

October 1, 2008

Edward J. Fishman

Via Hand Delivery

202.778.9456
Fax 202 778 9100
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Honorable Anne Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

FILED
OCT 1 - 2008
**SURFACE
TRANSPORTATION BOARD**



**RE: Finance Docket No. 35183
Genesee & Wyoming Inc. - Control Exemption - Georgia
Southwestern Railroad, Inc.**

Dear Secretary Quinlan:

On behalf of Genesee & Wyoming Inc. ("GWI"), please find enclosed for filing in the above-referenced docket an original and ten copies of a **Petition for Exemption** filed by GWI to acquire indirect control of Georgia Southwestern Railroad, Inc. A check in the amount of \$9,400 to cover the applicable filing fee is enclosed. An unredacted copy of the Stock Purchase Agreement referenced in the **Petition for Exemption** is being filed under seal in a separate envelope (marked "Highly Confidential-Filed Under Seal Subject to a Request for Protective Order") in conjunction with a Motion for Protective Order that is being filed contemporaneously herewith.

Please acknowledge receipt of this filing by file-stamping the attached extra copy of this letter and contact me if you have any questions. Thank you.

ENTERED
Office of Proceedings

OCT 2 - 2008

Part of
Public Record

Respectfully submitted,

Edward J. Fishman
Attorney for Genesee & Wyoming Inc.

Enclosure

FEE RECEIVED

OCT 1 - 2008

**SURFACE
TRANSPORTATION BOARD**

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 35183

**GENESEE & WYOMING INC.
-- CONTROL EXEMPTION --
GEORGIA SOUTHWESTERN RAILROAD, INC.**

PETITION FOR EXEMPTION

EXPEDITED CONSIDERATION REQUESTED

FILED

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**SURFACE
TRANSPORTATION BOARD**

Kevin M. Sheys
Edward J. Fishman
K&L Gates LLP
1601 K Street, NW
Washington, D.C. 20006
(202) 778-9000

Attorneys for Genesee & Wyoming Inc.

Dated: October 1, 2008

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STB Finance Docket No. 35183

**GENESEE & WYOMING INC.
-- CONTROL EXEMPTION --
GEORGIA SOUTHWESTERN RAILROAD, INC.**

PETITION FOR EXEMPTION

Expedited Consideration Requested

Pursuant to 49 U.S.C. § 10502 and 49 CFR Part 1121, Genesee & Wyoming Inc.

("Petitioner" or "GWT"), a noncarrier holding company, hereby petitions the Surface Transportation Board ("STB" or "Board") to exempt its indirect control of Georgia Southwestern Railroad, Inc. ("GSWR") upon consummation of the Stock Purchase Agreement ("Purchase Agreement") entered into by and among GSW Acquisition Sub Inc. ("GSW Sub"), GWI, Terry R. Small ("Small") and David L. Smoot ("Smoot").¹

GSW Sub is a non-carrier, wholly-owned direct subsidiary of GWI. Pursuant to the Purchase Agreement, GSW Sub intends to acquire GSWR, and upon consummation of that acquisition GSWR will continue as a corporation whose sole shareholder is GSW Sub. Thus, upon consummation of the proposed purchase, GSW Sub will acquire direct control of GSWR, and GWI (which will control GSW Sub through ownership of all of its shares) will acquire indirect control of GSWR.²

¹ GSWR connects through trackage rights to Chattahoochee Industrial Railroad, a Class III railroad controlled by GWI.

² GSW Sub is not listed as a petitioner in this Petition of Exemption because it will only obtain control of one carrier (GSWR) following consummation of the proposed purchase and, therefore, does not need to obtain an exemption from control authority under 49 U.S.C. § 11323.

GWI expects to consummate the acquisition of GSWR on October 1, 2008, prior to the Board's issuance of a decision in this matter. GWI, therefore, will transfer control of GSWR into a voting trust to prevent any unauthorized control by GWI until the Board issues a decision approving the control transaction that is the subject of this petition. The voting trust is described in more detail below. Petitioner seeks expedited consideration of this petition so that it and the shipping public can capitalize on the benefits of GWI's common control of GSWR and other GWI railroads.

I. GWI System

GWI is a noncarrier holding company that directly or indirectly controls one Class II and 28 Class III railroads. GWI controls the Buffalo & Pittsburgh Railroad, Inc., a Class II rail carrier operating in New York and Pennsylvania. It controls the following Class III railroads, operating in the indicated states: Arkansas, Louisiana & Mississippi Railroad Company (Arkansas and Louisiana); Chattahoochee Bay Railroad, Inc. (Georgia and Alabama); Chattahoochee Industrial Railroad (Georgia); The Chattooga and Chickamauga Railway Company (Tennessee and Georgia); Columbus and Greenville Railway Company (Mississippi); Commonwealth Railway, Inc. (Virginia); Corpus Christi Terminal Railroad, Inc. (Texas); Dansville and Mount Morris Railroad Company (New York); First Coast Railroad, Inc. (Florida and Georgia); Fordyce & Princeton Railroad Company (Arkansas); Genesee & Wyoming Railroad Company, Inc. (New York); Golden Isles Terminal Railroad, Inc. (Georgia); Illinois & Midland Railroad, Inc. (Illinois); Louisiana & Delta Railroad, Inc. (Louisiana); Luxapalila Valley Railroad, Inc. (Mississippi and Alabama); Maryland Midland Railway, Inc. (Maryland); Portland & Western Railroad, Inc. (Oregon); Rochester & Southern Railroad, Inc. (New York); Salt Lake City Southern Railroad Company (Utah); Savannah Port Terminal Railroad Inc.

(Georgia); South Buffalo Railway Company (New York); St. Lawrence & Atlantic Railroad Company (Vermont, New Hampshire, Maine); St. Lawrence & Atlantic Railroad (Quebec), Inc. (Vermont); Talleyrand Terminal Railroad, Inc. (Florida); Tazewell & Peoria Railroad, Inc. (Illinois); Utah Railway Company (Colorado, Utah); Willamette and Pacific Railroad, Inc. (Oregon); and York Railway Company³ (Pennsylvania).

In addition, GWI controls additional railroads with two of its wholly owned subsidiaries that are noncarrier holding companies: RP Acquisition Company One (RP1) and RP Acquisition Company Two (RP2). GWI and RP1 control Rail Partners, L.P.,⁴ and eight class III rail carriers formed as limited partnerships.⁵ GWI and RP2 control Rail Partners, L.P.,⁶ KWT Railway Inc. (a Class III rail carrier), and five Class III rail carriers organized as limited liability companies.⁷

The Board's most recent approval of the common control of the GWI system came when it published the notice of exemption filed in *Genesee & Wyoming Inc.—Control Exemption—Columbus and Greenville Railway Company, The Chattooga and Chickamauga Railway Company, and Luxapalila Valley Railroad, Inc.*, STB Finance Docket No. 35139 (served May

³ In addition, GWI has control over two limited liability companies, Maryland and Pennsylvania, LLC and Yorkrail, LLC, non-operating Class III rail carriers that separately hold the rail assets over which the York Railway Company operates.

⁴ Rail Partners, L.P. is a noncarrier limited partnership that holds all non-managing membership interests or all limited partnership interests (as applicable) in each of the Class III rail carriers that GWI and RP1 and RP2 control together. RP1 acquired the entire general partnership interest of Rail Partners, L.P.

⁵ These carriers are: Atlantic & Western Railway, Limited Partnership; East Tennessee Railway, L.P.; Galveston Railroad, L.P.; Georgia Central Railway, L.P.; Little Rock & Western Railway, L.P.; Tomahawk Railway, Limited Partnership; Valdosta Railway, L.P., and Wilmington Terminal Railroad, Limited Partnership.

⁶ RP2 acquired the entire limited partnership interest of Rail Partners, L.P.

⁷ The carriers are AN Railway, L.L.C.; The Bay Line Railroad, L.L.C.; Meridian & Bigbee Railroad, L.L.C.; Riceboro Southern Railway, L.L.C.; and Western Kentucky Railway, L.L.C.

15, 2008). That notice of exemption became effective May 29, 2008. Maps of the GWI system are attached hereto as Exhibit 1.

On October 1, 2008, in STB Finance Docket No. 35177, GWI filed a Petition for Exemption to acquire control of ten Class III railroads collectively referred to therein as the Ohio Central Railroads. The Ohio Central Railroads do not connect to the GSWR, and the transaction that is the subject of that Petition is unrelated to the GSWR transaction. If the Board approves GWI's acquisition of control of the Ohio Central Railroads prior to its action on this Petition, then GWI respectfully requests that the Board deem this Petition amended to include the Ohio Central Railroads among the railroads controlled by GWI. Further, GWI would have no objection to the consolidation of this Petition with the separate Petition filed for control of the Ohio Central Railroads for purposes of rendering a decision if doing so would expedite the issuance of such decisions.

The full name and address of the Petitioner is as follows:

Genesee & Wyoming Inc.
66 Field Point Road
Greenwich, CT 06830

Questions or correspondence concerning this Petition should be sent to the representative of GWI at the following address:

Kevin M. Sheys
K&L Gates LLP
1601 K Street, NW
Washington, DC 20006
(202) 778-9000

II. The GSWR Transaction

Petitioner controls GSW Sub, a newly formed non-carrier subsidiary, which has entered into an agreement to acquire GSWR, a Class III rail carrier. GSWR is a Class III rail carrier that operates lines located generally: (i) between approximately milepost R 12.0 in Florida Rock,

Harris County, GA south through Columbus, Chattahoochee County, GA and continuing southwest through Americus, Sumter County, GA to approximately milepost J 297.0 in Albany, Dougherty County, GA; (ii) from approximately milepost SLB 0.38 in Columbus, Chattahoochee County, GA southwest to approximately milepost SLB 23 in Cusseta, Marion County, GA; (iii) from approximately milepost H 278 in Smithville, Lee County, GA west through Cuthbert, Randolph County, GA to approximately milepost H 349 in White Oak, Barbour County, AL; (iv) from approximately milepost 63.55 in Dawson, Terrell County, GA southwest to approximately milepost 72.88 in Sasser, Terrell County, GA; (v) from approximately milepost SLC 160.0 in Cuthbert, Randolph County, GA south to approximately milepost SLC 91.68 in Bainbridge, Decatur County, GA; (vi) from approximately milepost SLC 91.68 in Bainbridge, Decatur County, GA west to approximately milepost MPAN 760 in Saffold, Early County, GA; and (vii) from approximately milepost SLC 91.68 in Bainbridge, Decatur County, GA south to approximately milepost SLC 90.62 at State Docks Lead (State Ports Authority), Decatur County, GA. Maps depicting the lines of GSWR are attached hereto as Exhibit 2. GSW Sub plans to acquire direct control and GWI plans to acquire indirect control of GSWR upon consummation of the transaction contemplated by the Purchase Agreement.

Upon acquisition of GSWR, GWI does not currently anticipate material changes in the general scope and nature of operations on GSWR's lines. GWI does not anticipate that any shipper currently served on GSWR's lines will experience a reduction in its rail transportation options as a result of GWI's indirect control of GSWR, and service options may in some cases improve given the synergies the proposed transaction will create

The proposed control transaction does not involve a Class I rail carrier. However, GWI is not certain that the proposed transaction qualifies for the automatic class exemption procedure

under 49 CFR 1180.2(d)(2) because GSWR connects with one of GWI's existing lines, the Chattahoochee Industrial Railroad, through trackage rights that GSWR holds over the line of CSX Transportation, Inc. Therefore, out of an abundance of caution, Petitioner is proceeding through the instant petition rather than through a notice of exemption.

III. The Stock Purchase Agreement

In accordance with the Purchase Agreement, GSW Sub desires to purchase from Small and Smoot, and Small and Smoot desire to sell to GSW Sub, ten (10) shares of common stock of GSWR, comprising all of the issued and outstanding capital stock of GSWR. Subsequently, GSW Sub will be the sole stockholder of GSWR, and GWI will be the sole stockholder of the shares of GSW Sub. An unredacted copy of the Purchase Agreement is being filed under seal in conjunction with a Motion for Protective Order being filed by GWI. A redacted copy of the Purchase Agreement is being filed herewith as Exhibit 3.

IV. Petition for Exemption

The acquisition of control of a rail carrier by a person that is not a rail carrier but that controls any number of carriers requires the prior approval of the Board. 49 U.S.C. § 11323(a)(5). As Petitioner is a non-carrier that controls other rail carriers, its indirect control of GSWR would be subject to the Board's prior approval requirements, absent exemption.

Under 49 U.S.C. § 10502, the Board must exempt a transaction from the prior approval requirements of § 11323 when the Board finds that: (1) prior approval is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101 (the "RTP"); and (2) either (a) the transaction is of limited scope, or (b) regulation is not necessary to protect shippers from an abuse of market power. In this case, all three criteria are satisfied for the reasons described below

A. Regulation Is Not Needed to Carry Out the Rail Transportation Policy

Detailed scrutiny of Petitioner's proposed indirect control of GSWR is not needed to carry out the objectives of the RTP. To the contrary, an exemption from the prior approval requirements here will promote several of these objectives. By minimizing the expense and delay associated with the full application process, exemption of this transaction will "minimize the need for Federal regulatory control over the rail transportation system," 49 U.S.C. § 10101(2), and "reduce regulatory barriers to entry into and exit from the industry," 49 U.S.C. § 10101(7). See, e.g., Gencscc & Wyoming Inc. – Control Exemption – South Buffalo Railway Company, STB Finance Docket No. 34107 (STB served Nov. 21, 2001) ("GWI South Buffalo").⁸

Also, by allowing Petitioner to integrate GSWR into its existing family of short lines, with GWI's attendant experience, resources, capital and administrative support, the exemption will "promote a safe and efficient rail transportation system by allowing carriers to earn adequate revenues" (49 U.S.C. § 10101(3)), "ensure the development and continuation of a sound rail transportation system...to meet the needs of the public and the national defense" (49 U.S.C. § 10101(4)), "foster sound economic conditions in transportation and ..ensure effective competition and coordination between rail carriers and other modes" (49 U.S.C. § 10101(5)), and "encourage honest and efficient management of railroads" (49 U.S.C. § 10101(9)). See, e.g., GWI South Buffalo, supra.⁹

⁸ See also RailAmerica, Inc. – Control Exemption – RailTex, Inc., STB Finance Docket No. 33813 (STB served Jan. 7, 2000) ("RailAmerica").

⁹ See also RailAmerica, supra (permitting holding company to realize cost savings furthers the objectives of the RTP); Summit View, Inc. – Control Exemption – Mahoning Valley Railroad Company, STB Finance Docket No. 34026 (STB served May 11, 2001)(enabling carrier to become part of a family of Class III carriers furthers the RTP).

The proposed transaction will result in new connections within the same corporate family: GSWR's trackage rights over CSX provide a connection to GWI's Chattahoochee Industrial Railroad in Saffold, Early County, GA. Where such a new connection is formed, exemptions have been found to be appropriate in the short line context, including transactions involving this very Petitioner. See, e.g., GWI South Buffalo: Genesec & Wyoming Inc. – Continuance In Control Exemption – Pittsburg & Shawmut Railroad, Inc., STB Finance Docket No. 32904 (STB served June 21, 1996) ("GWIP&S").¹⁰

Indeed, in this case, the existence of a connection through trackage rights between GSWR and Chattahoochee Industrial Railroad *promotes* elements of the RTP, as it fosters improved operating efficiencies and potential routings over commonly controlled railroads without foreclosing transportation options presently open to shippers. See, e.g., Emons Transportation Group, Inc. and Emons Railroad Group, Inc. – Continuance in Control Exemption – St. Lawrence & Atlantic Railroad, STB Finance Docket No. 33678 (STB served Nov. 20, 1998); Summit, supra (transaction likely to enhance rail service options).

Finally, an exemption here would expedite handling and resolution of Board proceedings. 49 U.S.C. § 10101(15). On the other hand, requiring a full-blown application proceeding in this case would contravene these very goals described above and would not promote other aspects of the RTP.

¹⁰ See also H. Peter Claussen and Linda C. Claussen – Continuance in Control Exemption – Georgia & Florida Railroad Co., Inc., ICC Finance Docket No. 32681 (ICC served June 23, 1995) ("Georgia & Florida"); H. Peter Claussen and Linda C. Claussen – Continuance in Control Exemption – Albany Bridge Company, Inc., ICC Finance Docket No. 32208 (ICC served Jan. 27, 1993) ("Albany Bridge"); William T. Bright – Control Exemption – The Buffalo Creek Railroad Company, ICC Finance Docket No. 31969 (ICC served Mar. 9 1992); Steve May – Control Exemption – Lackawanna Valley Railroad Corporation and Lackawanna Railway, Inc., ICC Finance Docket No. 31937 (ICC served Sept. 12, 1991) ("Steve May").

B. Regulation of the Transaction Is Not Needed to Protect Shippers From Abuse of Market Power

Because Petitioner's proposed indirect control of GSWR is limited in scope (as described in the following section), it is not even necessary to consider whether prior review is needed to protect shippers from an abuse of railroad market power. 49 U.S.C. § 10502(a)(2)(A). See, e.g., Indiana Rail Road Company – Petition for Exemption – Acquisition and Operation – Illinois Central Railroad Company – Line Between Sullivan, IN and Browns, IL, 6 I.C.C.2d 1004 (1990). In any event, there is no potential for such abuse here.

In the proposed transaction, GWI's indirect control of GSWR will not result in any material changes in the operation of GSWR. GWI simply will be incorporating GSWR into its family of short line carriers. As a result, shippers potentially will benefit from greater efficiencies. No shipper located on GSWR's lines is expected to lose rail service options as a result of the control transaction See, e.g., GWI South Buffalo, supra; GWI P&S, supra (common control by a holding company of an additional Class III carrier does not expose shippers to an abuse of market power where there is no significant change in service or competitive alternatives). To the contrary, the more likely result will be enhanced rail service, as shippers will benefit from the substantial experience and resources of Petitioner and from the connection between GSWR and the Affiliates. For these reasons, regulation of the transaction is not needed to protect shippers from an abuse of market power. See, e.g., GWI South Buffalo, supra.

C. The Transaction Is Limited In Scope

It is well-settled that the acquisition of control of a short line railroad operating in a limited geographical area generally is a transaction of limited scope. See, e.g., Genesee & Wyoming Industries, Inc. – Continuance in Control Exemption – Allegheny & Eastern Railroad,

Inc., ICC Finance Docket No. 32149 (ICC served Oct. 23, 1992) ("Genesee 1992") (involving a 147-mile line); Emons Holdings, Inc. – Continuance in Control Exemption – York Rail, Inc., ICC Finance Docket No. 31170 (ICC served Dec. 19, 1987); Albany Bridge, supra Here, Petitioner will acquire indirect control of one Class III rail carrier owning or operating approximately 220 miles of rail line in a discrete geographic area in Georgia and Alabama. Indirect control of GSWR by Petitioner will not result in a reduction of transportation options on GSWR's lines, and the common control of GSWR and the Affiliates will not adversely affect the operations of any of those carriers.

Also, when a control transaction adds a separately incorporated Class III carrier to an existing family of short lines, a finding of limited scope is appropriate. See Georgia & Florida, supra. Here, Petitioner's indirect control of GSWR will add one additional Class III carrier to Petitioner's group of short lines. GSWR will continue to assume the risks of owning and operating its own rail assets and business dealings between GSWR and its Affiliates will be based on commercially reasonable, arm's-length arrangements. Under these circumstances, a finding of limited scope clearly is warranted.

V. Employee Protective Conditions

The proposed control transaction will be subject to the labor protective conditions set forth in 49 U.S.C. § 11326(b).

VI. Environmental and Historical Reports

Under 49 CFR § 1105.6(c)(2)(i), no environmental documentation need be prepared for a control transaction that will not result in (1) a traffic diversion from rail to motor carriage of more than 1000 carloads per year or 50 carloads per mile; (2) a 100 percent increase in rail traffic or rail yard activity; (3) increases of more than 10 percent or 50 vehicles per day in truck traffic;

or (4) prescribed level increases in rail or truck traffic in Class I or non-attainment areas under the Clean Air Act. See 49 CFR §§ 1105.7(e)(4) and (5). Petitioner's indirect control of GSWR will not lead to significant changes in rail operations or traffic volumes that meet these thresholds, and therefore no such environmental documentation is required. See, e.g., GWI South Buffalo, supra.

Similarly, 49 CFR § 1105.8(b)(3) provides that a control transaction that will not substantially change the level of maintenance of railroad property is exempt from the requirement of preparing a historic report. As the transaction in question contemplates no substantial changes in maintenance over the Subject Lines, no historic report is required. See, e.g., GWI South Buffalo, supra.

VII. Voting Trust

Petitioner anticipates closing the purchase transaction that is the subject of this Petition of Exemption filed in Finance Docket No. 35183 prior to the Board's issuance of a decision in this proceeding. In such event, Petitioner will have the shares of GSWR placed into an independent, irrevocable voting trust to prevent any unauthorized control, until such time as the Board issues a decision exempting Petitioner's indirect control of GSWR. A copy of the form of Voting Trust Agreement to be used by Petitioner is attached hereto as Exhibit 4.

VIII Expedited Handling Requested

The Board has indicated that it will grant requests for expedited disposition in the appropriate circumstances. See, e.g., GWI P&S, supra; Steve May, supra. Petitioner respectfully requests expedited handling of this exemption petition because prolonged interim control of the operations of GSWR by an independent trustee may cause inefficiencies and

would prevent GWI and the public from capitalizing on the potential benefits of the proposed transaction, such as improved operating efficiencies resulting from the new connection between GSWR and the GWI Affiliates. Therefore, Petitioner requests that the Board expedite this matter, issuing a decision as soon as practicable (and making that decision effective on its service date), so that GWI can indirectly control GSWR.

IX. Conclusion

For the foregoing reasons, GWI requests that the Board expeditiously grant its petition for exemption to indirect control of GSWR.

Respectfully submitted,



Kevin M. Sheys

Edward J. Fishman

K&L Gates LLP

1601 K Street, NW

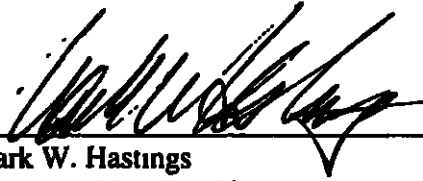
Washington, D.C. 20006

(202) 778-9000

**ATTORNEYS FOR GENESEE &
WYOMING INC.**

VERIFICATION

I, Mark W. Hastings, certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief. Further, I certify that I am qualified and authorized to cause the foregoing document to be filed.



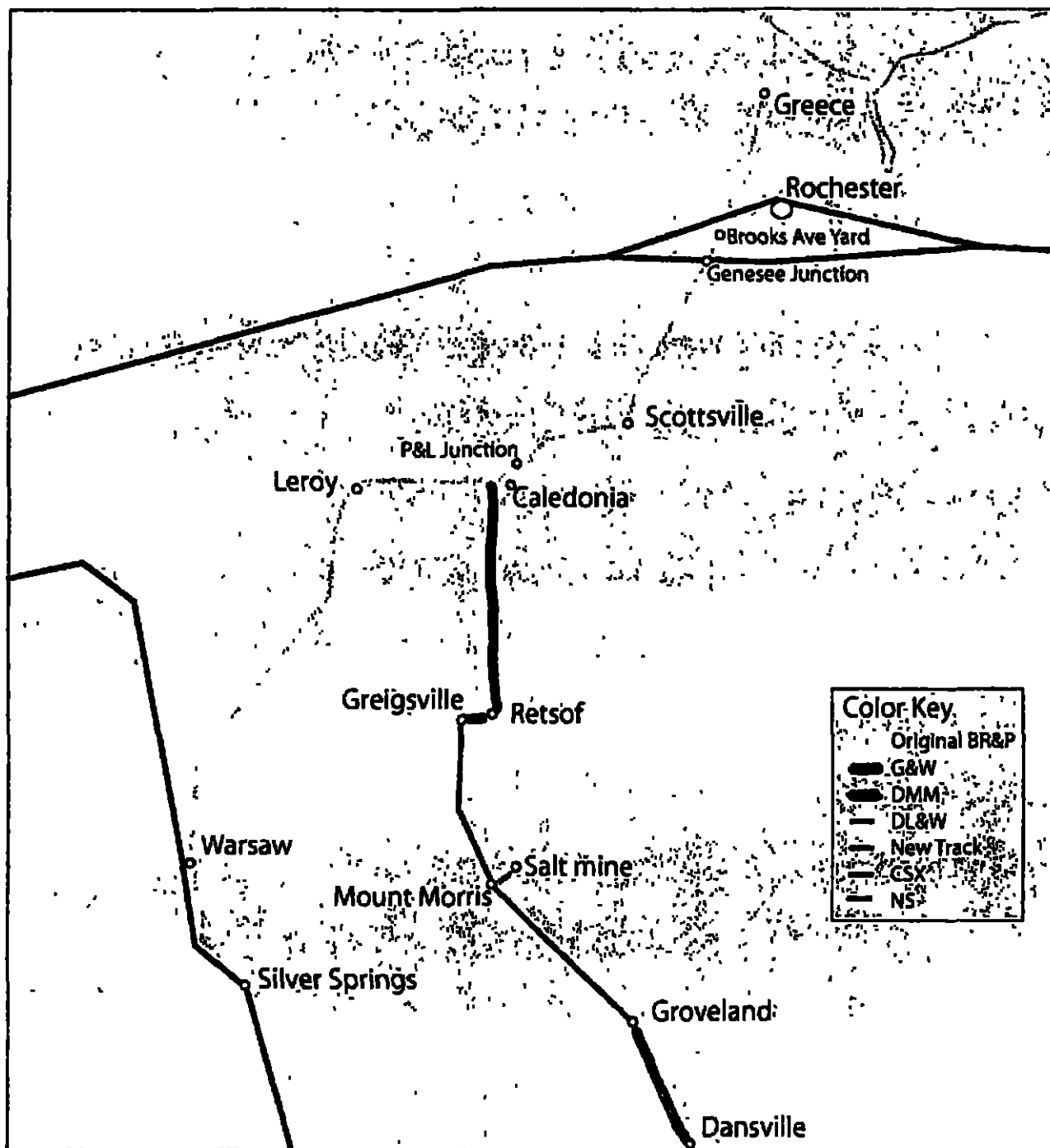
Mark W. Hastings
Executive Vice President
Genesee & Wyoming Inc

