

STATEMENT OF ELIZABETH HANFORD DOLE,
SECRETARY OF TRANSPORTATION,
BEFORE THE SENATE COMMITTEE ON THE JUDICIARY
CONCERNING THE SALE OF CONRAIL
NOVEMBER 21, 1985

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I APPRECIATE THIS OPPORTUNITY TO APPEAR BEFORE THIS COMMITTEE TODAY TO DISCUSS THE PLAN I HAVE SUBMITTED TO CONGRESS FOR THE TRANSFER OF CONRAIL TO THE PRIVATE SECTOR AFTER ALMOST A DECADE OF FEDERAL STEWARDSHIP. THIS HEARING IS ALSO VERY TIMELY SO THE COMMITTEE CAN HEAR FROM THE DEPARTMENT OF JUSTICE ABOUT ITS REVIEW OF THE COMPETITIVE ASPECTS OF THIS TRANSACTION.

IN REACHING MY DECISION, I KEPT IN MIND THE SACRIFICES AND SECURITY OF CONRAIL'S EMPLOYEES, THE NEEDS OF ITS SHIPPERS, AND THE INTEREST OF ITS MAJORITY STOCKHOLDER: THE AMERICAN TAXPAYER. WE LABORED LONG AND HARD TO REACH THE BEST RESULT FOR THE NATION. THE SELECTION OF NORFOLK SOUTHERN REPRESENTED THE TERMINATION OF AN EXTENSIVE BIDDING AND NEGOTIATION PROCESS, DURING WHICH WE CONTACTED MORE THAN A HUNDRED AND TEN POTENTIAL BIDDERS -- BOTH RAIL AND NON-RAIL COMPANIES.

WE WEIGHED ALL THE FEASIBLE OPTIONS FOR CONRAIL'S FUTURE, INCLUDING A PUBLIC OFFERING AND THE OPTION OF LEAVING CONRAIL IN THE GOVERNMENT. WE RELIED ON THE PROFESSIONAL FINANCIAL

ADVICE OF OUR INVESTMENT BANKER, GOLDMAN, SACHS AND COMPANY.
WE CONSULTED WITH CONGRESSIONAL LEADERSHIP AND MANY MEMBERS OF
CONGRESS, AND WITH FEDERAL AGENCIES WITH RELEVANT EXPERTISE.
WE TALKED WITH STATE AND LOCAL OFFICIALS FROM THE REGION,
EMPLOYEE REPRESENTATIVES, SHIPPERS, CONRAIL MANAGEMENT, CONRAIL
BOARD MEMBERS, AND OTHER INTERESTED PARTIES. FINALLY, AND MOST
SIGNIFICANTLY, WE HONORED ALL OF THE DIRECTIVES OF THE
NORTHEAST RAIL SERVICES ACT OF 1981.

AFTER THIS LONG AND THOROUGH PROCESS, I CHOSE THE NORFOLK
SOUTHERN OVER ALL OTHER BIDDERS BECAUSE THIS BID BEST MET THE
SALE CRITERIA WHICH I ESTABLISHED PURSUANT TO NERSA:

- o NORFOLK SOUTHERN IS THE BEST GUARANTEE OF A
FINANCIALLY STRONG CONRAIL;
- o THE NORFOLK SOUTHERN TRANSACTION BEST PRESERVES
SERVICE TO SHIPPERS AND COMMUNITIES; AND
- o CONSISTENT WITH THESE TWO CRITERIA, THE NORFOLK
SOUTHERN TRANSACTION MAXIMIZES THE FINANCIAL RETURN TO
THE GOVERNMENT.

IN TRUTH, THE FINANCIAL STRENGTH AND SERVICE CRITERIA ARE INSEPARABLE. IF WE HAVE LEARNED NOTHING ELSE FROM THE RAILROAD INDUSTRY'S DIFFICULTIES DURING THE LAST TWO DECADES, WE HAVE LEARNED THAT FINANCIAL STRENGTH IS THE BEST GUARANTEE OF CONTINUED SERVICE AND THAT FINANCIAL WEAKNESS YIELDS JOB LOSSES AND POOR SERVICE.

WHILE THE FOCUS OF TODAY'S HEARING IS THE JUSTICE DEPARTMENT'S REVIEW OF THE COMPETITIVE ASPECTS OF THIS SALE, I MUST STRESS MY STATUTORY MANDATE, AS SECRETARY OF TRANSPORTATION AND AS A TRUSTEE FOR THE PUBLIC INTEREST IN TRANSPORTATION, IS TO SEE THAT CONRAIL IS TRANSFERRED TO THE PRIVATE SECTOR IN A WAY THAT PUTS THE RAILROAD IN THE STRONGEST FINANCIAL POSITION. FROM THAT PERSPECTIVE, SEVERAL ASPECTS OF CONRAIL'S HISTORY AND PROSPECTS RAISE CONCERN ABOUT ITS FUTURE. CONRAIL HAS ONLY A VERY SHORT-TERM PROFIT HISTORY THAT WAS ACHIEVED THROUGH THE ABLE LEADERSHIP OF CONRAIL'S MANAGEMENT AND THE SACRIFICES OF ITS EMPLOYEES. ITS SUCCESSFUL TURNAROUND, HOWEVER, COULD NOT HAVE BEEN ACHIEVED WITHOUT SIGNIFICANT WAGE CONCESSIONS FROM ITS EMPLOYEES, PAYMENT OF ITS LABOR PROTECTION BY THE FEDERAL GOVERNMENT, AND RELIEF FROM PAYMENT OF STATE TAXES. THE ACCRUED BENEFITS OF FEDERAL OWNERSHIP HAVE ALLOWED CONRAIL TO ACCUMULATE A SUBSTANTIAL CASH CUSHION. WE BELIEVE THIS CUSHION IS ESSENTIAL TO ENABLE CONRAIL TO OPERATE THROUGH THE INEVITABLE DOWNTURNS IN BUSINESS CYCLES TO WHICH CONRAIL AND THE REGION IT SERVES ARE SO VULNERABLE.

