex Mex will also work with BNSF to route traffic via Laredo.

D. All Carriers Will Be Treated Fairly At The Laredo Bridge

⁹ However, when an existing agreement does reach its full maturation, KCS is not willing to simply renew such an agreement under the old terms without undertaking a good faith negotiation; nor would KCS expect UP and BNSF to simply renew expired agreements with Tex Mex or TFM without new negotiations.

Concerns over the fact that KCS will control the Laredo Bridge are altogether misplaced. KCS commits to abide by the existing dispatching and operating practices over the bridge that exist today. Indeed, there are numerous contracts and agreements going back for over a half of century governing those operations, and Tex Mex and TFM will continue to be bound by those agreements. Furthermore, as previously explained, UP's ability to switch gateways, its dominant market share at Laredo, its equity ownership position in TFM's main competitor in Mexico and the fact that KCS access to Mexico involves 350 miles of Tex Mex trackage rights over UP, give KCS a strong incentive to continue to work with UP to funnel traffic over the bridge. KCS has no plans to institute a "new chokehold" over the Laredo Bridge as UP wrongly accuses. Indeed, it is UP who has the "chokehold" over KCS and Tex Mex, as UP completely controls the infrastructure used by KCSR and Tex Mex to even access the bridge.

If UP is unhappy with the existing operations or practices over the bridge, it should invoke the rights and remedies it has in the numerous contracts governing those operations, rather than seek government intervention to resolve those concerns. Alternatively, KCS is more than willing to discuss alternative arrangements in private negotiations to further improve the efficiency of the operation of the bridge. Unfortunately, UP would rather fight these issues in public than discuss them with KCS in private.

E. There Will Not Be Significant Changes In
Operations And Safety Will Remain A Top Priority

Finally, to address some of the concerns expressed by UP, BNSF, and others regarding operational and safety issues, I would like to note that the full operational changes and impacts of the KCS/Tex Mex transaction have been fully addressed and set forth in the Application and will not change if and when the KCS/TFM transaction occurs. As the Application shows, the

KCS/Tex Mex transaction will not adversely impact the operations of any carrier, the environment, or safety.

With respect to the KCS/TFM transaction, it is not anticipated that KCS's increased ownership in TFM will have any operational impacts within the United States. KCSR is not consolidating its operations with TFM. While KCSR already provides substantial operational assistance to the Tex Mex, it does not have and does not expect to have the same relationship with TFM. TFM is a fully-staffed, fully-functioning railroad headquartered in Mexico City. Assuming that KCS obtains the various permissions needed to move forward with acquiring additional ownership in TFM, TFM's operations will remain south of the border. TFM will not take over, in whole or in any part, the operations of KCSR or Tex Mex in the United States. KCSR and Tex Mex will continue to be dispatched within the United States. Investment decisions and all other aspects of management of KCSR and Tex Mex will remain within the United States, controlled by NAFTA Rail from Kansas City. In short, management and control of rail operations within the United States will remain in the United States, and will not be transferred to or controlled by TFM.

Meanwhile, actions taken in conjunction with the TFM transaction will increase rail safety. As set forth in the Verified Statement of Thomas A. Leopold, General Director of Safety for KCS, the safety of U.S. rail operations will be improved by KCS/Tex Mex transaction and the KCS/TFM does not change that conclusion. I have read Mr. Leopold's statement and endorse his conclusions.

Finally, with respect to security issues, on May 1, 2003, KCSR and Tex Mex submitted an application to become a participant in C-TPAT. C-TPAT is a Department of Homeland Security ("DHS") system by which government and industry partner to assure against terrorist

incidents resulting from transportation. Also, on June 12, 2003, the new Vehicle and Cargo Inspection System ("VACIS") facility on the U.S. end of the Laredo Bridge was opened. The VACIS facility houses a state-of-the-art gamma ray imaging system that sees inside rail cars and intermodal equipment coming from Mexico. The DHS's Bureau of Customs and Border Protection, formerly known as U.S. Customs Service, installed the system, unlike any other at the U.S. Mexico border. Tex Mex built the two-story structure housing the system. This unique new system adds a new level of protection for the U.S. against terrorist activity. As NAFTA Rail increases its competitiveness with trucks, a higher proportion of U.S./Mexico traffic will move through the VACIS facility. All of these changes are intended to ensure that rail shipments to and from Mexico and the U.S. are done in a safe and secure manner.

CONCLUSION

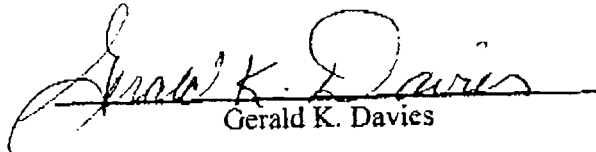
The KCS/Tex Mex transaction is a pro-competitive transaction that will not result in any adverse competitive affects on shippers, customers, or receivers in the U.S.; this conclusion is not different when one considers the implications of the TFM transaction on the KCS/Tex Mex transaction. The two transactions are purely end-to-end in nature. In addition, both intramodal and intermodal competition are inherent and powerful. UP and BNSF have substantial bargaining power and leverage, so there is no need in this transaction for the Board to be concerned about harm to competition or even harm to competitors. Finally, to provide further assurance of the pro-competitive nature of the two transaction, KCS is committing to continue to work with UP and BNSF, to not cancel any existing agreements prior to the end of their current term, to keep the Laredo gateway open on commercially reasonable terms, and to not make any changes in the way the Laredo Bridge is dispatched and operated.

With the transaction and the commitments made by KCS in this testimony, instead of decreasing competition, as many previous western mergers have done, the KCS/Tex Mex

transaction and the KCS/TFM transaction will enhance competition by providing an economically viable competitive alternative to UP and other dominant rail carriers. NAFTA Rail will also have enhanced ability to invest in infrastructure, equipment and technology at the Laredo Bridge and along the entire NAFTA Rail line. The KCS/Tex Mex transaction, even as considered in light of the KCS/TFM transaction clearly should be approved.

VERIFICATION

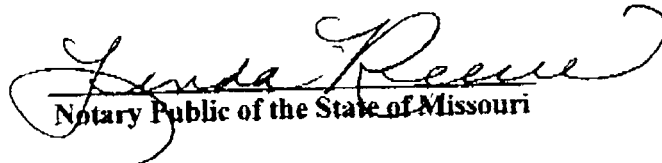
I, Gerald K. Davies, verify under penalty of perjury that I have read the foregoing statement and that it is true and correct. Further, I certify that I am qualified and authorized to file this verified statement.


Gerald K. Davies

Executed on 23 of June, 2003.

STATE OF MISSOURI)
)
COUNTY OF Jackson) ss.

Subscribed and sworn to before me
on this 23 day of June, 2003.


Notary Public of the State of Missouri

My commission expires:

August 4, 2006

LINDA REEVE
Notary Public - Notary Seal
STATE OF MISSOURI
CLAY COUNTY
MY COMMISSION EXP. AUG. 4.2006

SUPPLEMENTAL VERIFIED STATEMENT OF CURTIS M. GRIMM

**IN SUPPORT OF THE
SUPPLEMENT TO THE RAILROAD CONTROL APPLICATION
OF THE KANSAS CITY SOUTHERN RAILWAY COMPANY,
GATEWAY EASTERN RAILWAY COMPANY,
and
THE TEXAS MEXICAN RAILWAY COMPANY**

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34342

My name is Curtis M. Grimm, and I am Professor and Chair of Logistics, Business and Public Policy, Robert H. Smith School of Business, University of Maryland at College Park. I have been a member of this College since 1983. I received my B.A. in economics from the University of Wisconsin-Madison in 1975 and my Ph.D. in economics from the University of California-Berkeley in 1983. My Ph.D. dissertation investigated competitive impacts of railroad mergers. Further details may be found in the attached vitae.

I have previously submitted a statement in this case on behalf of Kansas City Southern ("KCS") as part of the initial application. My initial statement responded to a request by KCS to perform an economic analysis of the KCS purchase of control of The Texas Mexican Railway Company ("Tex Mex"), with particular emphasis on the impact on competition. My analysis showed that the control transaction, which is entirely end-to-end in nature, would result in no anticompetitive effects. There would be no locations or routing options that would be reduced from two-to-one or even from three-to-two.

I have subsequently been asked by KCS to address whether or not my findings reached in my initial statement would still be the same if I took into account a second transaction, i.e., KCS's acquisition of the shares of TFM that are currently owned by Grupo TMM and are not

currently owned by KCS. I have done so and concluded that the KCS/TFM transaction would not affect my earlier conclusions regarding the KCS/Tex Mex transaction and that the KCS/Tex Mex transaction would not result in any anticompetitive effects, even when one considers the implications of the KCS/TFM transaction.

The first section of my initial statement noted that The Kansas City Southern Railway Company ("KCSR") and Tex Mex are already end-to-end partners. I noted that the merger (or common control) of two firms who are already in a symbiotic relationship and who are already operating as highly integrated entities is generally viewed as benign from a competitive standpoint and positive from an efficiency standpoint. This conclusion would extend to the TFM transaction as well. While KCSR and TFM are not as highly integrated as KCSR and Tex Mex, especially given that TFM does not even operate property in the U.S., they nonetheless are part of the same corporate family and coordinate operations. For example, officers of TFM and KCSR form the majority of the Tex Mex management committee. TFM personnel guide the marketing efforts for Tex Mex, while KCSR provides significant operational support, from scheduling coordination and car blocking to dispatching coordination and locomotive and car supply management.

The main body of my initial statement examined the horizontal competitive effects from the transaction. Consistent with the DOJ and FTC horizontal merger guidelines, I examined whether the KCS/Tex Mex consolidation would reduce the number of independent rail alternatives in any market. Competition is greatly enhanced when alternative, fully-independent routings are available. On the other hand, if one carrier participates in all possible routings, i.e. has a bottleneck over any portion of all of the available routings, then there would be no available independent routings and competition can be greatly hampered. The importance of

independent routing alternatives has been recognized by the ICC/STB in *Consolidated Paper, Inc., et al. v. Chicago and North Western Transp. Co., et al.*, 7 I.C.C. 2d 330, 338, 1991 ICC LEXIS 47 (ICC decided Feb. 19, 1991), where the ICC noted that :

Competition between railroads generally requires the presence of two or more independent routes, that is, routes having no carriers in common. When a single carrier is a necessary participant in all available routes, i.e., a bottleneck carrier, it can usually control the overall rate sufficiently to preclude effective competition.

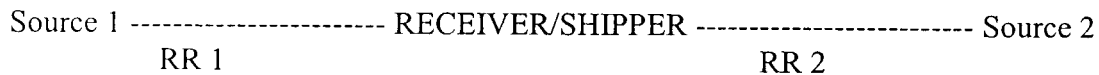
Accordingly, I focused my analysis primarily on instances where the proposed common control would reduce the number of independent railroad routings between a particular origin and destination pair, with particular attention given to instances where the consolidation produces a bottleneck carrier. The competitive analyses I have previously submitted to the STB in the UP/SP and KCS-GWWR-GWER mergers addressed horizontal impacts in the manner described above. I concluded in my previous statement that as a result of the KCS/Tex Mex transaction, there are no markets that will see a reduction in the railroad routing options available in that corridor from “two to one” nor from “three to two.” The common control of KCSR and Tex Mex is purely end-to-end and has no anticompetitive horizontal effects.

If one considers the competitive impacts of the KCS/Tex Mex transaction, even within the context of the KCS/TFM transaction, my conclusion with respect to no loss of competitive alternatives would not change. This is true even if one were to view the two transactions as one. Placing KCSR, Tex Mex, and TFM under common control would not reduce any shippers’ routing alternatives from two-to-one or three-to-two. This conclusion is true whether or not one uses BEA’s, stations, or specific points as the definition of the origin and destination pair. It is simply a fact that none of these three carriers today have any horizontal overlap, parallel lines, or

jointly serve the same shipper. The KCS/Tex Mex/TFM transactions are purely end-to-end with no horizontal anticompetitive effects.

In addition to the potential loss of route competition from a consolidation, a rail merger can also potentially result in reduction of independent alternatives for shippers located at the junction points of merging carriers. For example, in Figure 1 below, a receiver (more commonly understood as a shipper) who is served by both Railroad 1 and Railroad 2 can receive a desired commodity from different sources located on either railroad. This type of competition is commonly referred to as “source” competition because the shipper/receiver can obtain the same or similar commodity from two different and independent railroad routings and no one carrier serves as a bottleneck carrier in both routings.

Figure 1



In such an instance, even though a merger of Railroad 1 and Railroad 2 would be end-to-end in nature, it still could result in a reduction of the independent routings provided by the two different sources. For such a potential to exist with regard to the KCSR/Tex Mex/TFM consolidation, there would have to be a point or location where two or more of these railroads serve, albeit to or from different geographic regions. For the KCS/Tex Mex or KCS/TFM transaction, there is no such point, gateway, location, BEA, or individual shipper facility where source competition would be reduced.

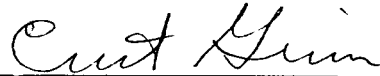
I noted in my previous statement that KCSR and Tex Mex connect only via Tex Mex’s trackage rights at Beaumont, TX, with KCSR handling origination and termination at Beaumont, so that there is no such loss in source competition from the KCS/Tex Mex transaction. Similarly, Tex Mex and KCSR only have tracks in the U.S., while TFM only has tracks in Mexico. As a

result, KCSR/Tex Mex only connect with TFM at the international bridge at Laredo. There are no shippers or receivers at that location that receive or ship goods from TFM and KCSR/Tex Mex so as to benefit from “source” competition provided by these two carriers. Accordingly, there could be no such reduction in source competition from the TFM aspect of the consolidation.

In conclusion, the STB has requested KCS to supplement its Application to reflect the implications of the TFM transaction for competition within the U.S. To comply with the Board’s directive to address the competitive effects of the TFM transaction in conjunction with the Tex Mex transaction, I have examined the methodologies utilized in my analysis for the KCS/Tex Mex transaction and have applied those methodologies to the KCS/TFM transaction. I can unequivocally say that the acquisition of Tex Mex by KCS, with or without the KCS/TFM transaction, will not have any adverse competitive effects on shippers, customers, or receivers in the U.S.

VERIFICATION

I, Curtis M. Grimm, verify under penalty of perjury that I have read the foregoing statement and that it is true and correct. Further, I certify that I am qualified and authorized to file this verified statement.

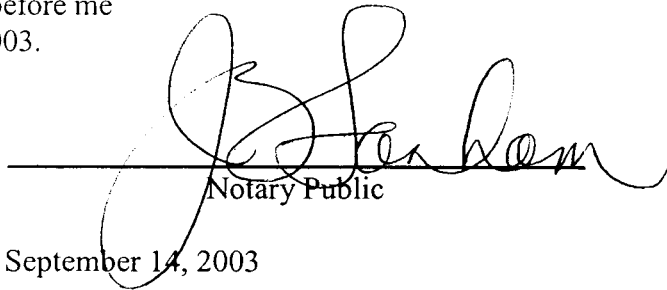


Curtis M. Grimm

Executed on 16th June, 2003

DISTRICT OF COLUMBIA

Subscribed and sworn to before me
on this 16th of June, 2003.


Notary Public

My commission expires: September 14, 2003

CURTIS M. GRIMM

4201 Clagett Rd.
Hyattsville, MD 20841
(301) 864-3979
(301) 405-2235 (w)
cgrimm@rhsmith.umd.edu (work email)
curtgrimm@comcast.net (home email)

EDUCATION

- 1983 University of California, Berkeley, Ph.D., Economics
Major Areas: Industrial Organization, Transportation and Econometrics/Statistics
Ph.D. Dissertation: Strategic Motives and Competitive Effects in Railroad Mergers
(Ted Keeler, Advisor)
- 1976 Freiburg University, West German, International Studies
Recipient of Rotary International Fellowship
- 1975 University of Wisconsin, Madison, B.A., Economics (with honors)
Recipient of Dean's Prize for Outstanding Scholastic Achievement, awarded to the two top
College of Letters & Science graduates

PRESENT POSITION

Professor and Chair, Logistics, Business and Public Policy; College of Business and Management;
University of Maryland; College Park, MD 20742.
(Appointed as Assistant Professor, August, 1983; promotion to Associate Professor,
August, 1989; promotion to Full Professor, August, 1993)

PREVIOUS EMPLOYMENT

July 1991 - January 1992

Visiting Research Fellow, Bureau of Transport and Communication Economics, Canberra,
Australia

January 1981 - December 1981

Economist, Office of Policy and Analysis, Interstate Commerce Commission, Washington, D.C.

October 1977 - August 1978 and November 1975 - July 1976

Assistant to the Chief of Intercity Transport Development, Planning Division, Wisconsin
Department of Transportation, Madison

June 1975 - September 1975

AIIESEC (International Association of Students in Economics and Commerce) Trainee, Swedish
State Power Board

PUBLICATIONS

Books and Monographs

- 1) C. Winston, T. Corsi, C. Grimm and C. Evans, The Economic Effects of Surface Freight
Deregulation, Brookings Institution, Washington, D.C., 1990.

- 2) Deregulation of Domestic Aviation: The First Year, Bureau of Transport and Communication Economics, Australian Government Publishing Service, Canberra, Australia, 1991 (lead author).
- 3) Smith, K., C. Grimm and M. Gannon, The Dynamics of Competitive Strategy, Sage Publishing, Newbury Park, CA, 1992.
- 4) Grimm, C. and K. Smith, Strategy as Action: Industry Rivalry and Coordination, West's Strategic Management Series, West Publishing Company, 1997 (revised edition, forthcoming in 2003).