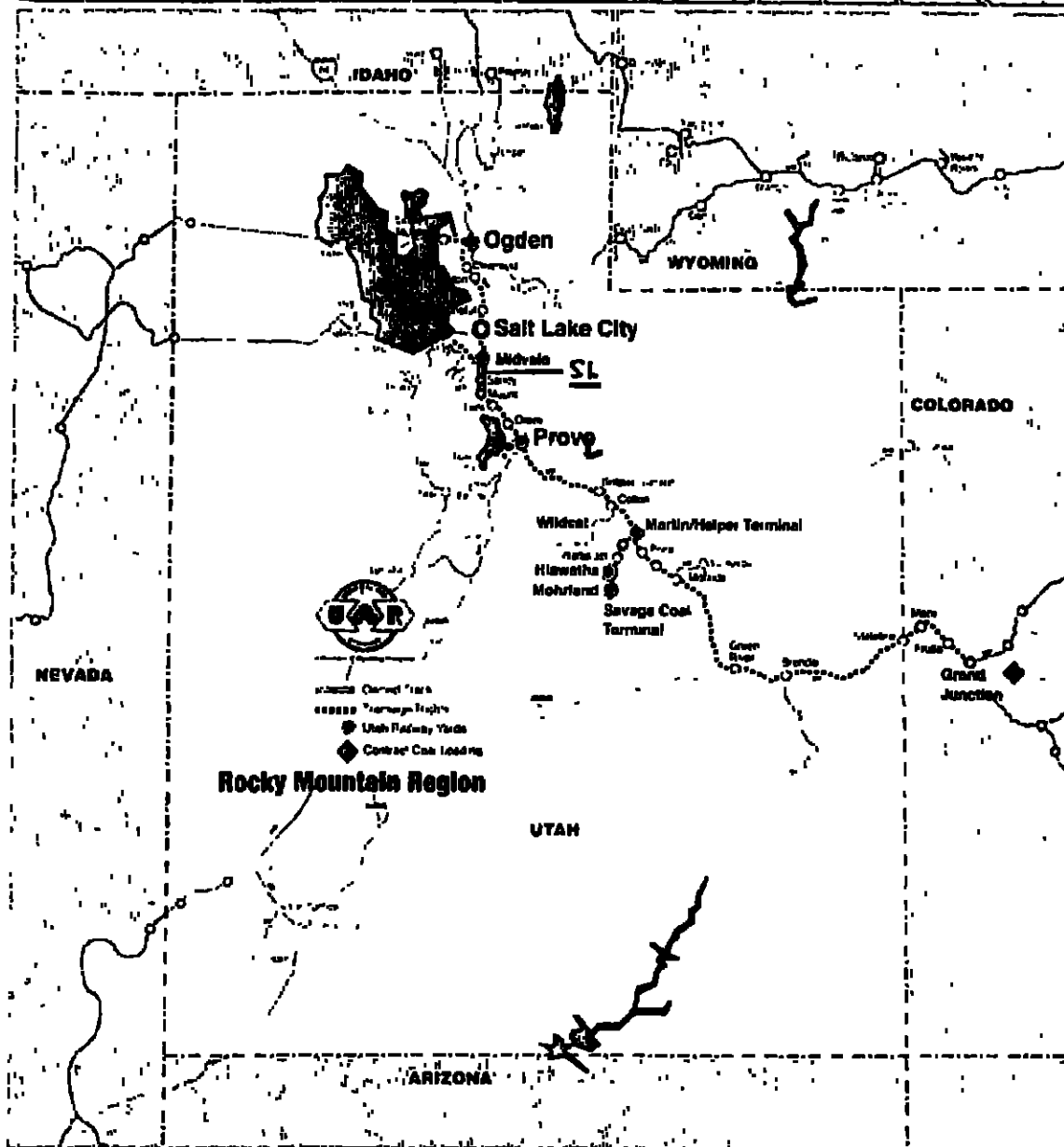
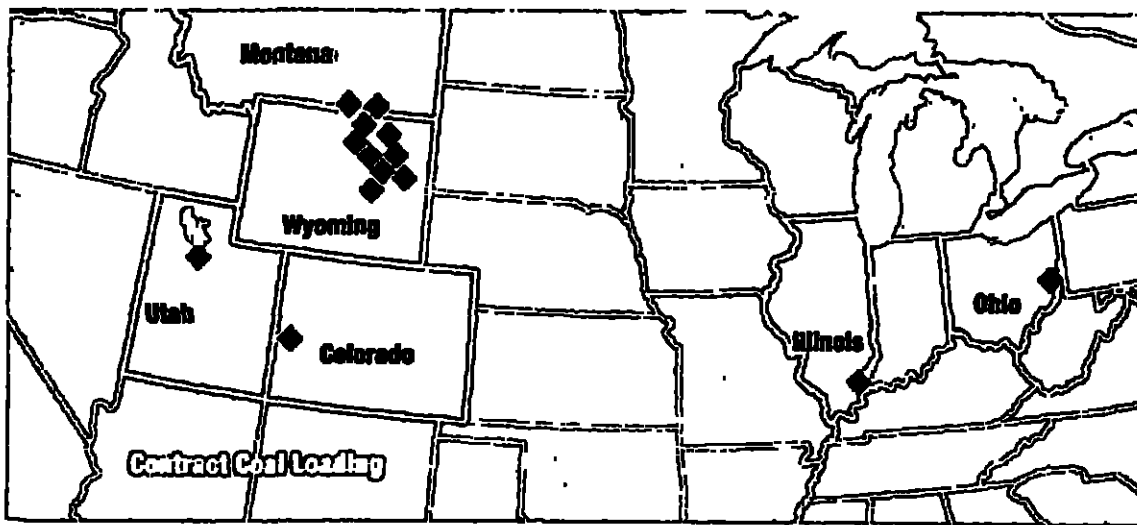
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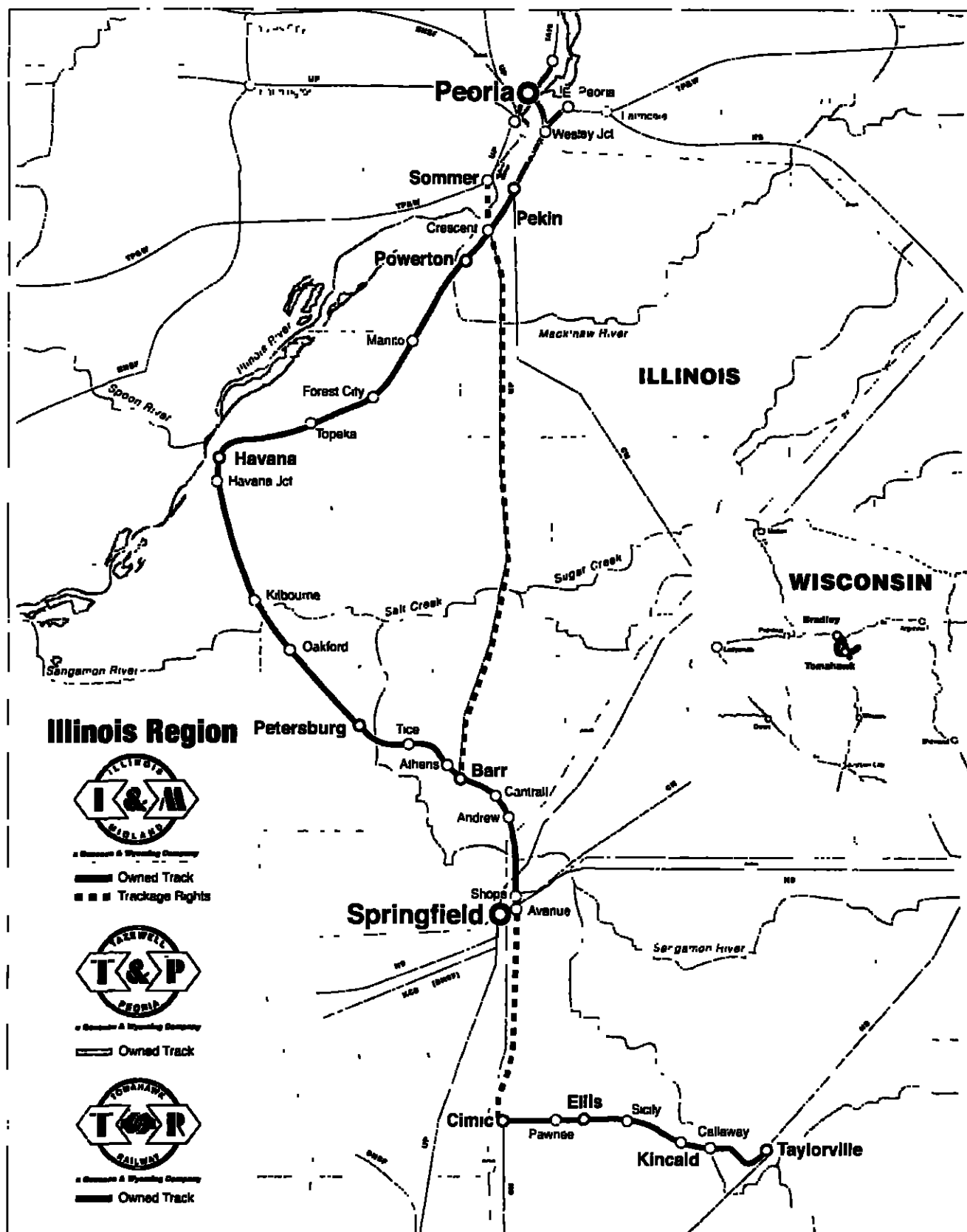
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EXHIBIT 1

MAPS OF AFFILIATES' RAIL LINES



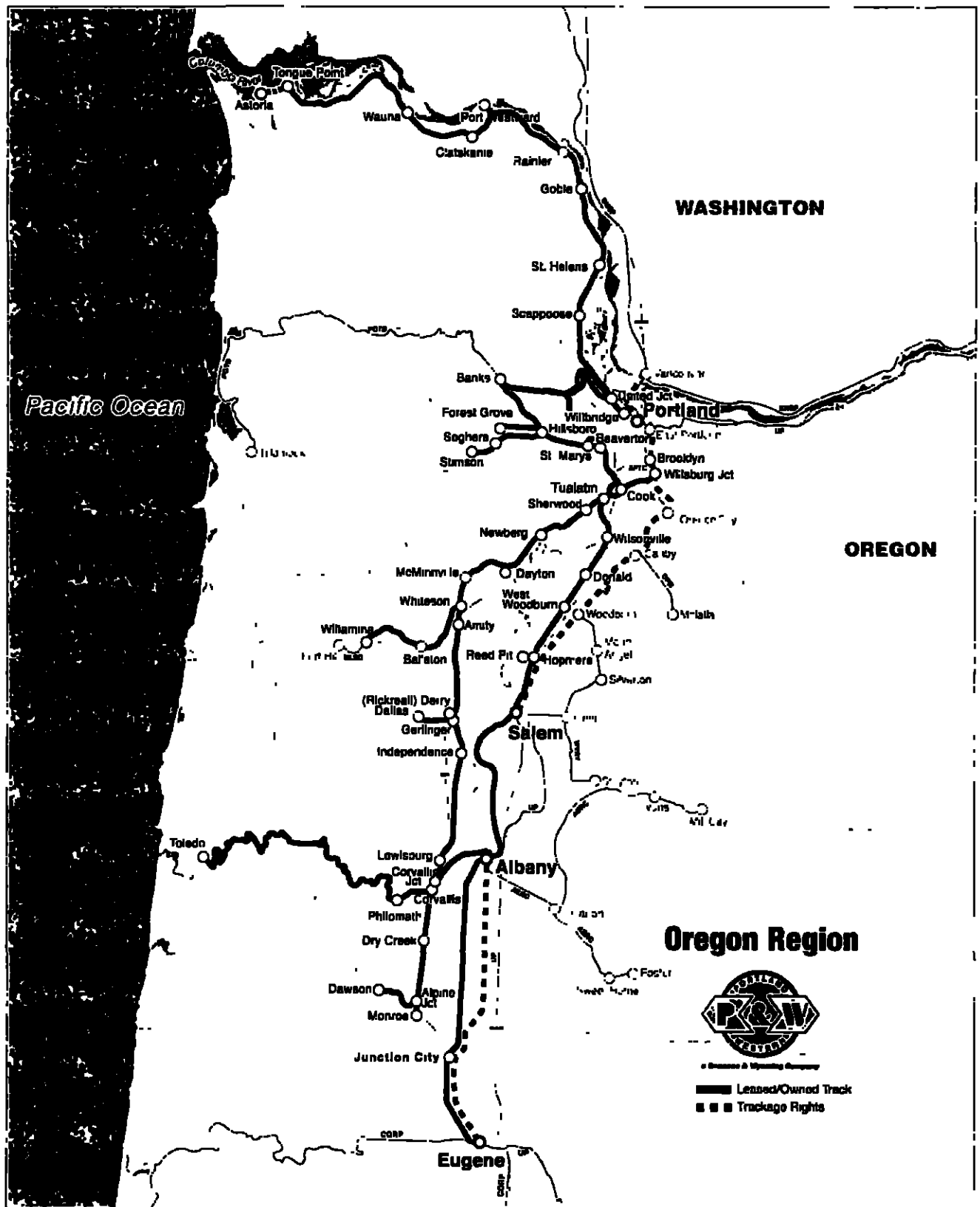




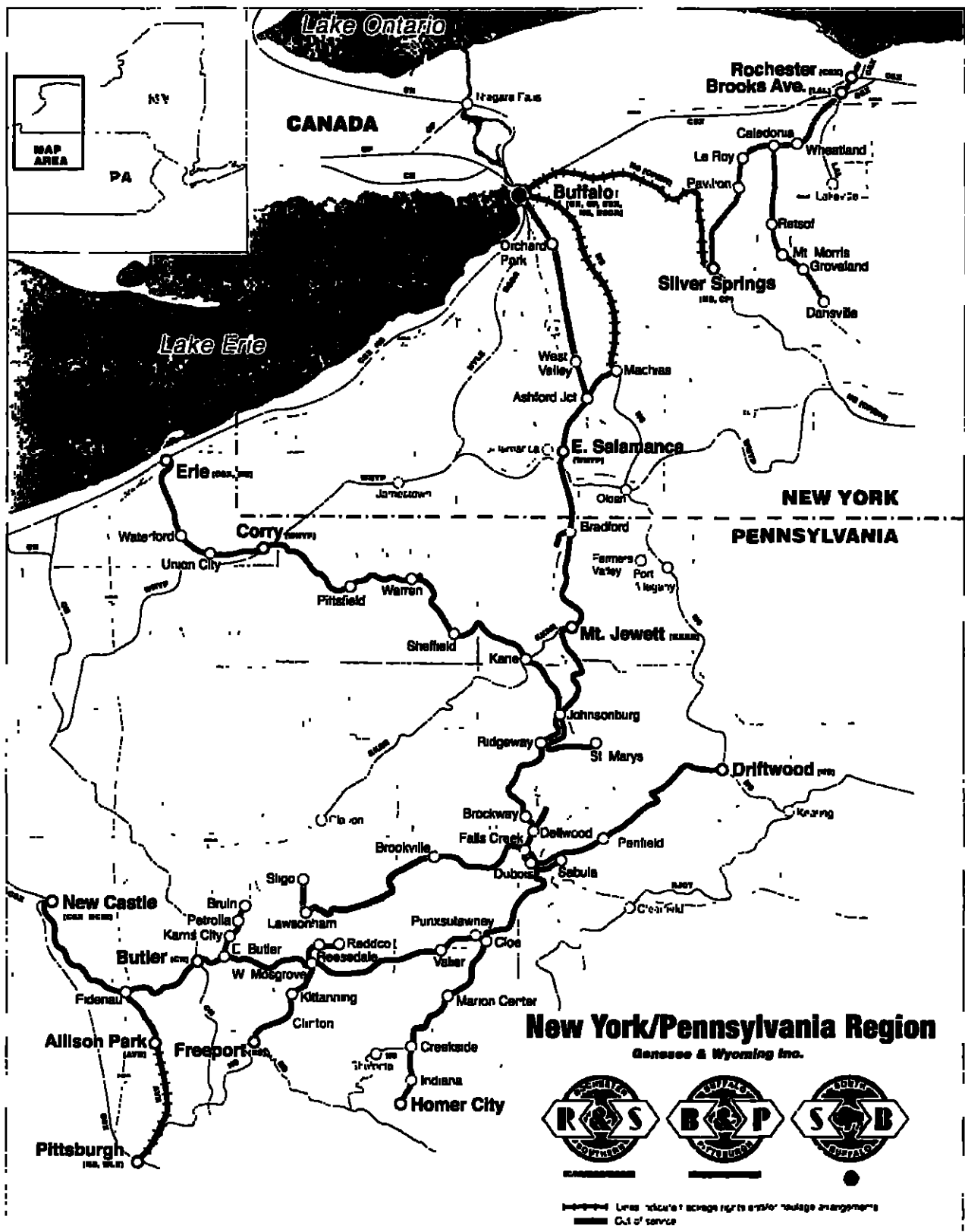
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 Springfield, Illinois 62702
 217 738-8501

Tazewell & Peoria Railroad, Inc.
 301 Wesley Road
 Creve Coeur, Illinois 61610
 309 694-8619

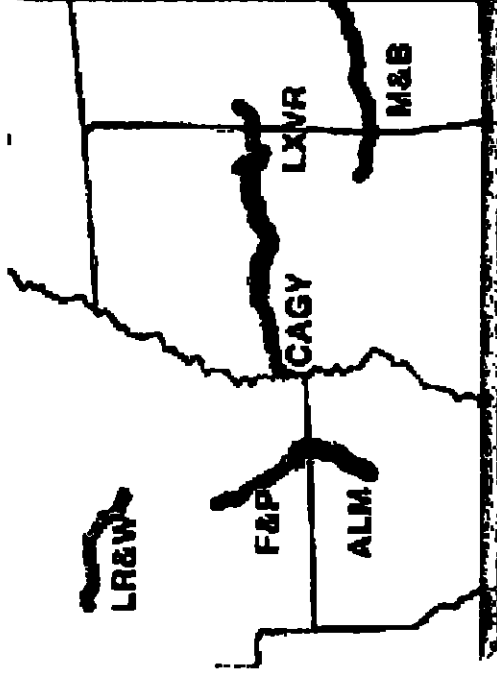
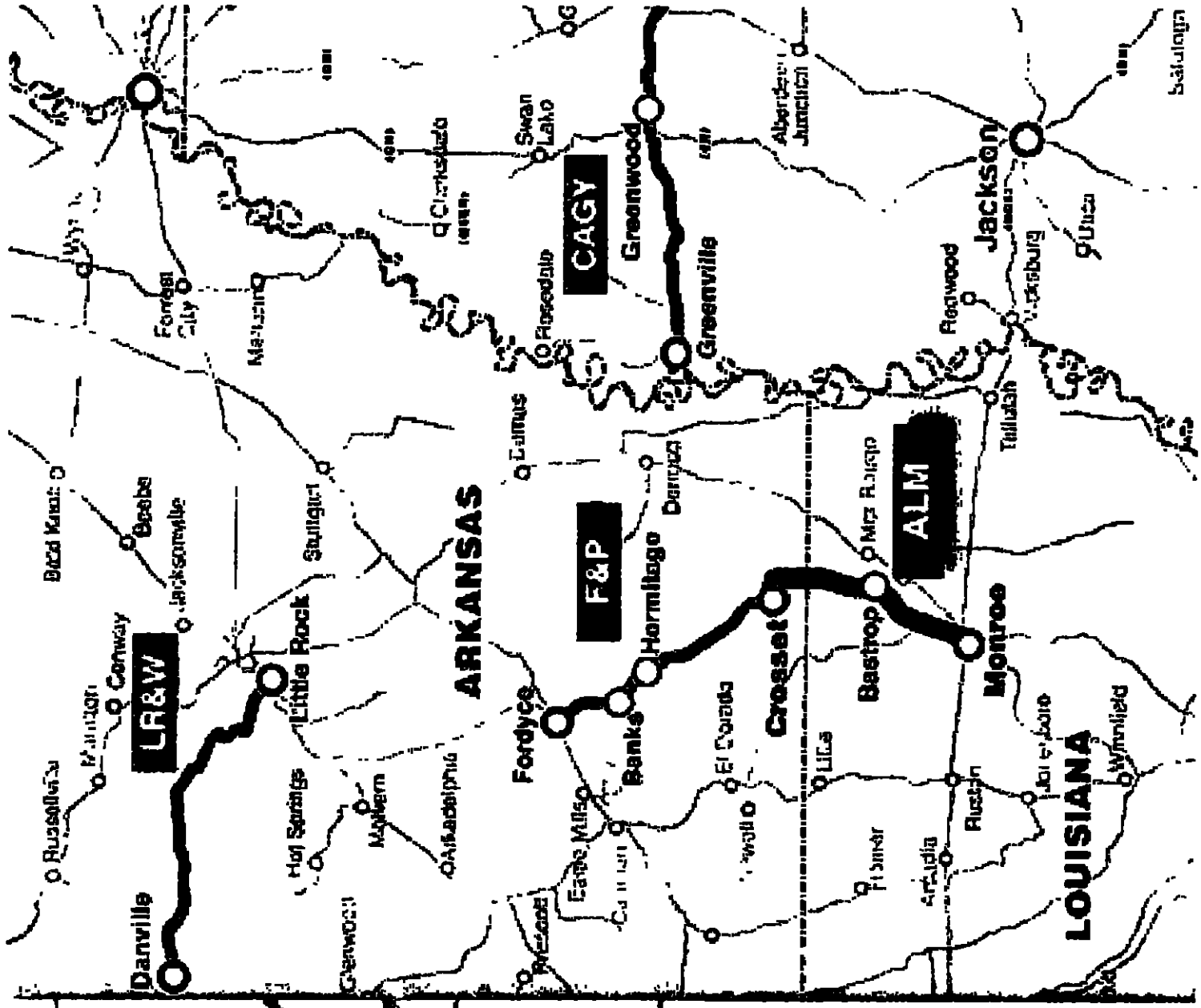
Tomahawk Railway, L.P.
 301 Mariette Street
 Tomahawk, Wisconsin 54487
 715-453-2303



Portland & Western Railroad, Inc.
 Willamette & Pacific Railroad, Inc.
 650 Hawthorne Avenue SE, Suite 220
 Salem, Oregon 97301
 503-365-7717

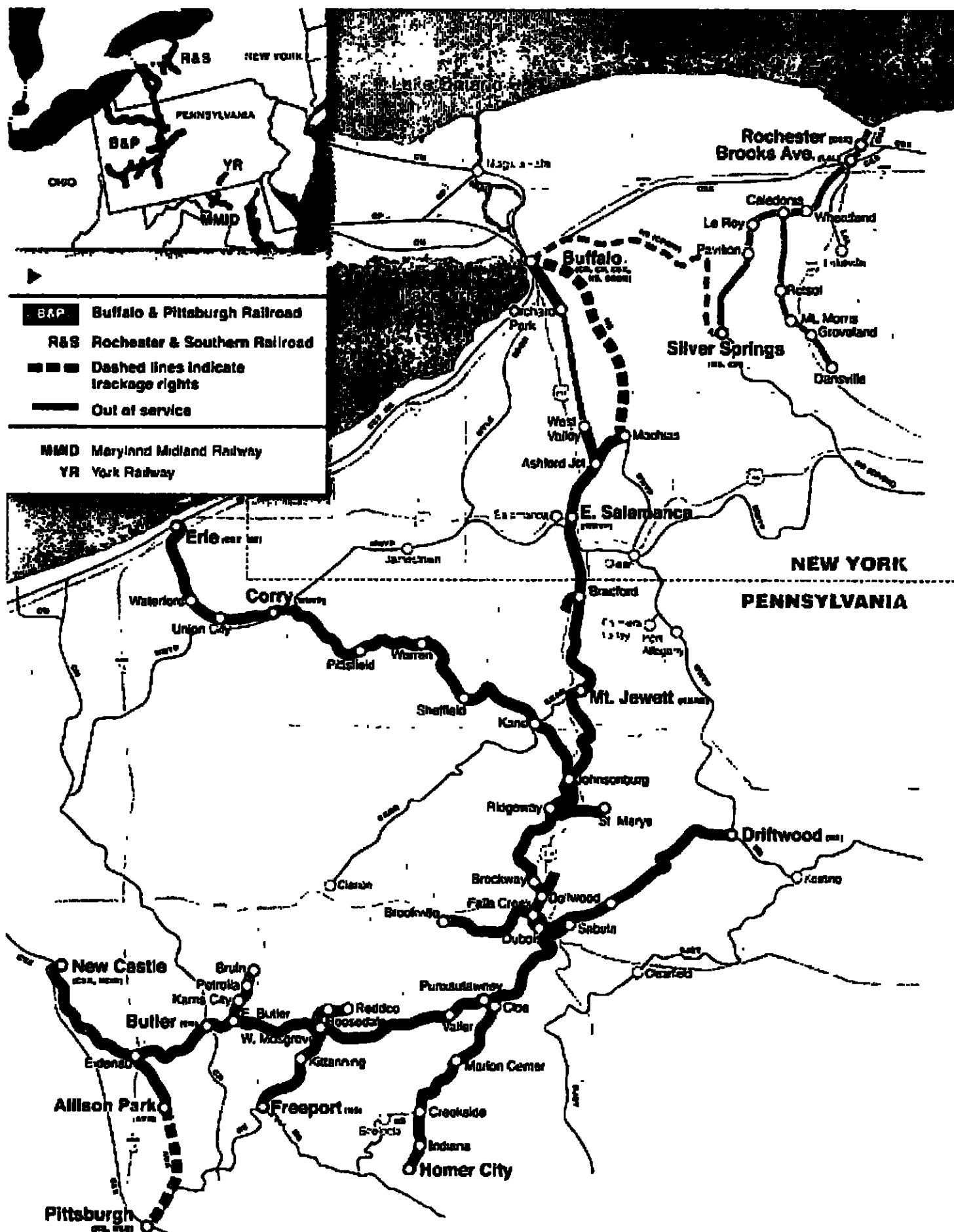


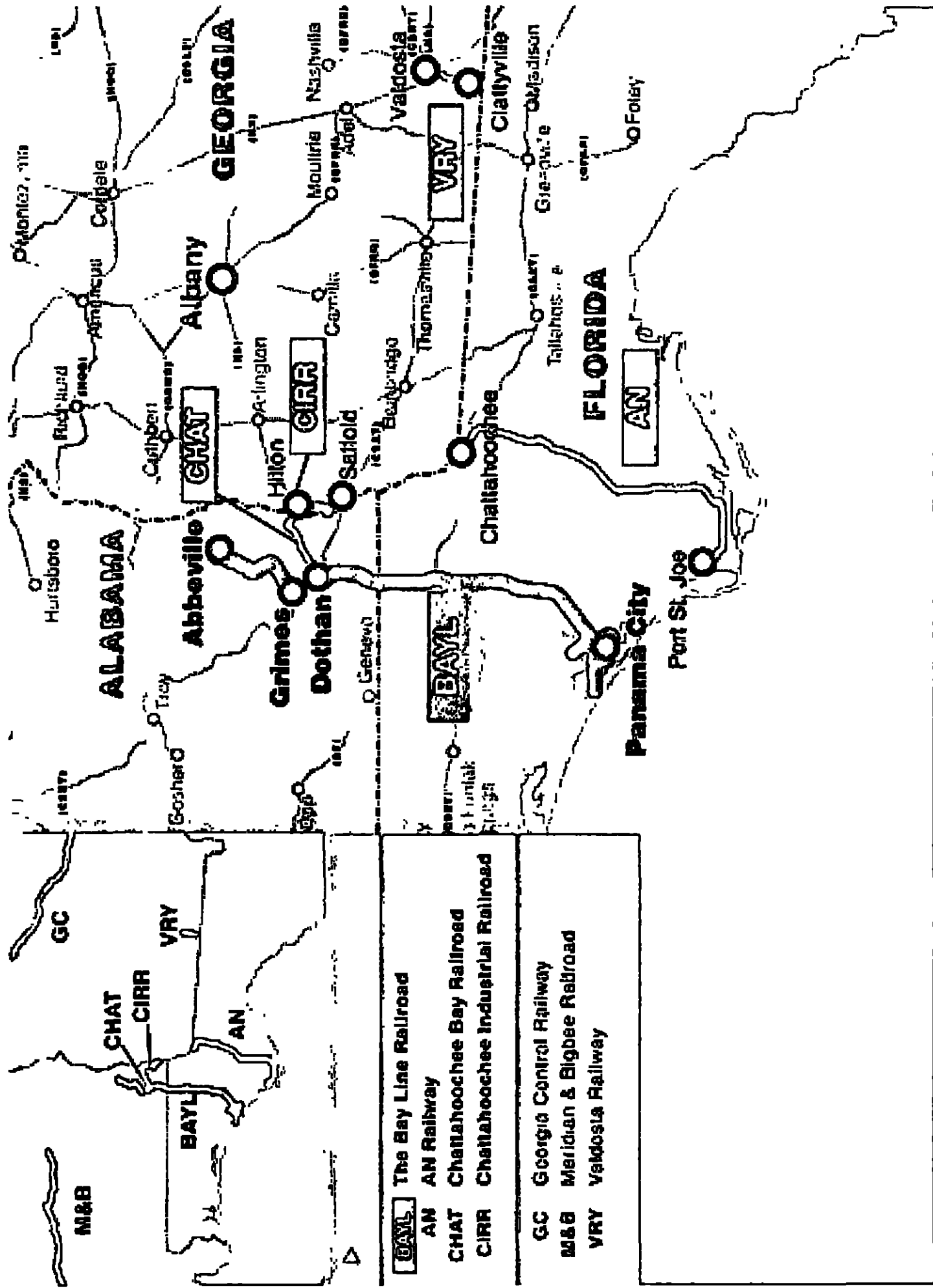
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 Rochester & Southern Railroad, Inc.
 South Buffalo Railway Company
 1200-C Scottsville Road, Suite 200
 Rochester New York 14624
 585-325 8601