THESE ARE BENEFITS CONRAIL WILL LOSE UPON BEING TRANSFERRED TO THE PRIVATE SECTOR. FURTHERMORE, EVEN WITH THESE BENEFITS, CONRAIL'S RECENT PERFORMANCE CONTINUES TO RAISE CONCERNS ABOUT ITS FUTURE. THE COMPANY'S REPORTED NET INCOME FOR THE FIRST NINE MONTHS OF 1985 WAS \$330 MILLION, WHICH WAS 10.2 PERCENT BELOW BUDGET AND 19.7 PERCENT BELOW ITS PERFORMANCE DURING THE COMPARABLE PERIOD LAST YEAR. IN ADDITION, CONRAIL'S NET INCOME FOR THE LAST QUARTER OF 1984 WAS 18.2 PERCENT BELOW BUDGET AND 23.7 PERCENT BELOW THE SAME PERIOD IN 1983. DURING THIS PERIOD THE COMPANY'S CASH DECREASED BY \$12 MILLION. THUS, EVEN IN THE TWO BEST YEARS CONRAIL IS PROJECTED TO HAVE, ITS PERFORMANCE REVEALS ITS VULNERABILITY. CONRAIL'S OWN PROJECTIONS SHOW THIS FINANCIAL WEAKNESS CONTINUING, SO I AM NOT OPTIMISTIC THAT THIS TREND WILL BE CORRECTED BY THE END OF THE YEAR.

A KEEN OBSERVER OF THE CONRAIL SALE, MR. HAYS WATKINS, CHAIRMAN OF CSX (THE CHIEF COMPETITOR OF BOTH CONRAIL AND NORFOLK SOUTHERN), HAS TERMED CONRAIL "AN INHERENTLY FRAGILE ENTITY" IN LETTERS TO ME, ONE ON JUNE 13, 1984:

"...RAIL TRAFFIC IN THE CONRAIL SERVICE AREA WILL NOT GROW, AND IS LIKELY TO CONTINUE ITS DECLINE OVER ANY FORESEEABLE PERIOD. THE BUSINESS CYCLE WILL PRODUCE A RECESSION AT SOME POINT, AND THE MARKET WILL ONLY SUPPORT TWO CARRIERS. BECAUSE OF CONRAIL'S PARTICULAR VULNERABILITY TO TRUCK DIVERSION, ITS LACK OF SIGNIFICANT COAL RESERVES, AND THE LACK OF A STRONG PARENT, AN INDEPENDENT CONRAIL WILL BE THE CARRIER TO FAIL..."

AND A SECOND ON NOVEMBER 16, 1984:

"NOTWITHSTANDING RECENT GAINS IN REMOVING ARTIFICIAL CONSTRAINTS ON ITS FINANCIAL VIABILITY, CONRAIL NEVERTHELESS REMAINS AN INHERENTLY FRAGILE ENTITY...NEITHER LAW NOR MANAGEMENT CAN ALTER THE DYNAMICS OF THE NORTHEAST ECONOMY OR ARREST THE EROSION OF CONRAIL'S MARKET.

"THE SALE OF CONRAIL TO A NON-RAILROAD ENTITY FAILS TO SHORE UP CONRAIL'S INHERENT VULNERABILITY."

IN THE THREE AND A HALF YEARS OF THE CONRAIL SALE PROCESS, THE NORFOLK SOUTHERN OFFER WAS THE HIGH BID BOTH QUANTITATIVELY AND QUALITATIVELY -- IT PROVIDES FOR THE INTEGRATION OF CONRAIL'S SERVICES INTO THE NORFOLK SOUTHERN FAMILY, IT BRINGS THE ENORMOUS FINANCIAL RESERVES OF A STRONG PARENT AND, UNLIKE SOME OTHER PROPOSALS, NORFOLK SOUTHERN'S DOES NOT RELY ON LEVERAGING OFF OF CONRAIL'S CASH OR MORTGAGING CONRAIL'S ASSETS TO MEET PURCHASE OBLIGATIONS TO THE GOVERNMENT OR LABOR, OR TO PAY DIVIDENDS IN ORDER TO MEET OBLIGATIONS TO ITS INVESTORS AT THE EXPENSE OF CONRAIL.

