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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34319

CONSOLIDATED RAIL CORPORATION --
DECLARATORY ORDER PROCEEDING

ENTERED
Office of Proceedings

OCT 21 2003

Part of
Public Record



AT&T COMMUNICATIONS, INC.'S COMMENT IN REPOSE TO THE
SURFACE TRANSPORTATION BOARD'S OCTOBER 10, 2003 DECISION

AT&T Communications, Inc. ("AT&T") respectfully submits this comment on the Surface Transportation Board's October 10, 2003 Decision, which AT&T received on October 14, 2003.

AT&T agrees with the Board that the issue presented under Section 11321(a) is purely a legal one. Indeed, AT&T believes that the questions submitted by Conrail and referred by the District Court's Memorandum Opinion and Order essentially have been answered by the District Court's ruling that "AT&T is not challenging any Conrail action specifically ordered or authorized by the STB" in its Decision No. 89. *See AT&T's Notice of Action, Statement of the Case and Suggestions for Further Proceeding*, filed on October 9, 2003 ("AT&T's Submission"), at page 4.¹

Because the issue posed to the Board is purely a question of law, AT&T assumes that, by ruling that Conrail has until October 27, 2003 to submit "evidence and argument," the Board is not inviting or intending to accept evidence from Conrail that was not before the Board in connection with Conrail's application to approve the acquisition transaction approved by the Board in Decision No. 89. If, however, the Board intends to permit Conrail to introduce new

¹ AT&T recognizes that it filed *AT&T's Notice and Suggestions for Further Proceedings* late in the day of October 9, 2003, and it may not have been considered before the Board issued its Decision the following day.

evidence in its opening submission, AT&T believes that it would be entitled to take discovery to test Conrail's evidence before responding with its reply due on November 12, 2003. Again, as noted in AT&T's Submission (at page 4), Conrail made representations to the District Court to justify its preemption claim that are flatly contradicted by the parties' application and Decision No. 89. Any new evidence therefore must be properly tested before this Board makes its decision here.

Accordingly, depending on whether Conrail's October 27, 2003 submission contains evidence not previously before the Board, AT&T will take the position that such evidence should be stricken, but if it is not, AT&T may request the Board for permission to conduct limited and carefully tailored discovery before it submits its reply.

Date: October 21, 2003

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CERTIFICATE OF SERVICE

I hereby certify that, on October 21, 2003, I caused a copy of the foregoing
*AT&T Communications, Inc. 's Comment in Response to the Surface Transportation Board's
October 10, 2003 Decision* to be served by first-class mail, postage prepaid, upon the following
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