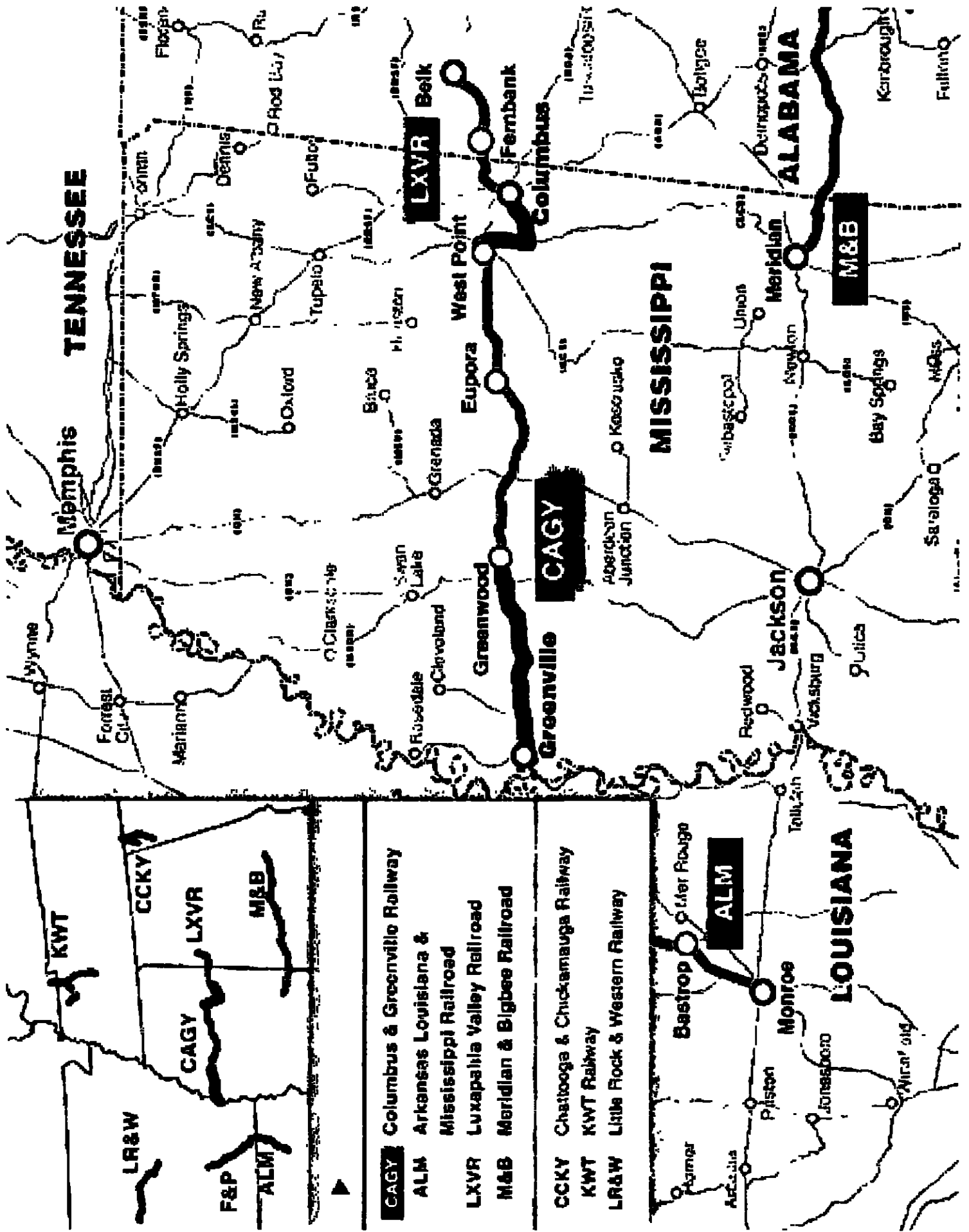


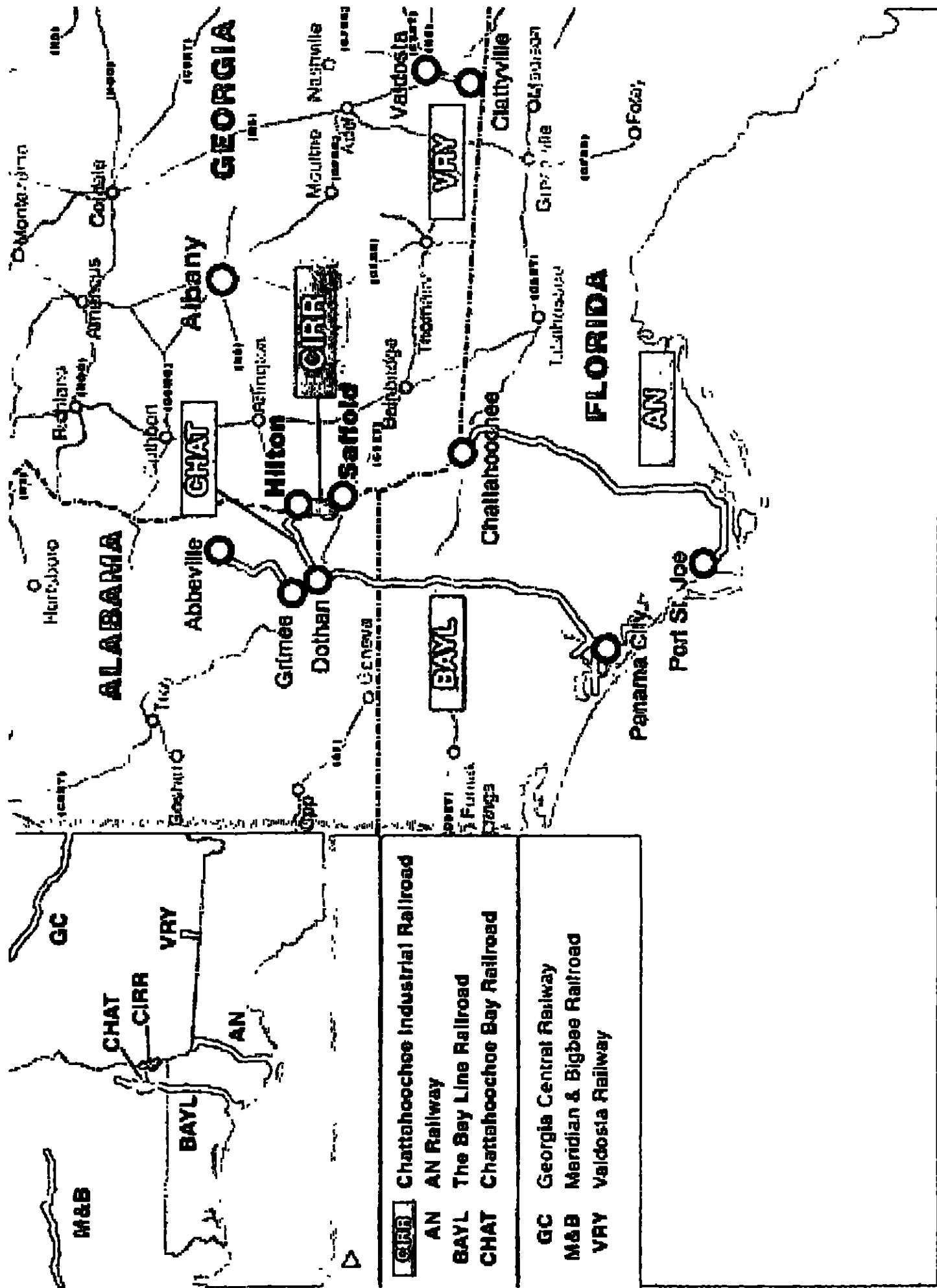
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- CAGY** Columbus & Greenville Railway
- F&P** Fordyce & Princeton Railroad
- LR&W** Little Rock & Western Railway

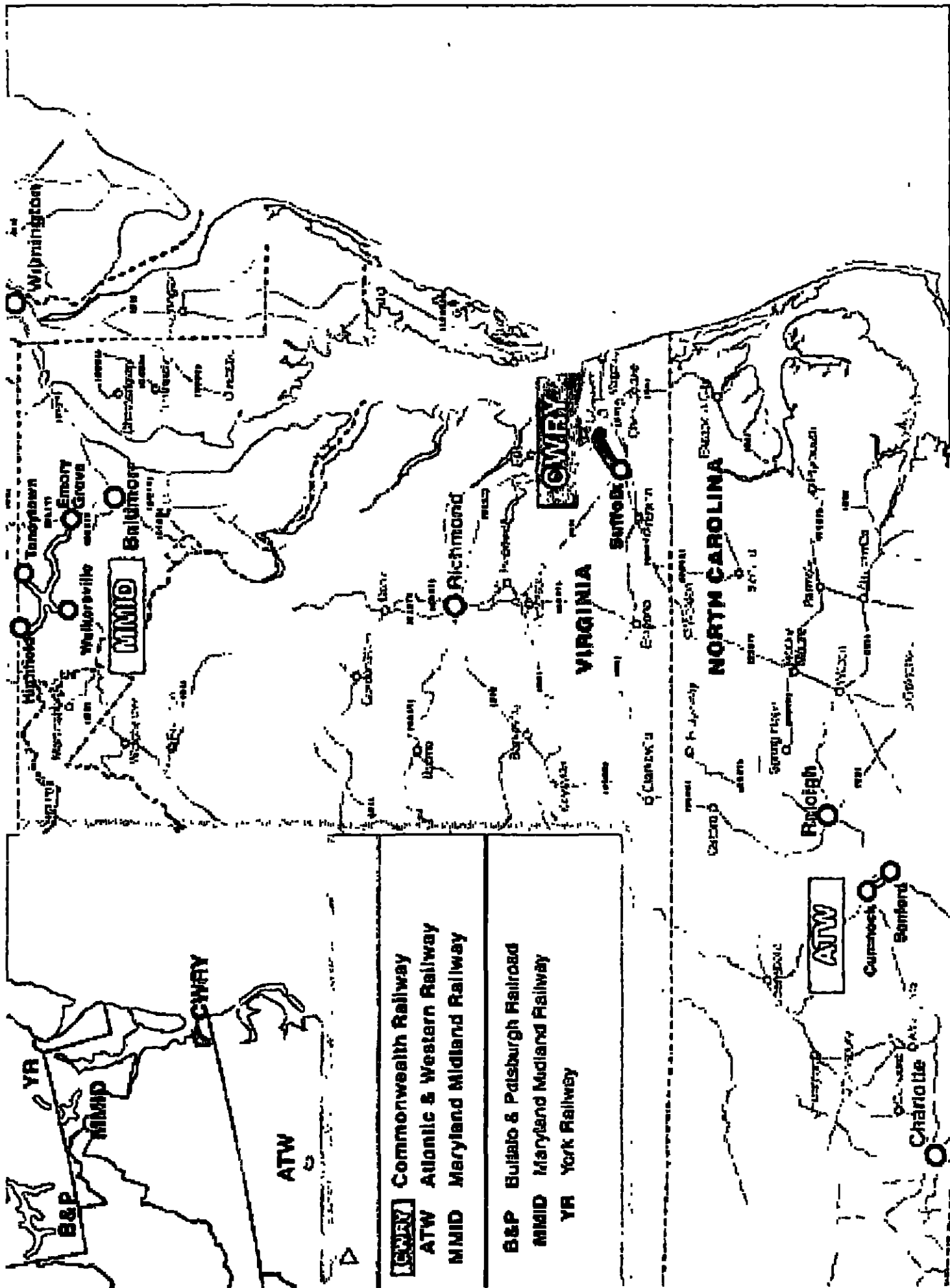
- LXVR** Luxapallila Valley Railroad
- M&B** Mudick & Bigbee Railroad

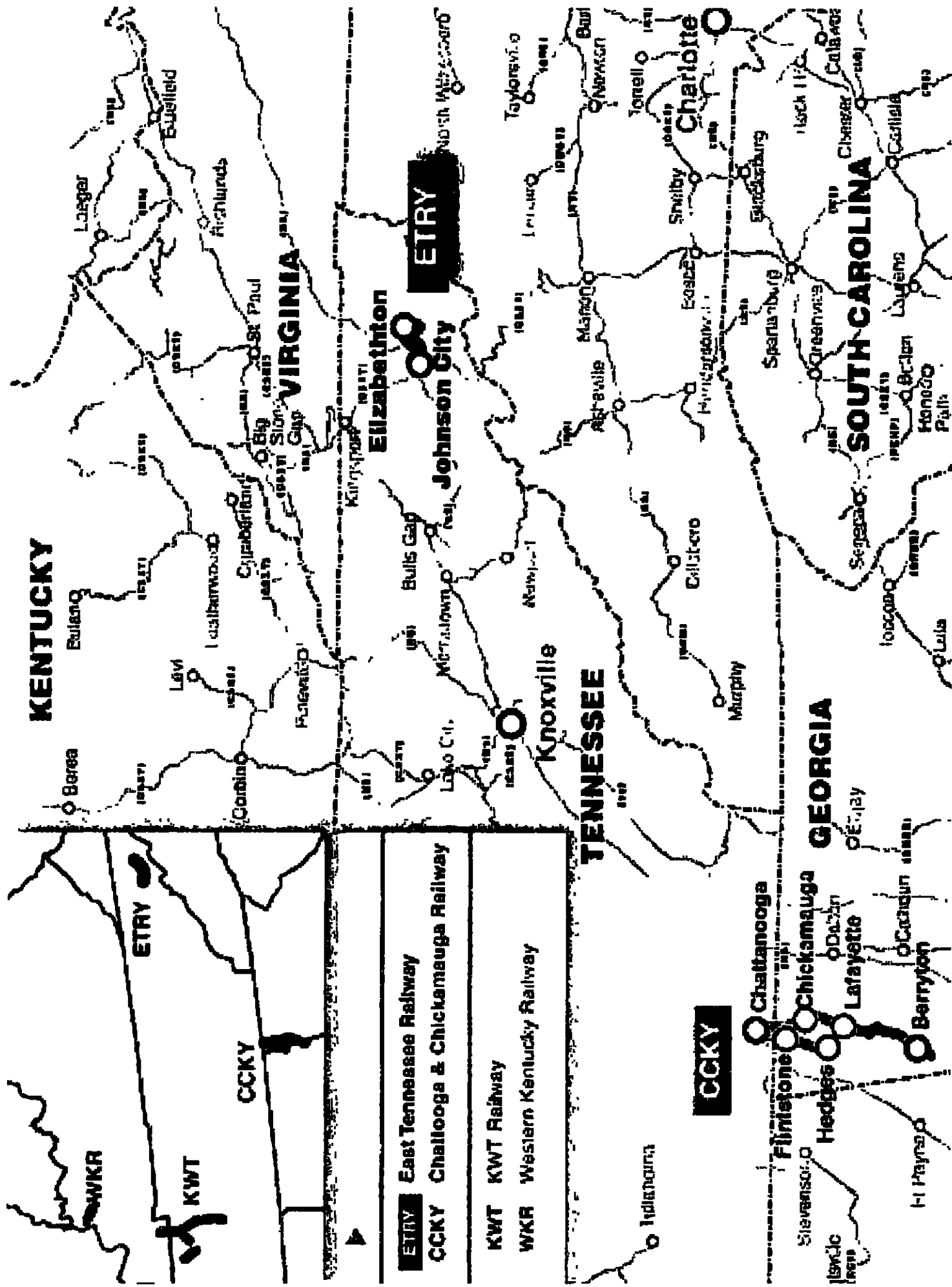












KENTUCKY

VIRGINIA

TENNESSEE

SOUTH CAROLINA

GEORGIA

ETRY East Tennessee Railway

CCKY Chattanooga & Chickamauga Railway

KWT Kentucky Western Railway

WKR Western Kentucky Railway

CCKY

ETRY

Elizabethton

Johnson City

Knoxville

Charlotte

Chattanooga

Chickamauga

Lafayette

Berryton

Seneca

Greenville

Charleston

Camden

Charleston

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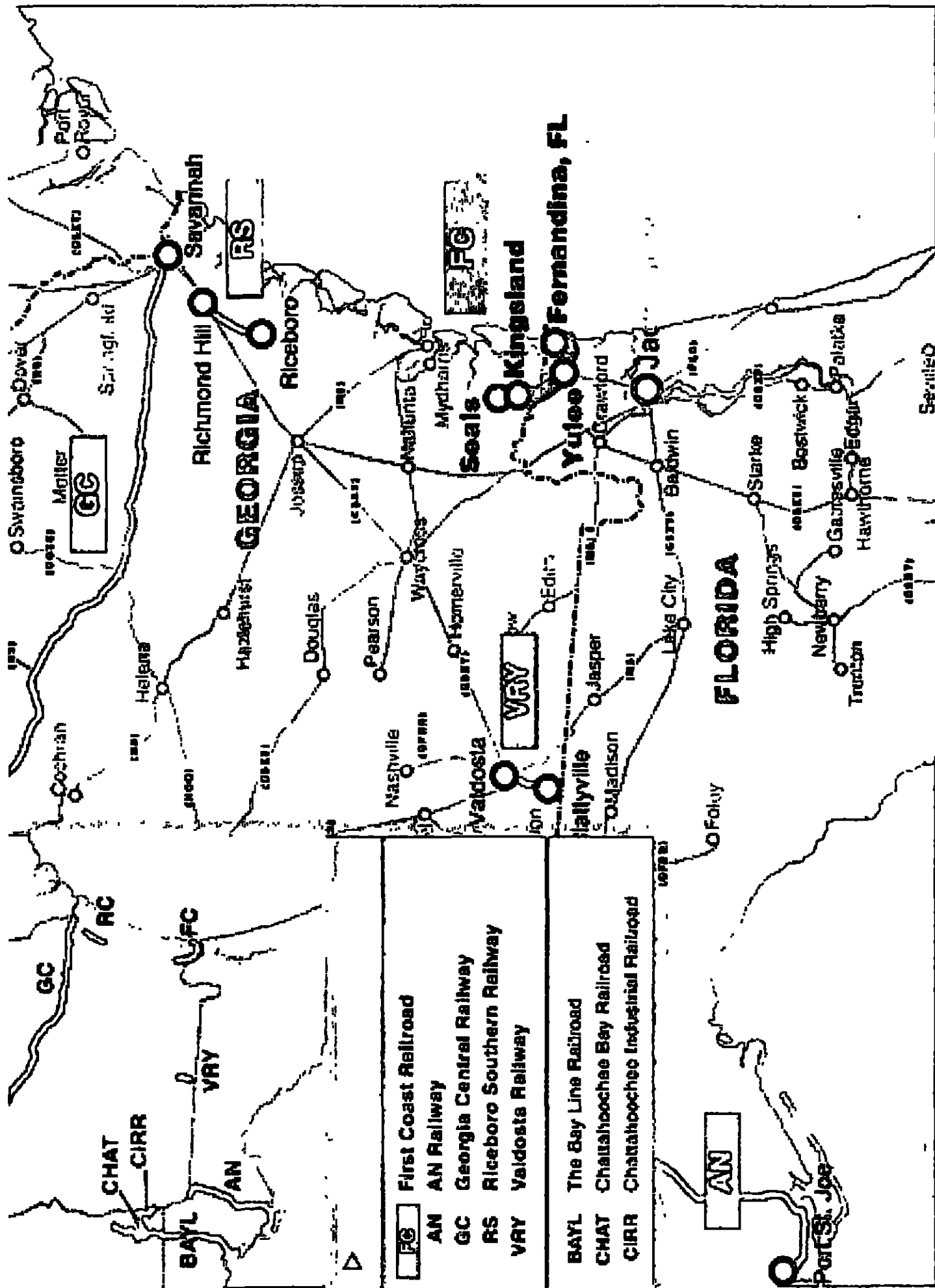
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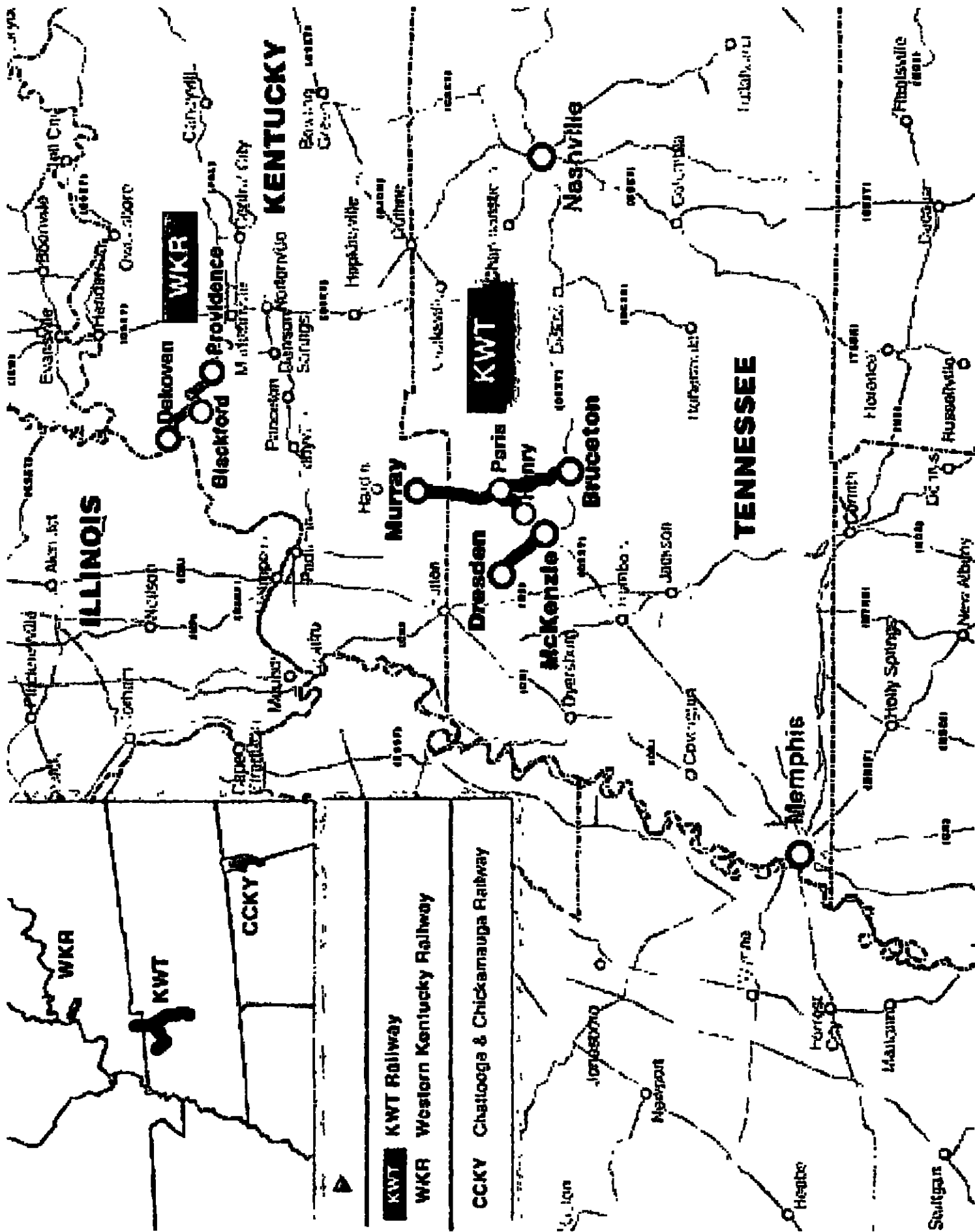
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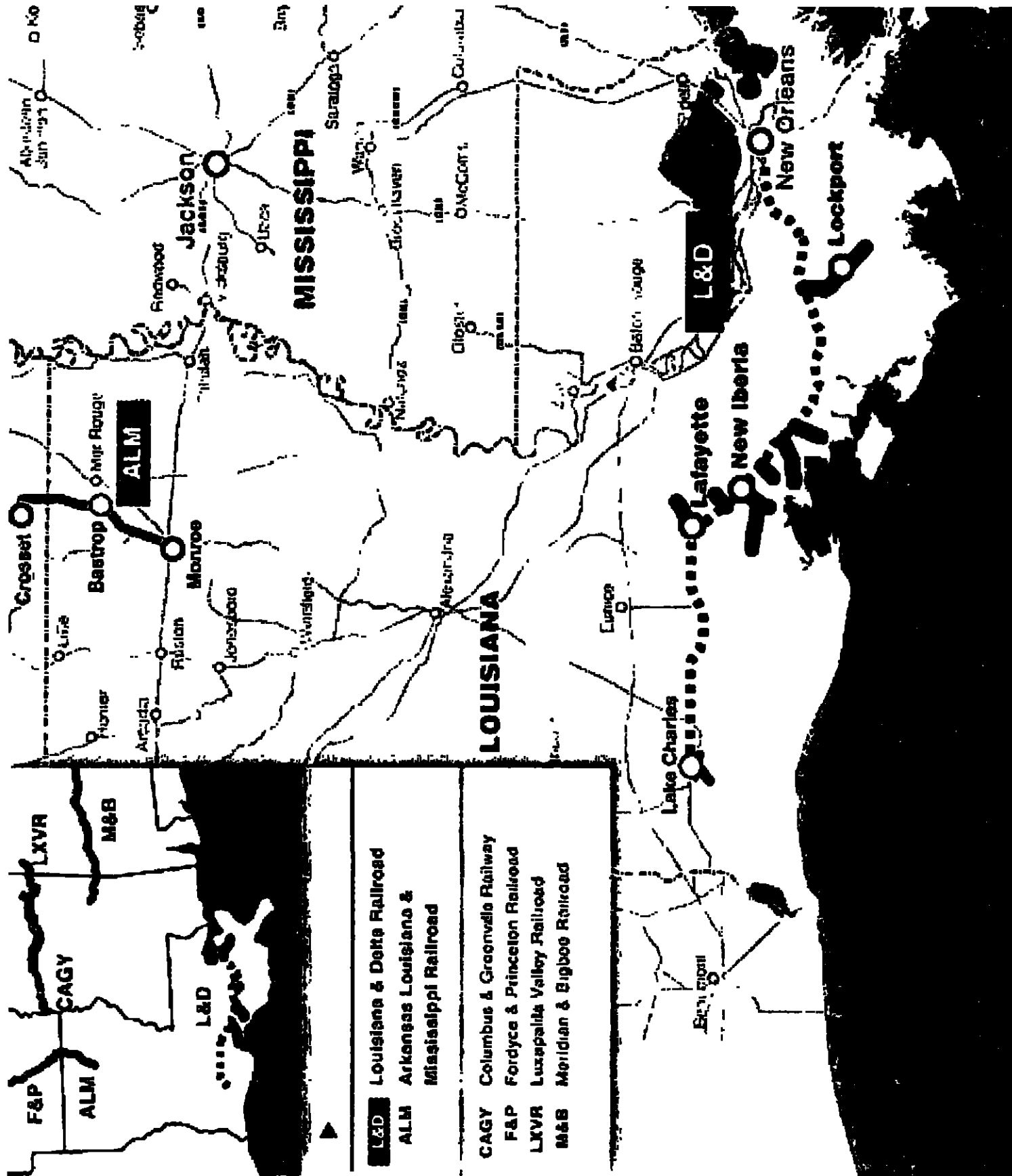
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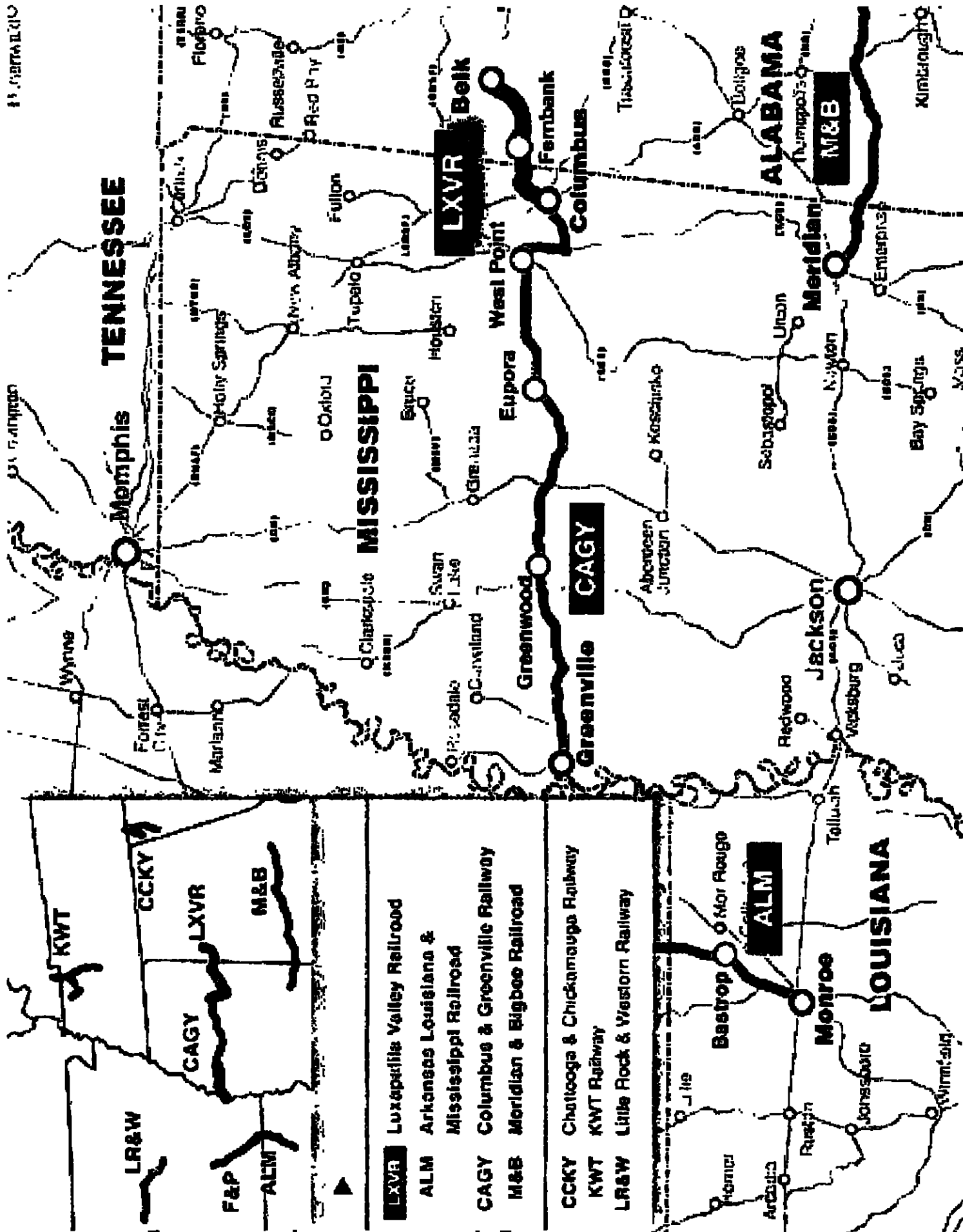
Camden