Articles in Refereed Journals

- 5) Grimm, C. and R. Harris, "Structural Economics of the U.S. Rail Freight Industry: Concepts, Evidence, and Merger Policy Implications," Transportation Research Vol. 17A, No. 4, 1983, pp. 271-281.
- 6) Grimm, C., "An Evaluation of Economic Issues in the UP-MP-WP Railroad Merger," Logistics and Transportation Review Vol. 20-3, 1984, pp. 239-259.
- 7) Fanara, P. and C. Grimm, "Stand-Alone Costs: Use and Abuse in Determining Maximum U.S. Railroad Rates," Transportation Research Vol. 19A, No. 4, July 1985, pp. 297-303.
- 8) Grimm, C. and R. Harris, "The Effects of Railroad Mergers on Industry Performance and Productivity," Transportation Research Record 1029, 1985, pp. 9-17.
- 9) Grimm, C., K. Phillips and L. Selzer, "The Economics of Coal Transportation: Implications for Railroad and Shipper Strategies," Transportation Research Record 1061, 1985, pp. 14-26.
- 10) Grimm, C. and K. Smith, "The Impact of Rail Regulatory Reform on Rates, Service Quality, and Management Performance: A Shipper Perspective," Logistics and Transportation Review Vol. 22-1, 1986, pp. 57-68.
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- 14) Smith, K. and C. Grimm, "Environmental Variation, Strategic Change and Firm Performance: A Study of Railroad Deregulation," Strategic Management Journal Vol. 8-4, July/August 1987, pp. 363-376.
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- 17) Kling, J. and C. Grimm, "Microcomputer Use in Transportation and Logistics: A Literature Review with Implications for Educators," Journal of Business Logistics Vol. 9, No. 1, 1988, pp. 1-18 (also published in the Proceedings of the 1987 Transportation and Logistics Educators Conference).
- 18) Grimm, C. and R. Harris, "A Qualitative Choice Analysis of Rail Routings: Implications for Vertical Foreclosure and Competition Policy," Logistics and Transportation Review Vol. 24, No. 1, March 1988, pp. 49-67.
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- 26) Corsi, T. and C. Grimm, "Strategies and Performance in the Truckload General Freight Segment Before and After Deregulation," Journal of the Transportation Research Forum Vol. 30, No. 1, 1989, pp. 92-97.
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- 36) Emerson, C., C. Grimm and T. Corsi, "The Advantage of Size in the U.S. Trucking Industry: An Application of the Survivor Technique," Journal of the Transportation Research Forum, 1992, Vol. 32, No. 2, pp. 369-378.
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- 57) Grimm, C and J. Plaistow, "Competitive Effects of Railroad Mergers," Journal of the Transportation Research Forum Vol. 38, No. 1, pp. 64-75, 1999.
- 58) Lee, H., K. Smith, C. Grimm and A. Schomburg, "Timing, Order and Durability of New Product Advantages with Imitation," Strategic Management Journal Vol. 21-1, 2000, pp. 23-30.
- 59) Carter, C., R. Kale and C. Grimm, "Environmental Purchasing and Firm Performance," Transportation Research Part E: Logistics and Transportation Review, Vol. 36, 2000, pp. 219-228.
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- 65) Patterson, K., C. Grimm and T. Corsi, "Adopting New Technologies for Supply Chain Management," Transportation Research Part E: Logistics and Transportation Review (forthcoming).
- 66) Lee, H., K.G. Smith & C.M. Grimm, "The Effect Of New Product Radicality And Scope On The Extent And Speed Of Innovation Diffusion, " Journal of Management, (forthcoming).

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- 68) Harris, R. and C. Grimm, "Revitalization of the U.S. Rail Freight Industry: An Organizational Perspective," International Railway Economics, K.J. Button and D.E. Pitfield eds., Gower Publishing Company, 1985, pp. 49-84.
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- 71) Grimm, C. and G. Rogers, "Liberalization of Railroad Policy in North America," Transportation Deregulation: An International Perspective, K. Button and D. Pitfield, eds., Macmillan, London, 1991.
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- 73) Grimm, C. and R. Windle, "Regulation and Deregulation in Surface Freight, Airlines and Telecommunications," in Regulatory Reform and Labor Markets, J. Peoples, ed., Kluwer Academic Publisher, Boston, 1998.
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Articles in Journals with Internal Review Boards

- 76) Grimm, C. and R. Harris, "The Financial Performance and Prospects of Railroads in the South and Southwest," Texas Business Review 56 (6), November/December 1982, pp. 257-262.
- 77) Grimm, C. and R. Harris, "Vertical Foreclosure in the Rail Freight Industry: Economic Analysis and Policy Prescriptions," ICC Practitioners' Journal 50 (5), July/August 1983, pp. 508-531.
- 78) Corsi, T. and C. Grimm, "Transportation Education in the 1980's: An Examination of Teaching Materials," Transportation Practitioners' Journal 52 (1), Fall 1984, pp. 27-39.
- 79) Grimm, C. and J. Kling, "Integrating Microcomputers into a Transportation and Logistics Curriculum," Defense Transportation Journal Vol. 44, No. 5, October 1988, pp. 14-22.

Articles in Proceedings (other than those listed above)

- 80) Grimm, C., "Public Interest Evaluation of Recent Rail Mergers," 1981 Eastern Transportation Law Seminar Papers and Proceedings, Association of ICC Practitioners, Washington, D.C., pp. 171-176.
- 81) Grimm, C., "Promoting Competition in the Railroad Industry: A Public Policy Analysis," Transportation Research Forum Proceedings, 1984, pp. 222-227.
- 82) Grimm, C. and K. Smith, "Impact of Deregulation on Railroad Strategies and Performance," Transportation Research Forum Proceedings, 1985, pp. 540-544.
- 83) Corsi, T., C. Grimm and R. Lundy, "ICC Exemptions of Rail Services: Summary and Evaluation," Transportation Research Forum Proceedings, 1985, pp. 86-92.
- 84) Corsi, T., C. Grimm and R. Smith, "Motor Carrier Strategies in a Changing Environment: An Empirical Analysis," Transportation Research Forum Proceedings, 1986, pp. 177-180.
- 85) Grimm, C., K. Smith and R. Blankinship, "Railroad Strategies and Performance: An Exploratory Study," 1987 Eastern Academy of Management Proceedings, pp. 25-28.
- 86) Smith, E., M. Gannon, C. Grimm and G. Young, "Competitive Advantage in Diverse Industries," Proceedings of the Second Biennial High Technology Conference, University of Colorado, Boulder, Colorado, January 1990.
- 87) Grimm, C., "The Impact of Entry and Concentration in Australian Aviation: A Test of Contestability Theory," Transportation Research Forum Proceedings, 1992.
- 88) Sapienza, H. and C. Grimm, "The Importance of Founder, Start-Up Process, and Structural Variables in Entrepreneurial Firms: A Study of the Shortline Railroad Industry," Frontiers of Entrepreneurship Research, 1994.

Other Publications and Reports

- Grimm, C., "Combining Scholarly Research with Public Policy Evaluation," ITS Review, Vol. 5, No. 2, Institute of Transportation Studies, University of California, February 1982.
- Grimm, C., "Strategic Motives and Competitive Effects in Railroad Mergers: A Public Policy Analysis," Dissertation Series, Institute of Transportation Studies, University of California, August 1983 (UCB-ITS-DS-83-1).

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Cambridge Systematics; Leeper, Cambridge and Campbell; T. Corsi, and C. Grimm, "A Guidebook for Forecasting Freight Transportation Demand," NCHRP Report 388, National Academy Press, Washington, D.C. 1997.

CONTRACTS AND GRANTS:

Course Development Grant, Joint MS Program in Telecommunications.

University of Maryland Center for International Education and Research (CIBER) Research Award, 1991.

University of Maryland Dingman Center for Entrepreneurship Research Award, 1990.

Small Business Administration, Small Business Development Center, University of Maryland.

From 1985 - 1989, Ken Smith, Martin Gannon and I received funding to establish Center for the counseling and training of small business managers. We also conducted research on strategic management of small businesses, including travel agencies and electronic firms. (Amount: \$200,000)

Department of Education Business and International Education Program. During 1988-89, I was part of a team which received a two-year grant for curriculum development, research and professional outreach. The program involves collaboration with the Maryland Port Authority on research, outreach and internships. (Amount: \$110,000).

Maryland Department of Transportation. During 1987/88 I worked with Tom Corsi and Merrill Roberts on a contract to study the impact of exempting Eastern Shore export container traffic from the 80,000 pound highway weight limitation. (Amount: \$35,000).

University of Maryland Grant to Integrate Computer Use into the Classroom, 1985.

University of Maryland General Research Board Summer Research Award, 1984.

CONFERENCE PAPER PRESENTATIONS:

"Public Interest Evaluation of Recent Rail Mergers," presented at the 11th Association of ICC Practitioners' Eastern Transportation Law Seminar, October 1981.

"Stand-Alone Costs: Use and Abuse in Railroad Maximum Rate Determination," presented at the Eastern Economics Association Annual Meeting, March 1984 (with Philip Fanara).

"Promoting Competition in the Railroad Industry," presented at the Transportation Research Forum Annual Meeting, October 1984.

- "The Politics of the Budget Deficit and the Role of Political Interest Groups," presented at the Annual Meeting of the Association for Public Policy Analysis and Management, October 1984 (with John Holcomb).
- "Impact of the Staggers Act on Rates and Shipper Quality: Role of Shipper Size and Competition," presented at the American Economics Association/Transportation and Public Utilities Group Annual Meeting, December 1984 (with Ken G. Smith).
- "The Effects of Railroad Mergers on Industry Performance and Productivity," Transportation Research Board Conference on Rail Productivity, University of Illinois, June 1985 (with Robert G. Harris).
- "Environmental Variation, Strategic Change and Firm Performance: A Study of Railroad Deregulation," presented at the Annual Meeting of the Academy of Management, August 1985 (with Ken G. Smith).
- "Management Characteristics, Strategy, and Strategic Change," presented at the Strategic Management Society Annual Meeting, Barcelona, Spain, October 1985 (with Ken G. Smith).
- "Impact of Deregulation on Railroad Strategies and Performance," presented at the Transportation Research Forum Annual Meeting, November 1985 (with Ken G. Smith).
- "ICC Exemptions of Rail Services: Summary and Evaluation," presented at the Transportation Research Forum Annual Meeting, November 1985 (with Thomas M. Corsi and Robert Lundy).
- "Excess Branchline Capacity in the Railroad Industry," presented at the Transportation Research Board Annual Meeting, January 1986.
- "The Economics of Coal Transportation: Implications for Railroad Shipper Strategies," presented at the Transportation Research Board Annual Meeting, January 1986 (with Les Selzer and Kent Phillips).
- "The Organization as a Reflection of its Top Managers: An Empirical Test," presented at the Annual Meeting of the Academy of Management, August 1986 (with Ken G. Smith).
- "Motor Carrier Strategies in a Changing Environment: An Empirical Analysis," presented at the Transportation Research Forum Annual Meeting, September, 1986 (with Thomas M. Corsi and Raymond Smith).
- "Shifts in Use of Owner-Operators Among LTL General Freight Carriers Since the Motor Carrier Act of 1980," presented at the Transportation Research Forum Annual Meeting, September, 1986 (with Thomas M. Corsi).
- "Environmental Variation, Decision Comprehensiveness and Performance," presented at the Strategic Management Society Annual Meeting, Singapore, October, 1986 (with Ken G. Smith, Martin Gannon, and Terence Mitchell).
- "Gambit and Repartee: A Theory of Competitive Action and Responses," presented at the Annual Meeting of the Academy of Management, August 1986 (with Ken G. Smith).
- "The Impact of the Environment on Personnel Policies: Management Characteristics in the U.S. Railroad Industry," presented at the Annual Meeting of the Academy of Management, August 1987 (with James Guthrie and Ken G. Smith).

- "Mobility Barriers in the Motor Carrier Industry," presented at the Transportation Research Forum Annual Meeting, November 1987 (with Thomas M. Corsi).
- "Railroad Cost Structure - Revisited" presented at the Transportation Research Forum Annual Meeting, November 1987 (with Tony Barbera, Kent Phillips and Les Selzer).
- "The Impact of Rail Rationalization on Traffic Densities: A Test of the Feeder Line Theory," presented at the Transportation Research Board Annual Meeting, January 1988 (with Les Selzer and Kent Phillips).
- "Porter's Generic Strategies and Organizational Size," presented at the Strategic Management Society Annual Meeting, October 1988 (with Ken Smith).
- "Predictors of Competitive Responses in the Domestic Airline Industry," presented at the Strategic Management Society Annual Meeting, October 1988 (with Ken Smith and Martin Gannon).
- "ATLFs: Driving Owner-Operators into the Sunset," presented at the Transportation Research Forum Annual Meeting, November 1988 (with Thomas M. Corsi).
- "Competitive Strategic Interaction: Action Characteristics as Predictors of Response," presented at the Annual Meeting of the Academy of Management, August 1989 (with Ming-Jer Chen and Ken G. Smith).
- "Strategies and Performance in the Truckload General Freight Segment Before and After Deregulation," presented at the Transportation Research Forum Annual Meeting, October 1989 (with Thomas M. Corsi).
- "Rivalry in the U.S. Domestic Airline Industry," presented at the Strategic Management Society Annual Meetings, October 1989 (with Ken Smith and Martin Gannon).
- "Building Competitive Advantage in Diverse Industries," presented at the Boulder, Colorado Conference on the Management of the High Technology Firm, January 1990 (with Greg Young, Ken Smith, and Martin Gannon).
- "Economic Effects of Surface Freight Deregulation," presented at the Transportation Research Board Annual Meeting, January 1990 (with Cliff Winston and Thomas Corsi).
- "Strategies of Challenging Airlines at Hub-Dominated Airports," presented at the Transportation Research Forum Annual Meeting, October 1990 (with James Kling and Thomas M. Corsi).
- "Size, Strategy, and Performance: LTL Motor Carriers," presented at the Transportation Research Board Annual Meeting, January 1991 (with Raymond Smith and Thomas Corsi).
- "The Role of Firm Reputation in Competitive Interaction," presented at the Annual Meeting of the Academy of Management, August 1991 (with Leith Wain, Martin Gannon and Ken G. Smith).
- "The Advantage of Size in the U.S. Trucking Industry," presented at the Transportation Research Forum Annual Meeting, November 1991 (with Carol Emerson and Thomas M. Corsi).
- "The Impact of Entry and Concentration in Australian Aviation: A Test of Contestability Theory," presented at the Transportation Research Forum Annual Meeting, October 1992.
- "Reevaluating Returns to Scale in Transportation," presented at the Transportation Research Forum Annual Meeting, October 1993 (with K. Xu, R. Windle and T. Corsi).

- "Access and Competition Policy in the US Rail Freight Industry: Potential Applications to Telecommunications," presented at a conference on Sustaining Competition in Network Industries through Regulating and Pricing Access, CITI, Columbia University, November 1993 (with R. Harris).
- "Engaging Competitors," presented to the Whitmore Conference, Dartmouth College, New Hampshire, September 1994, (with G. Young and K. Smith).
- "Engaging a Rival for Competitive Advantage: Firm Resources and the Competitive Environment as Predictors of Competitive Firm Activity," presented at the Annual Meeting of the Academy of Management, August 1994 (with G. Young, A. Schomburg and K. Smith).
- "David and Goliath: Strategies for Challenging the Dominant Rival," presented at the Annual Meeting of the Academy of Management, August 1994 (with K. Smith, T. Corsi and J. Kling).
- "Wealth Effects of New Product Rivalry," presented at the 14th Annual International Conference of the Strategic Management Society, Paris, September 1994 (with H. Lee, K. Smith, and A. Schomburg).
- "Business Distress and a Firm's Propensity to be Rivalrous," presented at the 14th Annual International Conference of the Strategic Management Society, Paris, September 1994 (with C. MacFhionnlaoich and K. Smith).
- "Industrial Organization Economics, Resource-Based Theory, and Schumpeterian Perspectives on Competitive Advantage: Toward an Action-Based Model of Advantage," presented at the Annual Meeting of the Academy of Management, August 1995 (with K. Smith).
- "Strategic Groups and Rivalrous Firm Behavior: Towards a Reconciliation," presented at the Annual Meeting of the Academy of Management, August 1995 (with K. Smith and G. Young).
- "Shareholder Wealth Effects of New Product Rivalry," presented at the Annual Meeting of the Academy of Management, August 1995 (with H. Lee and K. Smith).
- "Creative Destruction and Competitive Dynamics: An Action-Based Study of Industry Dethronement and Market Share Erosion," presented at the Annual Meeting of the Academy of Management, August 1996 (with W. Ferrier and K. Smith).
- "The Rate of International Alliance Formation: The Role of Firm Resources, Strategy, and Industry Structure," presented at the Annual Meeting of the Academy of Management, August 1996 (with G. Young and K. Smith).
- "An Assessment of the Validity of Competitive Dynamics Research," presented at the Annual Meeting of the Academy of Management, August 1996 (with G. Young, M. Becerra and K. Smith).
- "The Rate of International Alliance Formation: The Role of Firm Resources, Strategy, and Industry Structure," presented at the 16th Annual International Conference of the Strategic Management Society, Tempe, Arizona, October 1996 (with G. Young and K. Smith).
- "Performance Implications of Market and Non-Market Actions," presented at the Annual Meeting of the Academy of Management, August 1997 (with T. Quasney and B. Shaffer).
- "Multimarket Contact, Resource Heterogeneity, and Rivalrous Firm Behavior," presented at the Annual Meeting of the Academy of Management, August 1997 (with G. Young and K. Smith).