NORFOLK SOUTHERN BRINGS CONRAIL MORE FINANCIAL STRENGTH THAN ANY OTHER OPTION. THE MERGER BRINGS CONRAIL THE ENORMOUS FINANCIAL RESOURCES OF THE NORFOLK SOUTHERN SYSTEM. IT WILL

INCREASE CONRAIL'S VOLUME OF TRAFFIC BECAUSE IT WILL MAKE POSSIBLE CHEAPER, FASTER NORTH-SOUTH SINGLE LINE RATES. IT WILL DIVERSIFY CONRAIL'S TRAFFIC BASE AND LOWER ITS OPERATING COSTS THROUGH SYNERGIES, SUCH AS OPENING A SHORTER, MORE DIRECT ROUTE, PROVIDING SINGLE-LINE SERVICE, FOR WEST VIRGINIA COAL MOVING TO PHILADELPHIA. WEST VIRGINIA LOW-SULPHUR MIXING COAL NOW MOVES OVER CONRAIL TO PHILADELPHIA ON A CIRCUITOUS ROUTE THROUGH COLUMBUS, OHIO, AND THEN EAST. THE NORFOLK SOUTHERN/CONRAIL SYSTEM WILL PROVIDE FASTER, CHEAPER SERVICE THROUGH HAGERSTOWN, MARYLAND, TO PHILADELPHIA, OPENING NEW COMPETITIVE OPPORTUNITIES FOR WEST VIRGINIA MIXING COAL AND GIVING CSX COMPETITION FOR SINGLE LINE COAL MOVEMENTS TO THE NORTHEAST. THE SALE TO NORFOLK SOUTHERN WILL ALSO BREAK CONRAIL'S CURRENT MONOPOLY ON NORTHEAST-MIDWEST SINGLE-LINE SERVICE WITH THE ENHANCEMENT OF TWO REGIONAL RAILROADS: GUILFORD TRANSPORTATION INDUSTRIES AND THE PITTSBURGH & LAKE ERIE RAILROAD.

ACQUISITION OF CONRAIL BY NORFOLK SOUTHERN ALSO PROVIDES THE BEST ASSURANCE OF CONTINUED EMPLOYMENT TO CONRAIL'S EMPLOYEES, AND I HARDLY NEED TO EMPHASIZE THAT THE KEY TO JOB SECURITY IN THE RAIL INDUSTRY IS SUSTAINED SERVICE. CONRAIL'S EMPLOYEES HAVE FACED UNCERTAINTY ABOUT THEIR COMPANY'S FUTURE FOR TOO LONG. IT IS TIME TO END THIS UNCERTAINTY WITH A PROMPT AND EQUITABLE SOLUTION. NOT ONLY WILL NORFOLK SOUTHERN BETTER

ASSURE THE LONG TERM SURVIVAL OF THE COMPANY, IT WILL ALSO PRESERVE MORE JOBS IN THE NEAR TERM. NORFOLK SOUTHERN PROJECTS A NET EMPLOYMENT IMPACT OF ONLY 1200 JOBS FROM ITS ACQUISITION OF CONRAIL. CONRAIL, ON THE OTHER HAND, PROJECTS A CONTINUATION OF THE DRAMATIC REDUCTIONS IN EMPLOYMENT THAT HAVE CHARACTERIZED ITS HISTORY. SINCE ITS FORMATION IN 1976, CONRAIL HAS REDUCED THE AVERAGE NUMBER OF FREIGHT EMPLOYEES FROM 86,908 TO 37,911 IN 1984 -- AN AVERAGE OF 6,125 JOBS LOST EACH YEAR. THERE IS NO DOUBT THAT CONRAIL HAS NEEDED TO CUT THOSE JOBS TO SURVIVE. FOR THE SAME REASON, CONRAIL PROJECTS REDUCING FREIGHT EMPLOYMENT ANOTHER 12 PERCENT (4,579 JOBS) BY 1989 TO 33,332. CONRAIL'S EMPLOYEES HAVE CONTRIBUTED GREATLY TO THE SUCCESS IT HAS ENJOYED AND DESERVE THE SECURITY OF A FINANCIALLY STRONG EMPLOYER. AGAIN, THE NORFOLK SOUTHERN OFFER STANDS OUT BECAUSE THE STABILITY OF SERVICE CREATED BY A NORFOLK SOUTHERN/CONRAIL COMBINATION MEANS JOB STABILITY FOR CONRAIL'S EMPLOYEES. IT IS NOTEWORTHY THAT NORFOLK SOUTHERN HAS REDUCED ITS LABOR FORCE FAR LESS THAN EITHER CONRAIL OR THE RAIL INDUSTRY AS A WHOLE SINCE CONRAIL WAS CREATED.

IN ADDITION TO THE STRENGTHS NORFOLK SOUTHERN BRINGS TO THE CONRAIL SYSTEM, I SOUGHT AND OBTAINED FROM NORFOLK SOUTHERN AN EXTREMELY STRONG SET OF PUBLIC INTEREST COVENANTS. THESE COVENANTS WILL PRESERVE QUALITY SERVICE, PROTECT CONRAIL'S SHIPPERS, AND ENSURE CONTINUED FINANCIAL STRENGTH.

NORFOLK SOUTHERN HAS AGREED TO INVEST HUNDREDS OF MILLIONS OF DOLLARS ANNUALLY IN CONRAIL'S PHYSICAL PLANT AND TO REFRAIN FROM DEFERRING MAINTENANCE AS MEASURED BY NORFOLK SOUTHERN'S OWN STANDARDS, WHICH ARE THE HIGHEST IN THE INDUSTRY. THE COVENANTS REQUIRE CONRAIL TO REFRAIN FROM PAYING DIVIDENDS UNLESS TWO INDEPENDENT TESTS ARE PASSED: FIRST, CUMULATIVE DIVIDENDS MAY NOT EXCEED 40 PERCENT OF CUMULATIVE NET INCOME AND, SECOND, \$500 MILLION IN CASH WOULD REMAIN AFTERWARD. THIS ASSURES THAT ADEQUATE FUNDS WILL BE AVAILABLE TO OPERATE CONRAIL EVEN UNDER DIFFICULT ECONOMIC CIRCUMSTANCES.