Camden









LXVR Luxapilla Valley Railroad

ALM Arkansas Louisiana & Mississippi Railroad

CAGY Columbus & Greenville Railroad

M&B Meridian & Bigbee Railroad

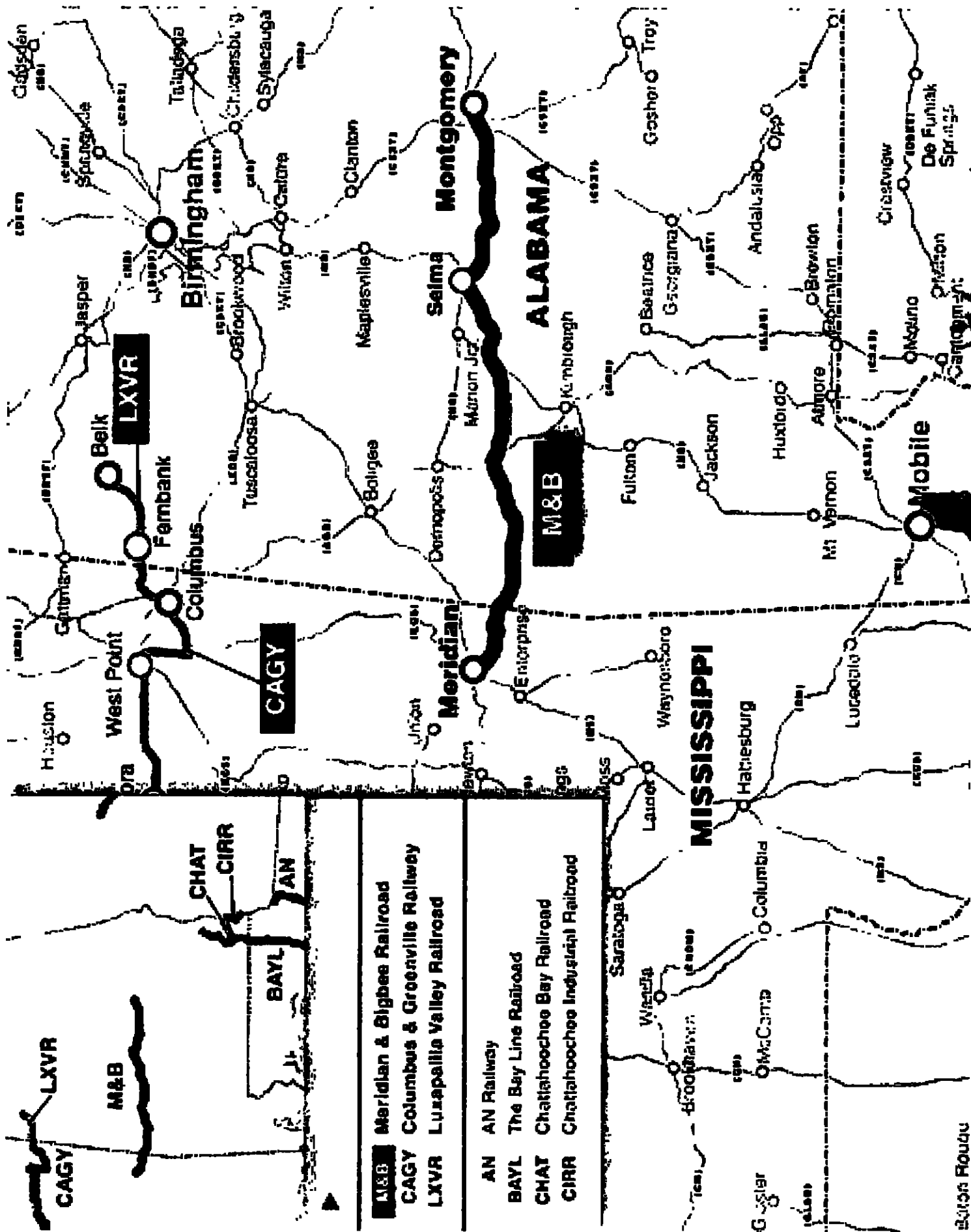
CCKY Chattanooga & Chickamauga Railway

KWT Knox, Winston & Tennessee Railway

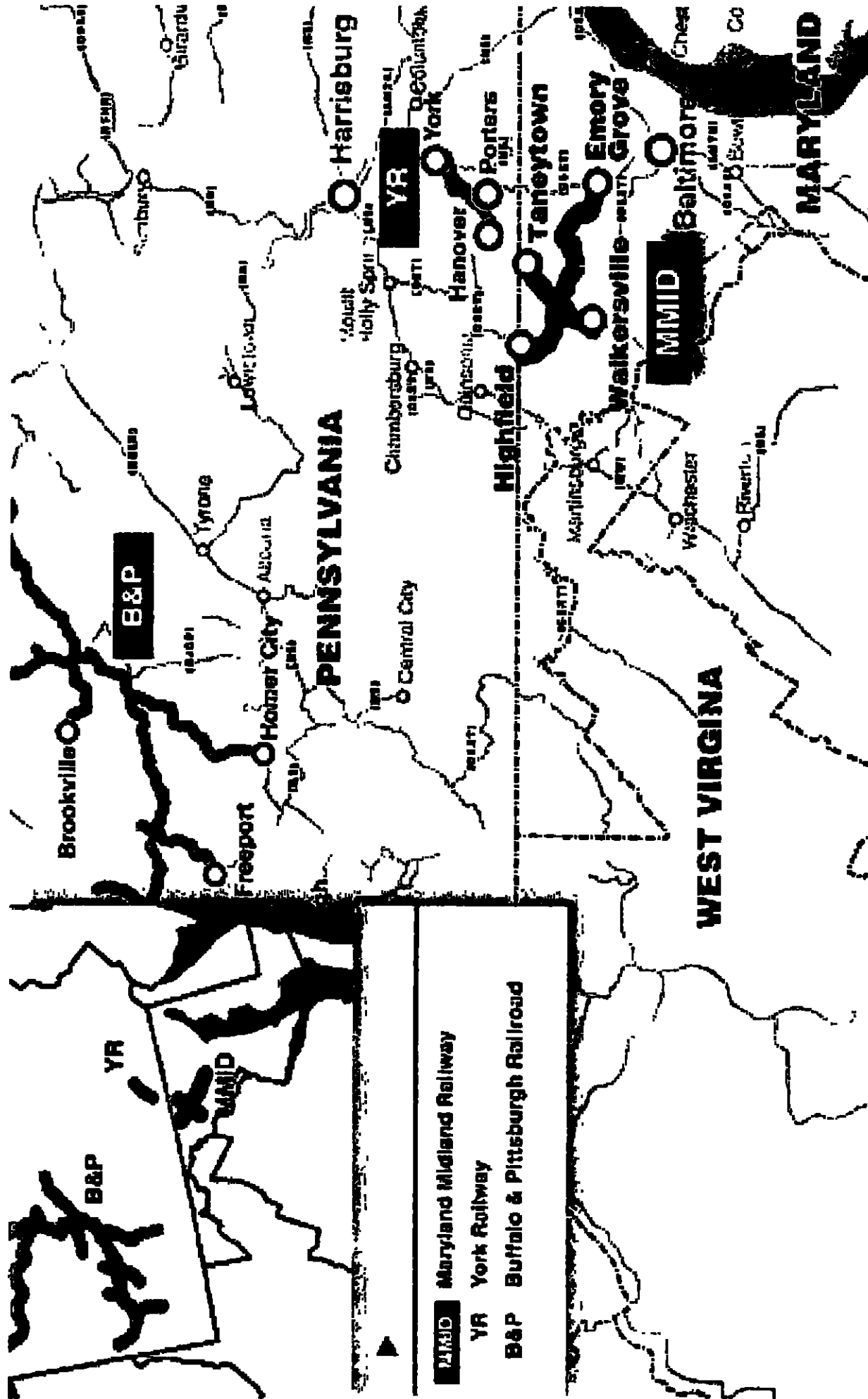
LR&W Louisiana Railway & Western Railway

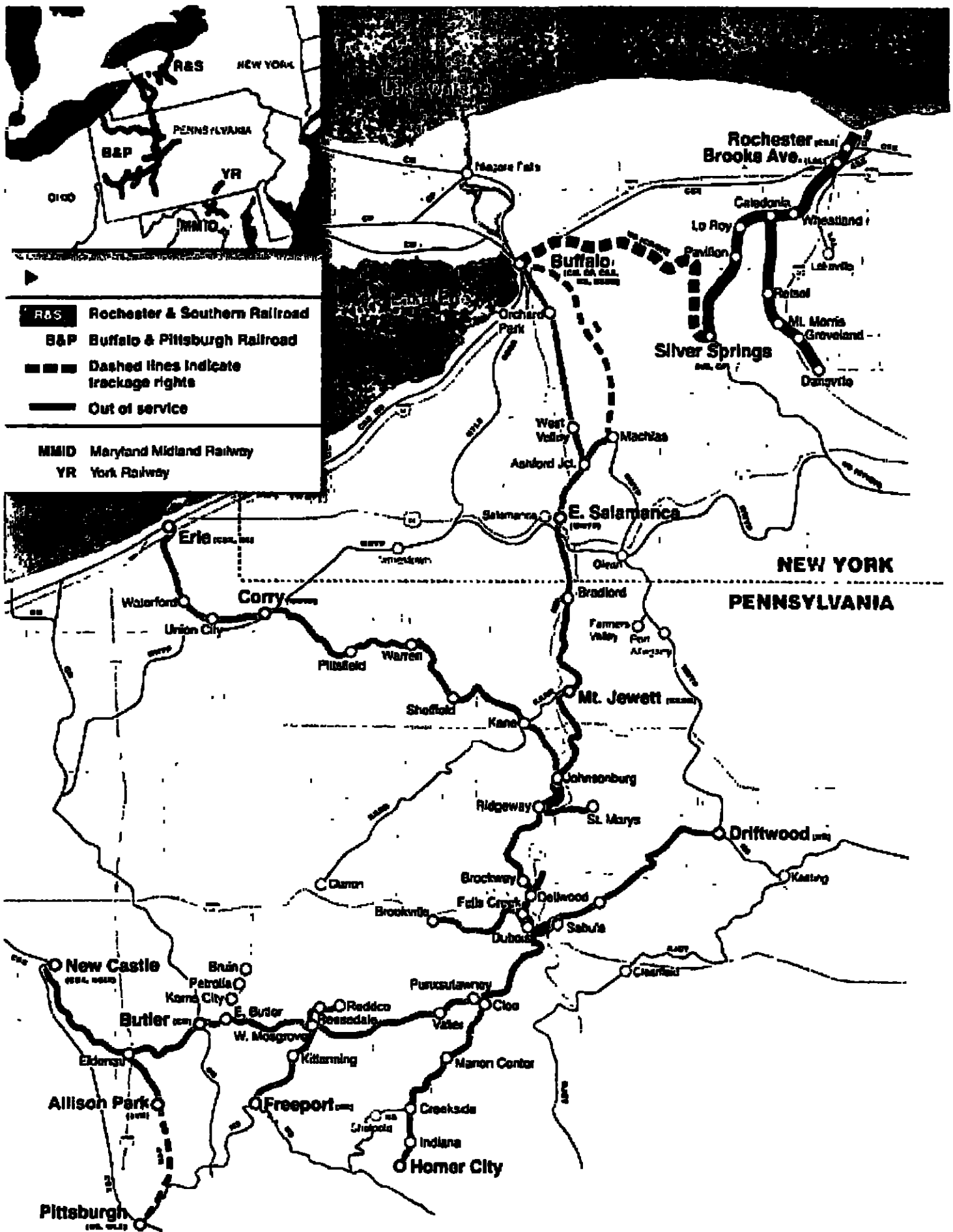
ALM

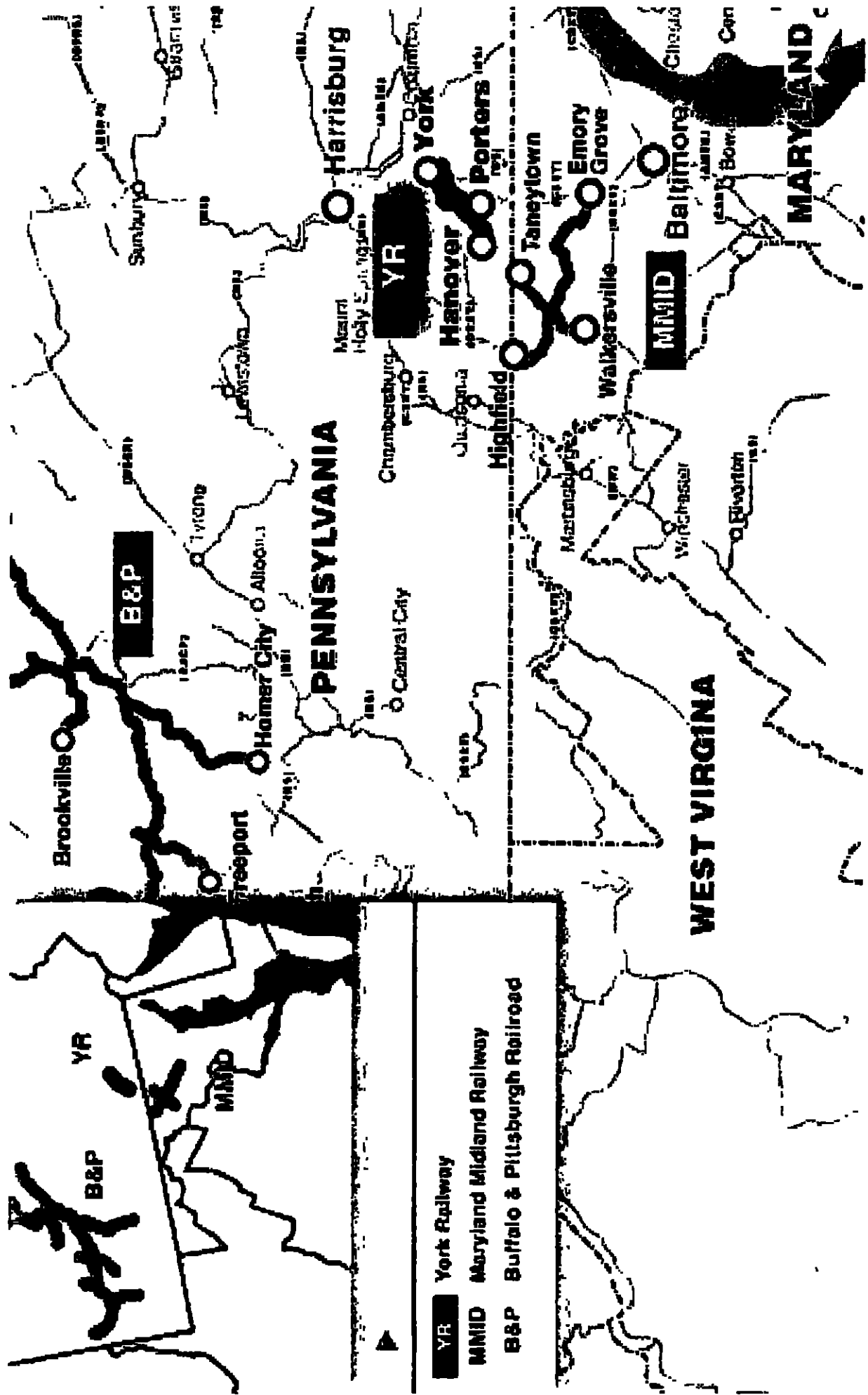
LOUISIANA



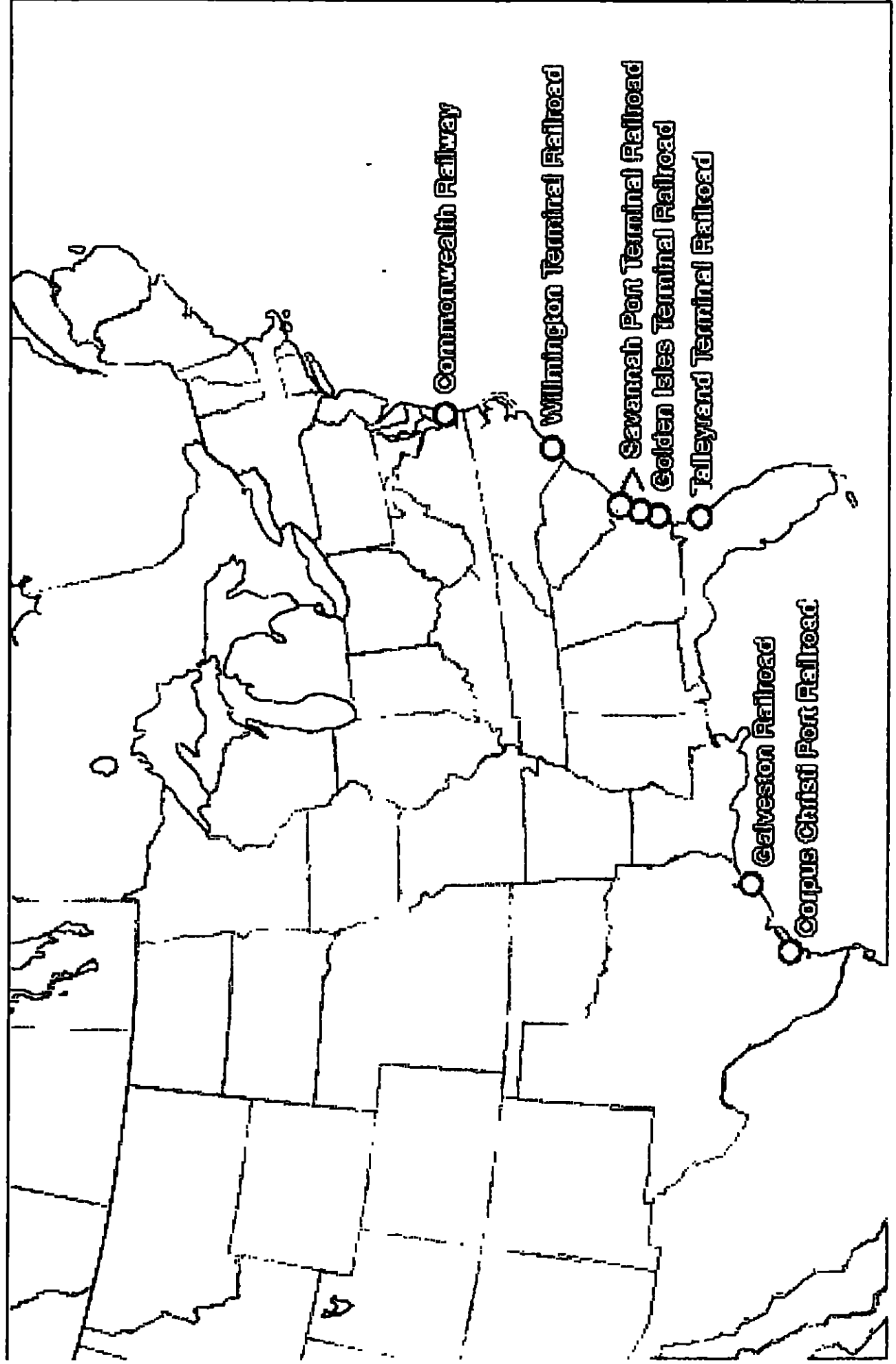
M&B	Meridian & Bigbee Railroad
CAGY	Columbus & Greenville Railway
LXVR	Luxapallie Valley Railroad
AN	AN Railway
BAYL	The Bay Line Railroad
CHAT	Chattahoochee Bay Railroad
CIRR	Chattahoochee Industrial Railroad







Genesee & Wyoming Inc. Port Railroads



2

5

EXHIBIT 2
MAPS OF GSWR'S RAIL LINES

3

EXHIBIT 3
REDACTED COPY OF PURCHASE AGREEMENT

EXECUTION COPY

STOCK PURCHASE AGREEMENT

BY AND AMONG

TERRY R. SMALL,

DAVID L. SMOOT,

GSW ACQUISITION SUB INC.

AND

GENESEE & WYOMING INC.

DATED AS OF OCTOBER 1, 2008

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STOCK PURCHASE AGREEMENT

This Stock Purchase Agreement, dated as of October 1, 2008, is by and among Terry R. Small ("Small"), David L. Smoot ("Smoot" and together with Small, the "Sellers"), GSW Acquisition Sub Inc., a Delaware corporation (the "Buyer"), and Genesee & Wyoming Inc., a Delaware corporation ("GWI"), solely for the purposes of the indemnify set forth in **Section 12.9** of this Agreement.

RECITALS

A. Sellers own in the aggregate ten (10) shares of common stock (the "Shares") of Georgia Southwestern Railroad, Inc., a Delaware corporation (the "Company"), comprising all of the issued and outstanding capital stock of the Company.

B. The Company is engaged in the business of operating short line railroads (the "Business").

C. Buyer desires to purchase from Sellers, and Sellers desire to sell to Buyer, the Shares for the consideration and on the terms set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1 **DEFINITIONS**

1.1 Defined Terms As used herein, the terms below shall have the following meanings:

"Acquisition Date" means March 1, 2002.

"Acquisition Documents" means that certain Stock Purchase Agreement, dated as of March 1, 2002, by and among Sellers and [REDACTED] pursuant to which Sellers purchased all of the issued and outstanding capital stock of the Company as provided for therein, and any documents relating to such transaction.

"Adjusted Net Working Capital" means as of any date of determination and all in accordance with GAAP, (i) [REDACTED]

[REDACTED] less (iii) [REDACTED]

"Affiliate" means a Person that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with the Person specified. For purposes of

this definition, the term **"control"** (including the terms "controlling," "controlled by" and "under common control with") of a Person means the possession, direct or indirect, of the power to (i) vote 50% or more of the voting securities or interests of such Person or (ii) direct or cause the direction of the management and policies of such Person, whether by contract or otherwise.

"Agreement" means this Stock Purchase Agreement, together with all exhibits and schedules (including the Disclosure Schedules) referenced herein, as it may be amended from time to time.

"August Adjusted Net Working Capital" means the Adjusted Net Working Capital of the Company at [REDACTED], as reflected in the calculation thereof set forth on Exhibit A.

"Balance Sheet" means the internally prepared unaudited interim balance sheet of the Company at August 31, 2008 delivered to Buyer.

"Breach" means (i) any breach, inaccuracy, failure to perform, failure to comply, failure to notify, default, or violation or (ii) any other act, omission, event, occurrence or condition the existence of which would (A) permit any Person to accelerate any monetary obligation or terminate or cancel or enforce any right or obligation, or (B) require the payment of a monetary penalty.

"Business Day" means any day except a Saturday or Sunday or other day on which commercial banks in New York, New York are required or authorized by law or executive order to close.

"Code" means the Internal Revenue Code of 1986, as it may be amended from time to time.

"Company Debt" means the indebtedness, together with all accrued interest, fees, penalties and charges, evidenced by (1) [REDACTED]

"Company Employee Benefit Plan" means any Employee Benefit Plan, whether or not in writing, (i) that is maintained or sponsored by the Company or to which the Company contributes or is required to contribute, or into which the Company has entered, or (ii) that is maintained or sponsored by an ERISA Affiliate of the Company or to which an ERISA Affiliate of the Company contributes or is required to contribute, or into which an ERISA Affiliate of the Company has entered, in each case, for the benefit of any active, retired or former employee, director, manager or consultant of the Company; provided that the term "Company Employee Benefit Plan" shall not include any Employee Benefit Plan that is maintained under applicable law by a governmental body.

"Company Qualified Plan" means any Company Employee Benefit Plan that is intended to be qualified under Section 401(a) of the Code.

"Confidentiality Agreement" means that certain letter agreement between the Company and [REDACTED]

"Consent" means any consent, authorization, approval, exemption, waiver or similar action.

"Contemplated Transactions" means the transactions contemplated by this Agreement, and any documents delivered pursuant hereto.

"Contingent Amount" means the sum of (i) [REDACTED]

"Contract" means any agreement, obligation, contract, commitment or undertaking that is legally binding upon a Person.

"Credit Support Arrangements" means arrangements in which guaranties (including guaranties of performance or payment under agreements, commitments, obligations and permits), letters of credit or other credit or credit support arrangements, including bid bonds, advance payment bonds, performance bonds, payment bonds, retention and/or warranty bonds or other bonds or similar instruments, were or are issued, entered into or otherwise put in place by any Person other than the Company to support or facilitate, or otherwise in respect of, the obligations of the Company or agreements, commitments, obligations and permits of the Company.

"DGCL" means the Delaware General Corporation Law, as amended

"Disclosure Schedules" means the schedules attached hereto and delivered by Sellers to Buyer as of the date hereof.

"Employee Benefit Plan" means any (i) "employee benefit plan" within the meaning of Section 3(3) of ERISA; (ii) any plan, program or agreement providing for or granting (A) stock options or options to purchase equity interests, (B) rights to purchase stock or equity interests, (C) rights to acquire restricted stock or equity interests, (D) equity based compensation, (E) deferred compensation, (F) bonuses, (G) incentive compensation, (H) fringe benefits, (I) sick leave, vacation or paid or unpaid leave, (J) profit sharing, (K) pension or retirement benefits, (L) medical, life, disability or accident coverage, (M) salary continuation, (N) retention benefits, (O) supplemental retirement benefits, (P) severance, termination pay or change of control benefits,

and (Q) unemployment benefits (whether or not insured); or (iii) employment agreement (but only to the extent of any provision thereof that provides benefits described in clause (ii)); provided, however, "Employee Benefit Plan" shall not include any government required programs.

"Encumbrances" means any lien, charge, adverse right, claim, mortgage, security interest or encumbrance in favor of any party.

"Environmental Claim" means any claim, action, demand, or notice by or on behalf of any Governmental Authority or Person alleging potential liability under, or a violation of, any Environmental Law, or potential liability arising out of the presence of or exposure to any Materials of Environmental Concern.

"Environmental Laws" means all Laws concerning pollution or protection of the environment or human health, including all those relating to the presence, use, production, generation, handling, transportation, treatment, storage, disposal, distribution, labeling, testing, processing, discharge, release, threatened release or cleanup of any Materials of Environmental Concern.

"Environmental Permits" means any and all permits, licenses, approvals, registrations, notifications, exemptions and any other authorization pursuant to or required under any Environmental Law.

"Environmental Report" means any report, study, assessment, audit or other similar document that addresses any issue of actual or potential noncompliance with, actual or potential liability under or cost arising out of, or actual or potential impact on business in connection with any Environmental Law or any proposed or anticipated change in or addition to Environmental Law that may affect the Company.

"Equipment and Machinery" means all the material equipment, machinery, furniture, fixtures and improvements, tooling, spare parts, supplies and vehicles (including all locomotives, cars, tractors, trailers, vans and all other transportation rolling stock) owned, leased or used by the Company

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"ERISA Affiliate" with respect to any Person means any trade or business that is a member of the same controlled group of corporations as such Person, within the meaning of Section 414(b) of the Code, that is under common control with such Person, within the meaning of Section 414(c) of the Code, that is a member of the same affiliated service group as such Person, within the meaning of Section 414(m) of the Code, or that is otherwise required to be aggregated with such Person pursuant to Section 414(o) of the Code.

"Excluded Assets" means those assets of the Company listed on Schedule 3.4 which are to be transferred by the Company to the Sellers in connection with the Contemplated Transactions pursuant to an Assignment of Excluded Assets substantially in the form set forth in Exhibit B, [REDACTED]

"Excluded Liabilities" means those liabilities associated with or arising out of the Excluded Assets or the transactions contemplated by the Acquisition Documents or as otherwise set forth on **Schedule 12.2**

"Final Adjusted Net Working Capital" means the Adjusted Net Working Capital of the Company as of the Closing Date as reflected on the Final Closing Date Statement.

"GAAP" means generally accepted accounting principles as in effect in the United States from time to time.

"Governmental Authority" means any: (i) nation, state, commonwealth, province, territory, county, municipality, district or other jurisdiction of any nature; (ii) federal, state, local, regional, municipal, foreign or other government; or (iii) governmental authority of any nature (including any governmental division, department, agency, commission, instrumentality, official, ministry, fund, foundation, center, bureau, agency, organization, unit, body and any court or other tribunal).

"Holdback Amount" means



"Indebtedness" means, with respect to any Person, (a) all indebtedness of such Person, whether or not contingent, for borrowed money and prepayment and termination costs related thereto, (b) all obligations of such Person for the deferred purchase price of property or services (including the aggregate principal amount thereof and the aggregate amount of any accrued but unpaid interest thereon), (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments and prepayment and termination costs related thereto, (d) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (e) all obligations of such Person as lessee under leases that have been or should be, in accordance with GAAP, recorded as capital leases, (f) all obligations, contingent or otherwise, of such Person under acceptance, letter of credit or similar facilities or in respect of interest rate and currency obligation swaps, hedges or similar arrangements and prepayment and termination costs related thereto, (g) all obligations of such Person to purchase, redeem, retire, defease or otherwise acquire for value any capital stock of such Person, or any warrants, rights or options to acquire such capital stock, valued, in the case of redeemable preferred stock, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends, (h) all Indebtedness of others referred to in clauses (a) through (g) above guaranteed directly or indirectly in any manner by such Person, or in effect guaranteed directly or indirectly by such Person through any agreement and (i) all Indebtedness referred to in clauses (a) through (g) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Encumbrance on property (including accounts and contract rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness.

"Information Technology" means (i) computer software, including application software, compilers and tool kits in object (or executable) code and/or (human readable) source code, and related documentation; (ii) proprietary computer programming languages and related documentation and materials; (iii) data feeds and databases; (iv) voice and data circuits, including, by way of example but not of limitation, hubs and routers; (v) telecommunications systems and services; and (vi) computer hardware and operating systems.

"Intellectual Property" means (i) patents and patent applications, including reissuances, continuations, continuations-in-part, extensions and reexaminations of such patents and patent applications; (ii) registered and unregistered trademarks, service marks, trade dress, logos, trade names and corporate names, or other identifying marks, indicators or labels, together with the goodwill associated with them and applications for, and renewals of, each of them; (iii) registered and unregistered copyrights and applications for, and renewals of, copyrights; and (iv) Internet domain names; provided, however, that "Intellectual Property" shall not include Information Technology.

"Interim Financial Statements" means (i) the Balance Sheet and (ii) the related internally prepared unaudited interim statements of income and of cash flows of the Company for the eight-month period ended [REDACTED]

"Knowledge of Buyer" means the actual knowledge of [REDACTED]

"Knowledge of Sellers" means the actual knowledge of [REDACTED]

"Law" means any federal, state, local, municipal, foreign or other law, statute, constitution, principle of common law, resolution, ordinance, code, edict, decree, rule, regulation, ruling or requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Authority.

"Leased Real Property" means the real property leased, subleased, licensed or otherwise occupied by the Company, together with, to the extent leased, subleased, licensed or otherwise by the Company, all buildings and other structures, facilities or improvements now or subsequently located thereon, and all fixtures, systems and equipment attached or appurtenant thereto.

"Litigation" means any action, suit, litigation, arbitration, proceeding (including any civil, criminal, administrative, investigative or appellate proceeding), hearing, inquiry, audit, examination, investigation commenced, brought, or conducted or any threatened claim against or affecting the Company, its assets or its directors, officers or employees in their capacities as such, heard by or before, or otherwise involving, any court or other Governmental Authority or any arbitrator or arbitration panel.