- "Performance Implications of Market and Non-Market Actions," presented at the Annual Meeting of the Academy of Management, August 1997 (with T. Quasney and B. Shaffer).
- "Techniques of Transportation Analysis: Costs," discussant at Transport Policy and Economics Conference in Honor of John R. Meyer, Kennedy School of Government, Harvard University, September 1997.
- "A Conceptual Model of Supplier-Reseller Satisfaction Perceptions in Distribution Channels," Academy of Marketing Science, Coral Gables, Florida, 1997 (with C. Emerson and R. Krapfel).
- "The Impact of Financial Condition on Competitive Behavior: Towards a Reconciliation of Competing Views," presented at the Annual Meeting of the Academy of Management, August 1998 (with C. MacFhionnlaoich, W. Ferrier and K. Smith).
- "Competitive Effects of Railroad Mergers," Transportation Research Forum Annual Meetings, Philadelphia, October 1998 (with J. Plaistow).
- "The Canadian Experience with Competitive Access," Transportation Research Board Annual Meeting, January 1999.
- "Predicting Order and Timing of New Product Moves: The Role of Top Management," presented at the Annual Meeting of the Academy of Management, August 1999 (with A. Srivasta, H. Lee and K. Smith).
- "Competition in the Deregulated Railroad Industry: Source, Effect and Policy Issues," presented at the AEI-Brookings Conference on Deregulation of Network Industries, December 1999.
- "Future of Rail Regulation," presented at the Alliance for Rail Competition Second Annual Rail Customer Forum, Washington, D.C., March 1, 2000.
- "The State of Railroad Research," presented at the Transportation Research Forum Annual Meeting, Annapolis, November 2000.
- "Investigating the Action Dilemma: Untangling the Relationships Between Firm Activity, Rival Activity, and Firm Performance," presented at the Annual Meeting of the Academy of Management, August 2001 (with P. Derfus and K. Smith).
- Discussant, Workshop on Airline and National Strategies for Dealing with Airport and Airspace Congestion, College Park, March 2001.
- Participant, Federal Railroad Administration and Surface Transportation Board Joint Roundtable on Rail Freight Industry, June 2002.

RESEARCH AWARDS:

- Academy of Management 2000 best paper award, for the paper determined to be the best published in 1999 in the *Academy of Management Journal*.
- Award for best paper, marketing channels track, Academy of Marketing Science conference, Coral Gables, Florida, 1997.
- Award for the best airline paper and best paper overall, 1990 Transportation Research Forum Conference.
- Plowman Award for the best paper, 1987 Transportation and Logistics Educators Conference.

Regular Common Carrier Conference Award for the best motor carrier paper, Transportation Research Forum Annual Meeting, September, 1986.

EDITORIAL AND REVIEWING ACTIVITIES:

Consulting Editor (1991-1993) Journal of the Transportation Research Forum.

Editorial Review Board, Journal of Transportation Management (1993-present).

Editorial Review Board, Transportation Research – Part E (2001-present).

Editorial Review Board, Journal of the Transportation Research Forum (2001-present).

PROFESSIONAL AFFILIATIONS:

American Society of Transportation and Logistics; Transportation Research Forum; American Economics Association & Transportation and Public Utilities Group; Transportation Research Board/Member, Committee on Freight Transport Regulation; Academy of Management; Strategic Planning Society.

TEACHING AND ADVISING:

Courses Taught

BMGT 370 (Introduction to Transportation: also served as course coordinator)

BMGT 372 (Introduction to Logistics Management)

BMGT 476 (Computer Models in Transportation and Logistics)

BMGT 495 (Business Policy)

BMGT 670 (Economic Environment of Business)

BMGT 671 (Managerial Economics)

BMGT 770 (Transportation Theory and Analysis)

BMGT 798 (Field Studies in Industry and Competitor Analysis)

BMGT 808 (Seminar in Industrial Organization and its Application to Strategic Management)

ENTS 631 (Telecommunications Policy)

Teaching Awards

Allen J. Krowe Award for Teaching Excellence, College of Business and Management, 1988.

Selected as one of the top 15% teachers in the College of Business and Management (12 times)

Member of the Following Ph.D. Dissertation Committees:

Tom Quasney (chair)	Jack Scarborough
Kirk Patterson (co-chair)	James Kling
Wally Ferrier (co-chair)	Robert Trempe
August Schomburg (co-chair)	George Rubenson
Greg Young (co-chair)	Ven Sriram
Hun Lee (co-chair)	Raymond Smith
Carol Emerson (chair)	Ritu Lohtia

Cormac Mac Fhionnlaoich (co-chair)
Pam Derfus (co-chair)
Ayesha Malhotra
Stephanie Head
Chris Lin
Constantinos Christou
Chul Moon
Deborah Lyons
Jane Feitler
Laura Power
Ming-Jer Chen
Harry Sapienza

Jason Chang
Douglas Meade
Barbara Houchen
Leith Wain
John Burgess
Douglas LaBahn
Ker-Tsung Lee
Yeon Myung Kim
Steven Chien
Chad Syverson
Eungcheol Kim

SERVICE:

Department Chair, Transportation/Logistics, Business and Public Policy (December 1994-present).

Member, APAC (Campus level committee, chaired by the Provost, charged with advising the Provost on strategic and programmatic matters) 2000-present.

Member, Vice President for Administrative Affairs search committee (2002).

Member, Ad Hoc committee to design an EMBA program (2001-2002).

Member, MBA director search committee (2001)

Member, Provost's Committee to conduct five year review of Dean Howard Frank (2001).

Chair of Search Committee, Executive Director of the Center for Knowledge and Information Management, 1999.

Member, CRC T&P Committee, Don Riley (1998).

Chair, Extra Merit Step for Non-Exempt Employees Committee, 1999.

Member, MBA 4th Track Committee (subcommittee of executive committee) (1996-1998).

Member, Strategic Planning Committee (subcommittee of executive committee). (1996-present).

College Workload coordinator (responsible for attending meetings with Provost and reps re: workload requirements and taking lead on filling out compliance forms).

Member, Executive Committee, Middlestates Accreditation Committee, University (Dan Fallon/Nelson Markley, Chair), Dec. 1995-1997.

Member, Faculty Composition and Development Section, AACSB Accreditation Committee (1995).

Lead College Member on Campus Committee to Form and Fund a Global China Institute (1995).

Chair of Search Committee, Transportation, Business and Public Policy Faculty Positions (1994-5, 1995-6, 1996-7, 1997-8, 1998-9, 1999-2000).

Member, College Strategic Planning Committee (drafted section on MBA program), 1994-5.

Chair, MBA Oversight Committee, College of Business and Management (May 1994-Jan. 1995).

Member, MBA Oversight Committee, College of Business and Management (1992-1994).

Chair, ELM Coordinator's Committee, College of Business and Management, (1993-1994).

Member, External Communications Committee, College of Business and Management, 1994.

Chair, PR on Academic Quality Committee, 1993.

Member Technology Advancement Program Business Screening Panels (1986-1990).

Member, Faculty Grievance Hearing Board, College Park Campus (1991).

Member, College Budget Committee (1990-1991).

Member, Strategic Planning Steering Committee, and Chair, MBA Subcommittee, College of Business and Management (1989-1990).

Member, General Committee on Faculty Affairs, College Park Campus Senate (1984-1986, 1987-1988).

Elected Representative to the College Park Campus Senate (1988-1991).

Member, Graduate Committee, College of Business and Management (1987-1988).

Chairman, MBA Case Competition Subcommittee of the Graduate Committee (1987).

Faculty Assistant Coordinator, MBA/Rutgers Invitational Case Tournament (1986-1987).

Faculty Judge, MBA Case Competition, College of Business and Management (1989).

Member, Undergraduate Committee, College of Business and Management (1987-1988).

Faculty Co-Advisor, University of Maryland Transportation and Logistics Club (1985-1990).

Member, International Task Force, College of Business and Management (1986-1987).

Member, Dean's Computer Integration Task Force, College of Business and Management (1986-1988).

Participant in Planning Session for External Activities, College of Business and Management, Wye Woods (Sept. 1987).

Member of Search Committee, Transportation, Business and Public Policy Faculty Positions (1985-1988, 1992).

In November, 1995, I presented testimony before the United States Senate and House Committees on Small Business at a joint hearing on "Railroad Consolidation: Small Business Concerns."

VERIFIED STATEMENT OF THOMAS A. LEOPOLD
IN SUPPORT OF THE
SUPPLEMENT TO THE RAILROAD CONTROL APPLICATION
OF THE KANSAS CITY SOUTHERN RAILWAY COMPANY,
GATEWAY EASTERN RAILWAY COMPANY,
and
THE TEXAS MEXICAN RAILWAY COMPANY
BEFORE THE
SURFACE TRANSPORTATION BOARD
FINANCE DOCKET NO. 34342

My name is Thomas A. Leopold. I am the General Director Safety and Training for Kansas City Southern ("KCS"). While my office is located at KCSR headquarters in Kansas City, MO, I spend a great deal of my time outside the office at various field locations operated by The Kansas City Southern Railway Company ("KCSR") and Gateway Eastern Railway Company ("GWER"), participating in safety meetings, training, inspecting safety practices, and working to insure that KCSR and GWER employees continue their commitment to protecting their own safety and that of their co-workers and of the public throughout each work day.

The purpose of this brief statement is to respond to the question of whether KCS's acquisition of greater ownership in TFM, S.A. de C.V. ("TFM"), a railroad operating solely in Mexico, will, in conjunction with the transaction before the Surface Transportation Board ("STB" or "Board") in this proceeding, have any effects on the safety of rail operations in the United States. My conclusion is that KCS's increased ownership in and cooperation with TFM will have a positive effect on rail safety in the U.S.

I believe that KCS's acquisition of a greater interest in TFM will have positive effects on rail operating safety in the United States for three reasons - (1) installation of KCSR's Management Control System ("MCS") on TFM; (2) sharing of best practices; and (3) TFM's

license and expertise with Train Operations and Energy Simulator (TOES) software to analyze incidents on KCSR, GWER and The Texas Mexican Railway Company ("Tex Mex").

Essentially, the MCS system and the sharing of best practices will help assure the safety of operating conditions on northbound trains from the moment they cross the border, while the availability of the TOES system for analysis of incidents on KCSR, GWER and Tex Mex will facilitate prompt analysis of incidents to help prevent recurrence of accidents and injuries.

In connection with its plan to increase its ownership interest in TFM, KCS plans to help TFM to install MCS on TFM early next year. As I understand it, basic information about KCS's MCS system has been provided elsewhere in KCS's application to the Board.

One important facet of the MCS system from a safety standpoint is its control and monitoring of the placement in trains of cars carrying hazardous materials ("hazmat"). In general, cars carrying hazmat need to be placed at specific areas within the train for safety purposes. Many of these requirements are contained in Federal Railroad Administration regulations.

MCS is designed to assure proper placement within the train of cars carrying hazmat. Indeed, if hazmat-carrying cars are not placed properly within the train, MCS will not clear the train for movement. Furthermore, MCS receives data from Automatic Equipment Identification ("AEI") readers along the track and can use that data to monitor placement of hazmat-carrying cars. Thus, installing MCS on TFM will help assure proper placement of hazmat-carrying cars in trains coming across the border into the U.S. KCSR has substantially eliminated problems with incorrect placement of hazmat cars in trains since instituting MCS on KCSR.

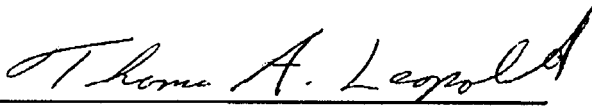
Also, MCS contains more specific information about each shipment than typically is available about trains received from TFM. Therefore, MCS will be an important resource for information about every hazmat shipment should an incident involving that shipment occur.

Sharing of best practices between KCS and TFM will also improve the safety of operations in the U.S. As discussed in KCS's Safety Integration Plan being filed with the Board, KCS is a leader in railroad safety, having earned a gold Harriman award in two of the past three years. KCS will strive to share its programs and practices with TFM in areas such as training, testing and evaluation of workers on safety practices. By assisting TFM in improving the safety knowledge and safety practices of its employees, KCS will help TFM to increase the safety of trains coming north across the border to interchange at Laredo with Tex Mex and with Union Pacific, as well as trains interchanged at Brownsville to Union Pacific and BNSF.

Finally, through their closer affiliation with TFM, KCSR, Tex Mex and GWER will have the benefit of TFM's use of the TOES system. Simply, TOES is a software system which provides highly sophisticated analytical tools to quickly assess the causes of accidents and injuries related to forces on the track and forces among cars in a train. TFM has agreed to use TOES to analyze incidents occurring on KCSR, Tex Mex and GWER as the companies become more closely related. Thus, the U.S. operations of KCSR, GWER and Tex Mex will be able to benefit from superior analysis of accidents and incidents available through TOES to improve their own operational safety in the U.S.

VERIFICATION

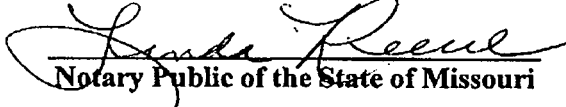
I, Thomas A. Leopold, verify under penalty of perjury that I have read the foregoing statement and that it is true and correct. Further, I certify that I am qualified and authorized to file this verified statement.


Thomas A. Leopold

Executed on 23 of June, 2003.

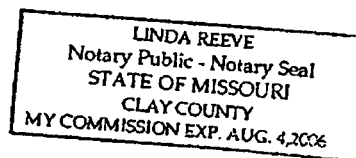
STATE OF MISSOURI)
)
COUNTY OF Jackson) ss.

Subscribed and sworn to before me
on this 23 day of June, 2003.


Notary Public of the State of Missouri

My commission expires:

August 4, 2006



APPENDIX 1

**MEMORANDUM
SUMMARIZING FEATURES OF MEXICAN LAW AND THE TFM CONCESSION
RELEVANT TO ISSUES ARISING FROM SECTIONS 1180.1(K) AND 1180.11**

**FROM THE LAW FIRM OF
KURI BREÑA, SÁNCHEZ UGARTE, CORCUERA Y AZNAR, S.C.**

JUNE 19, 2003

CONTAINS COLOR MATERIAL

Kuri Breña, Sánchez Ugarte, Corcuera y Aznar
Abogados

M E M O R A N D U M

June 19, 2003.

Re: Restrictions to the rendering of rail transportation
 services in Mexico.

As required for purposes of the filing that Kansas City Southern ("KCS") has made to the Surface Transportation Board of the United States of America ("STB"), pursuant to Sections 1180.2 and 1180.11 of the Code of Federal Regulations, this memorandum contains a general description of the provisions governing the rendering of rail transportation services in Mexico, which provisions may impose restrictions or preferences that have an effect on the commercial decisions of KCS with respect to the business and operations of TFM, S.A. de C.V. (formerly known as Ferrocarril del Noreste, S.A. de C.V.) ("TFM").

I. LEGAL FRAMEWORK AND TFM CONCESSION.

I.1. Legal Framework. The rendering of rail transportation services is a strategic activity supervised by the Mexican Government through the Mexican Communications and Transportation Ministry (*Secretaría de Comunicaciones y Transportes*) (the "SCT"). The SCT shall ensure that the national sovereignty is protected at all times and that the free competition is maintained among the different transportation systems¹.

The SCT may grant concessions to private entities ("Concessionaires") to construct and operate rail track

¹ Article 28, fourth paragraph of the Mexican Constitution. See also Article 1 of the Railway Law (as such term is defined below).

systems for the rendering of rail transportation services, subject to the provisions of the Railway Transportation Law (*Ley del Servicio Ferroviario*) published at the Official Gazette (*Diario Oficial de la Federación*) on May 12, 1995 (the "Railway Law") and the Regulations of the Railway Transportation Law, published at the Official Gazette on September 30, 1996 (*Reglamento de la Ley del Servicio Ferroviario*) (the "Railway Regulations" and together with the Railway Law the "Mexican Regulations").

The Mexican Regulations contain provisions which generally regulate the ownership of assets for and the rendering and operation of rail transportation services by Concessionaires.

The purpose of the Mexican Regulations is to provide a transparent and comprehensible set of rules for the adequate development of the railway system in Mexico. Specifically, the Mexican Regulations are intended to be an incentive for private investment by granting certainty to investors as to the applicable regulatory framework, without undermining the faculties of the Mexican federal government to supervise the development of rail transportation services in Mexico.

Ultimately, the Mexican Regulations are meant to create the basis for a more efficient and competitive railway system in Mexico, which may bolster international commerce and result in better transportation services.

I.2. TFM Concession. TFM was granted a concession dated December 2, 1996, as amended on February 12, 2001 (the "TFM Concession"), to operate the so-called northeast cargo railway line from Nuevo Laredo (border city to Laredo, TX) to Mexico City. We are attaching to this memorandum as Exhibit A a copy of the TFM Concession. The TFM Concession sets forth specific requirements and restrictions applicable to TFM for the rendering of rail transportation services.

II. RESTRICTIONS AND PRIVILEGES UNDER THE MEXICAN REGULATIONS AND THE TFM CONCESSION.

Below please find a general description of the main provisions under the Mexican Regulations and the TFM Concession governing the rendering of rail transportation services by TFM.

II.1. Ownership of rail tracks and related assets. The rail track systems in Mexico are identified as public communications networks which ownership shall be vested at all times on the Federal Government².

As a result, the rail track system built or operated by any Concessionaire, as well as related assets (i.e. rights of way, signaling, traffic control centers, tunnels and engineering, sewerage, electrical substations) shall always be the property of the Mexican Federal Government and shall revert to the Mexican Federal Government upon termination or expiration of the corresponding Railroad Concession³.

Additionally, the property of those assets identified in Annex I to the TFM Concession that are considered to have an historical, cultural or artistic value also remains in the Mexican Federal Government and are protected by the applicable regulations on archeological and historical monuments. These assets shall be preserved and maintained by TFM pursuant to applicable regulations. Any amendments or changes to the assets referred herein shall require the prior approval of the SCT together with the corresponding competent authorities.

II.2. Restrictions on Foreign Investment. Railroad Concessions may only be granted to Mexican companies. Foreign investment may hold more than 49% of the equity capital of a railroad Concessionaire with the prior approval of the Mexican Foreign Investment Commission (the "FIC")⁴. KCS applied to the FIC for such approval on April 25, 2003.

II.3. Participation of Foreign Governments. In no event shall the rights or assets related to a Railroad Concession be vested on, assigned or transferred to a foreign government⁵.

Notwithstanding the above, under Section 4.3 of the TFM Concession, the equity holdings of a foreign entity with state participation that is not a governmental authority and which may be regarded as an independent entity with individual assets, may not be construed as a participation of a foreign government in the equity capital of a

² Article 8 of the Railway Law and article 28 of the Railway Regulations.

³ Article 14 of the Railway Law.

⁴ Article 17 of the Railway Law. See also Article 8 of the Foreign Investment Law (*Ley de Inversión Extranjera*).

⁵ Article 19 of the Railway Law.

Concessionaire; provided further that such equity participation is limited to securities with limited voting rights or qualifies as minority participation without having the ability to control TFM.