NORFOLK SOUTHERN HAS AGREED TO CONTINUE CONRAIL'S PRACTICE OF SELLING ANY ABANDONED LINES FOR 75 PERCENT OF NET LIQUIDATION VALUE. ALL OF CONRAIL'S CURRENT MINORITY BUSINESS ENTERPRISE AND AFFIRMATIVE ACTION PROGRAMS WILL BE CONTINUED. CONRAIL'S HEADQUARTERS WILL REMAIN IN PHILADELPHIA. THE ALTOONA SHOPS WILL BE KEPT. GATEWAYS WILL BE REOPENED WITH REGIONAL RAILROADS. BEFORE PAYING DIVIDENDS AND ON A QUARTERLY BASIS, NORFOLK SOUTHERN OFFICERS MUST CERTIFY TO THE DEPARTMENT THAT NORFOLK SOUTHERN AND CONRAIL ARE COMPLYING WITH THE COVENANTS, AND FALSE CERTIFICATION IS SUBJECT TO CRIMINAL PENALTIES. CONRAIL CANNOT BE SOLD OFF IN PIECES OR MERGED INTO ANOTHER ENTITY. NORFOLK SOUTHERN WILL RETAIN AT LEAST 51 PERCENT OF EACH CLASS OF VOTING STOCK. TRANSACTIONS AMONG NORFOLK SOUTHERN AND ITS AFFILIATES AND CONRAIL ARE REQUIRED TO BE FAIR AND CONRAIL IS INDEMNIFIED AGAINST ABUSES. REVERSION OF

PENSION PLAN ASSETS IS BARRED. ALL OF THESE COVENANTS WILL LAST FOR FIVE YEARS AND ARE ENFORCEABLE BY FEDERAL COURT INJUNCTION, WHICH CAN BE SPEEDILY OBTAINED BECAUSE NORFOLK SOUTHERN HAS WAIVED JURISDICTIONAL DEFENSES.

OF COURSE, IT WAS NECESSARY TO ASSURE THAT THE PLAN PRESENTED TO CONGRESS WOULD NOT HAVE ADVERSE COMPETITIVE EFFECTS THAT WOULD UNDERMINE THE PLAN'S OBVIOUS COMPETITIVE ADVANTAGES. ACCORDINGLY, I SUBMITTED THE NORFOLK SOUTHERN OFFER TO THE JUSTICE DEPARTMENT FOR A COMPLETE ANALYSIS OF COMPETITIVE EFFECTS THAT COULD FLOW FROM ACCEPTING THIS BID.

I AM CONFIDENT THAT THE INDEPENDENT, SOPHISTICATED, COMPREHENSIVE AND OBJECTIVE EXAMINATION BY THE DEPARTMENT OF JUSTICE REMOVES ANY QUESTION THAT THIS PLAN TO SELL CONRAIL TO NORFOLK SOUTHERN IS COMPETITIVELY FLAWED. THE ANTITRUST DIVISION OF THE JUSTICE DEPARTMENT EXERCISES AN EXTREMELY RIGOROUS, SKEPTICAL VIEW OF TRANSPORTATION COMBINATIONS, AS DEMONSTRATED BY FILINGS WITH THE ICC IN RAIL MERGER PROCEEDINGS THAT ARE OFTEN ADOPTED ONLY IN PART BY THE ICC. THIS COMPETITIVE REVIEW WAS THE MOST STRINGENT TO WHICH ANY RAIL MERGER HAS EVER BEEN SUBJECTED BECAUSE NO OTHER AGENCY HAS MODIFIED OR SOFTENED THE CONDITIONS JUSTICE DEEMS APPROPRIATE. THE JUSTICE DEPARTMENT TOLD YOU ABOUT ITS METHODS AND ITS RESULTS. SINCE THE JUSTICE DEPARTMENT HAS ASSURED YOU THAT COMPETITION WILL NOT BE REDUCED, LET ME FOCUS, MR. CHAIRMAN, ON HOW THE BROADER PUBLIC INTEREST IS SERVED BY THIS SALE.

SALE OF CONRAIL TO NORFOLK SOUTHERN PROVIDES SHIPPERS WITH IMPORTANT COMPETITIVE ADVANTAGES. NORFOLK SOUTHERN HAS AGREED TO REOPEN CLOSED GATEWAYS AND TO STRENGTHEN REGIONAL CARRIERS THROUGH SUBSTANTIAL DIVESTITURES. NORFOLK SOUTHERN'S AGREEMENT TO REOPEN GATEWAYS REFLECTS ITS OWN LONG STANDING CORPORATE POLICY ON INTERCHANGES WITH REGIONAL RAILROADS. THE DIVESTITURES WILL ALSO PROVIDE EAST-WEST SHIPPERS WITH ANOTHER COMPETITIVE OPTION FOR SINGLE LINE SERVICE BETWEEN THE ST. LOUIS AND CHICAGO GATEWAYS AND THE NORTHEAST.

THE NORFOLK SOUTHERN/CONRAIL SYSTEM WILL LOWER SHIPPER COSTS BY OFFERING SHIPPERS AND CONSUMERS MORE EFFICIENT, LESS EXPENSIVE SINGLE LINE SERVICE ON NEARLY ALL COMMODITIES MOVING NORTH AND SOUTH ON THE COMBINED SYSTEM. TODAY, GOODS MOVING BETWEEN NORTHERN AND SOUTHERN POINTS ON THE CONRAIL AND NORFOLK SOUTHERN SYSTEMS AND THEIR COMPETITORS REQUIRE THE SERVICES OF TWO RAILROADS. INHERENT IN THIS "TWO CARRIER SERVICE" IS A REQUIREMENT THAT THE SHIPPER PAY HIGHER "JOINT RATES" AND OFTEN SWITCHING COSTS, AS WELL AS INCUR THE LOSS OF A DAY OR MORE IN YARD OPERATIONS WHERE THE TWO CARRIERS EXCHANGE TRAFFIC.