"Losses" means, in respect of any obligation to indemnify any Person pursuant to the terms of this Agreement, any and all actual out-of-pocket losses, damages, indemnities,

liabilities, obligations, judgments, settlements, awards, deficiencies, offsets, fines and penalties and any reasonable out-of-pocket costs, expenses and attorneys' fees relating to the foregoing.

[REDACTED]

[REDACTED]

[REDACTED]

"Material Adverse Effect" means with respect to any Person any development, circumstance, effect or change that, individually or in the aggregate, is or is reasonably likely to be materially adverse to the business, operations, assets, liabilities, condition (financial or otherwise), results of operations or prospects of such Person and its Subsidiaries, taken as a whole, it being understood that the impact of general industry and nationwide economic developments or changes shall not be included in the determination of whether a Material Adverse Effect has occurred to the extent (but only to the extent) that they do not disproportionately affect such Person compared with other Persons also so involved in such industry or the economy generally.

"Materials of Environmental Concern" means any gasoline or petroleum (including crude oil or any fraction thereof) or petroleum products, hazardous substances, polychlorinated biphenyls, urea-formaldehyde insulation, asbestos, molds, pollutants, contaminants, radioactivity, and any other substances of any kind, regulated pursuant to or that could give rise to liability under any Environmental Law.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] agreements governing the purchase of the Smithville to White Oak rail line segment.

"Order" means any award, citation, decision, injunction, judgment, order, ruling or verdict entered, issued, made or rendered by any court, administrative agency or other Governmental Authority or by any arbitrator.

"Organizational Documents" means (i) in respect of any corporation, its articles or certificate of incorporation and bylaws, (ii) in respect of any limited liability company, its articles or certificate of formation or organization and limited liability company or operating

agreement, and (iii) in respect of any other entity, its comparable charter and governing agreements, instruments and documents

"Owned Real Property" means the railroad rights of way and other real property or interests in real property owned by the Company, together with all buildings and other structures, facilities or improvements now or subsequently located thereon, all fixtures, systems and equipment of the Company attached or appurtenant thereto and all easements, licenses, rights and appurtenances relating to the foregoing.

"Permits" means all licenses, permits, franchises, Orders, Consents, registrations, authorizations, qualifications, certificates and filings with and under all Governmental Authorities or pursuant to any Law.

"Permitted Encumbrances" means: (i) liens for Taxes, assessments and governmental charges or levies not yet due and payable, or contested in good faith by appropriate action with appropriate reserves made, (ii) pledges or deposits to secure obligations under workers' compensation laws or similar legislation or to secure public or statutory obligations, (iii) minor survey exceptions, reciprocal easement agreements and other customary Encumbrances on title to real property, (iv) mechanics', carriers', workers', repairers' and other similar liens, (v) as to any lease, any Encumbrance affecting the interest of the lessor thereof, (vi) statutory landlords' liens and liens granted to landlords under any leases, (vii) liens arising under conditional sales contracts and equipment leases with third parties entered into in the ordinary course of business, (viii) liens in favor of [REDACTED] each as set forth on **Schedule 1.2** and (ix) other Encumbrances or imperfections on assets that are not material in amount or do not materially impair the existing use of the property of the Company.

"Person" means an individual, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, a limited liability entity, a Governmental Authority or any other entity.

"Personal Property" means all furniture, fixtures, Equipment and Machinery and other items of tangible personal property.

"[REDACTED]" [REDACTED]

"Railroad Assets" means all assets, properties and rights (including the Rail Facilities), real and personal, of the Company, but not including the Excluded Assets.

"Real Property" means land or an interest in land, including improvements to land that constitute real property under applicable Law.

"Representative" means, with respect to a particular Person, any director, officer, consultant, advisor or other representative of such Person, including legal counsel, accountants and financial advisors.

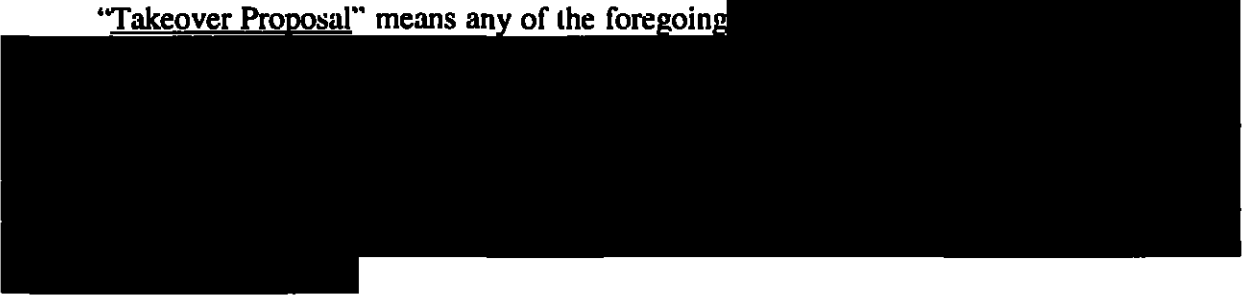
"Securities Laws" means the Securities Act of 1933, as amended, and the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Securities and Exchange Commission promulgated thereunder.

"STB" means the Surface Transportation Board.

"Straddle Period" means a taxable period that begins on or before and ends after the Closing Date

"Subsidiary" means, with respect to any Person, any corporation, limited liability company, partnership or other organization, whether incorporated or unincorporated, of which such Person or any other subsidiary of such Person beneficially owns a majority of the total combined voting or equity interests.

"Takeover Proposal" means any of the foregoing



"Tax" or "Taxes" means any net income, alternative or add-on minimum tax, gross income, gross receipts, sales, use, ad valorem, franchise, capital, profits, license, withholding, payroll, employment, excise, severance, stamp, occupation, premium, property, custom duty, transfer, documentary or other tax, governmental fee or other like assessment or charge of any kind whatsoever, together with any interest or any penalty, addition to tax or additional amount imposed by any Governmental Authority responsible for the imposition of any such tax.

"Tax Return" means any return, report, declaration, form, claim for refund, or information return or statement required or permitted to be filed with any Governmental Authority relating to Taxes, including, without limitation, estimated tax returns, income tax returns, information returns, withholding returns, employment tax returns, and any schedule or attachment thereto or any amendment thereto.

"Treasury Regulations" means the United States Tax regulations, including temporary regulations, promulgated under the Code, as the same may be amended hereafter from time to time (including corresponding provisions of succeeding United States Tax regulations).

1.2 Other Interpretive Provisions.

(a) The words "hereof," "herein," "hereto," "hereunder" and other words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provision of this Agreement unless specifically indicated as applying to a particular provision.

(b) Terms defined in the singular shall have a comparable meaning when used in the plural, and vice versa.

(c) The terms "dollars" and "\$" shall mean United States dollars.

(d) The word "including" shall mean including without limitation and the words "include" and "includes" shall have corresponding meanings. The words "or" and "any" are not exclusive.

(e) A reference to a Law includes any amendment thereto, and any modification or re-enactment thereof, any legislative provision substituted therefor and any rules, regulations and statutory instruments issued thereunder or pursuant thereto.

(f) When a reference is made in this Agreement to Sections, such reference shall be to a Section of this Agreement unless otherwise indicated.

(g) In the event that the final day of any time period provided herein based on calendar days does not fall on a Business Day, such time period shall be extended such that the final day of such period shall fall on the next Business Day.

ARTICLE 2

PURCHASE AND SALE OF SHARES

2.1 Purchase and Sale of Shares. Upon the terms and subject to the conditions contained herein, Sellers will sell, transfer and convey to Buyer, and Buyer will purchase and acquire from Sellers at the Closing the Shares, free and clear of all Encumbrances other than the restrictions on transfer pursuant to the Securities Laws and applicable state securities laws.

2.2 Closing Payment. At Closing, Buyer will pay to Sellers [REDACTED] pursuant to Sections 2.3(e) and (f), and [REDACTED] accordance with Section 3.3. The Closing Payment is subject to adjustment after Closing in accordance with Section 2.3. The Closing Payment, as finally adjusted in accordance with Section 2.3, and subject to resolution of claims, if any, against the Escrowed Amount, is referred to herein as the "Purchase Price."

2.3 Purchase Price Adjustments; Allocations.

(a) The Closing Payment shall be increased or decreased on a dollar-for-dollar basis to the extent that Final Adjusted Net Working Capital of the Company as set forth on the Final Closing Date Statement is greater than or less than the August Adjusted Net Working Capital.

(b) Within [REDACTED] after the Closing Date, Buyer shall cause to be prepared and shall deliver to the Sellers a statement setting forth the proposed Final Adjusted Net Working Capital (the "Final Adjusted Net Working Capital Statement"). If the Closing Date does not occur as of a month's end, then the Final Adjusted Net Working Capital shall include an appropriate proration for the month during which the Closing Date occurs for any items typically accrued in accordance with GAAP for a full monthly period. The Final Adjusted Net Working Capital Statement shall be prepared in accordance with GAAP in a manner consistent with calculation of the August Adjusted Net Working Capital and, except as specifically provided herein in the definition of Adjusted Net Working Capital, without any adjustments applicable solely as a result of the acquisition of the Company on the Closing Date.

(c) If the Sellers dispute the Final Adjusted Net Working Capital Statement (either as to content or manner of preparation), then the Sellers shall, within fifteen (15) days following receipt of such statement from Buyer, deliver a written notice to Buyer of such dispute setting forth in reasonable detail the basis for that dispute. If the Sellers do not so notify Buyer of a dispute within such [REDACTED], then the Final Adjusted Net Working Capital Statement shall be deemed to be the Final Closing Date Statement and the Final Adjusted Net Working Capital reflected therein shall be deemed final, conclusive and binding on the parties. In the event the Sellers deliver a notification of a dispute, Buyer and the Sellers shall negotiate in good faith to resolve such dispute; provided, however, that if Buyer and the Sellers fail to resolve such dispute [REDACTED] after notification of the dispute, then Buyer and the Sellers shall promptly (but in no event later than [REDACTED]) engage a mutually agreed upon independent nationally recognized accounting firm which firm shall not have or within three years prior to the Closing had any relationship with Buyer, the Sellers or the Company (the "Accounting Expert") to resolve such dispute. Buyer and the Sellers shall have the opportunity to provide written submissions and oral presentations relating to whether the Final Adjusted Net Working Capital Statement has been calculated properly, which written submissions shall be provided to the Accounting Expert, if at all, no later than [REDACTED] after the date of engagement of the Accounting Expert. Such submissions and presentations shall be limited solely to the disputed items, which shall be the only items reviewed by the Accounting Expert. The Accounting Expert shall deliver a written report resolving only the disputed matters relating to calculation of the Final Adjusted Net Working Capital, and setting forth the basis for such resolution within [REDACTED] after Buyer and Seller have submitted in writing and/or made oral presentations (or have had the opportunity to submit in writing and/or present orally but have not submitted or presented orally) their positions as to the disputed items. The determination of the Final Adjusted Net Working Capital as agreed by Buyer and the Sellers following a notice of dispute under this Section 2.3(c) or as made by the Accounting Expert after review and resolution of the disputed items shall be set forth in a statement either agreed to by the parties or as determined by the Accounting Expert and shall constitute the "Final Closing Date Statement" and will be final, conclusive and binding on the parties. Buyer and the Sellers shall each be responsible for one-half of the fees and expenses of the Accounting Expert

(d) For purposes of complying with the terms set forth in this Section, the parties shall cooperate with and make available to the other parties and their respective Representatives all information, records, data and working papers, and shall permit access to

their facilities and personnel, as may be reasonably required in connection with the preparation and analysis of the Final Adjusted Net Working Capital and the resolution of any disputes thereunder.

(e) If the Final Adjusted Net Working Capital is greater than the August Adjusted Net Working Capital, Buyer shall pay to Sellers the amount of such excess and Buyer shall release the Holdback Amount. Buyer shall make any such payment within five (5) Business Days of receiving from Sellers a written designation of the appropriate account or accounts, and any appropriate breakdown of such payment, to which such payment shall be made.

(f) If the Final Adjusted Net Working Capital is less than the August Adjusted Net Working Capital, Sellers shall pay to Buyer the amount of such deficiency, which (i) Sellers shall pay within five (5) Business Days of receiving from Buyer a written designation of the appropriate account or (ii) Buyer may satisfy by making a claim against the Holdback Amount. The excess, if any, of the Holdback Amount over such deficiency shall be released once the Buyer's claim is satisfied. If Buyer's claim is in excess of the Holdback Amount, Sellers shall be jointly and severally liable for any such excess.

2.4 Escrow Account Buyers will deposit [REDACTED] (the "Escrowed Amount") in an escrow account (the "Escrow Account") for a period ending [REDACTED] the Closing Date (the "Escrow Period"). The Escrowed Amount shall be available to secure the due performance and payment of Sellers' indemnification obligations pursuant to **Article 12** [REDACTED]

[REDACTED] all as more specifically provided for in the Escrow Agreement. Buyer and Sellers agree that SunTrust Bank shall serve as escrow agent (the "Escrow Agent") in connection with the Escrow Account and the Escrowed Amount shall be invested as provided in the Escrow Agreement. The Escrowed Amount, plus or minus any gains or losses from investments thereon, shall be paid in accordance with the terms of the Escrow Agreement substantially in the form attached hereto as **Exhibit C** (with such changes, if any, as the Escrow Agent may reasonably request) (the "Escrow Agreement"). The Escrow Agreement will provide that all amounts in escrow not otherwise subject to a claim for indemnification shall be released from the Escrow Account and paid to Sellers at the expiration of the Escrow Period in accordance with the Escrow Agreement

ARTICLE 3 **CLOSING**

3.1 Time and Place of Closing. Subject to the receipt of the deliveries specified in **Sections 3.2 and 3.3** below, the closing of the Contemplated Transactions (the "Closing") shall take place either by mail, including by electronic means, or at the offices of K&L Gates LLP, 1601 K Street, NW, Washington, DC 20006, as the parties shall agree, and

shall be held on or before October 1, 2008 (the "Closing Date") and at such time as the parties may agree.

3.2 Deliveries by Sellers. At the Closing, Sellers shall deliver, or cause to be delivered, the following to Buyer

(a) certificates representing the Shares, or other satisfactory evidence of ownership of the Shares, together with appropriate instruments of transfer;

(b) the certificate(s) contemplated by **Article 10** hereof;

(c) the Escrow Agreement, duly executed by the Sellers;

(d) the duly executed resignations specified in **Section 6.6**;

(e) a certificate of good standing issued by the Secretary of State of the State of Delaware no earlier than five (5) Business Days before the Closing Date;

(f) a certificate of Sellers, with incumbency certificate, approving the execution and delivery of this Agreement and the Contemplated Transactions;

(g) a FIRPTA certificate, duly executed by each of the Sellers, substantially in the form attached hereto as **Exhibit D**.

(h) all documents, instruments and writings required to transfer the Excluded Assets set forth in **Schedule 3.4** from the Company to Sellers;

(i) a Letter Agreement, duly executed by Small, substantially in the form attached hereto as **Exhibit E**;

(j) a Letter Agreement, duly executed by Smoot, substantially in the form attached hereto as **Exhibit E**; and

(k) all other documents, instruments and writings required to be delivered by Sellers at or prior to the Closing Date pursuant to Sellers' obligations as set forth in this Agreement.

3.3 Deliveries by Buyer. At the Closing, Buyer shall deliver the following to Sellers:

(a) The Closing Payment by wire transfer in immediately available funds to an account or accounts designated in writing by Sellers no later than two (2) Business Days before the Closing Date, with any appropriate breakdown of such payment specified;

(b) the certificate(s) contemplated by **Article 9** hereof;

(c) the Escrow Agreement, duly executed by Buyer;

(d) the Letter Agreements, duly executed by Buyer, and

(e) all other documents, instruments and writings required to be delivered by Buyer at or prior to the Closing Date pursuant to Buyer's obligations as set forth in this Agreement.

ARTICLE 4

GENERAL REPRESENTATIONS AND WARRANTIES OF SELLERS

Each Seller, jointly and severally, hereby makes the following representations and warranties to Buyer:

4.1 Organization of the Company. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. The Company has full corporate power and authority to conduct its business and to own, lease and operate its properties and assets. **Schedule 4.1** sets forth each jurisdiction in which the Company is duly qualified or otherwise authorized in all material respects as a foreign entity to conduct its business. The Company is in good standing in each jurisdiction where such authorization or qualification is required for the conduct of its business or the ownership of its assets. True and complete copies of the Organizational Documents of the Company as in effect on the date hereof have been previously made available to Buyer. The Company is not in violation of any of the provisions of its Organizational Documents.

4.2 Capitalization.

(a) The Shares represent all of the issued and outstanding capital stock of the Company. The instruments listed on **Schedule 4.2** represent all of the Shares. The Shares have been duly authorized and validly issued and are fully paid and nonassessable. There are no Contracts relating to the issuance, sale or transfer of any shares of capital stock of the Company or other securities of the Company, other than as contemplated herein. Other than as contemplated herein, no Person holds or is entitled to obtain any shares of capital stock of the Company, or other option, warrant or other right to purchase or obtain shares of capital stock of the Company. Sellers are the sole record and beneficial owners of the Shares, free and clear of all Encumbrances, other than pursuant to the Securities Laws and applicable state securities laws.

(b) The Company has no Subsidiaries.

(c) The Company does not own, or have any Contract to acquire, any equity securities or other securities of any Person or any direct or indirect equity interest in any other business.

4.3 Authorization. Sellers have full capacity, power and authority to execute and deliver this Agreement and to consummate the Contemplated Transactions. This Agreement has been duly executed and delivered by Sellers and, assuming the due execution of this Agreement by Buyer, is a valid and binding obligation of Sellers, enforceable against Sellers in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency, receivership, conservatorship, reorganization, moratorium, fraudulent conveyance or other similar laws now or hereafter in effect relating to or affecting the rights and remedies of creditors generally, and general principles of equity (whether considered in a proceeding at law

or in equity) and the discretion of the court before which any proceeding therefor may be brought.

4.4 Financial Statements; Books and Records.

(a) Sellers have delivered to [REDACTED]

[REDACTED] The Financial Statements fairly present, in all material respects, the financial condition and the results of operations of the Company as at the respective dates thereof and for the periods covered thereby, all in accordance with the same accounting principles consistently applied by the Company except for such adjustments and exceptions reflected on the Financial Statements or as set forth on Schedule 4.4(a).

(b) The books of account and minute books of the Company, which have been made available to Buyer, are true, accurate and complete in all material respects from the Acquisition Date. The minute books of the Company contain accurate records of all actions of the stockholders and the board of directors of the Company since the Acquisition Date. To the Knowledge of Sellers, the books of account and minute books of the Company are true, accurate and complete in all material respects prior to the Acquisition Date and contain accurate records of all actions of the stockholders and board of directors of the Company prior to the Acquisition Date.

(c) The Company maintains internal controls over financial reporting designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes, including policies and procedures that (i) pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the Company, (ii) are designed to provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements, and that receipts and expenditures of the Company are being made only in accordance with authorizations of the board of directors of the Company and (iii) are designed to provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the assets of the Company that could have a material effect on the Financial Statements. To the Knowledge of Sellers, there are no material weaknesses in the Company's internal controls.

(d) Schedule 4.4(d) describes, and Sellers have made available to Buyer true, accurate and complete copies of, all documents governing all "off balance sheet arrangements" (as defined in Item 303(a)(4)(ii) of Regulation S-K promulgated under the Securities Act of 1933, as amended).

4.5 Property.

(a) Schedule 4.5(a) sets forth a list of all material Owned Real Property. The Company has good and valid title to its Owned Real Property free and clear of all Encumbrances other than Permitted Encumbrances.

(b) Schedule 4.5(b) sets forth a list of all Leased Real Property used or occupied by the Company pursuant to written or verbal agreements (the "Real Property Leases"). [REDACTED]

[REDACTED] Each Real Property Lease constitutes the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms except as such enforcement may be limited by bankruptcy, insolvency, receivership, conservatorship, reorganization, moratorium, fraudulent conveyance or other similar laws now or hereafter in effect relating to or affecting the rights and remedies of creditors generally, and general principles of equity (whether considered in a proceeding at law or in equity) and the discretion of the court before which any proceeding therefor may be brought. All rent and other sums and charges payable by the Company under each Real Property Lease are current. [REDACTED]

[REDACTED] No notice of default or termination under any Real Property Lease has been received by the Company or Sellers and no event has occurred which with or without notice or lapse of time, or both, would constitute a breach or default that would interfere in any material respect with the conduct of the Business of the Company as currently conducted, or permit termination, modification, or acceleration under any Real Property Lease.

(c) Other than as set forth in Schedule 4.5(c), the Company has sufficient property interests in its Real Property to operate its Business as it is operated at the date of this Agreement.

(d) Except as set forth in Schedule 4.5(d), the Company has not entered into any Contract, commitment, lease or other agreement to sell, convey, assign or otherwise transfer any of the Real Property on which the Railroad Assets are located.

(e) [REDACTED]

(f) Schedule 4.5(f) sets forth a list of all material Personal Property owned or leased by the Company, and the Company has good, valid and marketable title or valid leasehold interest to all material Personal Property owned or leased by it, free and clear of all Encumbrances other than Permitted Encumbrances.

(g) All material tangible material Personal Property of the Company is in good working order, normal wear and tear excepted, and in all material respects is suitable for the purposes for which it is being used.

(h) The Company owns (or in the case of leased or licensed assets or properties, has a valid right to use) all of the assets and properties of any kind or nature necessary to permit Buyer to operate the Business of the Company from and after the Closing Date in the same manner and to the same extent, in all material respects, as the Business is currently conducted by the Company.

4.6 Rail Facilities. The Company holds sufficient property interests and operating rights in and to the rail lines depicted on the maps referenced in Schedule 4.6, and to the adjacent yards, spur tracks and other rail facility appurtenances thereto (collectively, the "Rail Facilities") to permit the Company to conduct rail freight operations on and over the Rail Facilities as such operations are conducted by the Company on the date of this Agreement. The rail lines that constitute a part of the Rail Facilities are contiguous to each other, with no gaps or strips in the rail lines, from one end point of each line to the other end point of each such line. The physical condition of the Rail Facilities is sufficient in all material respects to operate the Business as currently operated. Furthermore, the Railroad Assets, as of the date of this Agreement, comprise the assets necessary, in all material respects, to operate the Business as currently operated and consistent with past practice. The Company is not a party to any Contract or subject to any Order that would deprive it of the ability to operate substantially over the Rail Facilities on the date of this Agreement, or that would deprive the Company of the ability to (i) serve directly all customers that may be served directly by it on the date of this Agreement or (ii) interchange with the carriers listed on Schedule 4.6 at or near the locations listed on Schedule 4.6.

[REDACTED]

4.7 Environmental Matters.

(a) Except as set forth on Schedule 4.7:

(1) the Company [REDACTED] in compliance in all material respects with all, and has not violated in any material respect any, applicable Environmental Laws and prior to the Acquisition Date, to the Knowledge of Sellers, the Company had been in compliance in all material respects with all, and had not violated in any material respect any, applicable Environmental Laws;

(2) [REDACTED] the Company has obtained all, and has not violated in any material respect the terms and conditions of any, material Environmental Permits [REDACTED] the Company had obtained all, and had not violated in any material

respect the terms and conditions of any, material Environmental Permits required by applicable Environmental Laws;

[REDACTED]

(4) [REDACTED] the Company has not received notice of any existing or pending Environmental Claim, [REDACTED] no Environmental Claim is threatened and no environmental issues exist, and to the Knowledge of Sellers, there are no circumstances, conditions or events that could reasonably be expected to result in an Environmental Claim against the Company that would materially and adversely affect the Company;

(5) there are [REDACTED] no Materials of Environmental Concern, or other conditions, at, on, under or emanating from any property currently or, [REDACTED] at any other location (including any location used for the storage, disposal, recycling or other handling of any Materials of Environmental Concern), that could reasonably be expected to give rise to any material liability of, or result in material cost to, the Company arising under or relating to any Environmental Law;

(6) [REDACTED] the Company has not received any written request for information, nor has it been notified that it is a potentially responsible party, under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 or any similar state Law with respect to any on-site or off-site location for which liability has not been finally resolved, and prior to the Acquisition Date [REDACTED] nor was it notified that it is a potentially responsible party, under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 or any similar state Law with respect to any on-site or off-site location for which liability has not been finally resolved; and

(7) [REDACTED] the Company has not assumed or retained any obligation under any Environmental Law or concerning any Materials of Environmental Concern that could reasonably be expected to be material to the Company and prior to the Acquisition Date [REDACTED] the Company had not assumed or retained any obligation under any Environmental Law or concerning any Materials of Environmental Concern that could reasonably be expected to be material to the Company.

(b) The Sellers have delivered to Buyer true, accurate and complete copies of all Environmental Reports containing material information that is in the possession or control of the Company.

4.8 Insurance.

(a) **Schedule 4.8(a)** sets forth a true, accurate and complete list of all policies of property, casualty, liability and other insurance (other than any insurance policies relating to the Employee Benefit Plans) maintained by the Company, including the applicable deductibles thereunder (collectively, the "**Policies**") and a claims history since January 1, 2005. Such Policies cover against the risks normally insured against by entities in the same or similar lines of business as the Company in coverage amounts typically and reasonably carried by such entities.

(b) All Policies are valid and in full force and effect, and no written notice of cancellation or termination has been received by the Company with respect to any such Policy. Coverage for the Company under the Policies will continue until the Closing, subject to the payment by the Company of the applicable premiums. All premiums due thereunder have been paid. The Company is not in default under any provisions of the Policies, and there is no claim by the Company pending under any of the Policies as to which coverage has been questioned, denied or disputed by the underwriters or issuers of such Policies.

4.9 Contracts and Commitments

(a) **Schedule 4.9(a)** sets forth a true, accurate and complete list of the following, to the extent not duplicative of the information contained in **Schedules 4.15(a), (b)** and **(c)** relating to Intellectual Property and Information Technology, and **Schedule 4.17(a)** relating to employment agreements:

(1) all Contracts to which the Company is a party, or by which any of the assets and properties of the Company is bound, which either (A) involve an obligation of the Company to make payments or purchase any goods or services in any year in excess of [REDACTED] or (B) involve performance of services or delivery of goods or services or payments to the Company in any year in excess [REDACTED]

(2) all Contracts that are not terminable on notice of 60 days or less or without the payment of a termination fee or penalty;

(3) all equipment leases to which the Company, or by which any of the assets or properties of the Company is bound that involve a lease or installment payment in any one-year period in excess of [REDACTED]

(4) all collective bargaining or other related labor agreements to which the Company is a party;

(5) all agreements evidencing Indebtedness of the Company to any Person or evidencing guaranties or indemnity of Indebtedness of the Company;

(6) any Contract with any officer, director or stockholder of the Company or any entity in which any officer, director or stockholder of the Company has a five percent (5%) or more direct or indirect interest;

(7) any Contract that relates to railroad tariffs that (A) provides for scheduled, fixed or guaranteed annual payments, or is reasonably expected to result in payments

to the Company in fiscal year 2008, in excess of [REDACTED]
[REDACTED] in any one-year period;

(8) all agreements that purport to limit the ability of the Company to compete in any business or territory or during any time period; and

(9) any other Contract to which the Company is a party which was not entered into in the ordinary course of business and which is not otherwise set forth on **Schedule 4.9(a)** but is material to the Business.

(each, a "**Material Contract**").

(b) True, accurate and complete copies of all the Material Contracts listed on **Schedule 4.9(a)**, together with all amendments and supplements thereto and all waivers of any of the terms thereof, have been made available to Buyer.

(c) **Schedule 4.9(a)** sets forth for each Material Contract all current annual payments, rentals, credits, reserve amounts, maintenance accounts and similar obligation amounts.

(d) To the Knowledge of Sellers, neither Sellers nor the Company is a party to a Contract that limits the Company with respect to future interchange with a third-party connecting carrier, whether by outright prohibition, per-car penalty, adjustment in a purchase price or rental, positive economic inducement or other means, or that otherwise constitutes an "interchange commitment" as defined in 49 C.F.R. 1180.4(g)(4).

(e) Each Material Contract is legal, valid, binding, enforceable, and in full force and effect and will continue to be legal, valid, binding, enforceable, and in full force and effect without any modification that would interfere in any material respect with the conduct of the Business as currently conducted and immediately following the consummation of the Contemplated Transactions, including but not limited to that Stock Purchase Agreement between Sellers and [REDACTED] dated March 1, 2002. In particular, Sellers represent and warrant that the unwind provision of the Stock Purchase Agreement has not been triggered because the required sale of certain property to the Georgia Department of Transportation was completed and closed.

(f) Neither the Company, nor to the Knowledge of Sellers, any other party to any Material Contract, is in breach or default in any material respect in complying with any provisions thereof and no event has occurred which with or without notice or lapse of time, or both, would constitute a breach or default that would interfere in any material respect with the conduct of the Business as currently conducted, or permit termination, modification, or acceleration under any Material Contract since the Acquisition Date, and to the Knowledge of Sellers, no such breach, default or event occurred prior to the Acquisition Date. The Company has not received any written notice of the intention of any party to terminate any Material Contract, whether as a termination for convenience or for default of the Company thereunder.

4.10 Absence of Undisclosed Liabilities; Indebtedness.

(a) Except as set forth in **Schedule 4.10(a)**, the Company has no material liability, except (i) as disclosed, reflected or reserved against on the Balance Sheet, (ii) for liabilities incurred in the ordinary course of business consistent with past practice since the date of the Balance Sheet or (iii) incurred in connection with this Agreement or the Contemplated Transactions.