II.4. Changes in equity holdings. Each railroad Concessionaire shall notify the SCT of any changes in the beneficial ownership of equity representing 5% or more of the equity capital of such Concessionaire⁶.

II.5. Term of Concessions. Railway concessions may be granted through public auctions and for a term of up to 50 (fifty) years, which term may be extended for up to 50 (fifty) additional years, subject to the provisions of the Mexican Regulations⁷.

The TFM Concession was granted for an initial term of 50 years as of July 31, 1997. The term of the TFM Concession may be extended for up to 50 additional years pursuant to the Mexican Regulations.

II.6. Route. Subject to the provisions of the TFM Concession, TFM was granted the right to operate the route known as the Northeast Main Line, from Nuevo Laredo (border to Laredo TX) to Mexico City. Attached as Exhibit B we are enclosing a map outlining the route of the Northeast Main Line which operation was granted to TFM.

II.7. Scope of the Concession. TFM may render rail transportation services (and other ancillary services) for cargo within the authorized route specified in Section II.6 above, and other routes pursuant to trackage, hauling and other rights as agreed with other Concessionaires or granted by law.

Pursuant to the TFM Concession, TFM shall render the authorized services on an on-going basis in a uniform and equitable manner, without discriminating and under equal conditions as regards to time, quality and price⁸.

II.8. Exclusivity and Exceptions. TFM was granted exclusivity for the rendering of rail transportation services for cargo in the so-called Northeast Main Line for a term of 30 years as of July 31, 1997 (the "Exclusivity Period").

⁶ Article 17 of the Railway Law and Article of the Railway Regulations.

⁷ Article 11 of the Railway Law.

⁸ Section 2.1 of the TFM Concession.

The SCT may grant concessions for the rendering of rail transportation services for passengers on the same route granted under the TFM Concession, at any time during the term of the TFM Concession. Additionally, upon expiration of the Exclusivity Period, the SCT may also grant concessions for the rendering of rail transportation services for cargo on the same route granted under the TFM Concession⁹.

II.9. Business Plan. TFM is bound to comply with the investment commitments contained in a business plan which shall be updated every five years. The original Business Plan was attached to the TFM Concession and has been substituted by a revised Business Plan currently in effect and registered before the SCT.

II.10. Liens over Concession Rights and Assignments. Concessionaires may create liens over the rights derived from concessions to render rail transportation services, subject to the prior approval of the SCT. Notwithstanding the above, any liens created shall in no event extend to the railway and related assets which are the property of the Mexican Federal Government as specified under Section II.1 above.

Foreclosure of any liens over railway concessions do not warrant the creditor the right to become a Concessionaire. Any assignment of the rights derived from the Railroad Concessions shall be previously approved by the SCT¹⁰.

II.11. Interchange and Terminal Rights. Under the Mexican Regulations, Concessionaires shall grant to other Concessionaires a right of interchange and terminal rights as may be required for the rendering of rail transportation services, against payment of agreed upon fees.

Interchange and terminal rights are construed to include the interchange of cars and engines, connecting traffic between different railways, the movements and other actions necessary to provide for continuity on the railway traffic and delivery of the corresponding assets or equipment to its place of origin¹¹.

⁹ Section 1.4.2 of the TFM Concession.

¹⁰ Article 13 of the Railway Law and Article 16 of the Railway Regulations.

¹¹ Article 104 of the Railway Regulations.

The granting of interchange and terminal rights is intended to facilitate the operation of the Mexican railways as a continuous service. The Concessionaire providing the rail transportation services at the origin shall be responsible for collecting the corresponding fees from the client for the entire route, from point of origin to destination, and shall deliver the corresponding portion of the fees to the Concessionaires of the connecting routes¹².

The SCT shall determine the locations where the interchange may occur. For such determination, the SCT shall consider the location of terminals, the crossings of railways operated by different Concessionaires and the limits of the haulage and trackage rights imposed by the SCT under the concessions granted for the rendering of rail transportation services. The Concessionaires may agree on different interchange locations in writing, provided that the SCT shall be delivered a copy of any agreements and other related documents executed to that effect. The SCT shall review any interchange rights agreements executed between Concessionaires to ascertain that the continuity, efficiency and safety of the rail transportation system is not negatively affected¹³.

Under the provisions of the TFM Concession, TFM shall grant to Concessionaires and connecting railroads from foreign countries, terminal and interchange rights at interchange locations approved or designated by the SCT, under equitable conditions on a non-discriminatory basis¹⁴. Any distinctions on the opportunity of the services or the rates charged shall be based on specific circumstances that justify such distinctions being made.

II.12. Haulage and Trackage Rights. Under the Mexican Regulations, trackage rights are the right of transit granted to the trains and crew operated by a Concessionaire different than the one operating the corresponding railway, against payment of a fee. Haulage rights are considered to be those rights granted for the hauling of cars of a Concessionaire with the engines and crew of another Concessionaire and on the railway operated by such other Concessionaire, against payment of a fee¹⁵.

¹² *Idem.*

¹³ *Idem.*

¹⁴ Section 2.2 of the TFM Concession.

¹⁵ Article 106 of the Railway Regulations.

Concessionaires may agree to grant to each other haulage and trackage rights as may be requested for the rendering of rail transportation services, against payment of agreed upon fees. Additionally, the SCT may impose on concession titles issued to Concessionaires the obligation to grant haulage and trackage rights to other Concessionaires on identified sections of the railway operated by such Concessionaire, against payment of agreed upon fees¹⁶.

Concessionaires shall also grant trackage rights to other Concessionaires to access service or repair centers, against payment of agreed upon fees.

The Mexican Regulations also contain an obligation of Concessionaires to provide to the SCT copies of any agreements reached with other Concessionaires for the granting of trackage or haulage rights.

The TFM Concession contains specific regulations for TFM to grant haulage and trackage rights to other Concessionaires on specified sections of the Northeast Main Line, including the Concessionaires of the North-Pacific and Southeast routes, as specified in Annex 9 to the TFM Concession.

Pursuant to the TFM Concession, TFM is also entitled to exercise trackage and hauling rights granted by other Concessionaires, including the Concessionaires of the North-Pacific and Southeast routes on specified sections of those routes, as provided in Annex 10 to the TFM Concession.

II.13. Rulings issued by the SCT for trackage, hauling, terminal or interchange rights. If Concessionaires are unable to reach an agreement on the fees to be paid for interchange, terminal, trackage or hauling rights within 90 days as of the beginning of negotiations, at the request of the soliciting Concessionaire, the SCT may issue a provisional determination on the terms and conditions under which these services will be rendered until final resolution by the SCT¹⁷.

The SCT will issue a final determination only on those specific issues that are presented to it for resolution¹⁸. If the SCT is requested to issue a ruling on the fees to be paid

¹⁶ Article 36 of the Railway Law.

¹⁷ Article 35 of the Railway Law and Article 109 of the Railway Regulations.

¹⁸ Article 113 of the Railway Regulations.

for the granting of interchange, terminal, hauling or trackage rights, the SCT shall consider, among other things, costs of maintenance of the railway and infrastructure and traffic control, any increases in costs as a result of the interference by the SCT, the amortization of investments effected by the Concessionaire and a reasonable profit¹⁹.

The ruling issued by the SCT will be applied retroactively as of the date of initiation of the rendering of services or grating of rights, and interest on any omitted fees will be calculated at a rate equal to the rate determined by the Mexican Tax Ministry for unpaid taxes²⁰.

II.14. Rates for Rail Transportation Services. The rates charged by Concessionaires for the rendering of rail transportation services may be freely determined by each Concessionaire. Such rates shall be registered with the SCT, in the understanding that the registered rates shall be the maximum rates a Concessionaire may charge for services rendered²¹. Pursuant to Section 2.15 of the TFM Concession, if TFM charges rates in excess of those registered with the SCT, TFM may be liable against customers for the difference between registered fees and fees effectively charged to customers, plus interest at a rate equal to the rate determined by the Mexican Tax Ministry for unpaid taxes.

Concessionaires in general are entitled to implement promotions and grant discounts to clients under equitable conditions and without discriminating. Section 2.15 of the TFM Concession specifically restricts TFM from promoting tie-in or tie-out sales, price discrimination and cross subsidies.

On the determination of fees, Concessionaires shall specifically identify as a separate cost the fees and costs generated abroad on international transportation services. As mentioned under Section II.11 above, the Concessionaire providing the rail transportation services at the point of origin shall be responsible for collecting fees for the entire route and shall deliver the corresponding portion of the fees to the Concessionaires of the connecting routes.

¹⁹ Article 114 of the Railway Regulations.

²⁰ Article 109 of the Railway Regulations.

²¹ Article 46 of the Railway Law, article 170 of the Railway Regulations and Section 2.15 of the TFM Concession.

Notwithstanding the right of Concessionaires to determine the fees to be charged to customers, the SCT *ex officio* or at the request of any shipper or the Mexican Antitrust Commission, may analyze if the rates charged by Concessionaires are determined under competitive conditions. After hearing the parties and reviewing the evidence and documents presented to the SCT, if the SCT determines that the conditions for effective competition among Concessionaires for the rendering of rail transportation services and related services are not warranted, the SCT may impose a fee determination basis for Concessionaires to determine their applicable rates²².

In order to set a fee determination basis, the SCT shall consider the competitive rate that an efficient Concessionaire would charge for similar services, in consultation with the Mexican Antitrust Commission. The fee determination basis established by the SCT shall be adjusted periodically based on fluctuations on the consumer price index published by the Mexican Central Bank (*Banco de México*)²³.

For purposes of the Mexican Regulations, the SCT may determine that effective competition conditions among Concessionaires are warranted, if for the same route at least two different Concessionaires offer comparable services or there are at least two alternative means of transportation, or if transportation may be effected by using alternative routes, provided such routes are a viable alternative.

II.15. Fees to the Federal Government. Pursuant to the provisions of the Mexican Regulations and as specified in Section 4.6 of the TFM Concession, TFM paid to the Federal Government a one time fee for the granting of the TFM Concession and shall continue to pay periodic fees for the use and operation of the assets considered as property of the Mexican Federal Government, as set forth in the Federal Income Law (*Ley Federal de Derechos*) (i.e. fees for analysis of applications for licenses and permits, fees for authorizations for renovations to the railway, among others).

II.16. Efficiency and Safety Standards. Under the provisions of the TFM Concession, the rendering of rail transportation services by TFM shall comply with the

²² Article 47 of the Railway Law and Article 174 of the Railway Regulations.

²³ Article 175 of the Railway Regulations.

efficiency and safety standards set forth in Annex 6 of the TFM Concession, which standards may be amended or supplemented every five years²⁴.

II.17. Telecommunications and operational systems. Under the provisions of the Mexican Regulations and the TFM Concession, TFM, directly or through third parties, shall install and implement those telecommunications and other operational systems (including traffic control systems and other systems) that are necessary or convenient for the proper operation of the railway, as approved by the SCT²⁵.

II.18. Mail Service and other Services. Pursuant to Section 2.13 of the TFM Concession, TFM shall transport mail as a part of its rail transportation services for cargo, as well as personnel and equipment necessary for rescue or military operations, as may be required. TFM shall grant a trackage right to the Mexican military, if required.

II.19. Insurance and Liabilities. Pursuant to the Mexican Regulations and the TFM Concession, TFM shall obtain and maintain appropriate insurance to cover any liabilities in which TFM may incur as a result of the rendering of rail transportation services for cargo²⁶.

II.20. Maintenance and Changes to the railway. Pursuant to the Mexican Regulations and the TFM Concession TFM is responsible to maintain the railway and related assets in proper working order and condition²⁷. Any changes, renovations or additional installations to railways shall require the prior approval by the SCT²⁸.

II.21. Termination of Concessions. Under the Mexican Regulations and the TFM Concession, the TFM Concession may be terminated if any of the following events occur:

- (i) expiration of the term;
- (ii) resignation by TFM;
- (iii) in the event of revocation by the SCT;
- (iv) in the event the TFM Concession is confiscated by the Federal Government;

²⁴ Section 2.3 of the TFM Concesión.

²⁵ Article 34 of the Railway Law and Section 2.6 of the TFM Concesión.

²⁶ Article 52 of the Railway Law, Article 183 of the Railway Regulations and Section 2.17 of the TFM Concesión.

²⁷ Article 42 et seq. of the Railway Regulations.

²⁸ Article 30 et seq. of the Railway Regulations and Section 2.5 of the TFM Concesión.

- (v) In the event that the corresponding rail track system ceases to exist;
- (vi) In the event of bankruptcy or liquidation of TFM.

Moreover, The SCT may revoke the TFM Concession due to the following:

- (i) Failure to exercise the concession rights within 180 days following the date on which the TFM Concession was granted;
- (ii) Failure by TFM to render rail transportation services or to operate the rail tracks system, totally or partially, without a reasonable cause, as justified to the SCT;
- (iii) If TFM prevents or attempts to prevent other Concessionaires from complying with their obligations under the corresponding concessions or permits;
- (iv) If TFM fails to indemnify third parties for damages caused as a result of its operations or the rendering of services;
- (v) If TFM charges fees above those fees registered or approved by the SCT;
- (vi) If TFM changes its nationality;
- (vii) If the rights or title over the TFM Concession is transferred or assigned in breach of the Mexican Regulations;
- (viii) Failure to maintain the guaranty requested for the granting of the TFM Concession or any insurance policies required for the operation and rendering of services under the TFM Concession, and
- (ix) Generally, due to the breach of any of the obligations or requirements under the Mexican Regulations.

The SCT may immediately revoke the TFM Concession if any of the events under paragraphs I, VI or VII occurs. With respect to the causes for revocation listed in paragraphs II and V, the SCT may only revoke the TFM Concession if TFM has been fined or penalized on three separate occasions for these causes. Finally, with respect to the causes for revocation listed in paragraphs III, IV, VIII and IX, the SCT may only revoke the TFM Concession if TFM has been fined or penalized on five separate occasions for these causes

Finally, the SCT may confiscate the TFM Concession or any of the assets contemplated by it, in the event of a natural disaster, war, alteration of the public order or in the event of imminent danger affecting the national security or economy. In the event the TFM Concession is confiscated, the Federal Government shall indemnify TFM for any damages caused, pursuant to the Mexican Regulations.

II.23. Lease of Assets in the event of Termination of the TFM Concession. If the TFM Concession is terminated, totally or partially, pursuant to the Mexican Regulations, TFM granted the Federal Government an option to enter into a lease for the assets used for the rendering of the rail transportation services. The lease over the assets will be for a term of 1 year with automatic renewals for up to 5 years. The rent amount shall be determined by experts appointed to that effect.

**III. OTHER APPLICABLE REGULATIONS THAT MAY AFFECT THE
RENDERING OF RAIL TRANSPORTATION SERVICES IN
MEXICO.**

The rendering of rail transportation services is also subject to applicable foreign investment, environmental, antitrust, consumer protection, archeological and other applicable federal or local regulations in Mexico.

Considering the scope of this memorandum, we have not included a description of the specific provisions of the regulations mentioned above that may apply to the rendering of rail transportation services in Mexico.

* * * *

We hope the foregoing general comments will be useful. Should you have any question or require further assistance on this matter, please do not hesitate to contact us.

Sincerely,

EXHIBIT A

TFM CONCESSION

EXHIBIT B

NORTHEAST MAIN LINE

EXHIBIT C

NORTH-PACIFIC AND SOUTH EAST ROUTES

EXHIBIT A

TFM CONCESSION



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Concesión que otorga el Gobierno Federal por conducto de la Secretaría de Comunicaciones y Transportes en favor de Ferrocarril del Noreste, S.A. de C.V., al tenor de los siguientes antecedentes y condiciones

ANTECEDENTES

El 2 de marzo de 1995 se publicó en el Diario Oficial de la Federación la reforma al cuarto párrafo del artículo 28 de la Constitución Política de los Estados Unidos Mexicanos para sustituir el régimen de participación exclusiva del Estado en la prestación del servicio ferroviario por otro que permita la participación de los particulares y, como consecuencia de ello, se promulgó el 12 de mayo del mismo año la Ley Reglamentaria del Servicio Ferroviario con objeto de establecer el marco regulatorio fundamental para esta actividad.

La Comisión Intersecretarial de Desincorporación aprobó el esquema para llevar a cabo la reestructuración del sistema ferroviario, mediante Acuerdo del 18 de julio de 1995, consistente en la segmentación regional del sistema ferroviario mexicano para la conformación de tres vías troncales: pacífico-norte, noreste y sureste, así como de una terminal de servicios de interconexión y maniobras en el Valle de México.

La Secretaría de Contraloría y Desarrollo Administrativo, mediante Acuerdo publicado en el Diario Oficial de la Federación del 29 de noviembre de 1996, destinó al servicio de la Secretaría de Comunicaciones y Transportes los inmuebles que constituyen la vía general de comunicación ferroviaria del Noreste, así como los inmuebles donde se encuentran las instalaciones para la prestación de los servicios auxiliares, con objeto de que esta dependencia otorgue sobre dichos inmuebles las concesiones y permisos respectivos, en términos de lo dispuesto por la Ley Reglamentaria del Servicio Ferroviario.

La Secretaría de Hacienda y Crédito Público, previa opinión favorable de la Comisión Intersecretarial de Gasto Financiamiento autorizó la constitución de la empresa de participación estatal mayoritaria Ferrocarril del Noreste, S.A. de C.V., cuyo objeto social consiste principalmente en la operación y explotación de una vía general de comunicación ferroviaria y la prestación de servicios ferroviarios.

Ferrocarril del Noreste se constituyó como sociedad anónima de capital variable, conforme a las leyes mexicanas, según consta en escritura pública número 50,413, del

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22 de noviembre de 1996, pasada ante la fe del licenciado Miguel Alessio Robles Landa, notario público número 19 del Distrito Federal, cuyo primer testimonio se encuentra en trámite de inscripción en el Registro Público de Comercio de Monterrey, Nuevo León. La sociedad señala como domicilio para recibir notificaciones el ubicado en Manuel L. Barragán 4850, Colonia Hidalgo, Monterrey, Nuevo León.

