

**TESTIMONY OF JIM BURNLEY,
DEPUTY SECRETARY OF TRANSPORTATION,
BEFORE THE SURFACE TRANSPORTATION SUBCOMMITTEE
SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
CONCERNING SALE OF CONRAIL,
June 20, 1984.**

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

I APPRECIATE THIS OPPORTUNITY TO APPEAR BEFORE YOU TODAY TO DISCUSS THE SECRETARY'S ONGOING EFFORT TO SELL THE GOVERNMENT'S INTEREST IN CONRAIL, WHILE ENSURING CONTINUED SERVICE TO SHIPPERS IN THE NORTHEAST, THE BEST POSSIBLE RETURN TO THE FEDERAL GOVERNMENT FOR ITS INVESTMENT OVER THE LAST DECADE, AND PROPER RECOGNITION OF THE CONTRIBUTIONS OF CONRAIL EMPLOYEES.

I AM CONVINCED WE WILL SUCCEED IN REACHING EACH OF THESE GOALS. IT WAS THE WORK OF THIS COMMITTEE AND THE HOUSE COMMERCE COMMITTEE THREE YEARS AGO IN DEVELOPING THE NORTHEAST RAIL SERVICE ACT OF 1981 THAT WILL MAKE THIS POSSIBLE.

OUR DEADLINE FOR SUBMISSION OF OFFERS TO PURCHASE CONRAIL WAS REACHED JUST TWO DAYS AGO, AND I AM PLEASED TO ANNOUNCE THAT WE HAVE RECEIVED 14 SUBSTANTIVE OFFERS FOR CONSIDERATION. THE DOT STAFF, AS WELL AS GOLDMAN, SACHS, AND COMPANY, OUR INVESTMENT ADVISOR, ARE NOW DIGESTING THE DETAILS OF THESE OFFERS. I HAVE COPIES OF THOSE OFFERS WITH ME, WHICH I WOULD LIKE TO MAKE AVAILABLE TO THE COMMITTEE.

ONCE WE HAVE OUR ANALYSIS READY, WE WILL CONFER WITH THE LEADERSHIP OF BOTH HOUSES, BOTH MAJORITY AND MINORITY. FOLLOWING THESE DISCUSSIONS, SECRETARY DOLE WILL RECOMMEND TO YOU THE OFFER MOST CONSISTENT WITH THE PUBLIC INTEREST.

THE SECRETARY IS TAKING THIS APPROACH BECAUSE SHE BELIEVES THAT THE PUBLIC INTEREST AS WELL AS THE PLAIN INTENT OF NERSA REQUIRE US TO DEVELOP THE BROADEST POSSIBLE RANGE OF OPTIONS BEFORE REACHING A DECISION. THE EFFORT TO LOCATE ADDITIONAL PROSPECTIVE PURCHASERS DID NOT IMPLY DISSATISFACTION WITH EARLY BIDDERS.

SUBMITTAL OF A RECOMMENDED PLAN TO CONGRESS

THE 1981 NERSA AMENDMENTS TO THE 3R ACT, THE REGIONAL RAIL REORGANIZATION ACT, PROVIDE FOR SUBMISSION TO CONGRESS OF A PLAN RECOMMENDED BY THE SECRETARY FOR THE SALE OF THE GOVERNMENT'S COMMON STOCK HOLDINGS IN CONRAIL. TO SATISFY THE STATUTORY CRITERIA, THE RECOMMENDED PLAN MUST "ENSURE CONTINUED RAIL SERVICE", PROMOTE A "COMPETITIVE BIDDING" PROCESS FOR PURCHASE OF THE STOCK, AND "MAXIMIZE THE RETURN TO THE UNITED STATES ON ITS INVESTMENT". I BELIEVE WE HAVE WELL SATISFIED THE "COMPETITIVE BIDDING" CRITERION BY GENERATING THE 14 OFFERS NOW UNDER REVIEW.

WE PLAN TO JUDGE THE MERITS OF EACH PROPOSAL AS FOLLOWS:

- FIRST, WE WILL FAVOR THE PURCHASE OPTION THAT LEAVES THE RAILROAD IN THE STRONGEST FINANCIAL CONDITION AFTER THE SALE. THE REASON IS OBVIOUS -- CONRAIL NEEDS THE FINANCIAL STRENGTH TO PROVIDE COMPETITIVE SERVICES OVER THE LONG TERM, REGARDLESS OF NATIONAL OR REGIONAL ECONOMIC CYCLES. TO SAY THE SAME THING ANOTHER WAY, WE BELIEVE THAT NERSA REQUIRES US TO PURSUE THE OPTION THAT MINIMIZES THE RISK THAT THE FEDERAL GOVERNMENT WILL EVER BE ASKED AGAIN TO ASSUME RESPONSIBILITY FOR CONRAIL.

TO ACCOMPLISH THIS WILL REQUIRE ANALYSIS OF ELEMENTS SUCH AS THE FINANCIAL CONDITION OF THE OFFEROR AND FINANCIAL PROJECTIONS FOR THE COMBINED ENTITY AFTER CONSUMMATION OF SALE. AVAILABILITY OF FINANCING TO MAKE THE PURCHASE AND THE ABILITY TO SERVICE ANY RESULTING DEBT WILL BE REVIEWED. WE WILL ALSO CAREFULLY SCRUTINIZE SUCH FACTORS AS COMMITMENTS MADE BY THE OFFEROR TO MAINTAIN A MINIMUM WORKING CAPITAL LEVEL AT CONRAIL AND SPECIFIC PLANS FOR REINVESTMENT.

- SECOND, PROTECTION OF SERVICE TO SHIPPERS AND COMMUNITIES IN THE NORTHEAST IS ONE OF OUR MAJOR CONCERNS.