(b) Except for the Company Debt as reflected in the Balance Sheet, the Company has no Indebtedness, including any payment obligations related to Equipment and Machinery. Except as set forth on **Schedule 4.10(b)**, the Company is not in default with respect to any outstanding Indebtedness or any instrument relating thereto. Except as set forth on **Schedule 4.10(b)**, no such Indebtedness or any instrument or agreement relating thereto purports to limit the operation of the Business. True, accurate and complete copies of all instruments and agreements (including all amendments, supplements, waivers and consents) relating to any Indebtedness of the Company have been made available to Buyer

(c) Except as set forth in **Schedule 4.10(c)**, there are no Credit Support Arrangements outstanding with respect to the Company or any of its respective rights, assets or businesses.

4.11 No Conflict or Violation. Except as set forth in **Schedule 4.11**, neither the execution and delivery of this Agreement nor the consummation of the Contemplated Transactions will in any material respect:

(a) interfere with the ability of Sellers to consummate the Contemplated Transactions;

(b) result in the creation or imposition of any Encumbrance on the Shares, other than pursuant to the Securities Laws and applicable state securities laws;

(c) give any Governmental Authority the right to challenge any of the Contemplated Transactions or to exercise any remedy or obtain any relief under any Order to which the Company, or any of the assets owned or used by any of it, may be subject;

(d) result in the creation or imposition of any Encumbrance, other than Permitted Encumbrances, on any of the property or assets of the Company;

(e) result in any violation of the provisions of the Organizational Documents of the Company,

(f) result in any violation by Sellers or the Company of any Law or any Permit; or

(g) conflict with or result in any Breach which would constitute a default (or which would give rise to any right of Consent, acceleration or termination or the loss of any benefit) under any term or provision of any Material Contract.

4.12 Governmental Approvals. Except as set forth in **Schedule 4.12**, no Consent of, or declaration, notice, filing or registration with, any Governmental Authority is

required to be made or obtained by Sellers or the Company on or prior to the Closing Date in connection with the execution, delivery and performance of this Agreement and the consummation of the Contemplated Transactions.

4.13 Litigation, Accidents and Orders.

(a) **Schedule 4.13(a)** sets forth all pending Litigation: (i) that has been commenced by or against the Company or has been threatened by or against the Company and which has a reasonable expectation of resulting in a settlement or award of damages in excess of \$1,000,000; (ii) that could reasonably be expected to have a Material Adverse Effect on the Company; or (iii) that challenges, or that could reasonably be expected to have the effect of preventing, delaying or making illegal any of the Contemplated Transactions. Except as set forth in **Schedule 4.13(a)**, to the Knowledge of Sellers, no such Litigation has been threatened against the Company or, with respect to clause (iii) hereof, Sellers.

(b) **Schedule 4.13(b)** identifies all accidents or incidents that have resulted or reasonably could result in Litigation against the Company, including any Federal Railroad Administration reportable injuries or derailments or damage to property.

(c) Except as set forth in **Schedule 4.13(c)**, (i) there is no Order to which the Company, or any of the assets owned or used by it, is subject, (ii) no officer or director of the Company is subject to any Order that prohibits such officer or director from engaging in or continuing any conduct, activity or practice relating to the Business and (iii) neither Sellers nor the Company has received any notice or other communication from any Governmental Authority or any other Person regarding any actual, alleged, possible or potential violation of, or failure to comply with, any term or requirement of any Order to which the Company, or any of the assets owned or used by it, is or has been subject.

4.14 Compliance with Laws; Permits.

(a) Except as set forth in **Schedule 4.14(a)**:

(1) The Company is and [REDACTED] has been in compliance in all material respects with all Laws applicable to it or to the conduct or operation of the Business or use of any of its assets, and to the Knowledge of Sellers, prior to the Acquisition Date, the Company was in compliance in all material respects with all Laws applicable to it or to the conduct or operation of the Business or use of any of its assets;

(2) [REDACTED], no event has occurred or circumstance exists that (with or without notice or lapse of time) constitutes or could reasonably be expected to result in a material violation by the Company of, or a failure on the part of the Company to comply with, any Law, and to the Knowledge of Sellers, prior to the Acquisition Date, no event had occurred or circumstance existed that (with or without notice or lapse of time) constituted or could reasonably be expected to result in a material violation by the Company of, or a failure on the part of the Company to comply with, any Law; and

(3) [REDACTED], neither Sellers nor the Company has received any written notice or other communication from any other Governmental Authority or any other Person regarding any actual, alleged, possible or potential material violation of, or material failure to comply with, any Law, and to the Knowledge of Sellers, prior to the Acquisition Date, neither Sellers nor the Company had received any written notice or other communication from any other Governmental Authority or any other Person regarding any actual, alleged, possible or potential material violation of, or material failure to comply with, any Law.

(b) Schedule 4.14(b) identifies each Permit that is required by the Company to lawfully conduct and operate the Business in the manner presently conducted. Except as set forth in Schedule 4.14(b), [REDACTED] the Company is and has been in compliance in all material respects with all of the terms and requirements of each Permit identified or required to be identified in Schedule 4.14(b) and each such Permit is in full force and effect and [REDACTED], the Company was in compliance in all material respects with each Permit that was required by the Company to lawfully conduct and operate the Business at such time and at such time, each such Permit was in full force and effect.

4.15 Intellectual Property and Technology.

(a) All of the material Intellectual Property that the Company owns (the "Company Owned Intellectual Property"), licenses or otherwise has acquired the right to use as of the date of this Agreement (collectively, the "Company Intellectual Property") is set forth on Schedule 4.15(a). Schedule 4.15(a) specifies, as applicable, (A) the nature of such Company Intellectual Property, (B) whether such Company Intellectual Property is owned or licensed, (C) if provided under a license, the name of the licensor, and (D) whether such Company Intellectual Property is registered or has an application for registration filed with any Governmental Authority and, if so, the applicable application or registration number(s).

(b) All of the material Information Technology that the Company owns (the "Company Owned Information Technology"), licenses or otherwise has acquired the right to use as of the date of this Agreement (collectively, the "Company Information Technology") is set forth on Schedule 4.15(b). The definition of "Company Information Technology" specifically excludes commercial "off-the-shelf" or "shrink-wrap" software that is licensed to the Company as an end user on a non-exclusive basis. Schedule 4.15(b) specifies, as applicable, (i) whether such Company Information Technology is provided under a service contract or is owned or licensed, (ii) the date and parties to the contract, (iii) the scope of purchase (e.g., number of licenses if it is a software license), (iv) the ongoing costs under such agreement(s), and (v) expiration dates for all such licenses and contracts

(c) Except as set forth on Schedule 4.15(c):

(1) The Company has taken all commercially reasonable measures to keep in full force and effect all Company Owned Intellectual Property and Company Owned Information Technology registrations, renewals, and applications for registration that constitute Company Owned Intellectual Property or Company Owned Information Technology. All

registrations and applications for registration of Company Owned Intellectual Property with a Governmental Authority currently comply in all material respects with the formal legal requirements and payment of government fees for such registrations and applications (as applicable).

(2) The Company Owned Intellectual Property and the Company Owned Information Technology are owned by the Company, free and clear of any Encumbrance, except for Permitted Encumbrances. The Company has licensed or otherwise acquired from a third party the Company Intellectual Property that is not Company Owned Intellectual Property and the Company Information Technology that is not Company Owned Information Technology.

(3) (A) All material licenses, material service Contracts, and other material Contracts that constitute Company Information Technology are in full force and effect, (B) the Company is not in default with respect to any material obligation under any such licenses, (C) the ability of the Company to assign such material licenses and material Contracts is described in the terms, conditions, and provisions thereof, and (D) none of the Company, any licensors nor any other contracting parties have exercised termination rights with respect to such licenses, service Contracts or other Contracts.

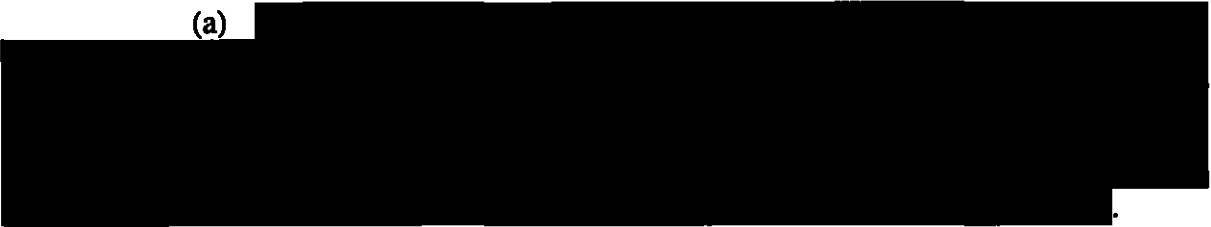
(4) As of the date of this Agreement, there is no Litigation, opposition or cancellation proceeding(s) pending or, to the Knowledge of Sellers, threatened that involves a claim against the Company that any Company Owned Intellectual Property or Company Owned Information Technology infringes, misappropriates or violates a third party's rights in or to Intellectual Property or Information Technology or challenging the ownership, use, protectability, registerability, validity, or enforceability of the Company Owned Intellectual Property or Company Owned Information Technology. To the Knowledge of Sellers, there is no Litigation, opposition or cancellation proceeding(s) pending or threatened as of the date of this Agreement that involves a claim against any customers or clients of the Company with respect to the Company Owned Intellectual Property or Company Owned Information Technology or any such customer's use thereof

(5) To the Knowledge of Sellers, no third party is infringing, violating, diluting, misusing, or misappropriating any Company Intellectual Property or Company Information Technology. Neither Sellers nor the Company has made any claim against or sent a cease and desist letter to any third party based upon any such infringement, violation, dilution, misuse, or misappropriation.

(6) To the Knowledge of Sellers, the processes employed, the services provided, the businesses conducted and the products used or dealt in by the Company and the Company Intellectual Property and/or Company Information Technology have not infringed, violated, diluted, misused or misappropriated any Intellectual Property or Information Technology rights of a third party. Neither Sellers nor the Company has received any written complaint, demand, notice, material charge or claim against the Company based upon any such infringement, violation, dilution, misuse, or misappropriation.

(7) No Company Owned Intellectual Property or Company Owned Information Technology is currently the subject of any re-examination, opposition, cancellation or invalidation proceeding before any Governmental Authority

4.16 Taxes.

(a) 

(b) Schedule 4.16(b) contains a complete and accurate list of all audits, examinations and compliance checks of all Tax Returns filed by or with respect to the Company from December 31, 2004 through the Closing Date, including a reasonably detailed description of the nature and outcome of each audit, examination and compliance check. All deficiencies proposed as a result of any audits have been paid, reserved against, settled, or, as described in Schedule 4.16(b), are being contested in good faith by appropriate proceedings. Except as described in Schedule 4.16(b), neither Sellers nor the Company has given or been requested to give waivers or extensions (or is or would be subject to a waiver or extension given by any other Person) of any statute of limitations relating to the payment of Taxes of the Company or for which any of them may be liable.

(c) To the Knowledge of Sellers, there exists no proposed or threatened Tax assessment against the Company except as disclosed in the Balance Sheet or in Schedule 4.16(c). All Taxes that the Company is or was required by Law to withhold or collect have been duly withheld or collected and, to the extent required, have been paid to the proper Governmental Authority or other Person and to the extent remittance is not yet due, are being properly held under applicable Law. No claim has been asserted or threatened by a Governmental Authority in a jurisdiction where the Company does not file Tax Returns that the Company is or may be subject to taxation by that jurisdiction.

(d) There is no Tax sharing or allocation agreement that will require any payment by the Company after the date of this Agreement.

(e) There are no liens for Taxes (other than for current Taxes not yet due and payable) existing on any of the assets of the Company or the Shares

(f) The Company has not assumed an obligation to make a payment that is not deductible under Section 280G of the Code or any similar provision of state, local or foreign law.

(g) The Company has not (i) agreed, or is not required, to make any adjustment under Section 481(a) of the Code by reason of a change in accounting method or otherwise; or (ii) made an election, or is required, to treat any of its assets as owned by another Person pursuant to the provisions of former Section 168(f) of the Code or as tax-exempt bond financed property or tax-exempt use property within the meaning of Section 168 of the Code.

(h) Except as set forth in **Schedule 4.16(h)**, the Company has no liability for the Taxes of any other Person under Treasury regulation Section 1.1502-6 (or any similar state, local, or foreign Law), as a transferee, by contract (except for customary provisions assigning responsibility for Taxes arising under contracts entered into in the ordinary course of business) or otherwise.

(i) The Company has not participated in a listed transaction as described in U.S. treasury regulations promulgated under Section 6011 of the Code.

(j) Except as set forth in **Schedule 4.16(j)**, no individual has a right to be indemnified by the Company or any Subsidiary for the additional Tax imposed by Code Sections 409A or 4999.

(k) The Company will not be required to include any item of income in, or exclude any item of deduction from, its taxable income for any taxable period (or portion thereof) ending after the Closing Date that is material in amount as a result of any: (i) change in method of accounting for a taxable period ending on or prior to the Closing Date, (ii) "closing agreement" as described in Code Section 7121 (or any corresponding state, local or foreign Law), (iii) intercompany transactions or any excess loss account described in the Treasury Regulations under Code Section 1502 (or any corresponding state, local or foreign Law), (iv) installment sale or open transaction disposition made on or prior to the Closing Date or (v) prepaid amount received on or prior to the Closing Date.

4.17 Employees; Employee Benefit Plans.

(a) **Schedule 4.17(a)** sets forth a true, accurate and complete list of each employment, service, severance, change of control, non-compete, and consulting agreement between any employee, director, consultant or independent contractor and the Company.

(b) **Schedule 4.17(b)** sets forth a true, accurate and complete list, to the extent not duplicative of the information contained in **Schedule 4.17(a)**, of all Company Employee Benefit Plans and identifies, with respect to each such Company Employee Benefit Plan, either Sellers, the Company or the applicable ERISA Affiliate of the Company that sponsors or maintains such Company Employee Benefit Plan or that contributes or is required to contribute to such Company Employee Benefit Plan or that entered into such Company Employee Benefit Plan. Except as set forth on **Schedule 4.17(b)**, neither Sellers, the Company, nor any ERISA Affiliate of the Company has announced or otherwise made a commitment to implement any arrangement that, if implemented, would be a Company Employee Benefit Plan.

(c) With respect to each Company Employee Benefit Plan, the Company has made available or caused to be made available to Buyer, to the extent applicable, a true, accurate and complete copy of such Company Employee Benefit Plan, any amendments thereto (or if such Company Employee Benefit Plan is not written, a description thereof), the summary plan description, any related trust or other funding vehicle agreements, the three most recent Form 5500 Annual Reports, the most recent determination letter or opinion letter (as applicable) received from the Internal Revenue Service with respect to each Company

Qualified Plan and all related agreements, insurance contracts and other agreements by which such Company Employee Benefit Plan is established, operated, administered or funded.

(d) Each Company Employee Benefit Plan complies in form with and has been maintained and operated in all material respects in accordance with the requirements of all applicable Law, including ERISA and the Code, and each Company Employee Benefit Plan has been maintained and operated in all material respects in accordance with its terms. With respect to each Company Qualified Plan, the term "applicable laws" shall include, without limitation, the provisions of the Code for such tax-favored treatment.

(e) Schedule 4.17(e) separately identifies each Company Qualified Plan. Except as set forth on Schedule 4.17(e), each Company Qualified Plan and each trust established in connection with each Company Qualified Plan is the subject of a favorable determination letter or a favorable opinion letter upon which the Company or ERISA Affiliate is permitted to rely, as applicable, issued by the Internal Revenue Service; and, in either case, the remedial amendment period described in Section 401(b) of the Code applicable to any amendment of each such Company Qualified Plan adopted after the date of such letter has not expired. Since the date of such determination or opinion letter, no event has occurred and no condition or circumstance exists that has resulted or is reasonably likely to result in the revocation of any such determination letter or the inability of the Company (or the applicable ERISA Affiliate of the Company) to rely on any such determination or opinion letter or that is reasonably likely to adversely affect the qualified status of such Company Qualified Plan or the exempt status of any such trust.

(f) Neither Sellers nor the Company nor any ERISA Affiliate of the Company has contributed to or has had an obligation to contribute to a multiemployer pension plan (as defined in Section 3(37) of ERISA) for the benefit of any active, retired or former employee, director or manager of the Company.

(g) No Company Employee Benefit Plan is a multiple employer welfare arrangement within the meaning of Section 3(41) of ERISA.

(h) Except as provided on Schedule 4.17(h), the consummation of the Contemplated Transactions is not a precondition to (i) any current or former employee, officer or consultant of any Company or any ERISA Affiliate of the Company becoming entitled to severance pay, unemployment compensation or any other similar payment or (ii) the acceleration of the time of payment or vesting, or the material increase in the amount, of compensation due any such employee, officer or consultant.

(i) Each fund established in connection with a Company Employee Benefit Plan that is intended to meet the requirements for a voluntary employees' beneficiary association under Section 501(c)(9) of the Code has at all relevant times met such requirements. Except as provided on Schedule 4.17(i), no Company Employee Benefit Plan provides medical, surgical, hospitalization, death or similar benefits (whether or not insured) for employees or former employees of the Company for periods extending beyond their retirement or other termination of service, except as required by the Consolidated Omnibus Budget Reconciliation Act of 1985, or similar applicable law.

(j) There are no pending, or to the Knowledge of Sellers, threatened, material claims by or on behalf of any Company Employee Benefit Plan, by any employee or beneficiary covered under any such Company Employee Benefit Plan, or otherwise involving any such Company Employee Benefit Plan (other than routine claims for benefits), and no civil or criminal action brought pursuant to the provisions of Title I, Subtitle B, Part 5 of ERISA is pending or, to the Knowledge of Sellers, threatened, against the Company or any ERISA Affiliate of the Company or any fiduciary of any Company Employee Benefit Plan with respect to any such Company Employee Benefit Plan. Neither the Company nor any ERISA Affiliate of the Company has received any written notice that any Company Employee Benefit Plan or any fiduciary thereof is presently the direct or indirect subject of an audit, investigation or examination by any governmental or quasi-governmental agency and, to the Knowledge of Sellers, no such action has been threatened.

(k) **Schedule 4.17(k)** sets forth each Company Employee Benefit Plan that is subject to Title IV or Section 302 of ERISA (each, a "**Company Defined Benefit Plan**"). Except as set forth on **Schedule 4.17(k)**, the present fair market value of the assets of each Company Defined Benefit Plan equals or exceeds the present value of vested and nonvested accrued benefits under such Company Defined Benefit Plan, based on the actuarial assumptions and methodology used for funding purposes as set forth in such Company Defined Benefit Plan's most recent actuarial report. Since the Acquisition Date, no reportable event under Section 4043 of ERISA has occurred with respect to any Company Defined Benefit Plan and, to the Knowledge of Sellers, no such reportable event occurred prior to the Acquisition Date. Since the Acquisition Date, no event has occurred and no condition has existed that could constitute grounds under Section 4042 of ERISA for termination of or appointment of a trustee to administer any Company Defined Benefit Plan, and to the Knowledge of Sellers, no such event occurred and no such condition existed prior to the Acquisition Date. No accumulated funding deficiency (as defined in Section 402 of ERISA or Section 412 of the Code) exists nor has any funding waiver from the Internal Revenue Service been received or requested with respect to any Company Defined Benefit Plan since the Acquisition Date. To the Knowledge of Sellers, no such deficiency existed or funding waiver(s) was received prior to the Acquisition Date. No excise or other tax is due or owing because of any failure to comply with the minimum funding standards of the Code or ERISA with respect to any Company Defined Benefit Plan. The Company has made available to Buyer a true and complete copy of the most recent actuarial and financial statements prepared with respect to each Company Defined Benefit Plan.

(l) Neither the Company nor any ERISA Affiliate of the Company nor any director, officer or employee of the Company or any ERISA Affiliate of the Company, nor any other Person who participates in the operation of any Company Employee Benefit Plan has engaged in any transaction with respect to any Company Employee Benefit Plan, or breached any applicable fiduciary responsibility or obligation under Title I of ERISA that would subject any of them to a tax, penalty or liability for prohibited transactions or breach of any obligations under ERISA or the Code or would result in any claim being made under, by or on behalf of any Company Employee Benefit Plan by any party with standing to make such a claim since the Acquisition Date. To the Knowledge of Sellers, no such transactions or breaches took place prior to the Acquisition Date.

(m) Neither the Company nor any ERISA Affiliate of the Company has incurred any liability or civil penalty under Sections 409, 402(i), 502(c) or 502(l) of ERISA or liability for any tax or excise tax arising under Chapter 43 of Section 6652 of the Code with respect to any Company Employee Benefit Plan, and no event has occurred and no condition or circumstance exists that could reasonably be expected to give rise to any such liability with respect to any Company Employee Benefit Plan since the Acquisition Date. To the Knowledge of Sellers, no such liabilities arose prior to the Acquisition Date.

(n) Since the Acquisition Date, the Company has had no Employee Benefit Plan that has been established, maintained, or sponsored by the Company or a direct or indirect subsidiary of the Company, or to which the Company or a direct or indirect subsidiary of the Company has contributed, or into which the Company or a direct or indirect subsidiary of the Company has entered solely for the benefit of non-US active, retired or former employees or directors of the Company or any direct or indirect subsidiary of the Company. To the Knowledge of Sellers, no such plan existed prior to the Acquisition Date.

(o) The Company does not, and, following the Closing Date the Buyer will not, have any liability (actual or contingent) with respect to any Employee Benefit Plan established, maintained, or sponsored by an ERISA Affiliate of the Company, or to which any ERISA Affiliate of the Company has contributed, or into which any ERISA Affiliate of the Company has entered, that is not a Company Employee Benefit Plan.

4.18 Labor Matters. The Company is not a party to or bound by any collective bargaining agreement, Contract or other agreement or understanding with a labor union or labor organization, nor is the Company the subject of a proceeding asserting that it has committed an unfair labor practice (within the meaning of the National Labor Relations Act), asserting that it has violated the Railway Labor Act, or seeking to compel it to bargain with any labor organization as to wages or conditions of employment, nor is there any strike or other material labor dispute or disputes involving the Company pending, or to the Knowledge of Sellers, threatened, nor have there been such disputes since January 1, 2005. The Company is not a party to or bound by any Contract or other agreement or understanding entitling its employees to labor protections related to Contemplated Transactions. To the Knowledge of Sellers, there is no activity involving any employees of the Company seeking to certify a collective bargaining unit or a craft or class or engaging in other organizational activity, nor has there been such activity since January 1, 2005. Since the Acquisition Date, the Company has not closed any site or facility, effectuated any layoffs of employees or implemented any early retirement, separation or window program, nor has any such action or program been planned or announced for the future. To the Knowledge of Sellers, no such actions took place prior to the Acquisition Date. The Company is in compliance in all respects with all applicable Laws and Contracts relating to employment and employment practices, terms and conditions of employment, wages and hours, equal employment opportunity, nondiscrimination, affirmative action, immigration (including those laws that require verification of employment), benefits, worker's compensation, FELA, labor relations, the payment of social security and similar taxes (including those taxes applicable specifically to railroad employees), occupational health and safety, and plant closings. The Company is not subject to any liability for the payment of any compensation, damages, taxes, fines, penalties, or other amounts, however designated, for failure to comply with any of the foregoing legal and contractual requirements since the Acquisition

Date. To the Knowledge of Sellers, no such liabilities existed prior to the Acquisition Date. Since the Acquisition Date, the Company is not subject to any liability for any payment to any trust or other fund or to any Governmental Authority, with respect to unemployment compensation benefits, unemployment insurance, social security or other (or analogous) benefits (including those taxes applicable specifically to railroad employees) for employees of the Company. To the Knowledge of Sellers, no such liabilities existed prior to the Acquisition Date.

4.19 Inspections and Audits.

(a) **Schedule 4.19(a)** sets forth the results of each federal or state health or safety inspection since January 1, 2005 relating to the Company, including any responses thereto filed by the Company;

(b) **Schedule 4.19(b)** sets forth a summary of each audit (including any audits by any insurance company or carrier) relating to the safety of the Company's operations (including any action plans prepared in response thereto) which has been prepared since January 1, 2005.

4.20 Operational Matters.

(a) **Schedule 4.20(a)** lists all major "on-track" equipment failures which involved locomotive failures during the immediately preceding one-year period.

(b) **Schedule 4.20(b)** lists, by dollar volume paid for calendar year 2007

there is no fact, circumstance or event that has occurred or is reasonably likely to occur that could reasonably be expected to have a Material Adverse Effect on the Company.

(c) **Schedule 4.20(c)** sets forth a materially accurate list of all accounts receivable of the Company as of the date set forth therein, which accounts receivable represent valid obligations arising from sales or transactions actually made or services actually performed in the ordinary course of business consistent with past practice. there is no material contest, claim or right of set-off under any Contract with any obligor with respect to any such accounts receivable relating to the amount or validity of such accounts receivable.

(d) **Schedule 4.20(d)** lists all bank accounts currently used or held by the Company and the authorized signatories associated therewith.

4.21 Absence of Certain Changes or Events. Except as set forth in the Balance Sheet or in **Schedule 4.21**, since December 31, 2007, no event, change or circumstance has occurred, which, individually or in the aggregate, has had or could reasonably be expected to have a Material Adverse Effect on the Company. Except as contemplated by this Agreement or permitted under **Section 6.2**, since the date of the Balance Sheet, the Company has carried on the Business in all material respects in the ordinary course consistent with past practice.

4.22 Related Transactions.

Schedule 4.22(a) sets forth a correct and complete list of (i) all transactions, Contracts, Indebtedness, loans, advances or other arrangements, or any related series thereof, between any Company stockholder, employee or director or any Affiliate thereof or their family members, on the one hand, and the Company on the other hand, since January 1, 2005 and (ii) all assets, properties and services of any Company stockholder, employee or director or any Affiliate thereof or their family members used in connection with the Company Business at any time since January 1, 2005



(b) Except as set forth in **Schedule 4.22(b)**, each of the Contracts between any Company stockholder, employee or director, on the one hand, and the Company, on the other hand, is terminable by the Company upon not more than thirty (30) days' prior written notice without the payment of any penalty or termination fee.

4.23 Regulatory Matters.

(a) The Company has filed all regulatory reports, schedules, forms, statements, registrations and other documents, together with any amendments required to be made with respect thereto, that it was required to file since January 1, 2005 with (i) any domestic or foreign industry self-regulatory organization ("**SRO**") and (ii) any other Governmental Authority, and has timely paid all Taxes, fees and assessments due and payable in connection therewith. Except as disclosed in **Schedule 4.23** and for normal examinations conducted by a SRO or Governmental Authority in the regular course of business of the Company, no SRO or Governmental Authority has initiated any proceeding or, to the Knowledge of Sellers, investigation into the Business or operations of the Company since January 1, 2005. There is no material unresolved violation, criticism or exception by any SRO or Governmental Authority with respect to any report or statement relating to any examinations of the Company.

(b) The Company is not subject to any cease and desist or other order issued by, or is a party to any written agreement, consent agreement or memorandum of understanding with, or is party to any commitment letter or similar undertaking to, or is subject to any order or directive issued by, or is a recipient of any supervisory letter from or has adopted any resolution of its board of directors at the request of, any SRO or Governmental Authority that restricts the conduct of its Business or that in any manner relates to its capital adequacy, its credit policies, its management or its business (each, whether or not set forth in the schedules to this Agreement, a "Company Regulatory Agreement"), nor has the Company been advised since January 1, 2005 by any SRO or Governmental Authority that it is considering issuing or requesting any such Company Regulatory Agreement.

4.24 Acquisition Documents. None of the parties to the Acquisition Documents has made a claim for indemnification under, or alleging a breach of any provision of, the Acquisition Documents, and to the Knowledge of Sellers, there exists no basis for such a claim. All transactions contemplated by the Acquisition Documents have been fully and finally completed.

4.25 Exclusive Dealing. Neither Sellers nor the Company is a party to any Contract relating to any Takeover Proposal

4.26 State Takeover Statutes. The Company has, or will have prior to the Closing Date, taken all necessary action so that no "business combination," "moratorium," "fair value," "control share acquisition" or other state antitakeover statute or regulation, including Section 203 of the DGCL, will be applicable to this Agreement or the Contemplated Transactions by reason of the Company being a party to this Agreement, performing its obligations hereunder or consummating the Contemplated Transactions.

4.27 No Brokers. Neither Sellers nor the Company has employed, or is subject to any valid claim of, any broker, finder, consultant or other intermediary in connection with the Contemplated Transactions.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

ARTICLE 5

REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby makes the following representations and warranties to Sellers:

5.1 Organization of Buyer. Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. The Buyer has full corporate power and authority to conduct its business and to own, lease and operate its properties

and assets. True and complete copies of Buyer's Organizational Documents in effect on the date hereof have been previously made available to Sellers.

5.2 Authorization. Buyer has full corporate power and authority to execute and deliver this Agreement and to consummate the Contemplated Transactions. The execution, delivery and performance of this Agreement by Buyer have been duly authorized by all necessary corporate action. This Agreement has been duly executed and delivered by Buyer and, assuming the due execution of this Agreement by Sellers, is a valid and binding obligation of Buyer, enforceable against it in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency, receivership, conservatorship, reorganization, moratorium, fraudulent conveyance or other similar laws now or hereafter in effect relating to or affecting the rights and remedies of creditors generally, and general principles of equity (whether considered in a proceeding at law or in equity) and the discretion of the court before which any proceeding therefor may be brought.

