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April 12, 2004

By Hand Delivery

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K St., N.W.
Washington, D.C. 20423-0001

210571
ENTERED
Office of Proceedings

APR 12 2004

Part of
Public Record

**Re: STB Finance Docket No. 27590 (Sub-No. 3), Application of
TTX Company for Approval of Pooling of Car Service
With Respect to Flat Cars**

Dear Secretary Williams:

Enclosed please find an original and ten (10) copies of General Electric Railcar Services Corporation's comments in response to the Application for Reauthorization of the TTX Flatcar Pool submitted by TTX Company in the above referenced matter.

Sincerely,


R. Latane Montague, IV

Enclosures

cc: (w/encl.) The Honorable Roger Nober (courtesy copy)
All Parties of Record

BRUSSELS BUDAPEST* LONDON MOSCOW PARIS* PRAGUE* WARSAW
BALTIMORE, MD BOULDER, CO COLORADO SPRINGS, CO DENVER, CO LOS ANGELES, CA McLEAN, VA MIAMI, FL NEW YORK, NY

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BEFORE THE SURFACE TRANSPORTATION BOARD

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**TTX COMPANY—
APPLICATION FOR APPROVAL OF POOLING OF CAR SERVICE
WITH RESPECT TO FLATCARS**

**COMMENTS OF GENERAL ELECTRIC RAILCAR SERVICES
CORPORATION**

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April 12, 2004

BEFORE THE SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 27590 (Sub-No. 3)

**TTX COMPANY–
APPLICATION FOR APPROVAL OF POOLING OF CAR SERVICE
WITH RESPECT TO FLATCARS**

**COMMENTS OF GENERAL ELECTRIC RAILCAR SERVICES
CORPORATION**

General Electric Railcar Services Corporation (“GE Railcar Services”) hereby submits its comments in reply to the “Application for Reauthorization of the TTX Flatcar Pool” (“TTX Application”) submitted by TTX Company (“TTX”) on January 6, 2004.¹

I. BACKGROUND

GE Railcar Services is one of the leading railcar lessors in North America. It owns and manages a fleet in excess of 183,000 railcars, including 3,895 intermodal flat cars and 5,354 other flat cars of various designs and types as well as over 32,206 boxcars and 3,007 mill gondolas. GE Railcar Services provides the rail industry with a broad array of equipment leasing and financial products. Its customers include Class I, regional and shortline railroads, as well as shippers in a wide range of industries including paper, plastics, automotive, food products, steel, coal, cement, and lumber.

¹ The facts alleged in these comments are verified by Gregory P. Taylor, a Vice President of GE Railcar Services. Gregory Taylor’s verification is attached to these comments.

II. COMMENTS

GE Railcar Services has reviewed the TTX Application to the Surface Transportation Board (“STB”) and understands the history, merits and efficiencies associated with TTX’s operation of the intermodal segment of its flatcar pool. TTX was instrumental in developing the intermodal infrastructure across the some thirty-eight Class I Railroads subject to regulation by the Interstate Commerce Commission (“ICC”). The success of that endeavor is evident from TTX’s dominance of the rail intermodal fleet: TTX owns or manages approximately 36,600 intermodal flatcars, representing approximately 69% of the North American intermodal flatcar fleet.

The transition from the ICC to the STB and the stated mission of the STB have been to promote competition and greater reliance on marketplace mechanisms. Continuing or expanding exceptions to the fundamental procompetitive principles of the antitrust laws does not comport with that mission where there is a failure to show that those exceptions serve the interest of economy of operation (or better service to the public) *and* that those exceptions do not unreasonably restrain competition. GE Railcar Services believes that a limited extension of the TTX flatcar pool is generally not inconsistent with the promotion of competition and the principle of reliance on marketplace mechanisms. That extension, however, should continue to provide antitrust immunity to TTX on *only* those aspects of its pooling operation that are necessary to provide efficiencies and public benefits. GE Railcar Services believes that a number of ancillary activities associated with the TTX pooling agreement do not provide such public benefits and are not critical to its operation and efficiencies. Such activities have a significant and increasingly negative impact on competition for flatcars and, potentially, for other

car types. Accordingly, GE Railcar Services respectfully requests that, before approval, the STB modify the TTX pooling agreement in the following ways:

1. The Board should limit the ongoing TTX flatcar pool to only those types of flatcars: (a) which TTX can demonstrate enjoy significantly increased loaded movements as a result of the operation of the pool, and (b) that utilize an infrastructure that was built on the premise of the pool existing. GE Railcar Services believes that TTX only has demonstrated material pooling related efficiencies with respect to intermodal flatcars. Accordingly, the STB should only renew the TTX flatcar pool for intermodal flatcars.

2. The pooling authority should not extend to collective price setting by TTX and its owner railroads. Additionally, owner railroads should not be allowed to discriminate between TTX and other private cars with respect to imposition of storage charges, transportation charges, switching charges and other freight charges ("Charges"). The combined effect of the owner railroads' collective rates and preferential treatment of TTX cars through abatement of Charges is to create a significant barrier to competition for car supply for the types of cars in the TTX pool. In the long run, this reduces the availability of low cost and innovative equipment to the ultimate shipping public. While collective price setting protection may have been appropriate in the developmental stages of intermodal transportation and rate regulation, it no longer serves the public interest or fosters efficiencies, and should be eliminated in any on-going or future TTX pooling agreement.

3. The pooling agreement should be approved for a term of no more than five years, with no automatic renewal at the end of the term. The railroad industry, the railcar leasing industry, and the market for freight cars are in a period of dramatic change. It is, therefore, impossible for the STB to assess accurately the efficiencies and competitive impact of the TTX pool for fifteen years.

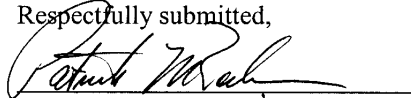
4. TTX's request for authorization to make unilateral changes to its car contracts and pooling practices without prior STB approval should be denied. Notably, the TTX Application does not specifically explain what future changes it is asking the STB to approve. What is clear, however, is that TTX desires to make those changes under the protection of its anti-trust law exemption. Accordingly, the STB and other interested parties should be given an opportunity to assess, and TTX should retain the duty to explain, the effects of those changes under the statutory standard of 49 U.S.C. 11322 *before* their implementation by TTX. Without this opportunity, TTX enjoys the protections of the exemption while self-defining its scope and unfairly shifts the burden to potentially affected parties to analyze the impact of its unilateral changes.

5. TTX should not be allowed to assign or allocate pool cars to specific member railroads. Assigned cars, by definition, are no longer operating in the "free running" pool and therefore no longer enjoy the increased efficiencies associated with management by the pool. Because there are no increased efficiencies, these TTX cars should not be allowed to compete against private car providers under the cloak of the STB's antitrust immunity.

III. CONCLUSION

GE Railcar Services believes that, if the TTX pool were to be operated under the proposals presented in the TTX Application, it would present an unreasonable restraint on competition in today's market for freight cars. However, with the limitations set forth above, GE Railcar Services believes that a limited extension of the TTX pool would be in the interest of better service and economy of operation and can be approved by the Board.

Respectfully submitted,



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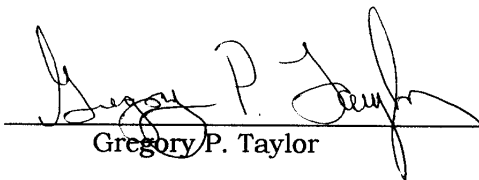
Oliver W.R. Champagne, Jr.
General Counsel
General Electric Railcar Services Corporation

April 12, 2004

Counsel for General Electric Railcar Services Corporation

VERIFICATION

I, Gregory P. Taylor, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement. Executed on April 9, 2004.


Gregory P. Taylor

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of April, 2004, I caused to be served by the means specified below a copy of the foregoing comments to:

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A handwritten signature in cursive script, reading "R. Latane Montague IV". The signature is written in dark ink and is positioned above a horizontal line.

R. Latane Montague IV
Counsel for Commenter