THE NORFOLK SOUTHERN/CONRAIL SYSTEM WILL OFFER SHIPPERS AND CONSUMERS LESS COSTLY, MORE EFFICIENT SINGLE LINE RATES FROM NEW ENGLAND AND THE MIDWEST TO THE GULF OF MEXICO. NORFOLK SOUTHERN/CONRAIL WILL BE ABLE TO OFFER SHIPPERS THE

SAME KIND OF "ONE-STOP SHOPPING" CAPACITY THAT CSX ACQUIRED IN THE MERGER THAT CREATED IT. NO JOINT RATES, NO SWITCHING FEES, AND NO LOST TIME IN YARDS ADD UP TO LOWER COSTS AND BETTER SERVICE FOR SHIPPERS AND CONSUMERS.

IN ADDITION TO THESE BENEFITS, THE EMERGENCE OF GUILFORD INTO THE MIDWEST WILL BREAK CONRAIL'S MONOPOLY ON SINGLE LINE TRAFFIC BETWEEN THE MIDWEST AND THE NORTHEAST. TODAY THERE IS ONLY ONE RAILROAD--CONRAIL--THAT CAN OFFER SINGLE LINE SERVICE BETWEEN THE NORTHEAST AND THE MAJOR MIDWESTERN GATEWAYS AT CHICAGO AND ST. LOUIS. BUT THE DIVESTITURES TO GUILFORD WILL END THAT MONOPOLY. GUILFORD WILL BECOME A MAJOR CARRIER OFFERING SINGLE LINE SERVICE BETWEEN CHICAGO AND ST. LOUIS AND A BROAD RANGE OF EASTERN AND NORTHEASTERN MARKETS. THE CREATION OF A SECOND SINGLE LINE EAST-WEST COMPETITOR WILL RESTORE HEAD-TO-HEAD SINGLE LINE COMPETITION BETWEEN THOSE POINTS FOR THE FIRST TIME SINCE THE MERGER OF THE PENNSYLVANIA RAILROAD AND THE NEW YORK CENTRAL TWO DECADES AGO.

CONSIDER HOW THE SALE OF CONRAIL TO NORFOLK SOUTHERN WILL ENHANCE THE COMPETITIVE OPTIONS OPEN TO MIDWESTERN SHIPPERS SENDING GOODS EAST AND SOUTH THROUGH THE CHICAGO GATEWAY. TODAY, THOSE SHIPPERS HAVE FOUR OPTIONS: (1) THEY CAN SHIP SOUTH VIA NORFOLK SOUTHERN, (2) THEY CAN SHIP SOUTH VIA CSX, (3) THEY CAN SHIP EAST VIA CONRAIL, OR (4) THEY CAN SHIP EAST

VIA THE COMBINATION OF GRAND TRUNK/CANADIAN NATIONAL/GUILFORD. AFTER THE SALE TO NORFOLK SOUTHERN, THOSE SAME SHIPPERS WILL HAVE THE SAME FOUR OPTIONS WITH THE ADDITIONAL BENEFIT THAT THEY ALSO CAN SHIP EAST VIA GUILFORD -- PROVIDING SHIPPERS WITH COMPETING SINGLE LINE SERVICE FOR THE FIRST TIME SINCE THE PENN CENTRAL MERGER. THE SITUATION IN ST. LOUIS IS SIMILAR.

THE SALE OF CONRAIL TO THE NORFOLK SOUTHERN WILL PRESERVE AND ENHANCE COMPETITION IN THE NORTHEAST BY STRENGTHENING THE NORTHEAST REGIONAL CARRIERS. TODAY, CONRAIL HAS A VIRTUAL MONOPOLY EAST OF THE OHIO BORDER AND NORTH OF WASHINGTON, D.C. IN THAT REGION, CONRAIL'S ONLY COMPETITION COMES FROM REGIONAL CARRIERS WHOSE EFFECTIVENESS HAS BEEN PROGRESSIVELY DIMINISHED BY SHORTENED HAULS AND CLOSURE OF GATEWAYS. THE DIVESTITURES ASSOCIATED WITH THE SALE TO NORFOLK SOUTHERN WILL MORE THAN DOUBLE THE SIZE OF THE P&LE AND SUBSTANTIALLY INCREASE GUILFORD'S MARKET ACCESS. THE DIVESTITURES WILL PROVIDE THESE REGIONAL CARRIERS WITH DIRECT ACCESS TO KEY MIDWESTERN MARKETS FROM CHICAGO AND ST. LOUIS TO TOLEDO, CLEVELAND, AND DETROIT. THE COMBINATION OF THE DIVESTITURES AND ACTIONS UNDER THE PUBLIC INTEREST COVENANTS TO WHICH NORFOLK SOUTHERN HAS AGREED WILL REOPEN MANY OF THE MORE THAN 300 GATEWAYS AND JOINT ROUTES CLOSED DURING CONRAIL'S MASS ROUTE CANCELLATIONS IN 1981. THESE TRANSACTIONS STRENGTHEN THE COMPETITIVE POSITION OF THE REGIONAL RAILROADS AND PREVENT THE LOSS OF COMPETITION THAT WOULD SURELY OCCUR IF THESE REGIONAL RAILROADS WERE LEFT WITH SHORT HAULS AND CLOSED GATEWAYS TO FACE A STAND-ALONE CONRAIL.