El licenciado Ramiro Sosa Lugo es apoderado general de la empresa, según consta en la escritura pública mencionada en el párrafo anterior, la cual le otorgó facultades para actos de administración, que no le han sido revocados ni modificados en manera alguna, y son bastantes para la suscripción de este instrumento.

Por lo anteriormente expuesto, con fundamento en lo dispuesto por los artículos 36 fracciones I, VII, VIII, XXIV, XXV y XXVII de la Ley Orgánica de la Administración Pública Federal; 20 al 26 y 41 de la Ley General de Bienes Nacionales; 6 fracciones I, II y IV, 7, 9, 10, 11, 12 y demás relativos de la Ley Reglamentaria del Servicio Ferroviario, 12 de su Reglamento y 5o. fracciones XI y XVIII del Reglamento Interior de la Secretaría de Comunicaciones y Transportes, esta Secretaría otorga la presente concesión conforme a las siguientes

CONDICIONES

Capítulo I Definiciones y objeto

Definiciones. Para efectos de la presente concesión, se entenderá por:

Bienes:	Los bienes del dominio público señalados en el numeral 1.2.2 que, siendo distintos de la vía general de comunicación ferroviaria, también son objeto de concesión en los términos del presente título.
Concesionario:	El titular de los derechos contenidos en el presente título.
Ley	La Ley Reglamentaria del Servicio Ferroviario.
Reglamento:	El Reglamento del Servicio Ferroviario.



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- Secretaría: La Secretaría de Comunicaciones y Transportes.
- Servicios auxiliares: Los que preste el Concesionario en virtud de los permisos contenidos en la presente concesión y que se indican en el Anexo cinco.
- Vía Férrea: La vía general de comunicación ferroviaria señalada en el numeral 1.2.1 del presente título.

Los demás términos que se utilizan en el presente título tendrán el significado que se les asigna en la Ley y en el Reglamento, salvo que en este título se les dé una connotación diferente.

1.2. Objeto. Por el presente título se concesiona:

1.2.1. La vía general de comunicación ferroviaria, que corresponde a la vía troncal del Noreste, descrita en el Anexo uno y cuya configuración, superficies, límites y rutas se detallan en el Anexo dos, con excepción de las superficies señaladas en el Anexo cuatro, así como su operación y explotación.

La vía general de comunicación ferroviaria comprende la vía férrea, el derecho de vía, los centros de control de tráfico y las señales para la operación ferroviaria;

1.2.2. Los Bienes del dominio público que se describen en el Anexo tres, con excepción de las superficies, señaladas en el Anexo cuatro, así como su uso, aprovechamiento y explotación, y

1.2.3. La prestación del servicio público de transporte ferroviario de carga en la Vía Férrea.

Asimismo, el Concesionario podrá prestar el servicio público de transporte ferroviario de carga en las demás vías troncales, rutas cortas o ramales integrantes del Sistema Ferroviario Mexicano, siempre que cuente con derechos de paso o derechos de arrastre.

1.3. Servicios auxiliares. La presente concesión comprende los permisos para prestar los servicios auxiliares que se indican en el Anexo cinco, en los términos y condiciones que en este título y en el citado Anexo se señalan.



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1.4. Límites de los derechos de la concesión.

1.4.1. Los derechos a que se refieren los numerales 1.2.1 y 1.2.2 se otorgan de manera exclusiva, durante la vigencia del presente título.

Se exceptúa de lo dispuesto en el párrafo anterior el control de tráfico del tramo Buenavista-Huehuetoca, el cual corresponderá realizarlo al concesionario de la Terminal Ferroviaria del Valle de México. En tanto el Concesionario lleva a cabo las obras e inversiones a que se refiere el numeral 2.5, el control de tráfico del tramo Huehuetoca-Querétaro lo realizará, de igual forma, el concesionario de dicha Terminal.

El Concesionario no podrá usar, aprovechar o explotar la Vía Férrea y los Bienes para fines diversos a los contenidos en los numerales 1.2 y 1.3, salvo que cuente con autorización de la Secretaría.

1.4.2. El presente título confiere derechos de exclusividad al Concesionario para prestar el servicio público de transporte ferroviario de carga a que se refiere el primer párrafo del numeral 1.2.3 por un periodo de treinta años contados a partir del inicio de la vigencia del presente título, con excepción de los derechos de paso y los derechos de arrastre que se detallan en el Anexo nueve y en el numeral 2.13 de la presente concesión.

La Secretaría podrá otorgar concesiones a terceras personas o derechos a otros concesionarios para que, dentro de la Vía Férrea señalada en el numeral 1.2.1, éstos presten servicio público de transporte ferroviario, en los términos siguientes:

1.4.2.1. Tratándose del servicio de pasajeros, en cualquier tiempo.

1.4.2.2. Tratándose del servicio de carga, cuando el Concesionario deje de contar con derechos de exclusividad, siempre que sea factible económica y técnicamente, sea congruente con las tendencias internacionales en la regulación ferroviaria y exista reciprocidad, especialmente en el caso de convenios internacionales.

La Secretaría resolverá lo conducente en términos de lo señalado en el Capítulo III de este título.



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1.5. Legislación aplicable. La operación y explotación de la Vía Férrea; el uso, aprovechamiento y explotación de los Bienes, así como la prestación del servicio público de transporte ferroviario de carga y de los servicios auxiliares, se sujetarán a la Ley y su Reglamento, la Ley de Vías Generales de Comunicación, la Ley General de Bienes Nacionales, la Ley General del Equilibrio Ecológico y la Protección al Ambiente, la Ley Federal de Competencia Económica y los tratados internacionales, leyes, reglamentos, decretos y normas oficiales mexicanas.

El Concesionario acepta que si los preceptos legales y las disposiciones administrativas a que se refiere el párrafo anterior fueran derogados, modificados o adicionados, quedará sujeto, en todo tiempo, a la nueva legislación y a las nuevas disposiciones legales y administrativas que en la materia se expidan, a partir de su entrada en vigor.

Capítulo II Prestación de servicios ferroviarios

2.1. Equidad en la prestación de los servicios. El Concesionario se obliga a prestar los servicios ferroviarios a los usuarios solicitantes, de manera permanente, uniforme y en condiciones equitativas y no discriminatorias en cuanto a oportunidad, calidad y precio, en los términos de lo dispuesto por el Capítulo VIII, título tercero, del Reglamento.

2.2. Servicios de terminal e interconexión. En todos los puntos de interconexión con vías férreas de otros concesionarios o con ferrocarriles conectantes de otros países, el Concesionario deberá proporcionar los servicios de terminal e interconexión, en condiciones equitativas y no discriminatorias en cuanto a oportunidad, calidad y precio. Cualquier diferencia en la oportunidad del servicio o en la aplicación tarifaria debe estar basada en circunstancias específicas que determinen las diferencias establecidas.

2.3. Estándares de eficiencia y seguridad. El Concesionario será responsable ante la Secretaría de que se preste el servicio público de transporte ferroviario de carga y demás servicios auxiliares, conforme a los indicadores de eficiencia y seguridad que se especifican en el Anexo seis, los cuales serán revisados y, en su caso, modificados por la Secretaría cada cinco años.



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2.4. Plan de negocios. El Concesionario deberá ajustarse, como mínimo, a los compromisos de inversión establecidos en el plan de negocios que, como Anexo siete, forma parte integrante del presente título, el cual deberá actualizarse cada cinco años, remitiéndose la documentación respectiva a la Secretaría, en el entendido de que dicha actualización no deberá tener como efecto la reducción de la inversión o de los compromisos previstos en el plan de negocios original, salvo autorización por escrito de la Secretaría.

El plan de negocios tendrá carácter de confidencial y permanecerá con tal carácter en el registro de la Secretaría.

2.5. Obras. El Concesionario podrá llevar a cabo la modificación de la Vía Férrea o los Bienes cuando dichas modificaciones tengan por efecto modernizar, reconstruir, conservar o mantener dicha Vía o los Bienes, o bien para mejorar la eficiencia o la calidad del servicio ferroviario, en el entendido de que no se dejará fuera de operación la catenaria correspondiente a la doble vía electrificada Buenavista-Querétaro.

El Concesionario, en un plazo máximo de dos años contados a partir de la vigencia del presente título, deberá realizar las obras e inversiones necesarias para que el control de tráfico de la doble vía electrificada se realice en forma separada en los tramos Querétaro-Huehuetoca y Huehuetoca-Buenavista, a efecto de que el Concesionario lleve a cabo el control de tráfico del primer tramo señalado. El segundo tramo será operado por el Concesionario de la Terminal Ferroviaria del Valle de México. Sin embargo, ambos concesionarios podrán acordar que la operación se realice en forma distinta, siempre que no existan impedimentos de carácter técnico u operativo para la eficiente y segura operación de la Vía Férrea y prestación del servicio, en cuyo caso deberán obtener la aprobación de la Secretaría.

La conservación y el mantenimiento de la doble vía electrificada de Buenavista a Querétaro quedará en su totalidad a cargo del Concesionario.

Todas las obras que se realicen a la Vía Férrea pasarán inmediatamente a formar parte del dominio público de la Federación, con independencia de la vigencia del presente título, y el Concesionario tendrá respecto de las mismas, los derechos y obligaciones que le confieren las disposiciones señaladas en los numerales 1.4.1, 1.4.2 y 1.5.

El Concesionario se obliga a realizar las obras con apego al proyecto ejecutivo previamente aprobado por la Secretaría. Concluidas aquéllas, las características,



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configuración y dimensiones específicas de las obras realizadas se agregarán al Anexo dos.

2.6. Telecomunicaciones y sistemas. El Concesionario deberá contar con los servicios de telecomunicaciones y sistemas necesarios para el funcionamiento eficiente de los centros de control de tráfico. Para tal efecto, el Concesionario podrá instalar una red privada de telecomunicaciones y sus propios sistemas o bien, contratar con terceros autorizados. En todo caso, se deberán observar las disposiciones aplicables en materia de telecomunicaciones y, en su caso, se deberá obtener la autorización correspondiente de la Secretaría conforme al artículo 34 de la Ley.

Los servicios de telecomunicaciones y sistemas deberán estar interconectados con toda la red del Sistema Ferroviario Mexicano.

2.7. Protección del ambiente. El Concesionario deberá cumplir con las disposiciones legales, reglamentarias y administrativas, así como con los tratados internacionales aplicables, en materia de equilibrio ecológico y protección al ambiente.

El Concesionario será responsable de los daños que, en materia ecológica y protección al ambiente, se originen a partir de la conclusión de la diligencia de entrega-recepción, y que deriven de actos u omisiones a su cargo, de conformidad con las leyes y disposiciones aplicables en la materia y lo dispuesto en el Anexo ocho.

De igual forma, el Concesionario será responsable de llevar a cabo las correcciones, modificaciones y obras de superficie e infraestructura de los centros de abasto y talleres que opere, que son requeridas para cumplir con la legislación en la materia.

Ferrocarriles Nacionales de México y, en forma subsidiaria, el Gobierno Federal, responderá de los daños, perjuicios, costos judiciales, sanciones y obligaciones que en esta materia se hubieran originado antes de la diligencia de entrega-recepción de la Vía férrea y los Bienes, o después de concluida ésta cuando sean consecuencia de actos u omisiones anteriores a dicha diligencia, en los términos y condiciones que se establecen en el citado Anexo ocho.

En caso de que como resultado de modificaciones en cualquier ordenamiento legal o administrativo en materia ecológica o de protección al ambiente surjan obligaciones o compromisos diversos a los establecidos en la legislación actualmente en vigor, Ferrocarriles Nacionales de México y el Gobierno Federal, no tendrán en ningún caso la obligación de indemnizar o restituir o en cualquier forma cubrir al Concesionario los



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trabajos, obras, acondicionamientos o modificaciones de cualquier orden que éste deba efectuar en relación con las operaciones o actividades sujetas a esta concesión, ni cubrir cantidad alguna que por tal motivo el Concesionario erogue, y no tendrá responsabilidad frente a este último o terceros.

Se exceptúan de lo señalado en el párrafo anterior, las modificaciones en los estándares de contaminación de los suelos, subsuelos y mantos freáticos derivadas de cambios legislativos o a disposiciones administrativas que se realicen con posterioridad al inicio de la vigencia del presente título, caso en el cual la responsabilidad y la rehabilitación, así como los daños, perjuicios, costos judiciales, sanciones, obligaciones civiles, administrativas y penales, corresponderán a Ferrocarriles Nacionales de México y subsidiariamente al Gobierno Federal, respecto de los actos y omisiones que hubieran tenido su origen o causa con anterioridad a la entrada en vigor de la presente concesión, en los términos y condiciones señalados en el citado Anexo ocho.

2.8. Desarrollo urbano. En la ejecución de obras que realice el Concesionario respecto de la Vía Férrea y los Bienes afectos a esta concesión dentro de los límites de un centro de población, deberá cumplir con lo dispuesto en la legislación, programas y zonificación en materia de desarrollo urbano.

2.9. Bienes con valor histórico, cultural o artístico. Con respecto a los Bienes concesionados que tienen valor histórico, cultural o artístico, señalados en la sección I del Anexo cuatro, registrados como monumentos históricos ante el Instituto Nacional de Antropología e Historia, el Concesionario deberá ajustarse en todo momento a las disposiciones de la Ley Federal sobre Monumentos y Zonas Arqueológicas, Artísticas e Históricas y su Reglamento, así como a las demás disposiciones aplicables, para la debida conservación y salvaguarda de tales Bienes.

El Concesionario será el responsable de la preservación y conservación de los Bienes señalados en el párrafo anterior, por lo que en ningún momento podrá alterar la naturaleza del bien de que se trate y para cualquier modificación o intervención deberá obtener el permiso correspondiente, según proceda, del Instituto Nacional de Antropología e Historia, del Instituto Nacional de Bellas Artes, o del Museo Nacional de los Ferrocarriles Mexicanos y la autorización de la Secretaría.

Asimismo, el Concesionario será el responsable de la preservación y conservación de los Bienes que se detallan en la sección I del Anexo cuatro, que se encuentran en proceso de registro, por lo que en ningún momento podrá alterar la naturaleza del bien



de que se trate y para cualquier modificación o intervención deberá obtener la autorización de la Secretaría. En caso de que dichos Bienes sean declarados de valor histórico, cultural o artístico, se estará a lo dispuesto en los párrafos anteriores.

2.10. Contratación de terceros. Para llevar a cabo la operación y explotación de la Vía Férrea y la prestación del servicio público de transporte ferroviario de carga, así como de los servicios auxiliares, el Concesionario podrá contratar el apoyo técnico de terceros. De igual forma, el Concesionario podrá contratar con terceros la realización de obras, así como la conservación y mantenimiento de la Vía Férrea y de los Bienes:

El Concesionario será, en todo caso, el único responsable ante la Secretaría y terceros, de la operación y explotación de la Vía Férrea, así como de la prestación de los servicios ferroviarios, y responderá de los daños y perjuicios que, en su caso, ocasionen los terceros con quienes contrate.

2.11. Designación de responsable técnico. El Concesionario se obliga a designar antes del inicio de operaciones, un responsable de la operación de la Vía Férrea, de la prestación del servicio público de transporte ferroviario de carga y demás servicios ferroviarios, quien contará con las facultades necesarias para obligar al Concesionario ante la Secretaría respecto de dicha operación y prestación de servicios.

El cambio de responsable o la modificación de sus facultades deberán ser notificados por escrito a la Secretaría dentro de los diez días hábiles siguientes a que esto ocurra.

2.12. Servicios a las comunidades. El Concesionario no podrá negarse a transportar agua a aquellas comunidades que por sus características geográficas o climatológicas lo requieran, en el entendido de que no es responsabilidad del Concesionario el suministro del agua a dichas comunidades.

Los usuarios de los servicios de transporte señalados en este numeral deberán cubrir las contraprestaciones que correspondan.

2.13. Otros servicios. El Concesionario se obliga a transportar el correo dentro de los servicios de carga que proporcione; a transportar personas y bienes destinados a operaciones de salvamento o auxilio, así como al personal y equipo de las fuerzas armadas. En este último caso, se deberá otorgar derecho de paso a su equipo ferroviario.



Los términos de la prestación de los servicios y del derecho de paso antes señalados, así como las contraprestaciones y responsabilidades correspondientes, se determinarán en las condiciones que acuerden las partes. En caso de que las partes no lleguen a un acuerdo, la Secretaría resolverá lo conducente de conformidad con lo dispuesto en los artículos 111 a 114 del Reglamento.

2.14. Interrupción del servicio. En aquellos casos en que en los términos establecidos en la Ley y el Reglamento se autorice al Concesionario para que deje de operar un tramo de la Vía Férrea o de prestar el servicio público de transporte ferroviario de carga, en forma permanente, la Secretaría podrá otorgar concesión a terceras personas para que operen el tramo de la Vía Férrea o presten el servicio que se interrumpa, y se estará a lo dispuesto en el Capítulo III de este título.

En los supuestos referidos en el párrafo anterior, los tramos de la Vía Férrea y los Bienes relativos al servicio interrumpido, en su caso, revertirán a la Nación en los términos del numeral 5.4 y el Concesionario no tendrá derecho a la devolución de las contraprestaciones que hubiera pagado por el otorgamiento del presente título, ni por las inversiones realizadas.

2.15. Tarifas. El Concesionario fijará libremente las tarifas, las que deberán registrarse y aplicarse en los términos que señalan la Ley y el Reglamento. En caso de que llegara a cobrar a los usuarios tarifas superiores a las registradas, deberá reembolsarles la diferencia con respecto a las tarifas registradas, y cubrirá, respecto de dicha diferencia, un interés a una tasa igual a la establecida por la Ley de Ingresos de la Federación para el ejercicio fiscal que corresponda, para los casos de prórroga en el pago de créditos fiscales.

En la aplicación de las tarifas, el Concesionario deberá abstenerse de practicar ventas atadas, discriminación de precios o realizar subsidios cruzados.

Lo anterior, sin perjuicio de las sanciones que procedan, de conformidad con la Ley, el Reglamento y demás disposiciones aplicables.

2.16. Modalidades. En caso fortuito o fuerza mayor, la Secretaría estará facultada para imponer modalidades en la operación y explotación de la Vía Férrea, así como en la prestación de los servicios ferroviarios, en los términos establecidos en la Ley y el Reglamento.