5.3 No Conflict or Violation. Except for the Consents contemplated by Section 5.4, neither the execution and delivery of this Agreement nor the consummation of the Contemplated Transactions by Buyer will in any material respect:

(a) interfere with the ability of Buyer to consummate the Contemplated Transactions;

(b) give any Governmental Authority the right to challenge any of the Contemplated Transactions or to exercise any remedy or obtain any relief under any Order to which Buyer, or any of the assets owned or used by Buyer, may be subject;

(c) result in the creation or imposition of any material Encumbrance, other than Permitted Encumbrances, on any of the property or assets of Buyer;

(d) result in any violation of the provisions of the Organizational Documents of Buyer;

(e) result in any violation by Buyer of any Law or any Permit that is material to the operation of its business; or

(f) conflict with or result in any Breach which would constitute a default (or which would give rise to any right of Consent, acceleration or termination or the loss of any benefit) under any term or provision of any material Contract to which Buyer is a party.

5.4 Governmental Approvals. Except for applicable requirements, if any, of the Securities Act of 1933, the Securities Exchange Act of 1934, state securities laws and the rules and regulations of the STB, no Consent of, or declaration, filing or registration with, any Governmental Authority is required to be made or obtained by Buyer on or prior to the Closing Date in connection with the execution, delivery and performance of this Agreement and the consummation of the Contemplated Transactions.

5.5 No Brokers. Buyer has not employed, and is not subject to the valid claim of, any broker, finder, consultant or other intermediary in connection with the Contemplated Transactions.

ARTICLE 6
COVENANTS OF SELLERS PRIOR TO THE CLOSING

Each Seller, jointly and severally, covenants as follows for the period from the date hereof to the Closing Date:

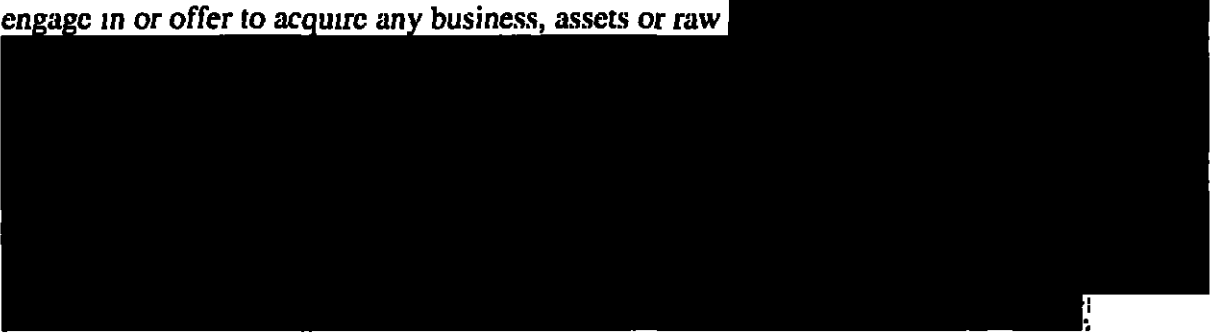
6.1 Maintenance of Business. Sellers shall cause the Company to, in each case in all material respects, (a) carry on its business in the ordinary course consistent with past practice, except as contemplated or required by this Agreement, or as otherwise agreed in writing by the parties hereto and (b) use reasonable best efforts to maintain and preserve intact its current business organization, employees and advantageous business relationships.

6.2 Certain Prohibited Transactions Except as specifically permitted or contemplated by this Agreement, Sellers shall not, and shall cause the Company not to, without the prior written approval of Buyer:

(a) change in any material respect any accounting methods used by the Company;

(b) sell or transfer any Shares or any interest therein or create any Encumbrance thereon, change the Company's authorized or issued equity securities, grant any option, warrant or right to purchase any equity securities of the Company or issue any security or instrument convertible into or exchangeable for any equity securities of the Company;

(c) except in the ordinary course of business consistent with past practice, (1) engage in or offer to acquire any business, assets or raw



(d) enter into a contract that would be a Material Contract (if it existed as of the date of this Agreement) or amend or terminate any Material Contract or grant any release or relinquishment of any material rights under any Material Contract;

(e) on behalf of the Company, assume, guarantee, endorse or otherwise become liable or responsible (whether directly, contingently or otherwise) for the obligations (other than de minimis obligations) of any other Person,

(f) mortgage, pledge or otherwise similarly encumber any of the Company's material assets (tangible or intangible), or create, assume or suffer to exist any material Encumbrances (other than Permitted Encumbrances) thereupon;

(g) on behalf of the Company, make any loans, advances or capital contributions to, or investments in, any Person except in the ordinary course of business consistent with past practice and not exceeding [REDACTED] in the aggregate;

(h) enter into, forgive, renew or amend in any respect any Indebtedness, including loans to employees, officers or directors of the Company;

(i) (1) enter into any new, or amend, terminate or renew any existing, employment, severance, consulting or salary continuation agreements with or for the benefit of any officers, directors or employees or grant any increases in the compensation, perquisites or benefits to officers, directors or employees (other than normal increases in annual salary in the ordinary course of business consistent with past practice); (2) accelerate the vesting or payment of the compensation payable or the benefits provided or to become payable or provided to any of its current or former directors, officers or employees (other than any such acceleration required by the terms of the Company Employee Benefit Plans applicable to such individuals as in effect on the date of this Agreement), or otherwise pay any amounts not due such individual; or (3) take any action with respect to salary, compensation, benefits or other terms and conditions of employment that would reasonably be expected to result in the holder of a change in control or similar agreement identified in Schedule 4.17(a) having "good reason" to terminate employment and collect severance payments and benefits pursuant to such agreement;

(j) (1) make or agree to make any capital expenditure or expenditures, or enter into any agreements or arrangements providing for capital expenditures, in each case other than those set forth in Schedule 6.2(j), (2) enter into any new line of business outside of the Business, or (3) make any investments not in the normal course of business greater than [REDACTED];

[REDACTED]

[REDACTED]

[REDACTED]

(m) amend, terminate or surrender any lease, or fail to exercise any rights of renewal with respect to any lease;

(n) grant, amend, modify, extend or terminate any trackage rights agreement, haulage agreement, power-run-through agreement, marketing agreement, joint facilities agreement or other agreement with carriers materially affecting the operations on, or marketing of traffic to, from or over, the Rail Facilities;

(o) abandon or discontinue service over all or any portion of the Rail Facilities, or commence a regulatory proceeding to facilitate any such abandonment or discontinuance;

(p) enter into, materially amend or renew any agreement with a shipper or receiver for movement of traffic over the Rail Facilities;

(q) enter into any agreement with a shipper or receiver that would cause or facilitate the diversion of a material amount of traffic from the Rail Facilities;

(r) amend the Organizational Documents of the Company;

(s) take any action which the Company reasonably expects would cause any of the representations and warranties made by the Company in this Agreement not to remain true and correct in any material respect; or

(t) authorize, commit or agree to take any of the foregoing actions.

6.3 Access. Sellers shall, and shall cause the Company to, allow Buyer during regular business hours and following receipt of reasonable prior notice, through Buyer's Representatives (a) to make such reasonable investigation of the business, properties, books and records of the Company and (b) to conduct such reasonable examination of the condition of the Company, in the case of each of clauses (a) and (b) as is reasonably necessary or advisable for purposes of the Contemplated Transactions. All information and access given Buyer and its Representatives shall be subject to the terms and conditions of the Confidentiality Agreement.

6.4 Governmental Approvals. As promptly as practicable after the date hereof, Sellers shall make, and shall cause the Company to make, all filings required by Law to be made by them in order to consummate the Contemplated Transactions and shall use their reasonable best efforts to obtain all necessary Consents and approvals from Governmental Authorities. Between the date hereof and the Closing Date, Sellers shall, and shall cause the Company to, cooperate with Buyer with respect to all filings that Buyer is required by Law to make in connection with the Contemplated Transactions. Subject to consultation with the Company, Buyer shall have final authority over the development, presentation and conduct of any proceedings before any Governmental Authority or SRO relating to the Contemplated Transactions, including over decisions whether to agree to or acquiesce in any conditions or restrictions. The Company shall take no regulatory or legal action in connection with any Governmental Authority or SRO and related to the Contemplated Transactions without Buyer's prior written consent.

6.5 Third-Party Consents.

6.6 Resignation of Officers and Directors. Sellers are the sole officers and directors of the Company. Sellers shall deliver to Buyer on or before the Closing their resignations as officers and directors of the Company.

[REDACTED]

[REDACTED]

ARTICLE 7
COVENANTS OF BUYER PRIOR TO CLOSING

Buyer covenants to Sellers as follows for the period from the date hereof to the Closing Date:

7.1 Governmental Approvals. As promptly as practicable after the date hereof, Buyer shall make all filings required by Law to be made by it in order to consummate the Contemplated Transactions and shall use its reasonable best efforts to obtain all necessary Consents from Governmental Authorities. Between the date hereof and the Closing Date, Buyer shall cooperate with Sellers with respect to all filings that Sellers and the Company are required by Law to make in connection with the Contemplated Transactions.

7.2 Third-Party Consents. Buyer shall cooperate with Sellers and the Company in obtaining any necessary Consents from third parties identified in **Schedule 4.11(g)**

ARTICLE 8 OTHER COVENANTS

8.1 Efforts to Close. Subject to the terms and conditions herein provided, each of the parties hereto shall use reasonable best efforts to take, or cause to be taken, all action or do, or cause to be done, all things necessary, proper or appropriate to consummate and make effective the Contemplated Transactions and to cause the fulfillment of the parties' obligations hereunder.

8.2 Notification of Certain Matters.

(a) Sellers shall give prompt notice to Buyer, and Buyer shall give prompt notice to Sellers, of (i) the occurrence or non-occurrence of any event that is likely to result in the failure of a condition set forth in **Articles 9 or 10**; provided, however, that the delivery of any notice pursuant to this **Section 8.2** shall not limit or otherwise affect the remedies available hereunder to any of the parties receiving such notice, (ii) any notice or other communication from any Person alleging that the approval of such Person is or may be required in connection with this Agreement or the consummation of the Contemplated Transactions, (iii) any notice or other communication from any Governmental Authority in connection with this Agreement or the consummation of the Contemplated Transactions, (iv) any claim or Litigation relating to this Agreement or the Contemplated Transaction or (v) any fact, event, change, development, circumstance, condition or effect that is likely to delay or impede the ability of such party to consummate the Contemplated Transactions or to fulfill its respective related obligations.

(b) The Sellers shall give prompt notice to Buyer of the occurrence of a default or event that, with notice or lapse of time or both, would become a default under any Material Contract.

8.3 Claim Under Acquisition Documents. If, after the Closing Date, the Company determines that a claim may be made under the Acquisition Documents by Sellers, Sellers shall (a) bring such claim in their own names, and shall be entitled to indemnification from Buyer for any costs and expenses associated therewith, and (b) promptly pay over to the Company any amounts recovered pursuant to such claim.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

8.8 Takeover Statutes. Sellers shall cause the Company to take all steps necessary to exempt (or continue the exemption of) the Contemplated Transactions from, challenge the validity of and otherwise act to eliminate or minimize the effects of any applicable state takeover Law (including Section 203 of the DGCL), as now or hereafter in effect.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

ARTICLE 9

CONDITIONS TO SELLERS' OBLIGATIONS

The obligations of Sellers to consummate the Contemplated Transactions on the Closing Date are subject, in the discretion of Sellers, to the satisfaction or waiver in writing, on or prior to the Closing Date, of each of the following conditions:

9.1 Representations, Warranties and Covenants. All representations and warranties of Buyer contained in this Agreement shall be true and correct as of the date of this Agreement and as of the Closing Date as though made on and as of the Closing Date (or on the date when made in the case of any representation and warranty which specifically relates to an earlier date), except as otherwise consented to in writing by Sellers and except for the failure or failures of such representations and warranties to be so true and correct that (after excluding any effect of materiality qualifications as set forth in any such representation or warranty), in the aggregate, such failure has not resulted in, or would not reasonably be expected to result in, a material adverse effect on Buyer's ability to consummate the Contemplated Transactions, and Buyer shall have performed in all material respects all agreements and covenants as required hereby to be performed by it prior to or at the Closing Date. There shall be delivered to Sellers a certificate (signed by the President of Buyer, or by an individual with similar authority) to the foregoing effect.

9.2 Consents.

9.3 No Governmental Orders. None of the parties hereto shall be subject to any Order of a Governmental Authority which enjoins or prohibits or makes illegal the consummation of this Agreement or the Contemplated Transactions.

9.4 No Governmental Litigation. There shall not be any pending or threatened Litigation in which a Governmental Authority is, or is threatened to become, a party and no party hereto shall have received any written or other communication from any Governmental Authority in which such Governmental Authority indicates the possibility of commencing any Litigation or taking any other action (a) challenging or seeking to restrain or prohibit the consummation of the Contemplated Transactions; (b) relating to the Contemplated Transactions and seeking to obtain from Sellers any damages or other relief that may be material to Sellers, or (c) seeking to compel Sellers to dispose of or hold separate any material assets as a result of the Contemplated Transactions.

9.5 Deliveries. All documents or instruments required to be delivered by Buyer at or prior to the Closing Date shall have been delivered to Sellers.

9.6 Certificates. Buyer will furnish Sellers with such certificates of its officers, directors and others to evidence compliance with the conditions set forth in this **Article 9** as may be reasonably requested by Sellers.

ARTICLE 10
CONDITIONS TO BUYER'S OBLIGATIONS

The obligations of Buyer to consummate the Contemplated Transactions on the Closing Date are subject, in the discretion of Buyer, to the satisfaction or waiver, on or prior to the Closing Date, of each of the following conditions:

10.1 Representations, Warranties and Covenants All representations and warranties of Sellers contained in this Agreement shall be true and correct as of the date of this Agreement and as of the Closing Date as though made on and as of the Closing Date (or on the date when made in the case of any representation and warranty which specifically relates to an earlier date), except as consented to in writing by Buyer and except for the failure or failures of such representations and warranties to be so true and correct (after excluding any effect of materiality qualifications set forth in any such representation or warranty) that, in the aggregate, such failure has not resulted in a Material Adverse Effect on the Company, and Sellers shall have performed in all material respects all agreements and covenants required hereby to be performed by Sellers prior to or at the Closing Date. There shall be delivered to Buyer a certificate, signed by Sellers, to the foregoing effect.

10.2 Consents All Consents and Permits from Governmental Authorities or third parties necessary to permit Buyer to consummate the Contemplated Transactions shall have been obtained. [REDACTED]

10.3 No Governmental Orders None of the parties hereto shall be subject to any Order of a Governmental Authority which enjoins or prohibits the consummation of this Agreement or the Contemplated Transactions or which conditions the consummation of this Agreement or the Contemplated Transactions in such a manner as would reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect on the Company or a material adverse effect on the financial condition, business or results of operations of Buyer or its Affiliates following the consummation of the Contemplated Transactions.

10.4 No Governmental Litigation There shall not be any pending or threatened Litigation in which a Governmental Authority is, or is threatened to become, a party and no party hereto shall have received any written or other communication from any Governmental Authority in which such Governmental Authority indicates the possibility of commencing any Litigation or taking any other action (a) challenging or seeking to restrain or prohibit the consummation of the Contemplated Transactions; (b) relating to the Contemplated Transactions and seeking to obtain from Buyer or its Affiliates any damages or other relief that may be material to Buyer; or (c) seeking to compel Buyer or any of its Affiliates to dispose of or hold separate any material assets as a result of the Contemplated Transactions.

10.5 Deliveries All documents or instruments required to be delivered by Sellers at or prior to the Closing Date shall have been delivered to Buyer.

10.6 Certificates Sellers shall furnish Buyer with such certificates of their officers, managers and others to evidence compliance with the conditions set forth in this Article 10 as may be reasonably requested by Buyer.

ARTICLE 11

TAX MATTERS

11.1 Tax Periods. The parties shall, to the extent permitted by applicable Law, cause each Tax period of the Company that begins on or before the Closing Date to end as of the end of the day on the Closing Date.

11.2 Tax Returns.

██████████ Sellers shall cause to be prepared and timely filed all Tax Returns of the Company for Tax periods that end on or before the Closing Date ██████████

(b) Buyer shall cause to be prepared and filed all Tax Returns relating to Straddle Periods. [REDACTED]

11.3 Tax Indemnification/Appportionment.

[REDACTED]

11.4 Cooperation; Records.

[REDACTED] Buyer and Sellers shall reasonably cooperate with each other in a timely manner in the preparation and filing of any Tax Returns and the conduct of any Tax audit or other Tax proceeding [REDACTED]

[REDACTED]

[REDACTED]

11.5 Tax Proceedings. Buyer shall promptly notify Sellers of any notice of Tax audit or deficiency relating to a Pre-Closing Period or Straddle Period of [REDACTED]

[REDACTED]

11.6 Refunds; Amendments.

[REDACTED]

-

[REDACTED]

ARTICLE 12
INDEMNIFICATION

12.1 Survival of Representations and Warranties and Covenants. All of the representations and warranties of Sellers

[REDACTED]

12.2 Indemnification by Sellers.

(a) Subject to the limitations of [REDACTED] Sellers agree to jointly and severally indemnify Buyer and its officers, directors, employees and stockholders (collectively, the "Buyer Indemnified Parties") and hold them harmless against any Losses that any of the Buyer Indemnified Parties actually suffer or incur that are caused by or are a result of (i) any Breach of any of the representations and warranties of Sellers contained in this Agreement, or (ii) any Breach of, or failure to perform, any agreement or covenant of Sellers contained in this Agreement (collectively, "Buyer Losses").

(b) Sellers agree to jointly and severally indemnify the Buyer Indemnified Parties from and against any Losses, without regard to any other indemnification provisions or limits on indemnification under **Sections 12.1, 12.5 or 12.6** that the Buyer Indemnified Parties actually suffer or incur resulting from the Excluded Liabilities.

12.3 Indemnification by Buyer.

12.4 Method of Asserting Claims.

(a) As used herein, an "Indemnified Party" shall refer to a Buyer Indemnified Party or Seller Indemnified Party, as the case may be, and the "Indemnifying Party" shall refer to the party or parties hereto obligated to indemnify such Indemnified Party.

(b) In the event that any of the Indemnified Parties is made a defendant in or party to any action or proceeding, judicial or administrative, instituted by any third party which may result in Losses (any such third party action or proceeding being referred to as a "Claim"), the Indemnified Party shall give the Indemnifying Party prompt notice thereof. The failure to give such notice shall not affect any Indemnified Party's ability to seek reimbursement unless such failure has adversely affected the Indemnifying Party's ability to successfully defend a Claim and then only to the extent of such adverse effect. The Indemnifying Party shall be entitled to contest and assume the defense of such Claim. Notice of the intention to so contest and defend shall be given by the Indemnifying Party to the Indemnified Party within twenty (20) days after the Indemnified Party's notice of such Claim. The Indemnified Party shall have the right to reasonably approve legal counsel of the Indemnifying Party. The Indemnified Party shall be entitled at any time, at its own cost and expense (which expense shall not constitute a Loss), to participate in such contest and defense and to be represented by attorneys of its own choosing; provided, that, the Indemnified Party shall have the right to employ separate counsel at the Indemnifying Party's expense if (i) the named parties to such proceeding (including any impleaded parties) include both such Indemnified Party and the Indemnifying Party, (ii) such Indemnified Party shall have been advised by counsel in its reasonable judgment that a material conflict of interest is likely to exist if the same counsel were to represent both the Indemnified Party and the Indemnifying Party that would make it inappropriate for the same counsel to represent both parties and (iii) such Indemnified Party notifies the Indemnifying Party in writing that it elects to employ separate counsel at the expense of the Indemnifying Party, provided, further, that in any case the Indemnifying Party shall not be obligated to pay the expense of more than one separate counsel in any one jurisdiction for all Indemnified Parties, taken as a whole. If the Indemnified Party elects to participate in such defense, the Indemnified Party will cooperate with the Indemnifying Party in the conduct of such defense. Neither the Indemnified Party nor the Indemnifying Party may concede, settle or compromise any Claim without the consent of the other party, which consent will not be unreasonably withheld

(c) In the event any Indemnified Party should have a claim against any Indemnifying Party that does not involve a Claim, the Indemnified Party shall deliver a notice of such claim to the Indemnifying Party, setting forth in reasonable detail the identity, nature and estimated amount of Losses related to such claim or claims, with reasonable promptness

and in any event prior to the expiration of the Indemnifying Party's indemnification obligation hereunder. If the Indemnifying Party notifies the Indemnified Party that the Indemnifying Party disputes the claim described in such notice, the Indemnifying Party and the Indemnified Party will proceed in good faith to negotiate a resolution of such dispute for a period of at least thirty (30) days.

12.5 Other Indemnification Provisions.

12.6 Limitations on Indemnification.

(a) In addition to the other limitations contained in this Agreement, Sellers' indemnification obligations under this Article 12 are subject

In addition to the other limitations contained in this Agreement

12.7 Treatment of Indemnity Payments.

12.8 Subrogation and Insurance.

(a) After any indemnification payment is made to any Indemnified Party pursuant to this **Article 12**, the Indemnifying Party shall, to the extent of such payment, be subrogated to all rights (if any) of the Indemnified Party against any third party in connection with the Losses to which such payment relates. Without limiting the generality of the preceding sentence, any Indemnified Party receiving an indemnification payment pursuant to the preceding sentence shall execute, upon the written request of the Indemnifying Party, any instrument reasonably necessary to evidence such subrogation rights.

(b) The Indemnified Party shall (i) provide prompt notice of any Claim or claim described in **Section 12.4(c)** to any insurer providing coverage for such claims and shall cooperate in good faith with any insurer providing coverage for such claims and (ii) after any indemnification payment is made to any Indemnified Party pursuant to this **Article 12**, promptly pay to the Indemnifying Party any insurance recovery received to the extent duplicative of such indemnification payment. The failure to give such notice shall not affect any Indemnified Party's ability to seek indemnification under this **Article 12** unless such failure has adversely affected the ability to pursue insurance coverage for such claims and then only to the extent of such adverse effect.

12.9 Credit Support Arrangements.

ARTICLE 13 MISCELLANEOUS

13.1 Termination. This Agreement may be terminated:

(a) At any time on or prior to the Closing Date, by the mutual consent in writing of the parties hereto;

(b) At any time on or prior to the Closing Date, by Buyer in writing, if Sellers have, or by Sellers in writing, if Buyer has, Breached (i) any covenant or agreement contained herein or (ii) any representation or warranty contained herein, and in either case such Breach would constitute a failure to satisfy the condition contained in **Section 9.1** or **Section 10.1**, as applicable, and in either case if such Breach has not been cured by the earlier of 30 days after the date on which written notice of such Breach is given to the party committing such Breach or the Closing Date;

(c) At any time, by Sellers or Buyer in writing, if (i) any Governmental Authority which must grant a Permit or Consent contemplated by **Section 10.2** has denied such Permit or Consent and such denial has become final and nonappealable or (ii) any Governmental Authority shall have issued a final nonappealable Order enjoining or otherwise prohibiting the consummation of the Contemplated Transactions; or

(d) By either party hereto in writing, if the Closing Date has not occurred by the close of business on [REDACTED] unless the failure of the Closing Date to occur by such date shall be due to the failure of the party seeking to terminate this Agreement to perform or observe the covenants and agreements of such party set forth herein.

13.2 Effect of Termination. In the event this Agreement is terminated pursuant to **Section 13.1** hereof, this Agreement shall become void and have no effect, except that (a) the provisions relating to expenses and publicity set forth in **Sections 13.9 and 13.11**, respectively, and this **Section 13.2** shall survive any such termination and (b) a termination pursuant to **Section 13.1(b)(i)** or **Section 13.1(d)** shall not relieve the breaching party from liability for an uncured breach of any covenant or agreement giving rise to such termination or existing and uncured as of the date of such termination.

13.3 Notices. Unless otherwise provided herein, any notice, request, instruction or other document to be given hereunder by any party to the others shall be in writing and delivered in person or by courier or by facsimile transmission (such facsimile notice to be effective on the date such receipt is acknowledged), as follows:

If to Buyer: Genesee & Wyoming Inc.
66 Field Point Road
Greenwich, CT 06830
Attention: General Counsel
[REDACTED]

With copies to: K & L Gates LLP
1601 K Street, NW
Washington, DC 20006
Attention: Thomas F. Cooney, Esq.
[REDACTED]

If to Sellers Mr. Terry Small
[REDACTED]

With copies to: Moore, Clarke, DuVall & Rodgers, P.C.
Post Office Drawer 71727
Albany, GA 31708-1727
Attention: James H. Moore, III
[REDACTED]

or to such other place and with such other copies as any party may designate as to itself by written notice to the others.

13.4 Choice of Law; Jurisdiction and Forum; Waiver of Jury Trial.

(a) This Agreement shall be construed, interpreted and the rights of the parties determined in accordance with the laws of the State of Delaware, without regard to the conflict of law principles thereof.

(b) Any action or proceeding brought in connection with this Agreement shall be brought in the federal or state courts located in Wilmington, Delaware which courts shall have exclusive jurisdiction. Each party hereby waives, to the fullest extent possible under applicable law, any objection that it may have to the venue of any action or proceeding with respect to this Agreement in such courts, or that such action or proceeding brought in such courts was brought in an inconvenient court and agrees not to plead or claim the same. The parties further agree, to the extent permitted by law, that final and unappealable judgment against any of them in any action or proceeding contemplated above shall be conclusive and may be enforced in any other jurisdiction by suit on the judgment, a certified copy of which shall be conclusive evidence of the fact and amount of such judgment. Each party hereby authorizes and accepts service of process sufficient for personal jurisdiction in any action or proceeding against it as contemplated by this Section 13.4 by certified mail, return receipt requested, postage prepaid, or by courier to its address for the giving of notices as set forth in this Agreement, or in any other manner set forth in Section 13.3 of this Agreement for the giving of notice, it being agreed that service in such manner shall constitute valid service upon such party in connection with any such action or proceeding; provided, further, that nothing in this Section 13.4(b) shall affect the right of any party hereto to serve legal process in any other manner permitted by applicable law.

(c) EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE CONTEMPLATED TRANSACTIONS. EACH PARTY CERTIFIES THAT IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS SET FORTH ABOVE IN THIS SECTION 13.5.

13.5 Entire Agreement; Amendments and Waivers. This Agreement, together with all schedules and exhibits hereto (including without limitation the Disclosure Schedules), constitutes the entire agreement among the parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties; provided, however, this Section 13.5 shall not terminate the Confidentiality Agreement which shall survive the execution and delivery of this Agreement. No supplement, modification or waiver of this Agreement shall be binding unless executed in writing by all parties. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

13.6 Counterparts; Facsimile. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A facsimile signature by any party on a counterpart of

this Agreement shall be binding and effective for all purposes. Such party shall subsequently deliver to the other parties an original, executed copy of this Agreement, provided, however, that a failure of such party to deliver an original, executed copy shall not invalidate its facsimile signature.

13.7 Invalidity. In the event that any one or more of the provisions contained in this Agreement or in any other instrument referred to herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement or any other such instrument.

13.8 Headings. The headings of the Articles and Sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

13.9 Expenses. Except as otherwise provided herein, Sellers on the one hand, and Buyer on the other hand, will each be liable for their own costs and expenses incurred in connection with the negotiation, preparation, execution or performance of this Agreement, whether or not the Closing shall have occurred.

13.10 Further Assurances. On and after the Closing Date, Sellers and Buyer will take all appropriate action and execute all documents, instruments or conveyances of any kind which may be reasonably necessary or advisable to carry out any of the provisions hereof.

13.11 Publicity; Disclosure Following the execution of this Agreement, Sellers and Buyer shall mutually agree on the form and timing of an initial joint press release to be issued by Buyer and the Company regarding this Agreement. Sellers and Buyer shall consult with and obtain the approval of the other party before issuing any press release or other public announcement with respect to the Contemplated Transactions and shall not issue any such press release prior to such consultation and approval, except as may be required by applicable Law, including the rules and regulations of any national securities exchange or national automated quotation system, in which case the party proposing to issue such press release or make such public announcement shall use its commercially reasonable efforts to consult in good faith with the other parties before issuing any such press release or making any such public announcement.

13.12 Successors and Assigns. Except as otherwise provided in this Agreement, no party hereto shall assign this Agreement or any rights or obligations hereunder without the prior written consent of the other party hereto and no other Person shall have any right, benefit or obligation hereunder, other than Buyer Indemnified Parties and Seller Indemnified Parties pursuant to Article 12 hereof. Any such attempted assignment without such prior written consent shall be void and of no force and effect; provided, however, that the Buyer may assign or cause to be assigned any or all of its rights and obligations hereunder to any wholly owned direct or indirect affiliate of Buyer or to an independent irrevocable voting trust pursuant to 49 C.F.R. Part 1013; provided, further, that no such assignment shall reduce or otherwise vitiate any of the obligations of the Buyer hereunder. This Agreement shall inure to the benefit of and shall be binding upon the successors and permitted assigns of the parties hereto, and no assignment shall relieve any party of any obligation or liability under this Agreement.

13.13 Construction of Agreement. Sellers and Buyer acknowledge that each party and each party's counsel have reviewed and revised this Agreement and that normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement or any amendments or schedules hereto.

[SIGNATURE PAGE TO FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, or have caused this Agreement to be duly executed on their behalf by their respective officers thereunto duly authorized, as of the day and year first above written.

BUYER:

SELLERS:

GSW ACQUISITION SUB INC.

By: /s/ Mark W. Hastings
Name: Mark W. Hastings
Title: President

By: /s/ Terry R. Small
Name: Terry R. Small

By: /s/ David L. Smoot
Name: David L. Smoot

[REDACTED]

GENESEE & WYOMING INC.