I WOULD LIKE TO COMMENT ON THE STRENGTHS OF GUILFORD AND THE P&LE.

GUILFORD HAS PROVEN ABILITY AS AN EFFECTIVE AND STRONG FREIGHT COMPETITOR. JUST TWO YEARS AGO, THE MELLON-ORGANIZED GUILFORD SYSTEM TOOK OVER THREE RAILROADS (THE BOSTON AND MAINE, MAINE CENTRAL RAILROAD, AND THE DELAWARE AND HUDSON), TWO OF WHICH WERE IN BANKRUPTCY. TODAY THE GUILFORD SYSTEM IS PROFITABLE ON A SYSTEM-WIDE BASIS. GUILFORD ACCOMPLISHED THIS IMPRESSIVE TURNAROUND THROUGH GOOD MANAGEMENT -- WITHOUT FEDERAL SUBSIDIES OR SPECIAL OPERATING LEGISLATION. WITH THE SINGLE EXCEPTION OF AN EXTRAORDINARY INVESTMENT IN THE DELAWARE AND HUDSON TRACKS IN NEW YORK NECESSARY TO CORRECT DEFERRED MAINTENANCE EXISTING WHEN GUILFORD BOUGHT THE RAILROAD, ALL THREE OF THE GUILFORD RAILROADS ARE NOW OPERATING ON A POSITIVE CASH FLOW BASIS.

THE DEPARTMENT OF TRANSPORTATION VIEWS GUILFORD AS A VIABLE COMPETITOR. BECAUSE OF ITS POSTURE AS AN EASTERN REGIONAL CARRIER AND ITS EAST-WEST TRAFFIC BASE, IT MELTS NICELY INTO THE LINES WHICH WILL BE DIVESTED. WITH THE ACQUISITION OF ACCESS OVER A HIGH SPEED TRUNK LINE FROM THE EAST COAST TO THE MIDWEST GATEWAYS AT TOLEDO, CHICAGO AND ST. LOUIS, GUILFORD ACQUIRES ACCESS TO ENORMOUS MARKETS, ALONG WITH ACCESS TO MORE THAN 50 PERCENT OF ALL THE FREIGHT IN THE COUNTRY THAT MOVES EAST THROUGH THE CHICAGO AND ST. LOUIS GATEWAYS.

THE GUILFORD SYSTEM IS NOT DESIGNED TO COMPETE WITH NORFOLK SOUTHERN/CONRAIL OVER THE BREADTH OF ITS NORTH-SOUTH SYSTEM. THE JUSTICE DEPARTMENT HAS DETERMINED THAT, OVER THE GREAT MAJORITY OF THAT SYSTEM, NO ADVERSE COMPETITIVE IMPACT EXISTS. THE EXPANDED GUILFORD SYSTEM IS INSTEAD DESIGNED TO COMPETE IN THE MARKETS JUSTICE IDENTIFIED WHERE A NEGATIVE COMPETITIVE IMPACT WOULD, IN FACT, OCCUR. WITH THE ACQUISITION OF THE DIVESTED LINES AND THE NEW CONNECTIONS IT GAINS, GUILFORD IS FULLY CAPABLE OF COMPETING IN THOSE MARKETS.

GUILFORD WILL NOT BE NORFOLK SOUTHERN/CONRAIL'S ONLY COMPETITOR IN THESE MARKETS. CSX CORPORATION SERVES MOST OF THESE MARKETS, OFFERING HEAD-TO-HEAD COMPETITION WITH THE NORFOLK SOUTHERN/CONRAIL SYSTEM ABOVE AND BEYOND THE COMPETITION THAT GUILFORD WILL PROVIDE. THREE MARKETS -- TOLEDO, FT. WAYNE, AND CLEVELAND -- WILL ACTUALLY GAIN A CARRIER. TOLEDO WILL GO FROM FIVE (CSX, NORFOLK SOUTHERN, CONRAIL, ANN ARBOR, AND GRAND TRUNK WESTERN) TO SIX, IF THE DIVESTITURE PLAN AS STRUCTURED IS APPROVED (CSX, NORFOLK SOUTHERN/CONRAIL, ANN ARBOR, GRAND TRUNK WESTERN, GUILFORD TRANSPORTATION INDUSTRIES, AND PITTSBURGH AND LAKE ERIE). CLEVELAND WILL LIKEWISE GAIN BOTH GUILFORD AND P&LE TO REPLACE NORFOLK SOUTHERN. FT. WAYNE, WHICH IS NOW SERVED BY CONRAIL AND NORFOLK SOUTHERN, WILL GAIN GUILFORD AND P&LE.

BOTH GUILFORD AND THE P&LE WILL ENJOY REDUCED SWITCHING CHARGES FROM THE NORFOLK SOUTHERN/CONRAIL SYSTEM.