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En caso de desastre natural, guerra, grave alteración del orden público o cuando se prevea algún peligro inminente para la seguridad nacional o la paz interior del país, la Secretaría, asimismo, podrá establecer modalidades en la operación y explotación de la Vía Férrea, así como en la prestación de los servicios ferroviarios, cuando a su juicio, éstas sean suficientes para atender las necesidades derivadas de dichos eventos, en los términos establecidos en la Ley y el Reglamento.

2.17. Seguros. El Concesionario se obliga a contar con las pólizas de seguros que en términos de la Ley y el Reglamento deba contratar, así como a mantener vigentes las mismas.

Capítulo III Concesiones y permisos a terceros

3.1. Concesiones a terceros. En el caso de que la Secretaría, de conformidad con lo señalado en los numerales 1.4.2 segundo párrafo y 2.14 del presente título y demás disposiciones aplicables, pretenda otorgar concesiones a terceros, deberá escuchar al Concesionario, para que éste manifieste lo que a su derecho convenga.

La Secretaría resolverá lo conducente de conformidad con lo dispuesto en la Ley, el Reglamento y demás disposiciones aplicables.

El Concesionario estará obligado a otorgar los derechos de paso y derechos de arrastre a las personas a quienes, de conformidad con lo dispuesto en este numeral, la Secretaría otorgue concesión, en los términos señalados en el siguiente numeral.

Lo anterior, en el entendido de que el Concesionario estará obligado a proporcionar todas las facilidades que se requieran para que el servicio de transporte de pasajeros se ajuste a los itinerarios correspondientes.

3.2. Derechos de arrastre y derechos de paso. El Concesionario estará obligado a otorgar los derechos de paso y los derechos de arrastre conforme a los términos y condiciones que se indican en el Anexo nueve.

Asimismo, el Concesionario tiene derecho para que se le otorguen los derechos de paso y los derechos de arrastre conforme a los términos y condiciones que se indican en el Anexo diez y el numeral 2.13 de este título.



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Los términos, condiciones y contraprestaciones conforme a los cuales se celebrarán los convenios respecto de los derechos de paso y derechos de arrastre a que se refiere el presente numeral se establecerán de conformidad con lo dispuesto en la Ley y el Reglamento.

3.3. Otras autorizaciones o permisos. La Secretaría podrá otorgar permisos o autorizaciones a terceras personas y a dependencias del Gobierno Federal, para que presten los servicios auxiliares a que se refiere el artículo 15 de la Ley, así como para que en la Vía Férrea realicen instalaciones u obras de las señaladas en el citado artículo 15 y el 34 de la Ley.

El Concesionario se obliga a permitir la construcción de cualesquiera de las instalaciones u obras antes citadas siempre que no se vea perjudicada la prestación de los servicios ferroviarios, ya sea impidiendo, interfiriendo o poniendo en riesgo la seguridad de la Vía Férrea, de la prestación del servicio público de transporte ferroviario y, en su caso, de los servicios auxiliares.

En este supuesto, el Concesionario prestará la colaboración necesaria a los permisionarios o autorizados para la realización de las obras o instalaciones señaladas, para lo cual establecerá el calendario y los horarios dentro de los cuales los terceros podrán realizar las obras respectivas, y el Concesionario tendrá derecho a recibir una contraprestación por los servicios que preste, de conformidad con lo establecido en el presente título, la Ley y el Reglamento.

Capítulo IV Disposiciones generales

4.1. Gravámenes. El Concesionario podrá constituir gravámenes sobre los derechos derivados de esta Concesión, de conformidad con lo dispuesto en el artículo 13 de la Ley.

En los casos en que se autorice la constitución de gravámenes sobre los derechos derivados de esta concesión, se deberá establecer, además de lo señalado en el segundo párrafo del artículo 13 de la Ley, que la ejecución de dicha garantía en ningún caso otorgará el carácter de concesionario al acreedor o al tercero adjudicatario. Para que la concesión le sea adjudicada al acreedor o a un tercero se requerirá que la Secretaría autorice la cesión de derechos en los términos del artículo 18 de la Ley.



El Concesionario, para garantizar el pago de los gravámenes, podrá obligarse en el convenio correspondiente a ceder los derechos y obligaciones contenidos en el presente título al acreedor o al tercero adjudicatario, condicionado a que se obtenga la autorización previa de la Secretaría, de acuerdo con lo señalado en el párrafo anterior.

Sin perjuicio de lo anterior, en el caso de que la presente concesión termine por cualquiera de las causas señaladas en las fracciones III, IV y VI del artículo 20 de la Ley y se encontraren a ese tiempo obligaciones financieras contraídas por el concesionario con motivo de la explotación de los bienes y servicios materia de este título pendientes de cumplimiento, se estará a lo siguiente:

4.1.1. La Secretaría, cuando así lo estime conveniente, en vista del interés público, intervendrá en la operación de la Vía Férrea y la prestación de los servicios ferroviarios.

4.1.2. En el supuesto anterior, y sujeto a lo dispuesto por el Presupuesto de Egresos de la Federación y demás disposiciones aplicables, o bien en caso de que se determine concesionar a un tercero la Vía Férrea, las utilidades derivadas de la operación y explotación de la misma, continuarán respondiendo de los compromisos financieros contraídos por el Concesionario para la explotación de la presente concesión, siempre y cuando el financiamiento correspondiente se haya aplicado para la realización de obras directamente relacionadas con la prestación del servicio ferroviario y edificadas en la Vía Férrea o en los Bienes.

4.2. Cesiones. El presente título es intransmisible, y el Concesionario sólo podrá ceder total o parcialmente los derechos y obligaciones establecidos en el mismo, en términos de lo dispuesto por el artículo 18 de la Ley.

4.3. Participación estatal de gobiernos extranjeros. Para efectos de lo dispuesto en el artículo 19 de la Ley, no se considerará como participación accionaria de un gobierno o Estado extranjero la que efectúen empresas con participación estatal de países extranjeros, que no sean consideradas como autoridades por la legislación interna del país de origen y que cuenten con personalidad jurídica y patrimonio propio, siempre que dicha inversión se realice en acciones de voto limitado o en forma minoritaria en acciones comunes representativas del capital social del Concesionario, y dicha tenencia no les otorgue directa o indirectamente el control de aquélla.

4.4. Nacionalidad. El Concesionario no tendrá más derechos que los que le conceden las leyes mexicanas. Por consiguiente, el Concesionario en cuyo capital participen



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inversionistas extranjeros, en este acto se compromete expresamente a no invocar la protección de ningún gobierno extranjero, bajo la pena de perder, en caso contrario, los derechos objeto del presente título en beneficio de la Nación Mexicana.

4.5. Reserva para pasivos laborales. El Concesionario se obliga a constituir una reserva para cubrir pasivos laborales contingentes que se originen durante la vigencia de este título, que deberá establecerse con estricto apego a lo dispuesto por el Boletín D3 del Instituto Mexicano de Contadores Públicos.

4.6. Contraprestaciones al Gobierno Federal. El Concesionario pagará al Gobierno Federal un aprovechamiento único que dará a conocer la Secretaría, el cual deberá cubrirse en los términos en que la Secretaría lo notifique.

Asimismo, a partir del inicio de la vigencia de la presente concesión, el Concesionario cubrirá al Gobierno Federal los derechos que por la operación y explotación de los Bienes del dominio público objeto de la concesión y por la prestación del servicio público de transporte ferroviario, establezca la Ley Federal de Derechos, en los términos y con la periodicidad señalados en la misma.

4.7. Contabilidad. El Concesionario deberá utilizar un sistema de contabilidad uniforme, que permita desagregar los diferentes costos.

En la aplicación de las tarifas, el Concesionario estará obligado a separar el componente originado en el extranjero del generado en México, guardando congruencia con los costos asociados a cada segmento.

4.8. Verificación. El Concesionario se obliga a cubrir las cuotas que correspondan en los términos de la Ley Federal de Derechos por concepto de la verificación a que estará sujeto de conformidad con el artículo 57 de la Ley.

Capítulo V Vigencia y terminación

5.1. Vigencia. La presente concesión estará en vigor por cincuenta años, contados a partir de la fecha de conclusión de la diligencia de entrega-recepción de la Vía Férrea y de los Bienes, o a partir del 31 de julio de 1997, lo que ocurra primero.



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El Concesionario podrá solicitar la prórroga de la vigencia del presente título en términos de lo dispuesto por el artículo 11 de la Ley.

El Concesionario contará con un plazo de seis meses contados a partir de la conclusión de la diligencia de entrega-recepción para obtener todos los registros, permisos y autorizaciones, contemplados en la Ley y el Reglamento, necesarios para la realización de las actividades objeto de esta concesión, salvo por lo que se refiere a lo dispuesto en los artículos 46 segundo párrafo y 50 último párrafo de la Ley, relativos al registro de tarifas y contratación de seguros, respectivamente.

El Concesionario contará con el apoyo de la Secretaría para la obtención de los registros, permisos y autorizaciones señalados en el párrafo anterior, en el entendido de que deberá cumplir con los requisitos establecidos en las disposiciones aplicables.

Hasta en tanto se celebren los convenios de derechos de arrastre y de paso respecto del tramo Huehuetoca-Buenavista, la conservación y mantenimiento de la doble vía electrificada de dicho tramo a que se refiere el numeral 2.5 tercer párrafo, lo cubrirá proporcionalmente al uso que de ésta se realice en la terminal del Valle de México.

5.2. Modificación de condiciones. Las condiciones establecidas en el presente título podrán revisarse y modificarse por acuerdo entre la Secretaría y el Concesionario, conforme a la Ley, el Reglamento y demás disposiciones aplicables.

5.3. Terminación. La presente concesión terminará por cualquiera de las causas señaladas en los artículos 20 y 21 de la Ley.

5.4. Reversión. Al término de esta concesión, cualquiera que sea su causa, la Vía Férrea y los Bienes revertirán a la Nación en buen estado operativo de acuerdo con las normas oficiales mexicanas respectivas y sin costo alguno para el Gobierno Federal, así como todas las obras y mejoras realizadas por el Concesionario, y que se encuentren adheridas a los mismos, con el solo deterioro natural, moderado y derivado del uso adecuado, por lo que, en caso contrario, el Concesionario efectuará, por su cuenta, las reparaciones que se requieran en el momento de la devolución, o en su defecto, indemnizará al Gobierno Federal por los desperfectos que hubieran sufrido la Vía Férrea o los Bienes con motivo de un uso inadecuado, o como consecuencia de su deficiente o inapropiado mantenimiento.

5.5. Derecho de preferencia. En caso de terminación o revocación, parcial o total, de la presente concesión y hasta noventa días posteriores a dicha terminación, si el



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Concesionario pretende enajenar, en uno o en una sucesión de actos, del inventario del equipo ferroviario, considerado en su número, más del quince por ciento del equipo tractivo, más del quince por ciento del equipo de arrastre o más del quince por ciento del equipo de trabajo, el Gobierno Federal tendrá derecho de preferencia respecto de cualquier tercero, en igualdad de condiciones, siempre que no exista otro concesionario que esté en posibilidad de prestar el servicio, y el equipo y demás bienes señalados sean indispensables para que la Secretaría continúe prestando el mismo.

La Secretaría resolverá lo conducente dentro de un plazo de treinta días hábiles contados a partir de que el Concesionario le notifique su decisión de enajenar los bienes citados. Transcurrido dicho plazo sin que la Secretaría emita resolución, se entenderá que, por lo que se refiere a dichos bienes, ha renunciado a ejercer el derecho de preferencia.

5.6. Promesa de arrendamiento. En caso de terminación anticipada o revocación parcial o total de la concesión, el Concesionario se obliga a celebrar un contrato de arrendamiento con la Secretaría respecto de los bienes afectos al servicio y operación de la Vía Férrea. Dicha obligación estará vigente durante los cuatro meses siguientes al término o revocación de la concesión.

La vigencia del contrato de arrendamiento será de por lo menos un año y renovable automáticamente por periodos iguales y hasta por cinco años. El monto de la renta será determinado a juicio de peritos, uno nombrado por el Concesionario, otro por el Gobierno Federal y en caso de discrepancia por un tercero en discordia, nombrado por ambos peritos. En caso de que el Concesionario no nombre perito, o éste no se pronuncie, se entenderá que renuncia a su derecho de nombrarlo y acepta de manera incondicional el dictamen que emita el perito nombrado por la Secretaría.

5.7. Tribunales competentes. Para todo lo relativo a la interpretación y cumplimiento de la presente concesión, salvo lo que administrativamente corresponde resolver a la Secretaría, el Concesionario conviene en someterse a la jurisdicción de los tribunales federales competentes del Distrito Federal, por lo que ambas partes renuncian al fuero que pudiera corresponderles en razón de sus domicilios presentes o futuros.

5.8. Notificaciones. El Concesionario se obliga a informar por escrito a la Secretaría de cualquier cambio de domicilio durante la vigencia del presente título, en el entendido de que en caso de omisión las notificaciones surtirán efectos en el domicilio señalado en el párrafo quinto de antecedentes.



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5.9. Publicación. El Concesionario deberá tramitar, a su costa, la publicación en el Diario Oficial de la Federación de la presente concesión, sin sus Anexos, en un plazo que no exceda de sesenta días contados a partir de la fecha de otorgamiento del presente título.

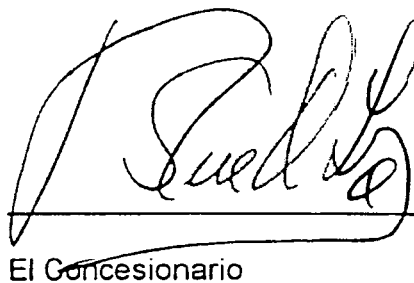
Los anexos referidos en el presente título forman parte integrante del mismo.

El ejercicio de los derechos derivados de este título implica la aceptación incondicional de sus términos por el Concesionario.

México, Distrito Federal, a los dos días del mes de diciembre de mil novecientos noventa y seis.



La Secretaría



El Concesionario

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Relación de Anexos

Anexo número	Contenido
Uno.	Descripción de la vía férrea concesionada.
Dos	Especificaciones de la configuración, superficies, límites y rutas de la Vía Férrea -Cartas de vía. (2 tomos).
Tres.	Especificaciones de los Bienes (10 tomos).
Cuatro.	Superficies que se excluyen de la Vía Férrea concesionada y relación de los Bienes con valor histórico, cultural o artístico.
Cinco.	Permisos.
Seis.	Indicadores de eficiencia y seguridad.
Siete.	Plan de negocios.
Ocho.	Responsabilidad en materia de protección al ambiente.
Nueve.	Derechos de arrastre y derechos de paso que el Concesionario está obligado a otorgar.
Diez.	Derechos de arrastre y derechos de paso en favor del Concesionario.
Once.	Cartas de derechos de paso del Ferrocarril del Noreste.

EXHIBIT A

TFM CONCESSION

AMENDMENT 1



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SUBSECRETARÍA DE TRANSPORTE

Oficio núm. 4.123

México, D.F., a 9 de febrero de 2001

LIC. MARIO MOHAR PONCE
Director General de
TFM, S.A. de C.V.
Presente.

Nos referimos a su escrito presentado el 6 de febrero de 2001 mediante el cual en relación con el Título de Concesión, otorgado respecto de la vía troncal del Noreste el 2 de diciembre de 1998 (el Título de Concesión), por el Gobierno Federal, a través de esta Secretaría, a TFM, S.A. de C.V. (antes Ferrocarril del Noreste, S.A. de C.V.), manifiesta que está de acuerdo en que se lleve a cabo la modificación del Título de Concesión para que revierta un tramo de la Vía Morelos.

Al respecto, considerando lo anterior y con fundamento en el artículo 6 fracción XVII en relación con el 21 fracción II del Reglamento Interior de esta Secretaría y en los acuerdos de la Comisión Intersecretarial de Desincorporación, CID-00-XXIII-3 y CID-00-XXX-2, del 31 de julio y 5 de octubre del 2000, respectivamente, se le informa que la Secretaría procederá a modificar el Título de Concesión, a fin de que revierta sin limitación de dominio y libre de todo gravamen al Gobierno Federal, un tramo de la Vía Morelos, en los términos que se establezcan en la modificación que se realizará.

Una vez efectuada la señalada modificación al Título de Concesión, el Gobierno Federal, por conducto de esta Secretaría, pagará por concepto de compensación por la reversión que TFM aceptó se realizara respecto del tramo citado en el párrafo anterior, la cantidad de \$653'570,738.11 (Seiscientos cincuenta y tres millones, quinientos setenta mil setecientos treinta y ocho pesos, 11/100 M.N.) más el Impuesto al Valor Agregado correspondiente, según avalúo de la Comisión de Avalúos de Bienes Nacionales actualizado, en su caso, a la fecha de pago. Dicho pago se efectuará a más tardar en la fecha en que TFM, Grupo Transportación Ferroviaria Mexicana, S.A. de C.V. (GTFM) o sus accionistas, subsidiarias o filiales adquieran las acciones representativas del capital social de GTFM o de TFM propiedad de Ferrocarriles Nacionales de México y del Gobierno Federal, respectivamente, o el 31 de octubre del año 2003, lo que ocurra primero.

EL Subsecretario

Dr. Aarón Dychter Poltolarek

Manifestamos nuestra conformidad con los términos del presente oficio.

TFM, S.A. de C.V.
Representantes Legales



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Firma C. G.-1-A

MODIFICACION AL TITULO DE CONCESION OTORGADO EL 2 DE DICIEMBRE DE 1996 POR EL GOBIERNO FEDERAL, A TRAVES DE LA SECRETARIA DE COMUNICACIONES Y TRANSPORTES, EN LO SUCESIVO "LA SECRETARIA" A LA EMPRESA FERROCARRIL DEL NORESTE, S.A. DE C.V., HOY TFM, S.A. DE C.V., EN LO SUCESIVO "EL CONCESIONARIO".