By: /s/ Mark W. Hastings
Name: Mark W. Hastings
Title: Executive Vice President

[STOCK PURCHASE AGREEMENT SIGNATURE PAGE]

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EXHIBIT 4
FORM OF VOTING TRUST AGREEMENT

VOTING TRUST AGREEMENT

THIS VOTING TRUST AGREEMENT (the "Voting Trust" or "Agreement") is made and entered into this 1st day of October, 2008, by and between Genesee & Wyoming Inc., a Delaware corporation ("Settlor"), and Alan R. Harris (the "Trustee"), whose address is 2918 Malone Drive, Panama City, FL 32405. This Voting Trust is being entered into pursuant to the Guidelines for the Proper Use of Voting Trusts as set forth in 49 C.F.R. Part 1013.

W I T N E S S E T H:

WHEREAS, Settlor is a railroad holding company that directly or indirectly controls the following freight rail common carriers: Buffalo & Pittsburgh Railroad, Inc. ("BPRR"), a Class II rail carrier operating in New York and Pennsylvania, and the following Class III rail carriers: Arkansas, Louisiana & Mississippi Railroad Company, operating in Arkansas and Louisiana; Chattahoochee Bay Railroad, Inc., operating in Georgia and Alabama; Chattahoochee Industrial Railroad, operating in Georgia; The Chattooga and Chickamauga Railway Company, operating in Tennessee and Georgia; Columbus and Greenville Railway Company, operating in Mississippi; Commonwealth Railway, Inc., operating in Virginia; Corpus Christi Terminal Railroad, Inc., operating in Texas; Dansville and Mount Morris Railroad Company, operating in New York; First Coast Railroad, Inc., operating in Florida and Georgia; Fordyce & Princeton Railroad Company, operating in Arkansas; Genesee and Wyoming Railroad Company, operating in New York; Golden Isles Terminal Railroad, Inc., operating in Georgia; Illinois & Midland Railroad, Inc., operating in Illinois; Louisiana & Delta Railroad, Inc., operating in Louisiana; Luxapalila Valley Railroad, Inc., operating in Mississippi and Alabama; Maryland Midland Railway, Inc., operating in Maryland; Portland & Western Railroad, Inc., operating in Oregon; Rochester & Southern Railroad, Inc., operating in New York; Salt Lake City Southern Railroad Company, operating in Utah; Savannah Port Terminal Railroad Inc., operating in Georgia; South Buffalo Railway Company, operating in New York; St. Lawrence & Atlantic Railroad Company, operating in Vermont, New Hampshire and Maine; St. Lawrence & Atlantic Railroad (Quebec), Inc., operating in Vermont; Talleyrand Terminal Railroad Company, Inc., operating in Florida; Tazewell & Peoria Railroad, Inc., operating in Illinois; Utah Railway Company, operating in Colorado and Utah; Willamette and Pacific Railroad, Inc., operating in Oregon, and York Railway Company ("York"),¹ operating in Pennsylvania;

WHEREAS, Settlor also controls additional rail carriers together with two of its wholly-owned subsidiaries that are non-carrier holding companies, RP Acquisition Company One ("RP1") and RP Acquisition Company Two ("RP2"). Settlor and RP1 together control Rail Partners, L.P.² and eight Class III rail carriers formed as limited partnerships.³ Settlor and RP2

¹ Settlor also has control over Maryland and Pennsylvania, LLC and Yorkrail, LLC, two non-operating Class III rail carriers that separately hold the rail assets over which York operates.

² Rail Partners, L.P. is a non-carrier limited partnership that holds all non-managing membership interests or all limited partnership interests (as applicable) in each of the limited partnership Class III rail carriers described in footnotes 4 and 6 below. RP1 acquired the entire general partnership interest of Rail Partners, L.P.

together control Rail Partners, L.P.,⁴ KWT Railway, Inc., a Class III rail carrier corporation, and five Class III rail carriers organized as limited liability companies;⁵

WHEREAS, Settlor has created a new wholly-owned subsidiary, GSW Acquisition Sub Inc. ("GSW Sub"), that plans to acquire control of Georgia Southwestern Railroad, Inc. ("GSR") pursuant to a Stock Purchase Agreement (the "Purchase Agreement") by and among GSW Sub, Gencsee & Wyoming Inc., Terry R. Small ("Small") and David L. Smoot ("Smoot") of even date herewith;

WHEREAS, upon the terms and conditions set forth in the Purchase Agreement, GSW Sub will purchase from Small and Smoot ten (10) shares of common stock of GSR, comprising all of the issued and outstanding capital stock of GSR;

WHEREAS, Settlor will file with the Surface Transportation Board (the "Board") a petition for exemption pursuant to 49 U.S.C. § 10502 from the requirements of 49 U.S.C. § 11323 to control GSR as a Class III rail carrier subject to Board jurisdiction;

WHEREAS, Settlor desires to isolate the control of GSR from Settlor and any company controlled by or affiliated with Settlor by depositing all shares of GSR into an independent irrevocable voting trust pursuant to the Board's regulations at 49 C.F.R. Part 1013, in order to avoid any allegation or assertion that Settlor is controlling or has the power to control GSR prior to receipt of the Board's approval or exemption of the Settlor's acquisition of control of GSR;

WHEREAS, the Trustee is willing to act as voting trustee pursuant to the terms of this Voting Trust; and

WHEREAS, capitalized used herein but not defined shall have the meanings ascribed to them in the Purchase Agreement.

NOW, THEREFORE, in consideration of the premises and mutual undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

³ The limited partnership Class III rail carriers are: Atlantic & Western Railway, Limited Partnership; East Tennessee Railway, L.P.; Galveston Railroad, L.P.; Georgia Central Railway, L.P.; Little Rock & Western Railway, L.P.; Tomahawk Railway, Limited Partnership; Valdosta Railway, L.P.; and Wilmington Terminal Railroad, Limited Partnership.

⁴ RP2 acquired the entire limited partnership interest of Rail Partners, L.P.

⁵ The Class III rail carriers organized as limited liability companies are: AN Railway, L.L.C.; The Bay Line Railroad, L.L.C.; Meridian & Bigbee Railroad, L.L.C.; Riceboro Southern Railway, L.L.C.; and Western Kentucky Railway, L.L.C.

1. Settlor hereby irrevocably appoints Alan R. Harris as Trustee hereunder, and Alan R. Harris hereby accepts said appointment and agrees to act as Trustee under this Voting Trust as provided herein.
2. This Voting Trust shall be irrevocable by Settlor and shall terminate only in accordance with the provisions of this Agreement.
3. This Voting Trust shall be executed simultaneously with the Purchase Agreement; however, this Voting Trust shall not become effective until, and is contingent upon, the consummation of the Contemplated Transactions ("Effective Time"). At the Effective Time, Settlor agrees that it will assign, transfer and deliver all of its right, title and interest in the issued and outstanding shares of capital stock of GSWR to the Trustee, and will direct that any and all additional shares of GSWR hereafter acquired by Settlor during the term of this Voting Trust be likewise assigned, transferred and delivered to the Trustee. All such shares shall be duly endorsed or accompanied by proper instruments duly executed for transfer thereof to the Trustee, with all applicable transfer taxes and fees having been paid by Settlor, in exchange for Trust Certificates (as described in Paragraph 5 hereof). The delivery of certificates of such shares may be made at such other place as may be designated by the Trustee. All shares of GSWR at any time deposited with the Trustee hereunder are hereinafter referred to as the "Trust Stock."
4. The Trustee shall hold in trust and shall dispose of, pursuant to the terms and conditions of this Voting Trust, all Trust Stock which may now or afterwards from time to time be delivered by or for the account of the Settlor. In exchange for the Trust Stock, the Trustee shall cause to be issued and delivered to the Settlor voting trust certificates ("Trust Certificates") substantially in the form attached hereto as Exhibit A, with the blanks therein appropriately filled.
5. The Trust Certificates issued by the Trustee may be transferred on the books of the Trustee by the registered holder or holders of the Trust Certificates (each, a "Holder," together, the "Holders") upon the surrender thereof, properly endorsed by the Holder, in person or by an authorized attorney of the Holder, according to rules from time to time established for that purpose by the Trustee. Title to the Trust Certificates, when endorsed, shall, to the extent permitted by law, be transferable with the same effect as in the case of negotiable instruments. Delivery of the Trust Certificates, endorsed in blank by a Holder, shall vest title to and all rights under the Trust Certificates in the transferee thereof to the same extent and for all purposes as would delivery under like circumstances of negotiable instruments payable to bearer; *provided, however*, that the Trustee may treat the Holder of record, or, when presented endorsed in blank, the bearers, as the owners for all purposes whatsoever, and shall not be affected by any notice to the contrary; provided further, however, that the Trustee shall not be required to deliver any Trust Stock without the surrender and cancellation of the corresponding Trust Certificate(s). Except to the extent provided otherwise in Paragraph 13 hereof, every transferee of a Trust Certificate shall, upon the receipt of such properly endorsed Trust Certificate, become a party to this Voting Trust as though an original party, and shall assume all attendant rights and obligations under this Voting Trust. In connection with, and as a condition of, making or permitting any transfer or delivery of any Trust Stock or

Trust Certificate under any provision of this Voting Trust, the Trustee may require the payment of a sum sufficient to pay or reimburse the Trustee for any stamp tax or other governmental charge in connection with the transaction.

6. From the Effective Time, and until such time as this Voting Trust shall terminate in accordance with the provisions in this Agreement, the Trustee, subject to the limitations contained in this Agreement, shall have the full right to vote and to execute consents with respect to the Trust Stock, and shall be duly bound to exercise such voting rights, either in person or by proxy, at all meetings of the shareholders of GSWR for any purpose, and shall possess in respect of any and all the Trust Stock, and shall be entitled to exercise, all the powers of absolute owners of the Trust Stock and all rights of every nature in respect of such Trust Stock, including the right to vote and to execute consents for every purpose and to receive distributions thereon, unless otherwise directed by a court of competent jurisdiction. The Trustee shall not exercise the voting powers of the Trust in any way so as to cause any dependence or intercorporate relationship between Settlor or companies controlled by or affiliated with Settlor (not including GSWR), on the one hand, and GSWR or companies controlled by or affiliated with GSWR, on the other hand, other than such dealings as permitted pursuant to Paragraph 8 hereof. (The term "affiliate" or "affiliates" wherever used in this Voting Trust shall have the meaning specified in 49 U.S.C. § 11323(c)). The Trustee may not vote the Trust Stock for any transaction that would result in a violation of 49 U.S.C. § 11323; *provided, however*, that the Trustee may, with the consent of the Holder(s) representing at least two-thirds of the shares of GSWR at the time held pursuant to this Voting Trust, vote with respect to the following:

- (a) the sale, lease or exchange of all or substantially all of the property and assets or of the capital stock of GSWR to any company other than a company controlled by or affiliated with Settlor, or dissolution of GSWR; or
- (b) the consolidation or merger of GSWR with or into any company other than a company controlled by or affiliated with Settlor.

In the case of any such sale, lease, exchange, consolidation, merger or dissolution so made with the consent of the Holder(s) representing at least two-thirds of the shares of GSWR at the time held pursuant to this Voting Trust, the Trustee shall have the power to sell, exchange, surrender or otherwise dispose of all or any part of the ownership interest of GSWR at the time held in trust, pursuant to the terms of or in order to carry into effect such sale, lease, exchange, consolidation, merger or dissolution. Subject to the provisions, and until termination, of this Voting Trust, the Trustee may vote or consent, or issue proxies to vote or consent at shareholders' meetings of GSWR and otherwise, as the Trustee shall determine in his uncontrolled discretion, and no voting or other right or power with respect to the Trust Stock and other securities held in trust shall pass to any Holder or to others by or under the Trust Certificates, or by or under this Voting Trust, or by or under any other agreement.

7. Neither the Trustee, nor the director, officer, or shareholder of any company controlled by or affiliated with the Trustee, may serve as an officer or member of the board of directors of Settlor or any company controlled by or affiliated with Settlor, or have any

direct or indirect business arrangements or dealings, financial or otherwise, with Settlor or any company controlled by or affiliated with Settlor (other than this Voting Trust), that could be construed as creating an indicium of control by Settlor over the Trustee. The investment by the Trustee in voting securities of Settlor or its affiliates not in excess of five percent of their outstanding voting securities shall not be considered a proscribed business arrangement or dealing, *provided* that such investment does not permit Trustee to control or direct the affairs of Settlor or its affiliates. The Trustee has the responsibility to manage GSWR through casting his votes for GSWR's Board of Directors and to exercise the voting rights and execute consents as provided in Paragraph 7 hereof. The Trustee's duties are therefore not merely custodial in nature. Nothing in this Voting Trust shall restrict the ability of any company controlled by or affiliated with Settlor to enter into or continue commercial dealings with GSWR in the ordinary course of business, based on arm's-length bargaining, during the term of this Voting Trust, including without limitation the following:

- (a) The provision of rail service over GSWR's rail lines by any company controlled by or affiliated with the Settlor;
 - (b) The leasing by GSWR of rolling stock or other equipment or assets or services from any company controlled by or affiliated with Settlor; and
 - (c) The provision by GSWR of such documents and information as Settlor may reasonably request in connection with presenting its position regarding control of GSWR to the Board or a court of competent jurisdiction.
8. In voting or giving directions for voting the Trust Stock, the Trustee will exercise his best judgment to elect suitable directors in the best interest of the affairs of GSWR. The Trustee, however, assumes no responsibility with respect to acts or omissions of the directors of GSWR (other than the gross negligence or willful misconduct of the Trustee himself).
9. The Trustee shall be entitled to receive reasonable and customary compensation for all services rendered by Trustee under the terms of this Agreement and shall be entitled to indemnity from Settlor against any and all expenses, claims and liabilities incurred in connection with or with respect to the performance of Trustee's duties under this Voting Trust; provided, that the indemnification of the Trustee by the Settlor shall not extend to expenses, claims or liabilities resulting from or in connection with the willful misconduct or gross negligence of the Trustee. The Trustee shall submit to Settlor quarterly invoices for services with appropriate documentation, and Settlor shall pay such statements within thirty (30) days after receipt thereof.
10. From and after the deposit of the Trust Stock with Trustee, and until the termination of this Voting Trust pursuant to the terms hereof, a Holder shall be entitled to receive, from time to time, payment of any cash distributions collected by the Trustee upon the ownership interests in GSWR represented by the Trust Certificates. Immediately following receipt of any such cash distribution, the Trustee shall pay the same over to or as directed by the transferee or Holder thereunder as then known to the Trustee.

11. In the event that any distribution other than cash is received by the Trustee, such distribution shall be held by the Trustee in accordance with the terms of this Voting Trust as though it is Trust Stock that was initially deposited with the Trustee by Settlor under this Voting Trust. With respect to such distribution, the Trustee shall issue new or additional Trust Certificates, or any applicable equivalent thereto, to the Holders entitled to receive any such distribution.
12. (a) This Voting Trust is accepted by Trustee subject to the rights hereby reserved to the Holder(s) at any time to sell or make any other disposition, in whole or in part, of its Trust Stock, whether or not an event described in subparagraph (b) below has occurred. The Trustee will at any time upon receipt of written instructions from a Holder, designating the person or entity to whom the Holder has sold or otherwise disposed of the whole or any part of such Holder's Trust Stock, and certifying in writing that such person or entity is not a shareholder, officer or director of Settlor, or a company controlled by or affiliated with Settlor, or a shareholder, officer or director of a company controlled by or affiliated with Settlor (upon which written certification the Trustee shall be entitled to rely), immediately transfer to such person or entity therein named all of the Trustee's right, title and interest in such amount of the Trust Stock as may be set forth in such instructions and shall cooperate with such person or entity in having such Trust Stock reissued in the name of such person or entity. If such instructions result in the transfer of all of the Trust Stock subject to this Voting Trust as of the date of such instructions, then upon transfer of the Trustee's right, title and interest therein, and in the event of a sale thereof, upon delivery of the proceeds of such sale, this Voting Trust shall cease and come to an end. If such instructions relate to only a part of the Trust Stock, then this Voting Trust shall cease as to such part upon such transfer, and the receipt of proceeds in the event of sale, but shall remain in full force and effect as to the remainder of the Trust Stock. In the event of a sale of Trust Stock by a Holder, the net proceeds of such sale shall be made payable to the Trustee and upon receipt thereof the Trustee shall promptly pay or cause to be paid such net proceeds to that Holder. It is the intention of this subparagraph that no violations of 49 U.S.C. § 11323 will result from a termination of this Voting Trust.
- (b) In the event that (i) Title 49 of the United States Code or other controlling law is amended to allow Settlor to acquire control of GSWR without obtaining Board or other governmental approval or exemption, (ii) the Board by final order approves or exempts the control of GSWR by Settlor, or (iii) Settlor is entitled under the regulations of the Board to file a verified notice of exemption to control GSWR and that notice becomes effective without the need for a Voting Trust; then immediately upon the delivery of a copy of such order of the Board or exemption with respect thereto, or an opinion of independent counsel selected by the Trustee that no order of the Board or other governmental authority or exemption is required, the Trustee shall transfer to the Holder(s) or transfer upon the order of the Holder(s) as then known to the Trustee, Trustee's right, title and interest in and to all of the Trust Stock or such part as may then be held by Trustee (as

provided in subparagraph (a) hereof), and upon such transfer this Voting Trust shall cease and come to an end.

- (c) In the event that (i) the Board or a court of competent jurisdiction denies Settlor authority to control GSWR and that order becomes final after judicial review or failure to appeal, (ii) the Board or a court of competent jurisdiction orders the Trustee to divest himself of the Trust Stock, and that order becomes final after judicial review or failure to appeal, or (iii) the Holder(s) determine in light of any other final order that the Trust Stock should be sold, the Trustee shall use best efforts to dispose of the Trust Stock under the terms of the Board or court order and in accordance with any instructions of Holder(s) not inconsistent with the requirement of the terms of any Board or court order. To the extent that registration is required under the Securities Act of 1933 or any other applicable securities laws in respect of any distribution of Trust Stock as contemplated in this Agreement, the Holder(s) shall reimburse the Trustee for any expenses incurred by Trustee. The proceeds of the sale shall be distributed, on a pro rata basis, to or upon the order of the Holder(s) hereunder as then known to the Trustee. The Trustee may, in his reasonable discretion, require the surrender to Trustee of the Trust Certificates hereunder before paying to the Holder such Holder's share of the proceeds
- (d) Unless sooner terminated pursuant to any other provision herein contained, this Voting Trust shall terminate one (1) year after the day and year first written above, so long as no violation of 49 U.S.C. § 11323 will result from such termination, and provided that this Voting Trust may be extended by mutual agreement of the parties hereto pursuant to applicable state law, until such time as the ICC Termination Act of 1995 and the regulations promulgated thereunder by the Board as presently in effect shall no longer require that the Trust Stock be held in a voting trust. All Trust Stock and any other property held by the Trustee hereunder upon such termination shall be distributed to or upon the order of the Holder(s) hereunder as then known to the Trustee. The Trustee may, in his reasonable discretion, require surrender to the Trustee of the Trust Certificates hereunder before the release or transfer of the Trust Stock evidenced thereby. Upon termination of this Voting Trust, the Holder(s)' respective rights, titles and interests in and to the Trust Stock then held by the Trustee shall be transferred to such Holder(s) in accordance with the terms and conditions of this Voting Trust and upon such transfer, this Voting Trust shall cease and come to an end.
- (e) The Trustee shall promptly inform the Board of any transfer or disposition of the Trust Stock pursuant to this Paragraph 13.

- 13. The Trustee shall not, by reason of this Voting Trust, or by the exercise of any powers or duties pursuant to this Voting Trust, incur any responsibility as shareholder, manager, trustee or otherwise by reason of any error of judgment, or mistake of law or fact, or of any omission of any agent or attorney, or of any misconstruction of this Voting Trust, or for any action of any sort taken or omitted or believed by the Trustee to be in accordance with the terms of this Voting Trust or otherwise, except for the willful misconduct or

gross negligence of the Trustee. The Trustee shall not be responsible for the sufficiency or accuracy of the form, execution, validity or genuineness of the Trust Stock or of any endorsement thereof, or for any lack of endorsement thereof, or for any description therein, nor shall the Trustee be responsible or liable in any respect on account of the identity, authority or rights of the persons executing or delivering or purporting to execute or deliver any such Trust Stock or endorsement of the Trust Stock, except for the execution and delivery of this Voting Trust by the Trustee. Settlor agrees that it will at all times protect, indemnify and save harmless the Trustee from any loss, cost, or expense of any kind or character whatsoever in connection with this Voting Trust except those, if any, arising from or in connection with the gross negligence or willful misconduct of the Trustee, and, except for such costs and expenses arising from or in connection with the gross negligence or willful misconduct of the Trustee, (i) Settlor will at all times undertake, assume full responsibility for, and pay all costs and expenses of any suit or litigation of any character, with respect to the Trust Stock or this Voting Trust, and (ii) if the Trustee shall be made a party thereto, Settlor will pay all costs and expenses, including reasonable attorneys' fees, to which the Trustee may be subject by reason thereof. The Trustee may consult with counsel, and the opinion of such counsel shall constitute full and complete authorization and protection in respect of any action taken or omitted or suffered by the Trustee hereunder in good faith and in accordance with such opinion. Notwithstanding any provision herein to the contrary, and without limiting the foregoing, Settlor shall indemnify and save harmless Trustee from and against any and all liability, losses and expenses (including without limitation reasonable attorneys' fees) arising out of or in connection with claims asserted against GSWR or Settlor, or related to the ownership or operation of GSWR's properties, under the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 *et seq.*), the Hazardous Materials Transportation Act (49 U.S.C. § 5105 *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 *et seq.*), the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*), the Clean Air Act (42 U.S.C. § 7401 *et seq.*), and the Toxic Substances Control Act (15 U.S.C. § 2601 *et seq.*), each as may be amended from time to time, and analogous state or local laws (and regulations and orders issued thereunder); *provided*, that this indemnity shall not apply to the extent that such liability, loss or expense arises out of or in connection with the gross negligence or willful misconduct of the Trustee.

14. The Trustee may at any time or from time to time appoint an agent or agents and may delegate to such agent or agents the performance of any administrative duty of the Trustee. The Trustee may at any time remove any agent so appointed by the Trustee and appoint a new agent to carry out the purposes herein.
15. The Trustee may at any time resign by delivering to Settlor his resignation in writing, such resignation to take effect the earlier of thirty (30) days after the date that such notice is sent, or the date of the appointment of a successor trustee. The Trustee shall cease to act as Trustee hereunder effective upon the appointment of a successor trustee as hereinafter provided. Upon receiving notice of resignation, Settlor shall within fifteen (15) days appoint a successor trustee, who shall satisfy the requirements of Paragraph 8 hereof. If no successor trustee shall have been appointed and shall have accepted the appointment within twenty (20) days after such notice of resignation, the resigning

Trustee may petition any federal court for the appointment of a successor trustee consistent with the terms and conditions of this Agreement. In the event of the Trustee's death or his inability to perform his duties under this Agreement, the Settlor shall, within fifteen (15) days after such death or inability to perform, appoint a successor trustee who shall satisfy the requirements of Paragraph 8 hereof. Upon written assumption by the successor trustee of the Trustee's powers and duties hereunder, Settlor shall be notified of such assumption, whereupon the Trustee shall be discharged of his powers and duties hereunder and the successor trustee shall become vested therewith. In the event of any material violation of the terms and conditions of this Voting Trust by the Trustee, the Trustee shall become disqualified from acting as Trustee hereunder as soon as a successor trustee hereunder shall have been selected in the manner provided by this paragraph.

16. Except as provided in this Agreement, the Trustee herein appointed, or any successor trustee, shall not, in the Trustee's individual capacity or otherwise, buy, sell or deal in the shares of GSWR, or the shares or membership or partnership interests, as applicable, of any company affiliated with or controlled by Settlor.
17. The Trustee accepts the powers and duties under this Voting Trust subject to all the terms, conditions and reservations contained in this Agreement and agrees to exercise the powers and perform the duties of Trustee as set forth in this Agreement; *provided*, however, that nothing contained herein shall be construed to prevent the Trustee from resigning as Trustee pursuant to Paragraph 16 hereof.
18. All notices, demands, requests or other communications that may be or are required to be given, served or sent to the Trustee or Settlor pursuant to this Voting Trust shall be in writing and shall be deemed to have been properly given or sent by mailing by registered or certified mail, return receipt required, or by a national overnight delivery service, appropriately addressed to the Trustee or Settlor, as applicable, as follows:

If to the Trustee:

Alan R. Harris
2918 Malone Drive
Panama City, FL 32405

If to Settlor:

Genesee & Wyoming Inc.
66 Field Point Road
Greenwich, CT 06830
Attn: General Counsel

With copies to:

K&L Gates LLP
1601 K Street, NW
Washington, DC 20006
Attn: Thomas F. Cooney, Esq.

Each notice, demand, request or communication which shall be mailed by registered or certified mail, or sent by national overnight delivery service, in the manner aforesaid shall be deemed sufficiently given, served or sent for all purposes at the time such notice, demand, request or communication shall be either received by the addressee or refused by the addressee upon presentation. Upon Trustee's receipt of a notice to a Holder other than Settlor, or in the event the Trustee is required to send notice to a Holder other than Settlor, the Trustee shall forward or send such notice to the Holder of record at the last known address of such Holder listed on the books maintained by the Trustee.

19. Copies of this Voting Trust shall be on file in the office of the Trustee and shall be open to any officer of Settlor or any other Holder daily during normal business hours.
20. In order to permit Trustee to perform the duties and obligations of this Voting Trust, Settlor shall provide Trustee with all corporate records and Board orders concerning the Trust Stock promptly upon Settlor's receipt or creation of such documents.
21. If, at any time, the Trustee is of the opinion that any tax or governmental charge is payable with respect to any Trust Stock held by the Trustee or in respect of any distributions or other rights arising from the subject matter of this Voting Trust, the Trustee may, but shall not be required to, pay such tax or governmental charge. The Trustee shall have a first lien, in the sum of any amount so paid, along with interest at a rate of six percent (6%) per annum, against the Trust Stock held by the Trustee and/or against any distributions or other rights arising from the subject matter of this Voting Trust, and may be satisfied therefrom.
22. If any term or provision of this Voting Trust is illegal, invalid or unenforceable under or inconsistent with present or future law, including, but not limited to, the ICC Termination Act of 1995 and regulations promulgated thereunder by the Board, as may be in effect at that time, then it is the intention of the parties hereto that the remainder of this Voting Trust shall not be affected thereby and shall be valid and shall be enforced to the fullest extent permitted by law. In the event that the Board shall at any time hereafter by final order find that compliance with law requires any other or different action by the Trustee than is provided herein, the Trustee shall, upon receipt of such final order, act in accordance with such final order instead of the provisions of this Voting Trust.
23. This Voting Trust may be executed in counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

24. This Voting Trust shall be governed and construed in accordance with the laws of the State of Delaware.
25. This Voting Trust may from time to time be modified or amended by agreement executed by the Trustee and Settlor:
 - (a) Pursuant to an order of the Board;
 - (b) With prior approval of the Board; or
 - (c) Upon receipt of an opinion of counsel satisfactory to Trustee and Settlor that an order of the Board approving such modification or amendment is not required and that such modification or amendment is consistent with the Board's regulations governing voting trusts as set forth in 49 C.F.R. Part 1013 or any successor provision.
26. This Voting Trust shall be binding upon the successors and assigns of the parties hereto.
27. Once the Settlor has caused the Trust Stock to be deposited with the Trustee, all references to "Settlor" in this Agreement shall be deemed to include any subsequent Holders

IN WITNESS WHEREOF, the parties hereto have executed this Voting Trust as of the date first written above.

TRUSTEE:

SETTLOR:

Alan R. Harris

GENESEE & WYOMING INC.

By: Matthew O. Walsh

Its: Senior Vice President

EXHIBIT A

No. _____

_____ Shares

VOTING TRUST CERTIFICATE

FOR

OWNERSHIP INTEREST OF

THIS IS TO CERTIFY that Genesee & Wyoming Inc. will be entitled, on the surrender of this Certificate, to receive on the termination of this Voting Trust Agreement ("Voting Trust") hereinafter referred to, or otherwise as provided in Paragraph 13 of the Voting Trust, all right, title and interest in a certificate or certificates for [_____] (_____) shares of common stock of Georgia Southwestern Railroad, Inc. ("GSWR"). This Certificate is issued pursuant to the Voting Trust, dated as of [_____] 2008, by and between Genesee & Wyoming Inc., a Delaware corporation ("Settlor"), and Alan R. Harris ("Trustee"). A copy of this Voting Trust is on file in the office of the Trustee, and open to inspection by the holder hereof during normal business hours. This Voting Trust, unless earlier terminated or extended pursuant to the terms thereof, will terminate one year from the date on which it was made, as shown above, so long as no violation of 49 U.S.C. § 11323 will result from such termination.

The holder of this Certificate shall be entitled to the benefits of this Voting Trust, including the right to payments equal to the cash distributions, if any, paid by GSWR on a pro rata basis with respect to the shares represented by this Certificate.

This Certificate shall be transferable only on the books of the undersigned Trustee or any successor, to be kept by such Trustee or successor, upon surrender hereof by the registered holder in person or by an attorney duly authorized in accordance with the provisions of this Voting Trust, and until so transferred, the Trustee may treat the registered holder as the owner of this Certificate for all purposes whatsoever, unaffected by any notice to the contrary

By accepting this Certificate, the holder hereof assents to all provisions of, and becomes a party to, this Voting Trust.

IN WITNESS WHEREOF, the Trustee has signed this Certificate.

TRUSTEE

Signature: _____

Printed Name: _____

Dated: _____