P&LE IS A CLASSIC REGIONAL CARRIER, DESIGNED TO PROVIDE COMPETITION WITHIN A 500-MILE RADIUS OF PITTSBURGH. ITS VIABILITY IS BETTER ASSURED BECAUSE OF THE DIVESTITURES. IF CONRAIL IS ALLOWED TO STAND ALONE, THE P&LE MIGHT IN TIME BE STRANGLER AT THE COST OF 1,000 JOBS IN PENNSYLVANIA ALONE. THE DIVESTITURE ALLOWS P&LE TO REACH ITS KEY MARKETS ON ITS OWN TRACKS, WHILE AT THE SAME TIME ADDING NEW LINES WITH SIGNIFICANT TRAFFIC INCLUDING FACILITIES OF KEY CURRENT CUSTOMERS FROM WHICH IT IS BARRED TODAY.

THE PATTERN OF DIVESTITURES WILL WORK FOR THE P&LE BECAUSE IT RESOLVES THE PROBLEMS WHICH HAVE PRODUCED THE P&LE'S FINANCIAL WEAKNESS. SINCE THE CREATION OF CONRAIL, P&LE HAS BEEN CUT OFF FROM FRIENDLY CONNECTIONS TO THE EAST AND WEST, PLAGUED WITH INEFFICIENT ROUTES TO MAJOR MARKETS, AND CONFRONTED BY A LACK OF GOOD GATEWAYS. THE DIVESTITURES RESOLVE THOSE PROBLEMS. THE P&LE CONSIDERABLY LENGTHENS ITS HAUL BY ACQUIRING MORE THAN 600 MILES TO ADD TO ITS PRESENT 500-MILE SYSTEM. P&LE ACQUIRES FAST, DIRECT, COMPETITIVE ACCESS TO MAJOR MARKETS IN FT. WAYNE, TOLEDO, CLEVELAND, BUFFALO, AND CANTON-MASSILLON. IN ADDITION TO ACQUIRING MAJOR NEW MARKETING AREAS IN THESE REGIONS, IT WILL ACQUIRE ACCESS TO THE MANUFACTURING COMPLEX ALONG THE OHIO RIVER NEAR STEUBENVILLE, OHIO.

THE TRACKAGE BEING DIVESTED TO THE P&LE IS THE TRACKAGE OF THE FORMER WHEELING AND LAKE ERIE RAILROAD, A PART OF THE OLD NICKEL PLATE LINE. THE WHEELING AND LAKE ERIE WAS CONSISTENTLY AMONG THE MOST PROFITABLE RAILROADS IN THE COUNTRY AND WAS KNOWN FOR GENERATING PROFITS EVEN THROUGHOUT THE GREAT DEPRESSION. THE DIVESTITURES RECREATE THE WHEELING AND LAKE ERIE AND RESTORE THE EASTERN GATEWAYS. THERE IS A CLEAR HISTORY THAT THIS TRACKAGE CAN BE RUN PROFITABLY AND EVERY REASON TO BELIEVE THAT IT WILL BE.

THE P&LE, LIKE THE GUILFORD SYSTEM IN 1983 AND THE CONRAIL SYSTEM BEFORE THAT, HAS COME THROUGH A REORGANIZATION. A FEW MONTHS AGO, P&LE REACHED AN ACCORD WITH ITS LENDERS WHICH RESTRUCTURES P&LE'S DEBT FROM SHORT-TERM TO LONG-TERM. THIS IS A VOTE OF CONFIDENCE BY THE FINANCIAL COMMUNITY, WHICH IS FURTHER EVIDENCED BY THE FACT THAT THE INVESTMENT BANKING FIRM OF DILLON, REED HAS INDICATED DEFINITIVE INVESTOR INTEREST IN FINANCING P&LE'S ACQUISITIONS, EVIDENCING THE JUDGMENT OF THE FINANCIAL MARKETS THAT THE ACQUISITIONS ARE VIABLE.

P&LE HAS READY AND AVAILABLE THE EQUIPMENT NEEDED TO SERVE THE NEW SYSTEM. IT HAS ON HAND AND IDLE, LARGE NUMBERS OF NEW AND NEARLY NEW STEEL MILL GONDOLAS AND COAL HOPPERS WHICH WERE BUILT TO SERVE THE VERY BUSINESS WHICH ITS EXPANDED ROUTES WILL ALLOW IT TO SERVE AGAIN. IN ADDITION, P&LE HAS THE AN

ARRANGEMENT TO ACQUIRE SPECIALIZED EQUIPMENT FROM NORFOLK SOUTHERN AS PART OF THE PURCHASE AGREEMENT. MOREOVER, SINCE P&LE WILL HAVE A SURPLUS OF EQUIPMENT EVEN AFTER THE DIVESTITURES, IT CAN ACTUALLY INCREASE ITS FINANCIAL STRENGTH BY TRANSFERRING SOME OF ITS SURPLUS EQUIPMENT TO THE GUILFORD SYSTEM, WHICH WILL NEED THAT EQUIPMENT TO SERVICE ITS NEW LINES.

FROM THIS DEPARTMENT'S POINT OF VIEW, THE DIVESTITURE PACKAGE NOW MEETS THE COMPETITIVE CONCERNS THE JUSTICE DEPARTMENT HAS RAISED. MOREOVER, THE DIVESTITURE PACKAGE SIGNIFICANTLY IMPROVES THE RAILROAD SYSTEM OF THE NORTHEAST AND THE MIDWEST.