CONSIDERANDOS

- I. Con fecha 2 de diciembre de 1996, el Gobierno Federal a través de la Secretaría de Comunicaciones y Transportes, otorgó a Ferrocarril del Noreste, S.A. de C.V., el Título de Concesión para operar y explotar la vía troncal del Noreste, a fin de prestar el servicio público de transporte ferroviario de carga que en ella opera y los servicios auxiliares (en lo sucesivo el Título de Concesión) en los términos del respectivo Título.
- II. Ferrocarril del Noreste, S.A. de C.V., cambió su denominación por la de TFM, S.A. de C.V., quedando asentado lo anterior en la escritura pública No. 33,385, de fecha 6 de mayo de 1997, otorgada ante la fe del Licenciado Miguel Limón Díaz, Notario Público No. 97 del Distrito Federal, la cual se encuentra debidamente inscrita en el Registro Público del Comercio de esta Ciudad, bajo el Folio Mercantil No. 222305.
- III. Los señores Mario-Mohar Ponce y Mario Alberto González Padilla, cuentan con la capacidad legal suficiente para suscribir el presente documento, según consta en la escritura pública No. 36,816, de fecha 12 de febrero del 2001, pasada ante la fe del Licenciado Miguel Limón Díaz, Notario Público No. 97 del Distrito Federal.
- IV. El Concesionario está de acuerdo en modificar el Título de Concesión a efecto de que revierta al Gobierno Federal el tramo de la vía Morelos que va del kilómetro M-229+364.75 equivalente al kilómetro B-253+666.24 al kilómetro M-262+094.30 equivalente al kilómetro B-285+861 y que se identifica en el plano que se agrega a este documento como Anexo "A".



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Lo anterior con el propósito de asegurar la continuidad y eficiencia en la prestación del servicio ferroviario del concesionario de la vía férrea del Pacífico-Norte, en el entendido de que todos los patios, laderos, cortavías espuelas y demás construcciones existentes y conectantes en el tramo descrito en el párrafo anterior, continúan siendo parte del Título de Concesión del Concesionario por lo que el Concesionario mantiene respecto de los mismos los derechos y obligaciones que en el Título de Concesión y la presente modificación se establecen, por lo que se otorgará al Concesionario derechos de paso obligatorios en el citado tramo, para conectar con sus instalaciones que formen parte del Título de Concesión, dar servicio a la industria y dar salida y entrada a trenes formados en Querétaro.

- V. El Concesionario solicitó a la Secretaría la modificación del Título de Concesión en lo relativo a la catenaria de la doble vía electrificada, en el tramo de Huehuetoca a Querétaro, a efecto de que la misma no sea utilizada ni mantenida y, en su caso, pueda ser desmantelada a opción del Concesionario, para lo cual hizo entrega a la Secretaría del estudio técnico correspondiente.
- VI. Que del análisis realizado al estudio técnico señalado en el considerando inmediato anterior, se concluyó que la operación de la doble vía electrificada en el tramo Huehuetoca-Querétaro impide el uso eficiente de los equipos y el desarrollo de nuevas tecnologías, en perjuicio de los usuarios, y de la operación del sistema en su conjunto. Asimismo, se consideró que parte de las instalaciones que se retiren de dicha vía, pueden ser utilizadas en forma más adecuada para el servicio público de transporte suburbano de pasajeros en la zona Metropolitana, que se proyecta establecer.
- VII. La Comisión Intersecretarial de Desincorporación, mediante Acuerdo CID-00-XXIII-3, del 31 de julio del 2000, aprobó la solicitud para modificar el Título de Concesión, a fin de revertir al Gobierno Federal una parte de la línea de la doble vía en el tramo La Griega-Mariscala, así como, en lo referente a retirar la catenaria de la doble vía electrificada, en el tramo de Huehuetoca a Querétaro y compensar el plan de inversiones de dicho título respecto al compromiso de elevarla.



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En virtud de lo anterior, con fundamento en los artículos 36 fracciones I, VIII y XXVII de la Ley Orgánica de la Administración Pública Federal; 1, 5, 6 fracciones II y VIII y 14 de la Ley Reglamentaria del Servicio Ferroviario; 1, 3, 15 y 42 del Reglamento del Servicio Ferroviario; 5ª, fracciones XI y XVIII del Reglamento Interior de la Secretaría de Comunicaciones y Transportes; y en relación con los numerales 2.4, 2.5, 5.2 y 5.4 del Título de Concesión otorgado el 2 de diciembre de 1996, en favor de Ferrocarril del Noreste, S.A. de C.V., publicado en el Diario Oficial de la Federación el 3 de febrero de 1997 y con el consentimiento del Concesionario, conforme a lo establecido en la Condición 5.2 del Título de Concesión del Concesionario, esta Secretaría modifica la concesión otorgada al Concesionario, con fecha 2 de diciembre de 1996, conforme a las siguientes:

CONDICIONES

PRIMERA. Se revierte al Gobierno Federal, sin limitación de dominio y libre de todo gravamen el tramo de la vía Morelos, que va del kilómetro M-229+364.75 equivalente al kilómetro B-253+668.24 al kilómetro M-262+094.30 equivalente al kilómetro B-286+861 y que se identifica en el plano que como Anexo "A" se acompaña a la presente modificación.

Todos los patios, laderos, cortavías espuelas y demás construcciones existentes y conectantes y las que construya el Concesionario de conformidad con el Título de Concesión, en el tramo de la vía Morelos señalado en el párrafo anterior, continúan siendo del uso exclusivo del Concesionario, en los términos del Título de Concesión y de la presente modificación.

El Concesionario deberá construir en el plazo máximo de un año contado a partir de la fecha de firma del presente Instrumento, las obras descritas en el Anexo "B" de este documento, en los términos que en dicho anexo se señalan. Las obras que se realicen pasarán a formar parte del dominio público de la Federación y reverterán al Gobierno Federal una vez concluidas a satisfacción de la Secretaría. En caso de que la obra mencionada en la fracción II del Anexo "B" no se realizara en el plazo señalado, el Concesionario acepta que revierta sin costo alguno al Gobierno Federal, el tramo de 36 metros de la línea B que va del Km. B-285+861 al Km. B-285 + 897.21 descrito en el Anexo "A" de la presente modificación.



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Forma C. G. 1-A

SEGUNDA.- Como consecuencia de la reversión a que se refiere la condición primera anterior, se modifican los Anexos Uno, Dos, Nueve, Diez y Once del Título de Concesión en los términos siguientes:

- a) Se modifica el Anexo Uno, para que a partir de la entrada en vigor de la presente modificación, se tenga por no puesta cualquier referencia al tramo entre La Gríega a Mariscala de la vía Morelos que va del kilómetro M-229+364.75 equivalente al kilómetro B-253+668.24 al kilómetro M-262+094.30 equivalente al kilómetro B-285+861 y que se identifica en el plano que como Anexo "A" se acompaña al presente Instrumento;
- b) Se modifica el Anexo Dos sustituyendo los planos 5 y 7 del Tomo I, y las cartas de vía relativas al tramo señalado en el inciso anterior, por los planos y cartas de vía que como Anexos "C", "D" y "E" respectivamente, se adjuntan a la presente modificación como parte del mismo;
- c) Se modifica el Anexo Nueve del Título de Concesión, en su numeral 1.7, para quedar como sigue:

"1. 7. Por la Vía Juárez del Km. B-265+ 078.35 = J-240 + 817.73 al Km. B-285 + 861 = JM-262 + 094.30, con lo cual mediante el uso adicional de los derechos de paso señalados en los numerales 1.1. y 1.6 de este Anexo Nueve, el concesionario de la vía férrea Pacífico-Norte tendrá derechos de paso para atender tráfico con trenes consolidados en Querétaro.

En tanto el Concesionario construya la conexión de la línea Morelos entre el Km. M-262 + 020 y el Km. A-263 + 970 de la línea A concesionada al concesionario de la vía férrea Pacífico-Norte, éste tendrá un derecho de paso sin costo, del Km. JM-262 + 094.30= B-285 + 861 al Km. B-285 + 897.21= Km. A-263+921.69.

Asimismo, en tanto el Concesionario reubique el cortavías identificado con el número 79, ubicado en el Km. B-251 + 418.13 = JM-227 + 312.18 de la línea B, concesionada al concesionario de la vía férrea Pacífico-Norte, éste tendrá un derecho de paso, sin costo, sobre la línea Morelos del Km. M-227 + 501.44 = B-251+607.70 hasta el Km. M-229 + 364.75= B-253 + 668.24. (N-6)".

Forma C. G. 1-A



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d) Se adiciona al Anexo Diez el numeral 1.9, para quedar como sigue:

"1.9. Derecho de paso sobre la vía Morelos a través de los cortavías entre el Km. M-229+364.75 = B-253+668.24 al JM-262+094.30 = B-285 + 861, con el fin de conectar, tener acceso y servir a la industria, formar trenes, dar entrada y salida a éstos sin limitación alguna al Patio Nuevo de Querétaro, a todos los patios, laderos, espuelas, cortavías y demás construcciones existentes y conectantes en dicho tramo que estén concesionadas al Concesionario, así como para tener acceso a Mariscala y hacer uso del derecho de paso contenido en el numeral 1.1. de este Anexo Diez. (PN-18)."

En el supuesto de que revierta el tramo de 36 (treinta y seis) metros de la línea B que va del Km. B-285 + 861 al Km. B-285 + 897.21, tendrá derechos de paso obligatorios en dicho tramo".

e) Se modifica el Anexo Once sustituyendo el plano identificado como N-6, junto con su memoria descriptiva, por el plano y memoria descriptiva que como Anexo "F" se adjuntan a la presente modificación como parte del mismo, y se adiciona el plano identificado como PN-18, junto con su memoria descriptiva, que se agregan como Anexo "G" a la presente modificación como parte del mismo.

TERCERA.- La operación ferroviaria en el cruce a que se refiere la fracción II del Anexo "B" o, en su caso, en el tramo de la línea B del Kilómetro B-285 + 861 equivalente al Kilómetro JM-262 + 094.30 al Kilómetro B-285 + 897.21 equivalente al Kilómetro A- 263 + 821.69, obedecerá al despacho a cargo del concesionario de la vía férrea Pacífico-Norte. El despacho deberá efectuarse a través de un sistema de semáforos en el orden en que lleguen los trenes al cruce (el que primero llega primero pasa). En el supuesto de que, la operación no se dé en forma eficiente, la Secretaría designará al responsable del despacho de los trenes en el cruce en cuestión, y en caso de tratarse de un tercero, será a cargo del Concesionario y del concesionario de la vía troncal del Pacífico-Norte, sin perjuicio de las sanciones que en su caso procedan.



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CUARTA.- Se modifica la condición 2.5 del Título de Concesión, para quedar como sigue:

- * 2.5 El Concesionario podrá llevar a cabo la modificación de la Vía Férrea o los Bienes cuando dichas modificaciones tengan por efecto modernizar, reconstruir, conservar o mantener dicha vía o los Bienes, o bien para mejorar la eficiencia o la calidad del servicio ferroviario, en el entendido que no se dejará fuera de operación la catenaria correspondiente a la doble vía electrificada Buenavista-Huehuetoca.

El Concesionario, en un plazo máximo de 2 (dos) años contados a partir de la entrada en vigor del presente título, deberá realizar las obras e inversiones necesarias para que el control de tráfico de la doble vía se realice en forma separada en los tramos Querétaro-Huehuetoca y Huehuetoca-Buenavista, a efecto de que el Concesionario lleve a cabo el control de tráfico del primer tramo señalado. El segundo tramo será operado por el Concesionario de la Terminal Ferroviaria del Valle de México. Sin embargo, ambos concesionarios podrán acordar que la operación se realice en forma distinta, siempre que no existan impedimentos de carácter técnico u operativo para la eficiente y segura operación de la Vía Férrea y prestación del servicio, en cuyo caso deberán obtener la aprobación de la Secretaría.

La conservación y el mantenimiento de la doble vía electrificada de Buenavista a Huehuetoca, quedará en su totalidad a cargo del Concesionario.

Todas las obras que se realicen a la Vía Férrea pasarán inmediatamente a formar parte del dominio público de la Federación, con independencia de la vigencia del presente título, y el Concesionario tendrá respecto de las mismas, los derechos y obligaciones que le confieren las disposiciones señaladas en los numerales 1.4.1, 1.4.2 y 1.5.

El Concesionario se obliga a realizar las obras con apego al proyecto ejecutivo previamente aprobado por la Secretaría. Concluidas aquéllas, las características, configuración y dimensiones específicas de las obras realizadas se agregarán al Anexo Dos."



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QUINTA.- Se modifica el Anexo State del Título de Concesión, a efecto de eliminar toda referencia a la obligación de conservar y mantener la catenaria de la doble vía electrificada en el tramo Huehuetoca-Querétaro, autorizándosele al Concesionario a compensar el plan de inversión que por ese concepto tenía previsto en el Plan de Negocios vigente.

SEXTA.- El Concesionario podrá retirar la catenaria, en el tramo Huehuetoca-Querétaro. Las subestaciones de energía, el cable de cobre, las consolas y demás instalaciones relativas a la electrificación de dicho tramo, revertirán en favor del Gobierno Federal, sin costo, de acuerdo con el inventario que en forma conjunta elaboren la Secretaría y el Concesionario.

Los bienes y partes desmontables y reutilizables que reviertan con motivo del retiro de la catenaria en el tramo Huehuetoca-Querétaro, excepto aquéllos que por su naturaleza no puedan ser retirados y entregados físicamente, serán retirados y entregados al Gobierno Federal en el lugar que indique la Secretaría dentro del territorio nacional, sin costo alguno para el Gobierno Federal, dentro de los 30 (treinta) días contados a partir de la fecha de firma del presente instrumento. En caso de que la entrega no se lleve a cabo por causas imputables al Gobierno Federal, la obligación del Concesionario para mantener las subestaciones subsistirá únicamente por dicho periodo de 30 (treinta) días, contado a partir de la fecha de firma del presente instrumento y la entrega será con cargo al Gobierno Federal, así como los gastos de administración y almacenaje en que se incurra. En caso de que la entrega de las subestaciones no se realice por causas imputables al Concesionario, éste será responsable de su mantenimiento hasta que se efectúe la entrega.

Los bienes desmontables y reutilizables que por alguna causa imputable al Concesionario, no puedan ser entregados al Gobierno Federal, deberán pagarse de acuerdo con el avalúo que al efecto realice la Comisión de Avalúos de Bienes Nacionales.



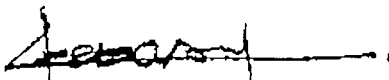
SECRETARÍA DE COMUNICACIONES
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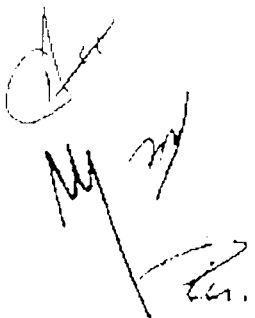
SEPTIMA.- La presente modificación al Título de Concesión entrará en vigor a partir del 12 de febrero del 2001 y pasa a formar parte integrante del Título de Concesión a partir de esa fecha. Las demás condiciones del Título de Concesión otorgado al Concesionario el 2 de diciembre de 1996, subsisten y se ratifican en sus términos.

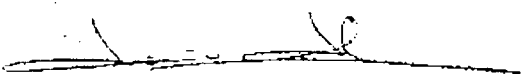
La firma del presente documento por parte del Concesionario, implica la aceptación incondicional de sus términos y condiciones.

México, Distrito Federal, a 12 de febrero del año dos mil uno.

EL SECRETARIO DE COMUNICACIONES
Y TRANSPORTES


Pedro Cerisola y Weber


TFM, S.A. de C.V.


Mario Mohar Ponce
Representante Legal

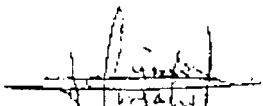
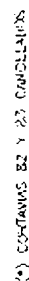

Mario Alberto Gonzalez Padilla
Representante Legal

DIAGRAMA DE FLUJO DE LOS DISTRITOS MARISCALA, LINEA JUAREZ Y LINEA MORELOS



PROGRAMA REVOLUCION
FERROCARRIL PACIFICO NORTE
FERROCARRIL DEL NOROESTE



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Forma C. C. A.

ANEXO B

Obras que deberá realizar el Concesionario

El concesionario se compromete a realizar las obras siguientes:

- I. Reubicar el cortavías incluyendo la caseta de control, identificado con el No. 79 ubicado en el kilómetro B-251+416.13 = JM 227+312.18 y Morelos kilómetro 227 +501.44=B-251+607.7 al kilómetro B-253 +588.92=M-229 +285.43 y Morelos kilómetro 229+364.75= B-253 +668.24, dicho cortavías se denominará 81A, realizando las adecuaciones de la conexión de la vía férrea de la línea B con la vía férrea de la línea Morelos que garantice una operación segura.
- II. Construir un tramo de vía para conectar la vía Morelos con la vía férrea A entre el kilómetro M-262+020 con el kilómetro A-263+970, mediante un cruce a nivel que deberá reunir por lo menos las siguientes condiciones:
 1. Instalar cuatro (4) sapos sólidos de acero manganso del N°. 10 de 16 pios 6 pulgadas de longitud, según especificaciones de la AREA¹, además deberá llevar herrajes reglamentarios, con lo cual se logra una conexión segura y eficiente.
 2. La estructura del cruce ferroviario deberá ser diseñada y construida por un proveedor de reconocida experiencia y capacidad.
- III. Instalar un sistema de semáforos automático en el cruce de las líneas Juárez-B y Morelos-A para habilitar el paso de trenes en base al principio "de que primero que llega, primero que pasa" en forma automática.
- IV. Construir, a juicio del Concesionario, una conexión entre la línea Juárez y la línea A en Mariscal para hacer uso de los derechos de paso del Concesionario a Guadalajara (DPL-1).

Las características y ubicaciones definitivas de las obras serán las que se establezcan en el proyecto ejecutivo de las mismas, que deberá ser previamente aprobado por la Secretaría en términos de la Ley, el Reglamento y demás disposiciones aplicables.

