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July 2, 2004

BY HAND

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

ENTERED
Office of Proceedings

JUL 02 2004

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Public Record



Re: **STB Finance Docket No. 27590 (Sub-No. 3)**

Dear Secretary Williams:

In response to the Board's decision served June 22, 2004, TTX Company ("TTX") submits this summary of the points its speakers will address at the July 7 oral argument in this proceeding. TTX's speakers will of course be prepared to address any questions the Board may have about the issues in this case.

As indicated in TTX's Notice of Intent to Speak at Oral Argument, three speakers will participate in the argument on behalf of TTX:

- Andrew F. Reardon, TTX's President and Chief Executive Officer;
- David R. Goode, Chairman of the Board, President, and Chief Executive Officer of Norfolk Southern Corporation, one of TTX's major owners and participants in the TTX flatcar pool; and
- David L. Meyer of Covington & Burling, TTX's counsel in this proceeding.

Mr. Reardon will provide an overview of TTX's role in the railroad industry and the benefits that are being achieved through pooling of flatcars. He will also discuss why TTX has no incentive or ability to engage in anticompetitive conduct that would harm leasing companies.

Mr. Goode will discuss, from a railroad's perspective, the importance of the operating benefits and associated efficiencies created by the TTX flatcar pool. He will also explain why TTX poses no anticompetitive threat to freight car leasing or alternative car supply options.

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Mr. Meyer will address in greater depth why, under the governing statutory standard, the evidence in this proceeding overwhelmingly supports approval of TTX's pooling application. More specifically, his presentation will address:

1. The role TTX plays in generating ***both "better service to the public" and "econom[ies] of operation."***

- The unanimous support for a continuation of TTX's pooling activities voiced by many dozens of shippers and others that benefit from the service improvements and economies that TTX's flatcar pool generates.
- The public interest justifications for reauthorizing the flatcar pool, including the evidence demonstrating (i) the efficiencies and operating benefits generated by TTX's free-running fleet of flatcars; (ii) the efficiencies and other benefits created by TTX's other pooling activities, including flatcar acquisition, maintenance, and research and development; and (iii) the impact of these efficiencies and benefits on railroads and industry participants, such as capital savings, lower car hire rates, and more competitive rail service offerings.
- The evidence specifically demonstrating that the benefits of pooling extend to non-intermodal flatcars.
- The relationship between the benefits that TTX is able to achieve and the need for (a) a 15-year term of reauthorization and (b) a clarification that TTX may act within the scope of its Pooling Agreement and the extant limitations on assignment and allocation without seeking advance Board approval.

2. The evidence demonstrating beyond question that reauthorizing TTX ***will not "unreasonably restrain competition."*** More specifically:

- The features of the flatcar pool that ensure that TTX plays only a pro-competitive role in the railroad industry, including (i) the interests and incentives of TTX's owners to use TTX only to the extent it achieves benefits (in terms of efficiencies, cost reductions or better service) that they could not achieve through other options; and (ii) the lack of any restriction on alternative car supply options, including the leasing of flatcars, which has expanded during the past decade.
- The evidence that TTX has in fact played a pro-competitive role in the railroad industry, including evidence regarding (i) the views of shippers, equipment suppliers and others that would be harmed were TTX restricting output or raising car supply costs; (ii) TTX's strong investment in flatcar equipment and innovation; and (iii) substantial reductions in TTX's car hire rates that reflect the efficiencies TTX has been able to achieve.

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- The lack of legal or economic foundation for the concerns expressed by Leasing Opponents, especially their contention that TTX's *low* prices are somehow anticompetitive.

3. The dangers of imposing restrictions on TTX's authority of the kind that have been suggested by TTX's opponents. More specifically:

- The devastating effects that would flow from eliminating TTX's pricing ability and requiring that TTX somehow attempt to engage in separate bilateral negotiations with each of its participants, including lessons from failed efforts at pooling of railroad equipment.
- The loss of benefits and efficiencies that would result from eliminating TTX's right to maintain and repair cars.

Respectfully submitted,



David L. Meyer

Attorney for Applicants

cc: All Parties of Record