MR. CHAIRMAN, ANOTHER ISSUE THAT HAS BEEN RAISED WITH RESPECT TO THIS SALE CONCERNS THE IMPACT OF DIVERSIONS ON COMPETING RAILROADS. THE DEBATE OVER POTENTIAL DIVERSIONS IS MISLEADING. THE DIVERSION OF TRAFFIC FROM ONE RAILROAD TO ANOTHER SHOULD NOT BE EQUATED WITH ANTICOMPETITIVE EFFECTS. OFTEN DIVERSIONS ARE AMONG THE BEST EXAMPLES OF COMPETITION AT WORK. INDEED, TO USE THE WORDS OF THE ANTITRUST DIVISION, DIVERSIONS OFFER SIGNIFICANT BENEFITS BECAUSE "DIVERSIONS OFTEN RESULT FROM LOWER COSTS TO RAILROADS OF PROVIDING SINGLE-LINE, RATHER THAN INTERLINE, SERVICE AND BECAUSE SINGLE-LINE SERVICE IS OFTEN ATTRACTIVE TO SHIPPERS..." THE JUSTICE DEPARTMENT CONCLUDED THAT DIVERSIONS ASSOCIATED WITH THIS SALE DO NOT PRESENT AN ANTITRUST PROBLEM BECAUSE THE DIVESTITURES TO

GUILFORD AND P&LE ASSURE THAT REGIONAL CARRIERS CONTINUE TO RECEIVE INTERLINE TRAFFIC FROM CARRIERS OTHER THAN CONRAIL AND NORFOLK SOUTHERN. SUCH ACCESS TO OTHER RAILROADS PREVENTS ABUSE OF MARKET POWER. MOREOVER, MOST MERGER-RELATED DIVERSIONS REFLECT EFFICIENCIES THAT ARE BENEFICIAL TO THE ECONOMY. RICHARD J. BARBER, AN EXPERT WITNESS FOR CSX IN ITS MERGER PROCEEDING, SPOKE SIMILARLY OF DIVERSIONS:

"...RAIL DIVERSION ALONE PROVIDES NO MEANINGFUL INSIGHT INTO THE CONSOLIDATION'S PROSPECTIVE IMPACT ON COMPETITION. OF CRUCIAL IMPORTANCE IS THE REASON (OR REASONS) WHY SUCH DIVERSIONS MAY OCCUR. HERE THE KEY FACTOR IS THE INCREASED SINGLE LINE SERVICE...THE TRAFFIC AND REVENUE...WHICH CSX WILL DIVERT FROM OTHER RAILROADS (AND OTHER MODES) IS BUT A QUANTITATIVE MEASUREMENT OF THE MERGER'S PRO-COMPETITIVE PUBLIC BENEFITS."

IN THAT LIGHT, THE DISAGREEMENTS ABOUT THE AMOUNT OF TRAFFIC A NORFOLK SOUTHERN/CONRAIL COMBINATION MIGHT DIVERT TAKE ON A DIFFERENT ASPECT. NEITHER FRA, USRA, NOR THE ICC STAFF ON LOAN TO THE HOUSE SUBCOMMITTEE ON TRANSPORTATION AND TOURISM PROJECT THAT ANY RAILROAD AFFECTED BY THE MERGER WILL BE UNABLE TO PERFORM ESSENTIAL SERVICES. INDEED, NORFOLK SOUTHERN HAS ALREADY REACHED JOINT RATE AND ROUTE AGREEMENTS WITH THE KANSAS CITY SOUTHERN, SOO/MILWAUKEE, AND IOWA INTERSTATE RAILROADS.

I WOULD MAKE ONE LAST POINT WITH RESPECT TO THE SALE PROCESS. THE SALE HAS BEEN SUBJECT TO INTENSE PUBLIC SCRUTINY FROM THE BEGINNING. THERE HAVE BEEN NUMEROUS HEARINGS ON THE SALE AND THE PROCESS OVER THE LAST YEAR OR SO, AND THE DEPARTMENT HAS PARTICIPATED FULLY. THESE HEARINGS INCLUDE FORMAL COMMITTEE HEARINGS BEFORE HOUSE APPROPRIATIONS, HOUSE ENERGY AND COMMERCE, SENATE COMMERCE, SCIENCE AND TRANSPORTATION, HOUSE WAYS AND MEANS, AND THIS COMMITTEE. IN ADDITION, SENATOR SPECTER HELD THREE HEARINGS IN PENNSYLVANIA AND SEVERAL MORE UNDER THE AUSPICES OF THE NORTHEAST MIDWEST SENATE CAUCUS. OTHER MEMBERS HAVE ALSO HELD HEARINGS IN THEIR STATES. THE DEPARTMENT HAS ALSO VISITED STATE DOT'S, SHIPPER FORUMS, REGIONAL FORUMS, AND OF COURSE, MET EXTENSIVELY WITH MEMBERS OF CONGRESS, GOVERNORS, AND LOCAL REPRESENTATIVES. NERSA EXPLICITLY CONTEMPLATED THIS SORT OF REVIEW RATHER THAN A FORMAL ADMINISTRATIVE OR JUDICIAL HEARING PROCESS. THE DEPARTMENT'S PROCESS HAS BEEN AN OPEN AND INFORMATIVE ONE.

THE SALE OF CONRAIL TO NORFOLK SOUTHERN UNDER S.638, AS REPORTED BY THE SENATE COMMITTEE ON COMMERCE AND TRANSPORTATION, WILL ASSURE THE MAINTENANCE, AND WE THINK ENHANCEMENT, OF RAIL COMPETITIVE CONDITIONS IN THE EAST. THE SALE HAS BEEN REVIEWED EXHAUSTIVELY. THE SALE I PROPOSE TO NORFOLK SOUTHERN REMAINS THE BEST ALTERNATIVE. IT IS TIME FOR CONGRESS TO ACT AND APPROVE THE SALE.