IN THIS AREA WE WILL BE LOOKING AT SUCH ELEMENTS AS ANY REDUCTION OR ENHANCEMENT OF COMPETITIVE SERVICE, INCLUDING SERVICE COMMITMENTS TO THE PRESENT CONRAIL SYSTEM, AND OPERATIONAL PLANS FOR A COMBINED ENTITY IF PURCHASE IS MADE BY ANOTHER RAILROAD OR ITS HOLDING COMPANY. SPECIFIC AREAS OF INTEREST HERE WOULD BE ABANDONMENT OF LINES, CONSOLIDATION OF YARDS AND FACILITIES, THE IMPACT ON ESSENTIAL SERVICE, AND THE IMPACT ON CONRAIL'S LABOR FORCE.

- THIRD, WE WILL FAVOR THE OPTION THAT IS CONSISTENT WITH THE PREVIOUS CRITERIA, AND OFFERS THE MAXIMUM RETURN TO THE UNITED STATES. THE SECRETARY WOULD NOT FAVOR THE PLAN WITH THE HIGHEST RATE OF RETURN TO GOVERNMENT IF IT WERE SERIOUSLY AT ODDS WITH THE PUBLIC INTEREST CRITERIA I'VE OUTLINED.

IN THIS AREA, OUR ANALYSIS WOULD FOCUS ON THE FORM AND AMOUNT OF CONSIDERATION, AND THE TREATMENT OF TAX ISSUES. FOR EXAMPLE, WE WOULD BE LOOKING AT TREATMENT OF CONRAIL'S "NOL'S", OR NET OPERATING LOSSES, AND "ITC'S", OR INVESTMENT TAX CREDITS.

NEEDED LEGISLATION

WE BELIEVE "CORE" LEGISLATION WILL MOST LIKELY BE NEEDED TO ALLOW A SALE PLAN TO GO FORWARD, AND WE HOPE TO TRANSMIT SUCH CORE LEGISLATION IN THE NEAR FUTURE. I WANT TO STRESS THE WORD "CORE", BECAUSE A PURCHASER MAY BELIEVE ITS OFFER REQUIRES ADDITIONAL STATUTORY PROVISIONS TAILORED TO THE TERMS OF ITS OWN OFFER. LEGISLATION MAY ALSO BE NEEDED TO ADDRESS TECHNICAL CHANGES THAT ARE NEEDED TO ALLOW CONSIDERATION OF AN APPROPRIATE RANGE OF REASONABLE OFFERS TO PURCHASE THE STOCK. OBVIOUS EXAMPLES WOULD BE THE ELIMINATION OF THE GOVERNMENT'S RIGHT TO SELECT CONRAIL'S DIRECTORS OR THOSE PROVISIONS RELATING TO USRA'S RIGHTS UNDER DEBT AND PREFERRED STOCK INDENTURES AFTER THESE INSTRUMENTS ARE CANCELLED.

THE MOST SIGNIFICANT OBJECTIVES OF SUCH LEGISLATION SHOULD ASSURE THAT:

NEEDED LEGISLATIVE CHANGES ARE MADE AT THE SAME TIME CONGRESS REVIEWS A PARTICULAR SALE PLAN;

CONRAIL SHOULD BE TREATED LIKE ANY OTHER RAILROAD AFTER THE SALE;

THE GOVERNMENT'S INVESTMENT IN CONRAIL SHOULD BE FULLY TERMINATED TO ASSURE THAT THE U. S. DOES NOT "RE-INHERIT" CONRAIL IN THE FUTURE; AND

THE AUTHORITY AND JURISDICTION OF THE SPECIAL COURT AND USRA SHOULD BE UNDISTURBED WITH REGARD TO CONTINUING VALUATION LITIGATION AND OTHER FUNCTIONS THAT OUTLIVE THE SALE.

WE WILL BE CONSIDERING WHAT ADDITIONAL LEGISLATION, IF ANY, MAY BE REQUIRED AS WE EVALUATE THE SALE OFFERS.

TIMING OF CONGRESSIONAL ACTION

WE WILL PROVIDE CONGRESS WITH APPROPRIATE CORE LEGISLATION, A COMPARISON OF THE OFFERS, AND OUR RECOMMENDED PLAN AS SOON AS POSSIBLE.

WE FEEL AN OBLIGATION TO DO EVERYTHING WE CAN TO RESOLVE THE UNCERTAINTIES NOW FACING SHIPPERS, EMPLOYEES, AND COMMUNITIES BEING SERVED BY THE CONRAIL SYSTEM. NO ONE IS WELL SERVED BY AN INDEFINITE PERIOD OF SUSPENSE ABOUT WHO WILL ULTIMATELY OWN CONRAIL. FOR EXAMPLE, THE STATES IN THE REGION CONRAIL SERVES ARE LOSING OVER \$20 MILLION PER YEAR IN TAXES BECAUSE OF FEDERAL OWNERSHIP OF THE RAILROAD.

CONVERSELY, WE HAVE NO INTENTION OF RUSHING TOWARD A SALE IF IT DOES NOT MEET THE PUBLIC INTEREST CRITERIA WE HAVE DEFINED. SECRETARY DOLE HAS HAD AMPLE OPPORTUNITY TO CONTRIVE A QUICK SOLUTION. SHE HAS DECLINED TO DO SO. HER DESIRE IS TO EXECUTE THE SALE THAT BEST PROTECTS THE PUBLIC INTEREST, AND WE LOOK FORWARD TO WORKING WITH THIS COMMITTEE TO ACHIEVE THAT OBJECTIVE.

MR. CHAIRMAN, THIS COMPLETES MY PREPARED STATEMENT. I WOULD BE PLEASED TO RESPOND TO ANY QUESTIONS FROM THE COMMITTEE.