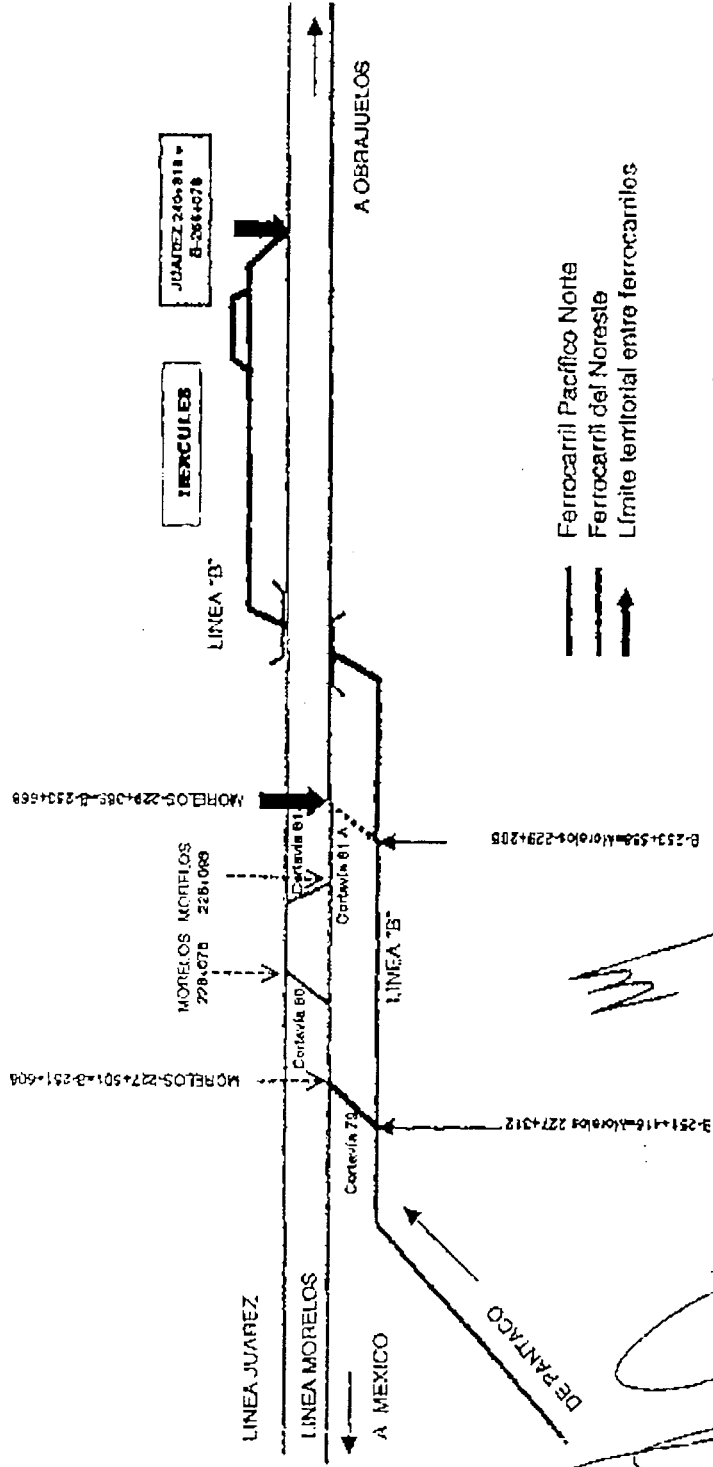
¹ AREA (American Railway Engineering Association.
Portafolio de planos de vía, edición 1996.

ANEXO C

5

LA GRIEGA Y HERCULES

Límites territoriales entre la vía férrea del Ferrocarril del Noreste y la vía férrea del Ferrocarril Pacífico-Norte



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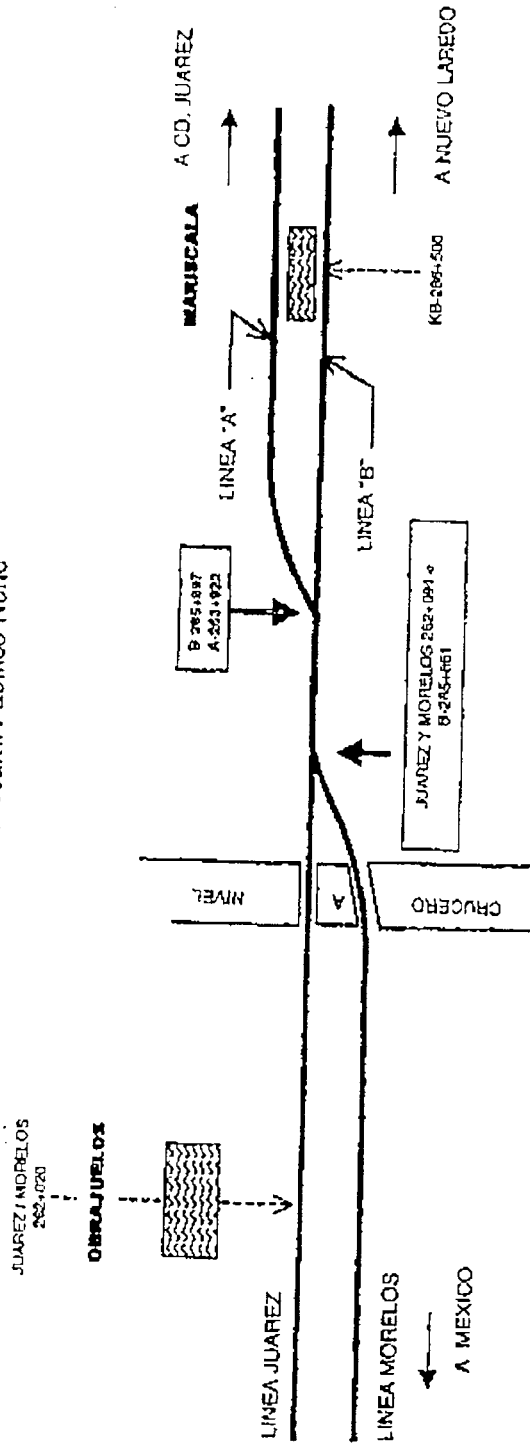
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ANEXO D

MARISCALA

7

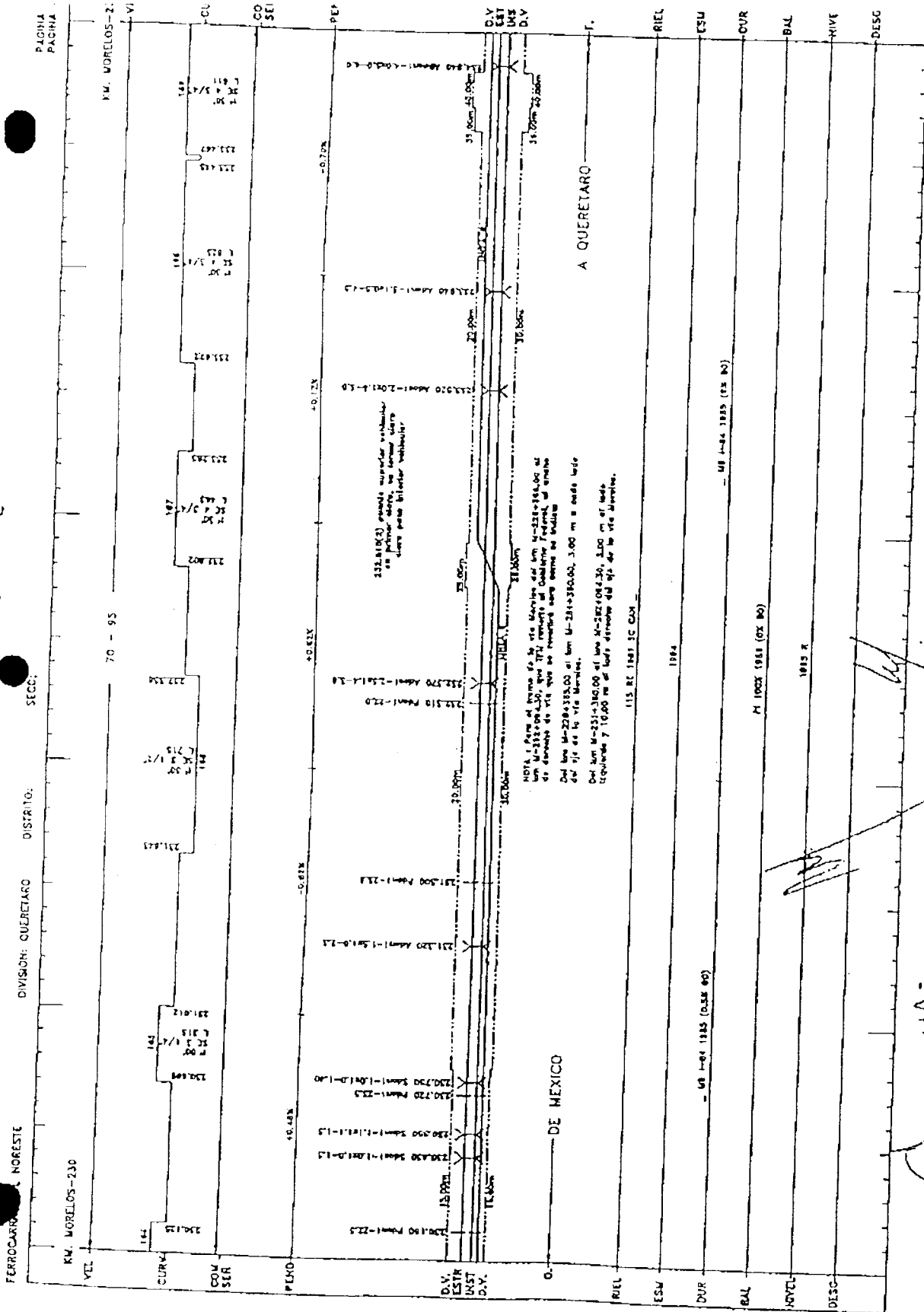
Límites territoriales entre la vía férrea del Ferrocarril del Noroeste y la vía férrea del Ferrocarril Pacífico-Norte



Ferrocarril Pacífico Norte
Ferrocarril del Noroeste
Límite territorial entre ferrocarriles

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A N E X O " E "



ANEXO E

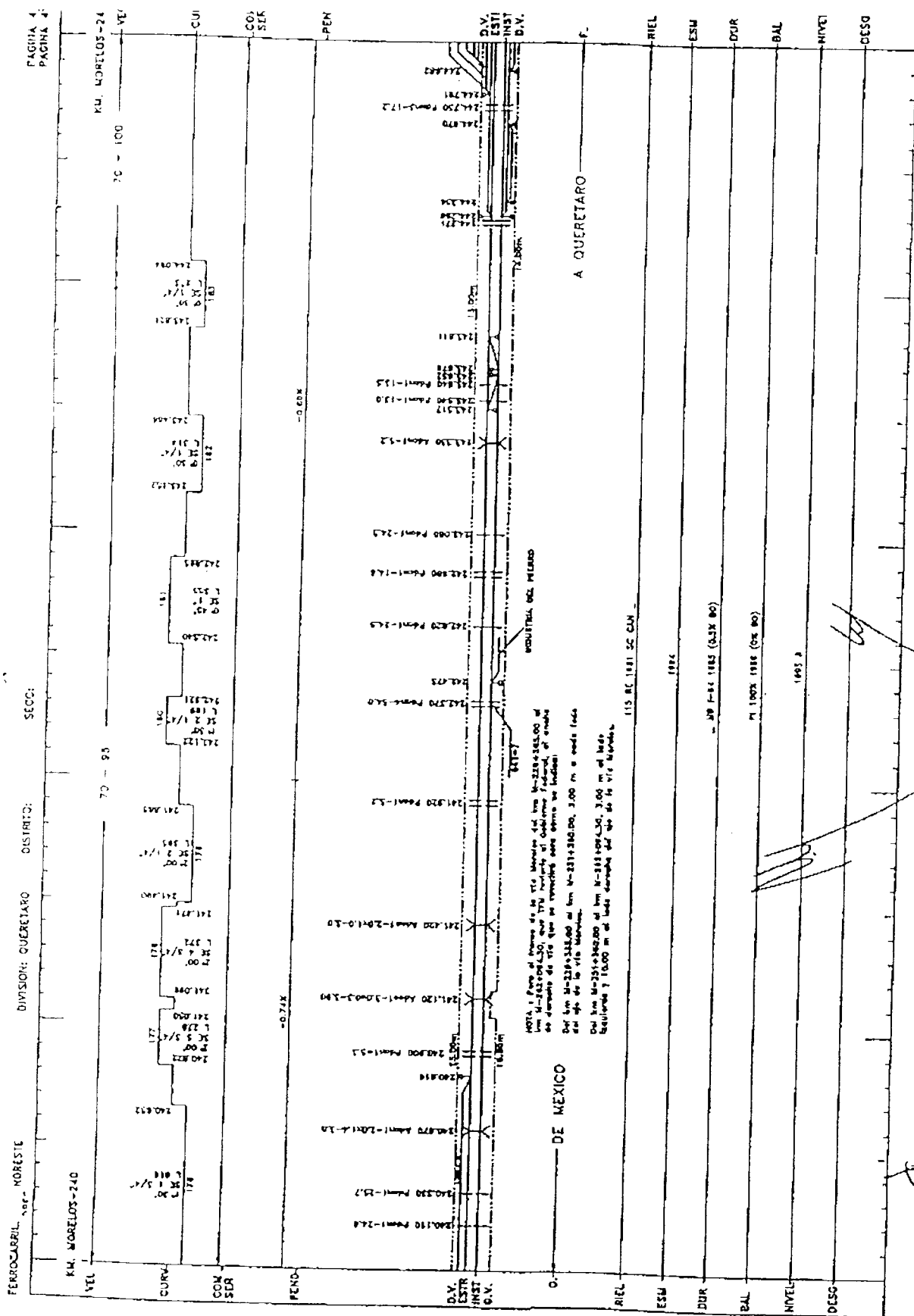


EXHIBIT B

NORTHEAST MAIN LINE

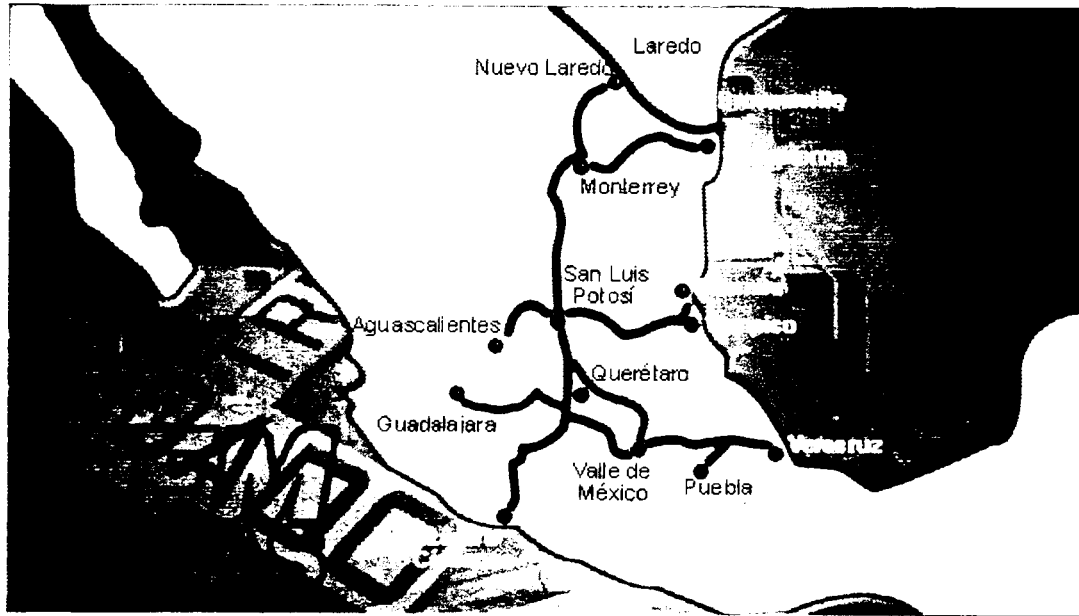
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EXHIBIT C

NORTH-PACIFIC AND SOUTH EAST ROUTES

TFM



LINEAS FERROVIARIAS MEXICANAS

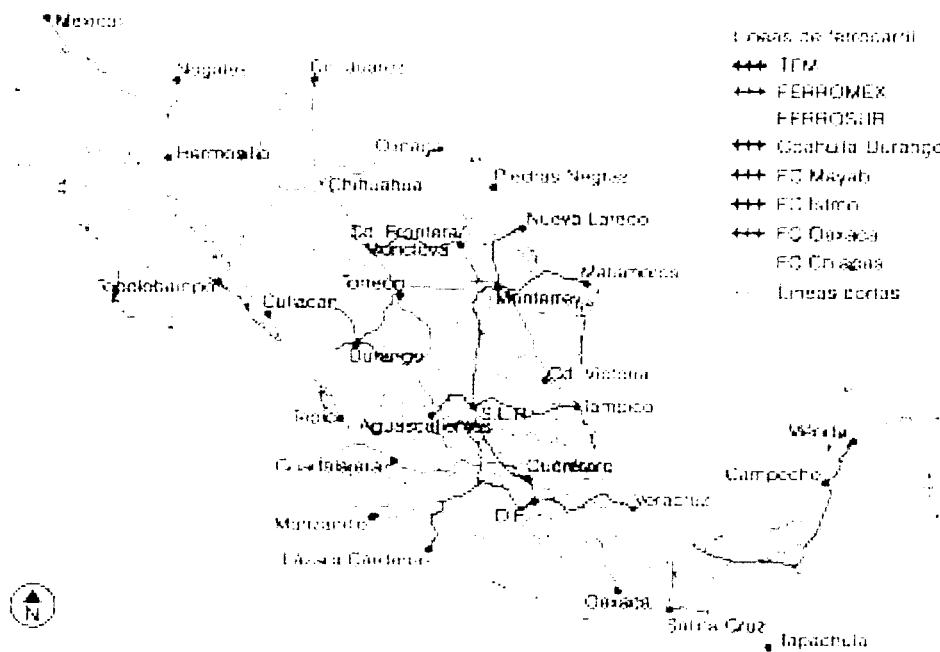


Figura 30. Red ferroviaria en la República Mexicana